

COLLECTIVE BARGAINING AGREEMENT
between
U.S. ENVIRONMENTAL PROTECTION AGENCY
and
ENGINEERS AND SCIENTISTS OF CALIFORNIA

The effective date of this agreement is November 27, 2024

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PURPOSE

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

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

- A. Safeguards the public interest;
- B. Contributes to the effective conduct of public business; and
- C. Facilitates and encourages the amicable settlements of disputes between employees and the Agency involving conditions of employment.

ARTICLE 1

Recognition and Unit Designation

Section 1. Exclusive Representative

- A. Engineers and Scientists of California, IFPTE Local 20 (the “Union” or “ESC”) is the exclusive representative of all employees in the bargaining unit as defined in Section 2 of this Article. Pursuant to 5 U.S.C. Section 7114(a) (1), “[the Union] is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.”
- B. For all matters in which the Union is represented under this Agreement and under the Federal Labor Statute, the Agency is only obligated to deal with one Union representative as a point of contact for each matter. Within 15 days after the effective date of this Agreement, the Union will provide the Agency with a list of designated Union representatives, their contact information and the types of matter(s) for which they will serve as a Union representative. The Union may amend its list by providing written notice to the Agency, but only the EPA Unit President or designee for that specific purpose will be allowed to make such modifications. If a Union official claims to be a Union representative for a particular matter but is not on the list for that matter, the Agency will notify the EPA Unit President, but the Agency will have no duty under this Agreement or the Statute to recognize any individual as a Union representative who is not on the list.
- C. Nothing in this section will preclude an ESC employee from representing the Union or an employee.

Section 2. Definition of the Unit

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

- A. Exclusions: The following are excluded from the Union’s units of exclusive recognition:
 - 1. Management officials and supervisors;
 - 2. Confidential employees, as defined in 5 U.S.C. Section 7103;
 - 3. Employees engaged in personnel work in other than a purely clerical capacity;
 - 4. Employees engaged in administering the Federal Service Labor Management

Relations Statute;

5. Employees engaged in intelligence, counterintelligence, investigative or security work which directly affects national security;
 6. Employees primarily engaged in investigation or audit functions relating to the work of individuals, employed by the Agency whose duties directly affect the internal security of the Agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity;
 7. Employees of the Office of the Inspector General;
 8. Experts and consultants appointed under 5 CFR 304.101;
 9. Intermittent employees;
 10. Employees hired under the summer employment program and employees under student appointments;
 11. Employees appointed under fellowship programs;
 12. Commissioned officers of the United States Public Health Service;
 13. Employees on temporary appointments of 90 days or less;
 14. Other employees excluded by the Statute; and
 15. Employees in positions that have been excluded under certifications and clarifications issued by the FLRA.
- B. Nothing in this section is meant to exclude any employee from the bargaining unit who is not excluded by statute.

Section 3. Other Units

If the Union becomes certified as the exclusive collective bargaining representative for any employees or bargaining unit not currently covered by this Agreement, this Agreement shall extend automatically to all employees covered by that certification on the ninetieth (90th) day following the certification of such unit unless the Agency exercises its bargaining rights. The dues withholding provision shall be applicable when the agreement goes into effect.

ARTICLE 2

Union Activities and Official Time

Section 1. No Recording of Protected Union Activity

Except as provided in this MCBA, no recording will be made without mutual consent of any conversation involving Union activity.

Section 2. Agency/Union Annual Meeting

The Agency shall annually brief the National Labor Management Forum (or successor group) participants on its budget.

Section 3. Surveys

Prior to surveying bargaining unit employees regarding conditions of employment, the Agency will provide the Union with a copy of the survey document generally three (3) business days in advance and allow the Union an opportunity to comment on it. The Union will, upon request, receive a copy of any survey results (i.e., generally a compilation of responses so the Union can understand how employees responded as a group) obtained unless there are privacy concerns.

In the event there are privacy concerns, the Agency will, upon request, provide the Union with an explanation of those concerns and discuss how best to share the results.

Section 4. Communication and Information Sharing

- A. The Union shall have the right to communicate with Bargaining Unit employees. In accordance with GSA and Agency facilities and cybersecurity rules, regulations, and policies, the Union may use Agency email systems, physical and electronic bulletin boards, desk drops, phones, signage etc., to communicate with employees.
- B. The Agency shall annually inform the employees of their right to Union representation. The Union has a right to inform employees of their right to Union representation.
- C. Upon request, the Agency will provide ESC with existing current electronic organizational charts for each organizational unit showing the chain of command. This request should be made to the Region 9 Human Resources Officer.

Section 5. Official Time

The Parties share the responsibility to ensure that official time is used effectively, efficiently, and is appropriately accounted for. Subject to this MCBA, the use of approved time by a Union Representative in the conduct of their representational duties shall be charged to official time.

- A. The Union may designate Representatives to act on its behalf. Nothing in this Article prevents a Union representative from requesting official time for a matter involving a geographical location

different from their Official Work Location. The Union will inform the Agency of its current officers and committee members annually by February 1 of each year.

- B. In accordance with 5 USC 7131(d), Union Representatives may be eligible for official time as reasonable, necessary, and in the public interest. This includes requests for training at the local and national levels.
- C. Notwithstanding any other provision in this Agreement, any activities performed by Union Representatives relating to the internal business of the Union shall be performed during the time the Representatives are in nonduty status.
- D. Use of Official Time:
 - 1. When it is necessary for a Union representative to use official time for representational purposes, the Union representative will inform their immediate supervisor of the dates and times, and general purpose of the official time (e.g. General Labor-Management Relations, Term Negotiations, Mid-Term Negotiations and Dispute Resolution). In the event that a pressing job-related need precludes the immediate excusal of the Union representative, the supervisor will inform the Union representative of the earliest time they will be permitted to use official time. The Union representative will report to the supervisor upon the end of their use of official time.
 - 2. Union representatives will not use official time for internal union business including solicitation for membership or collection of dues.
- E. At the end of each pay period each Union representative will record their official time in the Agency's official time keeping system (currently People Plus) using the correct time keeping code(s).
- F. Overtime and Compensatory Time: Employees serving as Union Representatives may not earn compensatory time or overtime for representational activities. Union Representatives can work overtime or compensatory time to perform Agency work per the Work Schedules and Overtime Articles.
- G. Telework and Remote Work: Union Representatives, who otherwise meet the criteria set forth in the Telework and Remote Work Articles of this MCBA, may perform Union activities while at their Alternate Work Location and/or their Remote Work Location.

Section 6. Union Training

The use of official time for attending local Union-sponsored training by Union Representatives is an appropriate matter for local level consideration. The use of official time for attending national Union-sponsored training by Union Representatives is an appropriate matter for national level consideration.

Section 7. Union Travel and Per Diem

- A. The Parties jointly commit to the following principles as the foundation for a productive and cost-effective labor management relationship:

1. When the Parties agree, the Agency will pay for Union travel and per diem.
2. Consistent with this MCBA, the Parties will schedule meetings as efficiently as possible, including consolidating meetings when appropriate and holding certain meetings virtually.
3. The Parties are committed to reducing the amount of travel used for representational activities.

Section 8. Agency Commitments

On the second Thursday of October each year, the Parties will meet to discuss issues for which training of Agency managers, Union Officers and bargaining unit employees, could be beneficial. Upon agreement of the Parties, the Parties will jointly provide this training. The Parties may also discuss Unfair Labor Practice, Prohibited Personnel Practices, Grievance, 4711 complaint and EEO claim trends identified by either Party.

Section 9. Union Officials and Telework/Remote Work

- A. Bargaining unit employees who serve as Union representatives may apply for Remote Work or Telework under the negotiated Articles and their eligibility will be based on their Agency position of record. For the duration of their incumbency in the Union representative position, employees may perform representational duties, consistent with law and regulation while on official time, from remote or alternate work locations under either a signed Remote Work or Telework Agreement.
- B. General
 1. All Union representatives desiring Remote Work or Telework arrangements are required to submit to their supervisor as provided in the Remote Work or Telework Articles a completed application for Remote or Telework, which must include: a completed Remote Work or Telework Application/Agreement; a completed Employee Self-Certification Safety Checklist for the remote work/telework location; an attached copy of Employee's Approved Schedule; and a copy of evidence of Remote Work/Telework Training taken by the employee.
 2. Unless herein stated otherwise, the rules and regulations governing Remote Work and Telework and contained in the Parties' Telework and Remote Work Articles continue to apply to all Union representatives performing representational duties from Remote or Alternate Work Locations. This includes, for example, changes in AWL or RWL.
 3. Commuting Expenses to Official Agency Worksite:
 - a. For a Union representative who has become a remote worker or a teleworker when traveling to their assigned official Agency worksite for Union representational responsibilities, the Agency will pay/reimburse employees for transit benefits for that employee to the extent transit benefits are available for similarly situated employees.
 - b. For a Union representative who has become a remote worker or teleworker and normally does not use transit benefits and whose RWL or AWL is outside the local commuting area, travel to their assigned official Agency worksite solely for Union representational responsibilities will not be paid/reimbursed by the Agency unless the Agency initiates the request.

- c. A Union representative who has become a remote worker or teleworker who travels to the Official Agency Worksite at the Agency's request will be reimbursed the cost of travel available for similarly situated employees.
- d. For an Agency employee recalled due to Agency needs arising from the employee's position of record, nothing in this agreement supersedes the Parties' Telework or Remote Work agreements and any Agency obligation to pay for/reimburse employee travel.

Section 10. Savings Clause

Nothing in this Agreement waives employee rights under 5 U.S.C. 7102 of the Statute or the Union's rights under Title 5 Chapter 71 of the U.S. Code.

ARTICLE 3

Union Use of Agency Facilities and Services

Section 1. Meeting Space

The Employer will provide the Union reasonable use of meeting/conference rooms on a space available basis during working hours. The Union will comply with all security and housekeeping rules. The Union will follow established procedures for reserving meeting space.

Section 2. Office Space and Furniture

- A. The Employer will continue to provide the Union use of a dedicated office space and furniture in the current location until the Agency has to undergo space reduction.
- B. Should the Agency undergo space reduction, the Parties understand the Union may be asked to reduce space which is subject to negotiations.
- C. The Employer will provide the Union with one lockable filing cabinet for storage of Union documents.

Section 3. Union Access to Government Equipment and Software

- A. The Union will be granted reasonable use, of the Employer's equipment available to all staff; examples include copiers, scanners, and printers for Union representational activities.
- B. Union representatives may use their government assigned equipment and software; examples include computer (which may be a laptop), telephone, and voicemail, email and Microsoft Teams (or equivalent) for representational activities.
- C. The Employer will provide the Union with a dedicated telephone number and corresponding voicemail for their use.

Section 4. Use of Email

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

- A. Use by the Union will be restricted to representational purposes pursuant to 5 USC Section 7101 et. seq. The Union may communicate with its entire bargaining unit but may not send mass mailers to the entire Region and/or Agency.

- B. Email attachments may need to be limited based on the Agency information technology systems. For large attachments, the Union will use a link to OneDrive or a comparable tool. The Agency will provide reasonable IT support to enable a link. The Union will limit its email communications to those employees who have a relevant interest in the subject matter.
- C. The Union will ensure that no email will violate law or security. The Union agrees not to post/email scurrilous or defamatory material/messages.
- D. The Union is subject to the same standards that apply to all users as established by EPA Policy.

Section 5. Bulletin Boards

- A. The Union may continue to use the bulletin boards provided for their exclusive use on each floor of the 75 Hawthorne Street, Regional Office where bargaining unit employees are located. The Union will have keys to the bulletin board and will coordinate with the Employer to secure keys to the bulletin boards to the extent it is missing such keys.
- B. The Union will ensure that no posting will violate law or security or contain defamatory material or material maligning the integrity of any individual, the Employer, or the Federal Government.
- C. The Employer agrees not to post any of its own materials in the Union bulletin boards.

Section 6. Mail Distribution

The Union may use the Employer's interoffice mail system (physical mail) for representational correspondence with bargaining unit employees, representatives, the Agency, and grievants. It is understood the interoffice mail system will not be used for mass mailings of any kinds. The Union may receive U.S. Postal Service mail or private express mail services addressed to the Union at Regional Office located at 75 Hawthorne Street. The Employer will make best efforts not to open mail addressed specifically to the Union.

Section 7. Authorized Representatives

Authorized representatives of the Engineers and Scientists of California who are not employed by EPA, Region 9, and have business to conduct at EPA, Region 9 offices, shall notify the Employer in advance of such business or visit. The ESC visitor will abide by appropriate rules and security requirements. Activities concerning internal Union business (e.g. membership programs/drives) will take place during non-work time.

Section 8. Distribution of Collective Bargaining Agreement

- A. The Employer shall provide the Union with 5 bound copies of the Parties' Collective Bargaining Agreement to review during the ratification process.
- B. The Employer will provide the Union with an electronic copy of the Collective Bargaining Agreement.
- C. If requested by a visually challenged employee, the Employer will provide a copy of the Collective Bargaining Agreement in an alternative format, e.g. Braille or an electronic copy of this Collective Bargaining Agreement that is accessible to visually impaired employees and, thus, complies with the Rehabilitation Act, 29 U.S.C. § 701, et seq.

Section 9. Union information on EPA Intranet

The Employer will maintain an easily available intranet page that provides Union officials' contact information and the current Collective Bargaining Agreement and other current agreement(s) between the Parties. Union official contact information will include their name, telephone numbers (if any), and e-mail address. When the Union provides the Employer with updated contact information for their representatives, the Employer will update the intranet page containing that information within a reasonable time.

Section 10. Ballot Box Elections

The Employer will provide the Union with a reasonable amount of space, such as a conference room, to conduct ballot box elections.

Section 11. Chapter Newsletter

Subject to the requirements of this article regarding email distribution, the Union may electronically distribute its Chapter's newsletters.

ARTICLE 4

Union Dues

Section 1. Withholding

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

Section 2. Eligibility

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

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

Section 3. Consistent Dues Deduction

- A. The Agency's payroll/HR system provider allows for electronic distribution of an employee's allotment to ESC.
- B. ESC shall provide the Agency with the new dues withholding amounts no later than 30 days after the implementation of this Agreement.
- C. The amount of dues withholding shall be consistent across the Agency.

Section 4. Responsibilities of the Union

The Union shall:

- A. Regular Dues: Submit SF-1187 allotment for only those dues which are the regular and periodic dues required by the Union for that employee. Initiation fees, special assessments, back dues, fines, and similar items are not considered dues and shall not be deducted;

- B. Inform Employees: Inform and educate its members of the voluntary nature of the allotment program, including conditions governing institution of allotments; and conditions governing the termination of allotments;
- C. Forms: Provide forms SF-1187, Request and Payroll Deduction for Labor Organization Dues, and SF-1188, Cancellation of Payroll Deductions for Labor Organization Dues, to employees;
 - 1. Forward properly executed and certified Standard Form SF-1187 to the servicing Human Resources Office or designee on a timely basis.
 - 2. State on the SF-1187 the allotment amount to be withheld each bi-weekly pay period and maintain copies of form SF-1187 for all active union members;
 - 3. Forward an employee's revocation (Standard Form 1188) to the Human Resources Office or designee when such revocation is submitted to the Union.
- D. Anniversary Dates: Keep a list of the "anniversary dates" of employees and provide the anniversary dates to employees or the Agency, upon request;
- E. Authorized Union Officials: Furnish a written statement to the Agency's payroll office, listing the names and titles of local Union officials authorized to certify the form SF-1187; and,
- F. Notice to Agency of Changes: Provide the Agency's payroll office, via the Human Resources Office or designee with written notification concerning:
 - 1. Changes in the amount of Union allotments at least 60 days before the pay period in which the change is requested. Per Section 5. B, the amount of dues withheld cannot be changed more than once per year.
 - 2. Changes in the Union officials who are authorized to certify and submit SF-1187 and SF-1188 forms.
 - 3. Any change in the bank routing number and/or account number used by the Union for the receipt of dues allotments.
 - 4. The name of any employee who has been expelled or ceased to be a member in good standing with the Union within 15 days of the date of final determination.

Section 5. Agency Responsibilities

- A. The Agency agrees to:
 - 1. Withhold dues on a bi-weekly basis, at no charge to the Union;
 - 2. Withhold a different amount of dues, upon certification from the EPA Unit President provided that the amount of dues withheld has not been changed during the past 12 months;

3. Forward to the designated Union officials copies of SF-1188s received directly from Union members for processing;
 4. Within ten (10) days of the close of each pay period, transmit employee dues withholdings to the bank account designated by the Union; and
 5. Provide a remittance report to the Union within 30 days or as soon as practicable.
- B. The Agency will terminate an employee's voluntary allotment on the first full pay period following:
1. Loss of exclusive recognition by the Union;
 2. Assignment or reassignment of the employee to an administrative unit outside of any of the Union's recognized bargaining unit, the temporary detail, reassignment or promotion to a position outside the bargaining unit;
 3. Separation of the employee from the Agency;
 4. Upon notice from the Union that the employee has been expelled or ceased to be a member in good standing of the Union.

Section 6. Processing Steps to Effect Allotment Withholding

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

Section 7. Revocation of Allotments.

- A. An allotment shall be effective for one year after the first deduction and can be revoked as provided by 5 U.S.C. 7115.
- B. "Anniversary date" means the date dues were first deducted from an employee's pay check, or if unknown, on the date one year prior to the signing of this agreement.
- C. Revocation notices (SF-1188) may be submitted by an employee at any time to the designated Union representative or to the Agency's Human Resources Office or designee.

Section 8. Reinstatement of Allotment Withholding

- A. When the employee is temporarily detailed, reassigned or promoted to a position outside the bargaining unit, the Union allotment withholding will restart automatically when the employee returns to their position in the bargaining unit.

- B. When an employee previously on dues allotment returns to pay status from non-pay status, the Agency will automatically reinstate the allotment withholding at the rate in effect at the time the employee returns to pay status. The Agency is not responsible for additional dues withholding when/if an employee returns from a non-pay status. Should the Union request to collect dues for the period of non-pay, the Union is solely responsible for collecting the dues from the employee.

Section 9. Correction of Errors

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

ARTICLE 5

Mid-Term Negotiations

This Article governs the mid-term bargaining relationship of the Parties over matters which are not covered by this agreement. The Agency will fulfill its midterm statutory bargaining obligations.

The purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interests of the Agency, the Union, employees, and Agency stakeholders.

Section 1. Mid-Term Negotiation Parameters

As set forth in Article 44 (Duration), the terms of this Agreement shall remain unchanged during its entire term, except as provided by this Agreement or as required by law.

Section 2. Mid-Term Negotiation Procedures

- A. Notice: When the Employer wishes to implement negotiable changes in personnel policies, practices and working conditions the Employer will provide the Union advanced notice of the proposed changes in working conditions in accordance with the law. Notice shall be provided as far in advance as possible taking into account the nature and scope of the proposed change and the need for timely implementation.
- B. Authorized Representatives: The Parties will approach negotiations in good faith with a sincere resolve to efficiently reach an agreement. Only the Union designated representative and Agency representative, as designated by the Director of the Labor and Employee Relations Division (LERD), may negotiate and execute a mid-contract memorandum.
- C. Request to Bargain and Proposals: If a Party intends to exercise its bargaining rights regarding a proposed change that creates a statutory duty to bargain, the Party must request to bargain and submit timely bargaining proposals in writing. The request must be in accordance with the procedures and time frames in this Article, or the Party will be considered to have waived its right to bargain.
- D. Implementation: Where the Union wishes to negotiate over the proposed change, the Employer may delay implementation of such change until the Parties have reached agreement on the proposed change unless the change is de minimis, required by law to implement prior to reaching agreement, or falls under the "Necessary Functioning" Doctrine.

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

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

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

Section 4. Service of Notices

- A. All notices will be by email. The email will contain "notice" in the subject line.
- B. The Agency shall serve such notice to the EPA Unit President. If the EPA Unit President is out of the office for five or more work days, the notice shall be sent to their designee.
- C. Union Demand to Bargain: The Union must submit a written demand to bargain no later than five (5) work days from the receipt of the Agency's notice. If no briefing is requested, it will have ten (10) workdays from demand to bargain to submit written proposals. The Union may timely request an extension to submit proposals.
- D. Briefing: The Union may request a briefing on the proposed change by submitting a written request within five (5) work days of the actual receipt of the notice. If a briefing is requested, it will be scheduled to occur within five workdays after the Agency receives the Union's request for briefing unless the Agency's subject matter experts (SMEs) are not available within the five workdays. In cases where the Agency cannot provide the Union with a briefing within five workdays, the Agency will schedule the briefing as early as practicable. If the Union requests a briefing, it will have ten (10) workdays from the date of the briefing to submit written proposals over the requested change. The Union may timely request an extension to submit proposals.
- E. Timeframe to Begin Bargaining: The Parties will make best efforts to commence negotiations no later than ten (10) workdays after the Union submits its bargaining proposals; or as soon as possible.

Section 5. Mid-Term Bargaining Ground Rules

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

- A. Minimize Bargaining Costs: The Parties will minimize, to the greatest extent possible, Agency and Union expenditures during negotiations. As such, virtual, telephonic and all other means of low-cost negotiations will be utilized to the greatest extent possible.
- B. Coordinate Bargaining: Where practicable and agreeable, the Parties will coordinate negotiation meetings with other scheduled meetings.
- C. All negotiations will be virtual unless otherwise agreed by the Parties.
- D. Face-to-Face Negotiations: Face-to-face negotiations will occur by mutual agreement of the Parties as follows:
 - 1. Negotiations will generally take place at an Agency-provided location.
 - 2. Negotiations will be conducted during the regular business hours of operation where the negotiations are taking place. Participant schedules will be adjusted to allow for bargaining per Section H, and to account for all time spent on official time.
- E. Consolidated Bargaining: If both Parties consent, negotiations on different proposed changes may be consolidated or held concurrently.
- F. Travel and Per Diem: Each Party is responsible for the travel and per diem costs of its team associated with negotiations for all phases of negotiations, inclusive of assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP). To the extent the Parties participate in third Party proceedings, the Parties will request such proceeding occur in the San Francisco Bay Area.
- G. Proposals: Proposals must be negotiable and must be related to the proposed change. Where applicable, if proposals are appropriate arrangements, such proposals must identify the adverse impact upon the employees that the proposals are intended to reduce or remedy. At any point in the bargaining process, the Party proposing the change may elect to withdraw any proposed change, in whole or in part. However, nothing considered in this paragraph shall prevent either Party from subsequently initiating negotiations over the same subject matter.
- H. Number of Negotiators/Spokesperson Authorities/Alternates:
 - 1. The number of Union negotiators representing the Union in bargaining under this Article who will be authorized official time under section 7131(a) of the Statute for such purposes during the time the employee otherwise would be in regular duty status, shall not exceed the number of Agency negotiators. The Agency will inform the Union of the number of Agency negotiators after the Agency receives the Union's bargaining proposals.

2. Each Party shall be represented at the negotiations at all times by one duly authorized chief negotiator or designee, who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign-off on agreements for their respective Party.
 3. The Parties will exchange the names of their bargaining team members for the specific issues to be negotiated no later than three (3) work days prior to the commencement date of the bargaining. Alternates may substitute for team members with advanced notice to the other side. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute. Inability to have all team members present will not delay negotiations.
- F. Subject Matter Experts (SMEs): Technical advisors and SMEs may be used by each Party with a limit of one technical adviser/SME at a time. The requesting Party will be responsible for all costs associated with the attendance of technical advisors/SMEs. Technical advisors or SMEs that are Agency employees will be on Agency time while attending negotiations sessions. Technical advisors/SMEs shall be excused once they have served their purpose.
- G. Silent Observers: Either Party is authorized up to one silent observer to attend negotiations. Silent observers are not authorized to speak during negotiation sessions. Union silent observers are voluntary thus, they shall not be authorized official time. The Agency and Union will introduce silent observers by name and association at the beginning of negotiation sessions.
- H. Mid-Term Bargaining Schedule: Negotiation sessions dates and times shall be by mutual agreement. The Parties shall meet at reasonable times and as frequently as may be necessary, and to avoid unnecessary delays. Negotiation sessions will generally be scheduled to occur three (3) days per week, unless the Parties agree on a different timeframe.
- I. Caucus: Either team may request a caucus. The length of the caucus will be determined by what is reasonable by the Party calling the caucus. However, caucuses shall not normally exceed 30 minutes.
- J. Failure to Reach Agreement: If an agreement is not reached the Parties will exchange a last and best offer; and request the mediation services of the Federal Mediation Conciliation Services (FMCS). Mediation shall be scheduled within five work days or as soon as a mediator is available, unless the Parties consent otherwise. If the Parties cannot reach a voluntary settlement with the assistance of a FMCS mediator, either side, or the Parties jointly, may seek assistance from the Federal Service Impasses Panel.
- K. Memorializing Agreement: Agreements will be in the form of memoranda of understanding (MOUs)/memoranda of agreement (MOAs). Upon agreement of each section, the chief negotiator for each Party (or designee) will signify temporary agreement on each section of the

MOU/MOA by initialing and dating the agreed upon section(s) of the working documents. Upon agreement of the entire MOU/MOA, the chief negotiator for each Party will sign and date two copies of the MOU/MOA to signify final agreement.

1. All MOUs/MOAs signed by the Parties and entered into during the life of the Parties' master collective bargaining agreement (MCBA) will be considered an addendum to this agreement and subject to its duration, unless a shorter expiration date has been agreed to in the MOU/MOA.
 2. All MOUs/MOAs signed by the Parties are subject to Agency Head Review, consistent with 5 U.S.C. 7114.
- L. Official Time: Official time for negotiations under this Section shall be provided consistent with 5 U.S.C. 7131(a).
1. Up to 8 hours of official time will be granted, depending upon complexity, for preparation per weekly negotiation session per Union team, unless otherwise requested by the Union and approved by the Agency. Such time will be administered in accordance with Article 2.
 2. Union negotiator's schedules and workloads will be reasonably adjusted to ensure they are available to perform tasks.
- M. Nothing in this Article constitutes a waiver on the part of the Union. The Union expressly reserves all rights and remedies under the FLRA.

ARTICLE 6

Negotiated Grievance Procedure

Section 1. Sole and Exclusive Procedure

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

Section 2. Grievance Definition

A grievance means any complaint:

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

Section 3. Exclusions

- A. Statutory Exclusions: Grievances on the following matters are excluded by Section 7121(c)(1) through (5) of the Statute:
 - 1. Any claimed violation of prohibited political activities (Subchapter III of Chapter 73 of Title 5);
 - 2. Retirement (5CFR Sec. 831); life insurance (5CFR Sec. 870, 871, 872, and 873), or health insurance (5 CFR Sec. 890);
 - 3. A suspension or removal for national security reasons (5 CFR 7532);
 - 4. Any examination or certification (5 CFR Sec. 332 and 337) or appointment (5 CFR Sec. 2, 3 and 8); or

5. The classification of any position which does not result in the reduction in grade or pay of an employee (5 CFR Sec. 511).
- B. Other exclusions: Grievances on the following matters are also excluded by this Agreement:
1. Written notice of a proposal to take an action;
 2. Management decisions to terminate a detail, reassignment, or temporary promotion;
 3. The adoption or non-adoption of a suggestion;
 4. Separation of a term, trial or excepted service employee;
 5. Removal of a probationary employee during probationary period;
 6. Adjudication of claims the jurisdiction over which is reserved by Statute and/or regulation to another department, such as, but not limited to, Department of Labor determinations on workers compensation;
 7. Actions taken by the Agency required by lawful court orders (e.g., garnishment of wages for indebtedness or child support) or actions that can be adjudicated in an alternate venue, (e.g., overpayment actions) which can be adjudicated through the Agency's Office of Hearing and Appeals;
 8. Performance-based actions appealed under another statutory procedure;
 9. Disciplinary or adverse actions appealed under another statutory procedure;

Section 4. Other Applicable Procedures

- A. Nothing in this Agreement shall constitute a waiver of any appeal or review rights permissible under 5 U.S.C. Chapter 71.
- B. If an alleged grievance also constitutes an alleged unfair labor practice, the aggrieved has the option to seek redress under this Article or under the unfair labor practice procedure set forth in 5 U.S.C. 7116 and 5 C.F.R § 2423, but not both.
- C. Statutory Option Selection: An employee may challenge matters that can be raised under both statutory procedures and under this Article in accordance with either of those procedures, but not both. An employee shall be deemed to have exercised their option when the employee timely initiates an action under the applicable statutory procedure or files a timely grievance in writing under the negotiated grievance procedure in this Article, whichever event occurs first.
- D. The following actions may be filed either under the appropriate statutory procedure or under the procedure outlined in this Article, but not both:
 1. Actions based on unsatisfactory performance (5 U.S.C. 4303);

2. Adverse Actions (5 U.S.C. 7512);
 3. Prohibited Personnel Practices (5 U.S.C. 2302 (b) (1));
 4. A formal EEO complaint (29 C.F.R. 1614).
- E. An employee shall be deemed to have exercised their option under this section when they timely initiate a formal action under the applicable statutory procedure or files a timely formal grievance in writing under the negotiated grievance procedure in this Article, whichever occurs first.
1. Informal EEO Grievance: Employees who have sought informal EEO complaint counseling may still file a grievance, provided that such grievance is filed within 45 calendar days of the event or non-event which caused the grievance to be filed, and no formal EEO complaint has been filed. Per 29 C.F.R. Part 1614, initiating one formal process precludes the use of the other.

Section 5. Designation of Representative

- A. An employee or EPA Unit President or a designee, a group of employees, the Union or the Employer may initiate a grievance.
- B. When an employee files a grievance on their own behalf, the Union shall have the opportunity to have an observer present at all steps of the grievance process, and the Agency will notify the Union at the earliest practicable date in advance of the formal meeting. The Union observer will not participate during the employee's presentation of the grievance, but will be allowed to present the Union's position on the grievance or any relief sought at the conclusion of the meeting. Upon request, the Employer will provide the Union with a copy of the grievance decision.
- C. If the Union is the Grievant's designated representative, the employee will state that in writing at the initial filing of the formal grievance. Communications under this procedure shall be directed to the representative designated by the Union. Any changes to that designation must be in writing. Each Party shall have a representative available to meet grievance filing time frames. Extensions may be granted with the consent of both Parties.

Section 6. Procedure for handling removals, demotion, or suspensions for more than 14 days based on performance or misconduct.

- A. An employee who receives a decision notice regarding a removal, demotion, or suspension for more than 14 days based on performance or misconduct may file an appeal with the Merit Systems Protection Board (MSPB). An MSPB appeal must be filed

within thirty (30) calendar days of the effective date of the action, or within thirty (30) calendar days after the date of receipt of the Agency's decision, whichever is later.

- B. If the employee decides to seek recourse through this negotiated grievance procedure, notice must be served upon the Employer within thirty (30) days beginning with the day after the effective date of the action.
- C. If the Union wishes to raise new issues not raised before the deciding official, it should, identify any additional issues in its written invocation of arbitration. However, this will not preclude either Party from raising any additional or new issues prior to the pre-hearing conference. In no event may the Union or Agency raise new issues before the arbitrator that have not been identified during the prehearing exchange, which in accordance with this Agreement, shall occur no later than 5 pm, Pacific Time, ten (10) work days prior to the arbitration.

Section 7. Filing a Grievance

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

Section 8. Informal Process

- A. The employee or the employee's representative may orally present the employee's grievance to the employee's supervisor or to the appropriate Agency official with authority to resolve the matter informally.
- B. The supervisor or Agency official may schedule a meeting with the employee and/or the employee's representative to discuss the dispute.

- C. The supervisor or appropriate Agency official may provide a written response within five (5) workdays of the matter being brought to their attention or any meeting scheduled under this section, whichever is later.
- D. If a matter is not resolved in this manner, the employee or the employee's representative may file a grievance in accordance with the procedures set forth in this Article. At the election of the employee or the employee's representative, this informal process may also be bypassed.
- E. An election to pursue resolution informally does not toll the required time frames for filing a formal grievance. However, an extension may be granted by mutual agreement of the Parties.
- F. If the dispute cannot be resolved informally, or the employee or the employee's representative chooses to forego the informal meeting described above, the following formal process must be used.

Section 9. Employee Grievance Procedure

- A. Formal Grievance- Step 1
 - 1. If the informal process is not utilized or the matter is not informally resolved, and at the employee's request, the supervisor may schedule a meeting with the employee prior to issuing the Step 1 grievance decision.
 - 2. An employee must file the grievance in writing to the employee's immediate supervisor, unless the immediate supervisor does not have the authority over the matter grieved. In the case that the employee's immediate supervisor does not have such authority, the employee must file the grievance with the authorized Agency official at the level having the necessary authority. The Agency has the sole authority to determine the proper Agency official to respond to any Union grievance.
 - a. If the employee files with the wrong official, the time limit for responding is automatically extended by the length of time necessary for the receiving official to route it to the proper official; the receiving official will provide the grievant and the Union with written notification that they are routing the grievance to the proper official. If the employee wishes to meet with responding official to discuss their grievance, the request for such a meeting must be included in their Step 1 grievance.
 - 3. The employee must state specifically that the employee is presenting a grievance. The grievance must include:
 - a. Copies of any existing documentary evidence that supports the employee's grievance;

- b. The specific remedy or relief sought;
 - c. The name, organizational unit and location of the aggrieved;
 - d. The name, title, organizational unit and contact information of the Agency official that allegedly took the action and a description of the circumstances that gave rise to the grievance;
 - e. If applicable, a statement of the law, regulation, policy, working condition, or agreement alleged to have been violated, citing specific sections, paragraphs and Articles; and,
 - f. Designation by name of the Union representative or a statement of self-representation.
- 4. Within 15 calendar days after receipt of the grievance, the Step 1 deciding official will issue a written decision. If the grievance is denied, the response will include the name of the Step 2 Agency official who has the authority to resolve the matter.
 - 5. The Agency's failure to respond to the grievance within the specified time frames, or as consented to by the Parties, will automatically advance the grievance to the next step.

B. Formal Step 2

- 1. If the matter is not satisfactorily resolved following Step 1, and the aggrieved employee and/or their representative, if any, wish to continue the grievance process, they must file the matter in writing to the Step 2 Agency official identified in the Step 1 decision within 15 calendar days of the notification of denial or the date that the response should have been received. The Step 2 grievance shall include, as attachments, the Step 1 grievance and the Step 1 grievance response.
- 2. If the employee has requested a meeting with the named Step 2 official, that management official or designee, may schedule a meeting within 15 days of receipt of the Step 2 grievance. The Step 2 Agency official shall issue a written decision on the grievance within 30 calendar days of receipt of the grievance.
- 3. If at any time during the processing of a grievance, a settlement agreement is accepted by the employee or the employee's designated representative, the agreement shall be in writing. Execution of the settlement agreement automatically withdraws the grievance in its entirety.

C. Formal Step 3

1. If an employee is dissatisfied with the response provided in Step 2, the employee may appeal the grievance to the Deputy Regional Administrator. Such notice of appeal must be made within fifteen (15) days of receipt of the response in Step 2. The Deputy Regional Administrator may designate another management official as the third level official. If the employee has requested a meeting, the third level official or designee may schedule a meeting. Best efforts will be made to schedule any such meeting within fifteen (15) days of the notice of appeal. Within thirty (30) calendar days of any meeting held, or if there is no meeting, within 30 days after receipt of the grievance appeal, the third level official or designee will issue a written decision.
2. If the grievance is not satisfactorily settled, the Union may refer the matter to binding arbitration in accordance with the procedures set forth in Article 7 of this Agreement or mediation as specified in this Article. Issues not raised at Step 3 may not be raised in arbitration unless mutually agreed to by the Parties in writing.
 - a. It is understood that any unanswered information requests made pursuant to 5 USC 7114(b)(4) will toll the time frame to invoke arbitration until a response is provided.

Section 10. Grievance of the Parties.

- A. Should either Party have a grievance concerning institutional rights granted by law, regulation or this agreement, the Party shall inform the designated representative of the other Party of the specific nature of the complaint in writing, as applicable and available, including:
 1. The specific evidence, including providing copies of any existing documentary evidence, that supports the grievance;
 2. Any provision of law, rule or regulation allegedly violated, citing specific sections, paragraphs and Articles;
 3. The name, title, organizational unit and contact information of the Agency official that allegedly took the action that gave rise to the grievance;
 4. The specific relief sought; and
 5. The grievance must be signed and dated.
- B. Time Limits of an Institutional Grievance: In order to avoid stale litigation, a grievance of a Party must be filed within 30 calendar days of the date of the matter, incident or issue

being grieved, or the date the Party reasonably should have been aware of the matter, incident or issue.

- C. Failure to Raise an Issue: If Parties are aware of evidence or issues but fail to raise them at the grievance of the Parties stage, that Party shall not include or raise the issue at arbitration.
- D. Where to File: The grieving Party will file the grievance with the designated representative of the other Party authorized to receive a Party grievance:
 - 1. A local matter will be filed with the designated local representative of the other Party (such as the Regional Administrator or the Union's Executive Director or their respective designees); or,
 - 2. A national matter will be filed with the designated national-level representative.
- E. Within 10 calendar days after filing the grievance, the Parties will determine whether they should meet to discuss the grievance and upon mutual agreement, schedule a meeting.
- F. Decision: Within 30 calendar days after receipt of the written grievance, the receiving Party will send a written decision on the grievance.
- G. If the matter is not resolved, the grieving Party may refer this to mediation as set forth below or refer it to arbitration in accordance with Article 7.

Section 11. Mediation

- A. Resolution of a Grievance: The Parties, upon request, will explore resolution of all potential grievances before being filed, individual grievances at steps 1, 2, and 3 and Party grievances.
- B. Within five calendar days of agreeing to mediation, the Parties will request the Federal Mediation and Conciliation Service (FMCS) to provide a mediator.
- C. If the matter is not resolved through ADR, the matter will continue through the grievance procedures at the step and time in which the process was paused for mediation.
- D. Settlement offers and discussion are confidential. Settlement offers or discussions will not be used as evidence or referred to in the remaining steps of the grievance process or at arbitration if the mediation efforts do not result in agreement. The Parties to the mediation process will be advised that the contents of the mediation discussion, including settlement offers, are confidential. All notes will be destroyed at the close of mediation.

- E. Settlements will be in writing and execution of the settlement agreement automatically withdraws the grievance in its entirety.
- F. All Settlement Agreements signed by the Parties to the mediation are binding on the Parties. Each Party will be provided a copy of the ADR Settlement Agreement.
- G. Any expenses associated with the mediation will be shared between the Parties.

Section 12. Disputes of Grievability

All disputes of grievability may be appealed to the next step of the grievance process.

Section 13. Information requests

- A. The Employer recognizes its obligations to provide the Union and its representatives with relevant and necessary data pursuant to the standards set forth in 5 USC 7114(b)(4).
- B. If the Agency denies the request, it will provide a written statement of the basis for the denial of information. Based on the denial, the Union may amend a current grievance, amend a current ULP charge or file a new ULP charge.

ARTICLE 7

Arbitration

Section 1. Invocation

- A. **Time Limits to Invoke Arbitration:** A notice to invoke arbitration will be made in writing by electronic mail to the other Party within 30 calendar days of receipt of the written decision rendered in the final step of the grievance procedure. If no written decision has been rendered, the 30-calendar day period begins the day after the written decision was due. Failure to provide a timely notice of an invocation will render the grievance not arbitrable.
- B. **The Parties:** Only the Union or the Agency may refer to arbitration any unresolved grievance after the final step of the negotiated grievance procedure. A referral must be made only by the EPA Unit President or the Agency Labor Relations Director (or designee). The notice to invoke arbitration filed by the Union must be served on the alleged responsible management official, Headquarters' Labor Relations Director and on any local designated management representative, such as a Labor Relations Officer.

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

- A. **Time Limits to Request List of Arbitrators:** Within five calendar days of invoking arbitration, the invoking Party will request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven impartial qualified persons to act as arbitrators. The invoking Party will request that the FMCS serve a copy of the panel list on both Parties (Union and management). The invoking Party will pay the FMCS fee.
- B. **Site of Hearings:** The Parties agree that virtual arbitration hearings are the default unless otherwise determined by the Arbitrator or both Parties agree to an in-person arbitration. The site of the dispute for grievances involving national matters, not an individual employee grievance, is Washington, DC, unless mutually agreed otherwise. For grievances regarding individual employees, the site of the dispute is defined as the location of the grievant's official duty station unless mutually agreed otherwise. Hearings will be held within the commuting area of the site of the dispute and the panel list will include arbitrators in that area. If the majority of witnesses are located outside of the local commuting area, the site of the dispute is where the majority of witnesses are located and that is where the hearing shall be held.
- C. **Travel Expenses and Other Costs:** For arbitrations that are in person, the Agency will secure a location for the hearing within the Agency's facilities. If this is not possible, the Agency is responsible for securing a location and the Parties will share the cost equally. Each Party is

responsible for any travel-related expenses and per diem associated with travel to the location of the hearing for its advocates and witnesses. Official time for attendance and travel to arbitration hearings, if otherwise in duty status, is covered under Article 2.

- D. Selecting the Arbitrator: After the Parties receive the list of arbitrators, they will meet in person, by telephone or by videoconference, within seven calendar days or unless the Parties consent to extend this period. The invoking Party will arrange the logistics for a coin toss to determine the order for striking, i.e., whether the Agency or the Union strikes first. The logistics will include provision of the coin (i.e. selecting an online website to perform an electronic coin toss) at a mutually agreeable time, date, and location of the coin toss. The non-moving Party will flip the coin. If the coin lands "heads up," the Union strikes first; if the coin lands "tails up," the Agency strikes first. If the selection is being done by Parties in different locations, the Parties may agree to use an electronic audible coin toss or other non-visual mechanism for determining which Party goes first. The Parties shall each strike one name from the list alternately and then repeat the procedure until only one name remains. The person whose name remains shall be selected as the arbitrator.
1. Once a final name is selected the Parties will sign the FMCS arbitration form letter and the invoking Party will email it back to the FMCS within five calendar days and provide a copy to the other Party. If electronic filing is used, the invoking Party will submit the selection form to FMCS and provide a copy to the other Party. The Parties will ensure that the listed names, addresses and phone numbers of the applicable Union and management representatives are correct.
- E. Setting the Hearing Date: Subject to availability, the hearing with the arbitrator will be scheduled to occur within 90 days of the notice to invoke arbitration in Section I.A. Arbitrators have the authority to dismiss grievances based on staleness.
- F. Upon selection of an arbitrator, the arbitrator will offer dates for the hearing and then the representatives of the Parties will communicate with the arbitrator and one another to select a date for the hearing.
- G. Failure to Comply or Cooperate: Failure by the invoking Party to comply with timelines in this section and/or failure to cooperate in the selection of an arbitrator, shall result in the grievance being withdrawn with no right to refile. If the non-invoking Party refuses to participate in the selection of an arbitrator than the invoking Party is entitled to select the arbitrator from the FMCS list.

Section 3. Fees and Expenses

- A. The cost of the arbitrator's fees and expenses will be shared equally by the Parties.
- B. Once a hearing is scheduled, should one Party request unilaterally that the hearing be

postponed or canceled for whatever reason, that Party will pay any fees charged by the arbitrator for the delay.

- C. In cases where the Parties mutually agree to postpone or cancel a hearing, the Parties will share any fees charged by the arbitrator for the delay. Outside of settlement, if the invoking Party withdraws its grievance prior to an arbitrator rendering a decision, the invoking Party is responsible for all arbitrator's fees or expenses incurred.
- D. If a settlement agreement is reached prior to the hearing, the Parties agree to notify the arbitrator that the matter has been settled as soon as possible, in order to minimize the costs.

Section 4. Arbitrator's Jurisdiction and Authority

An arbitrator's jurisdiction is limited to the allegations raised in the grievance at Step 2 or the Grievance of the Parties (for an institutional grievance). The arbitrator shall have no authority to alter, in any way, the terms and conditions of this agreement, any supplemental other negotiated agreement, any other condition of employment or issue not properly before the arbitrator.

Section 5. Bifurcation

The arbitrator has the authority to make all grievability and/or arbitrability determinations. The arbitrator shall make decisions as to grievability and/or arbitrability before addressing the merits of the case. Such threshold issues (i.e. timeliness, compliance with the grievance procedures of Article 6, staleness, standing, election of remedies, arbitrator authority, etc.) may be submitted to the arbitrator by brief and decided prior to a hearing on the merits of the underlying grievance.

No later than 21 calendar days before a scheduled hearing or any time before the hearing is scheduled, either Party may move to bifurcate into separate jurisdictional and merits proceedings so that all jurisdictional issues shall be decided prior to a hearing on the merits of the grievance. The Parties may submit documentation to the Arbitrator in support of their positions on jurisdictional matters. The arbitrator is empowered to make a decision based upon the submissions. A hearing on the merits will only be scheduled after the arbitrator has rendered a decision on all jurisdictional issues.

Section 6. Pre-Hearing Procedures

- A. Pre-Hearing Exchange: No later than 5:00 pm Pacific time, ten (10) work-days prior to the arbitration, the Parties will identify their statement of the issue(s) and the witnesses and documents they intend to present at the hearing. The list of witnesses shall include a brief

one or two sentence summary of each witness' expected testimony. If the other Party is unclear on a document or does not have a copy, it will be provided within 24 hours of receipt of request. Rebuttal witnesses and rebuttal evidence not previously identified may be presented to the arbitrator; the arbitrator has the authority to determine whether that information should have been previously identified and, if so, whether it shall be allowed into evidence and/or whether the other Party shall be permitted a delay to present sur-rebuttal evidence. In the event of a known disagreement over the Parties' proposed witnesses or evidence, the Parties may initiate a conference call with the arbitrator at least five (5) work days prior to the hearing to seek a ruling on the contested witnesses and/or evidence. Not having done so does not preclude either Party from making objections to witnesses or evidence at the hearing. However, if not having raised the issue in advance has resulted in a challenged witness traveling to the hearing from outside the local commuting area, arbitrators are empowered to take that into account in determining whether a witness should be permitted to testify. If evidence or information becomes available to a Party prior to the start of or during the proceeding, which has not been made available to the other Party and it intends to enter that evidence or information in the arbitration, the other Party will be provided that evidence or information immediately. If the information or evidence is substantial, the other Party may seek a postponement of the arbitration for one work day or until the arbitrator's next available date.

- B. The Parties will attempt to reach agreement on joint exhibits.
- C. The above exchanges may be done in person or through email.

Section 7. Stipulations

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

Section 8. Hearing Procedures

- A. Hearing Location and Official Time: As provided by Section 2, the Agency will secure a location for the hearing within the Agency's facilities. If this is not possible, the Agency is responsible for securing a location and the Parties will share the cost equally. The hearing

will be held during the regularly scheduled workweek. Grievants and witnesses in a duty status will be granted official time necessary to prepare for and participate in the arbitration proceedings. Official time for Union representatives will be granted pursuant to Article 2 of this Agreement.

- B. Number of Representatives: The Union and the Agency shall each be allowed up to two representatives to present its case; additional representatives may be permitted only by the consent of the Parties.
- C. Closed Hearings: Arbitration hearings are not open to the public and, except by the consent of both Parties, may not be attended by anyone other than the Party representatives and the grievant(s).
- D. Hearings Not Held in the Local Commuting Area: In arbitration hearings involving a single named grievant or multiple named grievants from a single duty station, if the hearing is not held virtually or at the official duty station of the grievant(s), the Agency shall pay travel expenses and per diem, as authorized by law and regulations, for:
 - 1. The single named grievant or a representative grievant if there are multiple grievants.
 - 2. Witnesses whose official duty stations are not in the local commuting area of the hearing location will participate via videoconference or teleconference and the arbitrator will accept this testimony as if given in person. However, either Party may elect to have such a witness testify in person at its own expense.
 - 3. Party representatives may participate via videoconference or teleconference. However, in such a case, the other Party is not obligated to participate virtually.

Section 9. Case Presentation and Burden of Proof

- A. Order of Presentation: The Agency will make its presentation first in disciplinary and adverse action cases. In all other issues, the Party invoking arbitration will make its presentation first in the hearing and that Party has the burden to prove its case by a preponderance of the evidence. In bifurcated cases, the Party requesting bifurcation will make its presentation first in the jurisdictional hearing. For disputes presented only via briefs, rather than at a hearing, the Party invoking arbitration shall submit the first brief, with the other Party responding within a time period set by the arbitrator.
- B. Post-Hearing Briefs: Each Party is entitled to file a post hearing brief by email within the time frame decided by the arbitrator at the hearing. Each Party shall serve the other Party with its brief by email on the next business day after briefs filed with the arbitrator or by other arrangement made with the arbitrator.

Section 10. Decisions

- A. Issuance of Arbitration Decision: The Parties will request the arbitrator to issue the decision as soon as possible but within thirty (30) days from the conclusion of the hearing or the close of the hearing record, including submission of briefs, unless the Parties consent to extend the time

limit. When the Parties both consent an expedited arbitration, the arbitrator may render a decision at the close of the proceedings.

- B. Finality of Arbitration Award: An arbitrator's decision shall be binding on the Parties as to the specific facts and circumstances of the grievance subject to the provisions in Section 11. If the Parties have a dispute on the interpretation of a specific provision of the award, they will meet to discuss the disputed provision. If no agreement on the interpretation of a specific provision is reached; they may mutually agree to return to the arbitrator for clarification.

Section 11. Exceptions

Either Party may file exceptions to the arbitration award with the FLRA under regulations prescribed by the Authority. Pursuant to the Statute, an arbitration award is final when no timely exceptions have been filed with the FLRA or when timely filed exceptions have been decided by the FLRA.

ARTICLE 8

Merit Promotion

Section 1. Purpose

This Article shall be administered consistent with 5 USC Chapter 23 to ensure that merit promotion principles are applied in a consistent manner to all bargaining unit employees. This Article applies only to competitive service bargaining unit positions that the Agency chooses to fill through merit promotion vacancy announcements.

Section 2. Posting Vacancy Announcements

- A. Posting: The Agency will post merit promotion vacancy announcements consistent with law, rule, regulation, and Agency policy and procedures.
- B. Applications: In order to be considered, applicants must submit a complete online application package, including all required documents as specified in the job announcement, by 11:59 p.m. Eastern Time on or before the closing date of the job announcement.

Section 3. Ranking and Referral of Candidates

Candidates will be rated and referred in accordance with law, rule, regulation and Agency policy and procedure.

Section 4. Confidentiality of Hiring Process.

The hiring process is confidential and should not be discussed outside of those involved with the selection process.

Section 5. Interviews and Selections

- A. Decision to Interview: Interviews will be conducted in accordance with law, rule, reg, Agency policy and procedures.
- B. Release of the Selected Employee: For an employee who has been selected for an internal position, the Agency will consider making the effective date no later than:
 - 1. One complete pay period for promotions, following the selectee clearing all requirements for the new position; or
 - 2. Two complete pay periods for reassignments, following the selectee clearing all requirements for the new position.

- C. When an employee is nearing the end of a waiting period for a within-grade pay increase, consideration will be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, provided such an action would benefit the employee.

Section 6. Access to Information

Candidates will have access to information about the status of their application in accordance with the Agency's merit promotion policy.

Section 7. Employee Inquiry and Concerns

When an employee has a question or concern about the merit promotion process, the employee may discuss it with an appropriate human resources representative and may file a complaint in accordance with Agency policy and 5 CFR335.103(3)(d).

Section 8. Record Retention

The Employer will maintain promotion and selection information in accordance with the Agency's record retention policy.

ARTICLE 9

Leave

Section 1. General Provisions

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

A. Leave Approval: Except in emergency or unanticipated circumstances, all leave must be requested, approved and scheduled before the employee is absent from work. If not requested and approved in advance, the employee must notify the supervisor, or supervisor's designee, of the request by telephone/voicemail, email or text (in the manner designated by the supervisor) as soon as possible, but typically no later than the start of the employee's scheduled tour of duty unless the employee is incapacitated and unable to communicate with their supervisor. If the employee is physically unable to make the request, the employee must take proactive steps when possible to ensure that the supervisor or designee is notified consistent with this Article. If an employee receives an "out-of-office" message from the supervisor via phone or email, or otherwise becomes aware that the supervisor is not available that day; the employee must notify the supervisor's designee (or higher level manager if there is no clear designee) of any request for leave that has not been preapproved. When an employee's situation will require the employee to be absent longer than one day, the employee must indicate the expected return to duty date. These telephone/voicemail/email/text communications are not substitutes for other time accounting or payroll systems which are still required to show schedules or certify time.

If leave is denied, the Agency will provide the reason(s) for denial, at the request of the employee. The Supervisor, or their designee, will communicate approval or disapproval as soon as possible after receipt of request, but before the date of requested leave.

- B. Leave Increments: All leave may be requested and used in 15-minute increments.
- C. Electronic/Calendar Record of Leave: Employees must make their requests for leave, either in advance for planned leave or no later than the day of their return from leave that was not preapproved, in the designated Agency's electronic system, currently PeoplePlus.
- D. Office Scheduling Procedures: Employees using leave are required to comply with their office workforce scheduling procedures, including updating electronic calendars with planned leave. If there are no specific procedures for an employee's office, at a minimum, for planned absences, the employee is expected to indicate leave on the Agency's calendar system (currently Outlook, but any successor system).
- E. Out-of-Office Procedures: Employees are required to comply with their office's out-of-office procedures, including modifying their outgoing voicemail, updating their out-of-

office email messages and, if applicable, notifying their customers of their absence(s). If there are no specific procedures for an employee's office, at a minimum, for planned absences, the employee is expected to update outgoing voicemail and email messages with a brief and professional statement about the employee's absence and expected duration and, where appropriate, who should be contacted in their absence.

F. Attend Health Unit: The employee is responsible for notifying the supervisor or designee when they visit the health unit and immediately if they will not be returning to work.

G. Tardiness: In accordance with policy, rule, and regulation the Agency may excuse infrequent tardiness of less than one hour.

H. Use or Lose Leave:

1. The Agency endeavors to issue an annual notice advising and reminding employees of the regulations concerning use or lose annual leave and the need to request annual leave to avoid unintended forfeiture.
2. The Agency may restore annual leave that was forfeited because it was in excess of the maximum leave ceilings if the leave was forfeited because of an administrative error, exigency of the public business, or sickness of the employee. Upon employee request, the Agency will undertake to restore the forfeited leave in accordance with applicable law, rule and regulation.

Section 2. Sick Leave and Medical Documentation

A. Government-Wide Regulations Control: Sick leave shall be administered pursuant to 5 C.F.R. Part 630, Subpart D.

B. Administratively Acceptable Evidence is Required: Per 5 C.F.R. 630.405(a), the Agency will grant sick leave "only when the need for sick leave is supported by administratively acceptable evidence."

C. Medical Certificate - Per 5 CFR 630.201(b), a "medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment." A medical certificate constitutes one form of administratively acceptable evidence referred to in Section 2.B. Medical certificates, at a minimum, must contain a statement that the employee is under the care of a medical professional, the nature of the employee's incapacitation, the impact of the incapacitation on the employee's ability to perform their duties, and the expected duration of the incapacitation.

D. Employee Self-Certification: Per 5 C.F.R. 630.405(a), "an employee's self-certification as to the reason for their absence" constitutes another form of administratively acceptable evidence referred to in Section 2.B.

- E. When a Medical Certificate is Required: In accordance with 5 C.F.R. 630.405(a), An Agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in §630.401(a) for an absence in excess of 3 workdays, or for a lesser period when the Agency determines it is necessary i.e. suspects leave abuse.

When requested by the supervisor (or other Agency official), an employee must provide a medical certificate within 15 calendar days of the date of the request. If despite diligent, good faith efforts it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days the employee must provide the documentation no later than 30 calendar days. Per 5 C.F.R. 630.405(b). An employee who does not timely provide the medical certificate “is not entitled to sick leave.”

Section 3. Other Types of Leave

All additional types of leave shall be administered consistent with applicable laws, rules, regulations and Agency policy, including Leave Without Pay (LWOP), Advanced Annual or Sick Leave, Family Medical Leave Act (FMLA), Federal Employees Family Friendly Leave Act (FEFFLA), Paid Parental Leave, Leave Bank, Leave Transfer, Administrative Leave, Weather and Safety Leave, Military Leave, Court Leave, Funeral Leave, Credit Hours Used, Compensatory Time in lieu overtime, Religious Compensatory Time, Time off to Vote, Blood Donations to an outside organization or in emergency situation, and Bone Marrow or Organ Donation Leave.

Section 4. Sabbatical

Sabbaticals may be granted at the discretion of the Agency for the purpose of professional study or to gain additional work experience outside the Federal government or other substantial reasons.

Section 5. Professional Examinations

Employees may be allowed time off with pay on Administrative Leave in connection with the taking of State Licensure examinations such as P.E., etc., where such licensure, in the Agency’s opinion, would contribute to the employee’s capability to effectuate the mission of the Agency within the employee’s current classification.

ARTICLE 10

Performance

Section 1. Authorities

The Agency will administer the performance management program in accordance with 5 United States Code (U.S.C.) Chapter 43 and 5 Code of Federal Regulations (C.F.R.) Part 430, 5 C.F.R. 432, 531 and Agency Performance Management Policies and Procedures. The Agency will not prescribe a distribution of levels of ratings for employees covered by this master collective bargaining agreement (MCBA). Each employee's performance will be judged solely against their performance standards.

Section 2. Definitions

- A. Acceptable Level of Competence: The performance (i.e., *Effective*) by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade in accordance with 5 C.F.R. §§ 531.403 and 404.
- B. Additional Performance Element: A dimension or aspect of individual, team or organizational performance that is not a critical or non-critical element. Such elements are not used in assigning a summary level but, like critical and non-critical elements, are useful for purposes such as communicating performance expectations and serving as the basis for granting awards. Such elements may include, but are not limited to, objectives, goals, program plans, work plans and other means of expressing expected performance. The use of additional elements is optional.
- 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.
- E. Critical Element: is a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is Unacceptable. Critical elements shall be used to measure individual performance only. Critical Elements must be rated at one of the following levels:
 - Distinguished
 - Effective
 - Unacceptable

- F. Goal Cascading Method: The downward flow of the Agency's goals established in its strategic and annual performance plans to the work unit level.
- G. Interim Review: Required informal or formal written evaluation of the employee's performance after an employee has performed work under an approved performance plan for at least 90 calendar days when the following occurs:
 - 1. The supervisor of record leaves their position;
 - 2. The employee changes position; or
 - 3. The employee completes a temporary promotion or detail.
- H. Non-Critical Element (non-CE): A dimension or aspect of individual, team or organizational performance, exclusive of a CE, that is used in assigning a summary level except for Unacceptable. Such elements may include, but are not limited to, objectives, goals, program plans, work plans and other means of expressing expected performance. The use of non-critical elements is optional.
- I. Measurement Source(s): The source(s) that may establish reliable and supportable bases for a rating and may be used to determine if standards are met or not met.
- J. Minimum Period of Performance: The minimum amount of time (90 days) that must be completed before a rating of record may be given.
- K. Not Rated: A non-rating applied to a CE/non-CE when the employee does not have an opportunity to perform work associated with the CE/non-CE. This should happen in limited circumstances.
- L. Performance Appraisal: The assessment of the employee's performance against their individual critical elements.
- M. Performance Improvement Plan: A plan designed to inform an employee of the CE(s) for which performance is unacceptable and of the performance requirement or standard(s) that must be reached in order to demonstrate acceptable (i.e., *Effective*) performance under the CE(s) at issue.
- N. Performance Plan: All of the written performance elements that set forth expected performance. A plan must include all CEs, non-CEs (if any) and the performance standards for each. This is commonly known as the performance agreement.
- O. Performance Standard: The management-approved performance threshold(s), requirement(s) or expectation(s) that must be met to be appraised at a particular level of performance as identified in Agency policy. A performance standard may include, but is not limited to, quality, quantity, timeliness and manner of performance.

- P. Progress Review: Communicating with the employee about performance compared to the performance standards of CEs and non-CEs.
- Q. Rating: The documented appraisal of performance compared to the performance standard(s) for each CE and non-CE on which there has been an opportunity to perform for a minimum period of 90 calendar days.
- R. Rating of Record: The performance rating prepared at the end of an appraisal period for performance of Agency-assigned duties over the entire period and the assignment of a summary level.
- S. Summary Level: A category of performance assigned to a rating of record. The three summary levels under PARS are:
- *Distinguished*: Issued to those employees who receive a rating of Distinguished on more than half of their individual CEs/non-CEs, and none of the CEs are rated Unacceptable.
 - *Effective*: Issued to those employees who receive a rating of Effective on one half or more of their individual CEs/non-CEs, and none of the CEs are rated Unacceptable.
 - *Unacceptable*: Issued to those employees who receive a rating of Unacceptable in one or more of their individual CEs. A rating of Unacceptable on a non-CE will not result in a summary level of Unacceptable.
- T. Supervisor of Record: A supervisor who personally directs subordinates without the use of other, subordinate supervisors. The supervisor of record accomplishes work through the direction of others; plans the staff's day-to-day operations; evaluates and tracks performance; recommends and approves personnel actions; provides advice and counsel on technical and administrative matters; approves training; and approves timecards. The supervisor is documented by either: 1) a Standard Form 52, *Request for Personnel Action*, when detailed into the position; or 2) a Standard Form 50, *Notification of Personnel Action*, when temporarily promoted or permanently assigned to the supervisory position.
- U. Unacceptable: Defined by law and regulation as "Performance of an employee which fails to meet established performance standards in one or more CEs in such employees' position." 5 U.S.C. 4301.

Section 3. Critical Elements and Performance Standards

- A. Per 5 C.F.R. 430.203: "Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable."

- B. The Agency will comply with 5 CFR Part 430 when making its decision as to the number of rating levels for each critical element, when determining individual employees' performance ratings, and when determining whether a rating level will have a written performance standard.
- C. Application of all performance standards shall be fair, equitable and consistent with 5 C.F.R. Part 430.

Section 4. Communicating Performance Plans

- A. Within the first 30 calendar days of every rating period or within 30 calendar days of employment or reassignment, the supervisor will discuss the performance plan with each employee. The employee will have electronic access to their draft performance plan, which contains the critical elements and performance standards.
- B. As required by 5 C.F.R. 430.206(b)(1): "Agencies should encourage employee participation in establishing performance plans." However, the employee does not need to agree with the final plan. The employee will have access to their final performance plan and may sign and date to acknowledge receipt.
- C. During the rating period, the supervisor will discuss with the employee, any changes in the employee's critical elements or performance standards; and annotate them in the performance plan.
- D. Performance discussions:
 - 1. A mid-year discussion, a closeout of current appraisal period and an establishment of standards for the new appraisal period discussion must take place each appraisal period.
 - 2. Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the supervisor or employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.
 - 3. Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and resolve problems.

Section 5. Procedures

- A. Within 30 days of appointment or reassignment, the employee will be issued a new performance plan.

- B. Within 30 days of change in supervisor; the new supervisor will conduct an expectation discussion and review the current performance plan.
- C. Employees will receive an annual performance rating for the performance appraisal period. Performance ratings will be completed within 30 days following the end of the rating period.
- D. Employees must be working under a performance plan for a minimum of 90 days before a rating can be given.
- E. Subsequent discussions on contents of the Performance Plan shall occur when there is a change in the work situation including, but not limited to, the following:
 - 1. A change in the supervisor of record;
 - 2. When the employee is detailed;
 - 3. A change in the work unit's goals or objectives;
 - 4. A change in assignments;
 - 5. A change in the work processes of the unit; or
 - 6. When an employee returns from an extended absence of ninety (90) calendar days or more.

Section 6. Changes to Performance Plans During the Performance Cycle

Keeping performance plans current and accurate.

- A. A critical element may be added or amended during the appraisal period.
- B. However, the supervisor shall not rate an employee on an added or substantially changed critical element until the employee completes the minimum period of performance (90 days) under the added or amended critical element.
- C. The employee is alerted to changes when there is a change to their performance plan. The employee may discuss the change(s) with their supervisor.
- D. Employees may participate in the performance management process by providing input to performance plans and preparing for and engaging in performance discussions. Employees may present concerns with regard to the performance plan to the supervisor for consideration.

Section 7. Training and Information

- A. Agency employees, supervisors and managers shall receive information on PARS to ensure they are familiar with the system.

- B. Awareness shall be provided using appropriate methods including, but not limited to, memoranda, briefing sessions, and on-line or instructor led training.
- C. Both the Agency and ESC recognize the importance of training employees, managers, supervisors, and ESC/EPA Unit officers/stewards within ESC's bargaining unit on elements of the PARS.
- D. The Union will be provided reasonable time to provide comments on training materials before they are published or distributed.

Section 8. Annual Pars Information

- A. In accordance with the Federal Service Labor-Management Statute the Union may request PARS information.
- B. ESC may request, on an annual basis, summary information concerning the ratings of record issued to non-SES Region 9 employees. The following information may be requested and provided, without personal identifiers, organizational code, organizational description, pay plan/series/grade, bargaining unit status, management status.

Section 9. Appraisal Period

The fiscal year performance rating is based upon the performance of that respective performance year.

Section 10. Minimum Period of Performance

- A. Employees should be on an approved performance plan for a minimum of 90-days to be evaluated at the end of the performance cycle. If the minimum 90-day period cannot be met before the end of the performance cycle, the appraisal period must be extended until the 90 days are met.
- B. When there is a PIP issued to an employee, the employee's performance period for that year is extended through the end of the PIP. The subsequent performance period begins the day after the PIP ends.

Section 11. Developing Performance Plans

- A. General Requirements:
 - 1. Each employee will have access to their performance plan identifying critical elements and standards. Performance elements and standards are written as specific, must be realistic, designed to achieve results, in alignment with the employee's job

duties, and set standards for which the employee will be held accountable for the work assignments and responsibilities of their position.

2. Employees are encouraged to participate in establishing performance standards. In the process of establishing and identifying critical elements and performance standards, the immediate supervisor and employee should discuss what is expected of the employee, methods and resources to achieve the performance standards, and any concerns the employee may have.
3. Supervisors shall give due consideration to an employee's grade level when developing critical elements, including measures for the evaluation of performance.

B. Procedures:

1. An employee must have a minimum of two and no more than five CEs in their PARS plan that must be linked to the Agency's strategic plan, regional plan or other local or program specific goals and plans, as appropriate.
2. A summary level may be calculated based on only one CE if all other individual CEs are "Not Rated." The CE is to describe the work assignments and responsibilities that are significantly influenced by an employee's work effort and within the employee's control.
3. These elements cascade down from the senior executive, to the supervisor and then to the employee.
4. Employees may add comments to the comment section when there are unresolved differences between the immediate supervisor and the employee regarding CEs, non-CEs and performance measures.

Section 12. Assumptions

- A. If an employee cannot perform work on a CE due to factors outside their control, a NOT RATED assignment will be given.
- B. If the employee can only perform a portion of the work on a CE due to factors outside their control, they will only be rated on the work they were able to perform.
- C. The supervisor and employee will work collaboratively to identify assumptions relevant to the employee's performance plan. The Supervisor will determine which assumptions are listed in the performance standard.
- D. The performance plan can be reviewed at any time to adjust or revise a CE.

Section 13. Content of the Performance Plan:

- A. Element: Name and/or description of the performance standards and critical elements or non-critical elements.
- B. Element Type: An element may be critical” (CE) or non-critical (Non-CE).
- C. Standard: Performance threshold(s), requirement(s) or expectation(s) that must be met to be appraised at a particular level of performance as identified in the Agency performance policy. A performance standard may include, but is not limited to, quality, quantity, timeliness and manner of performance.
- D. Measurement Source(s): Identification of sources that may establish reliable and supportable bases for a rating and may be used to determine if standards are met or not met, such as, but not limited to: personal observations, employee written products, or feedback from team leaders that assign work.
- E. Critical Element Rating: Each critical element must have an element rating of Distinguished, Effective or Unacceptable.

Section 14. Cascading

The employee may request the following performance standards from the Region 9 human resource office: 1) the employee’s immediate supervisor; 2) the Second Line Supervisor; and the Division Director.

Section 15. Assessing Employee Performance

- A. Progress reviews are inherently a confidential process and can only be shared as necessary.
- B. An employee must demonstrate an acceptable level of competence to be entitled to a Within Grade Increase.

Section 16. Progress Reviews

- A. 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.
- B. Frequent informal reviews of performance throughout the appraisal period are strongly encouraged and may be requested by either the employee or the supervisor.

- C. The Progress Reviews should be open, candid, and aimed at improving work products, and will provide an opportunity for feedback regarding schedules, accomplishments, and individual development.

Section 17. Interim Review/Ratings

- A. Interim ratings require an informal or formal written evaluation of the employee's performance after an employee has performed work under an approved performance plan for at least 90 calendar days when the following occurs:
 - 1. The supervisor of record leaves their position;
 - 2. The employee changes position;
 - 3. The employee completes a temporary promotion; or
 - 4. The employee completes temporary detail to another position.
- B. For details of less than 90 days supervisor should provide a narrative highlight.
- C. The interim review or rating will be considered when determining the rating of record.

Section 18. Timing of the Appraisal

Performance appraisals (ratings of record) are scheduled to be done annually within 30 days after the close of the appraisal period. Under special circumstances described below, appraisals may deviate from that schedule:

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

Section 19. Protected Union Activities

Union activities by an employee will not be a factor in the evaluation or appraisal of an employee's performance. In addition, the amount of time spent by an employee on Union activities (time not available to the employee to perform job-related duties) will also not be considered in the evaluation or appraisal of an employee's performance.

Section 20. Sources of Appraisal Input

Upon employee request the rating supervisor will inform the employee of the information considered when determining the rating. If the information may adversely affect the

employee's rating, the employee will be made aware of the information in order to facilitate their ability to respond and to correct inaccurate information.

Section 21. Rating an Element

Employees are encouraged to provide their supervisor with a written self-assessment (e.g., list of accomplishments completed, etc.) at the end of the appraisal period and/or at other times throughout the year. The supervisor will consider the employee's self-assessment when assigning a rating of record.

Section 22. Annual Rating of Record

- A. Employees will be assigned a rating of record at least once an appraisal cycle. The rating will be completed no later than 30 days after the appraisal cycle ends.
- B. It is understood that employees will only be evaluated on work which they have been assigned.
- C. Raters must provide a narrative description when the element is rated "Distinguished" or "Unacceptable".
- D. Assigning the Summary Level: Once all of the performance elements have been rated, the supervisor will assign the summary level (rating) as follows:
 - 1. Distinguished: More than half of the individual CEs/non-CEs; and none of the CEs are rated Unacceptable.
 - 2. Effective: One half or more of their individual CEs/non-CEs; and none of the CEs are rated Unacceptable.
 - 3. Unacceptable: One or more Critical Elements is rated Unacceptable. A rating of Unacceptable on a non-CE will not result in a summary level of Unacceptable.
- E. Provide a written narrative for the Summary Level.

Section 23. Approving the Rating of Record

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

Section 24. Documenting the Rating

Official documentation of the rating of record consists of the completed Performance Plan located in USA Performance (the current system) or future equivalent.

Section 25. Communicating the Rating

- A. The supervisor meets with the employee in private to conduct a formal appraisal interview. During the appraisal interview, the supervisor communicates to the employee:
 - 1. How each performance element was rated;
 - 2. The rating of record;
 - 3. Areas that need improvement, including making suggestions and asking the employee for suggestions on how to improve performance; and
 - 4. The requirement of a PIP, if appropriate.
- B. At the conclusion of the appraisal interview, the employee may access USAPerformance: and electronically sign or refuse to sign the rating of record.
- C. The employee can utilize the electronic signature bypass feature to refuse to sign the PARS rating.

Section 26. Recordkeeping

- A. Once all the Agency appraisals are finalized; the information will be transmitted to OPM to be maintained in the employee's Employee Performance File (EPF) in accordance with the General Records Schedules issued by the Archivist of the United States under the authority of 44 U.S.C. 3303a (d), and U.S. EPA Special Schedules.
- B. Performance related notes, records and written observations will be applicable only to that performance year.

Section 27. Employee Development

The Supervisor will provide support and training in accordance with Article 33.

Section 28. Notification of Unacceptable Performance

- A. Upon consultation with servicing LER specialist, the supervisor of record will notify the employee via the email below that their performance is Unacceptable, and a PIP may be issued to allow the employee an opportunity to demonstrate acceptable performance.
- B. The email notifying the employee of Unacceptable performance must include:
 - 1. Subj: Notification of Unacceptable Performance
 - 2. Body: this email serves as notice that your performance is unacceptable in one or more critical elements which may result in the issuance of a PIP.

Section 29. Performance Improvement Plan (PIP)

- A. At any time if the supervisor identifies that an employee's performance in one or more critical elements is at the unacceptable level, the supervisor may notify the employee of the critical elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance with the issuance of a Performance Improvement Plan (PIP).
- B. The PIP must inform the employee that unless their performance in the specified critical elements improves and is sustained at an acceptable level of performance, the employee may be demoted or removed from employment.
- C. The PIP will generally afford the employee no more than 60 calendar days to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and responsibilities of the employee's position.
- D. The supervisor may, at their discretion, extend the PIP. Notice of extension shall be given the employee and if applicable the designated representative.
- E. During the PIP period, the supervisor will offer assistance to the employee, to improve the employee's unacceptable performance.
- F. A supervisor can issue an unacceptable rating prior to issuing a PIP when a rating is required to be issued under the employee's performance plan; however, no performance-based action (5 C.F.R. Part 432) will be proposed until the completion of the PIP.
- G. Once the PIP has expired or the supervisor determines that assistance is no longer needed, the supervisor will provide the employee with a written notice of this determination.

Section 30. PIP Content

The following information should be included:

- A. Identify CE(s) for which performance is unacceptable and inform the employee of the performance requirements that must be attained in order to demonstrate acceptable performance.
- B. A description of assistance the employee will receive from the supervisor.

- C. The PIP must inform the employee that unless their performance in the CE(s) at issue improves and is sustained at an *acceptable* (i.e., *Effective*) level of performance, the employee may be demoted or removed from employment.
- D. A specific description of the requirements that must be met, in terms of quality, quantity, timeliness or manner as applicable of performance, for work to perform at the Effective Level. Numerical criteria or benchmarks used by the supervisor to interpret the performance standard must also be stated.
- E. A schedule of the performance feedback sessions to be held during the performance improvement period.
- F. A statement that the employee is expected to maintain at least Effective performance on the remainder of the CEs.

Section 31. Performance Based Actions

The Agency will follow 5 C.F.R. 430 and 5 C.F.R. 432 if an employee should not successfully complete the opportunity to perform at an acceptable level.

Section 32. Employee Appeal Rights

If an employee believes that a decision or other action taken or not taken under PARS resulted from a prohibited personnel practice as defined in 5 U.S.C. 2302 or an act of discrimination, the employee may file a grievance, complaint with the Equal Employment Opportunity Commission or the Office of Special Counsel.

Section 33. Employee Disagreement with Rating of Record

- A. An employee can provide a rebuttal within 10 workdays after receipt of the performance rating. The rebuttal should be submitted through the electronic PARS system.
- B. An employee who disagrees with their final rating of record may file a grievance under the negotiated grievance procedures.

Section 34. Performance Quotas

The Employer agrees that quotas will not be used to determine the number of “Distinguished” or “Effective” for final ratings of record given to employees for each appraisal period.

Section 35. Privacy Protections

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

Section 36. Appraisal Cycle

- A. It is highly recommended, but not mandatory, that each employee prepare a self-assessment. The self-assessment will be submitted to their immediate supervisor for consideration.
- B. Performance reviews will generally be completed by October 30.

Section 37. Performance Recognition

The Agency will adhere to Article 35, Incentive Awards, when recognizing and rewarding accomplishments. An employee may assert their preference for a Time-Off award in lieu of a monetary award.

Section 38. Reduction in Force ("RIF") Credit for Performance

In the event of a reduction-in-force at Region 9, ESC employees will receive additional years of retention service credit pursuant to 5 CFR §351.504.

ARTICLE 11

Work Schedules

Section 1. Purpose & Legal Background

- A. Purpose: This Article establishes the work schedules available to ESC bargaining unit employees at the U.S. Environmental Protection Agency.

This Article is designed to maintain and enhance the needs of the Agency, while at the same time, offering scheduling flexibility for individual employees. The Alternate Work Schedules (AWS) program is intended to help employees balance work and life responsibilities and to improve employee satisfaction and retention while increasing productivity through scheduling flexibilities.

Alternative Work Schedule programs have the potential to improve productivity and morale and to accomplish the Agency's mission and goals in an efficient fashion.

The parties recognize that reasonable accommodation may include work schedules and arrangements other than those contained in this Article. The work schedule options agreed to in this Article are not intended to limit the range of work schedule options available as a form of reasonable accommodation.

- B. Legal Background:

1. Public Law 97-221 permits the establishment of AWS by modifying the premium pay and scheduling provisions of 5 U.S.C. Chapter 61 and the overtime provision of the Fair Labor Standards Act (FLSA). Hours of work for EPA employees shall be in accordance with applicable laws and regulations.
2. In accordance with 5 USC 6132, an employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under sections 6122 through 6126 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours. The term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation)".
3. Other Authority and References:
 - a. Title 5, United States Code chapter 61, *Hours of Work*
 - b. Title 5, Code of Federal Regulations part 610, Hours of Duty

Section 2. Definitions

For the purpose of this Article:

- A. Administrative workweek: The period of seven consecutive calendar days beginning Sunday and ending Saturday. There are two administrative workweeks per pay period.
- B. Alternative Work Schedule (AWS): Work schedules which include either flexible work schedules or compressed work schedules.
- C. Basic Work Requirement: The number of hours, excluding overtime hours, that an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award. For a full-time employee the basic work requirement is eighty (80) non-overtime hours in biweekly pay period.
- D. Biweekly Pay Period: The two-week period for which an employee is scheduled to perform work.
- E. Compensatory Time: Time off on an hour-for-hour basis in lieu of overtime pay.
- F. Compressed Work Schedule (CWS):
 - 1. In the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and
 - 2. In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays and that may allow an employee to work more than 8 hours in a day;
- G. Core Hours: The time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the Agency to be present for work or on approved absence.
- H. Credit Hours: Those hours within a flexible work schedule that an employee elects to work in excess of the employee's basic work requirement so as to vary the length of a workweek or workday.
- I. Fixed Work Schedule: A work schedule that is assigned or approved by the supervisor and cannot be changed without prior supervisory approval. Standard/Regular and compressed work schedules are fixed work schedules.

- J. Flexible hours: The times during the workday, workweek, or pay period within the tour of duty during which an employee covered by a flexible work schedule may choose to vary the employee's times of arrival to and departure from the work site consistent with the duties and requirements of the position.
- K. Flexible work schedule (FWS): A work schedule established under 5 U.S.C. 6122, that:
1. In the case of a full-time employee, has an 80-hour biweekly basic work requirement that allows an employee to determine the employee's own schedule consistent with this Article; and
 2. In the case of a part-time employee, has a biweekly basic work requirement of less than 80 hours that allows an employee to determine the employee's own schedule consistent with this Article.
- L. Maxiflex: A type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week consistent with this Article.
- M. Overtime Hours means:
1. Standard/Regular (Straight-8) Work Schedule: Any work hours more than 8 hours in a day or 40 hours in a work week that are ordered in advance by management.
 2. Compressed Work Schedule: Any hours officially ordered more than those specified hours for full-time employees that constitute the Compressed Work Schedule (i.e., 5-4/9 or 4-10). For part-time employees, overtime hours are hours required to be worked outside of the compressed work schedule. However, if those additional hours still total less than 8, the employee receives a basic pay rate for the added hours. Only hours greater than 8 in a day and 40 in a week earn an overtime rate of pay.
 3. Maxiflex: Any hours more than 8 hours in a day or 40 hours in a week that are officially ordered in advance, but not including credit hours. Credit hours worked by the employee beyond 8 hours in a day or 40 hours in a week are not overtime hours.
- N. Regularly Scheduled Administrative Workweek: For a full-time employee, the period within an administrative workweek within which the employee is regularly scheduled to work. For a part-time employee, the officially prescribed days and hours within an administrative workweek during which the employee is scheduled to work.

- O. Tour of Duty: The hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.
- P. Work Day: The period, including the unpaid lunch break, during which an employee is normally scheduled to be at work.
- Q. Approved Work Schedule: The number of hours of work and/or hours of absences that the employee plans to accomplish in a given biweekly pay period and which is approved by the supervisor.
- R. Work-Related Needs: Office staffing, office personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meeting in person; and other operational needs that involve the work of the Agency.

Section 3. Responsibilities

- A. Managers and Supervisors are responsible for:
 - 1. Timely approving/disapproving, changing, modifying or removing an employee from a specific work schedules in accordance with this Agreement.
 - 2. Approving/disapproving an employee's request to earn and/or use credit hours.
 - 3. Approving/disapproving adjustments of more than 1 hour (earlier or later) to the arrival and departure times of the approved Maxiflex proposed work schedule, and any other changes to the approved Maxiflex work schedule in accordance with this Article.
 - 4. Approving/disapproving leave requests in accordance with the Leave Article of this Agreement.
 - 5. Coordinating work schedules among employees in their organization to accomplish the Agency mission.
 - 6. Considering work schedules of the attendees when scheduling meetings or events where employee attendance is required (including virtual participation).
 - 7. Reviewing the employee's time and attendance submissions to ensure they are properly completed and properly coded for overall accuracy.

8. Ensuring that work schedules support mission accomplishment and do not interfere with current activities or projects of the work unit.
9. Ensuring work schedules fall within the parameters of this Article before approving, disapproving, or accepting.
10. Disapproving or raising concerns over schedule submissions that do not conform with this Article or do not meet work related needs.
11. Communicating time and attendance inaccuracies and requiring the employee to submit corrections as appropriate

B. Employees are responsible for:

1. Adhering to the procedures and requirements in this Agreement when requesting and participating in an AWS.
2. Being present, in work status, for duty during hours corresponding to approved work schedules.
3. Ensuring that their time and attendance submission is submitted, coded for overall accuracy, and timely entered and attested to in the Agency Time and Attendance Recording System.
4. Maintaining the quality and quantity of work for their approved work schedule. Attending required meetings or events even though the meeting or event may be scheduled outside of the core hours.
5. Timely requesting work schedules and changes to approved work schedules in accordance with this Article.
6. Requesting prior supervisory approval to be absent from their scheduled hours in accordance with the Leave Article of this Agreement.
7. Timely submitting, in accordance with this Article, their proposed bi-weekly work schedule, if on an approved Maxiflex schedule.
8. Unless provided an exception by the supervisor, maintaining their current work schedule on the Agency's electronic calendar to assist coworkers to know their

availability for meetings. The employee's free/busy time must be visible to all staff and internal clients, unless provided an exception by the supervisor.

9. Making corrections or updates to their time report for previous pay periods as necessary to ensure accuracy and actual time(s) worked. Should a supervisor identify an issue with an employee's time reporting, the employee will make the necessary correction as directed.

Section 4. General Requirements

- A. Work Schedule Approvals/Disapprovals: All participation in the Agency AWS program (fixed and flexible) must be approved by the supervisor in advance. No request submitted in accordance with this CBA will be unreasonably denied. If an employee's request for a specific AWS is denied, the supervisor will provide a written explanation to the employee, upon request.
- B. Participation Voluntary: Employee participation in an AWS is voluntary.
- C. Work Schedule Request Form: Employees must request their work schedule on the Agency's Work Schedule Request Form or designated electronic system.
- D. Lunch Period: All daily tours of duty 6 hours or more must include a 30-minute unpaid lunch break each day. Fixed schedule daily tours of duty cannot contain an unpaid lunch break greater than 60 minutes. An employee cannot skip the lunch break and work during the lunch period to shorten the length of a workday or to earn credit hours. An employee's tour of duty will be established to ensure that the employee works the required number of hours for the type of work schedule selected and accounting for the lunch period.
- E. Temporary Changes for Work-Related Needs, Meetings, Travel, and Trainings: Employees scheduled for training, travel or other EPA events may need to arrange their schedules to correspond with the start/stop times and weekdays of the events. Employees will not be excused from attending meetings or other events solely because the employee is on an AWS and the meeting or event is outside of the Agency's core hours. Employees may also need to change their work schedules when necessary to meet work-related needs. Employees and supervisors should discuss options to make temporary adjustments to an employee's schedule and make such adjustments, as necessary.
- F. Tardiness: For employees on fixed schedules, the Employer will consider excusing infrequent tardiness using one of the following options:
 1. if the tardiness is 59 minutes or less, the supervisor can grant an excused absence;

2. the employee agrees to make up the time at the end of the day; or
 3. the employee submits a leave request.
- G. Requested Changes (Work Schedule Type): Employees are permitted to change work schedule types periodically (generally no more than once per month) with their supervisor's approval to accommodate workload demands or for personal reasons. However, they are not permitted to change work schedule types pay period by pay period. For example, an employee may not work on a Maxiflex schedule one pay period and then the next pay period switch to the 5-4/9 CWS, and then the next pay period switch back to Maxiflex. For changes to an existing schedule, the request normally must be submitted at least three (3) workdays prior to the end of the pay period immediately preceding the pay period for which the employee requests the change. Supervisors will make best efforts to accept or reject the request so there is sufficient notification to the employee for the change to be effective for the next pay period.
- H. Remote Work, Telework and Alternative Work Schedules: Employees who work an alternative work schedule may utilize remote work and telework opportunities consistent with the Telework and Remote Work Articles of this Agreement.
- I. Cannot Combine: Compressed work schedules and flexible work schedules cannot be combined or hybridized.
- J. Breaks: Employees may generally take unscheduled breaks as needed for personal reasons (e.g., to obtain coffee; make personal calls; use the restroom; etc.), provided they do not interfere with work-related needs. Therefore, there is no entitlement to two (2) scheduled 15-minute breaks. However, unscheduled breaks may not exceed a total of 15 minutes during each four hours of duty. For all employees, breaks may not be taken at the beginning or end of the workday to shorten the workday, or at the beginning or end of the lunch period to extend the lunch period.
- K. Unavailability of Time and Attendance Recording System: If the Agency Time and Attendance Recording System is not available to an employee for use, an employee will be granted sufficient time to update their timesheet once the system is available during the employee's working hours.
- L. Time and Attendance: Employees who are approved to work an AWS are required to provide affirmative evidence they have worked the proper number of hours in a biweekly pay period in accordance with 5 CFR 610.404. This is done by making proper entry into the Agency time and attendance system.
- M. Accountability: Employees are required to record the work hours, including starting and ending times for each workday in the Agency Time and Attendance Recording System.

- N. Restriction for Critical Positions: The Agency may restrict participation in an alternative work schedule for positions the Agency determines are of a critical nature.
- O. Work Schedules for New EPA Employees: New employees (i.e., employees who have worked at the Agency for less than six months) will be on a Standard/Regular 5/8 Work Schedule through their first full pay period. They may request an alternative work schedule but are encouraged to get experience in their organization or work unit.

Section 5. Types of Work Schedules

The following work schedules are available at the Agency:

- A. Standard/Regular (Straight-8 or 5/8) Work Schedule (fixed)
- B. Compressed Work Schedules (a fixed alternative work schedule)
 - 1. 5-4/9 Work Schedule (a fixed alternative work schedule)
 - 2. 4-10 Work Schedule (a fixed alternative work schedule)
- C. Maxiflex, (a flexible alternative work schedule)
- D. Part-time work (which can be on any of the above schedules for the portion of the pay period worked)

Section 6. Standard/Regular Work Schedule

- A. Work Week and Hours: For full-time employees, the basic 40-hour weekly tour of duty is scheduled on five days, normally Monday through Friday, and the working hours are the same each day. For part-time employees, this schedule allows them to complete a bi-weekly basic work requirement of 32-64 hours (i.e. part-time employees work between 16 to 32 hours per week) and may require the employee to work a minimum of 4 hours and up to 8 hours daily for work-related needs.
- B. Fixed Schedule: Regular schedule tour of duty times are fixed and must be between 6:00 a.m. and 6:00 p.m. local time.
- C. Night Pay: An employee is entitled to night pay when the employee is required to work overtime hours between 6:00 P.M. and 6:00 A.M.

D. Holidays:

1. When relieved from duty on a holiday, full-time employees are entitled to basic pay for 8 hours. Part-time employees are entitled to basic pay for the number of hours they were scheduled to work on the holiday.
2. When an employee is required to perform non-overtime work on a holiday, the employee is entitled to holiday pay for the number of hours during which work is performed.
3. When an employee is required to perform work on a holiday outside of the employee's regularly scheduled daily tour of duty, the employee earns the employee's overtime rate of pay for the hours worked.

Section 7. Compressed Work Schedules (CWS)

A. Authorized Compressed Work Schedules

1. "4-10" Schedule (4-Day Workweek): This is a fixed schedule that includes four days of 10 hours of work each day and one compressed day off each work week. To be established, employees request, and supervisors must preapprove, fixed arrival and departure times and two fixed non-workdays, one day each week. The fixed non-workdays must be the same day of each administrative work week. Fixed arrival and departure times must be the same for each workday.
2. "5-4/9" Schedule: 5-4/9 Work Schedule: this schedule allows employees to complete the basic 80-hours requirement in eight days of nine hours of work each day and one day of eight hours of work with one scheduled non-workday each pay period, totaling 80 hours of work per pay period. To be established, employees request and supervisors must preapprove, fixed arrival and departure times and a fixed non-workday. Fixed arrival and departure times must be the same for each workday for full-time employees, On the eight-hours workday a full-time employee must be scheduled to arrive at the same time or depart at the same time as the nine hours days (i.e., arrive one hour later or depart one hour earlier).

- B. Change in Day Off: Employees may request to change their compressed day off prior to the commencement of the pay period, subject to supervisory approval. The change should not generally result in two consecutive days off. A scheduled compressed day off, as part of the schedule, normally should not be changed once a pay period begins, but a change may be permitted by a supervisor for unusual or unforeseen circumstances.

- C. Conflicts in Days Off: Supervisors will resolve conflicts in scheduling the regular day off for an employee working a 5-4/9 or 4-10 Compressed Work Schedule. Supervisors may consider the following factors when resolving conflicts:
1. Work-related needs.
 2. The order in which involved employees selected the schedule.
 3. Employee seniority (based on service computation date for leave).
- D. Compressed schedule tour of duty times have fixed start and end times and must be between 6:00 a.m. and 6:00 p.m.
- E. Overtime Work: An employee is entitled to overtime pay when the employee is required to work beyond the number of regularly scheduled hours in a day for a compressed work schedule. For a full-time employee, overtime work consists of all hours of work outside of the established Compressed Work Schedule. For a part-time employee, overtime work consists of hours outside of the Compressed Work Schedule for the day (more than at least 8 hours a day) or for the week (more than at least 40 hours).
- F. Night Pay: The regular rules governing entitlement to night pay, at 5 CFR 550.121 and 122, apply. Employees are entitled to night pay for regular hours and regular overtime hours ordered to be performed between 6:00 p.m. and 6:00 a.m. local time.
- G. Holidays.
1. If a federal holiday falls on an employee's 8 hour work day, it will be recorded as 8 hours. If the holiday falls on a 9 or 10 hour work day, it will be recorded as 9 or 10 hours respectively.
 2. If the holiday falls on an employee's scheduled compressed day off, then the "in lieu of holiday" will be observed as follows:
 - a. If the holiday falls on a Sunday, the employee will get the next regularly scheduled workday off (e.g., if the employee's compressed day off is Monday, Tuesday will be observed as the "in- lieu-of holiday").
 - b. If the holiday falls on any other day, the employee will get the preceding regularly scheduled workday off (e.g., if the employee's compressed day off is a Monday and the holiday falls on Monday, the preceding Friday would be the "in- lieu-of" holiday)
- H. Credit Hours: Employees on compressed work schedules may not earn credit hours.

Section 8. Maxiflex – a flexible work Schedule

- A. Maxiflex is intended to give employees maximum flexibility to accomplish their work.
- B. Maxiflex allows employees to request their own schedule consistent with this Article. Maxiflex has an 80-hour bi-weekly work requirement for full time employees (and a prorated number of hours for part time employees), rather than a daily or weekly work requirement. Maxiflex permits employees to request to vary the number of hours worked each day and each week. For instance, Maxiflex allows full-time employees to complete the 80-hour work requirement in less than 10 workdays each pay period, and to earn approved credit hours for voluntary work performed in more than 80 hours bi-weekly.
- C. Tour of Duty under a flexible work schedule means the limits within which an employee must complete their basic work requirement. The tour of duty is composed of both core hours and flexible hours. The tour of duty for employees on Maxiflex is Monday through Friday and may begin as early as 5:00 a.m. and end as late as 8:00 p.m. local time. Credit hours may be earned outside of the normal tour of duty (5 am- 8 pm, Monday to Friday local time) to include weekends, as permitted in this Article.
- D. For employees under Maxiflex, there are no daily or weekly hours of work requirement except during designated core hours. Employees must work and/or be on approved absence during the designated core hours.
- E. Core Hours: The core hours for employees on Maxiflex are Tuesday, Wednesday, and Thursday from 11:00 am to 2:00 pm local time.
- F. But there are daily limits to the number of hours an employee may work. Employees may work up to eleven (11) hours in any one day, excluding lunch break, credit hours, overtime and compensatory time worked. The maximum number of regular, non-overtime, work hours an employee may work is eleven (11) hours.
- G. Unpaid breaks of more than 60 minutes are not normally permitted during core hours. Appropriate paid leave must be used for any additional time off during core hours. Unpaid breaks of any duration outside of core hours are permitted with supervisory approval.
- H. Day(s) Off: When establishing the work schedule, an employee on Maxiflex may select day(s) off to be any day(s) during the bi-weekly period subject to advance approval of their supervisor. Variations to the approved schedule are allowed, with prior approval by the employee's supervisor. Core hours do not apply on employee's non-work days.

Section 9. Maxiflex Procedures

- A. Requesting a Maxiflex Work Schedule: Employees interested in participating Maxiflex work schedule must:
1. Acknowledge in writing that the employee has read and understands this Article;
 2. Submit the completed Work Schedule Request Form to their supervisor for approval or disapproval
- B. Employees may not begin using Maxiflex in the middle of a pay period since the Maxiflex schedule format is based on two-week intervals.
- C. Advanced Work Scheduling
1. Employees working under Maxiflex will communicate their proposed biweekly work schedule to their supervisor. Some options include: (1) have a standing schedule with no bi-weekly submission or approval required; (2) recording on the +Maxiflex Pay Period Timesheet (MPPTS); or (3) providing a screenshot of the Agency Time and Attendance Recording System attached to an email. Employees must be working or in approved leave status during the core hours on the core days. An unpaid lunch break is allowed during core hours.
 2. The proposed work schedule must indicate the number of hours and starting and ending times the employee plans to work on each day of the upcoming pay period. To the extent possible, the schedule must also include any leave planned for use and any credit hours the employee plans to accrue and or use. Advanced scheduling of the pay period minimizes potential problems in determining an employee's entitlements to pay and leave and gives the supervisor notice of the employee's availability so they can plan and assign work.
 3. Standing proposed schedules do not require bi-weekly submission. It is the responsibility of the employee to notify their supervisor when there is a significant variation from the standing schedule.
 4. If an employee does not have an approved standing schedule and fails to timely submit their proposed work schedule, they are required to work a default schedule of eight-hour days (either from 8:00 a.m. to 4:30 p.m. or from 9:00 a.m. to 5:30 p.m. local time) for the affected pay period unless their supervisor grants an exception.
 5. Employees may alter their work days on a Maxiflex work schedule on a pay period to pay period basis.
 6. Once submitted, the proposed work schedule (including any proposed credit hours) becomes the work schedule for the pay period unless disapproved by the supervisor. The employee and the supervisor should work together to make modifications and

gain supervisory approval. The employee will keep track of work schedule adjustments made during the pay period to ensure the basic work requirement for the biweekly pay period is met (e.g., 80 hours for full-time employees), but there is no requirement to report start and stop times on a daily basis.

7. One-Hour Variance: Employees may adjust the start or stop time of their approved work schedule by a maximum of 1 hour without prior supervisory notice or approval as long as the adjustment does not interfere with established core hours, the tour of duty or official business obligations. Employees may deviate from their approved work schedule by more than 1 hour with advanced notice to their supervisors. In unforeseen circumstances or emergency situations when an employee needs to deviate by more than 1 hour, they will notify their supervisor as soon as practicable.
8. Part time and full-time employees follow the same advanced scheduling requirements.
9. If the supervisor objects to all or part of a proposed work schedule, they should state the reason(s) for disapproval and offer some alternatives, if available, in writing.
10. Regardless of the particular hours an employee proposes or actually works, at the end of the pay period, all full-time employees must meet the 80-hour biweekly work requirement (or the prorated number of hours for part time employees). There is no mandatory daily or weekly work requirement. For example, employees are not required to meet a daily work requirement of eight hours or a weekly work requirement of 40 hours.
11. Recording Daily hours: Employees must record their time in to work and time out of work daily by a method agreed upon between the supervisor and the employee (e.g. contemporaneous email, or on the Maxiflex pay period time sheet, etc.), and in the Agency's time and Attendance Reporting system by the day required each pay period.
12. Recording Credit Hours: Employees must record the number of credit hours earned and used each pay period in the Agency's time and attendance system.
13. It is solely the responsibility of the employee to notify their supervisor when there is a significant variation in the standing schedule.
14. Employees must separately request leave and credit hours to be used in the Agency's Time and Attendance Reporting System.
15. Employees must carefully plan and schedule annual leave throughout the year to avoid annual leave forfeiture. Employees on Maxiflex in high leave earning categories

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

Section 10. Credit Hours and Maxiflex Work Schedule

- A. Credit hours earned are those hours that an employee elects to work in excess of the basic work requirement with prior supervisory approval in accordance with this Article.
- B. Full-time or part-time employees on a Maxiflex schedule may earn credit hours.
- C. Earning Credit Hours: Earning credit hours must be requested by the employee and preapproved by the supervisor. For an example of credit hours, an employee is scheduled to work seven (7) hours on Monday. The employee requests and is approved to work three (3) additional hours on that day. If the employee works at least seventy-three (73) more hours during the pay period, the three (3) additional hours are considered credit hours because they are more than the scheduled basic 80 hours that the employee is required to work in this particular pay period. However, if at the end of the pay period the employee has not accounted for 80 hours with a combination of approved leave and work, the three (3) additional hours are counted towards the 80-hour biweekly work requirement and are not credit hours.
- D. Maxiflex Credit Hour Limits: Employees on Maxiflex can earn up to 3 credit hours per workday and up to 20 credit hours per pay period, subject to prior supervisory approval.
- E. Exceptions to the 3/20 Credit Hour Limit: On rare occasions when necessary to meet the work-related needs, supervisors may grant more than 3 credit hours per work day or more than 20 credit hours per pay period, on a case-by-case basis. Standing approvals for more than 3 credit hours per workday or more than 20 credit hours per pay period are not permissible.
- F. Weekend Credit Hours: Employees on Maxiflex may earn credit hours on weekends only with prior approval of the supervisor. The flexible hours for employees on Maxiflex who earn credit hours on Saturday or Sunday are 6:00 a.m. to 6:00 p.m. local time. Employees cannot generally earn credit hours outside of this timeframe on the weekend.

- G. Fifteen Minute Increments. Credit hours are earned in 15-minute increments.
- H. Credit hours must be recorded in the time and attendance system each time they are earned and/or used and must be recorded in 15-minute increments.
- I. If credit hours are erroneously used instead of use or lose annual leave (i.e., accrued annual leave beyond the 240-hour maximum carry over limit), and the annual leave is subsequently forfeited, the forfeited leave is normally ineligible for restoration.
- J. Employees are eligible to work credit hours at an approved alternate work location.
- K. An employee shall not be paid Sunday pay, holiday pay, or premium pay for night work for credit hours.
- L. Employees must be aware that at the end of the pay period, hours worked will be counted as credit hours only after the 80-hour bi-weekly requirement is met.
- M. Recording Earned and Used Credit Hours: Employees are accountable for keeping track of their credit hour balances and to record them accurately in the Agency Time and Attendance Recording System (currently PeoplePlus).
- N. Using Credit Hours: The use of earned credit hours is subject to the same approval process as annual or sick leave. An employee may use earned credit hours within the pay period they were earned (“earn and burn”) for all or part of any approved leave. Credit hours must be earned before they may be used.
- O. Carrying Over Credit Hours: The statutory limit for credit hour carryover from one pay period to the next is 24 hours for full time employees and 25% of the biweekly work schedule for part time employees. For example, a part time employee who works 64 hours per pay period may carry up to 16 credit hours from one pay period to another. In no instances can an employee carry forward any more credit hours than the statutory limit, even under extenuating circumstances. Employees are accountable for keeping track of their credit hour balances from day to day, week to week, and pay period to pay period. If an employee erroneously carries forward credit hours more than the allowable number and the credit hours are forfeited, the credit hours cannot be restored or paid to the employee. However, there is no prohibition to earning more than 24 credit hours in one biweekly period, but the employee must use the excess hours over 24 hours in the same pay period, or the excess credit hours will be forfeited.

- P. Standing/Continuing Requests: At the employee's request, supervisors may approve continuing requests to work credit hours for known or anticipated work needs that are for a designated time period or time limited project. Approval for an employee's continuing request to work credit hours for known or anticipated work needs must be made in writing from the supervisor to the employee and must include a designated time period or time-limited project for which credit hours are being approved to work. Requests for continuing approval for credit hours will not be unreasonably denied. At the employee's written request, the supervisor will provide the reason for a denial in writing. Supervisors may grant standing approval to work credit hours for known or anticipated workload needs if the credit hours are within the 3 credit hours per workday and within the 20 credit hours per pay period limit. Standing approvals for known or anticipated workload needs must be requested in writing and approved in writing for a designated period with an end date.
- Q. Credit Hours Do Not Expire: Although there is a statutory limit on the number of credit hours that an employee may carryover from one pay period to the next, there is no time limit for using earned credit hours. Credit hours do not expire. If the employee's credit hour balance does not exceed the statutory limit, those hours will be available for use as long as the employee is on the Agency's Maxiflex program described in this Article. If for any reason – voluntary or involuntary, separation or transfer—an employee leaves the Maxiflex program described in this Article, the employee will be paid for the accumulated credit hours at the employee's current rate of basic pay.

Section 11. Compensation and a Maxiflex Schedule

- A. Night Pay: When an employee elects to work credit hours or elects a time of arrival or departure at a time of day when night pay is otherwise authorized, night pay will not be paid. If an employee's daily tour of duty includes eight or more hours available for work during daytime hours (i.e., between 6:00 a.m. and 6:00 p.m. local time), the employee is not entitled to night pay even though the employee voluntarily elects to work hours for which night pay is normally required (i.e., between 6:00 p.m. and 6:00 a.m. local time). However, if an employee who is ordinarily entitled to night differential pay is required to work outside the hours of 6:00 am to 6:00 pm, they are entitled to night differential.
- B. Holidays: On a holiday, employees under Maxiflex work schedules are credited with 8 hours towards their 80-hour basic work requirement for the pay period, even if they would otherwise work more hours on that day. When the employee is scheduled to work more than 8 hours on the holiday that the employee is relieved from duty, hours greater than 8 must be rescheduled on another day, or the employee must account for those hours by charge to a category of approved absence. Part time employees will be credited with the number of hours that they would have actually worked that day had it not been a holiday; not to exceed 8 hours.

- C. Overtime, Compensatory Time and Credit Hours: Overtime work consists of hours of work that are officially ordered in advance and in excess of 8 hours a day or 40 hours in a week, but does not include hours that are worked voluntarily, including credit hours. Credit hours are distinguished from overtime/compensatory time off hours in that credit hours are at the election of the employee. If an employee has elected to work credit hours and overtime/compensatory time is subsequently authorized, the employee will be afforded the opportunity to elect to work the overtime/compensatory time rather than accumulate additional credit hours.

- D. Conversion of Credit Hours to Pay: Full time employees receive pay for a maximum of 24 hours of unused approved credit hours when they separate by retirement, transfer to another Agency, or when no longer subject to a flexible work schedule with credit hours. Part time employees will be paid for credit hours up to one-quarter of their biweekly work requirement. Credit hours are paid at the employee's current rate of basic pay.

Section 12. Part-time Work

- A. Employees may request to a part-time work schedule of between sixteen (16) to thirty-two (32) hours per week. The Agency may, at its discretion, grant such a request.

- B. Employees on a part-time schedule may request to return to a full-time work schedule. The Agency may consider an employee's request to return to full-time status. If the request is denied, the Agency will, upon written request, provide a reason for the denial in writing.

Section 13. Job-Sharing Program

Management may consider requests from employees to voluntarily job-share a position.

Section 14. Non-Compliance and Removal from an AWS

- A. Removal from an AWS: The supervisor or management official may remove an employee from AWS when there are documented misconduct or performance issues the supervisor determines are related to their ability to work effectively on an AWS, when the employee does not comply with the provisions provided in this Article, or to meet the organization or unit's specific work-related needs. The default work schedule for the employee in such circumstances is a Straight-8 schedule or a modified Maxiflex schedule, but the supervisor or management official has the authority to permit temporary changes to the schedule on rare occasions and due to extenuating circumstances.

- B. For AWS removals resulting from misconduct or performance issues related to their ability to work effectively on an AWS or for the employee's failure to comply with the provisions of this Article, employees may apply no sooner than six months after termination.
- C. For AWS removals resulting from work-related needs, the employee may reapply in the Agency's Official Time and Attendance System if or when any such issues are resolved. It is presumed the employee may return to their previous work schedule.
- D. For minor issues of non-compliance, the supervisor may counsel an employee when they do not comply with the provisions of the AWS work schedules program. For face-to-face counseling (including virtual) employees are entitled to be accompanied by a Union representative for any counseling and will be provided reasonable notice to obtain Union representation, if requested. The supervisor must make clear that they are counseling the employee, and that the supervisor is concerned about whether or not the employee is following this Article. Counseling will consist of identifying the problem and what the employee must do or stop doing going forward. Nothing in this paragraph will prohibit management from multiple counseling sessions with an employee.
- E. Supervisors are expected to use reasonable judgment and understanding that an employee may on rare occasions fail to comply with the many Maxiflex rules.
- F. Before a decision to remove an employee from an AWS, the employee will be notified in writing of the reason for their removal and may provide a response within one work day. The employee may request to return to AWS after six (6) months.

Section 15. Implementation

- A. Training: The Agency will prepare and offer training for all employees and supervisors on the requirements and provisions of this Article. The Union will have the opportunity to review the training materials and participate in the training.
- B. Training shall be required for all supervisors and all timekeepers, for new employees or employees new to AWS, and those electing to work Maxiflex or CWS work schedules for the first time. Employees on existing AWS schedules, while not required to take training, are required to sign a statement that they are aware of and agree to abide by all guidance and rules.
- C. Training sessions will be offered at least four times initially. A training package will be established within three (3) months of Agency Head review of this Article is completed

for employees opting to work AWS after the initial training sessions have been conducted. Training materials, including Q&As based on questions received during the training, will be posted on the Agency intranet and notices of the availability of these materials will be sent to all employees at least twice a year, at the April mid-year evaluation and the October end-of-year evaluation.

Section 16. Grievability

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

Article 12

Career Ladder Promotions

Section 1. Career Ladder Promotions

- A. The Agency will provide appropriate opportunities for employees to develop and advance in their careers.
- B. Employees in career ladder positions will be given adequate opportunity to reach the full potential of their assigned career ladders. Management will provide work assignments, and/or training appropriate for employee development and experience. Conditions prescribed by law and regulation (including 5 CFR § 335.104, eligibility for career ladder promotions) must be satisfied for an employee to be eligible for a career ladder promotion. Upon placing an employee in a career ladder position, the supervisor and employee will discuss the job requirements and expectations for the employee to reach the next higher level. Where there are eligibility concerns, these discussions should include requirements for next career ladder level, potential training, different behavior the supervisor expects from the employee, or taking on a particular project(s). The supervisor will hold these discussions at each level of the employee's progression and at mid and end of year performance reviews within the career ladder.
- C. Lack of availability of work at the higher grade level may not prevent a career ladder promotion.
- D. The following conditions must be satisfied for an employee to be eligible for a career ladder promotion:
 - 1. The employee's performance demonstrates the ability to perform the duties of the next higher grade level;
 - 2. The employee has completed the minimum waiting period in the lower-graded position (52-week period pursuant to 5 CFR § 300.604); and
 - 3. Pursuant to 5 CFR § 335.104, no employee shall receive a career ladder promotion unless their current rating of record under part 430 of this chapter is "Effective" or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Effective" on a critical element that is also critical to performance at the next higher grade of the career ladder.
- E. Supervisors are encouraged to discuss performance concerns as they arise throughout the year that may impact career ladder promotion eligibility. If the supervisor decides not to promote the employee, the supervisor will communicate that decision to the employee in writing no later than the employee's career ladder eligibility date. The supervisor must explain why they

determined the employee is not entitled to the promotion and how the employee must improve their performance in order to be granted the career ladder promotion.

- F. If the supervisor determines to promote the employee, the supervisor will submit the necessary personnel action early enough to process the promotion within the first pay period of the employee meeting time in grade requirements. Employees eligible for a career ladder promotion who do not receive their career ladder promotion timely are entitled, upon an administrative determination of an authorized official that the delay was unjustified or unwarranted (i.e., the employee otherwise met eligibility requirements of this Article), to retroactive promotion. Such retroactive promotion will be computed back to the first day of the pay period immediately following the employee's eligibility date. Back pay will be computed as in accordance with 5 U.S.C. 5596, beginning on the first day of the pay period immediately following the employee's eligibility date, and interest will end on the day the personnel action is completed.

Section 2. Developmental Details

- A. Agency leadership recognizes that details enhancing professional growth and development may be beneficial for employees, especially those employees with full promotion potential up to the GS-12 level. The purpose of Developmental Details is to provide flexible cross training, improved networking and collaboration, skills development, and knowledge-sharing opportunities for employees through temporary assignments while accomplishing Agency work.
- B. Definition: A Developmental Detail is a detail that includes a developmental component for permanent employees up to the GS-12 full performance level. They include voluntary opportunities posted on Talent Hub where interested employees can apply for short-term developmental assignments, special projects, or shadowing. Developmental Details may also be arranged outside of Talent Hub. Skills Marketplace is another way for employees to develop new skillsets.
- C. Timing:
 - 1. Developmental Details can be up to 120 days and may be extended.
 - 2. Developmental Details are normally limited to one per employee per year.
 - 3. Specifics regarding the duration, location, and duties may vary depending upon the employee, the project, and Agency needs and resources.
 - 4. Participants must not be on a Performance Improvement Plan to be eligible for a Developmental Detail.
- D. Developmental Details support employees in developing skills based on their career development needs and goals. These Developmental Details may promote diversity and inclusion across the Agency and provide knowledge/skills transfer.
- E. The Agency will encourage supervisors to support Developmental Details.

- F. Employees may explore and discuss possible Developmental Detail opportunities with other employees and supervisors, while maintaining communication with their supervisors and ensuring it does not disrupt their assigned work. Both the home and host offices must approve a Developmental Detail. If a supervisor disapproves a Developmental Detail, the employee may raise this matter to the second level supervisor without fear of retribution. If a grievance is filed regarding the disapproval, having raised the matter to the second level supervisor does not affect the Step 1 grievance official identification.

ARTICLE 13

Union Rights

Section 1.

The Union has been accorded exclusive recognition as the exclusive representative of the employees in the unit it represents and is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit.

Section 2. Formal Discussions

The EPA Unit President or designee will be notified via electronic mail at the earliest practicable date in advance of any formal meetings. The Union recognizes that circumstances may arise with regard to health, safety, facility, or security concerns that require immediate action. In those circumstances, the Agency will provide the Union with notice of a formal meeting as soon as possible. If the Union is unable to provide representation at the meeting due to time constraints, the Agency will give reasonable consideration to postpone the meeting.

The Union representative will introduce themselves to the organizer of the meeting, stating their role for attending the meeting is to represent the interests of the bargaining unit. The Union representative may participate in but not disrupt formal discussions. In such discussions, the Union may ask questions and may outline the Union's position concerning the issue(s) discussed.

The Union representative may also inform their bargaining unit employees of their availability to privately discuss or consult with the Union. If an employee(s) wishes to discuss or consult with the Union regarding any matters discussed at the meeting, they may do so.

Section 3. Right to Represent Employees without Restraint, Interference, Coercion, or Discrimination

The Agency shall not restrain, interfere with, coerce, or discriminate against designated representatives of the Union in the official exercise of their responsibilities as representatives on behalf of an employee or group of employees within the bargaining unit.

Section 4. Bargaining Unit Status Report

Every quarter the Agency will provide, at no cost, electronic bargaining unit status to the Union. These bargaining unit status reports will be in an excel spreadsheet or similar format with similar functionality and will include the following information: the employee name, e-mail address, grade and step, position title, organizational element/unit broken down by Region Division, Branch, location and Section/mail code.

In the event the Union brings any discrepancies or inaccuracies in the quarterly bargaining unit status report to the Agency's attention, the Agency shall resolve the issue and inform the Union that the issue has been resolved as soon as practicable.

Section 5. Union Access to Information Regarding Changes in Personnel Policies, Practices, Conditions of Employment, and/or New Rules or Regulations

The Agency recognizes its obligations to provide the Union or its authorized representative, upon request, data within a reasonable time period pursuant to the standards set forth in 5 USC Section 7114(b)(4).

ARTICLE 14

Transit Subsidy

Subject to the availability of funds and at the Agency's election, the Agency will participate in a transit subsidy program pursuant to the Clean Air Incentives Act, 5 USC 7905.

ARTICLE 15

Student Loan Repayment

The Agency has established a Student Loan Repayment Plan in accordance with 5 U.S.C. 5379 and 5 C.F.R. 537 and other Government-wide rules and regulations. Implementation of the Student Loan Repayment Program is subject to the availability of funds and will be in compliance with law, rule or regulation. The Agency, at its discretion, may use the plan as an incentive to recruit highly qualified candidates and to retain highly qualified employees as defined by 5 USC 2105.

ARTICLE 16

Child Care Subsidies

The Parties recognize that many employees need to have adequate child care services during duty hours. Subject to budgetary constraints, the Agency has a child care tuition assistance program available for eligible employees.

ARTICLE 17

Employee Assistance Program

The Employer and the Union recognize the importance of an Employee Assistance Program for employees. The Agency will publicize the broad range of assistance available from the EAP program. Employee participation in the program shall be voluntary. The Agency will keep the Union informed concerning the correct telephone numbers and contacts for the program.

ARTICLE 18

Workers Compensation

Section 1.

Employee(s) and/or witness(es) should report all on-the-job injuries immediately or as soon as possible to management.

Section 2.

The Agency will direct employees to the appropriate form(s) and assistance to file a workers' compensation claim.

Section 3.

Upon the injured employee's request, the Agency will provide information on their right to file a claim and information regarding benefits and compensation.

ARTICLE 19

Discipline

Section 1.

The Parties agree that employees shall maintain high standards of integrity, conduct and concern for the public interest and that the federal workforce shall be used efficiently and effectively. Disciplinary actions generally will be initiated in a timely manner, as circumstances warrant. The Parties agree to the principle of progressive discipline except when not warranted by the nature of the misconduct. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation. Progressive Discipline means the Agency will consider the employee's past disciplinary record as one factor among the Douglas Factors when determining an appropriate penalty.

Section 2. Informal Actions

- A. Informal actions in response to employee misconduct are non-punitive and can be:
 - 1. closer supervision;
 - 2. an oral admonishment (which may be memorialized in an email communication);
 - 3. a written warning or
 - 4. counseling.
- B. Any written informal action should identify the misconduct and include an outline of positive corrective steps and/or expectations going forward, if necessary.
- C. Prior to determining whether to issue an informal action, it may be appropriate for a management official made aware of potential employee misconduct, who did not directly observe the infraction or who otherwise may not have sufficient information, to make an inquiry of the employee and to provide an opportunity for the employee to explain their side of the situation. Nothing in this provision waives an employee's Weingarten Rights.
- D. After an informal action is issued, employees may consult with their Union representative and may respond to explain their side of the story.
- E. The Agency will not cite any records regarding an informal action, beyond eighteen (18) months in any subsequent formal disciplinary action except:

1. to establish 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; or
 2. a like offense has been identified during the eighteen (18) month period following the initial informal disciplinary action.
- F. Nothing in this section shall preclude an employee from requesting a meeting with management and a Union representative to discuss an informal disciplinary action.

Section 3. Formal Disciplinary Actions

A. Written Letter of Reprimand

1. Prior to issuing a Letter of Reprimand, the Agency will provide an employee an opportunity (verbally or in writing) to explain their side of the situation. The Letter of Reprimand will not be issued until at least two (2) workdays after the employee's explanation, if any.
2. The employee will be given five (5) workdays to provide a written response to the Letter of Reprimand. The employee shall be authorized a reasonable amount of official time to prepare a response. If requested in writing, the response will be included in the employee's eOPF with the Letter of Reprimand as one document.
3. A Letter of Reprimand and the employee response thereto, if any, will be maintained in an employee's eOPF for up to two (2) years.
4. Letters of Reprimand will be issued for just and sufficient cause.

B. Adverse Actions (Suspensions, Removals, Reductions in Grade or Pay, or Furloughs for thirty (30) Days or Less)

1. Any suspension (except for D and E below):
 - a. Will be preceded by advance written notice of at least thirty (30) calendar days before the action is effective.
 - b. The employee will be given fifteen (15) calendar days to provide the deciding official a response either orally, in writing, or both.
 - c. The employee shall be authorized a reasonable amount of official time to prepare a response.
2. Advance notices will specify the deciding official to whom the employee should provide any reply.

3. The notice will state the employee's right to be represented by an attorney or other representative, including the Union.
 4. Adverse actions will be taken to promote the efficiency of the service.
- C. Thirty (30) days advanced notice is required in all cases except when the Agency has reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension.
 - D. An advance written notice and opportunities to respond are not necessary for furlough without pay due to unforeseeable circumstances, such as acts of God, or sudden emergencies requiring immediate curtailing of activities. Management agrees that such furloughs will be an act of last resort. When management has the authority to do so, excused absence may be granted.
 - E. Records: The employee will be electronically provided the material relied on to support the Agency's proposed action, except where the sharing of such materials would violate Agency policies or the law.
 - F. The Agency notice of proposed action supplied to the employee will contain language explaining that an employee has the right to be represented by an attorney or other representative, including the Union. The notice of proposed action will also state that the employee may share the attached material with their representative.
 - G. When an employee does not have access to Agency systems the Agency may effectuate delivery via a known personal email address or via hard copy to the employee's last address on file with the Agency.

Section 4. Exceptions

The provisions of this Article do not apply to the removal including termination or non-conversion of probationary or trial period employees. Probationary and trial period employees retain their appeal rights to the Merit Systems Protection Board existing under Chapter 75 of Title 5 of the United States Code.

Section 5. Decisions on proposed suspensions and disciplinary removals

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

- B. The Agency will consider the Douglas Factors when making a decision on a proposed action. The proposing and deciding official (normally a higher-level manager than the proposing official) must review each case individually and consider those Douglas Factors that are relevant. The Douglas Factors may or may not weigh in the employee's favor.

Section 6. Duty Status Pending a Decision

- A. Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in their regular position during the advance notice period. In those rare circumstances where the Agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the Agency may elect one or a combination of the following alternatives:
 - 1. Assigning the employee to duties where they are no longer a threat to safety, the Agency mission, or to Government property;
 - 2. Allowing the employee to take leave, or carrying them in an appropriate leave status (annual, sick, leave without pay, or absence without leave) if the employee has absented themselves from the worksite without requesting leave;
 - 3. Curtailing the notice period when the Agency can invoke the provisions of 5 CFR 752.404(d)(1); or
 - 4. Placing the employee in a paid, nonduty status for such time as is necessary to effect the action.

Section 7. Grievance/Appeal

- A. Employees may grieve a disciplinary action through the Negotiated Grievance Procedure (NGP) Article of this MCBA.
- B. Grievances of disciplinary actions may only be processed through the Negotiated Grievance Procedure (NGP). Employees may appeal Suspensions of 15 days or more, Removals, Reductions in Grade or Pay, or Furloughs for 30 Days or Less to the Merit Systems Protection Board (MSPB) or file a grievance under the NGP Article of this MCBA but may not do both. Once an employee has elected to file an MSPB appeal or a written grievance under the NGP, the employee may not change subsequently to the other procedure.

C. To the extent not prohibited by law, arbitrators will apply a preponderance of the evidence standard to letters of reprimand and adverse actions. This standard does not apply to performance actions under Chapter 43 of the United States Code, which is covered by the performance Article.

D. The Agency has the burden of proof for all actions taken under this Article.

Section 8. Settlements

In lieu of rendering a decision on a proposed action, a deciding official may choose to offer an employee a settlement agreement, or access to Alternate Dispute Resolution (ADR) if locally established pursuant to this CBA. The Union may grieve any settlement agreement inconsistent with this CBA.

ARTICLE 20

Transfer of Function

Section 1

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

Any transfer of function by the Agency will be in accordance with applicable law, rule or regulation.

Section 2

The Agency can assist with identifying other vacant positions within Region 9 upon the employee's request.

ARTICLE 21

Employee Rights

Section 1.

The Employer and the Union will recognize and respect the dignity of employees, supervisors and managers.

Section 2.

- A. 5 USC 7102 provides that each employee shall have the right to form, join or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under 5 USC Chapter 71, such rights include the right:
 - 1. to act for ESC in the capacity of a representative and the right, in that capacity, to present the views of ESC to the heads of agencies, and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
 - 2. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.
- B. Employees temporarily assigned to a managerial or supervisory position or a position outside the bargaining unit may not serve as a Union representative and are temporarily outside of the bargaining unit.

Section 3.

Employees may inform their supervisors of, and may document, their belief that an order or instruction violates law, rule or regulation. Nonetheless, employees are expected to comply with supervisory order(s) or instruction(s) unless, under the circumstances, the task(s) poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress.

Section 4.

- A. During an examination of an employee in connection with an Agency investigation by a representative of the Agency, an employee may exercise rights under 5 USC 7114(a)(2)(B) and request the assistance of a Union representative.

- B. The Agency, as appropriate, will provide a Kalkines warning to an employee being investigated.

- C. When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:
 - 1. Requesting that the interviewer clarify questions;
 - 2. Clarifying responses provided by the employee;
 - 3. Assisting the employee in providing favorable extenuating facts;
 - 4. Suggesting other employees who may have knowledge of relevant facts; and
 - 5. Advising and/or conferring privately with the employee during the course of the meeting, unless doing so would unduly disrupt the examination.

ARTICLE 22

Probationary Employees

When an Agency terminates an employee serving a probationary or trial period it will provide the employee with written notice in accordance with 5 CFR § 315.804. When an Agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before their appointment, the Agency will follow 5 CFR § 315.805. When the probationary employee believes that their termination is based on discrimination, the employee has the right to discuss their complaint with an EEO counselor and may file a formal complaint in accordance with existing law, rule and/or regulations.

ARTICLE 23

Retirement/Resignation

An employee may resign or retire at any time and may set the effective date of their resignation or retirement. An employee may request to withdraw their resignation/retirement at any time before it becomes effective. The Agency may accept or deny an employee request to withdraw a resignation/retirement before its effective date. If denied, the Agency will inform the employee of the reason for the denial. Reasons to deny a withdrawal request include, but are not limited to, administrative disruption, the hiring or plans to hire a replacement, the acceptance of VERA/VSIP signified by submitting retirement forms to HR and the presence of an executed settlement agreement.

ARTICLE 24

Prohibited Personnel Practices

The Agency will refrain from engaging in Prohibited Personnel Practices in accordance with 5 USC §2302.

ARTICLE 25

Overpayment

Section 1. Notification of Overpayment

- A. In the case of erroneous payment arising out of pay or allowances, or payment of travel, transportation or relocation expense, an employee will be notified of the overpayment.
- B. Such notice will, include the employee's right to request a waiver of the overpayment under 5 USC § 5584, the employee's right to review documents establishing the debt, and the employee's right to request a hearing on the amount and validity of the debt.

Section 2. Waiver of Overpayment

- A. An employee may request a waiver of an erroneous payment of pay or allowances, or payment involving travel, transportation or relocation expenses, in whole or in part.
- B. The Agency, in accordance with 5 USC § 5584 and applicable Agency policy, will evaluate and process the request for waiver of the obligation to repay such overpayment.
- C. If the waiver is authorized, the Agency will give full credit for any amount with respect to which collection is waived, and an erroneous payment that is waived is considered a valid payment for all purposes.
- D. This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim.

ARTICLE 26

Ethics and Outside Employment

Section 1.

It is the intent of the Parties to have and maintain the highest ethical standards for employees.

Section 2.

Employees may be required to take ethics training.

Section 3.

Ethics opinions shall be based on relevant and applicable laws and the facts provided by employees seeking such advice and counsel.

Section 4.

Employees are required to request approval for certain outside employment or activities, consistent with federal government ethics regulations. Employees must submit a written request to the appropriate Deputy Ethics Official (DEO) and obtain their approval of such outside employment or activity prior to engaging in it. The request for outside employment must address the criteria contained in 5 CFR 6401.103(b) and must be submitted within sufficient time to provide for adequate review.

ARTICLE 27

Temporary Medical Issues

The Agency will endeavor to identify mechanisms available (i.e. Reasonable Accommodation, medical telework, worker's compensation, etc) which may be appropriate when addressing temporary medical conditions that may require modification of work assignments.

ARTICLE 28

Lactation Time and Facilities

Section 1.

The Agency will provide employees who are nursing and who are on official duty a reasonable amount of break time, periodically during the work day, to express breast milk.

Section 2.

The Agency will provide a place that is shielded from view and free from intrusion from coworkers and the public where milk may be expressed.

ARTICLE 29

Furlough

Furloughs shall be conducted in accordance with applicable laws, rules or regulations. The Agency will provide the Union notice of a furlough with as much advanced notice as practicable.

ARTICLE 30

Orientation of New Employees

Section 1.

The Union will be given the opportunity to participate in the new employee orientation process for bargaining unit employees. The EPA Unit President will be furnished the name, position, and date of entrance on duty for new bargaining unit employees prior to the orientation date.

Section 2.

- A. The Agency will advise new bargaining unit employees that the Union is their exclusive representative.
- B. When the Union cannot participate in the orientation session, the Agency will distribute, as provided by the Union, its informational packet.
- C. The Agency will notify new bargaining unit employees that the collective bargaining agreement is available on the Region 9 intranet.

ARTICLE 31

Fitness Center

Any change to fitness facilities will be handled as required by the federal labor statute and the procedures in Article 5, Mid-Term Negotiations.

ARTICLE 32

Health and Safety

Section 1. Purpose

Both management and the Union recognize the importance of providing a safe and healthy work environment for ESC employees. The Parties are committed to complying with all applicable rules, regulations, policies, and procedures intended to provide a healthy and safe work environment.

Section 2. Unsafe or Unhealthy Conditions

- A. In the course of performing assigned work both in the office and in the field, employees will be alert to the presence of unsafe or unhealthful conditions. It is an employee's right to report unsafe or unhealthy working conditions to the appropriate officials.
 - 1. In an imminently dangerous or unsafe situation as defined in 29 CFR 1960.2(u), the employee will make reports to their supervisor or another management official by the most expeditious means available.
 - 2. The employee has the right to decline to perform assigned work 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 seek effective redress.

Section 3. Regional Safety Officer

The Regional Safety Officer will have access to the Region 9 designated safety, health, and environmental management official ("Region 9 DSHEMO")

Section 4. Annual Review

- A. The Employer will take steps, on at least an annual basis, to ensure that employees are familiar with the proper emergency procedures.
- B. The Union will assist in this effort by encouraging its members to follow established procedures and to serve as monitors/coordinators, where such duties exist.

Section 5. Emergency Training

- A. The Employer will inform employees on at least an annual basis of the procedures to use to contact the local emergency management system (e.g. building security, Federal Protective Service, paramedics, fire departments, police departments, ambulance services, etc.).
- B. Subject to management discretion and budgetary constraints, the Agency will offer first aid, cardiopulmonary resuscitation (“CPR”) training, and defibrillation training to interested employees as can reasonably be scheduled. The Union will encourage its members to take the trainings.
- C. The Agency agrees to disseminate health and safety information on Region 9’s Intranet.

Section 6. Safety Equipment and Procedures

Subject to management discretion and budgetary constraints, the Agency will provide safety-related equipment to be used for employees’ protection in the performance of their job.

Section 7. Ergonomics

Subject to management discretion and budgetary constraints, upon request, the Agency will provide ergonomic evaluations for employees.

Section 8. Earthquake Supplies

Subject to management discretion and budgetary constraints, the Agency agrees to provide earthquake supplies for EPA leased space in Region 9.

Section 9. Health and Safety Committees

In accordance with 29 CFR 1960.37, the Agency may elect to utilize a Health and Safety Committee. The Health and Safety Committee established in Region 9 by a charter approved November 15, 2016 may remain in effect.

ARTICLE 33

Employee Training and Development

Section 1. General

Training and development of employees will be provided in accordance with applicable law, rule, or regulation and in accordance with Agency policy and procedure.

Employees are encouraged to pursue self-improvement, training and development to increase efficiency and output. The employee may discuss training opportunities with their supervisor.

Subject to budgetary constraints, the Agency may approve of an employee's request to enroll in job-related training courses.

Section 2. Career Counseling and Development

A supervisor can discuss the employee's career development goals and development opportunities and may assist with developing an Individual Development Plan (IDP) upon request by the employee.

Section 3. Leadership Development

When leadership development training opportunities are available, the Agency will communicate the information to eligible employees. Eligible employees may apply for consideration.

ARTICLE 34

Personnel Records and Access to Information

Section 1.

Employees will have access to their records maintained in an EPA system of record except those records restricted by law, rule, or regulation.

Section 2.

Medical documentation and employee information will be treated confidentially, and the Agency will observe all requirements of the Privacy Act and other appropriate legal authorities.

Section 3.

Personal notes maintained by an employee's supervisor will not be given to a succeeding supervisor except on a need to know basis.

ARTICLE 35

Incentive Award

Section 1. Purpose

Managers and supervisors will utilize the awards program as outlined in the awards policy. The EPA award program is an incentive program that provides recognition based on employee achievements that contribute to the Agency's mission. In administration of the awards program the Agency agrees to follow applicable policies, rules or regulations.

Section 2. Awards Information

- A. The Agency will provide the Union with the annual award budget allocation and number of quality step increases ("QSI") after it becomes available.
- B. The Agency will provide the Union with an annual report by January 31 of the ESC bargaining unit employees who received an award or QSI during the prior fiscal year. This report shall include the employees' names, series, grades, locations and offices along with award type.
- C. The Agency will provide the Union with the nominations forwarded for National Honor Awards consideration for ESC bargaining unit employees.

ARTICLE 36

Reduction-In-Force

Any Reduction in Force (RIF) conducted by the Agency will be in accordance with applicable laws, rules, or regulations. The Agency will advise the Union with a written notice.

Employees approved to work at a remote work location shall be notified by the Agency if impacted by a RIF. In the event of a RIF, Agency procedures must be in accordance with 5 CFR 351.

ARTICLE 37

Principles of Scientific Integrity

The Parties agree that EPA's scientific and technical activities should be of the highest quality and credibility. EPA commits to the principles of scientific integrity outlined in Agency fact sheets and policies.

ARTICLE 38

Reassignments

Section 1.

- A. Consistent with applicable laws and regulations the Agency may reassign work.
- B. When making such reassignments, the Agency may give consideration to factors such as:
 - 1. Agency needs;
 - 2. Available positions; and
 - 3. Qualifications.
- C. When the Agency initiates a reassignment, it will provide an employee with advance notice as practicable.
- D. If a reassignment requires a change in duty station, the Agency will make a reasonable effort to provide the employee time to accomplish the change in duty station, as appropriate.

ARTICLE 39

Drug-Free Workplace

Section 1.

The Agency will oversee a drug-free workplace and drug-testing program in accordance with federal law, rule, or regulation (i.e., Executive Order 12564 and HHS Mandatory Guidelines for Federal Drug Testing Programs) and Agency policy and procedures.

Section 2.

Upon Union's request and with bargaining unit employee's written consent, the Agency will furnish documentation underlying a reasonable suspicion test of that employee consistent with 5 U.S.C. 7114(b)(4).

Section 3.

An employee instructed to undergo a drug test may exercise rights under 5 USC 7114(a)(2)(B) and request the assistance of a Union representative. The Union representative may be granted official time in accordance with Article 2 but will bear their own travel expenses.

ARTICLE 40

Diversity, Equity, Inclusion and Accessibility

Section 1. Introduction

- A. The principles set forth in this Article will be integrated across and deep throughout the Agency. The Agency and Union affirm the importance of advancing equity, civil rights, racial justice, and equal opportunity for all employees, while maximizing the diverse talents, skills, and experiences of the EPA community to achieve EPA's mission to protect human health and the environment through a sustained, equitable, and inclusive culture.
- B. The Parties will treat each other and employees with dignity and respect. Accordingly, the Agency will endeavor to strengthen its ability to recruit, hire, develop, and retain our Agency's talent, and to remove barriers to equal opportunity. The Agency will work toward a workforce that reflects the diversity of the American people, while adhering to Merit System Principles. A growing body of evidence demonstrates that diverse, equitable, inclusive, and accessible workplaces yield higher-performing organizations.
- C. The Agency's recruitment efforts will include a focus on creating diverse applicant pools. The Agency will conduct outreach efforts which may include but are not limited to:
 - 1. Reaching out to underrepresented and underserved communities; including minority-serving institutions (HBCUs, HSIs, etc.);
 - 2. Conducting outreach and recruitment efforts to members of underrepresented and diverse communities; The Agency will support applicants' accessibility needs through the Reasonable Accommodation process.
 - 3. Leveraging special hiring authorities, such as Federal internship programs, including Pathways Internship Program, to provide entry-level career development opportunities to students and recent graduates and Schedule A Hiring Authority for persons with disabilities.
 - 4. Special Emphasis Program Managers and Union representatives are encouraged to set up automatic USAJobs notifications of recruitment and hiring activities.
- D. The Agency will follow Merit System Principles and practice equitable hiring, meaning:
 - 1. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
 - 2. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or

handicapping condition, and with proper regard for their privacy and constitutional rights.

3. If interviews occur, hiring managers are encouraged to use structured interviews and consider unconscious bias in the development of interview questions.

Section 2.

The Agency will publish its DEIA Strategic Plan on the intranet.

- A. Annually, the Agency agrees to provide a briefing on applicant flow data to the Union.
- B. The Agency will provide an equitable, accessible, and inclusive environment for employees with disabilities. The Agency will implement the Federal Government's initiatives to provide people with disabilities equal employment opportunities and take affirmative actions within the Agency to ensure full compliance with applicable laws including Sections 501, 504, and 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791, 794, 794d).
- C. The Agency will not tolerate discrimination based on protected class.
- D. Employees will not be subject to discrimination based on their sexual orientation, gender identity or gender expression. The Agency will foster a workplace that is an inclusive and respectful environment that invites participation from all people. There will be no tolerance of discrimination, including harassment, based on sex (including pregnancy, sex stereotyping, gender identity, gender expression or transgender status) or sexual orientation. The Agency will foster an environment that recognizes the inherent worth and dignity of every person and group, and embraces diversity, understanding, and mutual respect.
- E. Where current space allows for designation of a restroom as gender-neutral (i.e., adding a sign) and where such designation would not adversely impact employees' access to restrooms if they have disabilities, the Agency will designate a gender neutral restroom. As there are changes in office buildings, the Agency will continue to explore options for providing and designating additional gender-neutral restrooms.

Section 3. DEIA Reporting and Accountability.

- A. Reporting. The Agency will continue to collect all information to support the operation of the EPA Diversity Dashboard (and any successor) and applicant flow data. The Agency will update the Diversity Dashboard monthly. Access to the Diversity Dashboard will be available to all employees.
- B. The Agency agrees to provide ESC, annually, a copy of the MD-715 report and a briefing explaining the report. To the extent the OCR State of EEO presentation includes Region 9 data/information, OCR will share this as part of this briefing to the Union.

- C. The Agency is planning to create a Chief Diversity Office (CDO), per the Government-wide DEIA strategic plan and the Agency's DEIA Strategic Plan. The CDO will be responsible for implementing the Agency Plan's strategic actions.
- D. Once the CDO is in place, the Agency will notify the Union and initiate discussions regarding Union membership on an applicable DEIA Executive Committee.

Section 4. Training

- A. The Agency will maintain DEIA self-paced trainings and webinars in its learning management system that are available to all staff (e.g., workplace harassment, conflict resolution, understanding of implicit and unconscious bias).
- B. The Agency will survey the AAships and Regions and review Fed Talent offerings to compile existing interactive DEIA learning activities. The Agency will then produce a list of interactive training addressing DEIA topics to be shared with Agency employees.

Section 5. Pay Equity

The Agency will follow OPM pay administration. The implementation of Government-wide regulations and guidance to address pay inequities and advance equal pay among Agency employees may be subject to negotiations in accordance with the Midterm Negotiations (Article 5).

ARTICLE 41

Travel and Per Diem

Section 1. Travel Outside Established Tour of Duty

- A. Subject to supervisory approval, employees may travel outside of their regular work hours if they so choose. Employees traveling on their own time at their option are:
1. Responsible for any additional costs resulting from travel deviations; and
 2. May be entitled to Travel Compensatory Time Off in accordance with 5 CFR 550.1404.

Section 2. Advance Notice of Travel

If employees are required to travel, the Agency will make best efforts to provide reasonable advance notice.

Section 3. Travel Voucher

The Agency agrees to follow 41 CFR 301 when processing travel voucher claims.

Section 4. Travel Compensatory Time Off (TCTO)

The Agency will administer employee TCTO pursuant to applicable policy rule or regulation.

ARTICLE 42

Telework

Section 1. Purpose

The Telework Enhancement Act of 2010 requires the head of each executive Agency to establish a telework Article for eligible employees. A successful telework program can yield many benefits, including cost savings, increased productivity and performance, enhanced recruitment and retention, heightened employee morale, improved emergency preparedness and reduced energy use.

Section 2. Scope

This Article addresses regular, situational, and medical telework. It also addresses telework when used to accommodate employees with disabilities under the Agency's reasonable accommodation process.

Generally, employees covered by this Article are expected to report to the Agency worksite at least twice in a biweekly pay period.

Portions of this Article may allow for full-time telework on a temporary basis (except in the case of telework as a reasonable accommodation when a determination is made full-time telework without time limits is appropriate under the EPA's separate reasonable accommodation process). For telework arrangements where the employee is not expected to report to the Agency worksite on a regular and recurring basis (i.e., does not meet the two times per biweekly pay period requirement nor a temporary full-time telework arrangement) please refer to the Remote Work Article herein.

When an Agency policy and this collective bargaining agreement conflict, the Collective Bargaining Agreement (CBA) shall govern unless the Parties mutually agree otherwise.

Section 3. Policy

The EPA supports the use of telework. The eligibility of employees to participate in telework is based on:

- A. the extent they have sufficient portable work to support the requested telework schedule; and
- B. the employee meeting the eligibility requirements outlined in this Article. Since telework requires collaboration between management and employees, both Parties have responsibilities in its successful implementation and operation. An employee's participation in telework is voluntary. Teleworkers will receive the same treatment and opportunities as non-teleworkers (e.g., work assignments, awards and recognition, development opportunities, promotions, etc.) and are expected to perform and accomplish all assignments and tasks associated with their position, whether in the office or on an approved telework agreement.

Section 4. Definitions

- A. Telework: An arrangement where eligible employees perform the duties and responsibilities of their position during regular, paid hours from an approved worksite other than the official worksite (e.g., home or telework center).
- B. Alternative Work Location or Alternative Worksite (AWL): The AWL is an approved work location other than the employee's official worksite. An AWL will generally be an employee's residence or other approved worksite and will generally be within the local commuting area, such as a facility established by state, local, or county government or private organization for use by teleworkers. Employee requests to work at an AWL outside of the local commuting area may be approved by the appropriate approving official as noted in Section 6.
- C. Local Commuting Area: The geographic area usually constituting one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities where people live and can reasonably be expected to travel back and forth daily to their official worksite.
- D. Portable Work: Work normally performed at the employee's official worksite but can be performed at another location with equal effectiveness with respect to quality, quantity, timeliness, customer service, and other aspects of accomplishing the EPA's mission. Such work is part of the employee's regular assignments and does not involve a significant change in duties or the way the assignments are performed without supervisory approval.
- E. Official Worksite: The official location of an employee's position of record as determined under 5 CFR 531.605. Official worksite is the "official duty station" as the term is used in Title 5, United States Code, Section 5305(i).
- F. Position of Record: An employee's official position defined by grade, occupational series, employing Agency, law enforcement officer status and any other conditions determining coverage under a pay schedule (other than official worksite), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description, excluding any position where the employee is temporarily detailed.
- G. Official Agency Worksite: The office (program, region, lab, HR Shared Service Center) where the employee reports on a regular and recurring basis, receives direction, or returns to if the supervisor recalls the employee or terminates the telework agreement.
- H. Telework-Ready Employee: Any employee who has a telework agreement currently in effect, authorizing any type of telework.

Section 5. Roles and Responsibilities

- A. EPA Telework Managing Officer (TMO): The Assistant Administrator for the Office of Mission Support (or designated representative) shall serve as the TMO. The TMO serves as the primary telework point of contact between the Agency and the Office of Personnel Management. The TMO is responsible for overall policy development and implementation of the Agency's telework

policy and programs and serves as an advisor for Agency leadership on the full range of telework issues as well as a resource for managers and employees.

- B. Agency Telework Coordinator: The Office of Human Resources in the Office of Mission Support executes the duties of the Agency telework coordinator, who is responsible for overseeing the Agency telework program, identifying issues as necessary and ensuring any necessary training is provided as required.
- C. Program/Regional Office Telework Coordinators: Are responsible for ensuring all participants are aware of their responsibilities, have taken appropriate training, and have agreements in place. Upon request, these telework coordinators are required to provide participation data including documented approvals and disapprovals to allow monitoring of the program.
- D. Assistant Administrators, the Chief Financial Officer, the Chief of Staff to the Administrator, the General Counsel, and Regional Administrators or their equivalents or designated representatives: These executives are responsible for selecting program/regional office telework coordinators and may assign and locate telework coordinator duties anywhere in their respective organizations. However, if a manager does not designate a telework program coordinator, they must ensure the telework program coordinator's responsibilities are appropriately delegated to and performed by one person who will serve as a point of contact for the Agency's telework coordinator.
- E. EPA Human Resources Shared Service Centers: HR SSCs are responsible for ensuring all position descriptions are checked for telework eligibility prior to initiating recruitment and reassignment actions and are so noted in job advertisements.
- F. Supervisors and Managers: Supervisors and managers are responsible for the overall management of teleworking within their work units, including:
 - 1. Working with their regional human resources officer, HR SSC, and program management officer to identify positions eligible for telework and ensuring such designations are identified on position descriptions and in job announcements;
 - 2. Approving or disapproving new or revised requests to telework in accordance with this Article and within a reasonable timeframe (i.e., normally within 5 work days). In cases of disapproval, providing the rationale to the employee in writing;
 - 3. Reviewing and recertifying employee telework agreements when revisions are necessary.
 - 4. Overseeing day-to-day telework operations, modifying individual telework agreements to meet mission needs, accomplish workload, or changing circumstances, and maintaining records and information necessary for evaluation of the program;
 - 5. Ensuring teleworkers agree to comply with all existing security policies and procedures, regarding IT security, personally identifiable information and confidential business information;
 - 6. Ensuring proper use of appropriate telework time reporting codes to document hours teleworked; and

7. Monitoring performance by ensuring appropriate management controls are in place before employees begin telework assignments. Teleworkers and non-teleworkers are treated identically for the purposes of monitoring and assessing job performance; however, supervisors and managers may need to utilize different mechanisms for communicating with teleworking employees.
8. Supervisors should complete the appropriate process for performance or conduct issues prior to considering revoking an employee's telework agreement in accordance with this Article.

G. Employees: Employees are responsible for the following:

1. Completing a telework agreement and waiting for approval from their supervisor prior to teleworking;
2. Performing an assessment of the AWL and answering the required questions on the Self-Certification Safety Checklist;
3. Adhering to the telework Article, procedures, terms and conditions of the approved telework agreement;
4. Complying with EPA policies for information technology security and use of government equipment/materials;
5. Notifying their supervisor if modifications are necessary or potentially necessary to their telework agreement;
6. Working with their supervisor to recertify the telework agreement when revisions are necessary.
7. Being available during scheduled work hours by telephone, email, and other applicable Agency-approved technology and communication methods (e.g., Teams, etc.) in order to communicate with their supervisor, to be accessible to co-workers and customers, and overcome problems or obstacles as they occur.
8. Complying with all existing Agency security policies and procedures, including those relating to personally identifiable information and confidential business information;
9. Being prepared to telework in the event OPM or the Agency announces changes to its operating status, including changes to dismissal and closure procedures;
10. In coordination with supervisors, planning ahead, including taking any necessary equipment (e.g., laptops) home prior to a forecasted weather event; and
11. Make reasonable efforts to arrange dependent or elder care, if dependent care or elder care would otherwise interrupt or interfere with the employee's work duties during the time the employee is working at an AWL, and/or requesting leave or work schedule adjustments for

periods when the employee is not able to work due to dependent or elder care responsibilities.

Section 6. Types of Telework

Supervisors and managers may authorize the following types of telework based on their work-related needs:

- A. Regular/Routine Telework: Under this type of telework, employees may request approval to perform their duties at an AWL on a regular and recurring basis, on predetermined days each pay period. Regular telework will typically be on the same days each pay period. However, managers may authorize adjustments when requested, as long as the schedule provides for reporting to the office at least 2 days per pay period.

As noted in Section 4, AWLs are typically located within the LCA. However, supervisors or managers can approve regular telework for employees outside the LCA if it will not hinder the employee's ability to report to the official worksite at least two (2) days per period. Supervisors and managers should use good judgment but should remember employees may be recalled to the official worksite with at least 48 hours' notice based on mission needs. There are exceptions for approving AWLs outside the LCA. Please see the section on situational telework for guidance.

- B. Situational Telework: This type of telework is limited in duration on a non-routine, occasional, emergency, or ad hoc basis, as opposed to a regular telework schedule as defined above. Situational telework cannot be used in a routine manner to extend an employee's regular telework schedule. An employee must have an approved situational telework agreement in place and notify their supervisor in advance, if feasible, each time they wish to telework. An employee maybe approved for both situational and regular telework.

Supervisors or managers may approve temporary situational telework arrangements at an AWL outside of the local commuting area even if the employee isn't able to report 2 times a pay period. This determination will be made by the supervisor on a case-by-case basis, provided the employee meets all eligibility requirements contained in this Article.

The temporary exception should generally be used in cases where: (1) the employee is expected to return to work at the official worksite in the near future; or (2), the employee is expected to continue teleworking but will be able to report to the regular worksite at least 2 times per biweekly pay period. Examples of appropriate temporary situations include:

- Recovery from an injury or medical condition.
- Emergency situations preventing the employee from regularly commuting to the official worksite, such as a severe weather emergency or a pandemic health crisis.
- An extended period of approved absence from work (e.g., paid leave).
- When the employee is in temporary duty travel status away from the official worksite.
- When an employee is temporarily detailed to work at a location other than a location covered by a telework agreement.
- As a flexibility to facilitate a work/life balance for employees.

- C. Unscheduled Telework: This type of telework is not scheduled in advance but is performed when the Agency announces changes to its operating status, including changes to dismissal and closure procedures pursuant to OPM or local management operating status announcements. Any

telework-ready employee must perform unscheduled telework to the extent possible or take appropriate leave. In unique situations such as lack of electricity, infrastructure disruptions, or connectivity issues at the AWL, the employee should contact their supervisor as soon as possible to request weather and safety leave.

- D. Medical Telework: Allows for the continued accomplishment of Agency work while an employee has a medical condition certified by an appropriate medical provider not affecting the employee's ability to perform their regular work assignment at an AWL. The initial telework arrangement is valid for up to 90 calendar days (depending on the medical documentation) and may be extended in 90-calendar day increments if the medical certification justifies such at each extension (i.e., medical documentation must be submitted every 90 calendar days if warranted). This type of telework may be the equivalent of full-time, but it is a temporary telework arrangement and medical documentation justifying the need for medical telework must be provided to the supervisor. Also, a telework agreement and a safety checklist must be submitted and approved by the supervisor prior to the arrangement.

Please note, medical telework is not the same as telework as a reasonable accommodation. Medical telework is a temporary arrangement whereas telework as a reasonable accommodation is not subject to time limits if the condition justifying the arrangement persists. Please see the section on reasonable accommodation below.

In limited circumstances for medical telework, supervisors may approve employees to work at an AWL outside the local commuting area. This determination will be made by the supervisor on a case-by-case basis, provided the employee meets all eligibility requirements contained in this Article.

- E. Official Worksite for Pay Purposes: Generally, if the employee does not physically report to the official worksite at least twice each biweekly pay period, their duty station will change to the AWL and locality pay may be impacted. (5 CFR 531.605). An exception to this requirement is not appropriate in all time-limited situations as addressed above. If a supervisor has questions about the designation of the official worksite, they should consult their local telework coordinator or the national telework coordinator in the Office of Human Resources.
- F. Dependent and Elder Care: Telework may be used as a flexibility to help employees with dependent or elder care responsibilities meet their family obligations and work responsibilities. However, it is not appropriate to use telework if the employee is unable to work due to dependent or elder care responsibilities. If dependent care or elder care would otherwise interrupt or interfere with the employee's work duties during the time the employee is working at an AWL, they must arrange for dependent or elder care. The employee must request leave or work schedule adjustments for periods when the employee is not able to work due to dependent or elder care responsibilities. If appropriate and an option, employees may also consider requesting an Alternative Work Schedule (i.e. flexible work schedule or a compressed work schedule) to provide additional assistance with meeting their biweekly work requirement. Work Schedules is addressed in a separate Article from telework, so employees should consult the Work Schedules Article (Article 11) for more information.

Example 1: An employee has children in the home on a regular or situational telework day due to a school closure. Other than general oversight and occasional brief breaks to tend to family

matters, the employee is able to complete work assignments during the daily tour of duty. Leave or work schedule adjustments aren't necessary.

Example 2: An employee has children in the home on a regular or situational telework day due to a school closure. One child needs more than minimal assistance with a school assignment during the employee's tour of duty. The employee will need to take leave or adjust their work schedule for the time they were unable to work.

Example 3: An employee requested a temporary AWL at their parent's residence so they can help their father provide assistance to their mother post-surgery. The employee may telework when not providing care for their mother and must take leave or adjust their work schedule when taking her to doctor appointments or caring for her when the father must run errands or needs a break during the employee's tour of duty.

- G. Reasonable Accommodation under the Telework Program: Telework is an available way to accommodate qualified employees with disabilities under the Agency's reasonable accommodation process. Employees seeking to telework as a reasonable accommodation should contact their immediate supervisor or the national or local reasonable accommodation coordinator. Employees teleworking as a reasonable accommodation will follow the general requirements contained in this Article to the extent such requirements are consistent with the reasonable accommodation. Employees must, at a minimum, submit a telework application, training certificate, and safety checklist.

Employees approved to telework as a reasonable accommodation are required to have a valid, signed telework agreement.

- H. EPA Continuity of Operations Plan: Telework is an important part of the Agency's COOP. It enables employees to work from AWLs during emergencies such as a natural disaster, a terrorist attack, disruption to facilities or a pandemic health crisis. It is a key tool in continuing the Agency's vital role in the federal government in the face of an emergency. In such an emergency, any employee—with or without a telework agreement—may be required to telework. (Note: during any period the EPA is operating under a COOP, the COOP shall supersede this Article.)

Section 7. Portable Work: Designating and Notifying Employees

- A. Although most positions may be suitable for telework, not all aspects of all jobs can be performed effectively at an AWL and therefore, be considered portable. Also, the portability of an employee's work can change over time due to project or mission needs. Each supervisor must identify the positions within their organization eligible for telework based on this Article and those not eligible, and notify each employee, including new employees, of their eligibility to telework based on the portability of their work. Supervisors must use the notification memorandum (Appendix E) to notify employees of their ineligibility, if applicable. No notification is required if the employee is eligible to participate in telework. Supervisors are also responsible for working with their HR SSC to identify new positions or portions of positions eligible for telework and ensuring such designations are identified on position descriptions and in job announcements.

- B. Work Suitable for Telework: Portable work performed at another location with equal effectiveness with respect to quality, quantity, timeliness, customer service, and other aspects of accomplishing the EPA's mission. Work suitable for telework depends on job content, rather than job series or title, type of appointment, or work schedule.

Employees may have some duties suitable for telework and others not suitable. For these employees, supervisors will need to determine how many days per pay period an employee is eligible to work at an AWL as part of regular telework.

- C. Duties Not Suitable for Telework: Work that isn't portable can't be performed at another location with equal effectiveness. Examples of duties not suitable to be performed away from the Agency worksite include, but are not limited to, the following:
1. Requiring frequent in-person contact with the supervisor, colleagues, clients, or the general public in order to perform their job effectively. These duties cannot otherwise be achieved by e-mail, telephone, video calls, collaboration technology, or other electronic means;
 2. Accessing classified information or a classified installation [including those materials subject to a written policy, at the government, Agency or organizational level, restricting use/access outside of a specific government installation or area within a government installation];
 3. Involving the construction, installation, maintenance, or repair of EPA facilities;
 4. Involving the physical protection of EPA facilities or employees; or
 5. Involving other physical presence/site-dependent activity (e.g., emissions testing, laboratory trials).

Section 8. Employee Eligibility Requirements

- A. Basic Eligibility Requirements: An EPA employee may be authorized to telework if:
1. The employee has sufficient portable work for the amount of telework requested;
 2. The telework arrangement does not create any impediment to the effective accomplishment of the employee's and their organization's work;
 3. The employee agrees to return to the Agency worksite on a telework day if required to do so by their supervisor with at least 48 hours notice;
 4. The employee continues to comply with the terms of their written and approved telework agreement; and
 5. Arrangements are in place for dependent/elder care, if dependent care or elder care would otherwise interrupt or interfere with the employee's work duties during the time the employee is working at an AWL.

B. Employees may not telework work if:

1. The employee has been officially disciplined (i.e. a disciplinary action that results in the placement of a document in an employee's official personnel file) for being absent without permission for more than five days in any calendar year;
2. The employee has any documented performance or conduct deficiencies related to telework within the preceding 12 months, such as letters of reprimand, or leave restrictions;
3. The employee has been officially disciplined for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties; or
4. The employee has been officially disciplined for misuse of a government computer in the preceding 12 months.

Section 9. Telework Training

Standardized training sessions for supervisors and employees will be jointly developed by the Union and management on the basics of telework to ensure a common understanding of its requirements. Participating employees must complete the Agency-approved training and obtain a certificate of training before participation. The employee's record of the required training must be attached to the telework agreement. Supervisors or managers must also complete Agency-approved telework training and obtain a certificate of training.

Section 10. Establishing the Telework Agreement

A. Regular and Situational Telework: The following actions are to be taken when establishing a regular or situational telework agreement:

1. The employee submits a completed application to their immediate supervisor;
2. The employee and supervisor discuss the proposed telework agreement and the type of work to be completed by the employee at an AWL;
3. If a suitable arrangement is reached, the employee completes the application/agreement, safety checklist and the required training. Once all requirements are completed, the telework agreement is signed and dated by the employee and supervisor;
4. A separate agreement for each telework episode is not necessary if the employee has signed an agreement to telework;
5. Employees may request more than one AWL. Employees requesting to work at an alternate work location not previously approved must submit a telework agreement and checklist for the new location to the supervisor for approval.

6. Employees are to obtain information and implement all procedures for accessing the secured operations of the Agency worksite; and
 7. If the AWL is a telework center, arrangements must be made by the employee's organization to cover costs of using the center and to reserve a workstation for the employee.
- B. Medical Telework: Medical telework may be authorized for up to 80 hours per pay period for up to 90 calendar days. After 90 calendar days, a medical telework agreement may be extended for additional 90-calendar day periods if the additional medical certification justifies such at each extension (i.e., every 90 calendar days).
1. The following actions are to be taken when establishing a medical telework agreement.
 - a. The employee must submit a written statement from a licensed physician or other licensed healthcare practitioner:
 - i. Providing a description of the medical condition necessitating the telework arrangement;
 - ii. Summarizing the prognosis, including the expected return-to-work date, and, as appropriate, discussing medical management—including how the temporary medical condition might interrupt the employee's work schedule;
 - iii. Listing restrictions necessary for work performed at the AWL, if applicable;
 - iv. Stating the employee is able to perform the duties of the position at an AWL; and
 - v. Describing the benefit to the employee's medical condition from working at an AWL, or the reduction of health risks to other employees, if any, derived from this arrangement.
 - vi. Generally, the information provided will be sufficient for the supervisor to make a decision on the request for medical telework; however, management reserves the right to seek additional information if needed per 5 CFR § 339.102–104.
 - b. Based on the employee's condition, the supervisor may grant the employee sick leave or approve a combination of sick leave and telework to cover the situation.
 - c. Medical telework is appropriate for employees with non-work-compensable injuries. Employees with work compensable injuries will be managed under applicable workers' compensation regulations.

Section 11. Telework Agreements

The telework agreement covers the terms and conditions of the telework arrangement. It also constitutes an agreement by the employee to adhere to applicable guidelines and policies. The telework agreement includes items such as the voluntary nature of the arrangement; duration of the telework agreement; hours and days of duty at each work location; leave approval and requests for overtime and compensatory time; performance requirements; and proper use and safeguards of government property and records. When any significant aspect of the work agreement changes (e.g., position, work

assignment, alternate work location, etc.), the employee and supervisor will reassess the employee's work in accordance with this Article to determine telework suitability and continued approval.

Employees may have a telework agreement that allows them to telework from an AWL part of their day and work in an official Agency worksite part of their day (split-day) as long as they comply with relevant authorities on work schedules and leave.

Employees designated for COOP purposes may be required to telework, irrespective of telework status/agreement.

The supervisor must retain a copy of the signed telework agreement and a copy must be provided to the employee. A copy of the signed telework agreement must also be provided to the appropriate telework coordinator who is responsible for maintaining telework records in the organization.

Section 12. Time, Attendance and Other Miscellaneous Issues

- A. Recording Telework Hours and Control of Time and Attendance: Proper recording, monitoring and certification of employee work time are critical to the success of the program. Employees are responsible for recording all telework time into the time and attendance system using the appropriate telework time reporting codes.
- B. Telework Time Reporting Codes: The time reporting codes all teleworking employees must use to document and certify their work hours are provided below. There are separate TRCs for regular, situational/episodic, medical and unscheduled telework as well as for overtime telework and telework as a reasonable accommodation. EPA's approved TRCs are as follows:
- **TMREG**: Telework Medical Regular;
 - **TOHRW**: Telework Overtime Hours;
 - **TWRAC**: Telework for Reasonable Accommodation;
 - **TREGW**: Telework Regular Hours;
 - **TWCTU**: Telework Comp Time Used;
 - **TWCTE**: Telework Comp Time Earned;
 - **TWEHR**: Telework Episodic Hours (for situational/episodic); and
 - **TWUSH**: Telework – Unscheduled.
- C. Hours of Duty and Work Schedules: Employees who telework will maintain a single type of schedule (e.g., compressed, flexible work schedule) whether at the Official Agency Worksite or the AWL. Unstructured arrangements where employees work at the AWL without prior supervisory approval are not permitted. Employees should refer to the Work Schedules Article (Article 11) for more information.
- D. Overtime during Telework - Eligibility Requirements: Just as at the Official Agency Worksite, overtime work conducted at an AWL must be approved in advance; overtime work not ordered and approved in advance by the supervisor, in writing, will not be compensated. Detailed information on overtime can be found in the *EPA Pay Administration Manual* (EPA Order 3155) and this CBA.
- E. Workers' Compensation: Employees who telework are covered by the Federal Tort Claims Act or the Federal Employees Compensation Act and qualify for continuation of pay for workers'

compensation for injuries sustained while performing their official duties. For this reason, it is vital a specific AWL be approved in advance and adhered to by the employee.

The supervisor's signature on the request for compensation attests only to what the supervisor can reasonably know, specifically whether the event occurred at the Agency worksite or at an AWL during official duty. Typically, supervisors or managers are not present when an employee sustains an injury. Employees, in all situations, bear responsibility for informing their immediate supervisor of an injury at the earliest time possible, seeking appropriate medical attention and filing the appropriate workers' compensation claim form.

Telework arrangements can also result in employees who are currently receiving continuation of pay or worker's compensation returning to work, thus taking them off the workers' compensation rolls. Supervisors may be able to find work such employees are able to perform at home or restructure existing work so some of it may be completed at home.

- F. Requirement to Return to the Agency Worksite on a Scheduled Telework Day: Teleworking employees working at an AWL may be recalled to the Official Agency Worksite as a last resort to meet time-critical mission, staffing, and workload requirements that cannot be performed at the AWL and cannot be re-scheduled.

Under these rare circumstances, the supervisor shall notify the employee as early as possible, but not less than 48 hours in advance, if they are subject to a recall to the Official Agency Worksite in an effort to provide the employee sufficient time to make necessary arrangements.

A supervisor may, on rare occasions, recall an employee to their Official Agency Worksite with fewer than 48-hours notice when the purpose of the recall is unforeseeable and essential for the Agency to meet its mission.

If an employee is required to be at the Official Agency Worksite on a regularly scheduled telework day, the employee may request, and the supervisor may approve, a situational telework day in the pay period.

- G. Monitoring Performance: GAO guidelines require agencies to establish a method providing the supervisor with reasonable assurance employees are working when scheduled. Appropriate management controls and reporting procedures must be in place before employees begin teleworking. Teleworkers and non-teleworkers shall be treated identically for the purposes of monitoring and assessing job performance by the following methods:
1. Supervisory telephone calls, video calls, or e-mail messages to an employee during times the employee is scheduled to be on duty; and
 2. Use of performance management systems, including regular workload/accomplishments reports for teleworking and non-teleworking employees, to determine reasonableness of work output for time spent, project schedules, key milestones, quality of the work performed, and team reviews.

Routine performance monitoring will not include use of video or audio recording of employee activities at their workstations, keystroke counting, or monitoring of “availability” status on Teams.

Section 13. Emergencies: Unscheduled Telework/Dismissals/Closures

- A. Unscheduled Telework/Closures: In the event of an unexpected office closure, telework-ready employees already scheduled to telework on the closure day are required to do so. Telework-ready employees not scheduled to telework on the closure day but scheduled to work at the official duty location are required, in coordination with their supervisor, to utilize unscheduled telework to the maximum extent possible. If necessary, (e.g., there is insufficient portable work) the employee’s supervisor may grant an appropriate category of administrative leave (e.g., weather and safety) to cover all or a portion of the scheduled workday.

Employees who are required to work during their regular tour of duty on a day when federal offices are closed to the public (or during delayed arrivals or early dismissals) are not entitled to overtime pay, credit hours, or compensatory time off for performing work during their regularly scheduled hours. Employees reporting to an AWL other than the employee’s primary residence during the workweek will follow the closure or dismissal procedures of the AWL.

- B. Late Arrivals/Early Dismissals at the Agency Worksite: When the Agency announces early closure of or late arrival to the Agency worksite, telework-ready employees already scheduled to telework on the early closure or late arrival day are required to telework their regularly scheduled non-overtime hours to the maximum extent possible. Telework-ready employees not scheduled to telework on the early closure or late arrival day will be required to utilize unscheduled telework to the maximum extent possible. If necessary (e.g., there is insufficient portable work), the employee’s supervisor may grant an appropriate category of administrative leave (e.g., weather and safety), for their regularly scheduled non-overtime hours when the Agency worksite is closed. Early release for the holidays must be granted to those on telework to the same extent as granted to those employees working at the Agency worksite.
- C. Unscheduled Telework Announced: In the event the regular office/worksite is open, but there is an announcement of the option for unscheduled telework, telework-ready employees not otherwise scheduled to telework may telework, come into the regular office/worksite or use annual leave, credit hours, or other appropriate leave.
- D. Other Emergencies or Disruptions to the Agency Worksite: In the event of a disruption to normal office operations (e.g., national or local emergency, emergency event involving inclement weather, or any situation with the potential to disrupt normal office operations), employees approved for regular and situational telework are expected to telework to the extent possible if instructed by the supervisor to do so. In COOP situations, telework may be required.
- E. General Provisions: It is recommended supervisors and employees coordinate in advance if there is an anticipated event with the potential to disrupt normal office operations to ensure employees have portable work and the necessary equipment to telework during an Agency worksite closure to the extent possible.

As with scheduled telework, an employee performing unscheduled telework must have portable

work to perform throughout the workday when teleworking. An employee who does not have enough portable work may report to the Agency worksite if it is open; may contact their supervisor for additional work; may request annual leave, credit hours, or other appropriate leave; or may adjust their work schedule (if applicable).

When severe weather or other circumstances prevent work at the AWL (e.g., loss of electricity, employee must evacuate, infrastructure/connectivity and child/elder care issues) or there is a lack of portable work as determined by the supervisor, and the Agency worksite is closed to employees, a telework-ready employee may be granted an appropriate category of administrative leave (e.g., weather and safety) by their supervisor.

Section 14. Modification and Termination of the Telework Agreement

Telework is a voluntary program and not an employee entitlement. Employees who telework do not have an automatic right to continue teleworking. Telework agreements may be modified, adjusted or terminated at any time by management based upon an employee's failure to adhere to telework requirements or based upon any other consideration affecting employee eligibility under this Article. Telework agreements may also be modified, adjusted or terminated at any time when requested by the employee. Participation in telework will be terminated if the employee no longer meets the eligibility criteria. Before removing an employee from telework for performance or conduct issues, supervisors will complete the necessary processes to address the issues and consult their servicing labor and employee relations office for guidance.

Management shall provide sufficient notice (typically at least one full pay period when feasible) before terminating a telework agreement to allow the affected employee to make necessary arrangements. The reason for termination will be documented, signed by the supervisor, manager and/or approving official, and furnished to the affected employee and the servicing labor and employee relations office. The servicing labor and employee relations office will notify the ESC Unit President of the name of the employee and the reason(s) for the termination. Consent or acknowledgement via signature by the affected employee is not required for the termination of telework to take effect. An employee whose telework agreement was terminated may re-apply for telework.

When any significant aspect of an employee's work changes (e.g., position, work assigned, AWL), the supervisor will reassess the portability and suitability of employee's work for continued telework approval.

An employee may withdraw an application for telework, or terminate an approved telework agreement, at any time without prejudice, and return to the Agency worksite. The employee must notify the supervisor in writing, and the supervisor should in turn acknowledge the employee's notice in writing, to prevent misunderstandings about work location.

Section 15. Reporting

As OPM and other federal organizations seek telework reports, the Agency's TMO and Agency telework coordinator will serve as the primary liaisons between EPA, OPM and other federal organizations. EPA's telework coordinator will serve as the Agency's central coordinating point and will work with telework coordinators across the Agency to prepare comprehensive telework information.

Section 16. Facilities and Equipment

- A. Alternative Work Location Office Space: Requirements will vary depending on the nature of the work and the equipment needed to perform the work. At a minimum, employees should have adequate internet speed and be able to easily access the intranet, Agency systems, communicate by telephone, email and established collaboration tools (currently Microsoft O365 suite) with the supervisor, coworkers and serviced clients when working from their AWL. In addition, employees are responsible for verifying and ensuring their work areas comply with health and safety requirements (see the "*Employee Self-Certification Safety Checklist*"). Home work areas must be clean and free of obstructions, and free of hazardous materials. An employee's request to telework may be disapproved or rescinded based on documented safety problems or the presence of hazardous materials.

A supervisor or designated safety official may inspect the AWL for compliance with health and safety requirements in the very rare circumstance that this may be deemed appropriate. The need for a scheduled site visit by the supervisor or designated safety official to the employee's AWL during work hours may occur only in very rare circumstances where an employee's compliance with health and safety requirements raises reasonable concerns substantiating the need, and only after the supervisor receives concurrence from the servicing LER specialist or other human resources official and provides notice to the employee's Union representative, if applicable.

- B. Agency Worksite Space Sharing: If management seeks to implement any space-saving initiatives, they will notify the Union and bargain to the extent required by CBA, local agreements, applicable law, rule and regulation. Such space-saving options will be based on space availability and may include shared workstations, smaller workstations, or unassigned touchdown/hoteling situations.

If an employee ceases to telework, the employee will be assigned to an office space similar or equivalent to the office they had before any space-saving initiatives were implemented.

- C. Government-Furnished Equipment: The Agency is under no obligation to provide GFE to its employees solely for the purpose of teleworking, but most employees will receive a government-issued laptop at a minimum. Supervisors may authorize the purchase and distribution of additional equipment or supplies (e.g. printers, printer cartridges, monitor, etc.) for the individual teleworker where legally permissible, as necessary, and if budget permits.

Employees who have an Agency-issued laptop or mobile phone assigned to them may use such equipment while teleworking and shall take reasonable safeguards against theft and damage when they do so.

All Agency-issued equipment and supplies remain the property of the Agency and the EPA remains responsible for service and maintenance of the equipment. The EPA is also under no obligation to service or maintain equipment belonging to the employee, even if the employee uses it for Agency work. If an employee furnishes their own equipment/workstation at the AWL, the government will not reimburse the employee for the purchasing costs of the equipment/workstation. In addition, the employee is responsible for the maintenance, repair and replacement of privately-owned equipment. The Agency will not reimburse the employee for such costs, including broadband.

The EPA may not reimburse employees for the utility costs (e.g., heating, air conditioning, lighting and the operation of government-furnished computers) for AWLs. Utility costs include the monthly service charges for telephone or specific telephone charges. Teleworking employees should use Agency meeting and conferencing tools, communication options like EC-500, or government-issued mobile phones to conduct official government business with customers and contacts in other locations. The Agency will also not reimburse employees for miscellaneous office supplies. Employees requiring pens, paper, paper clips, notebooks, printer cartridges, etc., may use the supplies provided by the Agency; however, there should be no expectation of reimbursement for items purchased or for the Agency to ship goods to an employee's AWL.

For employees working at an AWL outside of the LCA, the Agency is responsible for service and maintenance of GFE. In cases where GFE needs repair and upgrade, the Agency will make all reasonable efforts to initiate repairs and upgrades remotely. However, should on-site assistance be required, employees must either return to their Agency worksite or make other arrangements with their supervisor to ensure repairs and upgrades can be made expeditiously. In consultation with the employee, supervisors or managers will make determinations over questions such as the employee's duty status, appropriate work assignments and potential temporary equipment during the interim period between when repairs and upgrades are required and when they are completed.

Note: Consistent with the Agency's Records Management policy, official Agency business should first and foremost be done on official EPA information systems. The Federal Records Act prohibits the creation or sending of a federal record using a non-EPA electronic messaging account unless the individual creating or sending the record either: (1) copies their EPA email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to their EPA email account within 20 days of the original creation or transmission of the record.

Section 17. Information Security

The EPA CIO issues and maintains information security directives for protecting EPA information and information systems to include when users are teleworking and accessing systems remotely. These directives outline the responsibilities of each program office, region or other organization, and users in protecting EPA systems and information. Other pertinent supporting information security directives may be issued by users' program offices, regions or other organizations.

Users agree their responsibilities, described in the Agency's information security directives, apply while on telework status. Teleworkers must minimize security risks to all Agency information and systems.

The AWL workplace and workstation and other devices used with Agency information must be configured to ensure all Agency information in any form or format is properly protected at all times and in accordance with all Agency directives.

Section 18. Records Management

When working at an AWL, Agency employees must continue to comply with the Agency's records management policy and any other applicable policies related to using, creating, maintaining and disposing of records. Employees shall also comply with the Federal Records Act, Freedom of Information

Act, the terms of any litigation hold, discovery in litigation and any requests for records by the Office of the Inspector General. Any record removed from the Agency worksite for telework assignments remains the property of the Agency and any information generated from telework assignments is the property of the Agency. Employees are responsible for maintaining the integrity of their records and for producing records on demand.

Disposal of Telework Program Records: EPA Records Schedule 0039, Alternate Worksite Records, authorizes the disposal of records related to requests or applications to participate in an alternate worksite program (i.e., telework). This includes agreements between the Agency and an employee, records relating to the safety of the worksite, the installation and use of equipment, hardware and software, and the use of secure, classified information or data subject to the Privacy Act.

Section 19. Policy Updating Provision

In accordance with the Telework Enhancement Act of 2010, this provision authorizes the assistant administrator of OMS, who has been re-delegated management authority for the Agency's directives system, the ability to independently update the Agency telework policy as required by other relevant federal organizations, including, but not limited to, the Office of Management and Budget, OPM, the Federal Emergency Management Agency, the National Archives and Records Administration, and the GSA. The AA for OMS may also re-delegate the authority to update the Article to the director of the Office of Human Resources. This authority also may be re-delegated further as appropriate.

Section 20. Waiver

Any request to waive the requirements of this Article must be submitted in writing by the AA/RA (or designee) and approved by the OMS AA (or designee).

Section 21. Materials Superseded

- A. EPA Order 3110.32, *Telework Policy* (July 28, 2020)

Section 22. References

- A. The Telework Enhancement Act of 2010
- B. Public Law 106-346, § 359: Requires all Executive agencies to establish telework policies
- C. Public Law 105-277, Omnibus Appropriation Act, Title IV, § 630: Requires funds be set aside for Executive agency employees to use telework centers
- D. 5 USC 65: Telework
- E. 5 CFR 351.203: Definitions
- F. 5 CFR Part 530: Pay Rates and Systems (General)
- G. 5 CFR Part 531: Pay Under the General Schedule

- H. 5 CFR Part 550: Pay Administration
- I. 5 USC Section 5305(i): Special Pay Authority-New Official Duty Station
- J. 5 USC 5702: Per diem; employees traveling on official business
- K. EPA Delegation 1-17 A (September 13, 2011) *Domestic Travel*.
- L. EPA HR Bulletin number 08-006B (September 30, 2008) *Time Reporting Codes (TRCs)for Certifying Time and Attendance for Employees in EPA’s Flexiplace (Telework) Program*
- M. *Guide to Telework in the Federal Government* (April 2011), OPM
- N. *Governmentwide Dismissal and Closure Procedures* (November 2018), OPM
- O. *Additional Guidance on Post-Reentry Personnel Policies and Work Environment* (July 23,2021), OPM
- P. *2021 Guide to Telework and Remote Work in the Federal Government* (November 2021), OPM

Section 23. Appendices

The following appendices will be placed on the EPA intranet site for the ESC CBA:

- Appendix A: Telework Agreement
- Appendix B: Safety Checklist
- Appendix C: Annual Recertification
- Appendix D: Telework Discontinuation
- Appendix E: Notification of Ineligibility

ARTICLE 43

Remote Work

Section 1. Purpose

The Telework Enhancement Act of 2010 requires the head of each executive Agency to establish a telework policy for eligible employees. A successful telework program can yield many benefits, including cost savings, increased productivity and performance, enhanced recruitment and retention, heightened employee morale, improved emergency preparedness and reduced energy use.

Section 2. Scope

This Article addresses remote work (i.e., full-time telework). Remote work is a non-temporary arrangement where an employee is not expected to report to the Agency worksite on a regular and recurring basis.

Please refer to the Telework Article for guidance on regular, situational, medical telework and telework when used to accommodate employees with disabilities under the Agency's reasonable accommodation process.

When the Agency's policy and the collective bargaining agreement conflict, the CBA shall govern unless the Parties mutually agree otherwise.

Section 3. Policy

The EPA supports the use of telework, including remote work. The eligibility of employees to participate in remote work is based on:

- A. the work of their position being fully portable; and
- B. the employee eligibility requirements outlined in this Article. Because remote work requires collaboration between management and employees, both Parties have responsibilities in its successful implementation and operation. An employee's participation in any form of telework is voluntary.

Remote workers will receive the same treatment and opportunities as non-teleworkers and teleworkers in similar positions (e.g., work assignments, awards and recognition, development opportunities, promotions, etc.).

Section 4. Definitions

- A. Telework: An arrangement where eligible employees perform the duties and responsibilities of their position during regular, paid hours from an approved worksite other than the official

worksite.

- B. Remote Work: Is a type of telework when an employee is scheduled to work within or outside the local commuting area of an Agency worksite and is not expected to report to the Agency worksite on a regular and recurring basis (also known as full-time telework).
- C. Remote Work Location (RWL): The RWL is an approved work location other than the employee's Agency worksite. A RWL will generally be an employee's residence, a telecenter or other approved worksite. A RWL may be within or outside of the local commuting area of the Agency worksite. An employee may have more than one approved RWL at a time.
- D. Local Commuting Area: The geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their official worksite.
- E. Portable Work: Work that is normally performed at the employee's official worksite, which can be performed at another location with equal effectiveness with respect to quality, quantity, timeliness, customer service, and other aspects of accomplishing the EPA's mission. Such work is part of the employee's regular assignments and does not involve a significant change in duties or the way in which assignments are performed, without supervisory approval.
- F. Official Worksite: The official location of an employee's position of record as determined under 5 CFR 531.605. Official worksite is the "official duty station" as that term is used in 5 United States Code, Section 5305(i). The official worksite for remote workers is the RWL.
- G. Position of Record: An employee's official position defined by grade, occupational series, employing Agency, law enforcement officer status and any other condition that determines coverage under a pay schedule (other than official worksite), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description, excluding any position to which the employee is temporarily detailed.
- H. Agency Worksite: For remote workers, the office (program, region, lab) from which the employee receives direction or reports to if the supervisor or manager recalls the employee or terminates the remote work agreement.
- I. Domestic Employee Teleworking Overseas (DETO): Is an overseas remote work arrangement wherein an EPA employee temporarily performs the work requirements and duties their domestic position from an approved overseas location via a DETO Agreement.

Section 5. Roles and Responsibilities

- A. EPA Telework Managing Officer: The Assistant Administrator for the Office of Mission Support

(or designated representative) shall serve as the TMO. The TMO serves as the primary telework point of contact between the Agency and the Office of Personnel Management. The TMO is responsible for overall policy development and implementation of the Agency's remote work policy and programs and serves as an advisor for Agency leadership on the full range of telework issues as well as a resource for managers and employees. The AA of OMS also provides review and concurrence on DETO requests.

- B. Agency Telework Coordinator: The Office of Human Resources in the Office of Mission Support executes the duties of the Agency telework coordinator, who is responsible for overseeing the Agency telework program. The coordinator may periodically review telework approvals and disapprovals to ensure consistency of application, direct changes as necessary, and ensure any necessary training is provided as required.
- C. Program/Regional Office Telework Coordinators: Are responsible for ensuring all participants are aware of their responsibilities, have taken appropriate training, and have agreements in place.

Upon request, these telework coordinators are required to provide participation data including documented approvals and disapprovals to allow monitoring of the program.

- D. Assistant Administrators, the Chief Financial Officer, the Inspector General, the Chief of Staff to the Administrator, the General Counsel, and Regional Administrators or their equivalents or designated representatives: These executives are responsible for selecting program/regional office telework coordinators (or other designated point of contact) and may assign and locate telework coordinator duties anywhere in their respective organizations. The AA/RA (or designated representative) is responsible for approving DETO agreements.
- E. Human Resources Shared Service Centers: HR SSCs are responsible for ensuring all position descriptions are checked for telework eligibility prior to initiating recruitment and reassignment actions and are so noted in job advertisements.
- F. Supervisors and Managers: Supervisors and managers are responsible for the overall management of teleworking and remote work within their work units, including:
 - 1. Working with their regional human resources officer, HR SSC, and program management officer to identify positions eligible for telework and ensuring such designations are identified on position descriptions and in job announcements;
 - 2. Taking into account work-related needs, recommending approval or disapproval of new or revised remote work requests and forwarding for senior management approval, and in cases of disapproval, providing the rationale to the employee, if requested;
 - 3. Reviewing and recertifying employee telework agreements when revisions are necessary;

4. Overseeing day-to-day telework operations, modifying individual telework agreements to meet mission needs, accomplish workload, or changing circumstances, and maintaining records and information necessary for evaluation of the program;
5. Ensuring remote workers agree to comply with all existing security policies and procedures, including IT security, personally identifiable information, and confidential business information;
6. Ensuring proper use of appropriate time reporting codes to document hours worked; and
7. Monitoring performance by ensuring appropriate management controls are in place before employees begin remote work. Remote teleworkers and non-teleworkers are treated identically for the purposes of monitoring and assessing job performance; however, supervisors and managers may need to utilize different mechanisms for communicating with teleworking employees;
8. Being available during scheduled work hours by telephone, email, and other applicable Agency-approved technology and communication methods (e.g. Teams, etc.) in order to communicate with the employee

G. Employees: Employees are responsible for the following:

1. Completing a remote work agreement and waiting for concurrence from their supervisor and approval from the DRA (or designee) prior to assuming a remote work schedule;
2. Performing an assessment of the RWL and answering the required questions on the Self-Certification Safety Checklist;
3. Adhering to this remote work Article, procedures, terms and conditions of the approved remote work agreement;
4. Complying with EPA policies for information technology security and use of government equipment/materials;
5. Notifying their supervisor if modifications are necessary or potentially necessary to their remote work agreement;
6. Being available during scheduled work hours by telephone, email, and other applicable Agency-approved technology and communication methods (e.g. Teams, etc.) in order to communicate with their supervisor and to be accessible to co-workers and customers;
7. Maintaining communication with the supervisor while teleworking and working with the supervisor to overcome problems or obstacles as they occur;

8. Complying with all existing Agency security policies and procedures, including those relating to personally identifiable information and confidential business information;
9. Arranging for dependent or elder care, if dependent care or elder care would otherwise interrupt or interfere with the employee's work duties during the tour of duty. Requesting leave or work schedule adjustments for periods when the employee is not able to work due to dependent or elder care responsibilities.

Section 6. Types of Remote Work

The following types of remote work may be authorized based on organizational or employee needs:

- A. Remote Work: The employee teleworks full-time and is not expected to report to the Agency worksite on a regular and recurring basis. An RWL may be approved for within or outside the local commuting area, but is limited to the States, commonwealths, territories, and possessions of the United States (see 5 CFR 591.205 for a list of non-foreign areas).
- B. Domestic Employee Teleworking Overseas (DETO): This is a rare type of telework arrangement where an employee is allowed to perform their domestic duties from an RWL overseas. These arrangements require senior management and State Department approval.
- C. EPA Continuity of Operations Plan: Enables employees to work from RWLs during emergencies such as a natural disaster, a terrorist attack, disruption to facilities or a pandemic health crisis. If COOP is activated, any employee—with or without a telework agreement—may be required to telework. During any period the EPA is operating under a COOP, the COOP shall supersede this Article.

Section 7. Portable Work

- A. Work Suitable for Telework: Portable work that can be performed at another location with equal effectiveness with respect to quality, quantity, timeliness, customer service, and other aspects of accomplishing the EPA's mission. Work suitable for telework depends on job content, rather than job series or title, type of appointment, or work schedule. It is possible within identical or related occupational series, one position or portion thereof may be determined to be eligible for remote work, and another may not, depending on individual job requirements.
- B. Duties Not Suitable for Telework: Includes functions and tasks not suitable to be performed away from the Agency worksite. Examples include, but are not limited to duties:
 1. Requiring in-person contact with the supervisor, colleagues, clients or the general public in order to perform the job effectively, and which cannot otherwise be achieved by e- mail, telephone, video calls, collaboration technology, or other electronic means;

2. Accessing classified information or a classified installation [including those materials subject to a written policy, at the government, Agency or organizational level, restricting use/access outside of a specific government installation or area within a government installation];
3. Involving the construction, installation, maintenance or repair of EPA facilities;
4. Involving the physical protection of EPA facilities or employees; or
5. Involving other physical presence/site-dependent activity (e.g., emissions testing, laboratory trials).

Section 8. Employee Eligibility Requirements

- A. Basic Eligibility Requirements: An EPA employee may be authorized to telework if:
1. The employee has sufficient portable work for the amount of telework requested;
 2. The telework arrangement does not create any impediment to the effective accomplishment of the employee's and their organization's work;
 3. The employee agrees to report to the Agency worksite if required to do so by their supervisor in accordance with this Article;
 4. The employee continues to comply with the terms of their written and approved telework agreement; and
 5. Arrangements are in place for dependent/elder care, if dependent care or elder care would otherwise interrupt or interfere with the employee's work duties during the time the employee is working at an RWL.
- B. Eligibility for Remote Work: In addition to meeting the basic eligibility requirements, employees seeking approval for remote work must meet additional criteria. As with all telework, management will determine if authorizing an employee to perform remote work is appropriate in accordance with this Article and based on equitable function-based criteria, including job functions and not managerial preference.

Approval for remote work should only be authorized when all of the following criteria are met:

1. All of the employee's work is portable;
2. Tasks or work assignments can be performed at least equally effectively at the RWL;
3. There will be no foreseen disruption to customer service with any Agency customers or stakeholders (e.g., public, states, industry);

4. The employee does not have duties or work assignments requiring regular in-person face-to-face customer service or coworker interface except in potentially rare situations; and
5. The employee has the ability to meet performance plan objectives working remotely.

C. Employees may not remote work if:

1. The employee has been officially disciplined (i.e. a disciplinary action that results in the placement of a document in an employee's official personnel file) for being absent without permission for more than five days in any calendar year;
2. The employee has any documented performance or conduct deficiencies related to telework within the preceding 12 months, such as letters of reprimand, or leave restrictions;
3. The employee has been officially disciplined for viewing, downloading, or exchanging pornography, including child pornography, on a federal government computer or while performing official federal government duties; or
4. The employee has been officially disciplined for misuse of a government computer in the preceding 12 months.

D. Remote Work for New Employees: The approval of remote work for new employees is at management's discretion. The basic telework and remote work eligibility criteria must be met, required training and forms completed and appropriate senior management approvals obtained prior to the commencement of remote work. At a minimum, management should consider the employee's:

1. Previous federal service, if any;
2. Length and nature of previous work experience; and
3. Any previous experience teleworking.

Section 9. Authorizing Remote Work

- A. The immediate supervisor must initiate, and the employee's DRA (or their designee) must approve the remote work request based on a determination the employee meets all required criteria of this Article. If the request is not approved, the DRA (or their designee) will respond in writing specifically identifying the reason the request was denied. Such decision will be subject to existing Agency or negotiated grievance procedures.
- B. For all remote work, the official worksite is the RWL. Supervisors or managers must prepare and submit to the appropriate servicing HR SSC at least 30 calendar days prior to the effective date,

the required personnel documentation (i.e., Request for Personnel Action, Standard Form 52) to change an employee's official worksite to their RWL. The SF-52 must include a copy of the employee's approved remote telework agreement and the following information:

1. Employee Information

- a. The full name, series, grade and title of the employee.
- b. A copy of the employee's current position description.

2. Position Information

- a. The position's current official duty station.
- b. The position's proposed official duty station.

C. Remote Work Outside the Local Commuting Area: Any request by an employee for remote work outside the LCA is voluntary on the part of the employee. If approved, the relocation is for the convenience and benefit of the employee and the Agency will neither pay for nor reimburse any relocation costs incurred by the employee. However, if the supervisor or manager recalls an employee on approved remote work to the office, then the employee is entitled to reimbursement of travel related expenses according to travel policy.

1. If an employee wants to perform remote work outside of the LCA the employee must meet all requirements for remote work and must receive a written recommendation for doing so, in advance, from their supervisor or manager. The written recommendation must clearly explain how the employee is fully able to perform all of their duties effectively from the remote location, so approval of the request will not, under any circumstances, diminish the Agency's ability to accomplish its mission and meet its operational goals.
2. When assessing relocation requests the supervisor or manager must document and consider the following:
 - a. Evaluating relocation costs by working with the Federal Employee Relocation Center Office of the Chief Financial Officer, if applicable; and
 - b. Whether or not the employee's work is tied to a specific geographic location or the proposed RWL will better serve the employee's work assignments (e.g., an On Scene Coordinator with an RWL in a specific location which would decrease response times to a location with documented high emergency response needs);

D. Directed Remote Work: A program or the region may have a mission need for a position or employee to remote work from a specific location (e.g., to be closer to inspection sites). Thus, such arrangements aren't solely for the convenience or at the request of the employee. Generally, directed remote work arrangements are allowed provided eligibility, approval and other documentation requirements are met. Please note, telework is voluntary except in the case of COOP or evacuation (5 CFR 550 Subpart D). Management needs to consider the voluntary nature of telework before implementing a directed telework arrangement with an already encumbered position. Remember, remote workers aren't expected to report to the

Agency worksite on a regular or recurring basis and the RWL will usually be the employee's residence or a tele-center. If the program or the region wants to establish a worksite at another EPA location or federal, state, local or Tribal government office, and the employee will report to the other location on a regular and recurring basis, please refer to HR Bulletin 20-003B, *Worksites Away from the Position of Record*.

- E. Designating Positions for Remote Work: For recruitment and retention purposes, program or regional management may designate certain positions as a remote position or remote work eligible in vacancy announcements if eligibility criteria are met and senior management approval is obtained prior to posting. The program or region should carefully analyze and document in writing the need, costs, consequences and benefit to the Agency's mission or goals for allowing remote work. The written documentation justifying the designation will be kept in the case file for the action. As noted previously, telework is voluntary. However, if the Agency advertises the position as a "remote position" as a condition of accepting the position the employee will need to complete the telework agreement to work remotely. Or the Agency may advertise the position as "remote work eligible" so whoever is selected may choose to work remotely or at the Agency worksite. Required telework forms and trainings must be completed prior to the commencement of remote work.

Section 10. Telework/Remote Work Training

Standardized training sessions for supervisors and employees will be jointly developed by the Union and management on the basics of telework and remote work to ensure a common understanding of the requirements. Participating employees must complete the Agency-approved training and obtain a certificate of training before participation. The employee's record of the required training must be attached to the remote work agreement. Supervisors or managers must also complete Agency-approved telework and remote work training and obtain a certificate of training.

Section 11. Remote Work Agreements

The remote work agreement covers the terms and conditions of the remote work arrangement. It also constitutes an agreement by the employee to adhere to applicable guidelines and policies. The agreement includes items such as the voluntary nature of the arrangement; hours and days of duty at the RWL; responsibilities for timekeeping, leave approval and requests for overtime and compensatory time; performance requirements; and proper use and safeguards of government property and records. When any aspect of the employee's position related to remote work eligibility changes, the employee and supervisor or manager will review the employee's remote work agreement to determine continued approval.

The supervisor or manager must retain a copy of the signed remote work agreement and a copy must be provided to the employee. A copy of the signed remote work agreement must also be provided to the program or regional office telework coordinator who is responsible for maintaining telework records in the organization.

The following actions are to be taken when establishing a remote work agreement:

- The employee submits a completed application to their immediate supervisor.
- The employee and supervisor discuss the proposed telework agreement and the type of work the employee performs, which will be completed by the employee at an RWL.
- The employee and supervisor complete the application and agreement, safety checklist, and the required training.
- The employee and the supervisor will discuss any necessary procedures for accessing the secured operations of the Agency worksite (i.e. a Secure Access Facility or a Sensitive Compartmented Information Facility).

Section 12. Time, Attendance, and Other Miscellaneous Issues

- A. Recording Telework Hours and Control of Time and Attendance: Proper recording, monitoring and certification of employee work time are critical to the success of the program. Employees are responsible for recording all telework time into the time and attendance system using the appropriate telework time reporting codes.
- B. Telework Time Reporting Codes: The time reporting codes all remote work employees must use to document and certify their work hours are as follows:
- **TOHRW**: Telework Overtime Hours;
 - **TWRAC**: Telework for Reasonable Accommodation;
 - **TWFUL**: Telework – Full-time (i.e., Remote Work);
 - **RWHME**: Remote Work from approved duty station
 - **RWSIT**: Remote work temporarily from an alternative work location other than regular remote work location
- C. Work Schedules: Employees who remote work will have the same schedule options as those who work at the Agency worksite, including compressed or flexible schedules. Circumstances may warrant work schedules to be changed with the supervisor’s approval and in accordance with established procedures. Employees should refer to the Work Schedule Article for more information.
- D. Overtime during Remote Work - Eligibility Requirements: Approval in advance of overtime work is required; overtime work not ordered and approved in advance by the supervisor, in writing, will not be compensated. Detailed information on overtime can be found in the *EPA Pay Administration Manual* (EPA Order 3155) and this CBA.
- E. Leave: Procedures for requesting leave are the same for remote work employees and employees working at the Agency worksite. Employees are responsible for reporting leave usage appropriately on their timecards. Remote workers may utilize leave for a portion of the workday and work from the RWL for the remainder of the workday.

- F. Workers' Compensation: Employees who remote work are covered by the Federal Tort Claims Act and the Federal Employees Compensation Act, and qualify for continuation of pay for workers' compensation for injuries sustained while performing their official duties.

The supervisor's signature on the request for compensation attests only to what the supervisor can reasonably know, specifically whether the event occurred at the Agency worksite or at an AWL during official duty. Typically, supervisors are not present when an employee sustains an injury. Employees, in all situations, bear responsibility for informing their immediate supervisor of an injury at the earliest time possible, seeking appropriate medical attention and filing the appropriate workers' compensation claim form.

Remote work arrangements can result in employees who are currently receiving continuation of pay or worker's compensation returning to work, taking them off the workers' compensation rolls. Supervisors may be able to find work such employees are able to perform at home or restructure existing work so some of it may be completed at home.

- G. Requirement to Report to the Agency Worksite or a Location other than the RWL: Employees participating in remote work may be directed to report to their Agency worksite or a location other than the RWL for limited reasons such as, but not limited to: special assignments, training, travel, emergencies or other situations deemed necessary by the supervisor or manager to meet mission requirements. Under these rare circumstances, the supervisor shall notify the employee as early as possible, but not less than 48 hours in advance, in an effort to provide the employee sufficient time to make necessary arrangements.
- H. Relocation: When employee requested remote work is approved, the Agency will not pay relocation costs for the employee to move to the RWL. If the remote work agreement is terminated, the employee is responsible for all costs associated with returning to the Agency worksite. If the remote work is directed, the region or program may have to pay relocation costs to move the employee to the RWL or return to the Agency worksite if the remote work is terminated.
- I. Travel: The travel provisions applying to employees working at the official worksite also apply to employees who remote work. In addition, when remote work employees are directed to report to the Agency worksite, they are entitled to travel expenses.
- J. Dependent and Elder Care: Remote work may be used as a flexibility to help employees with dependent or elder care responsibilities meet their family obligations and work responsibilities. However, it is not appropriate to use remote work if the employee is unable to work due to dependent or elder care responsibilities. If dependent care or elder care would otherwise interrupt or interfere with the employee's work duties during the time the employee is working at an RWL, they must arrange for dependent or elder care. The employee must request leave or work schedule adjustments, as appropriate, for periods when the employee is not able to work due to dependent or elder care responsibilities.

Example 1: An employee has children in the home due to a school closure. Other than general oversight and occasional brief breaks to tend to family matters, the employee is able to complete work assignments during the daily tour of duty. Leave or work schedule adjustments aren't necessary.

Example 2: An employee has children in the home due to a school closure. One child needs more than minimal assistance with a school assignment during the employee's tour of duty. The employee will need to request leave or adjust their work schedule for the time they were unable to work.

K. Monitoring Performance: Appropriate management controls and reporting procedures must be in place before employees begin remote work assignments. Teleworkers and non-teleworkers should be treated identically for the purposes of monitoring and assessing job performance by the following methods:

1. Supervisory telephone calls, video calls, or e-mail messages to an employee during times the employee is scheduled to be on duty; and
2. Use of performance management systems, including regular workload/accomplishments reports for teleworking and non-teleworking employees, to determine reasonableness of work output for time spent, project schedules, key milestones, and quality of the work performed.

Routine performance monitoring will not include use of video or audio recording of employee activities at their workstations, keystroke counting, or monitoring of "availability" status on Teams.

Section 13. Emergencies: Dismissals/Closures

- A. Closures: In the event of an Agency worksite closure, remote workers are required to telework if able to do so. Employees required to work during their regular tour of duty on a day when federal offices are closed to the public (or during delayed arrivals or early dismissals) are not entitled to overtime pay, credit hours, or compensatory time off for performing work during their regularly scheduled hours.
- B. Late Arrivals/Early Dismissals at the Agency Worksite: When the Agency announces early closure or late arrival of the Agency worksite, remote workers are required to telework their regularly scheduled non-overtime hours. Early release for the holidays has to be granted to remote workers to the same extent as granted to employees working at the Agency worksite.
- C. Other Emergencies or Disruptions to the Agency Worksite: In the event of a disruption to normal office operations (e.g., national or local emergency, emergency event involving inclement weather, or any situation that may result in a disruption to normal office operations), remote workers will continue to work their normal hours unless directed

otherwise by the supervisor or management, or the employees are unable to do so due to the emergency (e.g., a hurricane knocks out electricity at the remote workers RWL). Remote workers prevented from working due to an emergency may be granted safety and weather leave or administrative leave based on the circumstances of the emergency (e.g., loss of electricity, employee must evacuate, infrastructure or connectivity and child or elder care issues).

Section 14. Modification and Termination of the Remote Work Agreement

A. By the Employee:

1. Employees may request to modify or adjust Remote Work arrangements.
2. Employees may withdraw an application for Remote Work or terminate an approved Remote Work Agreement without prejudice at any time and return to the Official Agency Worksite. To ensure clarity, the employee must notify the supervisor in writing and identify the expected date of change and the supervisor should confirm receipt of the notice in writing.
3. If an employee terminates a Remote Work agreement, the employee is responsible for all costs associated with returning to the commuting area of the Official Agency Worksite.

B. By the Agency:

1. Remote Work arrangements may be modified, adjusted, or terminated by management in the following circumstances:
 - a. The employee no longer meets the eligibility criteria;
 - b. the employee fails to comply with this Article or the employee's Remote Work agreement;
 - c. As otherwise required by law

Remote work is a voluntary program and not an employee entitlement. The operational needs of the Agency are paramount. Employees who are remote workers do not have an automatic right to continue remote working. Remote work agreements may be modified, adjusted, or terminated by management based upon an employee's failure to adhere to remote work requirements or based upon any other consideration affecting employee eligibility. Remote work agreements may also be modified, adjusted, or terminated at any time when requested by the employee and approved by the appropriate management official. Management has the right at any time to end an employee's use of remote work, if the employee fails to comply with the terms of the employee's remote work agreement, or if the remote work arrangement no longer meets mission needs. Participation in remote work will be terminated if the employee no longer meets the eligibility criteria. Before removing an employee from remote work involuntarily, supervisors should consult their servicing labor and employee relations office for guidance.

For remote workers within the LCA, supervisors shall provide sufficient notice (typically one full pay period, when feasible) before modifying or terminating a remote work agreement to allow the affected employee to make necessary arrangements. After a notice of termination, the employee will typically have a minimum of 10 additional calendar days to report to the Agency worksite. For remote workers outside the LCA, the supervisor shall typically provide a minimum of 30 calendar days' notice and the employee will typically have a minimum of 45 calendars' day to report to the Agency worksite. Also, locality pay may change. The servicing labor and employee relations office will notify the ESC Unit President of the name of the employee and the reason(s) for termination. Consent or acknowledgement via signature by the affected employee is not required for the termination of remote work to take effect. An employee whose remote work agreement was terminated may re-apply for remote work.

When any significant aspect of an employee's work changes (e.g., position, work assigned, RWL), the supervisor will reassess the portability and suitability of employee's work for continued remote work approval in accordance with this Article.

Generally, an employee may withdraw an application for remote work, or terminate an approved remote work agreement, at any time without prejudice and report to the Agency worksite. The employee must notify the supervisor or manager in writing, and the supervisor or manager shall acknowledge the employee's notice in writing, to prevent misunderstandings about work location. If an employee ceases to remote work, the employee will be assigned to an office space similar or equivalent to other similarly situated employees at the Agency worksite.

Section 15. DETO

- A. General Provisions: A DETO (Domestic Employee Teleworking Overseas) is a type of remote work arrangement allowing an Agency employee to telework from an overseas location on a temporary basis. The Agency may not approve permanent DETO arrangements (i.e., overseas remote work without a not-to-exceed date). The employee's overseas residence will generally be the RWL. The employee is expected to return to the Agency worksite when the DETO arrangement ends. These types of arrangements are rare and additional criteria beyond normal remote work requirements must be met. Also, the arrangement must be cleared through the State Department. The Chief of Mission, State Department, has authority over Executive branch employees working overseas.

A DETO is not an entitlement. The program or regional office requesting a DETO may not take any personnel actions violating merit system principles in order to provide an advantage to an employee requesting a DETO (e.g., reassigning an employee into a position with more promotion potential because the duties of the successor position are fully portable). Every required form, approval and clearance required by EPA and the State Department must be completed before a DETO arrangement can begin.

- B. General Criteria: A program or the regional office may consider requesting a DETO arrangement

when an EPA employee's spouse or domestic partner is required to temporarily report to an overseas location by order of the U.S. government (civil service or military). This is known as a "sponsored" DETO arrangement. Other types of DETO arrangements known as "independent" arrangements (i.e., an employee is not on government orders of a spouse or domestic partner) may not be approved.

- C. Eligibility: A DETO may be approved for non-probationary/non-trial period, permanent full-time or part-time Agency employees who have worked at EPA for at least one year. The employee's work must be fully portable and meet the remote work criteria in this Article.

The following positions are not eligible for DETO arrangements:

- Supervisory;
- Managerial;
- Senior Executive Service;
- Senior Level (SL) or Scientific/Professional (ST);
- Requires access to or handling of classified materials;
- Positions ineligible for telework as noted in this Article; and
- If the duties of the position require reporting on or playing a substantive role in the policy or administrative issues pertaining to the country the RWL will be located in.

- D. Authorizing a DETO: The program or the regional office is responsible for securing all necessary approvals within EPA and the State Department.

1. The employee must request a DETO arrangement with their supervisor or manager. If the supervisor or manager concurs, the employee must complete a telework agreement for the DETO arrangement.
2. DETO arrangements can be costly, and the approving region or program is responsible for these costs. The supervisor or manager of the employee requesting a DETO arrangement should consult the Office of International and Tribal Affairs as soon as practicable in the DETO process to better understand State Department procedures and potential costs.
3. The supervisor or manager must develop a justification including the following information:
 - a. The reason for the DETO.
 - b. How the DETO arrangement meets the general remote work and DETO criteria in this Article (including outside the LCA criteria).
 - c. Cost considerations for travel, recall, U.S. Embassy fees, etc.
 - d. How the supervisor or manager plans to effectively monitor the employee while the employee is overseas and in a different time zone.

- e. The benefit to the Agency for allowing a DETO arrangement.
 - f. Supporting documentation (i.e., orders from the federal organization related to the spouse/domestic partner's move overseas).
4. The DETO agreement and justification must be approved by the employee's DRA (or designee) and the AA of OMS.
 - a. The AA of OMS will consult the Administrator's Office, if necessary, and the Chief Information Officer about information security concerns related to the DETO.
 5. Once the EPA remote work agreement has been approved, the program or the regional office must secure clearance through the State Department. The supervisor or manager will work with OITA to complete this process.
 - a. For overseas arrangements less than one year, approval must be obtained through the e-Country Clearance process.
 - b. For overseas arrangements longer than a year (including extensions of arrangements previously approved through Country Clearance), the National Security Decision Directive 38 process must be followed.
 6. The employee must also meet any overseas training requirements and have proper documentation such as passports, visas, and a work permit to perform work for the federal government overseas.
 7. Once approvals from EPA and the State Department have been obtained, the documentation verifying approval and a SF-52 should be sent to the servicing HR SSC to change the employee's duty station when they arrive overseas. The HR SSC will not effect any change in duty station without a complete approval package.
 - a. The employee is responsible for notifying the supervisor of arrival at the overseas location so the personnel action can be effected timely.
 - b. The employee must complete the telework safety checklist for their overseas RWL and return it to their supervisor or local telework coordinator within two pay periods of the employee starting the DETO.
- E. Conditions of a DETO: The employee is treated like a domestic employee in regards to position duties and responsibilities related to work assignments, time and attendance and performance. The employee is expected to attend meetings, communicate with management and customers, and otherwise fulfill the duties of their position. The employee may not perform work at any other location than the approved RWL(s) in the telework agreement.

F. Pay and Leave:

1. The base rate for the General Schedule (GS) pay scale will be used, locality pay is not applicable.
2. EPA's standard policies and guidance regarding time and attendance apply. Employees must regularly communicate with their supervisor or timekeeper each pay period to ensure time and attendance is accurate.
3. Overtime must be ordered and approved in writing and in advance.
4. Employees are subject to the overtime and premium pay entitlements applicable to their positions (i.e., based on the position's designation as Fair Labor Standards Act exempt or non-exempt).
5. Employees are only entitled to U.S. holidays and are expected to work during regular duty hours or use other paid leave (annual leave, credit hours, etc.) for local holidays of the overseas location. They are not entitled to premium pay or compensatory time when working on a local holiday.
6. Employees are required to work during regular duty hours (or use other paid leave) if the domestic Agency worksite has a closure (e.g., emergency, weather, etc.).
7. Employees may be eligible for workers' compensation benefits for disability or death resulting from injury sustained in the performance of duty when qualifying criteria are met under the Federal Employees' Compensation Act.

G. Training and Travel:

1. Employees traveling on official business away from the duty station reflected on their SF-50 as part of the DETO position's duties are eligible for temporary duty travel. TDY travel should be minimized, and alternate technology used instead, to the extent practicable. Travel expenses (e.g., per diem) must be documented in an official travel authorization.
2. Distance learning options generally should be used as the first option to meet training needs.

H. Termination of a DETO:

1. The duration of a DETO arrangement may not exceed the initial overseas assignment duration of the spouse or domestic partner's orders.
2. Additional time may be requested by presenting an amended telework agreement (same approval requirements as the original) and seeking permission from the State Department through the NSDD 38 approval process.

3. The supervisor may cancel or amend the DETO by providing written justification based on the needs of the office, misconduct or unacceptable performance at any time with prior notification of at least two pay periods.
4. The employee may cancel the telework agreement at any time with prior notification of at least two pay periods.
5. An employee may request an adjustment of the DETO agreement by providing a written justification to the supervisor or manager for consideration and approval.
6. Nothing in this Article impacts the State Department's authority to determine who may telework overseas.
7. Upon termination of a DETO arrangement, the employee is generally expected to return to the domestic Agency worksite. However, options to accommodate the employee's circumstances may be considered (e.g., extended leave, including leave without pay or resignation). The supervisor or manager should consult their regional human resources officer or program management officer for guidance on next steps.
8. The supervisor or manager is responsible for submitting a SF-52 to the servicing HR SSC to change the employee's duty station once a DETO arrangement ends

Section 16. Reporting

As OPM and other federal organizations seek telework (including remote work) reports, the Agency's TMO and Agency telework coordinator will serve as the primary liaisons between EPA, OPM and other federal organizations. EPA's telework coordinator will serve as the Agency's central coordinating point and will work with telework coordinators across the Agency to prepare comprehensive telework information.

Section 17. Facilities and Equipment

- A. Remote Work Location Office Space: Requirements will vary depending on the nature of the work and the equipment needed to perform the work. At a minimum, employees should have adequate internet speed and be able to easily access the intranet, Agency systems, communicate by telephone, email and established collaboration tools (currently Microsoft O365 suite) with the supervisor, coworkers and serviced clients when working from their RWL. In addition, employees are responsible for verifying and ensuring their work areas comply with health and safety requirements (see the "*Employee Self-Certification Safety Checklist*"). Home work areas must be clean and free of obstructions, in compliance with all building codes, and free of hazardous materials. An employee's request to remote work may be disapproved or rescinded based on safety problems or the presence of hazardous materials. In rare instances, a designated safety official may inspect the RWL for compliance with health and safety

requirements when deemed necessary.

- B. Agency Worksite Space Sharing: The organizational unit where an employee is assigned, may implement space-saving initiatives in regard to employees who have approved remote work agreements. Such space-saving options may include shared workstations, smaller workstations or unassigned touchdown/hoteling situations. If management seeks to implement any such space-saving initiatives, they will notify the Union and bargain to the extent required by this CBA, local agreements, applicable law, rule and regulation.
- C. Government-Furnished Equipment: The Agency may provide GFE to its remote work employees equivalent to that provided to employees at the Agency worksite. Supervisors may authorize purchase and distribution of additional GFE items (such as monitors, printers, etc.) as needed.

Employees who have an Agency-issued laptop or mobile phone assigned to them shall take reasonable safeguards against theft and damage. All Agency-issued equipment and supplies remain the property of the Agency and the EPA remains responsible for service and maintenance of the equipment. The EPA is also under no obligation to service or maintain equipment belonging to the employee, even if the employee uses it for Agency work.

If an employee furnishes their own equipment/workstation at the RWL, the government will not reimburse the employee for the purchasing costs of the equipment/workstation. In addition, the employee is responsible for the maintenance, repair and replacement of privately owned equipment. The Agency will not reimburse the employee for such costs, including broadband.

The EPA may not reimburse employees for the utility costs (e.g., heating, air conditioning, lighting and the operation of government-furnished computers) for RWLs. Utility costs include the monthly service charges for telephone or specific telephone charges. Employees should use Agency meeting and conferencing tools, communication options like EC-500, or government-issued mobile phones or calling cards to conduct official government business with customers and contacts in other locations. The Agency may reimburse employees for miscellaneous office supplies. Employees requiring pens, paper, paper clips, notebooks, etc., may use the supplies provided by the Agency.

For employees that work at an RWL outside of the LCA, the Agency is responsible for service and maintenance of Agency equipment. In cases where Agency equipment is in need of repair and upgrade, the Agency will make all reasonable efforts to initiate repairs and upgrades remotely.

However, should in-person assistance be required, managers and employees will work together to make arrangements to ensure that repairs and upgrades can be made expeditiously; this may include providing temporary equipment and enabling shipping of inoperable and repaired equipment. In consultation with the employee, supervisors will make determinations over questions such as the employee's duty status, appropriate work assignments and potential temporary equipment during the interim period between when repairs and upgrades are required and when they are completed.

Note: Consistent with the Agency's Records Management Policy, official Agency business should first and foremost be done on official EPA information systems. The Federal Records Act prohibits the creation or sending of a federal record using a non-EPA electronic messaging account unless the individual creating or sending the record either: (1) copies their EPA email account at the time of initial creation or transmission of the record, or (2) forwards a complete copy of the record to their EPA email account within 20 days of the original creation or transmission of the record.

Section 18. Information Security

The EPA CIO issues and maintains information security directives for protecting EPA information and information systems to include when users are working remotely and accessing systems remotely. These directives outline the responsibilities of each program office, region or other organization, and users in protecting EPA systems and information. Other pertinent supporting information security directives may be issued by users' program office, region or other organization.

Users agree their responsibilities, described in the Agency's information security directives, apply while on telework status. Remote workers must minimize security risks to all Agency information and systems.

The RWL workplace and workstation and other devices used with Agency information must be configured to ensure all Agency information in any form or format is properly protected at all times and in accordance with all Agency directives.

Section 19. Records Management

When working at an RWL, Agency employees must continue to comply with the Agency's records management policy and any other applicable policies related to using, creating, maintaining and disposing of records. Employees shall also comply with the Federal Records Act, Freedom of Information Act, the terms of any litigation hold, discovery in litigation and any requests for records by the Office of the Inspector General. Employees should also be aware that Agency work maintained on an employee's personal computer may be subject to litigation discovery or the Freedom of Information Act even if it is not considered a record under the Federal Records Act.

Remote workers should refrain from saving any EPA information to their personal equipment. Any record removed from the Agency worksite for telework assignments remains the property of the Agency and any information generated from telework assignments is the property of the Agency. Employees are responsible for maintaining the integrity of their records and for producing records on demand.

Disposal of Telework Program Records: EPA Records Schedule 0039, Alternate Worksite Records, authorizes the disposal of records related to requests or applications to participate in an alternate worksite program (i.e., telework). This includes agreements between the Agency and an employee, records relating to the safety of the worksite, the installation and use of equipment, hardware and

software, and the use of secure, classified information or data subject to the Privacy Act.

Section 20. Policy Updating Provision

In accordance with the Telework Enhancement Act of 2010, this provision authorizes the assistant administrator of OMS, who has been re-delegated management authority for the Agency's directives system, the ability to independently update the Agency telework policy as required by other relevant federal organizations, including, but not limited to, the Office of Management and Budget, OPM, the Federal Emergency Management Agency, the National Archives and Records Administration, and the GSA. The AA for OMS may also re-delegate the authority to update the policy to the director of the Office of Human Resources. This authority also may be re-delegated further as appropriate.

Section 21. Waiver

Any request to waive the requirements of this policy must be submitted in writing to the DRA (or designee) for consideration by the OMS AA (or designee).

Section 22. Materials Superseded

- A. EPA Order 3110.32, *Telework Policy* (July 28, 2020)

Section 23. References

- A. The Telework Enhancement Act of 2010
- B. Public Law 106-346, § 359: Requires that all Executive agencies establish telework policies
- C. Public Law 105-277, Omnibus Appropriation Act, Title IV, § 630: Requires that funds be set aside for Executive agency employees to use telework centers
- D. 5 USC 65: Telework
- E. 5 CFR 351.203: Definitions
- F. 5 CFR Part 530: Pay Rates and Systems (General)
- G. 5 CFR Part 531: Pay Under the General Schedule
- H. 5 CFR Part 550: Pay Administration
- I. 5 USC Section 5305(i): Special Pay Authority-New Official Duty Station
- J. 5 USC 5702: Per diem; employees traveling on official business
- K. EPA Delegation 1-17 A (September 13, 2011) Domestic Travel.
- L. EPA HR Bulletin number 08-006B (September 30, 2008) Time Reporting Codes (TRCs) for Certifying Time and Attendance for Employees in EPA's Flexiplace (Telework) Program
- M. Guide to Telework in the Federal Government (April 2011), OPM
- N. Governmentwide Dismissal and Closure Procedures (November 2018), OPM
- O. Requirements for Executive Branch Employees Teleworking in Foreign Locations (June 2016), U.S. State Department
- P. Additional Guidance on Post-Reentry Personnel Policies and Work Environment (July 23, 2021), OPM
- Q. 2021 Guide to Telework and Remote Work in the Federal Government (November 2021), OPM

Section 24. Appendices

The following appendices will be placed on the EPA intranet site for the ESC CBA:

- Telework Agreement
- Safety Checklist
- Annual Recertification
- Telework Discontinuation

ARTICLE 44

Duration

Section 1. General

- A. This CBA shall remain in full force and effect for four years from the effective date of this Agreement. This Agreement may be extended in one (1) year increments thereafter by mutual agreement of the Parties.
- B. If either Party desires to renegotiate this Agreement upon expiration, it will notify the other Party in writing between 30 and 60 days prior to the expiration date of the Agreement. The written notice may be accompanied by proposed ground rules.

Section 2. Mid-Term Reopener

- A. Either Party may serve the other Party with written notice between March 1, 2026, and March 31, 2026, of its desire to reopen this CBA.
- B. The Parties may reopen no more than three (3) existing Articles each, for a potential total of six (6) Articles if each Party chooses to reopen three (3).
- C. If this provision is exercised, negotiations will commence within thirty (30) calendar days after such notice or as may be otherwise mutually agreed upon by the Parties and will follow the ground rules in this CBA's Midterm Article.

Section 3. Distribution and Publication of this CBA

- A. The Agency will ensure that the CBA is placed on the Agency intranet site pursuant to the Union Rights Article of the Parties' CBA. The Parties understand a reasonable amount of time will be needed for the Agency to ensure the agreement is administratively compliant (e.g., 508 compliance, formatting) before its publication.
- B. All superseded CBAs will be removed or clearly marked as superseded. The Union will note to the Agency when any superseded agreements are discovered, including their locations.

FOR THE UNION:

MARK SIMS
Digitally signed by MARK
SIMS
Date: 2024.12.06
13:03:24 -08'00'

MARK SIMS
LEAD NEGOTIATOR
President-EPA Unit
Engineers and Scientists of California
IFPTE Local 20

**SARA
JACOBS**
Digitally signed by SARA
JACOBS
Date: 2024.12.09
10:57:48 -08'00'

SARA JACOBS
NEGOTIATOR
Vice President-EPA Unit
Engineers and Scientists of California
IFPTE Local 20

FOR THE EMPLOYER:

**PHILIP
BROWN**
Digitally signed by PHILIP
BROWN
Date: 2024.12.09
16:12:50 -05'00'

PHIL BROWN
LEAD NEGOTIATOR

**CHEREE
PETERSON**
Digitally signed by
CHEREE PETERSON
Date: 2024.12.09
17:40:02 -08'00'

CHEREE PETERSON
DEPUTY REGIONAL ADMINISTRATOR
U.S. EPA, REGION 9

RATIFIED BY THE MEMBERSHIP AND APPROVED BY THE AGENCY HEAD. THE EFFECTIVE DATE OF THIS AGREEMENT IS: November 27, 2024