

## PREAMBLE

This collective bargaining agreement is entered into to prescribe certain rights and obligations of the employees of the Department of Energy (DOE) Headquarters represented by the National Treasury Employees Union (NTEU) and to delineate procedures which are designed to meet the special requirements and needs of DOE Headquarters. The provisions of this agreement have been negotiated and should be interpreted in a manner consistent with the requirements of an effective and efficient Department. The Department of Energy Headquarters and the National Treasury Employees Union are dedicated to partnership efforts designed to assure success for our respective organizations and to maintain a cooperative and constructive working relationship.

5 U.S.C. s 7114(a)(2) provides in part as follows:

"An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at-

\* \* \*

"any examination of an employee in the unit by a representative of the agency in connection with an investigation if-

- (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
- (ii) the employee requests the representation."

## **ARTICLE 1**

### **RECOGNITION AND COVERAGE**

#### **Section 1.01**

All professional and nonprofessional employees of DOE Headquarters employed in the Washington, DC metropolitan area, excluding employees of the Federal Energy Regulatory Commission and the Office of the Inspector General; employees of any offices specifically excluded by Executive Order; any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; employees engaged in Federal personnel work in other than a purely clerical capacity; management officials, supervisors, and confidential employees, as defined in 5 U.S.C. 7103(a); are employees occupying positions within the bargaining unit. The above-described bargaining unit is represented for purposes of exclusive recognition by the National Treasury Employees Union. To facilitate efficient labor-management relations, there is a separate chapter which represents Headquarters employees in Germantown, Maryland, and a separate chapter which represents all other Headquarters employees (both such NTEU chapters collectively and singularly represent the bargaining unit employees of DOE Headquarters).

#### **Section 1.02**

The terms and conditions of this Agreement apply only to positions within the bargaining unit and to employees who occupy those positions. When the word “employee” is used in this Agreement, it is understood that it means an employee in a bargaining unit position.

#### **Section 1.03**

This Agreement is made and entered into by and between the Department of Energy (DOE or Employer) Headquarters, hereinafter referred to as the Employer, and National Treasury Employees Union (NTEU), hereinafter referred to as NTEU.

#### **Section 1.04**

To the extent that the provisions of DOE internal orders, regulations, policies, guidance, or practices are in specific conflict with this Agreement, the provisions of the Agreement will govern.

#### **Section 1.05**

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

provisions of this Agreement shall be applicable upon certification of NTEU. Upon coverage of an organization, a management/NTEU team will be formed to resolve issues similar to those covered by the Collective Bargaining Agreement. After the 60 day grace period, employees may exercise grievance rights to resolve appropriate issues. There will be a 120 day grace period from the date of certification of newly covered organizations prior to formal third party actions being filed.

- B. During the first 120 days of coverage, management officials will be jointly briefed by Headquarters Labor Relations and NTEU on their labor/management responsibilities. In addition, during the first 120 days of coverage, employees will be jointly briefed by Headquarters Labor Relations and NTEU on the provisions of the Collective Bargaining Agreement.

## **Article 2**

### **Precedence of Laws and Regulations**

#### **Section 2.01**

In the administration of all matters covered by this agreement, officials and employees are governed by existing or future laws or regulations of higher authorities.

#### **Section 2.02**

The terms and conditions of this agreement, plus the provisions contained in DOE Headquarters personnel administration orders constitute the personnel policies, practices, and general employment conditions for the bargaining unit. Therefore, except as provided in Article 13, Midcontract Negotiations, there will be no changes in any personnel policy, practice, or condition of employment during the life of this agreement.

## **Article 3**

### **Employees' Rights**

#### **Section 3.01**

Each DOE Headquarters employee has 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 rights. Except as otherwise provided in law and this agreement, such right includes:

- A. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of Government, the Congress, or other appropriate authorities; and

B. to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

Each employee has the right to work in an environment free of prohibited discrimination. DOE and NTEU are committed to protecting this right.

### **Section 3.02**

The initiation of a grievance in good faith by an employee will not cause any reflection on the employee's standing with the employee's supervisor or on the employee's loyalty or desirability to the organization. Employees and NTEU stewards who have relevant information concerning any matter for which remedial relief is available under this agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal. Supervisors will not lower an employee's performance appraisal due to the employee's decision to confer with the Union or to pursue a grievance.

Additionally, employees have the right to be represented by a designated NTEU steward for the purpose of representing to the Employer any matter of dissatisfaction or in representing the employee to any Government agency or official other than the Employer. In accordance with Article 7 of this agreement, employees are entitled to reasonable amounts of administrative time to confer with the Union with respect to any matter covered by this agreement. Employees are to notify their leave approving official of any anticipated absences greater than 30 minutes in duration. The employee need not tell the supervisor the substantive issue to be discussed with the Union.

### **Section 3.03**

Bargaining unit employees and managers will conduct themselves in a professional and businesslike manner, characterized by mutual courtesy, in their day to day working relationships.

### **Section 3.04**

Employees are only required to make payment to NTEU through voluntary dues. Dues provide a source of funds that enable NTEU to represent employees effectively.

### **Section 3.05**

A. Prior to any examination of any bargaining unit employee by a representative of DOE management in connection with an investigation, the management representative will inform such employee whether the results of the examination are likely to result in disciplinary/adverse action against that employee, and of their statutory right to NTEU representation during questioning, upon request. The employee will be afforded an opportunity to sign a form certifying that he/she has been informed of such rights and will receive a copy of said executed form, upon request. (See [Appendix A](#))

B. When the DOE Headquarters Office of Security interviews a bargaining unit employee in the administrative review process which may result in disciplinary action, the employee must be informed of his/her right to be represented by an NTEU representative as provided by 5 U.S.C. 7114(a)(2)(B). The employee will be afforded an opportunity to sign a form certifying that he/she has been informed of such rights and will receive a copy of said executed form, upon request. (See [Appendix A](#))

C. When the person being interviewed is accompanied by a representative furnished by NTEU the role of the representative includes, but is not limited to, the following rights:

1. to clarify the questions;
2. to clarify the answers;
3. to assist the employee in providing favorable or extenuating facts;
4. to suggest other employees who have knowledge of relevant facts; and
5. to advise employee

### **Section 3.06**

DOE will, in coordination with NTEU, post a jointly-developed notice to all employees on all bulletin boards described in section 8.10, stating a condensed version of employee rights.

The Employer will semi-annually inform bargaining unit employees, in writing, of their rights to an NTEU representative at an examination of an employee by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee, and the employee requests the representation.

### **Section 3.07**

Employees have the right to refuse, without fear of employer reprisal, to obey an order that would require the employee to violate a law, including local traffic ordinances, parking prohibitions and speed limits. Employer reprisal is a prohibited personnel practice, addressed under Article 37 of this agreement.

This right does not negate an employee's responsibility to follow all lawful directions, nor management's right to take appropriate action in instances where an employee fails to follow such directions.

### **Section 3.08**

Normally, when there is more than one established work shift per day, those employees who are equally qualified will be given their choice of shift. Where no agreement is reached, conflicts among equally qualified employees will be resolved on the basis of seniority as determined by service computation date.

### **Section 3.09**

The decision on whether and when to resign (including retirement) from employment are voluntary matters of free choice for each employee and may not be coerced. An employee may withdraw a resignation prior to the effective date, if such withdrawal is submitted in writing before a commitment is made to fill the position that would otherwise be vacated by the employee.

## **Article 4 Management Rights**

### **Section 4.01**

Nothing in this agreement shall affect the authority of the Employer:

A. to determine the mission, budget, organization, number of employees, and internal security practices of DOE Headquarters;

B. In accordance with applicable laws:

1. to hire, assign, direct, layoff, and retain employees in DOE Headquarters, or to suspend, remove, reduce in grade or pay, or take other disciplinary actions against such employees;
2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which DOE Headquarters operations shall be conducted;
3. with respect to filling positions, to make selections for appointments from:
  - a. among properly ranked and certified candidates for promotion; or
  - b. any other appropriate course; and
4. to take whatever actions may be necessary to carry out the agency mission during emergencies.

## **Article 5 NTEU Rights**

### **Section 5.01**

The parties hereby acknowledge that Executive Order 13522 regarding Labor-Management Forums provides a cooperative forum for managers, employees, and employees' union representative to discuss government operations, which will promote satisfactory labor relations and improve the productivity and the effectiveness of the federal government. The parties agree to effectuate Executive Order 13522 and any related executive orders.

NTEU shall be given the opportunity to represent employee(s) at any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their

representatives concerning any grievance or any personnel policy or practice or other general condition of employment. Accordingly, NTEU will receive as much advance notice as possible but no less than five (5) workdays notice prior to any formal meeting. Written notification to the impacted chapter(s) shall be accomplished in accordance with the terms of Article 7, Section 7.04.

Notification must include an agenda of the meeting's subject matter and the time designated for NTEU's presentation. The Employer and NTEU are strongly encouraged to jointly develop agendas and conduct formal discussions with employees. In any formal discussion held pursuant to this section, the NTEU representative(s) shall be introduced by the Chair. The NTEU representative(s) may ask relevant questions, will be provided the time needed to express NTEU's issues/concerns and positions regarding the subject of the meeting, and may request meetings and formal discussions with one or more employees in the unit. Management shall not unreasonably withhold approval of NTEU's request(s).

### **Section 5.02**

NTEU has the right and responsibility to represent all employees in the bargaining unit in matters where NTEU is the exclusive representative. However, consistent with applicable statute, regulations and case law, NTEU may refuse to represent certain employees, e.g., non-NTEU members, in matters where NTEU is not the exclusive representative, or in matters where NTEU has no contractual duty, such as proposed disciplinary and adverse actions, or processes.

### **Section 5.03**

In conjunction with NTEU, DOE will semi-annually notify employees of NTEU rights and employee rights regarding participation in NTEU in accordance with title 5 U.S.C. 7101, 7102, and 7116 and DOE's commitment to protect those rights.

In addition, NTEU may develop a communication to be distributed by the Employer after joint NTEU-DOE concurrence to all managers reminding them of their responsibilities for notifying Headquarters Labor Relations of upcoming formal meetings. The joint communication will be distributed by the Employer periodically upon the request of NTEU.

### **Section 5.04**

Upon NTEU's request, the Employer shall provide NTEU with a list of employees, including their grade, within a work group with the same job classification; the list will be ranked by the employees' service computation date.

### **Section 5.05**

Upon the effective date of the Collective Bargaining Agreement, NTEU will develop an education program on the Collective Bargaining Agreement for the Headquarters employees.



Headquarters managers will be invited to attend the education program. With the supervisors' agreement as to the scheduling of which specific session(s) the employees can attend, Headquarters employees may attend the education program in its entirety, which will be offered in both the DOE Germantown and Forrestal facilities. The education program will be presented in-person as frequently as NTEU deems necessary. In the event an employee is unable to attend an in-person session, the employee will be permitted to watch a recording of an in-person session and/or read the Collective Bargaining Agreement, whichever is the employee's preference; in either event, the employee will be given an opportunity to ask NTEU questions about the Collective Bargaining Agreement. Employees working at an alternate work site will be allowed to participate in an in-person session by available DOE-provided alternative technologies.

The Employer will grant official time to the NTEU education program presenters for the development of the education program, preparation for the education program, the presentation of the education program, and any necessary associated travel.

#### **Section 5.06**

One week of each year, to be designated by the NTEU National Office, will be recognized as Labor Recognition Week. During that week, local chapters may use the Employer's cafeterias, break rooms and snack bars in Headquarters offices and posts of duty to set up exhibits to publicize the contributions of NTEU and organized labor to society. Meeting rooms shall also be made available. All employees shall receive one hour of administrative time to participate in Labor Recognition Week activities. Local NTEU Chapters shall be provided with forty (40) cumulative hours of official time to prepare and conduct Labor Recognition Week activities conducted in accordance with provisions of Articles 7 and 8. Each chapter shall have the right to display a banner during Labor Recognition Week which conforms to regulations and laws, announcing Labor Recognition Week.

#### **Section 5.07**

NTEU may contribute to any DOE employee newsletters and/or publications concerning conditions of employment.

#### **Section 5.08**

NTEU has the sole right and responsibility of designating those individuals who will represent and speak on behalf of NTEU. In this regard, NTEU must advise management of NTEU designations in a timely manner.

### **Article 6** **NTEU Representatives**

The Employer recognizes the efforts of NTEU representatives as important in promoting a quality workplace, and a safe and friendly work environment. Although serving

voluntarily, the rights and responsibilities of these NTEU representatives are supported by the language of this Agreement and by Federal Law. In this regard, the roles and responsibilities of Managers and NTEU representatives will be conveyed through annual, joint labor/management training sessions.

### **Section 6.01**

"NTEU Representative" includes only those employees named by NTEU to any position where the employee acts as the spokesperson in the interest of NTEU or employees within the Bargaining Unit. This includes stewards, elected officers, and any other employees designated by NTEU. NTEU Representatives acting in such capacities qualify for adequate periods of Official Time under Article 7 of this Agreement. Use of official time for representation purposes may not be used as a reason for a supervisor to lower the performance appraisal of an NTEU representative.

### **Section 6.02**

NTEU may designate as representatives as many as 32 stewards. In designating stewards, NTEU will take into account their organizational and geographical location of each, in order to minimize travel and other time away from the stewards' official duties. First-tier partnerships may reduce the need for steward services, and the designation of stewards may be affected.

NTEU will provide the Employer with a complete, up-to-date list of appointed stewards, the identity of chapter officers and chief stewards, and the office location and telephone number of each. Each steward must be a bargaining unit employee. NTEU must notify the Employer of any change in stewards as soon as possible but at least two (2) days before the effective date of any change.

In addition to the above stewards, NTEU may designate other representatives as set out in Section 6.01 above. NTEU will provide notification to the labor relations office of all such specific subject matter designations, as they are made.

### **Section 6.03**

Employees and NTEU representatives will have access to the Employers' communications systems as a tool for reducing the time spent away from work during the course of conducting labor-management business. In addition, this communication system is needed to receive and transmit information to the Employer.

### **Section 6.04**

Newly-appointed representatives may require a mentoring period in which to become familiar with their duties and the processes of labor-management relations. To further this

process, a newly appointed representative may accompany or be accompanied by the chief steward, Chapter president, another representative, or National NTEU representative to formal meetings, or in the case of stewards, grievance meetings at all appeal levels, until the new steward has participated in three (3) grievances.

## **Section 6.05**

Training in leadership development, labor management relations, workers health and safety, civil rights, equal employment opportunity, labor relations law, alternative dispute resolution, and other specialized areas that are considered under this Agreement, are appropriate and important training curricula for Individual Development Plans of NTEU representatives. Supervisors will consider the need for training in these areas, along with the training needs related to NTEU representatives' assigned duties and responsibilities.

## **Article 7 Official Time**

### **Section 7.01**

Consistent with the provisions of Article 6, NTEU Representatives:

- A. NTEU stewards or representatives and employees, as appropriate, will receive reasonable official/administrative time to:
  - 1. confer with respect to any matter for which remedial relief may be sought pursuant to the terms and conditions of this Agreement;
  - 2. prepare and present grievances;
  - 3. prepare a reply to a notice of proposed disciplinary or adverse action or any other matter for which a statutory appeals procedure exists;
  - 4. testify as witnesses in arbitration proceedings; and
  - 5. travel locally to and from the above-listed activities.
- B. NTEU stewards or representatives, as appropriate, will receive as much official time as is necessary to travel and:
  - 1. be present at formal discussions or briefings between the Employer and one or more employees concerning grievances, personnel policies or practices, or other general conditions of employment;
  - 2. attend meetings with the Employer regarding labor-Management relations business;
  - 3. attend grievance meetings, arbitrations, and statutory appeal procedures;
  - 4. attend disciplinary or adverse action meetings;
  - 5. prepare for and attend Labor- Management Relations Committee ("LMRC") meetings;

6. represent an employee in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action and the employee requests representation;
  7. review Management actions and prepare for possible impact and implementation negotiations;
  8. participate in Labor-Management negotiations in accordance with the applicable articles of this Agreement, which includes, but is not limited to, proceedings at the Federal Mediation & Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP);
  9. prepare for and participate in local, HQ-wide, or Department wide partnership activities;
  10. attend meetings with the Employer to discuss or present unfair labor practice charges or unit clarification petitions;
  11. participate in Federal Labor Relations Authority (FLRA) investigations or proceedings and in preparation therefore;
  12. attend meetings with the Employer for the purposes of presenting adverse action reply (ies).
  13. attend meetings with the Employer for the purpose of presenting reconsideration reply (ies) in connection with the denial of within-grade increases.
- C. Each representative designated pursuant to Article 6, NTEU Representation, will receive up to thirty-six (36) hours of official time each year of their stewardship to travel and attend NTEU-sponsored training, which may be required to perform their NTEU duties, and is designated to further the interest of the Government by bettering the Labor-Management relationship within the Department of Energy Headquarters bargaining unit. The chapter presidents, officers, and chief stewards from each chapter will receive up to sixty (60) hours of official time for such training.
- D. Six (6) members may each be granted not more than ten (10) work days of official time per year to meet with congressional representatives to present views of employees they represent concerning their terms and conditions of employment.

## **Section 7.02**

With the exception of paragraph F below, NTEU representatives and affected employees will request and be granted official time as follows:

- A. As far in advance as possible of the proposed time use, the representative or employee will inform the immediate supervisor (normally the employee's leave approving official) of the amount of time requested and the general nature of the purpose for which it is requested.

1. NTEU representatives will use the ESS leave system, or its replacement, to make a request for official time and indicate the general nature of the purpose for the official time (i.e., one of the purposes stated in Section 7.01 of the Article). In completing the request, NTEU representatives should provide their leave approving official with as much advance notice of the need for official time as possible. Management will make every effort to provide NTEU with sufficient advance notice of meetings or other activities in which NTEU representatives are expected or have a right to participate. The parties recognize that there will be some circumstances in which advance notice will be virtually non-existent. In those instances, and where rescheduling the need for official time is not possible, requests are to be submitted with the understanding that they are approved. In accordance with OPM definitions, "Negotiations" includes time spent for or in preparation for negotiations over basic or supplemental agreements, renegotiation of agreements, mid-term negotiations, whether interest based or position-based, and the use of the Federal Mediation and Conciliation Service or the Federal Service Impasses Panel; "Dispute Resolution" includes representations in connection with grievances, arbitrations, adverse actions, ADR, and other labor relations complaints and appellate processes, as well as counseling, phone calls, e-mail and meetings with Management on complaints and problems that are pre-grievance or pre-complaint, but not part of any formal process; and "General labor relations" includes all other activities not covered above, including, but not limited to, Management committee meetings, partnerships, consultations and pre-decisional meetings, OSHA walk around inspections, labor relations training, and formal and Weingarten-type meetings.
  2. Employees (other than NTEU representatives) are required to request official time in accordance with other provisions of this Article. When requesting grants of official time, an affected employee must provide the following information to the supervisor:
    - a. The general nature of the purpose for the official time usage (i.e., one of the purposes stated in Section 7.01 of the Article). However, the affected employee need not tell the supervisor the nature of the substantive issue to be discussed with the steward.
    - b. The location where the time would be used; namely, address, room, office name and telephone number.
    - c. The proposed duration of the time usage.
    - d. The date proposed for using the time.
- B. The Employer acknowledges the importance of a timely response from the supervisor to the employee as to whether the amount of official time is approved. Unless the supervisor disagrees in a timely manner that the amount of time requested is appropriate, the representative or employee may use the time for the stated purpose. In the event that the supervisor does not agree that the official time or the amount of time is appropriate, the supervisor should provide the

employee with at least one (1) hour notice before the employee would have to leave to attend the event/meeting.

- C. If the supervisor does not agree that the amount of time requested is appropriate, he or she will discuss the matter with the employee or representative and attempt to reach agreement. In considering requests by NTEU representatives and affected employees for use of official or administrative time, supervisors will first review the work situation of the office to ascertain if the representative/employee can be excused for all or part of the requested period. If the work situation is such that the time usage cannot be allowed at the time specified in the request, the representative/employee will be informed of the reason and of the next available time when the work situation will permit usage of the requested time. This information shall be in writing, if a written response is requested by the representative/employee.
- D. If agreement cannot be reached, the representative or employee may use the amount of time the supervisor is willing to grant for the stated purpose. All unresolved denials of official time are to be reported immediately by the official denying the time to the DOE HQ Labor Relations Office, which will seek resolution with the respective Chapter President.
- E. When disputes arise as outlined above, the DOE Headquarters Labor Relations and NTEU will meet to attempt resolution. If a mutually satisfactory resolution is not reached, the dispute may be referred to mediation, mediation-arbitration (med-arb), or, Arbitration, as outlined in Article 12, for resolution.
- F. The parties recognize that pursuant to the Federal Service Labor-Management Relations Statute and other portions of this Agreement, official time shall be granted in any amount the employer and NTEU agree to be reasonable, necessary and in the public interest. The Parties recognize that Labor-Management activities for which official time is allowed may result in one or more NTEU official(s) engaging in full time, virtually full time, or significant amounts of official time on Labor-Management activities on a continuing basis. These representatives will not be subject to the process described in paragraphs A through E above. Instead, these representatives will be subject to the process described below:
  - 1. Official time requests under Section 7.02F must be approved in advance by the employee's leave approving official for extended periods (e.g., specified amounts of official time within months or quarters). Any impediments or exigencies related to the official time request should be mutually discussed between the leave approving official and the requesting NTEU representative so that any potential dispute may be resolved at the earliest possible time. After discussing the request, the responsible leave approving official must approve or deny the request within five (5) workdays of discussion. During the pendency of Management's response, official time may be taken for the purpose of insuring continuity of representation. If the leave approving

official proposes a modification to or denies the requested official time he or she shall provide the requesting NTEU Representative with the reason for the proposed modification or denial in writing.

2. At least five (5) workdays prior to the end of the agreed period of official time referenced above, the NTEU representative will submit a new official time request. The representative and the supervisor will meet to assess the official time needs compared to the Employer's work load assignments during the period just passed, and projected work load needs in the immediate future.
3. The representative will report his or her use of official time at the end of each pay period.
4. Where disputes arise regarding the virtual full time needs of the NTEU official, the representative and his/her leave approving official or supervisor should discuss work assignments or projects, and representational responsibilities in advance as much as possible in order to minimize or avoid conflicts. Consideration should be given to such things as time sensitivity, availability of others to perform the needed tasks, and overall workload.
5. All unresolved official time disputes are to be reported immediately to the DOE HQ Labor Relations Office, which will seek resolution with the respective chapter president and leave approving official. If after completion of this process a dispute still exists, either party may file a grievance or other appropriate action under law, rule, or regulation.
6. Should the Employer determine that mission needs require modification of previously approved official time the Employer shall provide written notice of that determination to the impacted NTEU Representative and Chapter President as soon as that determination is made. Thereafter, the parties will meet and discuss the modification. If the issue(s) cannot be resolved, Management will provide a written statement outlining its decision. The employee may then exercise his or her rights as appropriate. During the pendency of this dispute, the employee will perform the assigned tasks to ensure continuity of mission accomplishment.
7. If the Employer rescinds previously approved official time under Section 7.02F6 above the following procedures will apply:
  - a. The agency shall provide a written description of the work/mission needs that it has determined require the modification of the previously approved official time to the impacted Union Official and the Chapter President.
  - b. This written description will include the estimated amount of time that the Employer believes will be necessary to complete the identified work/mission

need (e.g., a week/40 hours or less, two (2) to three (3) weeks, a month (30 days), or more than a month (30 days) but less than two (2) months, etc.).

- c. If the estimated amount of time described in Section 7.02F7b is two (2) work weeks or less any timeframes for Union action under this Agreement (e.g., Union suspense to file a grievance, invoke arbitration, file, request or present an oral reply, etc.) shall be tolled until the Union official assigned to those cases by the Union is released to provide representation.
- d. If the estimated amount of time described in Section 7.02F7b is more than two (2) workweeks the Union Official will immediately be provided ten (10) hours of official time to transfer their case(s) to an available replacement representative(s) of NTEU's choosing. The replacement representative(s) will immediately be provided a total of ten (10) hours, as needed, to receive and review the cases. Should the NTEU replacement representative(s) not be releasable or not immediately available (e.g., on leave, travel, workload, etc.) all deadlines/suspenses for the cases he or she has been designated by the Union to receive shall be tolled for a maximum of two (2) weeks.
- e. The tolling of timeframes described in Sections 7.02F7c and 7.02F7d above will not act as a bar to Management's exercise of its rights under 5 U.S.C. § 7016, or any of its rights articulated in the Collective Bargaining Agreement. This tolling of timeframes will not act as a bar to any grievance, appeal or claim by the Union or an Employee alleging that the Agency's actions constitute a violation of law, rule, regulation, or this Agreement.

- G. The Employer will not harass, intimidate, or in any way inappropriately interfere with a representative's right to request and use official time pursuant to this Article.

### **Section 7.03**

When the time is to be used, a representative or employee, who has been granted official time under the terms of this Article, is encouraged to remind the immediate supervisor that he or she is leaving the work area to use the approved time. Upon completion of the approved time usage, the representative or employee will inform the supervisor of the total amount of official time used, if it is different from the time already requested.

### **Section 7.04**

- A. In the case of a formal meeting concerning only one representational area, the Employer will notify the chapter president, the designated acting chapter



president, if any, and the executive vice president. Any designated representative may request official time to attend the meeting pursuant to this section.

- B. In the case of a formal meeting concerning more than one representational area, the Employer will notify both chapter presidents, the designated acting chapter president(s), if any, and the respective executive vice presidents. Any designated representatives may request official time to attend the meeting pursuant to this section.

### **Section 7.05**

- A. An NTEU representative may address new bargaining unit employees attending orientation sessions for twenty (20) minutes on official time. During this time, NTEU may speak with new bargaining unit employees without the presence of non-bargaining unit employees.
- B. New Employee Orientation will be presented at the Forrestal building.
- C. The Employer will provide to each chapter president, at the beginning of each new quarter, a listing of all new bargaining unit employees who entered into service during the past three months. The list will include name, organization, telephone number, e-mail address, position title, series and grade.
- D. If no orientation session is held at Forrestal for three (3) consecutive months, an NTEU representative will be given the opportunity to meet with each new Forrestal employee, for not more than twenty minutes.
- E. The Germantown NTEU Chapter may attend and participate in any orientation at the Forrestal building, which is attended by Germantown bargaining unit employees, or, as an alternative, may meet with each new Germantown employee for not more than twenty (20) minutes without the presence of Management officials.

### **Section 7.06**

The Employer will provide official time, not more than 120 hours per chapter, per year, if the NTEU National Office offers special training apart from its annual steward's training.

### **Section 7.07**

The Employer will approve official time for each chapter to send a representative to attend special emphasis program events (e.g., EEO activities, Black activities, Women's activities, Hispanic activities, or other minority/special emphasis program events). Travel

and per diem for these events shall be provided by the Employer under Article 34, Section 34.09 of this Agreement.

### **Section 7.08**

The Employer will approve official time for all NTEU officials who attend DOE sponsored joint labor-Management meetings outside the Washington, DC commuting area (e.g., DOE Health and Safety Committee, etc). Travel and per diem for these events shall be provided by the Employer under Article 34, Section 34.08 of this Agreement.

### **Section 7.09**

Both NTEU Chapters will be granted twenty-four (24) hours of official time per steward to train those stewards on the new contract, plus reasonable time for travel, within ninety (90) days of the effective date of this Agreement.

## **Article 8**

### **Facilities and Services**

#### **Section 8.01**

- A. Room C-075 in Germantown will continue to be an NTEU office. Room BF-109 in the Forrestal Building will continue to be an NTEU office. The existing furniture and equipment will remain in the rooms along with a secretarial desk and chair and one four-drawer locking file cabinet. The Employer shall provide notice to, and bargain with, NTEU in the event there is a change in office space.
- B. The employer shall continue to provide NTEU with private office space in the existing satellite buildings. Upon NTEU's request, and subject to availability, the Employer shall provide NTEU with private office space for representational purposes in each satellite building with at least 100 bargaining unit employees. The Employer will ensure that the afore described private office space is equipped with a telephone. The employer shall provide notice to, and bargain as appropriate with, NTEU in the event there is a change in office space needs at the satellite buildings that would impact NTEU office space under this provision.
- C. When requested, the Employer shall provide locks on office doors or lockable filing cabinets which will be provided for all NTEU officers and stewards.

#### **Section 8.02**

The Employer will provide NTEU with a reasonable amount of space to conduct ballot box elections pursuant to its bylaws.

### **Section 8.03**

The Employer will provide NTEU with access to available confidential offices or conference rooms for use in connection with its representational duties. Subject to safety and security requirements, NTEU will be permitted to use available auditoriums and conference rooms to conduct non-work hour meetings and administrative/union meetings. Requests for the use of these facilities must be made as far in advance as possible and will include the time, date, and number of people expected to attend. NTEU will be responsible for assuring that conference rooms or auditoriums are left in a clean and orderly condition upon the completion of the meetings.

### **Section 8.04**

NTEU National representatives visiting the Employer's premises will comply with appropriate security regulations. NTEU National representatives visiting the Employer's premises may be accompanied or escorted by an NTEU chapter representative.

### **Section 8.05**

- A. NTEU representatives may use Employer facsimile transmission equipment (FAX) in connection with joint labor-management business at no cost. When either party sends a FAX, the party sending the FAX will confirm receipt with the addressee of the FAX by electronic mail or telephone. In the event that either party hand-delivers a document, delivery must be made to a person and the document will not be deposited in an empty office. No matter the method of delivery, the Employer shall deliver all documents to NTEU on workdays.
- B. NTEU representatives may use Employer copying facilities for joint labor-management business at no cost.
- C. The Employer shall provide all NTEU Offices, as identified in Section 8.01A, with telephone service, including but not limited to, services such as voicemail.
- D. NTEU will have access to the electronic mail system for representational purposes. Receipt of e-mail will be accepted as an official communication between the Employer and NTEU. All NTEU users will comply with system usage requirements which the Employer establishes.
- E. At no cost to NTEU, the Employer agrees to furnish NTEU Chapter 213 with one (1) e-mail address, with two (2) separate inboxes, to use for representational communications. At no cost to NTEU, the Employer agrees to furnish NTEU Chapter 228 with one (1) e-mail address to use for representational communications.

- F. The Employer understands that communications between NTEU chapter representatives, NTEU National, and employees are confidential and may include personnel sensitive information. Unauthorized Employer access to such communications is prohibited.
- G. The NTEU Chapter offices, as identified in Section 8.01A, will be provided a computer and telephone and related equipment, including but not limited to, monitors, removable media and associated peripherals consistent with the Employer's standard workstation provided by the Office of the Chief Information Officer's Common Operating Environment (DOECOE). This workstation will be refreshed in a manner consistent with the DOECOE refresh cycle. Furthermore, whenever hardware and/or software upgrades are made by the Employer, the Employer will also upgrade the equipment provided to both NTEU chapters. In addition, the Employer shall provide the NTEU chapter offices, as identified in Section 8.01A, with a printer, fax, and scanner. Such equipment will be refreshed in a manner consistent with the DOECOE refresh cycle or when the equipment is broken. NTEU will not be charged fees for the use of this equipment.
- H. The Employer shall provide to both NTEU chapters, at no cost to NTEU, or no additional cost to DOE, and to the extent allowable by law, access to the same electronic resources purchased and/or utilized by the Headquarters Labor Relations program, if any, including but not limited to, resources providing legal precedent and case law pertaining to federal sector labor relations, such as LexisNexis, Westlaw, or comparable electronic resources.
- I. The Employer shall provide access to Internet resources to NTEU office computers. NTEU may request access to any blocked or filtered sites through the procedures established by the Office of the Chief Information Officer.
- J. The Employer will maintain a clearly titled and appropriately positioned link from its Office of Human Capital Management Internet website to the NTEU Chapters 213 and 228 websites, upon request of the Chapters. The Chapters will be responsible for all content presented at their respective web sites. NTEU is bound by the Employer's rules that govern use of these resources. The NTEU chapters may provide a link to the National NTEU website from each chapter website.
- K. The Employer shall continue to allow NTEU Union Officials to use their Blackberry (or like cell/smart phone) provided by their Program/Office for NTEU representational activities. If the Program/Office determines that it needs to discontinue the above described Blackberry use it must provide NTEU with notice and opportunity to bargain as required by law, rule, regulation, and this Negotiated Agreement.
- L. The Employer shall provide NTEU with access to the Employer's projection, teleconference, and video conference equipment, if available, for presentations, including but not limited to, orientation, NTEU-sponsored training, and representational meetings.

- M. The Employer shall not remove/discontinue NTEU's existing television monitor and cable connections. Upon NTEU's request, the Employer shall provide each NTEU Chapter with access to a DVD player or other equipment, if available.

#### **Section 8.06**

NTEU representatives may use the Employer's internal mail/distribution system to transmit information to specifically-named individual bargaining unit employees at no cost. Printed informational materials are to be bundled for delivery by organizational code. A mailing sheet, listing name, room number, and mail stop for each bargaining unit employee at that mail stop shall be attached to each bundle of materials.

#### **Section 8.07**

The Employer shall provide on a monthly basis to each NTEU chapter, for its internal use only, an electronic file, in a format agreed to by the parties, containing the chapter's bargaining unit employees' names, series, grades, position titles, DOE phone number, DOE e-mail address, and organizational locations (i.e., mail routing symbols).

#### **Section 8.08**

The Employer shall provide each NTEU chapter with one electronic copy of all DOE Headquarters publications concerning personnel policies, practices or general conditions of employment.

#### **Section 8.09**

- A. The Employer will print enough copies of this Agreement to provide one paper copy to all present and future bargaining unit employees and managers, and 100 paper copies to NTEU. The Employer shall provide appropriate access to this Agreement in a manner that complies with the Rehabilitation Act, 29 U.S.C. § 701, et seq.
- B. In addition, this Agreement will be posted on the Office of Human Capital Management Internet website.

#### **Section 8.10**

NTEU may have exclusive use of the following bulletin boards to post material:

- A. In addition to those bulletin boards now in use, NTEU may have exclusive use of those bulletin boards which it purchases for installation in the Employer's work areas. The Employer will provide for such installation. In the Forrestal Building, NTEU will be provided with keys to half of each locked bulletin board. NTEU will be given exclusive use of the cork side of the bulletin board.

- B. If allowed by the lessor, there shall be a large bulletin board or other device in each of the satellite office locations where informational bulletins shall be posted. For those satellite offices without existing bulletin boards for NTEU's exclusive use, NTEU may post information on half of these bulletin boards, if the bulletin boards are allowed by the lessor.

### **Section 8.11**

NTEU may distribute material on the Employer's premises in both work and non-work areas to employees before, during, and/or after scheduled work hours provided that both the employees distributing and the employees receiving such materials are on personal time.

An NTEU representative may visit cafeterias and other non-work areas located on the Employer's premises to discuss union business with individual bargaining unit employees or small groups of bargaining unit employees provided that the employees participating are on personal time.

### **Section 8.12**

The Employer will ensure that NTEU has an opportunity to participate in the annual health fair it holds each year in conjunction with the health benefits open season.

### **Section 8.13**

The Employer agrees to list the name, office telephone number, NTEU office telephone number, and e-mail address of the presidents, executive vice presidents, vice presidents, chief stewards, and stewards of NTEU Chapters 213 and 228 in the Employer's telephone directory.

## **Article 9**

### **Dues Withholding**

#### **Section 9.01 - Purpose and Coverage**

- A. This article is for the purpose of permitting eligible employees, who are members of the National Treasury Employees Union (NTEU), to authorize voluntary allotments from their compensation.
- B. This article covers all eligible employees:
  - 1. Who are members in good standing of NTEU;
  - 2. Who have voluntarily completed and submitted Standard Form 1187, Request for Payroll Deduction for Labor Organization Dues (SF-1187); and
  - 3. Who receive net compensation sufficient to cover all or a part of the allotment.

- C. The Employer shall automatically withhold, on a bi-weekly basis, the appropriate amount of dues from any bargaining unit employee who has submitted an SF-1187.
- D. NTEU will pay no fee for these services.

#### **Section 9.02 - Certification and Remittance Procedures**

Certification and remittance procedures shall be as follows:

- A. Dues will be remitted to NTEU;
- B. Electronic files will be transmitted to the Administrative Controller, National Treasury Employees Union, 1750 H Street NW, Washington, DC 20006; and
- C. The NTEU National president or any chapter officer who has submitted proper written notification to the labor relations office is authorized to make the necessary certification of SF-1187.

#### **Section 9.03 - NTEU Responsibilities**

NTEU will:

- A. Inform the Employer in writing of changes in the certification and remittance procedures;
- B.. Forward properly executed and certified SF-1187s to the employee's servicing payroll office on a timely basis;
- C. Forward an employee's revocation (SF-1188, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues) to the labor relations office when such revocation is submitted to NTEU;
- D. Inform in writing, by the NTEU National president, the labor relations office of the name of any participating employee who has been expelled or ceases to be a member in good standing in NTEU within ten (10) days of the date of such final determination; and
- E. Inform in writing, by the NTEU National president, the labor relations office of any change in the formula, rates, methods, and percentages for its membership dues.

#### **Section 9.04 - Employer Responsibilities**

The Employer is responsible for processing voluntary allotment of dues in accordance with this article. The Employer will:

- A. Upon receipt of the properly certified SF-1187, have its servicing payroll office stamp the date received legibly on the back of all copies;
- B. Withhold dues on a bi-weekly basis;

- C. Provide bi-weekly, by the Department's pay date, the electronic Dues Withholding file in the format and detail provided for in Section 9.14 A.
- D. Discontinue allotments when required by 5 U.S.C. Chapter 71;
- E. Through the labor relations office, notify the employee and the NTEU Chapter president within thirty (30) days of a determination that an employee is not eligible for an allotment, along with the reasons for the decision and the specific duties that disqualify the employee from the bargaining unit;
- F. Withhold new amounts of dues upon certification in writing from the NTEU National president provided the formula, methods, rates, or percentages for withholding has not been changed during the past twelve (12) months;
- G. Transmit remittance to the allottee designated by NTEU;
- H. Transmit electronic files to NTEU or its designee;
- I. Via the labor relations office, stamp on a properly executed SF-1188 the date received so that the revocation will be effective consistent with provisions outlined in Section 9.10 of this article; and
- J. Provide local NTEU chapters with a copy of SF-1188s within 3 working days of receipt;
- K. In the event, the Employer determines that an employee's position is no longer in the bargaining unit, the Employer shall provide the applicable NTEU chapter with a list of the specific duties performed by the employee.
- L. The Employer shall include SF-1187 forms in new employee orientation packages.

#### **Section 9.05 - Submission of SF-1187**

A properly executed SF-1187 consists of a signed original SF-1187 or a signed facsimile submitted to the labor relations office.

#### **Section 9.06 - Overpayment to NTEU**

- A. Upon determination by the Employer that dues withholding for an employee was not timely terminated and resulted in an overpayment to NTEU the Employer will affect an adjustment to reimburse the employee.
- B. Each pay period, the Employer will forward a bill for dues overpayment, with an accompanying document prescribed by the Debt Collection Act of 1982, to the Administrative Controller, National Treasury Employees Union, 1750 H Street NW, Washington, DC 20006. This bill will identify amounts which were reimbursed to employees as a result of dues withholding and the pay periods in which the overpayments were made to NTEU. The bill will request repayment of the overpayments which were made to NTEU. The document accompanying the bill will include a statement that debts due to the government for more than thirty (30) days are subject to interest, penalties and administrative charges, to the extent required by regulations and law. The bill sent



to NTEU will request payment be made payable to "U.S. Department of Energy" and will specify that the payment, and a copy of the bill, be mailed to an address designated on the bill for the U.S. Department of Energy. The right of NTEU to request a waiver of overpayment in accordance with 5 U.S.C. § 5584 and applicable federal regulation, or to dispute the amount of overpayment, will also be contained in the accompanying document; a copy of the bill and accompanying document will be forwarded to the labor relations office.

- C. Upon receipt of the amount due from NTEU the accounts receivable for the applicable pay period will be closed. If a waiver or partial waiver of overpayment is timely requested by NTEU, the Employer will suspend collection of the amount in question pending adjudication by the Department of Energy in accordance with 5 U.S.C. § 5584 and applicable federal regulation. The Department will notify the local NTEU chapter of the determination.

#### **Section 9.07 - Waiver of Overpayment**

- A To be considered timely, a request for waiver of overpayment must be submitted to the Department's Office of Headquarters Accounting Operations by NTEU within ninety (90) calendar days from the date of the bill for dues overpayment.
- B. If the bill for dues overpayment is received more than 10 days after the date of the bill, NTEU may request an extension of the waiver deadline date for a period of time equal to the number of days between the time the bill was received and the date of the bill, less 10 days.

### **Section 9.08 - Denials of Requests for Waiver**

Denial by the Department of NTEU requests for waiver of overpayment in Section 9.07 above, will be subject to the institutional grievance procedure in Article 11 of this agreement.

### **Section 9.09 - Leaving or Changing the Bargaining Unit**

- A. Request for Transfer Payroll Deductions. If an employee moves from a bargaining unit position at one duty station to a bargaining unit position at another duty station, and both bargaining unit positions are represented by NTEU, dues withholding will not be canceled. In the event the transfer of an employee results in a change in the employee's NTEU chapter affiliation, the Employer will note the change and adjust dues withholding as appropriate.
- B. Leaving the Bargaining Unit Temporarily. Employees who leave the bargaining unit temporarily (for a period in excess of 6 months) will have their withholding suspended and will have the withholding reinstated once they return to the unit.

### **Section 9.10 - Action and Effective Dates**

The effective dates for action under this Agreement are as follows:

- A. The SF-1187 will be entered into the payroll system as soon as practical, but no later than the pay period following receipt of the SF-1187 in the servicing payroll office.
- B. Changes in the formula for dues withholding will begin the first pay period designated by the NTEU National Office. Changes in rates or percentages will be provided to the Employer a minimum of thirty (30) days prior to the effective date of the change; changes in formula or method of dues withholding will be provided to the Employer a minimum of ninety (90) days prior to the effective date of the change.
- C. Revocation notices for employees who have had dues allotments in effect for more than one (1) year must be submitted to the labor relations office during the first complete pay period in the month of August in each year. Revocations will become effective during the first full pay period beginning on or after October 1st each year. Revocations may only be effected by submission of a completed SF-1188. For this purpose, "effective date" is defined as the first day of the pay period for which the revised dues applies.
- D. Revocation notices for employees who have had dues allotments in effect for less than one (1) year must be submitted to the labor relations office on or before the one (1) year anniversary date of their dues allotment. Revocations may only be effected by submission of a completed SF-1188. The SF-1188 will become effective the first full pay period after the employee's anniversary date. The employee's anniversary date is defined as the first day of the pay period in which dues withholding first takes place.
- E. NTEU will receive a copy of all SF-1188s with a legible date stamp.
- F. Termination due to loss of membership in good standing will be effective on the beginning of the first pay period after the date of receipt of notification by the labor relations office from the NTEU National president.

- G. For termination due to separation or movement out of the bargaining unit, a final deduction will be made for the last pay period in which the employee is in the bargaining unit.

#### **Section 9.11 - Errors in Withholdings**

- A. The total error in the amount of dues withheld shall be adjusted as soon as is practical after the error has been detected by the Employer or written notification is received from NTEU or employee of an error.
- B. When an underpayment to an employee results in an overpayment to NTEU (for example, the Employer fails to timely terminate dues withholding after receiving a properly submitted employee request), the Employer will refund the payment to the employee in accordance with subsection 9.06 of this article.
- C. When the Employer fails to commence dues withholding in a timely manner, or otherwise fails to remit dues owed, the Employer will pay the full amount to NTEU and recoup the funds from the employee's salary through an adjustment subject to the employee's right to seek waiver of overpayment. When an adjustment is made to an employee's salary to recoup dues withholding, the employee will be issued written notification by the Department of Energy of the Employer's intent to offset in accordance with 5 C.F.R. 550 Subpart K.
- D. Disputes arising out of dues withholding situations where either the Employer has failed to withhold the appropriate amount of dues from an employee, that is the employee or Employer owes NTEU money; or where the Employer has paid NTEU money collected via an inappropriate dues withholding, shall be resolved in the following manner.
  - 1. On a bi-weekly basis, the Employer will send to NTEU a copy of the Employer's dues withholding electronic file. This electronic file should be received by the second (2nd) Thursday after the close of the pay period, that is, pay day. The tape will be presumed received on this date unless NTEU informs the Department's servicing payroll office within three (3) days of payday.
  - 2. On receipt of the electronic file, NTEU will review the information provided, identifying potential problems. NTEU will then transmit information to its local chapters requesting the local chapters to pursue potential problems with the labor relations offices. Local NTEU chapter officials must review the information provided to them and contact the labor relations office within thirty (30) calendar days of the date on which NTEU received the dues withholding electronic file from the Employer (that is, payday reference in D.1., above). The only exception provided for not making contact within thirty (30) days, as provided in D.1. above, is when NTEU has informed the Employer that it had not received the electronic file.
  - 3. Once contact has been made by the local NTEU chapter official with an employee's labor relations office regarding a specific problem, the employee's labor relations office shall, within ten (10) work days, unless extended by mutual agreement, review the case(s) presented and decide if a problem does in fact exist, and how it may be corrected, for example, dues withholding adjustment. The labor relations office will advise the servicing payroll office and the employee of its determination and provide the local NTEU chapter with information related to the subject problem. In instances where it is determined the Employer has failed to withhold the appropriate amount of dues from an

employee resulting in an underpayment to NTEU, the Employer will pay the full amount to NTEU and recoup the funds from the employee's salary through an adjustment subject to the employee's right to request waiver of overpayment. When an adjustment is made to an employee's salary to recoup dues withholding, the employee will be issued written notification by the Department of Energy of the Employer's intent to offset in accordance with 5 C.F.R.550 Subpart K. In instances where it is determined the Employer has failed to withhold the appropriate amount of dues from an employee resulting in an overpayment to NTEU, the Employer will effect an adjustment to reimburse the employee within two (2) pay periods of notification from the labor relations office, and bill NTEU for the dues overpayment pursuant to Section 9.06.

4. If the problem is not resolved at the local level in accordance with D.3, above, NTEU may file a grievance in accordance with Article 11.

## **Section 9.12 - Employee Notifications**

- A. When a dues paying Bargaining Unit employee is permanently placed in a non-bargaining unit position, a "J" code will be provided to NTEU on the biweekly dues transmission for the employee, and the employee will be supplied with the following form by the labor relations office.

### "Termination of Dues Withholding"

Regulations governing dues withholding to a labor organization require that dues withholding be canceled whenever an employee is placed in a non-bargaining unit position.

You were recently subject to a reassignment or promotion which will automatically terminate your dues withholding. The final dues withholding will be made for the pay period in which the action is effective.

If you have any questions regarding the termination of your dues withholding, you may wish to contact NTEU Chapter \_\_\_\_\_. The Civil Service Reform Act of 1978 permits you to continue your membership.

- B. When a Bargaining Unit employee is temporarily (in excess of 6 months) placed in a non-bargaining unit position, a "L" code will be provided to NTEU on the biweekly dues transmission for the employee, and the employee will be supplied with the following form by the labor relations office:

**"Suspension of Dues Withholding"**

Regulations governing dues withholding to a labor organization require that dues withholding be suspended whenever an employee is placed in a non-bargaining unit position. Upon your return to a bargaining unit position, the Employer will automatically reinstate the withholding of NTEU dues.

### **Section 9.13 - Deductions from Back Pay Awards**

In accordance with current regulations and case law, the Employer will deduct NTEU dues from an employee's back pay award for that period in which the employee had an allotment for dues withholding in effect.

### **Section 9.14 - Bi-Weekly Dues Information and Format.**

A. The file format of the bi-weekly dues withholding electronic file should be as follows:

Field Name	Begin Position	Field Length	Date Type
SSN	1	9	Numeric
Chapter	10	3	Numeric
First Name	13	10	Alpha
Last Name	23	13	Alpha
Filler	36	2	Alpha (Spaces)
Amount (Total)	38	4	* Zone Decimal
WAEID	42	3	Alpha
D Code	45	1	Alpha
Filler	46	14	Alpha (Spaces)
Grade	60	2	Numeric
Step	62	2	Numeric
Pay Plan	64	2	Alpha
Nat'l AMT. D/W	66	4	* Zone Decimal
Chapter AMT. D/W	70	4	* Zone Decimal

\* These are not packed decimal numeric fields.

- B. A comprehensive list of all the possible dues withholding codes that should be utilized on the Dues Withholding Electronic File are listed below:

Code	Description
D	Continuing
E	Insufficient Pay
F	New Allotment
G	Revocation
H	Separation (other than retirement)
I	Pay Adjustments (plus amounts only)
J	Movement Out Of Recognition Area
K	Seasonal to Non-Duty Status
L	Temporary Promotion/Reassignment to NBU
M	Reactivate NTEU Dues After Temporary Promotion/Reassignment
N	Seasonal Continues in Non-duty Status
R	Retirement
T	Transfer from One NTEU Chapter to Another NTEU Chapter, Within The Same Agency
X	Deceased

### **Section 9.15 - Discretionary Allotments**

Employees may elect as many as five (5) discretionary allotments, (which are not savings allotments) which employees may use to have additional voluntary deductions withheld from their pay. Such discretionary allotments may be used consistent with regulations for various purposes such as insurance and other benefits which may be offered by NTEU.

### **Section 9.16 - Bi-Weekly List of SF-1187s**

The Employer shall provide each local chapter with a bi-weekly electronic list of SF-1187s that have been submitted to the servicing payroll office. This list will include the dates the SF-1187s were processed and their expected effective dates.

## **Article 10**

### **Polygraph**

#### **Section 10.01**

DOE employees may be subject to a polygraph examination as required by 10 C.F.R. §709.3.

Pursuant to 10 C.F.R. §709.21, the Employer must notify the employee required to take a polygraph examination in writing of the date, time, and place of the polygraph examination, the provisions for a medical waiver, and the employee's right to obtain and consult with legal counsel or to secure another representative prior to the examination. The employee must receive

the notification at least ten (10) workdays before the time of the examination except when good cause is shown, or when the employee waives the advance notice provision.

Pursuant to 10 C.F.R. §709.22, an employee has the right to obtain and consult legal counsel or another representative, such as NTEU; however, the counsel or representative may not be present in the room during the polygraph examination. Interpreters and signers may be present in the examination room during the polygraph examination.

The Employer will not discourage DOE HQ employees, subject to polygraph examination, from notifying Chapter 213 or 228 of the employee's notification of a scheduled polygraph examination.

## **Section 10.02**

The Employer will provide seven (7) workdays advance notice to the appropriate NTEU chapter when an employee is required to undertake any polygraph examination.

At the request of NTEU Chapter 213, 228, or NTEU National, the Employer will provide the total number of covered employees, including each designated position, title, job series, grade, and step, who are subject to polygraph testing as determined by the requirements of 10 C.F.R. §709.

## **Section 10.03**

If a covered employee refuses or stops a Polygraph Examination as permitted under 10 C.F.R. §§709.13-709.14, and consistent with 10 C.F.R. §709.14, it is determined that the employee cannot retain his or her clearance, and his or her incumbent position requires such a clearance, the Employer must deny the covered employee access to classified information and materials protected under 10 C.F.R. §709.3(b) and (c) and the Employer may reassign or realign the employee's duties or take other action, consistent with that denial of access and applicable personnel regulations.

If the employee chooses to resign in lieu of accepting another position or there are no available positions, the DOE will offer the employee an opportunity to resign for personal reasons, and such will be reflected in response to any inquiries, except with regard to security/intelligence investigations.

## **Section 10.04**

In the event that a covered employee refuses to take a polygraph examination, the Employer may not record the fact of that refusal in the employee's personnel file, pursuant to 10 C.F.R. §709.14.

## **Section 10.05**

If the DOE engages in any follow up interviews with employees after the actual polygraph examination is concluded, the parties will follow Article 3, Section 3.05.

## **Section 10.06**

Pursuant to 10 C.F.R. §709.25, the Employer may not take an adverse personnel action against an employee or make an adverse access recommendation solely on the basis of a polygraph examination result of “significant response” or “no opinion”. The Employer may not use a polygraph examination that reflects “significant response” or “no opinion” as a substitute for any other required investigation.

## **Article 11 Grievances**

### **Section 11.01**

**A.** Consistent with 5 U.S.C. §7103(a)(9), the term “grievance” means any complaint:

1. By an employee concerning any matter relating to the employment of the employee;
2. By the Union concerning any matter relating to the employment of any employee; or
3. By any employee, labor organization, or agency concerning:
  - (a) The effect or interpretation, or claim of a breach, of a collective bargaining agreement, or
  - (b) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

**B.** The following items may not be grieved:

1. Any claimed violation of 5 U.S.C. Chapter 73, Subchapter III, (relating to prohibited political activities).
2. Retirement, life insurance, or health insurance.
3. A suspension or removal under 5 U.S.C. § 7532.
4. Any examination, certification, or appointment.
5. The classification of any position which does not result in the reduction in grade or pay of an employee.
6. Matters specifically excluded by other Articles of this Agreement.



7. Matters over which an employee has filed a written complaint of discrimination through the formal EEO complaint process.
8. Non-selection for promotion from a group of properly ranked and certified candidates consistent with 5 CFR § 335.103, except where an employee alleges that a prohibited personnel practice under 5 USC § 2302 or 29 CFR § 1614 has occurred.
9. Mid-term performance appraisals, performance counseling sessions, or the issuance of performance improvement plans. Employees maintain their right to respond to such performance appraisals, performance counseling sessions, or performance improvement plans, orally or in writing, as outlined in other relevant Articles of this agreement.
10. Matters already filed with the Merit Systems Protection Board (MSPB) as an adverse action which are, therefore, statutorily precluded from duplicate filing under this procedure.
11. Notices of proposed disciplinary or adverse action. Employees maintain their right to respond to such notices of proposed disciplinary or adverse action, orally or in writing, as outlined in other relevant Articles of this agreement.
12. Any matter previously raised before or adjudicated by the Office of Special Counsel (OSC), Occupational Safety and Health Administration (OSHA), and the Department of Labor (DOL).
13. Termination of a probationary employee.
14. Personnel actions resulting from reduction in force (RIF), which result in the employee being separated, downgraded, or furloughed for more than 30 days or which allege violations of 5 U.S.C. 2302 (b) (1).
15. A grievance where the sole allegation is the non-adoption of a suggestion by the agency.

## **Section 11.02**

This procedure is the only procedure available to Bargaining Unit Employees for the processing and disposition of grievances described by Section 11.01 of this article.

## **Section 11.03**

- A. Any aggrieved employee affected by discrimination, a removal, or performance-based reduction in grade, or other adverse action, may, at his/her option, raise the matter under a statutory appeal procedure or under this negotiated grievance procedure, but not both.

- B. Pursuant to 5 U.S.C. 7121, an employee shall be deemed to have exercised her/his option under this provision in adverse actions when the employee files a timely written notice of appeal or files a timely written grievance under this procedure, whichever occurs first.
- C. Pursuant to 29 C.F.R. 29 CFR 1614.301, an employee shall be deemed to have exercised his/her option under this provision when the employee files a timely written complaint or files a timely written grievance under this procedure, whichever occurs first. NTEU is not required under statute to represent non-members when they elect to use the statutory appeal process.
- D. When an employee grieves an allegation of illegal discrimination, the employee may request a copy of any available counseling reports.

#### **Section 11.04**

Grievances under the terms of this article may be initiated by Bargaining Unit Employees either singly or jointly or by NTEU on behalf of an employee or by NTEU or the Employer on their own behalf. As used in this agreement, the term grievant refers to the aggrieved party, whether a bargaining unit employee, NTEU, or the Employer.

#### **Section 11.05**

- A. Grieving employees will have the right to be accompanied, represented, and advised by NTEU throughout the grievance process.
- B. Union stewards who file grievances concerning a matter of personal concern will be represented by a steward appointed by the Chapter President.
- C. Where an employee has initiated a grievance and does not elect to be represented by NTEU, NTEU will have a right to be present at all discussions between the Employer and the employee about the grievance.

#### **Section 11.06**

In the event that two or more grieving employees have filed a grievance involving a similar fact pattern and a similar issue, upon request or agreement by NTEU the grievances shall be joined and processed as one.

#### **Section 11.07**

The following procedural requirements must be met by each grievant, whether a bargaining unit employee, NTEU, or the Employer, or the grievance will be rejected and not processed. For purposes of this Article a grievance and any related submissions shall be considered to be reduced to writing, signed and delivered when submitted via e-mail or fax.

**A.** Each grievance must be reduced to writing, signed and delivered to the DOE Headquarters (HQ) Labor Relations Office with a courtesy copy to the step 1 deciding official, who will be at the lowest level of authority appropriate to settle the grievance (if NTEU or an employee is grieving), or to NTEU (if the Employer is grieving) within fifteen (15) workdays of the particular act or occurrence precipitating the grievance or within fifteen (15) workdays after the aggrieved became aware of the particular act or occurrence precipitating the grievance. For grievances alleging discrimination, the time limits for filing a grievance shall be within forty-five (45) calendar days of the particular act or occurrence or within forty-five (45) calendar days of the grievant becoming aware of the particular act or occurrence. The time limit for filing grievances over 5 USC § 7116 is 180 calendar days. Such grievances will be filed pursuant to Section 11.10A, if filed by bargaining unit employees; Section 11:11A, if filed by NTEU, and Section 11:11B, if filed by the Employer.

**B.** Each grievance must contain a clear and detailed explanation of the complaint, including the article and section of the agreement alleged to have been violated and the specific, if applicable, personal relief or remedy sought by a Bargaining Unit Employee, or institutional relief sought by NTEU or Employer.

#### **Section 11.08**

- A.** The time limits delineated in this article may, by mutual agreement of the parties (except as described in Section 11.09 below), be extended.
- B.** Any step of this procedure may be waived by the mutual agreement of the parties.
- C.** Extensions should be used only under extenuating circumstances, and should be the exception rather than the rule.
- D.** Any oral agreement will be confirmed in writing by both parties before the time in question expires. Confirmation may include the use of e-mail or fax.
- E.** If a party requests mediation, upon mutual agreement, grievance time limits may be tolled for the pendency of the mediation.

#### **Section 11.09**

- A.** The parties recognize the mutual benefits of resolving grievances at the lowest possible administrative level. To that end, employees, NTEU, and the Employer are encouraged to informally attempt resolution of the matter precipitating the grievance before invoking the procedures of this Article. Accordingly, if a party timely requests informal resolution or mediation, and that request is accepted by the other party, the DOE HQ Labor Relations Office must be notified. Grievance time limits will then be tolled for a specified period of time, as agreed upon by the parties. Informal resolution and mediation for purposes of this section include both formal mediation and informal discussions or mediation in lieu of proceeding to or during the grievance process contained in Sections 11.10 and 11.11 of this Article.

- B.** A party for purposes of this Section shall be a representative of the Employer, NTEU and the grievant or potential grievant.

### **Section 11.10**

Grievances filed by Bargaining Unit Employees are processed as follows:

#### **A. Step One**

The grievance is reduced to writing as prescribed by Section 11.07 of this article and delivered to the DOE HQ Labor Relations Office with a courtesy copy to the appropriate step one deciding official, who must be at the lowest level of authority appropriate to settle the grievance. Unless the meeting is mutually waived, the step-one deciding official will consider the matter and will meet with the employee and NTEU within five (5) workdays of receipt of the grievance to discuss the grievance. The step one deciding official will give the grievant and NTEU a written decision regarding the grievance within five (5) workdays after the meeting or within ten (10) workdays of receipt of the grievance if no meeting was held.

#### **B. Step Two**

Appeals of the Step-1 decision rendered under the provisions of this article must be submitted in writing within ten (10) workdays of NTEU's receipt of the Step-1 decision. The appeal must be submitted to the DOE HQ Labor Relations Office with a courtesy copy to the Step-2 deciding official, who must be at a level higher in the management chain or organization than the Step-1 deciding official. The Step-2 deciding official will consider the matter and review all information contained in the Step 1 and Step 2 grievance submittals and the Step-1 decision.

Unless the meeting is mutually waived, the deciding official will meet with the grievant and NTEU within five (5) workdays of receipt of the Step-2 grievance. The Step-2 deciding official shall issue a decision within ten (10) workdays of receipt of the grievance, or within five (5) workdays after the meeting, if one was held.

#### **C. Step Three**

Appeals of decisions rendered under the provisions of this article must be submitted in writing within ten (10) workdays of NTEU's receipt of the Step-2 decision. The appeal must be submitted to the DOE HQ Labor Relations Office with a courtesy copy to the Step-3 deciding official, who has the authority to decide and resolve. The Step-3 deciding official will consider the matter and review all information contained in all three grievance submittals and the previous decisions.

Unless the meeting is mutually waived, the deciding official will meet with the grievant and NTEU within ten (10) workdays of receipt of the Step-3 grievance. The Step-3

deciding official shall issue a decision within fifteen (15) workdays of receipt of the grievance, or within ten (10) workdays after the meeting, if one was held.

- D. If the matter is not settled after the completion of the grievance process, the employee or NTEU has five (5) work days to request review by the Assistant Secretary, or equivalent, or his/her designee, who may review the material and/or meet with the parties. A copy of the request must be sent to the DOE HQ Labor Relations Services. After ten (10) workdays of the request, NTEU may elect to invoke arbitration within the time limits set forth in Section 11.13 of this Article.
- E. If a grievant wishes to withdraw a grievance that request must be submitted in writing to the Union and DOE HQ Labor Relations Services.
- F. If the parties reach a settlement, that settlement must be reduced to writing, contain the terms of the grievance, state that the grievance is now closed, and be signed by DOE, where applicable NTEU, and the employee.
- G. In their consideration of the grievance, the above identified management officials may confer with any non-bargaining unit employee they feel might be helpful in resolving or deciding the grievance. When a management official desires to confer with a bargaining unit employee, such a meeting will be governed by Article 5. In addition, the management official(s) must provide the following to the NTEU Chapter President in the notice described in Article 5.
  - 1) name of the bargaining unit employee;
  - 2) the employee's post of duty;
  - 3) the general subject intended to be discussed with the bargaining unit employee; and
  - 4) the proposed meeting date, time, and location.
- H. A manager may not confer with a bargaining unit employee under this section unless the manager has received a written declination to attend the meeting/conference from the Chapter President or his/her designee.
- I. The location of grievance meetings shall be as agreed upon by the parties and may include video-teleconference or teleconference meetings. Where the parties cannot agree on the location of the grievance meeting, any grievance meetings shall be held at the grievant's official duty station.
- J. The Employer will provide a business-based, substantive, and/or procedural response to each issue raised by the Union and/or grievant at each step of the grievance response, regardless of whether the issue was raised in writing or verbally during the grievance procedure.

### **Section 11.11**

**A.** Grievances filed by NTEU on its own behalf are submitted to the DOE HQ Labor Relations Services as prescribed by Section 11.07.A of this article. Unless the meeting is mutually waived, the HQ Labor Relations Services will consider the matter and will meet with NTEU to discuss the grievance within five (5) workdays of its receipt of the grievance. The HQ Labor Relations Services will give NTEU a written decision regarding the grievance within three (3) workdays of the meeting or within five (5) workdays of its receipt of the grievance if no meeting is held. Should the grievance be settled during this process, NTEU will withdraw the grievance in writing or the parties will reduce the settlement to writing, stating that the matter is closed, and sign the settlement. In its consideration of the grievance the HQ Labor Relations Services will confer with whomever it feels might be helpful in resolving or deciding the grievance. HQ Labor Relations Service contact with a Bargaining Unit Employee shall be conducted in accordance with Section 11.10.G and H above.

**B.** Grievances filed by the Employer are submitted to NTEU as prescribed by Section 11.07.A of this article. For purposes of this Article, the grievance will be submitted to the appropriate Chapter President when the issue impacts a single Chapter or NTEU National when the issue impacts both NTEU Chapters or alleges that NTEU National has engaged in the alleged violative conduct. Unless the meeting is mutually waived, NTEU will consider the matter and will meet with the Employer to discuss the grievance within five (5) workdays of its receipt of the grievance. If a meeting is held it will be attended by a representative of the HQ Labor Relations Services, a Chapter representative and an NTEU national office representative as appropriate. NTEU will give HQ Labor Relations Services a written decision regarding the grievance within three (3) workdays of the meeting or within five (5) workdays of its receipt of the grievance if no meeting is held. Should the grievance be settled during the process, the Employer will withdraw the grievance in writing or the parties will reduce the settlement to writing stating that the matter is closed and sign the settlement.

### **Section 11.12**

- A.** Any portion of a grievance may be deleted at any time by the grievant.
- B.** New issues and appropriate remedies may not be raised by either party unless they have been timely raised at Step-2 of the grievance procedure; however, the parties may mutually agree to join new issues at any time within the grievance process.

### **Section 11.13**

- A.** A final decision rendered in accordance with the provisions of either Section 11.10 or 11.11 of this article which 1) resolves the grievance to the satisfaction of the grievant, or 2) adopts the remedy sought by the grievant as stated in the original grievance submission and is closed in accordance with Section 11.10 or 11.11, may not be appealed to arbitration.

- B. All other final grievance decisions may be appealed to arbitration in accordance with the provisions of Article 12 of this agreement.
- C. Arbitration must be invoked within thirty (30) calendar days of receipt of a final grievance decision as prescribed by either Section 11.10 or 11.11 of this article.

#### **Section 11.14**

- A. Where a question of grievability is raised by the Employer or the NTEU during the processing of a grievance under the provisions of either Section 11.10 or 11.11 of this article, the grievance process will be suspended until the grievability question is discussed by the parties. Unless mutually waived, such discussion will occur within five (5) workdays of the non-grievable assertion. If the Employer has alleged an issue is non-grievable or nonarbitrable for reasons other than timeliness the Union will have five (5) workdays after the date of the waiver or discussion to amend and refile the grievance if it wishes.
- B. Questions that cannot be resolved by the parties as to whether a matter is grievable shall be amended to the grievance and discussed as the grievance is processed.
- C. Procedural arbitrability issues, such as timeliness and failure to adequately state a claim, must be raised by the Employer no later than the last grievance response. However, if the issue is whether the matter is substantively arbitrable, that matter may be raised at any time by the Employer and the grievance will be amended to include the issue.

#### **Section 11.15**

Failure on the part of a grievant or NTEU to timely prosecute a grievance at any step of the procedure will have the effect of nullifying the grievance. Failure on the part of the Employer to meet the time limits at any step of the procedure, will permit the grievant or NTEU to move the grievance to the next step.

#### **Section 11.16**

The parties have the obligation to produce all relevant information during the grievance process. Either party may make an informal request for information. Responses including statistical information to such requests will be handled promptly, professionally, and in the spirit of partnership. Where information requests have been filed, grievance time requirements will be held in abeyance pending receipt of a response to the request.

#### **Section 11.17**

In any grievance involving a dispute over the interpretation of the Employer's regulations, the Employer will provide all parties with an interpretation of its regulation. This interpretation will not change for the life of this agreement unless required by higher

authority. Any such interpretation will be provided to an arbitrator if necessary, under the terms of Article 12.05.

### **Section 11.18**

In any grievance involving a dispute over the interpretation of any other authority's regulations, the parties will request interpretation of such regulation from the proper authority. Any such interpretation will be provided to an arbitrator, if necessary, under the terms of Article 12.05.

### **Section 11.19**

- A. Grieved suspensions of three (3) days or more will be stayed throughout the grievance procedure (including arbitration) except where the Agency can articulate an issue of Agency security or other adverse impact on the mission/efficiency of the Service.
- B. Where the Employer issues a decision imposing a conduct or performance-based removal and NTEU invokes arbitration, NTEU may petition the next arbitrator on the panel rotation to stay the action pending issuance of the arbitrator's award. The removal action will be stayed pending the arbitrator's decision. The petition for the stay must be filed within (5) work days after the issuance of the removal decision, and must contain the following:
  - 1. a chronology of the facts including a description of the alleged prohibited personnel practices involved and the action or actions that the Employer has taken or intends to take which form the basis for the petition;
  - 2. evidence and/or argument showing that the action taken or threatened is a personnel action, and that there is a substantial likelihood that the grievant will prevail on the merits of the appeal;
  - 3. documentary evidence that supports the stay request; and
  - 4. a specific request for remedies including but not limited to back pay.
- C. The petition for a stay must be filed with the selected arbitrator and the DOE HQ Labor Relations Services. Filings may be made by personal delivery, FAX, mail, commercial overnight delivery, or e-mail.
- D. The Employer must respond to the petition within five (5) calendar days of the filing of the petition.
- E. The Arbitrator must issue a decision within ten (10) calendar days of the filing of the petition.
- F. Once under his or her jurisdiction, the arbitrator may seek a mutually agreed resolution of the matter, or clarify the issues via telephone prior to issuing a decision on the stay. The



arbitrator must issue a written ruling on the stay petition within ten (10) calendar days of the receipt of the petition. Any and all decisions on a petition for a stay are final and binding on the parties.

- G. The arbitrator will be responsible for assessing any and all costs associated with the petition for a stay, consistent with Article 12.
- H. Absent mutual agreement, the arbitrator who ruled on the request for a stay will hear the ultimate arbitration related to that action, if any. When such arbitration decisions result in the reversal of the Agency's action the arbitrator has the authority to issue all legal remedies.

## **Article 12**

### **Arbitration**

#### **Section 12.01**

Any grievance processed under the terms of Article 11, Grievances, except a grievance involving the interpretation of DOE Headquarters policy, which is otherwise appealable to arbitration as defined by Article 11, may be appealed to binding arbitration by either the Employer or NTEU within thirty (30) calendar day of the grievant's receipt of a final grievance decision as prescribed by Article 11.

#### **Section 12.02**

Where a question of arbitrability is raised by the Employer or NTEU, arbitration of the merits of the grievance may be suspended by mutual agreement until the arbitrability question is resolved through use of the provisions of this article. If the parties decide to separately arbitrate the arbitrability issue, they will jointly invoke arbitration in accordance with the time limits and procedures of this article.

#### **Section 12.03**

Arbitration is invoked by either the Employer or NTEU notifying the other party of its desire to appeal a grievance to arbitration by a notice hand-delivered or sent by certified mail, registered mail, or sent by fax. The arbitrator will be whoever follows the individual on the following list who handled the last arbitration hearing: Ira Jaffe, Jerry Ross, Andre McKissick, and Suzanne Butler.

#### **Section 12.04**

Management may stay a disciplinary or adverse action on a case-by-case basis. Management will consider such factors as hardship of the action on the employee/grievant, the severity of the alleged discipline, among other things.

#### **Section 12.05**

The arbitrator's authority is limited to the issue(s) of the grievance as stated in the original grievance submission and modified later, if at all, by mutual consent of the parties. An issue of grievability or arbitrability referred singly to arbitration will be decided singly by the arbitrator without regard to the merits of the grievance. The arbitrator has no authority to alter, in any way, the terms of this agreement. Further, the arbitrator has no authority to interpret the Employer's regulations. Where such regulations, in the judgement of the arbitrator, bear on a grievance, the arbitrator will notify NTEU that he is seeking such an interpretation. The arbitration process will be suspended until that interpretation is received. The arbitrator is then bound, in his deliberations, by any such interpretation. In any cases involving a dispute over the interpretation of the regulations of any other authority the arbitrator will request interpretation of those regulations from that authority. In such instances the arbitrator will notify the parties that he/she is seeking such an interpretation and the arbitration process will be suspended until that interpretation is received (unless the parties requested and received such an interpretation earlier which has been provided to the arbitrator). The arbitrator is then guided, in his deliberations, by such interpretation.

#### **Section 12.06**

Within seven (7) calendar days of invocation, the party invoking arbitration will notify the selected arbitrator of his/her selection in writing and request the arbitrator to designate the hearing date for the earliest possible time. The Employer will make all physical arrangements for the hearing, including obtaining a suitable hearing room on or near as possible to the Employer's premises.

#### **Section 12.07**

If both parties agree, the parties will hold a pre-hearing conference to attempt settlement and to stipulate to as many exhibits, witnesses, facts and issues as possible, as soon as possible, but in no instance later than twenty (20) calendar days after the notice to the arbitrator. At least ten (10) calendar days prior to the hearing date the parties will exchange lists of proposed witnesses. If the parties agree on the witness list they will submit the list to the arbitrator at least seven (7) calendar days prior to the hearing date. If the parties cannot agree on the witness list, the dispute will be referred to the arbitrator at least seven (7) calendar days prior to the hearing date. Expected testimony of the proposed witnesses will accompany the witness list. DOE Headquarters bargaining unit employees participating in the hearing as a grievant or as a witness will be excused from duty, if otherwise in a duty status, to participate in the hearing. One DOE Headquarters bargaining unit employee participating in a hearing as a representative of the grievant may be excused from duty for such participation in accordance with the provisions of Article 7.

#### **Section 12.08**

The conduct of the arbitration hearing will be determined solely by the arbitrator, who will have full authority to determine the appropriateness of requested witnesses and to limit testimony of witnesses or the introduction of documents based on issues of

relevance, redundancy, or competence. Transcripts will be made of any arbitration hearing upon request of either party. The requesting party will pay the costs. A transcript is mandatory in removal cases, and, in addition, an arbitrator can order that a hearing be transcribed.

### **Section 12.09**

The arbitrator may rely on notes taken at the hearing, any exhibits entered into the record, a transcript if taken, and post-hearing briefs in order to reach a final and binding decision. The arbitrator is authorized to issue a bench decision at the end of the hearing. If he or she does so, it must be followed within fourteen (14) calendar days of the close of record by a written decision. If no bench decision is issued, a written decision must be provided within fourteen (14) days of the close of record. All written decisions should include a finding of facts, and an opinion containing the reasoning and basis for the decision.

### **Section 12.10**

Any fees and expenses of the arbitrator and the hearing, including costs of a mandatory transcript, will be shared equally by the parties.

### **Section 12.11**

Either party may file an exception to an arbitrator's award with the Federal Labor Relations Authority or the appropriate Court of Appeals within thirty (30) calendar days of the award's issuance. The arbitrator's decision will be implemented as soon as practicable but no later than thirty (30) calendar days after receipt unless either party is filing exceptions. If either party does not understand the arbitrator's decision, that party will request clarification of the decision from the arbitrator.

## **Article 13 Midcontract Negotiations**

### **Section 13.01**

The parties may not establish or change any personnel policy, practice, or working conditions which conflict with this agreement except by mutual agreement.

### **Section 13.02**

Where the Employer wishes to change a personnel policy, practice or employment condition not controlled by the terms of this agreement which affect only one NTEU chapter, it will notify the NTEU's chapter president in writing. Where such changes are Headquarters-wide, the Employer will notify both NTEU chapter presidents in writing. Should negotiations take place which affect both chapters, both will be represented if they so desire. This notice will include sufficient information for NTEU to understand the need for and impact of the requested change. NTEU will receive reasonable advance notice before the Employer wishes to implement the requested change. Should

negotiations take place regarding a requested change, ground rules shall be established at the time a request is made.

### **Section 13.03**

Mandatory amendments may be required after the effective date of this agreement because of new (or changes to existing) laws, Executive Orders, or regulations of Government-wide authorities. In such an event the parties shall meet as soon as possible after receipt of a written request from either party for the purpose of negotiating those amendments to the agreement required to bring this agreement into conformity with the new laws, Executive Orders, or regulations of Government-wide authorities.

### **Section 13.04**

In the event that the scope of bargaining currently available to the parties is expanded due to changes in the law or higher agency regulations, either party may reopen this agreement by submitting proposals addressing these areas. Such negotiations shall be strictly limited to those areas that the scope of bargaining has specifically broadened.

### **Section 13.05**

To the extent permitted by law, NTEU may initiate mid-term bargaining by submitting to DOE written proposals for changes in conditions of employment.

## **Article 14 Partnership**

### **Section 14.01**

The parties commit to actively pursuing a partnership that will improve the quality of work life for employees, foster a cooperative labor-management relationship which facilitates the timely and efficient resolution of work place issues, and maximizes the participation of employees in achieving the agency's mission. To accomplish these and other mutual objectives, the parties agree to take steps to reinstate the DOE/NTEU Headquarters Partnership Council ("HPC") within 30 days of the effective date of this agreement.

### **Section 14.02**

The parties will use an interest-based bargaining approach to revise the Headquarters Partnership Agreement. In addition to defining the roles and responsibilities of the HPC, the Partnership Agreement will establish a process for pre-decisional involvement, collaborative problem-solving, consensus decision-making, and the negotiation of matters set forth in 5 U.S.C. 7106(b)(1). The Partnership Agreement will also provide third-party mediation-arbitration where DOE and NTEU mutually agree, to resolve any bargaining impasse involving the substance of a matter contained in 5 U.S.C. 7106(b)(1); however, absent mutual agreement, either party may seek a recommended solution through the use

of an advisory arbitration process, the recommendations of which are binding only if accepted by both parties. Notwithstanding the aforementioned understanding on substantive (b)(1) matters, NTEU retains the right to negotiate over the impact and implementation of any action or decision taken by Management which affects the personnel policies, practices, and/or conditions of employment of bargaining unit employees, including matters covered under 5 U.S.C. 7106(b)(1), for which agreement was not reached pursuant to the provisions of the Partnership Agreement. The parties recognize the value of open and honest communications, and the sharing of information at the earliest possible time, and that such principles should be incorporated into appropriate HPC governing documents.

### **Section 14.03**

The parties agree to follow the specific commitments and procedures set out in the existing DOE/NTEU Headquarters Partnership Agreement as currently in effect, and as amended pursuant to this Article. A general review of the Agreement will be undertaken during the initial HPC meeting (and at subsequent meetings, as required) to accomplish necessary modifications to the Partnership Agreement. To assist the parties, ongoing training will be made available for HPC members, which focuses on strategies and behaviors that will improve the labor-management relationship, promote effective communications, and strengthen the partnership. Moreover, all meeting and bargaining sessions will include a mutually-agreed upon facilitator.

### **Section 14.04**

The HPC will determine and provide direction regarding the establishment of other partnership councils within headquarters. Furthermore, where appropriate, the respective chapter presidents, the relevant program office, and Headquarters Labor Relations Services will coordinate efforts to establish first tier partnership agreements within individual program offices.

## **Article 14.A Labor Management Committees**

A. Both parties agree that the formation of committees dedicated to examining issues related to the workplace and to recommending changes is beneficial to Headquarters as a whole. Accordingly, the parties agree that the following standing committees will be formed:

Headquarters Health and Safety Committee  
Headquarters Disability Council  
Germantown Grounds Committee  
Forrestal Cafeteria Committee  
Germantown Cafeteria Committee  
Travel Committee  
Succession Planning Committee

The Committees will meet, formulate, and recommend suggested changes in existing practices and rules that relate to the subject committee. The members of the committee shall have access to Agency information relevant to their duties. New committees will be formed upon mutual agreement on an as-needed basis.

B. NTEU will appoint all bargaining unit employees and may have up to 4 representatives on official time (2 from each Chapter) on each committee that addresses issues at both locations, and 2 Chapter representatives on official time on committees that address one location. There is no limit to the number of National office representatives that NTEU may have. The Employer will have a number of non-bargaining unit representatives equal to that of NTEU.

C. The committee shall designate a chairperson who shall be nominated from among the committee members and shall be elected by the committee members. Management and non-management members shall alternate in this position. Maximum service time as a chairperson will be 2 years.

D. Meeting announcements, meeting minutes, and activities conducted by the committees will be jointly prepared and publicized electronically or made accessible to all Headquarters employees.

E. Nothing in this Article shall diminish the union's rights, under law and this Agreement, to notice and an opportunity to bargain over changes in conditions of employment.

## **Article 15**

### **Position Classification**

#### **Section 15.01**

Employees are encouraged to make any comments or recommendations to their immediate supervisors, or other appropriate management officials, regarding the accuracy of their position descriptions. The Employer agrees to review the presentation and advise the employee of the results of its review. The Employer agrees that position descriptions for each new position will accurately reflect, to the extent feasible, the major duties of the employee filling that position. Position descriptions will be amended when the major duties change. The servicing personnel operations branches are available to advise employees and their immediate supervisors as to the proper format and content of bargaining unit position descriptions.

#### **Section 15.02**

NTEU will be notified immediately after an Employer's decision to reorganize any part of the bargaining unit has been made. Such notice will identify significant changes in the duties and responsibilities of employees occupying positions to be affected by the reorganization. The Employer will also inform NTEU when changes in position classification standards result in classification changes.

**Section 15.03**

Employees assigned to positions will be provided a position description.

**Section 15.04**

All classification errors will be corrected as soon as possible.

**Section 15.05**

NTEU will be provided a copy of the DOE Headquarters classification maintenance review schedule and updates as they occur.

**Article 16****Acceptable Level of Competence****Section 16.01**

Between 75 and 60 calendar days prior to the date that an employee is eligible to receive a within-grade increase, the employee's supervisor will review the employee's performance. If the supervisor concludes that the employee's performance has not been at an acceptable level of competence, the supervisor will provide the employee with a written notice at least sixty (60) calendar days prior to the end of the waiting period which indicates:

- A. those aspects of the employee's performance in which the employee is deficient and the extent of such deficiencies;
- B. specific instances supporting the deficiencies;
- C. a statement of what the employee needs to do to improve performance to an acceptable level of competence, and the type of guidance and review the supervisor will provide;
- D. that the employee's within-grade increase may be denied unless sustained improvement to an acceptable level of competence is shown within sixty (60) calendar days. If the Employer fails to give this sixty (60) calendar day advance notice, and the within-grade increase is denied, the Employer will make a determination as to the employee's acceptable level of competence not later than 60 calendar days after the date the written notice is given to the employee.

**Section 16.02**

If at the end of the waiting period the employee's performance is at an acceptable level of competence, the within-grade increase will be granted and the notice will not be used as the basis for subsequent personnel action. If an employee's performance is not at an acceptable level of competence, the Employer will notify the employee in writing that the within-grade increase will be denied. The notice will include a statement of the following:

- A. The employee's performance has been determined not to be at an acceptable level of competence;

B. A comparison of the employee's performance during the 60-day notice period against the performance standards, including specific instances supporting the employee's actual performance;

C. The employee's right to have the decision reconsidered, to whom the request should be made, and the time limit in which the employee may make such a request;

D. That if the supervisor determines that the employee is performing at an acceptable level of competence, the within-grade increase can be approved at any time; and

E. That in any event, a new determination will be made no later than 52 weeks after the date of the original determination.

### **Section 16.03**

When an employee chooses to make an oral presentation in connection with a request for reconsideration, a written summary will be made of the oral presentation and a copy provided to the employee.

### **Section 16.04**

When an employee is denied a within-grade increase by the reconsideration official, the letter transmitting that official's decision shall include a statement which informs the employee about the right to file a grievance. The fifteen (15) workday time limit on filing a grievance starts to run when the employee receives the notice of negative determination from the reconsideration official. If a grievance is not filed within that period, the employee cannot grieve the denial until and unless a new negative determination is made by the reconsideration official 52 weeks later. The denial letter will also contain a statement at the top of the first page in capital letters: "A COPY OF THIS LETTER MAY, AT YOUR OPTION, BE FURNISHED TO NTEU CHAPTER [213] and [228].

## **Article 17**

### **Performance Management Program**

#### **Section 17.01**

The Performance Management Program (PMP) establishes the requirements and responsibilities for Employee performance, including appraisal, recognition and rewards for Employees in Headquarters, and to measure Employee levels of achievement against specific, objective, quantifiable, measurable, and not impermissibly absolute performance objectives and criteria that are developed jointly by the Rating Official and the employee. If the employee does not wish to participate in the development of his/her performance plan, the Rating Official will discuss the critical elements with the employee to ensure he/she has a clear understanding of what is expected during the appraisal period.

The Performance Management Program integrates the processes used to:



- 1) Communicate and clarify organizational goals to Employees;
- 2) Identify individual Employee responsibility and, where applicable, individual accountability for accomplishing organizational goals; and
- 3) Use appropriate measures of performance as the basis for appraising, recognizing and rewarding accomplishments.

## **Section 17.02 – Definitions**

The following definitions are for informational purposes and to provide a common understanding regarding the use of these terms as they apply to bargaining unit employees. For more information, see DOE Order (O) 331.1C, Change 1, *Employee Performance Management and Recognition Program*, dated 02/16/11 and in the *Supervisory/Non-supervisory Employee Performance Management and Recognition Program Desk Reference* (the Desk Reference), dated 10/01/2010. The Agency shall provide NTEU notice and opportunity to negotiate any changes to DOE O331.1C, Change 1, the Desk Reference, or any policy, directive, or guidance concerning this Article or performance appraisals for bargaining unit employees to the fullest extent allowed by law, rule or regulation.

- A. Acceptable Level of Performance** – Performance that meets the requirements of an employee’s critical elements, which are written at the Meets Expectations (ME) level.
- B. Advisory Rating** – An unscheduled performance rating that is prepared for an employee who is detailed or temporarily promoted to another position or specific set of duties for 90 days or more, and consists of a rating of each critical element and does not include a summary rating; the advisory rating is completed by the Rating Official to whom the detailed or temporarily promoted employee reports.
- C. Annual Rating** – a written record of the appraisal of each critical job element and the overall performance rating for the Employee’s performance during the rating year. Annual ratings are prescheduled ratings of record and are generally issued once a year.
- D. Summary Ratings** – An overall rating based on the rating for the critical elements that describes an employee’s overall performance throughout the appraisal period; this rating is considered the rating of record and is described using summary levels. See the table for various summary levels.

Total Weighted Critical Elements	And	Summary Rating
All at EE		SE
Majority at EE	No element at NI	EE
Equally divided between EE and ME	No element at NI	ME
All or a majority at ME	No element at NI	ME
Majority at EE or ME	Less than 50% at	ME

	NI	
At least 50% at NI	No element at FME	NI
At least one at FME		FME

- E. Performance Assistance Plan (PAP)** – An informal counseling memorandum notifying an Employee that his or her performance of at least one critical element has fallen below the ME level, e.g., is determined to be at the Needs Improvement (NI) level; the PAP identifies deficiencies and provides assistance by describing the actions needed to improve performance to the ME level.
- F. Performance Improvement Plan (PIP)** – A formal memorandum notifying an Employee that his or her performance of at least one critical element is at the Fails to Meet Expectation (FME) level, and contains a plan to lead the Employee toward improving performance; the PIP is a mechanism that meets the requirement of 5 §CFR Part 432 to provide an Employee with a formal opportunity period to improve performance before a removal or demotion action can be taken based on unacceptable performance.
- G. Performance Plan** – A written or otherwise recorded document that contains critical elements that specify the expected performance outcomes and expectations upon which an Employee’s performance is evaluated; the performance plan is expected to be developed jointly by the Rating Official and the Employee; and it becomes official when signed by both the Rating and Reviewing Officials and is issued to the Employee.
- H. Progress Review** – A meeting in which the Rating Official and the Employee discuss the Employee’s progress towards meeting the job performance expectations in the Employee’s performance plan. All Employees will receive at least two (2) progress reviews as part of an annual evaluation process, evenly spaced in the rating cycle. However, in no case will the Employer use measures of program effectiveness to evaluate or appraise an individual Employee.
- I. Performance Standard** – The expressed measure of the level of achievement established by the Employer for the duties and responsibilities of a position or group of positions. Performance standards shall be written at the Meets Expectations (ME) level.
- J. Rating Levels** – Levels of performance Rating Officials use to evaluate individual critical elements and derive a final summary rating; DOE’s rating levels for critical elements are Exceeds Expectations (EE), Meets Expectations (ME), Needs Improvement (NI), and Fails to Meet Expectations (FME).
- 1) Exceeds Expectation (EE)** – Performance at this level is dramatically higher than that described at the ME level in terms of work products and/or results achieved, high cost-savings or cost avoidances, and/or extremely high levels of efficiency, effectiveness, and timeliness.

- 2) **Fails to Meet Expectations (FME)** – This is the lowest level at which a critical element can be evaluated. It indicates that the employee's performance is "Unacceptable." When one critical element is rated FME, the overall summary level rating is FME.
  - 3) **Meets Expectation (ME)** – This is the "Fully Successful" level that is described for each critical job element and is intended to describe the level that is reasonably expected to be achieved in terms of quality, effectiveness, and timeliness.
  - 4) **Needs Improvement (NI)** – A critical element rated at this level indicates that an employee has not met the expectations for a critical element and that performance at this level is clearly lower than what is reasonably expected at ME, but is not considered unacceptable. Supervisory intervention and assistance, counseling, formal training, and/or developmental assignments are needed to improve performance to raise it to the ME level.
  - 5) **Significantly Exceeds Expectations (SE)** – The highest level attainable as a summary rating level and is regarded as the "Outstanding" level. To attain this level, all critical elements must be rated at the EE level.
- K. Rating Official** – Normally, the immediate supervisor of an Employee who is responsible for developing performance plans, monitoring performance, and rating performance of the Employees under his or her supervision. Rating Officials must evaluate an Employee's performance fairly and accurately against the performance plan.
- L. Reviewing Official** – The person with full supervisory authority who is responsible for approving performance plans and summary ratings of record prior to their transmittal to Employees; the Reviewing Official is normally the Rating Official's immediate supervisor.
- M. Within Grade Increases** – A periodic increase in an Employee's rate of basic pay from one step of the grade of his/her position to the next higher step of that grade.

### **Section 17.03 – Rating Cycle**

The performance appraisal rating cycle shall extend twelve (12) months, beginning on October 1 and ending on September 30. Circumstances can exist for which it is not possible to review an Employee's performance for the entire twelve (12) month period. Under such circumstances, the Employee can be rated for a period of less than twelve months. However, the performance rating period shall be at least ninety (90) days in length.

- A. When an employee is reassigned or promoted within DOE and the effective date is less than ninety (90) days prior to the end of the performance appraisal period (i.e., July 4<sup>th</sup> or later), the losing Rating Official shall prepare a performance rating that will serve as the employee's rating of record.

- B.** When an employee is transferred to another Government Agency and the effective date of the transfer is July 4<sup>th</sup> or later, the employee's rating official shall prepare a performance rating that will serve as the rating of record for the appraisal period.
- C.** If an employee's Rating Official leaves on or after July 4<sup>th</sup>, before departing the Rating Official shall prepare a performance rating that will serve as the rating of record for the appraisal period.
- D.** If an employee's Rating Official leaves 90 days or more after the start of the rating period but before July 4<sup>th</sup>, before departing the Rating Official shall prepare a performance rating that will be considered by the new Rating Official for the final rating of record.
- E.** If the processes set forth above in this Section or those described in Section 17.09 of this Article cannot be met (e.g., if there is an unexpected sudden departure of the Rating Official), the employee's reviewing official will serve as both the rating and reviewing official for the employee.
- F.** When a rating of record cannot be prepared at the time specified in this Article, the appraisal period shall be extended in accordance with 5 CFR 430.208(g). Such an extended appraisal period shall conform to the terms of this Article. Once the conditions necessary for completing the rating of record have been met, a rating of record shall be prepared as soon as practicable after meeting those conditions.

#### **Section 17.04**

Only Employees who have completed a minimum performance period of ninety (90) calendar days will be evaluated at the end of the appraisal period. The appraisal period begins on the date the Employee is issued a certified performance plan as referenced above in section 17.02G. The annual rating period date will remain as established regardless of within-grade increases, promotions, and any other actions, whether temporary or permanent.

In the event that the performance of the duties and/or responsibilities reflected in the critical job elements and standards do not reflect the Employee's actual duties or responsibilities, the Employer may mark a critical job element as Not Ratable (NR).

#### **Section 17.05**

Under the Performance Management Program, Employees will be rated on their critical job elements and standards. Elements and task/expectations are developed by rating officials with input from Employees according to the process set out below.

- A.** The Rating Official shall discuss the Employee's performance plan and the expectations of the Rating Official for successful completion within 30 days of the beginning of the

rating period. An Employee will be given a reasonable amount of duty time, up to two (2) hours, to prepare for the discussion on the new standards and elements, and to present written comments concerning his/her Performance Appraisal Plan to the rating official. In the event that an Employee assists in developing his or her performance plan, the Employee shall be given a reasonable amount of duty time to do so. Employees should review their performance plans prior to the discussion about the performance plans with their Rating Officials.

- B.** Each Employee is entitled to a meeting with the rating official for presentation and discussion of the annual performance appraisal. At the Employee's request, the Employee will be provided a copy of the annual performance appraisal and be given five (5) working days to sign or decline to sign the document and return it to the rating official. Declining to sign the document does not invalidate the appraisal or rating. The Employee may add written comments on the performance appraisal and return it to the rating official within five (5) work days. Such Employee comments on the designated section of the appraisal shall become a part of the appraisal record.

Management will not reply or comment on any such employee comments. If the Employer determines that an Employee's performance is such that a FME or NI level rating is appropriate during the last 90 days before the end of the rating period the Employer will notify the Employee of that determination. The employer should provide that notice as soon as practicable after the determination is made, but normally not later than five (5) work days after making that determination. That notice will be provided to the employee in writing and shall, at a minimum, provide the reasons for the determination and a description of the next step in the rating (e.g., imposition of a PIP or PAP).

- C.** The effective date of the appraisal is the date the appraisal is presented to the Employee for signature by the rating official after having been signed by both the rating and reviewing official.
- D.** A current performance appraisal may be challenged by the Employee within fifteen (15) work days of the effective date of the rating in accordance with the procedures outlined in Article 11. The resolution of a grievance on an appraisal rating will be based only on the performance of the employee during the current performance cycle. A successfully challenged appraisal will become the appraisal of record and the grieved appraisal will be destroyed.
- E.** In the application of standards to individual Employees, the Employer agrees to take into account factors such as availability of resources, lack of training, official time spent performing other work, such as when on a detail, or frequent, authorized interruptions of normal work duties.
- F.** Final ratings are to be provided to Employees within forty-five (45) calendar days of the end of the rating period.

- G.** The Employee is encouraged to sign the performance appraisal upon issuance by the rating official. The Employee's signature on the appraisal indicates only that the rating has been discussed with the Employee, and the Employee has reviewed the appraisal, not an Employee's agreement with the performance appraisal.
- H.** Employees who are union representatives performing representational functions will be appraised based solely upon their performance on the job. Employees who are union representatives will not have the time spent performing representational duties reflect favorably or unfavorably on their performance appraisals. Union representatives serving on 100% official time are ineligible to receive a performance appraisal. If the minimum period cannot be met, the Union representative will receive a "Not Ratable" rating.

### **Section 17.06**

The process of monitoring performance is ongoing; therefore, the Employer will counsel Employees in relation to their overall performance rating on an as needed basis. Employees shall receive at least two (2) progress reviews during the annual performance appraisal year as part of an annual evaluation process. In the event that it is necessary to rate the Employee for less than six months, the Employee shall receive at least one progress review at the mid-point of the rating period.

- A.** Prior to a final rating, input will be provided to the rating official from all other Management officials who have assigned work to the Employee during the review period. Generally such input should be reduced to writing by the other Management officials and provided to the Rating Official; however, in the circumstance that the input is not provided in writing the Rating Official should document (in writing) what information was provided and who the Management official was that provided the information. Further, any negative input provided should be reduced to writing and submitted by the reporting Management official. The rating shall be based on all work assigned by all Management officials during the review period, and which is covered by the Employee's elements and standards. The Employee shall be provided a copy of any written input or feedback.
- B.** Performance shall be assessed solely on accomplishments during the rating period and not on the basis of any prior rating period. Performance shall be monitored throughout the performance period subject to the minimum requirements for performance monitoring and feedback described in the following sections. Feedback is not limited to formal periodic reviews, and is encouraged throughout the rating year.
- C.** Employees will be advised in writing of any change in the Employee's elements and standards due to a change in duties or to reassignment of the Employee to a new position, or change in the identity of the Employee's rating official. The Employee will be provided an opportunity to discuss and clarify these changes and the resulting expectations with the rating official. The Employee will be given performance feedback and clarification of performance elements and standards at reasonable intervals. Progress reviews will be annotated/documented in ePerformance by the rating official and the Employee. Employee's acknowledgement of performance feedback, progress reviews,

etc. shall only reflect receipt of the information and will not necessarily signify agreement to that information.

- D.** Employees may, at any time, request and will be provided a copy of any informal documentation regarding their performance during the rating period retained by his/her supervisor of record.
- E.** Any input considered by the rating official in determining the Employee's rating shall be shared with the Employee in writing. The Employee will have an opportunity to respond to this input before the final rating is determined. While the performance appraisal meetings will normally be between the rating official and the Employee, other parties may attend the performance appraisal meeting and provide input if the Employee and the rating official have agreed in advance.
- F.** Employees will be requested to sign the Certification of Progress Review Form indicating that a progress review has occurred. Progress reviews are not grievable.

#### **Section 17.07**

If, at any time, an Employee's performance on any critical element is in danger of falling below a Meets Expectations (ME) (or equivalent) level, the following options may be implemented:

- A.** The Employer has determined that the rating official will advise the Employee in a face-to-face meeting of the expected level of performance;
- B.** The Employee determined to be falling below ME (or equivalent) shall receive a reasonable opportunity to correct identified deficiencies. If there is a failure by the Employee to correct the performance deficiency, then the Employee will receive specific written guidance regarding performance improvement. Such guidance will include:
  - 1)** the critical elements upon which performance needs to improve and the corresponding performance standards;
  - 2)** work expectations, and
  - 3)** what the Employee must do in order to meet performance expectations on such critical elements.
- C.** The Employee will have the opportunity to respond to the guidance in writing; however, the guidance is not grievable.
- D.** These steps will serve as part of the basis for determining that an Employee's performance is at FME (or equivalent), which will then require that the Employee be placed on a Performance Improvement Plan (PIP)(or, if applicable, an NI which will then require the Employee be placed on a Performance Assistance Plan (PAP).

- E.** If the Employee is on a PIP or a PAP the Rating Official shall meet with the Employee on a regular basis to advise the Employee of his or her performance progress. The PIP/PAP shall define the frequency of how often the Employee and the rating official shall meet. Such meetings shall normally occur weekly and should normally be conducted face to face; however, upon mutual agreement or in the case of medical need meetings can be held telephonically.
- F.** The PIP/PAP period must provide a meaningful, reasonable opportunity for an Employee to improve his or her work performance. The Employer must provide guidance, assistance and counseling, and the counseling must be more than just a review of an Employee's work product, criticism, or vague instructions about how to improve.
- G.** A union representative may attend the meeting for issuance of a PIP or PAP, upon the employee's request and with the Rating Official's approval. Such approval will not be unreasonably withheld.
- H.** If an Employee is approved for leave during a PIP/PAP, the PIP/PAP period may be extended. The Employee will not be held accountable for work that does not get done during the Employee's absence.
- I.** Successful completion of a PAP indicates that the Employee has met expectations and if the Employee's current appraisal indicates that an evaluation level of below meets expectations, it will be revised to at least the meets expectations level.

### **Section 17.08**

The Employer has determined that critical job elements and standards will be consistent with the requirements of the Employee's position. Employees will be evaluated based on a comparison of performance with the standards established for the appraisal period. The Employer has also determined that the rating officials will meet with their Employees at least annually to discuss critical job elements and standards. The critical job elements will be defined at the Meets Expectations level. Other levels of accomplishment are discussed at Section 17.02(j)(1-5). The critical job elements and standards will be issued annually, normally within thirty (30) days of the beginning of the appraisal period. An employee or rating official may initiate a discussion to clarify the application of the generic levels of accomplishment to the employee's performance elements and standards, including what the employee needs to do to perform at an Exceeds level for each critical element. The parties may discuss specific, objective, quantifiable and measurable parameters tied to the mission. The employee or rating official may memorialize the discussion in writing and share it with each other. This discussion and any resulting written document are intended to clarify the application of official performance standards and do not alter, amend, or add to the standards. Results of the discussion shall represent a good faith attempt to describe performance expectations, although this discussion and any resulting written document are not a guarantee of any specific performance rating for the employee. The agency and the union encourage managers and their employees to engage in regular discussions concerning application of the performance management system. Any discussion under this section will occur within a reasonable period of time.



## **Section 17.09**

### **A. Departure Ratings/Advisory Ratings\_–** The Employer has determined the following:

- 1) if the Rating Official permanently departs his or her position, a departure appraisal should be prepared for all Employees reporting to that Rating Official that have met the minimum appraisal period for their position. The new Rating Official will then consider the departure appraisal as appropriate in preparing a rating of record when the Employee's appraisal period ends;
- 2) if the Rating Official permanently departs his or her position during the last ninety (90) days of the Employee's rating period, the departure appraisal becomes the rating of record; and
- 3) if the Rating Official temporarily departs for a position during the last ninety (90) days of the Employee's appraisal period, that Rating Official will be responsible for preparing the rating of record.

An advisory rating that does not become a rating of record constitutes a recordation and cannot be grieved.

## **Section 17.10**

### **A. Employee Performance Management and Recognition Program Website -**

- 1) The Employer shall establish and maintain a website dedicated to the Employee Performance Management and Recognition Program.
- 2) The website shall include (at a minimum):
  - a) Answers to Frequently Asked Questions (FAQs);
  - b) DOE Order 331.1C, the Desk Reference Guide;
  - c) A link to on-line training;
  - d) Any other relevant information on the Employee Performance; and
  - e) An email address to which employees may submit questions. Questions submitted to the email address shall be answered by the Employer within a reasonable period of time not to exceed three (3) workdays from the date the question was submitted.

## **Section 17.11**

**New Performance Rating or Awards System** – If the Employer decides to implement a new performance ratings or awards system, the Employer will provide notice to NTEU in accordance with the statute and the parties' Collective Bargaining Agreement, and the opportunity to bargain to the extent authorized by law.

**Article 18  
Reserved**

**Article 19**

**Merit Promotion**

**Section 19.01**

- A. Personnel actions involving Bargaining Unit positions which require competition will be conducted using merit principles and in accordance with the provisions of this Article. Such personnel actions shall be compliant with this Agreement, applicable laws, rules, and regulations, and to the extent consistent with this Agreement, and DOE orders.
- B. The Employer may simultaneously post vacancy announcements for, and separately rate, rank and assess, as applicable, both Merit Promotion and Public Notice candidates for vacancies. The Employer shall provide first consideration to DOE Headquarters Employees for all Headquarters Bargaining Unit vacancies by considering the "best qualified" (BQ) eligible candidates for the position announced. However, the list of internal Best Qualified candidates will be referred first to the selecting official for final consideration. The Employer will make a final determination on the selection or non-selection for internal BQ candidates before receiving any information on the list of external BQ candidates. The Employer's decision to decline making a selection from the internal BQ candidate list will be reduced to writing, annotated on the BQ list certification, signed and dated.

**Section 19.02**

- A. The provisions of this Article apply to the following personnel actions:
  - 1. Permanent promotions, except for those listed in Section 19.02.B;
  - 2. Temporary promotions in excess of 120 calendar days and term promotions;
  - 3. Reinstatement to positions of higher grade or one having greater known promotion potential than the last non-temporary position held except when the employee is being reinstated from the reemployment priority list;
  - 4. Transfer to a higher graded position or to a position with greater known potential than the position currently held;

5. Reassignment or demotion to positions with known promotion potential greater than the employee's current position (except as required by reduction in force regulations);
6. Selection for training required to prepare an employee for promotion (i.e., when eligibility for promotion depends on whether the employee has completed training);
7. Selection for career ladder target positions; and
8. Details of more than 120 consecutive calendar days to higher graded positions or positions with known promotion potential.

B. This Article does not apply to the following personnel actions:

1. Re-promotion to the same or a lower grade than one from which an employee was demoted involuntarily and without personal cause. Acceptance of a downgrade in lieu of separation in a reduction in force and a demotion due to a classification error are not voluntary demotions;
2. A position change required by reduction in force regulations;
3. Selection of a candidate from the reemployment priority list even to a position at higher grade than the one held in the competitive service;
4. A promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification standard or the correction of a classification error;
5. A career promotion when, at an earlier stage, the employee was selected from an OPM register or was selected under competitive promotion procedures for a position intended to prepare the employee for a full performance level position at a higher grade level. The opportunity for further promotion must be made a matter of record and the existence of career ladders must be documented;
6. A career promotion resulting from an employee's position being reclassified at a higher grade because of additional duties and responsibilities;
7. A position change from one position having known promotion potential to another position having no higher potential;
8. A temporary promotion of 120 days or less;
9. A detail of 120 days or less even if to a higher graded position or a position with greater known promotion potential;

10. A conversion to permanent promotion or reassignment from temporary promotion or detail if:
  - a. the detail or temporary promotion was made initially according to competitive procedures; and
  - b. the fact that it might lead to a permanent promotion or reassignment was stated in the vacancy announcement.
11. A career ladder promotion following noncompetitive conversion of a Student Career Experience Program student in accordance with Federal regulations; and
12. Promotion of a candidate not given proper consideration in a previous competitive promotion action, and therefore entitled to priority consideration. This will be given one time to a position at the same grade level and with equivalent promotion potential to the position for which the employee was improperly considered.

### **Section 19.03**

- A. Announcements will be listed in an on-line recruitment system, such as “USA Jobs.”
- B. DOE will provide the NTEU Chapter President and Executive Vice President a weekly listing of new announcements, an electric copy of each announcement or a working link to the announcement.
- C. DOE vacancies will be open for the amount of time necessary to attract a diverse pool of highly qualified candidates, normally ten (10) workdays.
- D. The Employer will ensure that vacancy announcements adhere to OPM/USAJOBS directives and will at a minimum contain:
  1. announcement number;
  2. opening and closing dates (if open, the announcement will so indicate);
  3. position title, series, grade, including bargaining unit status;
  4. organization location and duty station;
  5. known noncompetitive promotion potential;
  6. area of consideration and whether applications will be accepted from outside the area of consideration;
  7. principal duties, including the amount of travel;

8. qualification standards and any selective placement factors;
  9. evaluation methods and ranking factors;
  10. procedures for applying, including where to obtain assistance in reviewing, researching and/or applying for on-line vacancies; how applicants may apply and where they can locate the competency questions. The posting of vacancy announcements will be circulated by electronic means only. Employees who wish to be considered will be informed that the on-line application submission system is the exclusive method of application;
  11. statement of equal employment opportunity; and
  12. number of positions expected to be filled, or a statement may be added to the effect that if an additional position in the same grade, series, major duties and basic qualifications opens up within 90 days of the issuance of the original selection certificate, more than one selection may be made from that selection certificate.
- E. If the Employer identifies or is notified that the electronic application system being used is non-compliant with Sections 508 or 501 of the Rehabilitation Act, the Employer will inform NTEU of this notification and provide applicants with application processes that are compliant with Section 508 and 501 of the Rehabilitation Act.
- F. If a vacancy announcement is canceled and/or re-advertised, the reason for the cancellation and/or re-advertisement shall be noted on the selection certificate and/or made a part of the merit promotion file. Additionally, the Employer will provide the NTEU Chapter President and Executive Vice President for both Chapters and all applicants for the position notification of the cancellation/re-advertisement, and the reason for that action.
- G. In any merit promotion competitive action where the minimum qualification requirements are being substantively changed from previous announcements of the same position in the same office, a notice of the substantive change will be noted on the announcement.
- H. In event that "USA Jobs" is unavailable due to service maintenance, upgrade, etc., the Employer will immediately notify the Chapter Presidents and Executive Vice Presidents that USA Jobs is unavailable, the reason (if known), and estimated duration, and what if any guidance or information OPM is providing impacted agencies, including any OPM announcement of service disruption. In such a circumstance the Employer shall take the following actions plus any other protections/ameliorative actions suggested or directed by OPM:
1. If applicable, the open period will be tolled for the duration of the outage and will resume when service is restored. The Employer shall post a notice on its main internet page with a list of all DOE announcements impacted by the outage.

2. If the Agency is made aware that certain Employees were impacted by an outage, the Employer will provide further instructions to impacted Employees if necessary and will provide this information to the NTEU Chapter President or his or her designee.
- I. In the event the Agency seeks to replace USA Jobs, or the Employer identifies a need to establish a new merit promotion selection process, it will provide NTEU with notice and opportunity to negotiate as required by Article 13 of this Agreement, law, rule, and regulation.

#### **Section 19.04**

- A. Any candidate who wishes to be considered for an announced vacancy will submit an application using the on-line recruitment system. Only candidates who register for the on-line recruitment system will be notified electronically of new announcements of similar positions. No automatic consideration will be granted. A separate application for each vacancy announcement must be submitted via USA Jobs on or before the announcement's closing date. Applications must be submitted by midnight Eastern Time on the closing date. The on-line system will be used to notify candidates of the status of the application via e-mail at various stages of the process, i.e., after initial receipt of the application and after the on-line assessment of the employee's application, etc.
- B. Each applicant must have an individual on-line account. In the event that an absent employee does not have access to the internet e.g., military service in a remote location or medically incapacitated) and notifies the servicing HR Specialist identified on the vacancy announcement prior to the closing date, the Employer shall make accommodations to allow the employee to apply by alternate means.
- C. The Employer will consider Employee requests for time to apply and interview for Agency vacancies during the work day.

#### **Section 19.05**

Determination of an employee's eligibility for an advertised position will be accomplished through an on-line self-certification process that will require an applicant to respond to a series of questions. The servicing HR Specialist will screen an applicant's experience against the appropriate OPM Qualification Standards. The HR Specialist's screening of an applicant's experience may be reviewed by an appropriately qualified independent subject matter expert (SME). The SME will not be the selecting official or the supervisor of the position that is the subject of the announcement quality review, in determining overall rating and ranking.

#### **Section 19.06**

Upon request, the Employer shall provide NTEU with copies of merit promotion selection certificates and the signed and dated selection/non-selection information for the position.

#### **Section 19.07**

NTEU will be provided, upon request, a copy of the competency questions used in a vacancy and a copy of the announcement.

#### **Section 19.08**

- A.** After the Employer has completed the rating and ranking process, the Employer shall refer the Employees with the highest scores among all eligible candidates, as determined by a natural break in scores, and certify them as “Best Qualified” (BQ). Those employees will be put on the best qualified list in alphabetical order and shall be forwarded to the Employer’s designated selecting official for selection consideration.
- B.** The employer’s designated selecting official will make a decision to select or not select within thirty (30) calendar days of receiving the best qualified list. Selection certificates automatically expire 30 calendar days after issuance. The selecting official may request an extension for an additional 30 calendar days. In unusual cases, a second 30-day extension for a maximum time limit of 90 days from the initial date of issuance may be approved by the servicing personnel office. Prior to any extension, NTEU will be provided notification of requests for such extensions, to include the justification for making the request.
- C.** The employer’s designated selecting official, in reaching a decision to select one of the candidates, will objectively review the merits of each candidate. Selections will be made in accordance with Merit Promotion Principles stated in 5 USC 2302.
- D.** After a selection has been made, all applicants will be notified of their specific status in the ranking and the name of the selectee will be made available upon request.
- E.** An employee identified by the Employer as ineligible for a vacancy may request and be provided the following:
  - 1. A description of the qualification(s) of the position for which the Employee applied and was found to be ineligible;
  - 2. A list of the minimum qualifications that the Employee failed to meet; and
  - 3. Information on what action(s) (e.g., courses of study, experience, time in grade, etc.) that the Employee needs to complete in order to meet those qualification; and

- F. Upon request by the Employee, the Employer shall consider approving the addition of the action(s) identified in Section 19.08E3 to the Employee's individual development plan (IDP).

#### **Section 19.09**

- A. Normally, an employee who has been selected for a promotion will have the promotion become effective no later than one complete pay period following the selection or the date the position is vacated if the selection was made in advance of the position being available. Positions will not be canceled or re-advertised after an employee has been offered a position absent some factor beyond the Employer's control, e.g., a Congressional budget decision. Upon request, the factor and any supporting documentation will be shared with NTEU.
- B. Employees may be entitled to retroactive pay in connection with improper personnel actions in accordance with applicable laws and government-wide regulations.
- C. If, as the result of a grievance being filed under this Agreement, either the parties agree or an arbitrator decides that an employee was not awarded proper consideration in a previous competitive action, then corrective action will be taken in accordance with the following principles:
  - 1. If the employee was erroneously omitted from the best qualified list, the employee will receive priority consideration for the next appropriate vacancy for which the employee is qualified. An appropriate vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion opportunities as the position for which the employee received improper consideration. Priority consideration involves, in addition to the above, the submission of the employee's name alone on a certificate before the selecting official reviews the qualifications of all other competitive candidates.
  - 2. In the event that two or more employees are entitled to priority consideration for the same vacancy, the names of all such employees shall be submitted on a single promotion certificate to the selecting official.
- D. As stated in Section 19.02.B.1. employees who are demoted involuntarily and without personal cause, either because of a reduction in force or a reclassification, may be re-promoted non-competitively. In addition, they will be given priority consideration for positions for which they are qualified under the same procedures set forth in Section 19.09.C 1. above for employees not given proper consideration in a previous competitive action.

#### **Section 19.10 – Career Ladder Promotions**



Prior to the date an employee in a position with noncompetitive promotion potential to the full performance level is eligible for promotion to a higher grade level, the employee's performance will be reviewed by the supervisor to determine whether the employee has demonstrated the potential to perform at the next higher grade level. Employees certified as capable of satisfactorily performing at the next higher grade level will be promoted effective the first pay period after having met the minimum time-in-grade requirement.

#### **Section 19.11**

If an employee is promoted and subsequently within a year is demoted for inability to perform at a higher level, the Employer agrees to make reasonable efforts to return the employee to the same position from which promoted or a like position as soon as is practicable.

#### **Section 19.12**

An employee's accumulation or balance of annual or sick leave may not be considered by a promotion panel or selecting official as the basis of selection or non-selection.

#### **Section 19.13**

The Employer will maintain promotion and selection files for two (2) years in accordance with DOE Order 320.1 and Office of Personnel Management regulations 5 CFR § 335.103(b)(5).

#### **Section 19.14**

In the processing of grievances related to actions taken under the terms of this article, NTEU will be furnished sanitized copies of any pertinent evaluative material used by any ranking panel, immediate supervisor, selecting official, or other person evaluating the employee/applicant for the grieved promotion action, upon request.

#### **Section 19.15**

Prior to selection for promotion, an employee's security clearance will not be a factor in determining the employee's eligibility for promotion unless there is good reason to believe that the clearance will not be granted or there would be too great a delay in processing the clearance.

## **Article 20**

### **Details and Temporary Promotions**

#### **Section 20.01**

- A. For the purposes of this Article, a detail is a temporary assignment for a specific period of time of a bargaining unit employee to a set of duties and responsibilities, within the bargaining unit, different from the ones permanently assigned. A detail may be at an equal, higher or lower grade level than the employee's permanent position. There will be no adverse impact on an employee who is detailed to a lower graded position. Upon completion of the detail, the employee returns to his or her permanent position.
- B. Details of more than thirty (30) days are documented on a Standard Form 52, Request for a Personnel Action. Employees to be detailed are to be given as much notice of details as possible, including any changes in performance expectations, awards criteria, pay levels, length of the detail, reporting structure as well as a copy of any documentation relevant to the detail. If a detail is extended beyond its original length, such an extension will be documented. In making details, the parties will be mindful of their obligations under Article 37.02 F and J.

#### **Section 20.02**

- A. An employee who is assigned to a higher-graded position for more than one pay period will be temporarily promoted instead of detailed if the employee is otherwise eligible for the promotion.
- B. If the Employer determines that a higher-graded detail of less than 120 calendar days could be performed equally well by any number of qualified employees within the organization, the Employer shall solicit volunteers from the qualified employees within the organization. If there are more volunteers than available details, the Employer shall offer the detail(s) to the qualified volunteer(s) with the most federal service. If there are insufficient volunteers, the Employer shall select the qualified employee(s) with the least Federal service to perform the detail. The Employer shall rotate the higher-graded detail(s) among qualified volunteers in an organization.
- C. Details to higher-graded positions or positions with known promotion potential, and temporary promotions longer than 120 calendar days shall be filled through the competitive procedures of Article 19 - Merit Promotion - of this Agreement.
- D. Details that are a part of a formalized training/development program (e.g., formal intern programs) may be excluded from the aforementioned solicitation process.

#### **Section 20.03**

- A. When an employee is detailed to a higher-graded position for more than 30 calendar days, but is not eligible for a temporary promotion, the employee's performance in the

higher-graded position may be cause for an award nomination. Supervisors are encouraged to give this serious consideration.

- B. Details under these circumstances will not exceed 120 days.
- C. When the rotation of employees through higher graded positions has the effect that compensation at the higher grade is avoided, the Employer will comply with the provisions of Section 20.02 of this Article, Article 37 of this Agreement, 5 USC 2302, or any other law, rule or regulation.

#### **Section 20.04**

The Employer is responsible for determining which employees will be detailed to lower-graded positions. However, if the Employer determines that the detail could be performed just as well by one or more employees, the employee from that group who wishes to do the work and who has the most Federal service will be detailed. If no employee in that group wants the detail, the employee with the least Federal service will be detailed. There will be no adverse impact on an employee who is detailed to a lower grade.

#### **Section 20.05**

The Employer shall not assign an employee to a detail with unclassified sets of duties that extend beyond 120 days.

#### **Section 20.06**

An employee may file a grievance over any violation of this Article pursuant to Article 11, the negotiated grievance procedure.

#### **Section 20.07**

- A. Employees may request to be detailed or not to be detailed at any time. The Employer is obligated to consider such requests, but is under no obligation to grant such a request.
- B. When an Employee can demonstrate a significant hardship exists which would be relieved by a detail to a vacant position for which he/she is qualified and management chooses to fill, the Employee will be detailed unless management presents just cause to preclude the detail, e.g., a less than fully satisfactory performance appraisal, or substantial workload disruption. The current and future positions must be in the same series, grade, title, and have interchangeable duties.

## **Article 21**

### **Reassignments**

#### **Section 21.01**

A. Employees may request to be reassigned or not to be reassigned at any time. The Employer is obligated to consider such requests, but is under no obligation to grant such a request.

B. When an employee can demonstrate a significant hardship exists which would be relieved by a reassignment to a vacant position for which he/she is qualified and management chooses to fill, the employee will be reassigned unless management presents just cause to preclude the reassignment, e.g., a less than fully satisfactory performance appraisal, or substantial workload disruption. The current and future positions must be in the same series, grade, title, and have interchangeable duties.

C. When an employee can demonstrate a significant hardship exists which would be relieved by a reassignment, he/she may exchange positions with another employee who agrees to the exchange so long as they occupy interchangeable positions (same series, title, grade and duties) and management does not present just cause to preclude the reassignment, e.g., a less than fully satisfactory performance appraisal, or substantial workload disruption.

#### **Section 21.02**

An employee who is going to be reassigned will be given as much advance notice as possible.

#### **Section 21.03**

The Employer agrees that where an employee has been reassigned due to the abolition of the employee's position, the employee will be given priority consideration for that position (same location, if possible) upon request should the Employer reestablish that position within one year. When a position is to be reestablished, affected employees will be given reasonable advance notice.

## **Article 22**

### **Reduction in Force**

The Parties recognize that a Reduction in Force (RIF) is highly disruptive to managers and employees alike and they are committed to working in good faith collaboration to aggressively mitigate the need for or the severity of a RIF. Consistent with this commitment, a union-management committee will begin meeting as soon as the Employer anticipates that there may be a need for a RIF, e.g., if it appears that a Congressional subcommittee proposes budget cuts that could result in a RIF. The union-management committee will consider the missions and functions of positions, and will consider discretionary managerial and budgetary mechanisms immediately available to relieve funding shortfalls and employee reductions. The committee will include agency representatives that have the authority to make decisions that could mitigate the need for or the severity of the potential RIF, such as facilitating the placement of employees

outside of the affected organization, and make final RIF decisions. The committee will be the primary vehicle used to monitor the RIF.

## **Section 22.01**

### **Notice to NTEU.**

- A. The Employer agrees to notify NTEU of any reduction in force (RIF) as far in advance as possible and before the notification of affected employees, and will furnish information about potential RIFs as soon as information is available, even if the information is not finalized. Such information shall include the reason for the RIF, the proposed effective date, the particular competitive area initially affected, initial competitive level definitions, the criteria used to identify the positions to be abolished, vacancies filled during the process, the retention registers involved, including a master retention list, the list of abolished positions, and the OPM authorization for the RIF, if obtained. Management will continue to provide information to the Union throughout the RIF process as it is developed and revised.
- B. Likewise, the Employer will make all reasonable efforts to keep employees in a competitive area anticipating a RIF generally informed of all relevant developments and decisions, including at a minimum a written announcement by the Head of the Headquarters Element, or designee, of the need for and decision to begin formal RIF planning and at least one informational briefing.

## **Section 22.02**

**Briefing.** Upon request by NTEU, the Employer will provide a briefing on the conduct of the RIF.

## **Section 22.03**

**Official Time.** As provided under Article 7, NTEU representatives will receive a reasonable amount of official time to participate in any meetings, briefings or negotiations with the Employer which may result due to an anticipated RIF.

## **Section 22.04**

Any RIF will be carried out in accordance with law, regulations, DOE Order 320.1, and this Article.

## **Section 22.05**

**Mitigation Strategies.** The Employer will use all practicable options and measures to minimize the adverse impact of any reduction in force. Such measures may include, but not be limited to: the use of attrition or requests for buyout and early retirement opportunities, aggressive placement assistance throughout Headquarters and in other agencies, freezes on outside hiring, retraining, and significant cost cutting (e.g., travel, performance awards and furloughs). Whenever feasible, vacancies will not be filled

from outside the affected organization if employees facing separation are qualified and available for the vacancies.

#### **Section 22.06**

The Employer will provide NTEU and employees who are issued certificates of expected separation, or specific RIF notices, with information concerning the full array of entitlements and benefits that accrue to employees under law, regulation, and this Article, including information on retirement options, severance pay, appeal rights, priority selection and repromotion, etc.

#### **Section 22.07**

Prior to the conduct of a reduction in force, all positions within the competitive area must be assigned to a competitive level.

#### **Section 22.08**

##### **Review of Records.**

- A. The Employer will advise employees in a competitive area in which a RIF is anticipated that they should avail themselves of the opportunity to review their Official Personnel Folder (eOPF) to ensure the accuracy and completeness of the information contained therein. A reasonable amount of official administrative time will be provided for this purpose. The Employer will ensure that the employees have the opportunity to review retention data before assignment rights are determined and specific notices are issued.
- B. Employees may also have a reasonable amount of administrative time to review documents related to their reduction in force action. Employees who have been issued a specific reduction in force notice, and their designated representative, are entitled to review any completed records used by the Employer in a reduction in force action that has been, or will be taken, against the employee including:
  - 1. the complete retention register information with the released employee's name and other relevant retention information (including the names of all other employees listed on that register, their individual service computation dates and their adjusted service computation dates) so that the employee may consider how the Employer constructed the competitive level, and how the Employer determined the relative retention standing of the competing employees; and
  - 2. the complete retention register for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights (e.g., registers to which the released employee may have potential assignment rights under Sec. 351.701(b) and (c) of the RIF regulations).

## **Section 22.09**

### **Retention Register.**

- A. The Employer will provide NTEU with two copies of the retention register used in determining assignment rights prior to the issuance of specific RIF notices. The Employer will provide NTEU with updated information concerning the RIF (such as additional positions affected, revised effective dates), and, should they be employed, the results of all trial runs (i.e., "mock RIF" data), as soon as such information is available.
- B. Subsequent to providing NTEU with copies, yet before issuance of specific notices, the Employer shall make the retention register available for visual inspection by employees in a competitive area in which a RIF has been announced.
- C. Upon request, the Employer shall provide NTEU with timely data that show the numbers of employees who are issued certificates of expected separation and specific RIF notices. For each employee for whom the information is available, the Employer will identify the employees by race, national origin, gender, disability status, and age (40 and older).

NTEU will have up to ten work days after receiving the data to submit ideas to the Employer on minimizing the potential adverse impact of a proposed RIF on protected classes of employees. At the completion of a RIF, the Employer will provide NTEU with a report on the numbers of employees in protected classes who were affected.

## **Section 22.10**

**Retention Standing.** When two or more employees are tied in retention standing, i.e., two employees in the same subgroup have the same service computation date, and one or more but not all tied employees must be released from the competitive level, the Employer shall break the tie on the basis of:

- A. length of DOE service, and if a tie remains;
- B. time within grade, and if a tie remains;
- C. by lottery.

## **Section 22.11**

**Assignment Offer Deadline.** An employee will be given five (5) calendar days in which to accept or reject an assignment offer made pursuant to this section.

## **Section 22.12**

**Notice to the Affected Employees.**

A. Employees identified as being affected by a reduction in force shall be provided written notice between ninety (90) and sixty (60) calendar days before the effective date of a reduction in force action. When circumstances not reasonably foreseeable necessitate that the Employer request approval from OPM to shorten the notice period, the Employer will consult with NTEU about the circumstances. In no case shall a notice be issued less than 30 full calendar days prior to the proposed effective date.

B. Employees affected by a reduction in force shall have the opportunity to meet with a Headquarters servicing personnel office representative, to discuss the action and the information related to the employee's RIF action.

## **Section 22.13**

### **Career Assistance.**

A. The Employer shall provide surplus and displaced employees the full range of career transition assistance services mandated by OPM's Career Transition Assistance Plan regulations and applicable Departmental directives on Priority Placement and Career Transition Assistance.

B. The Employer shall provide employees who are downgraded in a RIF with the full range of priority consideration provided under applicable Departmental directives.

C. The Employer shall provide employees with specific notices of separation and former Headquarters employees who were separated through RIF procedures the full measure of priority reemployment services afforded by OPM's regulations and applicable Departmental directives.

D. The Employer will provide employees with information on how to apply for jobs using the Interagency Career Transition Assistance Plan (ICTAP).

E. The Employer will provide employees with a full range of outplacement assistance and services. These services may include, but are not limited to:

1. assistance in computer-based resume preparation and vacancy announcement searches;
2. workshops on interviewing skills and/or transitioning to the private sector;
3. Employee Assistance Program (EAP) counseling services and private referrals;
4. individual retirement counseling; and
5. information on local outplacement assistance agencies.



Under the Department's Career Transition Assistance Plan, surplus and displaced employees are allowed a minimum of 40 hours of excused absence to use the facilities and services provided, and to conduct job interviews. Each employee separated through RIF procedures will have access to available and established transition services for 90 days after separation where such services are made available to bargaining unit employees and such access will not result in additional cost to the Agency.

#### **Section 22.14**

**Appeals.** This agreement does not affect the entitlement of employees to file appeals contesting reduction in force actions to the Merit Systems Protection Board.

#### **Section 22.15**

**Grade and Pay Retention.** An employee who is downgraded as a result of a reduction in force action and who is otherwise eligible shall receive grade and pay retention benefits in accordance with 5 U.S.C. 5362 and 5363, and applicable regulations.

#### **Section 22.16**

- A. The Employer will provide NTEU with a report on each RIF as soon as practicable following the effective date of a RIF with the following information (electronically, if available):
  - 1. Name, series and grade of employees reassigned;
  - 2. Name, series and grade of employees downgraded;
  - 3. Name, series and grade of employees separated;
  - 4. A list of all vacancies filled during a RIF;
  - 5. The information in A1 through A4 will also be provided by race, national origin, gender, disability status, and age to the extent that information is available.
- B. Six months after a RIF, the Employer will provide NTEU with a report containing the numbers of employees rehired and their job series.

#### **Section 22.17**

The parties agree to bargain over competitive areas for reductions in force to the extent allowable by law, in accordance with the provisions of Article 13. If the Employer decides to change competitive areas, it will notify NTEU and honor all of its bargaining obligations before the change is effected.

#### **Section 22.18**

Nothing in the Agreement shall be construed to limit NTEU's right to bargain over any and all negotiable issues relating to a RIF that are not expressly addressed in this Article.

## **Article 23**

### **Training and Development**

#### **Section 23.01**

Training and development of employees is a matter of significant importance to fulfilling the mission of the Department. Appropriate training and career development of employees, as determined by the Employer and as funds permit, will continue to be provided insofar as they foster effective and efficient operations. Employees are encouraged to discuss any training they feel is appropriate with their immediate supervisors. The DOE Headquarters Training Office training officials are available to advise employees and their supervisors regarding available training courses.

#### **Section 23.02**

The DOE Headquarters training officials can assist employees with regard to how to access all available Government and non-Government training opportunities (for example, educational programs provided by the Office of Personnel Management, the Department of Agriculture, and distance learning opportunities). A link to DOE training opportunities will be distributed at least quarterly throughout DOE Headquarters. Employees are encouraged to review training opportunities, including those on the Online Learning Center ("OLC") and apply for the training opportunities they feel will aid in their self-development.

#### **Section 23.03**

Employee requests to attend training courses at DOE Headquarters facilities during duty hours will be considered. Training requests must be initiated, approved, and authorized in accordance with DOE's training policy and/or procedures and any applicable training agreement (e.g., a supervisor approves the training, a designated official authorizes the training request, and the employee ensures completion of the training).

#### **Section 23.04**

Employees who have obtained necessary approval from the Employer for training courses outside DOE Headquarters facilities will be reimbursed for authorized expenses.

#### **Section 23.05**

Employees who take preparatory courses which are approved by their supervisors for job-related professional certification or licensing will be reimbursed for any authorized related expenses.

### **Section 23.06**

When training is required for promotion, selection for the training must be made in accordance with merit based selection processes, as required by federal statute and regulation.

### **Section 23.07**

A. Opportunities for participation in training courses will be equitably distributed among eligible employees. Generally, when the Employer is unable to accommodate all applicants for available training courses approved or established by the Employer, and financed in whole or in part by the Employer, available slots will be prioritized according to mandatory technical qualification requirements, followed by the individual development plans (IDPs), which are established as a part of the annual individual skills needs assessments. Exceptions to this rule will be discussed with NTEU (these may include, but are not limited to, such training as that required under Performance Improvement Plans or to accommodate a qualified handicapped employee, or as part of rotational internship programs or needed training in new and developing technologies).

B. Each employee will receive a copy of the written annual skills needs assessments performed by his/her supervisor, during their performance appraisal discussion.

C. Applications not accommodated will be given priority consideration if/when the same course is repeated.

### **Section 23.08**

Employees who are, under applicable law or regulation, required to attend continuing education courses in order to maintain certification or license to practice shall be reimbursed for the cost of such courses and travel if:

A. the courses are directly related to the performance by the employees of their official government duties; and

B. the courses meet the other specifications enumerated in the Government Employees Training Act.

### **Section 23.09**

The Employer will distribute schedules and detailed descriptions of upcoming training opportunities to all employees by DOECAS and the On-line Learning Center (OLC). The Employer agrees to provide for job-related training and career development programs which make mentoring and developmental details or training assignments available to Headquarters employees.

### **Section 23.10**

The Employer will make training officials and relevant information resources accessible during normal working hours to employees in the Germantown facility as well as in the Forrestal Building.

### **Section 23.11**

The Employer will provide DOE-sponsored training in both the Germantown facility as well as the Forrestal Building.

## **Article 24**

### **Overtime and Compensatory Time**

#### **Section 24.01**

##### **A. Overtime:**

- 1) Overtime is defined in 5 CFR § 550.111 and DOE O 322.1C - Pay and Leave Administration and Hours of Duty (January 19, 2011).
- 2) Overtime for Fair Labor Standards Act (FLSA) *exempt* employees must be authorized and approved in advance in writing.
- 3) Overtime for Fair Labor Standards Act (FLSA) *non-exempt* employees will be ordered and permitted only when essential work cannot be accomplished during an employee's normal working hours.

##### **B. Compensatory Time:**

- 1) Employees who are *exempt* from the Fair Labor Standards Act (FLSA) may earn compensatory time off in lieu of overtime pay under 5 CFR § 550.113 and are subject to the Office of Personnel Management's (OPM) compensatory time off regulations at 5 CFR § 550.114, DOE O 322.1C - Pay and Leave Administration and Hours of Duty (January 19, 2011).
- 2) Employees who are *non-exempt* from the Fair Labor Standards Act (FLSA) may earn compensatory time off in lieu of overtime pay under 5 CFR § 551.501 and are subject to the Office of Personnel Management's (OPM) compensatory time off regulations 5 CFR § 55.0114 and DOE O 322.1C - Pay and Leave Administration and Hours of Duty (January 19, 2011).

#### **Section 24.02**

- A. Extended or regular overtime assignments are not appropriate to permanently correct staffing imbalances.

- B. When the Employer determines that overtime or compensatory time is needed to perform work that meets the current definition established by the Office of Federal Procurement Policy (OFPP) as constituting either inherently governmental duties (i.e., a function that is so intimately related to the public interest as to require performance by federal government employees) or “critical functions” (i.e., a function that is necessary to the agency to perform well and maintain control of its mission and operations and that are typically critical functions which constitute recurring and long term duties) which is normally performed by a bargaining unit Employee, the Employer shall ensure that the overtime or compensatory time work is first offered to the bargaining unit Employee assigned those duties.
- C. Upon request, the Employer will release an employee from an overtime assignment if a qualified replacement is available and willing to work. Upon request, the Employer will consider documented health conditions and extreme hardships when assigning overtime. Furthermore, the parties agree that overtime assignments should not normally be required if the employee shows that the overtime assignment will impair his or her health or would cause an extreme hardship. If the Employer denies an employee’s request under this provision, the Employer will provide the requesting employee with a written statement that contains the reasons why the Employer has denied the employee’s request.

#### **Section 24.03**

- A. When the Employer requires employees to work overtime assignments, the Employer will provide as much advance notice to the affected employees as possible.
- B. The Employer is responsible for determining which employees will work overtime assignments. However, if Management determines that the overtime assignment could be performed just as well by one or more employees, the employee from that group who wishes to do the work and who has the most Federal service will be given the assignment. These provisions will not apply when overtime assignments are frequent. In that case, the assignments will be rotated among the interested employees in the group, or if no one is interested, among all the employees in the group.

#### **Section 24.04**

- A. While the Employer reserves the right to provide employees notice that no overtime work may be performed by either exempt or non-exempt employees, nothing in this Article precludes or impairs Fair Labor Standards Act (FLSA) exempt employees from filing a claim for “induced” overtime or FLSA nonexempt employees from filing a claim for “suffered or permitted” overtime.

Example: If a nonexempt employee performed work for the benefit of the DOE and the supervisor knew or had reason to believe that the work was being performed and the supervisor had an opportunity to prevent the work from being performed, the work may be considered "suffered or permitted" and be compensable.

B. Nothing in this section precludes or impairs an employee from filing a claim for "induced" overtime.

#### **Section 24.05**

Compensatory time for travel outside an employee's normal duty hours is covered in Article 34.02 of this Agreement.

#### **Section 24.06**

- A. The Employer shall ensure that all overtime worked will be reported in fifteen (15) minute increments.
- B. Under the FLSA, a nonexempt employee must be compensated for every minute of work performed during his/her regularly scheduled administrative workweek, including regularly scheduled overtime.
- C. When irregular or occasional overtime work is performed in other than the full fifteen (15) minutes, any overtime worked for seven (7) minutes or less will be rounded down, and any overtime worked for more than seven (7) minutes will be rounded up.

#### **Section 24.07**

- A. Employees shall earn compensatory time in accordance with applicable rules and regulations.
- B. Compensatory time may be earned and used in quarter hour increments.
- C. The Employer will post a link to the C.F.R. or other regulations cited in or related to *DOE O 322.IC - Pay and Leave Administration and Hours of Duty* (January 19, 2011) on the same page as the *DOE O 322.IC* on the DOE website.
- D. Compensatory time off will be approved for *exempt* and *non-exempt* employees in lieu of payment for irregular or occasional overtime worked when requested and permitted under applicable laws and regulations to the maximum extent possible.
- E. Compensatory time shall be taken before annual leave is scheduled, unless "use or lose" annual leave is available.
- F. Accrued compensatory time is to be used within 26 pay periods from the date earned to avoid payment of overtime at the end of the 26<sup>th</sup> pay period following the date earned.
- G. Accrued compensatory time will be paid at the employee's rate of pay at the time the compensatory time was earned.

- H. All compensatory time earned but not used within the 26 pay periods after it is earned will be converted and the Bargaining Unit Employee shall receive payment for that unused compensatory time off at employee's rate of pay at the time it was earned irrespective of their FLSA status (i.e., *exempt* and *non-exempt*).
- I. Employees are limited to carrying over 80 hours of compensatory time from one pay-period to another, except when an exigency is declared by the Employer.

#### **Section 24.08**

Employees may elect either to be paid for irregular overtime worked or to be granted compensatory time off in lieu of overtime pay, unless they must be paid under FLSA. When the employee's annual and compensatory time leave balance would create a leave scheduling problem, the employee will be paid for the overtime and not given a choice to elect compensatory time.

#### **Section 24.09**

Compensatory time earned will be equal to the time spent in overtime work on an hour-for-hour basis. Compensatory time must be used before annual leave. Employees and supervisors will make every effort to ensure that accrued compensatory time is used within 26 pay periods of date earned. However, compensatory time earned, requested and not granted within 26 pay periods of the pay period in which overtime was worked shall be paid as overtime.

#### **Section 24.10**

- A. When a grievance has been filed involving this Article, the Parties agree that, upon written request, relevant records of overtime assignments will be provided to a grievant and/or his/her Union representative.
- B. Upon request the Employer shall provide the Union with records of overtime and compensatory time worked by bargaining unit employees for any specified period of time. In the event the Union makes such a request the Employer shall provide the Union with the requested information within a reasonable amount of time. The Union's request under this provision shall be made pursuant to 5 USC § 7114(b)(4) and shall toll all grievance/appeal timeframes as described in Article 11.

### **Article 25**

#### **Hours of Work and Work Schedules**

#### **Section 25.01 - General**

- A. All provisions of this Article shall be administered by the parties consistent with the provisions of 5 USC § 6120, *et seq.*, and all other applicable laws, rules, and regulations.

- B.** In addition to a “regular” five-day per week, eight-hour per day schedule, there are two categories of Alternate Work Schedules (AWS) available to bargaining unit employees: compressed work schedules (CWS) and flexible work schedules (FWS).
- C.** The availability of AWS described in this Article will be consistent with the work requirements of the Employer.
- D.** Decisions on Employee requests will be made by the Employee’s immediate supervisor. Denials will be provided in writing to the requesting Employee and will identify the rationale for the decision. NTEU will be provided a copy of any denials upon request.
- E.** Individual supervisors may require Employees to sign in and sign out or otherwise document their start and stop time each day, including a daily direct entry, in the supervisors’ absence.
- F.** AWS, as described in this Article, are tours of duty available to all eligible bargaining unit Employees who are stationed in the Washington, DC area, which includes Germantown, MD.
- G.** Eligible Employees working Telework may work any CWS or FWS provided in this Article.
- H.** Employees will normally be allowed to continue their AWS while on temporary assignment. However, prior to embarking on duty elsewhere (e.g., travel status, jury duty, court leave or training, etc.), an Employee and the leave approving official should discuss hours of work during the temporary duty assignment. Based on this discussion, the leave approving official will make a determination regarding whether the Employee should remain on their current AWS or modify that AWS for the duration of the temporary duty and advise the employee of that determination in writing. The Employer will ensure that Employees are compensated for all hours worked in accordance with law, rule, and regulation. Accordingly, Employees will not be expected to work hours beyond the approved schedule unless overtime or compensatory time is approved.

## **Section 25.02 – AWS Program Options**

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

1. Compressed Work Schedules (CWS) – CWS are fixed work schedules with a fixed day off and fixed start and stop times (i.e., CWS may not have different fixed starting and ending times on different days) but enable BU Employees to complete the basic eighty (80) hour biweekly work requirement in less than ten (10) workdays.
2. Five/Four-Nine (5/4-9) – This compressed work schedule tour has a fixed schedule within a pay period of nine (9) workdays which includes eight (8)



workdays of nine (9) hours each, one (1) workday of eight (8) hours and one (1) non-workday within each bi-weekly pay period.

3. Four/Ten (4/10) Work Schedule – This plan is a fixed schedule that includes four (4) 10-hour days and one (1) non-workday within a five day work week.
4. Overtime Hours for CWS: Overtime hours used with respect to compressed schedule programs under 5 USC §§ 6127 and 6128, means any hours in excess of those specified hours which constitute the compressed schedule.
5. Employees on a fixed CWS schedule may not “glide” or earn credit hours.

**B. Flexible Work Schedule (FWS) –**

1. Gliding Schedule:

- a. This FWS is also referred to as a sliding or sliding/gliding schedule which consists of five 8-hour work days, plus a daily lunch approximately half-way through the tour, 40 hours each week and 80 hours bi-weekly, with the core hours of 9:00 a.m. to 3:00 p.m.
- b. Employees must start by the beginning of the established core hours (or be charged for the absence) and depart by the end of the established flexible hours following the core hours.
- c. During the regularly scheduled work week, as long as not otherwise directed, a participant of the program may, on a daily basis, vary his or her arrival to work without prior supervisory approval and without charge to leave as long as:
  - 1) The Employee reports within a window of no more than one (1) hour before and one (1) hour after his or her scheduled reporting time, and
  - 2) The employee correspondingly adjusts his or her scheduled time of departure from work that day.
- d. This one hour window may be expanded on an as-needed basis with the approval of the supervisor.
- e. Overtime Hours used for FWS: overtime hours used with respect to flexible schedule programs under 5 USC § 6122 through § 6126 means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance.
- f. Employees must work 8 or more hours between 6 a.m. and 6 p.m., and Employees are not eligible for night pay for voluntarily working flexible hours between 6 p.m. and 6 a.m., including while earning credit hours.
- g. Credit hours may be authorized for this schedule.

## 2. Credit Hours

- a. Credit hours may be earned by an Employee working FWS in the following manner:
  - 1) Credit hours worked must be requested and approved in advance.
  - 2) Credit hours will be earned and taken in quarter-hour increments.
  - 3) Credit hours may be worked only by Employees on FWS after a supervisor has determined that there is a need for an Employee's services, upon request of the Employee, and approval by the supervisor when there is work to be done.
  - 4) Credit hours worked will not entitle Employees to overtime or night differential. If the Employee declines to work credit hours, he or she can be required to work and shall be compensated with either overtime and or compensatory time, if applicable.
  - 5) Supervisors may agree to schedule the accrual and use of credit hours on a long-term basis, e.g., quarterly or longer.
  - 6) An Employer may deny use of previously earned credit hours if such absence would interfere with work requirements.
  - 7) An Employee is entitled to his or her basic rate of pay for credit hours.
  - 8) With prior supervisory approval, an Employee may earn a maximum of two (2) credit hours per normal workday and up to twelve (12) credit hours on a non-workday during any bi-weekly pay period. A maximum of 24 credit hours may be accrued and carried over from one bi-weekly pay period to another bi-weekly pay period.
  - 9) With prior supervisory approval, credit hours may be worked non-contiguously to the Employee's regular work schedule and may be worked at an alternate worksite. For example, an employee may work at the regular work site between 7:30 a.m. and 4:00 p.m. (which includes 8 hours of work plus a lunch period), and return home and work 2 credit hours between 8:00 p.m. and 10:00 p.m. Any commuting time is off-duty time.
  - 10) Subject to law, regulations, and the terms and conditions of this Agreement, credit hours either alone or in combination with annual, sick, or compensatory leave, or leave without pay, may be used for a full day of absence.

11) Credit hours may not be earned while traveling. Employees on travel status are entitled to compensatory time for travel pursuant to applicable regulations.

12) Credit hours may not be used until earned, including during the same pay period in which they are earned. Credit hours that are not used within 26 pay periods of the pay period in which they are earned will be forfeited.

b. Employees may use credit hours in conjunction with a Gliding Schedule on a recurring basis to establish a regularly scheduled day off during subsequent pay periods, in accordance with 25.02 B. 2. (a)(5) above.

C. All employee work schedule options described above require that work not commence earlier than 6:00 a.m. or end later than 6:00 p.m. on the quarter hour.

### **Section 25.03 – Requirements**

- A. An Employee's work schedule request, including a request for specific starting or stopping times and/or regular days off, will be approved unless the request would interfere with work requirements, such as office coverage, participation in collaborative projects, or cost efficiencies. However, it is possible that based on considerations such as workload requirements, only a particular number of Employees may have the same day off. The Employer will attempt to accommodate an Employee's choice of regular days off and will consider Employee needs, and/or Employee hardship when deciding whether to accommodate an Employee's choice of regular day off. If an Employee's requested work schedule or regular day off cannot be approved, the process in Section 25.04C will be used to determine what schedule or days off an Employee will have.
- B. Participation in the AWS program is predicated on an Employee's performance on any critical element being at or above the equivalent of Meets Expectations, Fully Successful, or Level 3. The Employee must not have received any written disciplinary/adverse action in the last 6 months.
- C. Employer decisions regarding alternative work schedules may be grieved or otherwise appealed as allowed by law.
- D. Employees occasionally may be ordered to report for duty on their regularly scheduled day off by the Employer. In such circumstances and upon request, the leave approving official will provide an Employee with the workload rationale for the decision in writing. In accordance with Article 24, Employees may elect to be compensated at appropriate overtime rates of pay for actual hours worked or by the accrual and use of equivalent amounts of compensatory time off; or the Employee may switch his or her AWS day off.

- E. No employee will be forced to participate in an AWS program. If an Employee declines to do so, he or she will continue to work his or her existing tour of duty.
- F. The Employer may temporarily suspend the operation of the alternative work schedule program in all or any part of the Headquarters bargaining unit when workload emergencies require it. Such workload emergencies shall be specific and documented.

#### **Section 25.04 - Procedures for Establishing a Work Schedule**

- A. To establish a work schedule, each covered Employee is responsible for submitting to his/her first-line supervisor a written request for a bi-weekly eighty (80) hour work schedule corresponding to a standard pay period. Any workday within this schedule must commence no earlier than 6:00 a.m. and end no later than 6:00 p.m.
- B. This schedule, referred to as the work schedule, will provide, by pay period, for a total of eighty (80) work hours, plus daily lunch breaks, through any combination of workdays within the limits described above. An Employee's approved work schedule must be compatible with his or her duties.
- C. After receiving an Employee's written submission of proposed work schedule(s), the first-line supervisor will grant the Employee's first or second choice as long as workload and/or cost efficiency permits. Normally, within ten (10) workdays of their receipt of an Employee's work schedule request, the supervisor will provide the Employee with a copy of the approved work schedule that will become the Employee's established work schedule. In instances where an Employee's first choice schedule cannot be approved, DOE seniority Entry-On-Duty date (EOD) will be the determinative factor in breaking ties among qualified Employees, with further ties being broken by time in the work unit.
- D. The Employer will work with Employees to arrive at a mutually agreeable schedule. If the Employee's first or second preference cannot be granted, the supervisor will notify the Employee in writing as to the reasons for the denial. Thereafter, the Employee may resubmit his or her preference for a schedule as described in paragraph C above.
- E. It is of mutual benefit to Employees and the Employer to maintain a stable work environment; thus, an Employee's established work schedule will remain in effect unless modified in accordance with procedures set forth in this Article. An Employee may, with prior supervisory approval and consistent with this Article, make a temporary change in his or her schedule within a specific pay period without modification of the established work schedule provided that the requirement for eighty (80) work hours per pay period is still met.

#### **Section 25.05 - Changes in Work Schedules**

##### **A. Permanent Changes to Established Work Schedules**

- 1) An Employee may request a permanent change in his/her established work schedule in writing by submitting the request at least two full pay periods before the pay period in which the changes would be effective.
- 2) Where multiple Employees request the same work schedule and where the Employer does not identify any specific workload or cost efficiency requirements, staffing needs and/or expertise, the Employee with the earliest DOE Entry-On-Duty date will be given his or her first choice. Less senior employees will be given the next available identified preferred schedule or day off.
- 3) Where multiple Employees request the same work schedule and where the Employer has identified specific workload or cost efficiency requirements, staffing needs or expertise, the Employer will provide a written description of the workload requirements, staffing needs, and/or expertise to a requesting Employee or NTEU. In circumstances where the Employer has identified specific workload requirements, staffing needs, and/or expertise and the Employer's decision results in an Employee being required to change his or her AWS or regular days off the Employee with the earliest DOE Entry-On-Duty date will be given his or her first choice. Less senior Employees will be given the next available identified preferred schedule or day off.
- 4) Schedule changes will be approved or disapproved consistent with this Article.
- 5) The supervisor must notify the Employee in writing of his/her decision no later than the Friday before the beginning of the pay period in which the requested change would be effective if approved.
- 6) Changes approved by the supervisor will become effective on the first day of the next pay period, as specified in the Employee's request and approved by the supervisor.
- 7) Employees may request no more than four (4) permanent changes each calendar year.

#### **B. Temporary Changes to Established Work Schedules**

- 1) Employees may request temporary changes in work schedule (i.e., change of scheduled day off, tour of duty, etc.) from their supervisor.
- 2) Normally such requests will be made at least one (1) day in advance.
- 3) The supervisor will consider, and normally approve, such requests, so long as workload and cost efficiencies permit.
- 4) The supervisor will provide written confirmation (i.e., email) of any denial of a request for a temporary change to an established schedule.

### **C. Impact of Voluntary Changes on Other Employees**

Voluntary changes to work schedules will not be permitted if such changes would require other Employees in the work unit to change their schedules involuntarily.

#### **Section 25.06 – Lunch Schedules**

- A. Lunch Schedule – Employees will take an unpaid 30-minute lunch break, normally between 11:00 a.m. and 2:00 p.m., or at other times with supervisory approval.
- B. With supervisory concurrence, Employees on an FWS may extend or vary their lunch period, and compensate for this time accordingly.
- C. With supervisory concurrence, Employees not on an FWS schedule may extend their lunch hour by taking leave or compensatory time.

### **Article 26 Holidays**

#### **Section 26.01**

When the Employer requires the services of employees on an established holiday, the Employer will provide as much advance notice to the affected employees as possible.

#### **Section 26.02**

The Employer is responsible for determining which employees will work on holidays. However, if management determines that the holiday work could be performed just as well by one or more employees, the employee from that group who wishes to do the work and who has the most Federal service will be given the assignment. If no employee in that group wants to do the work, the employee with the least Federal service will be given the assignment. These provisions will not apply when holiday work is frequent. In that case, the assignments will be rotated among the interested employees in the group or, if no one is interested, among all employees in the group.

### **Article 27**

#### **Absence and Leave**

#### **Section 27.01 - General**

- A. The provisions of this Article apply to all employees regardless of marital status.
- B. Leave will be administered in accordance with DOE Order 322.1.C, except where that Order conflicts with this Agreement. Where there is such a conflict the terms of this Agreement shall control. Leave will be earned in one hour increments and used in fifteen minute increments.

C. Leave will be scheduled in such a manner so as to balance the needs of the employee and the accomplishment of work. Leave is to be granted whenever possible.

D. Employees will be notified annually of proper procedures for requesting leave.

E. Employees are encouraged to schedule leave in advance when financial commitments are involved.

F. Whenever language in this Article indicates that management will grant or employees will take or use administrative leave, leave without pay (LWOP), or advanced sick or annual leave it is understood that these are types of absences or leave categories which are subject to workload, staffing requirements, and managerial approval. Absent specific statutory or regulatory requirements, management retains the right to approve absences and employees' use of these types of leave consistent with the accomplishment of work and the Agency's mission.

G. For purposes of this Article (except with regard to leave pursuant to the Family Medical Leave Act (FMLA)), family member as used in this Article means an individual with any of the following relationships to the Employee:

1. Spouse, and parents thereof;
2. Sons and daughters, and spouses thereof;
3. Parents, and spouses thereof;
4. Brothers and sisters, and spouses thereof;
5. Grandparents and grandchildren, and spouses thereof;
6. Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of the definition found in 5 CFR § 630.201; and
7. Any individual related by blood or affinity whose close association with the Employee is the equivalent of a family relationship

#### **Section 27.02 - Annual Leave**

A. Requests may be made in amounts of leave accrued plus leave to be earned during the leave year as reflected in an Employee's biweekly statements of earnings and leave (SEL).

B. Employees should advise their leave approving official of leave they plan to take as soon as they decide they wish to take it.

- C. An Employee's use of annual leave is always at the Employee's discretion, when approved by the leave approving official. Annual leave scheduling will be worked out between the Employee and the leave approving official. Employees will submit annual leave requests as far in advance as possible using the approved written procedures in their office.
- D. A leave approving official will decide whether or not to approve employee requests for leave as soon as possible, and a decision will be made no later than ten (10) workdays following receipt of the request. If the leave request cannot be decided promptly, the leave approving official and the Employee will meet within the ten (10) day period to discuss the best way to resolve the leave request decision. It is understood that a leave approving official may direct employees with documented time and attendance problems to use other specific means to report their absence.
- E. Employees may not be denied annual leave for reasons other than those concerning the Employee's and/or the office's work situation. Once approved, Employee's leave requests will not be rescinded but for a significant unanticipated change in the employee's and/or the office's work situation. The Employer will provide specific written reason(s) for rescinding or denying leave. Leave approving officials will make every effort to adjust the Employee's and/or the office's work situation to permit Employees to be granted annual leave as requested and to use scheduled annual leave once approved.
- F. Employees may appeal leave rescission under this Section in writing to the Step 2 Official under Article 11, who must meet with employee within three (3) workdays. Employees appealing under this provision are entitled to Union representation.
- G. An Employee may request, and have approved, a change in selection of annual leave time provided that another Employee's choice is not affected.
- H. Employees may change previously authorized annual leave to sick leave when sick leave is appropriate. Employees may also change annual leave to leave without pay with the approval of the leave approving official. Employees may request to retroactively convert leave without pay or sick leave to annual leave.
- I. Employees will not be forced to take annual leave.
- J. An Employee seeking unscheduled annual leave will ensure that the leave approving official is notified within the first hour of the Employee's tour of duty, or as soon thereafter as possible in unusual circumstances. The Employee should attempt to contact the leave approving official directly, and inform him or her of the anticipated extent of the absence. Voice mail and/or email are appropriate means of notification under this Section. Employees shall be provided the appropriate phone number and email to use in the leave procedures discussed in Section 27.01.D above. It is understood that a leave approving official may direct employees who have been put on leave restriction to use



other specific means to report their absence. If the absence extends beyond the anticipated period, the leave approving official will be notified promptly.

- K. Disapproval of leave or leave restriction letter is not a disciplinary action.
- L. Conflicts in annual leave requests made by Employees, which would otherwise be approved, shall be at first attempted to be resolved among the Employees. If there is no resolution of conflicts in the granting of annual leave, requests will be resolved by the leave approving official based on the following criteria:

1. Extraordinary or emergency reasons
2. Situations where leave would otherwise be lost;
3. Date of submittal of leave request;
4. Financial commitments; or
5. Seniority defined as DOE Entry on Duty (EOD) date.

An Employee's previously approved leave normally shall not be disapproved under the terms of this Section (i.e., a subsequent request by another Employee for leave). Once a decision has been made the leave approving official must advise the involved Employee of the basis for the decision, and provide that decision in writing to the involved Employee(s).

- M. The Employer shall provide bargaining unit Employees the date set by OPM (i.e., before the start of the third bi-weekly pay period prior to the end of the leave year) to schedule "use or lose" leave. The Employer shall ensure that bargaining unit Employees are provided a minimum of five (5) workdays after such notice to submit their requests for "use or lose" leave. The Employer shall make every reasonable effort to grant the Employee's request for "use or lose" annual leave consistent with workload and staffing needs.
- N. In accordance with 5 USC § 6304 (d) and (e), and 5 CFR § 630.305-311 if an Employee is unable to take scheduled previously requested and approved annual leave pursuant to Section 27.02. M above due to the exigency of public business, or for the other reasons referred to in 5 USC § 6304(d)(1), the annual leave will be restored. This will be done in accordance with 5 § CFR 630.306. The Employer will provide the impacted Employee with written confirmation that the annual leave will be restored. In addition, the employee will be informed of the timeframe for using the restored leave. If not used during this time, the restored annual leave will be forfeited. The Employer will provide information regarding the ability of Employees to restore any leave lost due to the end of the year "use or lose" policy on an annual basis.

### **Section 27.03 - Sick Leave**

- A. An Employee shall earn leave in accordance with applicable statutes and regulations. The use of sick leave is an Employee benefit to be used by the Employee in accordance with the specific procedures of this article for absences required by illness, injury, medical appointments, certain circumstances involving contagious diseases, or bereavement, in accordance with Section 27.08 below.
- B. When practical, sick leave requests for non-emergency medical reasons, (e.g., dental or optical examinations, operations, or treatments) should be submitted as far in advance as possible to the appropriate leave approving official. Such requests shall be approved as quickly as possible after receipt of the request or two (2) workdays prior to the requested leave, whichever occurs first. Requests for sick leave under this Section where rescheduling will adversely impact the Employee's health shall be approved. Other requests shall be approved unless the Employee's absence would create a workload problem, in which event the Employee would be given advance notice by the leave approving official as time permits so that other appointments can be made.
- C. An Employee seeking unscheduled sick leave will ensure that the leave approving official is notified within the first hour of the Employee's tour of duty, or as soon thereafter as possible in unusual circumstances. The Employee should attempt to contact the leave approving official directly, and inform him or her of the anticipated extent of the absence. Voice mail and/or email are an appropriate means of notification under this Section. Employees shall be provided the appropriate phone number and email to use in the leave procedures discussed in Section 27.01.D above. It is understood that a leave approving official may direct Employees who have been put on a leave restriction to use other specific means to report their absence. If the absence extends beyond the anticipated period, the leave approving official will be notified promptly.
- D. Except for the provisions under Section 27.03 E Employees will not be required to furnish a medical certificate to substantiate a request to be granted sick leave for periods of three (3) consecutive work days or less unless the Employer has given written notice that the Employee must furnish a medical certificate or other administratively accepted evidence for all absences from work which the Employee desires to charge to sick leave.
- E. In the absence of a leave restriction, if the Employer suspects that an Employee has requested sick leave of three (3) consecutive days or less contrary to statute or regulation the Employer may request that the Employee provide a medical certificate or other evidence in support of their claim. In response to such a request the Employee may:
1. provide the requested information directly to the leave approving official; or
  2. provide the requested information using the procedure described in Section 27.03F below; or
  3. decline to provide the requested information.

If an Employee declines to provide the requested information the Employer must either approve the requested leave or provide the Employee with a written notice that the leave has been denied and the reason for that denial. Thereafter, an Employee may either:

1. decide to submit additional medical documentation as described above;
  2. request that the requested sick leave be considered as unscheduled annual leave subject to the determination process described in Section 27.02 above; or
  3. grieve the denial of sick leave
- F. For absences of more than three (3) work days, Employees may, as deemed appropriate by the Employer, be required to furnish either a medical certificate, other administratively acceptable evidence, or self-certification as to the reasons for their absence.
1. In the event the Employer advises an Employee that he or she must provide a medical certificate, or other administratively acceptable evidence/information the Employer shall limit the type and amount of medical information requested to only that needed to make a decision. For example, a supervisor might need to know that an Employee has a disabling condition that may require accommodation and that the accommodation is medically warranted but would not necessarily need to know the full clinical diagnosis of that medical condition.
  2. Employees will have a reasonable period of time, but not more than fifteen (15) days to furnish any requested medical certificate, other administratively acceptable evidence, or self certification as set out paragraph E above.
  3. If an Employee does not wish to share specific medical information in support of their request with the leave approving official, the Employee has the option to execute a release of information to be provided along with a sealed copy of any existing supporting information (not to be opened by the leave approving official) in order for a separate determination of incapacitation to be reviewed by a health provider designated by the Employer.
  4. Thereafter, the Employee shall submit any additional documentation or information he or she wishes to be considered in the same manner as described above.
- G. The employer, the leave approving official, and the health care provider designated by the Employer will exercise the utmost respect for the Employee's need for privacy and shall keep medical and other information confidential as required by law, rule, and regulation.
- H. An Employee suspected of abuse of sick leave based on a pattern of usage, will be counseled and the reason(s) for the absence(s) will be considered before any determination is made that abuse has occurred. The Employer shall advise an Employee of their right to have a Union representative present prior to any inquiry of suspected abuse of sick leave as described herein. The Employee may also be placed on leave restriction. The leave restriction letter will state the period of time it will be

in effect but such time will not exceed six (6) months in duration. Leave restriction letters may be extended in writing if the Employer believes that the pattern of leave abuse has continued. If a leave restriction letter is extended it will be reissued in the same manner as described above. A leave restriction is not a disciplinary action and will not be placed in the Employee's Official Personnel Folder (OPF).

- I. Employees may visit health units for brief periods of illness. Except in emergencies, they must notify their leave approving official in advance. Normally, sporadic visits of one hour or less are excused without charge to leave. Visits to health units for occupational injuries will not be chargeable to leave.
- J. Employees will not be required to furnish a doctor's certificate on a continuing basis if the employee suffers from a chronic condition which does not necessarily require medical treatment, although absence from work may be necessary and the employee has furnished medical certification of the chronic condition. Such certification shall be submitted in accordance with Section 27.03 F.3 above. Thereafter an Employee's use of leave related to the chronic condition shall be deemed covered by the initial or any follow up doctor's certificate, unless the Employer has reasonable cause to suspect that the leave used by the Employee should not be covered by the doctor's certificate. In such an event, the Employer shall follow the procedures set forth in Section 27.03 above.
- K. In rare instances, an approved absence which would otherwise be chargeable to sick leave may be chargeable to leave without pay at the option of the employee and with the approval of the Employer.
- L. A request by an Employee for advanced sick leave will be approved when all of the following conditions are met:
  - 1. The requesting Employee is eligible to earn sick leave;
  - 2. The leave is required for a serious disability, ailment, or treatment;
  - 3. Continued employment is expected upon the Employee's return;
  - 4. The Employee has provided acceptable medical documentation to support the need for advanced sick leave; and
  - 5. The Employee is not on leave restriction.
- M. A leave approving official, after having received a request for advanced sick leave, will respond in writing indicating the decision and the basis for the decision if the request is denied.

#### **Section 27.04 - Leave Without Pay**

A. The Employer agrees to approve leaves of absence for any Employee elected to a position of national officer of the National Treasury Employees Union for the purpose of serving full time in the elective position. Such leaves of absence will be concurrent with the term of office of the elected official and will automatically be renewed by the Employer upon notification in writing from the elected official that the employee has been reelected and wishes to continue in a leave of absence status.

B. The Employer agrees to approve a leave of absence for one Employee for the purpose of serving in a full time appointive position for the National Treasury Employees Union. The term of the leave of absence will be no more than two (2) years. Any affected employee will have his/her leave of absence renewed for one additional two (2) year period upon request.

C. Any employee with five (5) years of consecutive service with the Employer is entitled to a one (1) year leave of absence to engage in a full-time, job-related study. A program of study will be found to be job-related if it will significantly assist the employee to do the Employee's current job, or to achieve and perform another job to which the employee can reasonably aspire. It is understood that such requests, shall be granted in accordance with the following:

1. The Employee's absence will not create a severe workload problem; and
2. If there are more eligible applicants than such leaves of absence, the Employee with the greatest length of service will be chosen.

D. If feasible, an Employee returning from an extended leave of absence will be returned to the position held at the time that the leave of absence began. If the Employee returning from an extended leave of absence cannot be placed in the position held at the time the leave of absence began, then every effort will be made to place the Employee in a like position. If the returning Employee cannot be placed in the original position held at the time the leave of absence began, or in a like position, every effort will be made to place the Employee in a like position somewhere in the first tier organization.

#### **Section 27.05 - Administrative Leave**

- A. Administrative leave (Excused Absence) is the approved absence from duty without loss of pay and without charge to leave.
- B. When voting polls are not open at least three (3) hours either before or after an employee's regular hours of work, the Employee will, upon written request, be granted an amount of administrative time by the leave approving official which will permit the Employee to report to work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time.

- C. Early dismissals and closing caused by hazardous weather conditions or other emergency situations will be communicated in accordance with current OPM Guidelines. If the decision to excuse Employees is made during normal working hours, Employees will be notified as soon as possible. Absences of up to one (1) day may be excused even if the office remains open, if prohibition or restriction of traffic by public authority during work hours would require a one-way commute or if a breakdown in public transportation that could not be foreseen would preclude an Employee from reporting within four (4) hours of the start of the workday despite a diligent effort.
- D. When an emergency condition forces the closure of a DOE facility and Employees who work there are granted administrative leave as a result of the closure, an employee of the facility who is working off-site and who is prevented from accomplishing work because of that same emergency condition will be provided the same amount of administrative leave granted to Employees who were working in the closed facility.
- E. An Employee who donates blood may receive a maximum of four (4) hours of administrative leave for the purpose of blood donation. Additional time may be granted if justified.
- F. In accordance with OPM Guidelines, an Employee returning from active duty with the reserves or National Guard, may take 5 days (forty (40)) hours of excused absence before reporting for duty.
- G. An Employee who returns from official travel from a location that the Centers for Disease Control (CDC) or Department of State has issued a travel advisory due to a contagious disease may be authorized up to three (3) days (twenty-four (24) hours) of excused absence if they are not able to telework.
- H. When the Department is relocating an Employee, including a temporary or permanent change of station move or detail outside the local commuting area, or to move a new hire to an initial duty station, current and newly hired Employees may be excused up to three (3) work days (24 duty hours) when they are unavoidably detained while awaiting or arranging the transportation of household goods or for other activities necessary for the move, including getting settled in a new location. This situation is also referred to as “transient leave.”
- I. An Employee may be excused up to ten (10) calendar days (80 consecutive duty hours) for a house-hunting trip, including travel time.
- J. An Employee may take up to four (4) hours of excused absence each leave year for health screenings.

#### **Section 27.06 - Leave for Maternity/Paternity Reasons**

Family Friendly leave policies guaranteed by federal law are discussed under Section 27.08 of this article.

A. Parental leave may be a combination of as many as three separate kinds of leave: sick leave, annual leave, and leave without pay (LWOP). Lengths of absence for parental leave will be determined by the Employee, the Employee's physician, and the leave approving official based on the reasonable needs of each to the maximum extent provided by law, rule and regulation.

B. In the event of a pregnancy of the Employee, or his or her spouse, or his or her domestic partner, upon request, Employees will be granted appropriate leave in accordance with applicable, law, rule, regulation or this Agreement. Absent an emergency situation, employees must coordinate all such leave with the appropriate leave approving official. Upon request by the employee, the Employer will consider, to the extent allowable by law, granting a leave of absence of six (6) months or more after each child-birth. The Employer recognizes that not all deliveries occur as planned, accordingly the Employer will consider granting additional leave as needed in response to unexpected medical situations arising both before and after delivery.

C. Employees may request to be absent on a full or part time basis using any combination of annual leave, sick leave, or LWOP to provide care for the newborn child, the mother during any incapacitation related to pregnancy or delivery, and/or any minor children as provided by law, rule and regulation. A request to utilize leave under this provision should be made in advance whenever possible.

D. An Employee may use a combination of annual leave, sick leave or LWOP for the time required in the adoption of a child.

E. If, after consulting a physician, a pregnant Employee requests a temporary modification of work duties or a temporary reassignment for medical reasons, every reasonable effort will be made to accommodate this request.

#### **Section 27.07 - Religious Holiday**

A. Normally, an Employee will be granted annual leave or LWOP for a workday which occurs on a religious holiday. Employees should give as much advance notice as is reasonable.

B. An Employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in compensatory time for time lost for meeting those religious requirements.

C. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Department's mission, the Employer shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an Employee requesting such time off for

religious observances when the Employee's personal religious beliefs require that the Employee abstain from work during certain periods of the workday or workweek.

D. For the purpose stated in paragraph C of this section, the Employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid by the appropriate amount of compensatory overtime work within twenty-six (26) pay periods. Overtime worked during this period will be counted against the compensatory time off until it has been made up before the Employee can be paid for the overtime or accumulate more compensatory time. Compensatory overtime shall be credited to an Employee on an hour-to-hour basis. Appropriate records will be kept of compensatory overtime worked and used.

### **Section 27.08 - Family Friendly Leave Provisions**

Nothing in the Agreement shall negate any federal employee entitlements under any family friendly leave provisions guaranteed by public law, regulation, and DOE Order. Requests for leave entitlements pursuant to these provisions may, at the leave approving official's discretion, require submittal of medical documentation in accordance with the procedures outlined in Sections 27.03.E and 27.03F for the type of leave being requested. The employer agrees to post all regulations related to Family Friendly leave provisions on the Office of Human Capital Program's website.

#### **The Family Friendly Leave provisions include:**

A. The Family and Medical Leave Act of 1993 (FMLA) (See 5 USC § 6381 *et seq.*; 5 CFR § 630.1201, *et seq.*)

Employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for (a) the birth of a son or daughter and care of the newborn; (b) placement of a son or daughter with the employee for adoption or foster care; (c) the care of a spouse, son, daughter or parent with a serious health condition; and (d) a serious health condition of the employee that makes the employee unable to perform the duties of his or her position. Upon return from such leave, the employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status and other terms and conditions of employment.

B. **Family Friendly Leave** (See 5 CFR § 630.401)

Employees may use up to 104 hours (13 days) of sick leave each year to care for a family member, or to arrange for or attend the funeral of a family member, if their sick leave balance is sufficient, and up to 480 hours to care for family members with serious medical conditions. Full-time employees may use 40 hours (5 days) of sick leave for these purposes without regard to their current sick leave balance. Additional hours may be used if the employee retains a balance of at least 80 hours of sick leave in his or her leave account. The employee may use as much sick leave as is available to him/her for



purposes related to the adoption of a child, or for the employee's own medical treatment or incapacitation due to illness, injury, pregnancy or childbirth.

**C. Leave for Bone-Marrow or Organ Donation**

Employees are entitled to use 7 days of paid leave each calendar year (in addition to annual or sick leave) to serve as a bone-marrow donor or up to 30 days to serve as an organ donor.

**D. Federal Leave Sharing**

Employees may donate up to one half of their annual leave to other Federal employees who have medical emergencies. The regulations at 5 CFR § 630.901 et seq. contain specific limitations on such donations.

**Section 27.09 - Military Leave (See 5 USC § 6323)**

- A. A full-time employee working a 40-hour workweek will accrue 120 hours (15 days at 8 hours a day) of military leave in a fiscal year, or the equivalent of three (3) 40-hour workweeks. Military leave under § 6323(a) will be prorated for part-time employees and for employees on uncommon tours of duty based proportionally on the number of hours in the employee's regularly scheduled bi-weekly pay period.
- B. Any employee who is a member of the National Guard or other reserve component of the Armed Forces shall be entitled to military leave for each day of active duty, active duty training, and inactive duty training in such organizations for up to a maximum of fifteen (15) calendar days in any fiscal year (FY). To the extent that an employee does not use the fifteen (15) calendar days of military leave in a FY, the remaining calendar days of military leave accumulates for use in the succeeding FY until it totals fifteen (15) days at the beginning of a fiscal year. An employee can carry over a maximum of fifteen (15) days into the next FY. This leave need not be taken on consecutive days. Approval of the military leave provided in the foregoing shall be based on the presentation of the orders directing the employee to active duty and a copy of the certification of completion of such duty.
- C. Inactive Duty Training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. Such inactive duty training includes regularly scheduled unit training periods, additional training periods, and equivalent training. For further information, see Department of Defense Instruction Number 1215.6, March 14, 1997.
- D. Pursuant to 5 USC § 6323(b) employees are provided twenty-two (22) workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor. This leave is provided for Employees who perform military duties in support of civil authorities in the protection of life and property or who perform full-

time military service as a result of a call or order to active duty in support of a contingency operation as defined in Section 101(a)(13) of Title 10, United States Code.

- E. The term “contingency operations” means a military operation that:
1. Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
  2. Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, United States Code, chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.
- F. Military leave should be credited to a full-time employee on the basis of an 8-hour workday. The minimum charge is one (1) hour.
- G. An employee may be charged military leave only for hours that the employee would have otherwise work and received pay.
- H. Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will be charged for only the amount of military leave necessary to cover the period of training and necessary travel.
- I. Members of the Reserves and/or National Guard will not be charged military leave for weekends and holidays that occur with the period of military service.
- J. An employee’s civilian pay remains the same for periods of military leave under 5 USC § 6323(a), including any premium pay (except Sunday premium pay) an employee would have received if not on military leave.
- K. For military leave under 5 USC § 6323(b) and (c), an employee’s civilian pay is reduced by the amount of military pay for the days of military leave. However, an employee may choose to not take military leave and instead take annual leave, compensatory time off for travel, or sick leave, if appropriate, in order to retain both civilian and military pay.

**Section 27.10 – FMLA for Military Exigencies & Care of a Service Member (See Fed. Reg. Vol. 76, No. 190 Final Rule, re: 5 CFR 630.1204-1209 )**

Eligible BU Employees who are family members of a covered military member may take FMLA for qualifying military exigencies to the maximum extent allowed by law.

**Section 27.11 - Court Leave**

- A. An employee is entitled to court leave to the extent necessary:
  - 1. To serve jury duty, or
  - 2. To participate in judicial proceedings in a nonofficial capacity as a witness when one of the parties is the United States, the District of Columbia, or a state or local government.
- B. Employees who are excused by a court so that two (2) or more work hours remain in their regular work day must return to duty (including flexiplace) or request leave, unless returning to duty creates a hardship.

#### **Section 27.12 – Set Aside Accounts for Donated Leave**

To the extent required by the Regulations, the Employer shall ensure set-aside accounts are established for employees who are using donated leave. The leave in the set-aside accounts will be transferred to the employee's regular leave accounts when the medical emergency ends or the employee exhausts all donated leave.

### **Article 28 Employee Benefits**

#### **Section 28.01**

Employees seeking advice regarding benefits should telephone or visit their servicing personnel operations branch which will advise them as to available benefits under such programs as retirement, health and life insurance and injury compensation.

#### **Section 28.02**

The Employer agrees that employees who are eligible to retire within 2 years shall be given an opportunity to voluntarily participate in one OPM-sponsored retirement planning seminar.

#### **Section 28.03**

Each employee who separates voluntarily or involuntarily (except by retirement) will be informed by the Employer as to the employee's rights to file for any type of retirement benefits to which the employee may be entitled.

#### **Section 28.04**

An employee may withdraw a resignation or retirement application at any time prior to its effective date, provided (a) the withdrawal is communicated in writing to the Employer; and (b) the Employer has not made a commitment to fill the position of the retiring or resigning employee to any specific person.

#### **Section 28.05**

A. A package of NTEU material will be given to each new bargaining unit employee on the employee's first day of duty which will include:

1. a copy of this agreement;
2. an SF-1187; and
3. a list of stewards and officers including office location and telephone number.

B. The Employer shall ask employees to sign a receipt of this material which reads; "I hereby acknowledge receipt of a copy of the Collective Bargaining Agreement, Request for Payroll Deduction for Labor Organization Dues (SF-1187), and a list of stewards and officers." This receipt shall be delivered to the appropriate NTEU Chapter president within three (3) workdays.

C. A list of new bargaining unit employees will be provided to each chapter president biweekly.

#### **Section 28.06**

A. When an employee receives an overpayment of pay and allowances, other than travel and transportation expenses allowances and relocation expenses, the Employer will waive the obligation to repay such overpayment under the following conditions:

1. The amount of the over payment is not more than \$500;
2. There is no reason to believe that the overpayment is the result of misrepresentation, fraud, fault, or a lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim;
3. The payment is not the subject of an exception by the Comptroller General in the account of the accountable officer;
4. The waiver, if made, would be in accordance with Comptroller General standards;
5. If collection would be against equity and good conscience and not in the best interest of the United States;
6. If the application was made within 3 years of discovery of the erroneous payment; and
7. The waiver could be consistent with governing decisions of the Comptroller General.

B. Where, through an administrative error, an employee receives an overpayment in the amount which would normally go unnoticed or undetected, such employee will be permitted to repay the excess over the number of pay periods equal to the total pay periods over which the overpayments were made. These payments will be made in installments of at least ten dollars (unless a lesser amount will complete reimbursement), payment in full can be made while the employee is still on the Department's active roles.

#### **Section 28.07**

Employees temporarily physically unable to do their regularly assigned tasks will be given light duty assignments when possible.

**Article 29**  
**Employee Awards**

**Section 29.01**

- A. The parties agree to implement the following performance-based awards.
- B. The Employer will distribute all award monies pursuant to the terms set forth in this Article and DOE Order 331.1C (Change 1, 02/16/2011).

**Section 29.02**

**A. Performance Based Cash Award.**

1. The employer has determined that it will establish an overall awards budget for bargaining unit employees. The percentage allocation for the bargaining unit awards budget will be no less than the amount allocated to any other pool, e.g., non-unit managerial pool (not including the SES pool). The Employer will provide NTEU with the elements of the awards equation as soon as it is known. Information will include the total salary base, the percentage of salaries allocated to the awards pool, and will be provided for each first tier. NTEU will be provided additional information and details in a briefing, if requested. The employer will notify NTEU throughout the year of any changes in budget administration that affect the awards pools immediately after the decision about the change is finalized.
2. Employees in the Performance Management System whose annual summary rating-of-record is "Meets Expectations" (ME) or higher are eligible for a Performance-Based Cash Award unless the employee has been rated at "Needs Improvement" or below on any critical element. All employees rated at or above this level will be nominated for a Performance-Based Cash Award. Performance-based cash awards will be paid to employees no later than four months after the end of the official rating year, unless limited or prohibited by budget, law, rule, regulation, Order, or the Agency Head.
3. In the event that the Employer determines to change awards allocation in DOE O 331.1C (February 16, 2011) for the bargaining unit award pool, it shall give NTEU notice, and an opportunity to bargain to the extent permitted by law.
4. The Employer shall distribute Performance-Based Cash Awards in a fair and equitable manner.
5. Employees with a rating of ME or higher may request to receive either a cash award or time off award.
6. An employee may not receive more than one of the following for the same performance:
  - a. A performance-based cash award
  - b. A Quality Step Increase (QSI); or
  - c. A time-off award (TOA).
7. New hires, transferees, part-time employees, and employees who are reassigned or detailed after the start of the rating year may receive a pro-rata award calculated from the date of appointment until the end of the rating period.

8. Awards will be determined based on the overall summary rating and the applicable share value, multiplied by Employee's salary, as defined by DOE Order 331.1C (dated February 16, 2011), as follows:
  - a. SE – 5 shares
  - b. EE – 4 shares
  - c. ME – 3 shares when the majority of elements are rated at ME and at least 1 at EE or the elements are equally divided between EE and ME;
  - d. ME – 2 shares if all or a majority of elements are rated ME; or
  - e. ME – 1 share when the majority of the elements are rated ME or higher and less than 50% at NI, and management elects to offer this award.
9. Awards will be pro-rated in accordance with DOE O 331.1C (dated February 16, 2011), which states that pro-ration is determined by dividing the total hours in a pay status by 2080 hours and multiplying the result times the pro-rated share value.

**B. Quality Step Increases (QSI)**

1. QSIs are faster than normal within-grade increases used to reward employees at all General Schedule grade levels who display high quality performance and are permanent increases in pay.
2. QSIs are granted at management's discretion to reward a sustained performance of Outstanding or equivalent rating (i.e., SE) as defined in 5 CFR § 430.208(d), and to motivate employees toward increased productivity.
3. The following applies to the granting of a QSI:
  - a) QSIs may be granted only to employees:
    - 1) who have permanent or indefinite appointments;
    - 2) whose current rate of pay is less than the maximum for their grade;
    - 3) whose current rating of record is Outstanding or equivalent (i.e., SE) as defined in 5 CFR § 432.208(d) in the last two (2) years; and
    - 4) who are expected to continue to serve in their current position, or in a similar position at the same grade, at the same level of performance, for the foreseeable future. Decisions on Quality Step Increases will be based on objective criteria.
  - b) Only one QSI may be granted to an employee during any 52-calendar week period.
  - c) Decisions on Quality Step Increases will be based on objective criteria. Such criteria shall be published by the Departmental element affected within the first four months of the rating year and distributed to bargaining unit employees with copies sent to the Presidents and Executive Vice Presidents for each respective chapter concurrently.

- d) Upon request, management will provide the Union with the names of the employees receiving QSIs, the documented criteria met by each employee to receive the awards, and the names of all bargaining unit candidates who were nominated for a QSI but did not meet the criteria.

**C. Time Off Awards (TOA) - TOAs are administered in accordance with DOE Order 331.1C as follows:**

- 1. An employee may request to be given a TOA in lieu of a QSI or cash award for performance based on the summary ratings as follows:
  - a. Each employee whose summary performance rating is Meets Expectations shall be eligible for a Time-Off Award of:
    - 1) 30 hours when the majority of critical job elements are rated at ME and at least one critical job element is rated at EE or the elements are equally rated between EE and ME;
    - 2) 20 hours when all or a majority of critical job elements are rated ME; or
    - 3) 10 hours when all or a majority of critical job elements are rated ME or higher and one critical job element is rated at NI, and management elects to offer this award.
  - b. Each employee whose summary performance rating is Exceeds Expectations shall be eligible for a TOA of 40 hours.
  - c. Each employee whose summary performance rating is SE shall be eligible for a TOA of 50 hours.

**Section 29.03**

A TOA may be granted without loss of pay or charge to leave subject to the following constraints:

- 1. Each employee who is eligible for a Time-Off Award will be consulted as to his/her preference for either a Time-Off Award and/or a Performance-Based Cash Award. If the employee expresses a preference for a Time-Off Award, the employee's preference will be given serious consideration. However, if management determines that it cannot give the employee the preferred Time-Off Award, it will notify the employee that he/she will be nominated for the cash award instead.
- 2. Time-Off Awards must be used within one calendar year of the date that the award is granted. It may not be transferred if an employee transfers to another Federal agency, nor is the award payable in a lump sum if the employee leaves Federal service.

**Section 29.04 – Other Awards**

- A. In addition to those performance based awards listed in Section 29.02, employees may be nominated for the following awards:
1. Superior Accomplishment (Special Act) Award – This is a monetary or non-monetary award granted for a contribution resulting in tangible and/or intangible benefits to the Government. This is the type of award given for a special act or service.
  2. On the Spot Award – This award is given to recognize an act performed above and beyond the call of duty or an act demonstrating high quality service. Employees seeking information regarding incentive awards should telephone or visit the Headquarters personnel office, which will advise them as to available awards for which they may be nominated.
- B. Conference of a Special Act or On-the Spot Award for any work activity shall not prevent the Employer from proper recognition of that work in the Employee's performance evaluation if that work activity is related to or included in the Employees elements and standards.

### **Section 29.05 - Separation**

Once a decision is made to pay performance awards in an organization, DOE bargaining unit employees, who separate from DOE on or after the last day of the performance cycle, but prior to payout of performance awards will receive performance awards paid by the rating organization provided that the former employee:

1. Was a Federal employee of DOE as of the last day of the performance cycle; and,
2. Received an annual rating of record that qualifies for a performance award for that performance cycle.

### **Section 29.06 - Disapproval**

A disapproval of an award nomination must be in writing and shall include a detailed explanation for the decision to deny the award. Award nomination disapprovals shall be in accordance with this Agreement and be fair and equitable.

### **Section 29.07 – Reports**

The Employer will provide NTEU an annual report of all awards issued to bargaining unit employees. This list will contain the position of the award recipient, the grade and series of the recipient, the amount of the award, and the type of the award (e.g., performance, QSI, Special Act). The Employer shall assign an employee with a numeric designator that shall remain the same for the employee during their tenure with DOE. Upon request, the Employer will provide NTEU with information about the types of acts that led to the award, including any supporting documentation, within 10 days of the request, unless the parties mutually agree to an extension. This list will be issued to the Union no more than quarterly, upon request.

### **Section 29.08 – Travel Gainsharing**

Gainsharing is a program through which DOE employees who travel can earn cash awards if they save the agency money. The program is entirely voluntary. Employees are not required to participate. Within 30 days of the effective date of this agreement the travel committee will meet to design a gainsharing pilot program for the headquarters. Features of the program will include rewarding



employees who save the agency money on lodging and airline tickets. The committee will develop the program within 60 days of the effective date of this agreement. The Travel Committee will be composed of two Agency Representatives and two NTEU Representatives. Implementation of the program developed by the Committee will be no later than 90 days from the effective date of this agreement.

## **Article 30**

### **Equal Employment Opportunity**

#### **Section 30.01**

It is the policy of the Employer and NTEU to support an affirmative and positive Equal Employment Opportunity (EEO) program. Discrimination on the basis of race, color, religion, national origin, lawful political affiliation, sex, marital status, sexual orientation, age, or nonrestrictive physical handicap will not be tolerated in personnel practices and employment conditions; and it is agreed that these basic principles shall be accomplished by Section 30.03 through 30.04 of this Article.

#### **Section 30.02**

Employees seeking appropriate assistance from an EEO Counselor are limited to an EEO Counselor in their building unless there is no EEO Counselor in their building, or there is a conflict of interest (e.g., the EEO Counselor may be affected by the outcome or a charge or complaint). In those cases, the employee shall coordinate the request for another counselor with the EEO Officer.

#### **Section 30.03**

NTEU will be provided annually available sanitized EEO reports.

#### **Section 30.04**

A. The Employer agrees to continue the DOE Headquarters EEO Advisory Committee, which shall meet at least on a quarterly basis.

B. NTEU may appoint up to four (4) representatives from Forrestal and up to four (4) representatives from Germantown to serve as members of the Committee. The appointment of these individuals will not affect the status of other employees currently serving on the Committee from identical organizational components.

#### **Section 30.05**

It will be the function of the EEO Advisory Committee to advise the Employer on the continuing development and implementation of the Headquarters EEO program, including, but not limited to: affirmative action, upward mobility, recruitment efforts, and the nature and timely processing of complaints on hand. While the EEO Advisory Committee shall not be a forum for complaints, grievances, or appeals, it may raise questions or concerns for the Employer's consideration and response. Statistical and other information which is not otherwise prohibited from disclosure by law and regulations, and which is developed by the Employer in connection with existing and planned affirmative action or EEO efforts, shall be made available to the Committee upon request.

## **Article 31**

### **Personnel Records**

#### **Section 31.01**

The Employer will continue to maintain systems of records containing personal information about employees in accordance with the requirements of the Privacy Act of 1974.

#### **Section 31.02**

An employee may access his or her Official Personnel Folder (OPF) through the electronic OPF system (e-OPF system). The e-OPF system is a secure web-based application that is accessible from remote locations. Employees shall have access to their e-OPF from their workstations at any time.

#### **Section 31.03**

An employee shall be notified each time a document is added to his/her OPF in accordance with Office of Personnel Management (OPM) practice. An employee may print a copy of a document from his/her OPF. The e-OPF system automatically maintains an electronic record of any access to an OPF, and employees shall have the ability to retrieve this “electronic record,” upon request.

In the event that an employee’s e-OPF is disclosed without proper authorization, the Employer shall notify the impacted employee of the unauthorized disclosure as soon as possible. When the Employer notifies the employee of the unauthorized disclosure, the Employer shall provide the employee with the contact information, including the telephone phone number and e-mail address, of his/her NTEU chapter president. Furthermore, the Employer will notify the employee of the action that it intends to take on behalf of the employee as a result of such an unauthorized disclosure.

#### **Section 31.04**

Each time that an employee finds a discrepancy in their OPF, he/she may bring it to the attention of the Human Capital Management Office (HCMO) for investigation and correction. The employee may provide available documentation to support the discrepancy claim. Corrections to discrepancies may have to be coordinated with other federal agencies. In the event that the Employer disagrees with the employee’s contention that the OPF is incorrect, the employee shall be notified of such disagreement in writing. When the Employer notifies the employee of its disagreement with the employee’s contention, the Employer shall provide the employee with the contact information, including the telephone phone number and e-mail address, of his/her NTEU chapter president. The employee shall be entitled to raise any of the foregoing matters as a grievance pursuant to Article 11 of this Agreement.

### **Section 31.05**

The Employer will take all necessary precautions to prevent a security breach of employees' personnel data. Where it is found that DOE is negligent for a security breach, the Employer will take all necessary steps to ensure that any situation that results in the breach is resolved. Should an employee's personnel data become compromised, due to DOE's negligence, the Employer shall take all reasonable steps to assist the employee in the resolution of errors or actions resulting from such a compromise, which will, when appropriate, include but not be limited to reimbursement to the employee of reasonable expenses related to credit record monitoring for a minimum of one (1) year following discovery of the breach.

### **Section 31.06**

Upon request, an employee will be provided assistance from the HQ human resources staff concerning any information contained in his/her e-OPF.

### **Section 31.07**

Records maintained by an employee's supervisor, which are exempt from the disclosure requirements of the Privacy Act, may not be used in arbitration proceedings without providing advance notification of at least two (2) weeks and a copy of such records to NTEU.

## **Article 32 Health and Safety**

### **Section 32.01**

- A. To the extent of its ability and authority, the Employer will provide and maintain a safe and healthy work environment.
- B. The Employer shall, to the extent possible, and in accordance with applicable, law, rule and regulation, make every effort to minimize any safety hazards in the workplace.

### **Section 32.02**

Bargaining Unit Employees are encouraged to inform the Employer of any unsafe or unhealthy practice, equipment or condition which might represent a health and safety hazard. NTEU and the Employer will promptly report any perceived safety hazard to the appropriate authority.

- A. Each building occupied by Bargaining Unit Employees shall have an annual health and safety inspection. Such inspections shall be directed by a safety office of the Employer, or designee, who shall be accompanied by a designated representative of NTEU. Bargaining Unit Employees participating in this inspection will do so on official time.
- B. NTEU will be provided a copy of applicable health and safety reports made to appropriate authorities. Applicable reports are defined as any report that contains

information regarding working conditions that impact NTEU Bargaining Unit Employees. (e.g., reports of asbestos in office buildings where NTEU's Bargaining Unit Employees work on a daily basis or might visit as part of their routine work assignments).

- C. The Employer and NTEU will jointly address the issue of improved safety on the roadways, parking areas, walkways and steps under the control of the Employer or leased by GSA on behalf of the Employer. For those areas not under the control of the Employer, but adjacent to the Employer facilities and used by Bargaining Unit Employees during or immediately before or after the working day, the Employer and NTEU may jointly identify needs for improved safety to officials of local governments or building managers. The Employer shall communicate with local government entities or building managers to resolve any safety problems. The Employer shall provide NTEU with copies of the response of the third party and if applicable, the date it estimates that the safety problem(s) will be resolved. The Employer will also notify Bargaining Unit Employees of these problems and shall provide NTEU with copies of any such notice.

### **Section 32.03**

A. NTEU and Bargaining Unit Employees will be notified annually in writing of proper emergency evacuation and shelter in place procedures. In imminent danger situations where an evacuation is required, Bargaining Unit Employees will be notified by means of the general emergency alarm and will be evacuated. NTEU and Bargaining Unit Employees will also be notified as soon as is reasonable of other potential hazards, inconveniences, or emergency situations (e.g., equipment malfunction, elevator outages, on-going construction and restroom closure or plumbing interruptions).

B. The Employer will timely notify the impacted Bargaining Unit Employees and NTEU Chapter of a bomb threat. Such notification should be made to the Chapter President or his or her designee. To be timely, notice of the bomb threat must be provided to NTEU when the Employer notifies its first-line managers. In the event a bomb threat occurs, the Employer shall provide NTEU with the following information within a reasonable period of time following the bomb threat but no later than fifteen (15) days after the bomb threat, unless an internal security concern exists or a federal criminal investigation is ongoing.

1. whether the Agency has notified any authorities;
2. who those authorities were;
3. the actions the Employer took in response to the threat;
4. if, when and how the Employer advised Bargaining Unit Employees of the threat;

5. whether or not the Employer evacuated the building;
  6. if the Employer dismissed the Bargaining Unit Employees from work after the evacuation;
  7. any other pertinent information.
- C. The Employer shall provide NTEU with copies of any after action reports related to any fire, drill, evacuations, emergency responses, and shelter in place events to the extent permitted by law or regulation.

#### **Section 32.04**

- A. The Employer will continue to provide health services on site (in both Forrestal and Germantown) which are sufficient to care for a Bargaining Unit Employee during an emergency and until proper outside medical authorities can reach the Bargaining Unit Employee.
- B. The Employer will train Bargaining Unit Employees in Cardiopulmonary Resuscitation (C.P.R.) Techniques. Such training will be provided on duty time. Notification of C.P.R. classes will be sent to all Bargaining Unit Employees via DOECast, and schedules will be posted on the DOE intranet. IN CASE OF EMERGENCY, Bargaining Unit Employees should call the appropriate internal emergency number.
- C. The Employer shall continue to provide adequate numbers of automated external defibrillators (A.E.D.'s) throughout Headquarters, including DOE satellite offices. The placement of A.E.D.'s is subject to the determination of the Headquarters, Health and Safety Office. Furthermore, the Employer will train NTEU Bargaining Unit Employees, who volunteer on the use of an A.E.D. Such training will be provided on duty time. The Employer shall provide notification of A.E.D. classes to all NTEU Bargaining Unit Employees via DOECast, and schedules will be posted on the Employer's intranet.
- D. The Employer shall provide training on emergency procedures to any NTEU bargaining unit volunteers who are floor wardens and monitors.
- E. With the employees' permission, the names, phone numbers/extensions, and locations of all current NTEU Bargaining Unit Employees, who have received C.P.R., A.E.D., or First Aid training shall be posted on the DOE intranet and annually updated so as to ensure proper employee awareness.

#### **Section 32.05**

- A. The Employer shall provide appropriate medical evaluations for Bargaining Unit Employees who become ill at work. Occupational exposures will be addressed by the Office of Illness and Injury Prevention Programs, or its successor organization.
- B. The Employer agrees to continue to sponsor American Red Cross Blood Donation events for NTEU Bargaining Unit Employees.
- C. NTEU may organize a blood drive for its Bargaining Unit Employees.
- D. Subject to availability of funds, the Employer agrees to offer lunch-time seminars on stress management and other wellness information at no cost to Bargaining Unit Employees.
- E. The Employer shall continue its existing practice of allowing Bargaining Unit Employees who receive allergy shots to bring their serum and materials into the Health Unit and have the nurses in the unit administer the injections, in accordance with physician prescriptions.
- F. Subject to availability of funds, the employer shall offer free flu vaccinations to Bargaining Unit Employees.

#### **Section 32.06**

- A. At a minimum, the Employer agrees to make available to Bargaining Unit Employees, as requested, a copy of pertinent health benefit brochures.
- B. The Employer agrees to keep on file copies of each health plan offered to Bargaining Unit Employees.
- C. The Employer will provide office First Aid Kits through the supply store for all organizations within the NTEU bargaining unit. First aid kits will be accessible at all hours (i.e., not locked away in a place that they cannot easily be retrieved when needed). Employees will be informed of the location of their office's first aid kit annually and when relocated.
- D. Subject to Management's rights to determine budget, the Employer will offer first aid classes to Bargaining Unit Employees. Such training will be provided on duty time. Notification of first aid classes will be sent to all Bargaining Unit Employees via DOECAST. The Employer shall post schedules for such first aid classes on the DOE intranet.

#### **Section 32.07**

- A. The Employer will inform the appropriate NTEU Chapter(s) and Employees in the impacted work area in writing when chemicals, pesticides, or other hazardous materials or processes potentially harmful to a Bargaining Unit Employee's health are to be used and/or stored in the impacted Bargaining Unit Employees' work areas. Such notice will be given as soon as the Employer becomes aware of the intent to use and/or store such chemicals. In no case may the notice be given later

than one (1) full workday before the chemicals are to be used and/or brought into the affected work area. The Employer shall provide additional information such as the Material Safety Data Sheets (MSDS) for said chemicals, upon request. The MSDS or information regarding the hazard may be posted on the Employer's website.

- B. Within a reasonable period of time after the identification of potentially unsafe conditions but not later than five (5) hours after the identification, the Employer shall:
  - 1. Notify the NTEU Chapter President(s) for the area impacted by unsafe or potentially unsafe condition; and
  - 2. Immediately thereafter, the NTEU Chapter President(s) and the appropriate Management official shall meet and NTEU shall be briefed on the Employer's planned response to the unsafe or potentially unsafe conditions (e.g., designation of safe areas, notice to employees, dismissal, etc.).
- C. Upon request, the Employer shall provide the Union with an inventory of chemicals, pesticides, or other hazardous materials stored or used on the Employer's premises by either the Employer or its agents (e.g., contractors, employees, etc.) where those materials may impact Bargaining Unit Employees. In the event the Union makes such a request for information related to those materials or for the MSDS for materials, etc. the employer shall provide the Union with the requested information within a reasonable amount of time.

### **Section 32.08**

The Employer will, consistent with its right to assign work, make a reasonable attempt to reassign tasks of Bargaining Unit Employees who provide acceptable medical documentation that particular tasks presently assigned to the Bargaining Unit Employees pose a health hazard to the Bargaining Unit Employees.

### **Section 32.09**

- A. The Employer will, upon request, provide NTEU with a copy of and access to those Government-wide and DOE regulations, standards, directives, and procedures, plus any applicable non-government standards governing the safe conduct and performance of Bargaining Unit Employee duties and the maintenance of a safe work area.
- B. The Employer will provide NTEU with notice and opportunity to bargain the impact and implementation of changes to DOE regulations, standards, and directives which may affect the health and/or safety of NTEU Bargaining Unit Employees.

### **Section 32.10**

- A. Bargaining Unit Employees recuperating from illness or injury and/or temporarily physically incapacitated for their assigned duties may voluntarily submit a written request to their supervisor for temporary assignment to duties commensurate with their qualification and abilities. Such a request must contain documentation which addresses the medical basis for and the expected length of the proposed temporary reassignment. The Bargaining Unit Employee may choose to provide the above described documentation to either their supervisor or to the FOH Medical Officer. Procedures for submitting necessary medical information as outlined in Article 27.03.F are also applicable here. Documentation will be evaluated by FOH. Submission of documentation does not guarantee that requests will be granted. The Employer shall, to the extent possible, and in accordance with applicable rules and regulations and medical recommendations, make every reasonable effort to grant such temporary assignments.
- B. The Employer may require Bargaining Unit Employees recuperating from illness or injury and temporarily physically incapacitated for their assigned duties to work a temporary assignment with duties commensurate with their medical limitations. Such assignments will be at no loss of pay, compliant with all other requirements of this Agreement, law, rule, and regulation.

#### **Section 32.11**

When the Employer is notified of a violation by the Occupational Safety and Health Administration (OSHA) or otherwise becomes aware of a violation of OSHA standards, it will inform the impacted NTEU Chapter and Bargaining Unit Employees.

#### **Section 32.12**

Qualified disabled Bargaining Unit Employees may request reasonable accommodation in accordance with federal law and Agency procedures. The Employer shall timely process all requests for reasonable accommodation in accordance with this Agreement, law, rule, and regulation. Reasonable accommodation may include, but is not limited to that provided under law, regulations, and Equal Employment Opportunity Commission (EEOC) guidance.

#### **Section 32.13**

- A. Bargaining Unit Employees have the responsibility under 29 CFR 1960.10 to comply with the standards, rules, regulations, and orders issued by the Employer related to occupational health and safety. Bargaining Unit Employees have the right to report unsafe and unhealthful working conditions to appropriate officials. Bargaining Unit Employees will not be retaliated against for reporting such conditions.
- B. The Employer acknowledges the existence of employee rights under 29 C.F.R. 1960, including the right to be free from reprisal and retaliation when Bargaining Unit Employees decline to perform their assigned tasks because of a reasonable belief that,



under the circumstances, the task(s) pose an imminent risk of death or serious bodily harm, coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures, as established by the Employer.

#### **Section 32.14**

When Bargaining Unit Employees are injured in the performance of their duties, the Employer shall inform the Bargaining Unit Employees of the procedures for filing a claim for benefits under the Federal Employees Compensation Act. Information will be provided about the type of benefits available, including specific references to the option to file a claim for disability compensation if they are disabled from work.

#### **Section 32.15**

As provided under the Patient Protection and Affordable Care Act, the Employer shall provide Bargaining Unit Employees with: (1) a reasonable break time to express breast milk, for a nursing child for one (1) year after the child's birth, each time such employee has need to express milk and (2) a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by the employee to express milk.

### **Article 33 Employee Assistance Program**

#### **Section 33.01**

The Employer agrees to continue its employee assistance program (EAP) as required and allowed by applicable law, regulation, or Executive Order. Information concerning available EAP programs will be available electronically to employees on the DOE web site. A specific link to such EAP information shall be posted on the DOE Human Capital Office homepage. The Employer will continue to provide EAP services in both the Germantown and Forrestal locations. An employee may request counseling with an individual with whom he/she believes counseling will be effective.

#### **Section 33.02**

The Employer will take action to encourage an employee to enroll in an available EAP program if it is reasonably apparent that the employee is experiencing difficulties in their work environment. It is understood that employees undergoing a prescribed program of treatments will be granted sick leave or leave without pay for this purpose on the same basis as any other illness when absence from work is necessary. If an employee is participating in the program, the responsible supervisor must take this fact into consideration before taking any formal corrective measures for poor performance.

#### **Section 33.03**

The Employer will continue to afford reasonable accommodation to employees who are qualified disabled employees before any action for continuing performance problems relating to their disabling conditions is taken.

## **Article 34**

### **Travel**

Within fifteen (15) work days of the effective date of this agreement, a Committee of management and union representatives will meet to discuss issues relating to travel. The Committee will be formed consistent with Article 14.A, and will meet on an on-going basis. The Committee will meet to review proposed changes to DOE travel related issues prior to the Employer making decisions regarding headquarters travel policies. After completion of such meetings the Committee will issue any written recommendations to the Employer.

#### **Section 34.01**

- A. Consistent with 5 CFR § 610.123, the Employer, if practicable, will schedule and arrange for travel of bargaining unit employees to occur within the bargaining unit employees' regularly scheduled work hours. However, if circumstances require the bargaining unit employee to travel on a non-work day, the bargaining unit employee may request to travel during duty hours on the preceding regular work day prior to the work event. If Management agrees to this request, subsistence reimbursement may be allowed to start with the departure time but will be limited to that which would have been payable if departure was made on the non-work day. Bargaining unit employees who are required to travel during non-duty hours may obtain, upon request, the written reasons why such travel was required at those hours.
- B. When travel results from an event which cannot be scheduled or controlled administratively, such travel may be considered hours of employment for pay purposes pursuant to appropriate provisions of Title 5 of the Fair Labor Standards Act (FLSA).

Consistent with 5 CFR § 551.422, a bargaining unit employee who is covered by FLSA and is on official travel away from his or her official duty station shall be compensated for time in travel status outside his or her regular tour of duty, if: the overtime is ordered and approved in advance (or "suffered or permitted") and the time spent traveling requires the bargaining unit employee (1) to work during travel (e.g., drive vehicle, either privately or Government-owned as part of a work assignment); or (2) travel as a passenger on a one-day assignment away from the official duty station; or (3) travel as a passenger on an overnight assignment away from the official duty station during hours on non-work days that correspond to the bargaining unit employee's regular working hours.

- C. Disputes arising under this subsection may be addressed through the use of the grievance procedure provided in Article 11 of this Agreement.

## Section 34.02

As stated in 5 CFR § 550.1401, *et seq.*, and subject to the conditions specified in 5 CFR Part 550, Subpart N, a bargaining unit employee is entitled to earn, on an hour-for-hour basis, compensatory time off for time in a travel status away from the bargaining unit employee's official duty station when the travel time is not otherwise compensable.

- A. "Official Duty Station" means the geographic area surrounding a bargaining unit employee's regular work site that is the same as the area designated by the employing agency for the purpose of determining whether travel time is compensable for the purpose of determining overtime pay, consistent with the regulations in 5 CFR 550.112(j) and 551.422(d).
- B. Travelers will comply with established DOE policies and procedures when requesting and recording compensatory time for travel (e.g., Supplemental Guidance Regarding Compensatory Time Off for Travel (Rev. October 27, 2008 and when added to DOE Handbook on Overtime, Appendix D)).
- C. "Usual Waiting Time" shall be defined in accordance with 5 CFR § 550.1404. For purposes of this agreement "usual waiting time" shall normally be two (2) hours for a domestic flight and three (3) hours for an overseas flight. The Employer's determination of what constitutes "usual waiting time" in a particular instance shall take into account any unique circumstances identified by the traveler and be applied in a consistent, fair and equitable manner.
- D. Compensatory time for travel earned in conjunction with authorized travel does not require a separate approval process.
- E. Upon returning from any officially authorized travel, the bargaining unit employee shall submit the requisite Compensatory Time for Travel documentation. The Travel documentation shall normally be submitted within fourteen (14) calendar days of return from travel; however, where the bargaining unit employee is on leave or travel immediately following their return travel this time shall be extended by the number of days the bargaining unit employee is on leave or travel. A bargaining unit employee's documentation for compensatory time earned shall normally be reviewed and approved or denied by the authorizing travel official within ten (10) workdays of receipt. Authorized compensatory time will normally be credited within the pay period approved. The authorizing travel official will notify the bargaining unit employee as to the approval or denial of the request, and if denied, a reason for the denial.
- F. In accordance with 5 CFR § 550.1406, a DOE HQ bargaining unit employee's written request to use compensatory time for travel already credited will be approved using the same standard as set in Article 27, Section 27.02. It is the bargaining unit employee's responsibility to apply for compensatory time off in a timely manner to avoid forfeiture of the credited time before the twenty-sixth (26<sup>th</sup>) pay period expiration date. Pursuant to 5 CFR 550.1407, the twenty-sixth (26<sup>th</sup>) pay period time frame begins during the pay

period that the compensatory time for travel is earned. The leave approving official will decide whether to approve bargaining unit employee requests as soon as possible but no later than 10 workdays from receipt of the request. In accordance with 5 CFR § 550.1407 (2)(e), *Exception due to an exigency*: “If an employee fails to use his or her compensatory time earned under §550.1404(a) by the end of the 26<sup>th</sup> pay period after the pay period during which it was earned due to an exigency of the service beyond the employee’s control, an authorized agency official, at his or her sole and exclusive discretion, may extend the time limit for using such compensatory time off for travel for up to an additional 26 pay periods.”

- G. In the event the bargaining unit employee disputes the authorizing travel official’s reason for denial of permission to use accrued compensatory time off, he or she may file a grievance under Article 11 of this Agreement.

### **Section 34.03**

- A. In accordance with the Travel and Transportation Reform Act of 1998, bargaining unit employees will use a government-issued charge card for travel unless the bargaining unit employees have an exemption. The basis for the issuance of a card including the credit worthiness of an employee will be consistent with OMB Circular A-123 Appendix B.
- B. DOE will provide bargaining unit employees with a point of contact who can provide information on the use of the travel charge card.
- C. Bargaining unit employees are not required to use the credit card for those activities exempted by GSA: e.g., meals, phone calls, parking, laundry/dry cleaning, local transportation systems, taxis, tips, when a bargaining unit employee’s application for a card is pending, when on invitational travel, and if the employee is a new appointee.
- D. DOE will consider individual exemptions to use of the credit card on a case by case basis. Bargaining unit employees will submit a request with an explanation of the reason for the exemption to the Chief Financial Officer via the Head of the bargaining unit employee’s organization. DOE will issue exemptions to bargaining unit employees who establish that use of the card would create a hardship for the bargaining unit employee. If the exemption is granted, the Employer will provide the bargaining unit employee a method for payment of travel expenses, e.g., advance the bargaining unit employee the necessary funds to cover travel expenses.
- E. DOE will reimburse bargaining unit employees within fifteen (15) calendar days after a proper voucher is submitted to the approving official. In the event that the Employer fails to reimburse a bargaining unit employee for allowable expenses within fifteen (15) calendar days, *and this failure results in late payment charges*, the Employer will *reimburse* the bargaining unit employee for any late payment fees using the prevailing Prompt Payment Act Interest Rate.

- F. If a bargaining unit employee loses his/her travel card privilege for whatever reason, the Employer will provide assistance in processing a request for a travel advance. If the bargaining unit employee has lost travel card privileges because of personal failure to reimburse the credit card company or through abuse of the credit card, the bargaining unit employee will take appropriate steps to settle all outstanding obligations and submit a request for restoration of the travel card privileges.
- G. Consistent with OMB Circular A-123 Appendix B, DOE will provide bargaining unit employees travel card training on policies to include the mandatory use of the card, appropriate use of the card, and when the travel charge card must be used.
- H. Bargaining unit employees who are using a travel card may receive a cash advance for authorized travel on the credit card through a bank or automated teller machine. The Employer will pay all cash advance fees and charges.
- I. In the event that a bargaining unit employee's personally identifiable information is compromised or potentially compromised related to the use of the travel card, DOE will immediately inform the impacted or potentially impacted bargaining unit employee(s) and will pay for a minimum of one (1) year of credit monitoring for the impacted bargaining unit employees.

#### **Section 34.04**

- A. The Employer agrees to reimburse bargaining unit employees when in travel status for per diem and mileage expenses incurred by them in the discharge of their official duties to the maximum extent allowable by law and regulation.
- B. In accordance with Federal Travel Regulations, and when authorized in advance by the Employer, reimbursement on an actual subsistence expense basis will be authorized when actual and necessary subsistence expenses of official travel are unusually high due to special or unusual circumstances. Reimbursement on an actual subsistence expense basis should be requested and authorized in advance.
- C. Bargaining unit employees will be reimbursed for authorized fees in connection with changing official travel arrangements caused by the needs of the Employer, or due to a significant personal emergency such as a family, medical, or natural disaster emergency.
- D. Consistent with law and GSA regulations bargaining unit employees may retain promotional items, including frequent flyer miles earned on official travel, so long as such items are obtained under the same conditions as those offered to the general public at no additional cost to the government.

#### **Section 34.05**

A bargaining unit employee who is assigned to training or duty away from the bargaining unit employee's regularly assigned post of duty, and who elects to return home during non-work days,

will be reimbursed for travel not to exceed the amount reimbursable for the per diem if the bargaining unit employee had remained away from home.

#### **Section 34.06**

Government travel regulations and DOE travel policies will be available for bargaining unit employee review at DOE Headquarters travel offices and on the DOE web-site.

#### **Section 34.07**

NTEU will be formally notified of any changes the Employer proposes to make to travel policies or procedures and will have an opportunity to bargain prior to implementation of any changes.

#### **Section 34.08**

The Employer will provide travel and per diem for union officials travelling on official time for employer-sponsored events and/or at the invitation of the employer under this Agreement. Additionally, this includes those events identified in Article 7, Section 7.07 and 7.08.

### **Article 35 Wage Surveys**

#### **Section 35.01**

If DOE Headquarters is requested to participate in a wage survey which could affect bargaining unit positions, NTEU will be notified and invited to participate as appropriate.

#### **Section 35.02**

NTEU will be provided copies of the results of any wage survey affecting bargaining unit positions as soon as possible.

#### **Section 35.03**

NTEU will be provided full information on wage surveys for all Wage Grade employees, including data which results in discrepancies in wage rates for employees in a particular area.

### **Article 36 Contracting Out**

#### **Section 36.01**

The Employer agrees to comply with whatever laws and binding regulations are applicable at the time a decision is made to contract out.

#### **Section 36.02**

Immediately after a decision is made to let a contract which has potential adverse impact on the bargaining unit, NTEU will be provided a summary of the contract and the request

for proposals (RFP), as well as information indicating the number of employees and/or staff years (hours) required under the contract. No decision to contract out will be effected until NTEU has been notified and given an opportunity to negotiate concerning its impact and implementation.

### **Section 36.03**

A. Unless contrary to law or regulation, the Employer shall include in its open market bid request for RFP the requirement that employees adversely affected by the contracting out shall be given the right of first refusal with respect to positions the contractor has open within ninety (90) days of the award as a result of entering into the contract.

B. No later than ten (10) workdays after the contract is awarded, the Employer shall furnish the contractor with a current list of adversely affected employees.

### **Section 36.04**

Employees will be formally advised of their eligibility for registration in the Priority Placement Program at the time they are identified as adversely affected, and will be entitled to the placement considerations accorded by the Department's policies and this agreement.

### **Section 36.05**

The Employer agrees to eliminate or minimize any potential adverse impact by:

A. coordinating with OPM to ensure that adversely affected employees have access to Government-wide placement programs, including the OPM-operated Displaced Employee Program and the Interagency Placement Assistance Program; and

B. coordinating with the U.S. Department of Labor on publicizing private sector job opportunities.

### **Section 36.06**

The Employer will keep NTEU fully informed of any study or planned study to contract out any function of its headquarters operations.

## **Article 37**

### **Prohibited Personnel Practices**

#### **Section 37.01**

An employee affected by a prohibited personnel practice under 5 U.S.C. 2302 (b)(1) may raise the matter under a statutory procedure or the negotiated procedure (Article 11), but not both.

#### **Section 37.02**

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

A. discriminate for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation as prohibited under any law, rule, or regulation;

B. solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action, unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:

1. an evaluation of the work performance, ability, aptitude, or general qualifications of such an individual; or

2. an evaluation of the character, loyalty or suitability of such individual;

C. coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

D. deceive or willfully obstruct any person with respect to such person's right to compete for employment;

E. influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

F. grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

G. appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110(a)(3)) of such employee, if such position is in the agency in which such employee is serving as a public official (as defined in 5 U.S.C. 3110(a)(2)) or over which such employment exercise jurisdiction or control as such an official;

H. take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for:

1. a disclosure of information by an employee or applicant which the employee reasonably believes evidences:

a. a violation of any law, rule, or regulation, or

b. mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety if such disclosure is not specifically prohibited by law and if such information is not specifically required by



- Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
2. a disclosure to the Special Counsel of the Merit Systems Protection Board, or the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:
- a. a violation of any law, rule, or regulation; or
  - b. mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- I. take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of:
- 1. the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
  - 2. testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in paragraph 1;
  - 3. cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
  - 4. for refusing to obey an order that would require the individual to violate a law;
- J. discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
- K. knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or
- L. take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing or directly concerning the merit system principles contained in 5 U.S.C. 2301.

## **Article 38**

### **Drug Testing**

Pursuant to DOE Order 3792.3 (July 29, 1988, Change 1 – August 21, 1992), Executive Order (E.O.) 12564, and the Substance Abuse and Mental Health Services Administration (SAMHSA) Mandatory Guidelines for Federal Workplace Drug Testing Programs, Pub

L. 100-71, Sec. 503, codified at 5 USC 7301, the Employer shall implement the Drug-Free Federal Workplace Testing Implementation Program as follows:

**Section 38.01: EMPLOYEE RIGHTS**

- A. Employees are entitled to and will be informed of the right to NTEU representation at every stage of the drug testing procedure.
- B. The Employer's designation of a position as a Testing Designated Position (TDP) is not itself grievable and not arbitrable, in accordance with DOE Order 3792.3; however, any employee may assert, through the negotiated Grievance Procedure under this Collective Bargaining Agreement (CBA), or any other appeal process that:
  - 1. their duties do not involve performance of the sensitive tasks ascribed to the position in that position's nomination; or,
  - 2. the procedures used to nominate their position as a TDP were misapplied.

The filing of such a grievance shall not act to stay implementation of the DOE Drug Testing Process.

- C. The direction to submit a urine sample may be grieved under the CBA or appealed as described above. The filing of such a grievance shall not act to stay collection or other implementation of the DOE Drug Testing Process.
- D. Under no circumstances will any employee be subjected to urine testing as a punitive measure.
- E. Employees will receive a reasonable amount of administrative time, pursuant to Article 7 of the CBA, to read any notice concerning the DOE Drug Testing Plan and to consult with an NTEU steward. Prior to signing any Drug Use Acknowledgement Form, the employee will be permitted a reasonable amount of administrative time to seek advice from an appropriate source.
- F. An employee who is the subject of a drug test shall be entitled to:
  - 1. the results of such employees' drug test; and
  - 2. the results of any relevant certification review or revocation proceedings as referenced in Subpart H of the Substance Abuse and Mental Health Services Administration (SAMHSA) Mandatory Guidelines for Federal Workplace Drug Testing Programs, Pub L. 100-71, Sec. 503, codified at 5 USC 7301.
- G. The Employer will ensure all communications relating to this program, whether written or verbal, protect employee rights to privacy and confidentiality as set forth in the Privacy Act of 1974, the Rehabilitation Act as Amended, and any other applicable law,

rule or regulation.

### **Section 38.02: EMPLOYEE ASSISTANCE PROGRAM**

- A. The Employee Assistance Program (EAP) office and the health units shall maintain a supply of pamphlets and booklets on available drug rehabilitation programs and pamphlets/information prepared by the U.S. Public Health Service, American Red Cross and/or other expert organizations, for distribution to employees.
- B. The EAP and the health units shall continue to provide referrals, upon request, to certified community treatment facilities and other local resources.
- C. Each employee who voluntarily attends and/or visits the DOE EAP for counseling shall be granted a reasonable amount of administrative time for this purpose. Employees who are referred by the EAP for counseling and/or treatment shall be granted a reasonable amount of appropriate leave for participation in such counseling and/or treatment sessions.
- D. Annually, NTEU shall be provided a list of all DOE HQ EAP coordinators and counselors and will be advised in writing of changes in those positions. The Employer shall provide NTEU with the dates, times, and locations that DOE HQ EAP coordinators and counselors will be available.

### **Section 38.03: REHABILITATION**

- A. Any employee who is determined to have used illegal drugs, based upon direct observation, evidence obtained from a criminal conviction, a verified positive drug test or the employee's voluntary admission, shall be referred to the EAP.
- B. Any employee, who is determined to have used illegal drugs, also has the right and will be encouraged to enter a drug rehabilitation program.
- C. As provided in DOE Order 3792.3, Chapter III, Section 5.i (Change 1- August 21, 1992), while participating in a counseling or rehabilitation program for the use of illegal drugs, an employee shall be exempted from the random drug TDP Pool (TDPP) for the duration of the counseling, drug rehabilitation program, or for thirty (30) calendar days, whichever is longer.
- D. Any employee who signs a Drug Use Acknowledgement Form, or has a confirmed positive drug test, and who enters an approved drug rehabilitation program, and thereafter refrains from illegal drug use, may request that implementation of a disciplinary/adverse action, be held in abeyance. That abeyance shall last during the employee's participation in the drug rehabilitation program and will continue thereafter so long as the employee continues to abstain

from illegal drug use as defined below in paragraph 38.03E. This provision will not preclude the Agency from implementing any decision such as a disciplinary/adverse action based on any other unrelated misconduct, or on performance, or for misconduct which may have led to the drug test.

- E. If an employee successfully completes a drug rehabilitation program and thereafter refrains from illegal drug use for not less than twelve (12) months after the completion of the drug rehabilitation program, the Employer may rescind the disciplinary/adverse action decision that was being held in abeyance in accordance with 38.03D above. The Employer will not unreasonably delay or deny an employee's request under this provision.
- F. Employees may invoke the provisions of the Rehabilitation Act and handicap accommodation, as appropriate, in connection with any disciplinary/adverse action.
- G. Any employee who is determined to have used illegal drugs, as described in Section 38.03A, above, occupies a "sensitive position," as that term is defined at Section 7(c) of Executive Order 12564, loses their security clearance, and is restricted from performance of "sensitive" duties, may be reassigned into a non-sensitive position until such time that the employee regains a security clearance. The employee may then be returned to those duties at such time as the Employer determines that returning the employee to his/her previous duties will not adversely affect the public health and safety or the national security.
- H. Every reasonable effort will be made to continue the employment of an employee who is removed from sensitive duties in a pay status while he or she is undergoing a drug rehabilitation program. The Employer will make every reasonable effort to place the employee in an alternative position for which they are qualified until the employee successfully completes a certified drug rehabilitation program. If this cannot be done at the employee's regular duty station, consideration will be given to a temporary reassignment or other accommodations

#### **Section 38.04: RANDOM DRUG TESTING**

Employees shall be provided with written notification when requested to appear for TDP random urinalysis specimen collection. Generally, the employee will be notified within two (2) hours of the scheduled test pursuant to DOE Order 3792.3, Chapter II, Section 5.a (Change 1 – August 21, 1992).

The Notice of Test shall contain, in addition to the information specified in DOE Order 3792.3, Chapter II, Section 5.b (Change 1 – August 21, 1992):

1. the drugs for which testing will be performed; and
2. a notice that the employee is entitled to NTEU representation at all stages of the procedure.

### **Section 38.05: REASONABLE SUSPICION TESTING**

- A. When a supervisor or his or her designee proposes that any employee submit a urine sample for testing based upon a suspicion of illegal drug use, under the criteria in DOE Order 3792.3, Section 4(f) (Change 1 - August 21, 1992), that supervisor will prepare, and submit for concurrence, a report to the Head of the Departmental Element, or his or her designee. Such report shall contain the evidence in support of the determination that the “reasonable suspicion” criteria in Section 4(f) have been met, including dates and times of reported or suspected illegal drug use, sources of information used to verify information, and/or circumstances which the supervisor/manager believes warrant reasonable suspicion testing.
- B. If the employee is required to submit a urine specimen for analysis, a copy of this written report, as described in Section 38.05.A, will accompany the employee’s Notification of Test, as required by DOE Order 3792.3, Chapter II, Section 5 (Change 1 – August 21, 1992).
- C. If an employee is required to provide a urine specimen for testing based on a reasonable suspicion of illegal drug use and does not accept the stated basis for suspicion as “reasonable,” that employee will provide his/her urine specimen and, thereafter, may grieve this issue under the Collective Bargaining Agreement, or file any other appropriate appeal allowed by law, rule or regulation.
- D. Employees shall be provided with written notification when requested to appear for reasonable suspicion urinalysis specimen collection.
- E. The Notice of Test shall contain, in addition to the information specified in DOE Order 3792.3, Chapter II, Section 5.b (Change 1 – August 21, 1992):
  - 1. the drugs for which testing will be performed; and
  - 2. a notice that the employee is entitled to NTEU representation at all stages of the procedure.

### **Section 38.06: EMPLOYEE APPLICANT TESTING**

- A. Notification that the position is subject to drug testing shall be placed on the vacancy announcement.
- B. Any employee applicant who has been tentatively selected for a TDP vacancy, pending the outcome of urinalysis testing, will receive a Notice of the scheduling of the collection of their urine specimen for analysis. A copy of this notice will be provided to NTEU.

- C. An employee shall be provided with written notification when requested to appear for employee applicant urinalysis specimen collection.
- D. An employee who has been tentatively selected for a TDP vacancy may decide that he/she does not wish to submit to a urine test and withdraw his/her name from consideration. No records will be kept in the employee's Official Personnel File (OPF) indicating the withdrawal from the position.
- E. Promotions of bargaining unit employee applicants to TDP vacant positions will not be unreasonably delayed due to the imposition of a drug test. Therefore, such appointments shall become effective at the beginning of the next pay period after the date of receipt of the negative urine test results. If an employee receives an initial positive urine test result which is subsequently determined by the MRO to be invalid the employee's promotion shall be effective beginning of the next pay period, after the initial positive urine test results.

#### **Section 38.07: INCIDENT/OCCURRENCE TESTING**

Employees shall be provided with written notification when requested to appear for incident/occurrence urinalysis specimen collection.

The Notice of Test shall contain, in addition to the information specified in DOE Order 3792.3, Chapter II, Section 5.b. (Change 1 – August 21, 1992):

- 1. the drugs for which testing will be performed; and
- 2. a notice that the employee is entitled to NTEU representation at all stages of the procedure.

#### **Section 38.08: SPECIMEN COLLECTION**

Specimen collection, laboratory certification, laboratory analysis, and actions of the Medical Review Officer (MRO) will be in accordance with E.O.12564, SAMHSA Mandatory Guidelines and DOE Order 3792.3 (Change 1 – August 21, 1992).

Every effort within DOE's direct control will be made to ensure proper custody of samples.

Employees shall provide their urine specimens in individual privacy unless there is reason to believe that a particular employee may alter or substitute the specimen to be provided. The employee shall provide his/her specimen in the privacy of a rest room stall or otherwise partitioned area that allows for privacy.

#### **Section 38.09: LABORATORY ANALYSIS**

- A. Per the SAMSHA Guidelines, only HHS-Certified Laboratories will be used to test urine specimens collected as part of the DOE Drug Testing Plan, and

urinalysis techniques within DOE's direct control which are employed in testing these specimens will conform to HHS Guidelines.

- B. Pursuant to DOE Order 3792.3 CH.II, section 3(a)(2) an employee may obtain a second or retesting under this section at another facility/lab. Such second or retesting shall be paid for by the employee.

#### **Section 38.10: MEDICAL REVIEW OFFICER**

In accordance with E.O.12564, SAMHSA Mandatory Guidelines and DOE Order 3792.3 (Change 1 – August 21, 1992) the Medical Review Officer (MRO):

- A. Shall comply with the guidelines for Federal drug testing programs promulgated by the Department of Health and Human Services;
- B. Receive and review drug test results for the purpose of determining use of illegal drugs;
- C. Assure that an individual who has been tested positive has been afforded an opportunity to explain or provide additional information related to the test result;
- D. Issue appropriate written notices of determinations based on drug test results, consistent with confidentiality requirements. No result will be considered a verified positive result prior to the issuance of the written notice.
- E. If the MRO requests that the employee meet in person after being notified of a confirmed positive test, travel to and from the MRO shall be on duty time (with no loss to leave) and where appropriate travel and per diem shall be authorized for the employee and their representative.
- F. If the MRO determines after the meeting that there is no justification for the positive result, the MRO shall notify the employee in writing thereof. An additional copy of this letter will be provided to the employee for submission to NTEU if the employee so desires.

#### **Section 38.11: DRUG USE ACKNOWLEDGEMENT FORM**

- A. Each employee, who receives Notice from the MRO of a positive test for illegal drug use, will be allowed up to 48 hours to determine whether or not he or she wishes to sign a Drug Use Acknowledgement Form.
- B. The Employer shall release information concerning employee drug tests in accordance with the Privacy Act.

- C. The Drug Use Acknowledgement Form will not be placed in the employee's official personnel file (OPF).

#### **Section 38.12: DISCIPLINARY/ADVERSE ACTION**

- A. Any Employee subject to any disciplinary or adverse action shall be afforded the rights as outlined in all appropriate articles of the CBA.
- B. The implementation of a decision to impose disciplinary/adverse action based on a first positive drug test will be stayed at the request of the NTEU until the award by an arbitrator is issued, if the following conditions are met:
  - 1. expedited arbitration is invoked by the NTEU within five (5) calendar days of receipt of the decision to effectuate the proposed action;
  - 2. the arbitration hearing is held within fourteen (14) calendar days of the invocation of expedited arbitration; and
  - 3. the arbitration decision is issued within two (2) calendar days of the close of the hearing record.
- C. The parties will use the designated arbitrators listed in Article 12 of the current CBA. If the next arbitrator in the rotation is unable to meet the time frames described above, the subsequent arbitrator in the sequence will be contacted until a selection is made.
- D.
  - 1. No employee whose urine sample tests positive for illegal drugs shall be denied the opportunity to resign, "...for personal reasons" at any time prior to formal issuance of a final adverse action decision.
  - 2. The Nature of Action and the Remarks sections of the Standard Form (SF-50) which documents this separation from Federal employment will reflect only that separation was by resignation and that it was for personal reasons, as long as the resignation is submitted prior to the removal decision is received by the employee. Absent a showing to the contrary it will be presumed that the employee has received the Agency's decision within five (5) calendar days of the certified mail mailing date.
  - 3. Inquiries concerning the nature of the separation action will be referred to the Headquarters Employee Labor Relations Division ("HQ ELMR"), who will say that the employee resigned.

#### **Section 38.13: INFORMATION PROVIDED TO NTEU**

The Union will be provided notification within two weeks of an increase or decrease in the number of NTEU bargaining unit employees subject to random drug testing and any changes in positions subject to random drug testing.



## **Section 38.14: DISTRIBUTION**

This Article will be posted on the HQ ELMR website.

## **Section 38.15: MODIFICATIONS**

To the extent required by the Federal Service Labor Management Relations Statute, if the Employer proposes to modify or revise its Drug Free Workplace Program, NTEU shall receive adequate prior notice of proposed changes in terms and conditions of employment and shall be provided an opportunity to submit bargaining proposals and enter into negotiations concerning the Impact and Implementation of proposed changes to the extent provided by the federal law.

## **Article 39 Outside Employment**

### **Section 39.01**

As required by applicable regulations, employees must obtain approval by appropriate officials (the immediate supervisor) of their intent to engage in outside activities in advance of undertaking such activity. A written request for approval will be submitted in advance. The Employer will approve or disapprove any written request of an employee to engage in outside activities as soon as possible, but no later than ten (10) workdays of the Employer's receipt of the request.

### **Section 39.02**

If an employee wishes to dispute the Employer's rejection of a request to engage in outside employment, the employee may file a special grievance directly with the management official who denied the request. This grievance must be filed within fifteen (15) workdays of the Employer's rejection of the request. It will be treated exactly as if it had been processed through the agreement's grievance procedure, and is now at the final step of the procedure. If the Employer and employee are unable to satisfactorily adjust the grievance, the Employer will forward to the employee, within the time limits prescribed for the final step of the grievance procedure, a letter containing all the reasons and evidence why it is rejecting the outside employment request. Thereafter, NTEU may invoke arbitration over the issue.

### **Section 39.03**

Employees must adhere to all statutes and regulations governing participation in outside activities, including those contained in the "Standards of Ethical Conduct for Employees of the Executive Branch," Title 5, Code of Federal Regulations, Part 2635. Employees may engage in outside employment or other outside activity compatible with the full and proper discharge of the duties and responsibilities of their Government employment.

Incompatible activities include, but are not limited to:

- A. acceptance of a fee, compensation, gift, payment or expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest;
- B. outside employment which tends to impair the employee's mental or physical capacity to perform assigned Government duties and responsibilities in an acceptable manner; and
- C. outside work or activity that takes the employee's time or attention during the employee's official work hours.

## **Article 40**

### **Temporary Employees**

#### **Section 40.01**

Temporary employees who are not serving in appointments limited to one year or less and who have a reasonable expectation of working more than six months have the right to enroll in Government life insurance and health insurance programs.

#### **Section 40.02**

Temporary employees terminated due to lack of work before the designated expiration date of their appointment, should one exist, will be given two weeks advanced notice, if possible.

#### **Section 40.03**

Temporary employees terminated for reasons other than lack of work will receive two weeks advanced notice, if possible. This notice will include the reasons for the termination. The immediate supervisor will meet with the employee and the area steward to discuss the issue, if requested. The meeting will take place during the notice period.

## **Article 41**

### **Part-Time Employees**

The Employer will consider employee requests to work part-time. Where a request is rejected, the reasons for such will be explained in writing upon request.

## **Article 42**

### **Probationary Employees**

A probationary period is defined within 5 CFR § 315.801. Pursuant to 5 CFR 315.802, the probationary period required under 5 CFR § 315.801 is one (1) year and may not be extended, except as provided by regulation.

## **Section 42.01**

- A. The Employer will meet with a probationary employee approximately every four (4) months during the first year of the probationary period to discuss the employee's performance and expectations. Written summary of the discussion will include as appropriate:
  - 1. Observations by the supervisor or other individual designated by the Employer on the employee's conduct and/or performance.
  - 2. Guidance in regard to performance or conduct-related problems. When it appears that the employee's performance or conduct may be lacking, the supervisor or other individual designated by the Employer will take the following actions as necessary:
    - a. Explain what is required of the employee in the position;
    - b. Identify ways or means for the employee to improve his or her performance or conduct.
  - 3. An evaluation of the employee's potentialities and an attempt to determine whether the employee is suited for continued employment with the Employer.
- B. Employees will receive counseling by the supervisor(s) or individual designated by the Employer upon request. The counseling session will include those areas in which the employee has indicated he or she would like further guidance or knowledge.
- C. A probationary Employee will be advised of the Employee's performance prior to the end of the tenth month of the probationary period. The supervisor or the individual designated by the Employer will no earlier than the beginning of the ninth month nor later than the end of the tenth (10) month of the probationary period, submit through supervisor channels a signed statement certifying either that employee's performance and conduct have been found satisfactory or that they have been found unsatisfactory. Such certification does not guarantee continued employment throughout the probationary period. Further, nothing precludes the Employer from taking appropriate action, including removal, prior to or later than this time.

## **Section 42.02**

- A. Termination of a probationary Employee who has completed one year of current continuous service under other than a temporary appointment will be taken in accordance with the procedures contained in Article 44 (Adverse Action) of this Agreement, unless that Employee is otherwise excluded from those procedures by law.
- B. When the Employer determines that a probationary appointment is to be terminated for unsatisfactory performance or conduct, it will terminate the employee's services by

notifying him or her in writing, providing the reason for the separation, and the effective date of the action. The information in the notice shall, as a minimum, consist of the Employer's conclusions as to the inadequacies of the Employee's performance or conduct.

- C. If the Employer has determined to terminate a probationer, the letter of termination will be provided to the probationary employee prior to the expiration of the probationary period and will advise the employee of his or her statutory appeal rights as set forth in Section 42.04.
- D. A probationary employee may elect to submit a voluntary resignation in lieu of termination at any time prior to the date of his or her termination. If an employee has received a letter of termination due to poor performance and the probationary employee voluntarily resigns before the effective date of the termination, the employee's Official Personnel Folder and SF50 will only reflect the employee's voluntary resignation.

### **Section 42.03**

- A. When the Employer proposes to terminate a probationary Employee for reasons based in whole or in part on conditions arising before his or her employment, the Employee is entitled to a written notice stating the reasons, specifically and in detail, for the proposed action. The employee is entitled to a reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his or her answer. If the employee answers, the employer shall consider the answer in reaching its decision.
- B. Upon the probationary Employee's request, the Employer shall provide the employee and NTEU with copies or access to any documents or files that provide the basis for the proposed termination.
- C. After considering the affected Employee's answer, the Employee is entitled to be notified of the Employer's decision at the earliest practicable date. The decision shall be delivered to the Employee at or before the time the action will be made effective. The notice shall be in writing, inform the Employee of the reasons for the action, inform the Employee of his or her right to appeal to the Merit Systems Protection Board (MSPB), and inform him/her of the time limit within which the appeal must be submitted. A sanitized copy of the notice will be provided to NTEU on or before delivery to the Employee.

### **Section 42.04**

A letter of termination will advise probationary employees of their statutory appeal rights. The letter of termination will also advise the employee of the following:

- 1) "In addition to any right you may have to appeal to the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), you

may also have the right to file charges or complaints with the Federal Labor Relations Authority (FLRA), Office of Special Counsel (OSC), the Office of Personnel Management (OPM) or other Federal agencies if you believe your rights have been violated and your claims are within their jurisdiction.”

- 2) The name, telephone number, and email of the NTEU Chapter President.

### **Section 42.05**

All provisions of this Agreement apply to probationary employees, except those provisions which are inconsistent with law, rule, or regulation. NTEU may represent probationary employees in connection with any matter consistent with law or regulation and this Agreement, e.g.,

1. The denial of leave, including the Family and Medical Leave Act (FMLA);
2. A request for an Alternate Work Schedule (AWS);
3. An investigation conducted by the Employer or Inspector General;
4. An improper reassignment or error in the merit promotion process;
5. A negative recordation used in a performance appraisal;
6. Employment related claims that may be raised to outside Government agencies.

## **Article 43**

### **Disciplinary Actions**

#### **Section 43.01**

A. Disciplinary actions include oral and written reprimands, letters of warning, and suspensions for 14 days or less.

B. Employees shall be disciplined for such cause as will promote the efficiency of the service.

#### **Section 43.02**

The parties agree to the concept of progressive discipline designed primarily to correct and improve employee behavior rather than to punish. However, each situation warranting discipline must be evaluated individually and, in instances involving serious offenses, progressive discipline may not be appropriate.

#### **Section 43.03**

A. NTEU shall be given the opportunity to be present at any examination of an employee in the unit by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against him/herself and the employee requests NTEU representation.

B. A meeting between an employee and the Employer, during which the principal topic of discussion is discipline or potential discipline of the employee, will entitle the employee to request to be accompanied by the area steward during such meeting.

C. The Employer will semi-annually notify employees of their rights of representation as set out in A. above.

#### **Section 43.04**

When the Employer takes a disciplinary action against an employee more serious than a reprimand, the following procedures will apply:

A. The written proposal will be delivered prior to taking an action and will contain the specific reasons for the proposed action stated in detail. It will also inform the employee of the right to review all material which was relied upon to support the reasons for the action. Copies of this material will be provided to the employee upon request.

B. The employee will be given ten workdays from the date the employee received the notice of proposed disciplinary action in which to deliver an oral and/or written reply. Reasonable requests for extensions will be granted if submitted in writing prior to expiration of the time allowed stating the reasons for desiring more time. The proposal notice will specify who will receive the oral and/or written reply. This official will be the person who will be making the decision, or designee.

C. The employee and his/her representative will receive a reasonable amount of official time to prepare the reply.

D. When management has relied upon witnesses to support the reasons for the proposed action, the Employer will make their identity known to the employee.

E. In delivering a reply, the employee may set forth mitigating circumstances and give reasons as to why the proposed action should not be effected.

F. The final decision in a disciplinary action covered by this section must be made by a higher level DOE Headquarters management official than the official who issued the notice of proposed action. The decision letter will state which charges are sustained.

#### **Section 43.05**

In deciding what action may be appropriate, the Employer will give due consideration to the relevance of any mitigating and/or aggravating circumstances. The "Douglas factors," included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically, but rather to outline the tolerable limits of reasonableness:

- A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- B. The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- C. The employee's past disciplinary record;
- D. The employee's past work record; including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- E. The effect of the offense upon the employee's ability to perform assigned duties;
- F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- G. The notoriety of the offense or its impact upon the reputation of the agency;
- H. 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;
- I. Potential for the employee's rehabilitation;
- J. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- K. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

#### **Section 43.06**

An employee subject to disciplinary action may grieve the action within 15 workdays of receipt of the Decision under the negotiated grievance procedure in Article 11 of this agreement. Such grievance must be filed with a management decision maker at least one level higher in the supervisory chain of command than the Deciding Official in the decision to discipline. Such grievance shall be filed at a step in the negotiated grievance procedure higher than Step 1. This grievance right shall be stated in the decision letter.

#### **Section 43.07**

A. Letters of reprimand will be placed in the employee's Official Personnel Folder for the period of time specified in the letter but not to exceed one year.

B. Letters of warning will not be placed in the employee's Official Personnel Folder. A copy will be maintained only by the employee's immediate supervisor and will be destroyed one year following the date of issuance or sooner, if appropriate.

#### **Section 43.08**

NTEU will receive sanitized copies of any advance notice letters that are issued pursuant to this Article when the employee receives such letter. NTEU will also receive any decision letters, when the employee receives such letter, where it has not previously been designated as the employee representative in the matter.

#### **Section 43.09**

Each advance notice letter and final decision letter issued pursuant to this Article will contain a notification of the right to representation, including NTEU representation and the name, telephone number and mail routing symbol of the current NTEU Chapter president.

### **Article 44**

#### **Adverse Actions**

#### **Section 44.01**

- A. For the purpose of this Article an adverse action is defined as a suspension for more than fourteen (14) days, reduction in grade or pay, furlough for 30 days or less, or removal.
- B. Under 5 U.S.C. Chapter 75, adverse actions will be taken only for such cause as will promote the efficiency of the service. The Employer may not take an adverse action against an employee on the basis of any reason prohibited by 5 U.S.C. § 2302.
- C. A meeting between an employee and the Employer during which the topic of discussion is adverse action or potential adverse action against the employee will entitle the employee to request to be accompanied by the National field representative and either the NTEU president or area steward during such meeting. If such a request is made it will be honored.
- D. The procedures of this Article do not apply to employees serving a probationary period, unless the employee has completed one year of current continuous service under other than a temporary appointment limited to one (1) year or less, and is not otherwise excluded from these procedures by federal law, rule or regulation.



## **Section 44.02**

- A. In all cases of proposed adverse action an employee will be given at least thirty (30) calendar days advance written notice (“proposal notice”) stating the specific reasons for the proposed action.
- B. The employee will be given a reasonable time, but not less than ten (10) workdays, to respond orally and/or in writing, and to furnish affidavits and other documentary evidence in support of the reply. Reasonable requests for an extension will be granted if submitted in writing prior to expiration of the time allowed; the request must state the reasons for desiring more time. The proposal notice will specify who will receive the oral and/or written reply. In making a reply the employee may set forth mitigating circumstances and give reasons as to why the proposed action should not be effected.
- C. The proposal notice shall inform the employee of the right to review the material relied upon to support the reasons for the proposed action set forth in the notice. Copies of the material relied upon will be furnished to the employee, if requested. When the Employer has relied upon the statements of witnesses to support the reasons for the proposed action, the Employer will include these statements in the material relied upon and make them available to the employee.
- D. The employee will have the right to be represented in the preparation and presentation of the reply. The employee and his/her representative will receive a reasonable amount of administrative time or official time, as set forth in Article 7 of this Agreement, to prepare and present the reply.

## **Section 44.03**

- A. The final decision in an adverse action covered by this Article must be made by a higher level official than the official who issued the notice of proposed action. The decision letter will state which charge or charges are sustained and set forth the reason(s) the charge or charges were sustained.
- B. Such final decision will address all factual disputes, if any, raised in the employee’s reply by stating the reasons why each factual basis underlying the decision was adopted.
- C. In deciding what action may be appropriate, the Employer will give due consideration to the relevance of any mitigating and/or aggravating circumstances, and will consider the appropriateness of progress discipline as addressed in DOE Order 3750.1. The “Douglas Factors” included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically, but rather to outline the tolerable limits of reasonableness:
  - 1. The nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities, including whether the

offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;

2. The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record; including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. The notoriety of the offense or its impact upon the reputation of the agency;
8. 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;
9. Potential for the employee's rehabilitation;
10. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
11. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

#### **Section 44.04**

The proposal notice is not required in those cases when the crime provision is invoked; i.e., when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed.

#### **Section 44.05**

In the event the Employer sustains the Proposal and effects an adverse action against an Employee, the Employee may appeal the decision to the Merit Systems Protection Board (MSPB) in accordance with applicable law. In the alternative, NTEU may directly

invoke expedited arbitration. If NTEU invokes the provisions of Article 11, Section 11.19, such petition will automatically include invocation of expedited arbitration on the merits of the action.

An employee may not both appeal an adverse action to the MSPB and invoke arbitration.

#### **Section 44.06**

- A. The Employer will provide both NTEU Chapter President and Executive Vice Presidents of Chapters 213 and 228 with sanitized copies of any proposal notices that are issued pursuant to this Article, when the employee receives such letter.
- B. The Employer will also provide both the NTEU Chapter President and Executive Vice Presidents of Chapters 213 and 228 with sanitized copies of any decision letters, when the employee receives such letter, even in those circumstances where NTEU has not previously been designated as the employee representative in the matter.
- C. The Employer shall ensure that each proposed adverse action and decision letters provided described above utilizes an identifier that connects the proposal notices and decision letters to the same employee.
- D. The employee shall maintain a record of all adverse actions imposed upon Headquarters employees to the extent required by NARA and DOE Order 243.1A (dated November 7, 2011.)

#### **Section 44.07**

Each proposal notice and final decision letter issued pursuant to this Article will contain a notification of the right to representation, including NTEU representation and the name and telephone number and mail routing symbol of the current NTEU chapter president.

#### **Section 44.08**

In the event that the Employer changes its current policy with regard to administering and maintaining workforce discipline or its policy on workforce penalties, the Employer shall provide NTEU notice and an opportunity to bargain impact and implementation of those changes for Bargaining Unit Employees, as required by federal law, rule and regulation.

## **Article 45**

### **Performance-Based Actions**

#### **Section 45.01**

In proposing action against an employee based on unacceptable performance, the Employer will act in accordance with applicable law and regulations.

#### **Section 45.02**

Throughout the appraisal period, supervisors should apprise employees of their performance on an ongoing basis. Employees are to be notified as soon as possible of any performance deficiencies. In any action taken in connection with unacceptable performance, the supervisor will provide as much guidance and assistance as possible to help improve the employee's performance.

#### **Section 45.03**

The Employer will consider lateral reassignment of an employee based on unacceptable performance before it acts to reduce in grade or remove an employee for unacceptable performance.

#### **Section 45.04**

The steps outlined in this section do not constitute a grievance; this Article is not intended to change the rights and obligations set out in Article 11 of this Agreement (Grievances).

Before proposing to take action against an employee for unacceptable performance, the supervisor will issue a letter of requirements. This document will provide a 90 calendar day period within which the employee's unacceptable performance must improve. The employee will be informed as to which critical elements are being performed unacceptably. Specific instances of poor performance will be identified. Documentation of unacceptable performance will have been provided to the employee. This written documentation is the only documentation that can be relied on by a supervisor to find an employee's performance "unacceptable." The letter will also state what the employee has to do to improve performance above the unacceptable level during the opportunity period and will indicate the type of guidance and review the supervisor will provide during the opportunity period. The letter also will state the following:

- A. That the employee may have a representative, including an NTEU representative, and may reply to the Employer's letter orally and/or in writing;
- B. That the employee will be given a reasonable amount of official time to prepare to do so;
- C. That the written and/or oral reply be provided no later than ten workdays after the notice period had begun;
- D. The name, telephone number, and room number of the current president of the local NTEU Chapter.

### **Section 45.05**

If, after the end of the opportunity period, the employee's unacceptable performance has not improved, a performance-based action, if any, is to be accomplished in accordance with the following procedures:

A. The Employer will give each employee whose performance remains unacceptable a thirty-day notice period.

B. The thirty (30) days begin when the Employer gives the employee a letter of proposed adverse personnel action, based on the continued unacceptable performance. This letter will list the critical elements that the employee has performed unacceptably during the opportunity period as well as specific examples of the employee's performance which have not been corrected following the issuance of the letter of requirements.

C. This letter will state the following:

1. That the employee has a right to a representative including an NTEU representative, and may reply to the Employer's proposed action orally and/or in writing;
2. That the employee will be given a reasonable amount of official time to prepare to do so;
3. That the written and/or oral reply be provided no later than ten workdays after the notice period had begun;
4. That the Employer will make a written summary of the employee's oral reply and provide a copy to the employee;
5. That copies of all evidence upon which the Employer is relying in the matter will be provided upon request;
6. That any reply and final decision in the matter will be heard by a higher level manager in the organization than the one who proposed the action should a higher level manager exist and
7. The name, telephone number, and room number of the current president of the local NTEU Chapter.

### **Section 45.06**

Employee performance which occurred more than one calendar year prior to the date on which the employee received the letter of proposed adverse action will not be relied on to support the proposal. Additionally, employee performance which was not specifically identified in the proposed adverse action will not be relied on to reach a final decision.

### **Section 45.07**

The NTEU will receive sanitized copies of any advance notice letters that are issued pursuant to this Article when the employee receives such letter. The NTEU will also receive any decision letters, when the employee receives such letter, where it has not previously been designated as the employee representative in the matter.

## **Article 46**

### **Smoking**

#### **A. Definitions**

1. Smoking. The activity involving lighted cigar, cigarette, pipe, or tobacco products.
2. Designated Smoking Areas. An area which is identified by a sign reading, "Designated Smoking Area" and includes the international smoking symbol, where personnel may smoke cigarettes only.

#### **B. General requirements:**

1. Smoking is prohibited in DOE-occupied facilities and office space in the Washington, DC metropolitan area, which includes Washington, DC, Northern Virginia and Suburban Maryland. Smoking is also prohibited within government-owned or leased vehicles.
2. Smoking is prohibited within 25 feet from any doorway or air intake for any DOE Facility in the Washington, DC metropolitan area.
3. Smoking is permitted within personal vehicles as long as the vehicles are not parked within the building structure (including garages and loading docks) and are not parked within 25 feet from a doorway, handicapped parking spot, or air intake.
4. Smoking is permitted in the following "designated smoking areas:"
  - a. the south side of the Forrestal South Building, and
  - b. the south side of the Germantown "C" wing entrance.
5. DOE HQ will maintain smoking shelters in the designated Germantown and Forrestal Smoking Areas.

#### **C. Smoking Cessation Programs.**

1. Where an employee's Federal Employees Health Benefits (FEHB) Program does not provide access to smoking cessation programs the Employer will make smoking cessation programs available to employees who wish to stop smoking at no cost to the employee and no additional cost to Employer.
2. The Employer's EAP office shall maintain a list of approved smoking cessation programs and will provide the contact information regarding those programs to Bargaining Unit Employees.

3. Appropriate leave will be granted for employee participation in such programs in accordance with Article 27.
  4. Smoking Cessation Programs are covered under the Federal Employees Health Benefits (FEHB) Program.
- D. If complaints are registered concerning smoking locations, the parties will meet to attempt to resolve the complaints.
- E. Working conditions and conditions of employment for employees who choose to smoke will remain the same as those for employees who choose not to smoke.

## **Article 47**

### **Flexiplace**

#### **Section 47.01**

A. Flexiplace is a work arrangement that permits an employee to work at home or at another approved work site away from his or her traditional work site. The parties are committed to maximizing the use of flexiplace so that employees have maximum flexibility without adversely affecting the agency's mission.

B. Participants may be permitted to work at flexiplace work sites full days or a portion of a day. There is no limit to how the work schedule may be configured so long as the scheduling is neither disruptive to the work that remains in the office nor causes an unreasonable burden on those who choose not to work flexiplace.

C. The parties recognize that the benefits of flexiplace include:

- improving the quality of worklife and job performance and increasing productivity;
- improving morale and reducing stress by giving employees more options to balance work and family demands;
- decreasing traffic and parking congestion, energy consumption, and air pollution;
- providing services when the regular office is closed;
- extending employment opportunities to employees with disabilities, including employees who have partially recovered from work-related injuries who can do the job from an off-site location;
- potentially enhancing recruitment and promoting diversity by expanding the geographic recruitment pool.

D. Unless specifically changed by the terms of this article, all other terms and conditions of employment as outlined elsewhere will remain the same for employees participating in the Flexiplace program.

E. The parties recognize that in order for the Flexiplace program to be successful, supervisors will manage employees by results, e.g., evaluate employee success by their output, rather than process.

## **Section 47.02**

A. Employee participation is voluntary and subject to management approval. When considering an employee's request to work flexiplace, the supervisor should consider restructuring the employee's work to accommodate the request.

B. To be considered for a flexiplace arrangement or to continue to work on a flexiplace arrangement, an employee must meet the following criteria:

1. The employee has been with the agency for one year.
2. The employee has been in the first tier organization for more than six months.
3. The employee's performance has not dropped below a meets expectations or equivalent.
4. The employee has not received any disciplinary/adverse action in the last six months that would impact the integrity of the Flexiplace Program.
5. The employee has suitable work to do on flexiplace. Work suitable for flexiplace depends on job content rather than job title, type of appointment, or work schedule. For example, telecommuting is feasible for work that requires thinking and writing data analysis, reviewing grants or cases, writing decisions or reports; telephone intensive tasks setting up a conference, obtaining information, following up on participants in a study; and for computer-oriented tasks programming, data entry, and word processing. Work may not be suitable for Flexiplace if the employee needs to have:
  - extensive face-to-face contact with supervisors, other employees, clients or the general public;
  - access to material which is routinely required to accomplish assignments and cannot be removed from the official duty station;
  - special facilities or equipment that are not available off-site.

C. Employees may participate in flexiplace for medical reasons, or to care for a family member, as that term is defined in the glossary of this agreement. In addition to meeting the above conditions, the Employer may require that medical documentation be provided in accordance with the procedures specified in Article 27, Section 27.03.

## **Section 47.03**

A. An employee requesting a flexiplace arrangement will develop a plan to submit to his or her supervisor that includes such information as the type of work to be done at the flexiplace site, the days to be worked at the flexiplace site, etc. The employee and the supervisor will work together to make any necessary adjustments to the plan before it is



finalized. The employee's plan will be approved if he/she has sufficient work to do at the alternate site, and it does not conflict with a mission necessity or training.

B. The Employer will approve or deny the employee's request within 5 days of submission. Once approved, the employee and the supervisor will enter into a Flexiplace Work Agreement that incorporates the employee's work plan.

C. Any time an employee believes he or she needs to permanently or temporarily return to work in the office, the employee will normally provide management with thirty (30) calendar days notice of the needed change, except in emergency situations.

D. Employer decisions regarding Flexiplace may be appealed by filing a "Step One" grievance in accordance with Article 11, Section 11.07 and 11.10. If the matter is not resolved at Step One, the matter may be appealed to arbitration, in accordance with the provisions of Article 12. The arbitrator, after hearing the case, will issue a bench decision.

#### **Section 47.04**

A. Flexiplace home work sites require adequate work space (a room or a portion of a room which is adequate for the performance of official duties), light, basic residential telephone service, power, adequate environmental conditions, smoke alarms, and adequate security. The Employer will not pay for any of these requirements.

B. The employee will be available at the assigned alternate site unless on pre-approved leave or lunch, or if he/she has given the manager prior notice and has received permission to modify the work day. The supervisor and the employee will work out appropriate protocols to ensure employee availability. For purposes of timekeeping, employees participating in the flexiplace program will provide appropriate information necessary to accurately document their time and hours worked.

C. The Employer is not responsible for paying any extra costs the employee may incur for working at home, e.g., adding an additional telephone line.

D. Employees will comply with all required security measures and disclosure provisions so that at no time are security or Privacy Act requirements compromised.

E. Employees will comply with applicable government regulations governing information management and electronic security procedures for safeguarding data and data bases.

F. To ensure that Information Systems and sensitive information procedures are in place at the alternate work sites, the Employer may inspect the employee's work site with twenty-four (24) hours notice to the employee. The notice will include the date and approximate time of arrival, the number of management officials coming to the site, the estimated duration of the inspection and other appropriate information. The employee may arrange for an NTEU representative to accompany the manager to the inspection.

G. Employees must notify their supervisor of any accident or injury which occurs at the alternate work place during the course of the scheduled work period and complete the necessary paperwork.

#### **Section 47.05**

A. The equipment necessary to work at the alternate site must be available. To the extent feasible, the first tier organization will provide the employee equipment from available surplus, including equipment which can be made available from the surplus of other first tiers, although it is not under any obligation to purchase equipment for this purpose or to deny it to others who may need it. Should the first tier be unable to provide the equipment from its available supply, the employee will have to provide it through his/her own means. The Department of Energy retains ownership and control of any and all hardware, software, telecommunications equipment and data placed in the alternative work site by the government. This equipment is to be used for official business only.

B. Employees will protect all government records and data against unauthorized disclosure, access, mutilation, obliteration, or other unauthorized use.

### **Article 48**

#### **Reorganization/Relocation Notification Procedures**

##### **Section 48.01**

The Employer and NTEU agree that a stable and healthful office environment which contributes to employee comfort, productivity and job satisfaction is an important organizational objective. When the Employer determines that it is necessary to reorganize or to physically relocate employees, it will provide advanced notification to NTEU to begin a cooperative discussion. The objectives are for the reorganization/relocation to be thoroughly coordinated with NTEU, well planned and implemented promptly, in accordance with procedures outlined in this Article, and to minimize adverse impact upon staff and organizational disruption. A standard notification form must be used and is available from Labor Relations.

The parties will jointly develop general guidelines in each separate facility where bargaining unit employees are located. Where these guidelines are not able to be met, management will be expected to distribute existing space fairly among all occupants of the building who are under the administrative control of the Employer.

##### **Section 48.02 – Definitions**

For the purpose of this Article:

A. "Relocation" means a physical move of the employee(s) in a work unit from one worksite (e.g.: office, suite of offices, shop, building) to another. Temporary on-site relocation, of less than thirty (30) days duration, for office refurbishing (e.g., painting and carpeting) will not be subject to this notification procedure; if seating or office layout arrangement are changed formal notification will be made.

B. "Reorganization" means at a minimum, organizational change, including transfer of function, involving the elimination, addition, or realignment or redistribution of functions, employees, or responsibilities among or within Departmental components.

C. "Advanced Notice" means written notification submitted as soon as there has been a determination to reorganize or physically relocate employees.

D. "Notice" means written notification, submitted as much in advance of the proposed implementation date as possible, but in no case less than three (3) work weeks prior to a proposed implementation date.

E. "Implementation Date" means the calendar day proposed by management for effectuation of the proposed change in working conditions which is described in the Notice, and by which it seeks to fulfill any statutory obligation to negotiate in good faith.

F. The parties also recognize that Executive Order 12871 required an opportunity to bargain over subjects set forth in 5 U.S.C. 7106(b)(1). Management and NTEU agree that, within 90 days of signing this agreement, an MOU will be executed by the parties explaining those matters covered by 5 U.S.C. 7106 (b)(1); i.e., the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work, that require advance notice and how that notice will be satisfied.

#### **Section 48.03 - Disclosure of Plans**

A. Where the Employer wishes to reorganize, the Employer will give Notice to NTEU and provide, as appropriate, the following initial information:

1. reason(s) for the reorganization,
2. a list with the names, position titles and grades of all affected employees,
3. approved mission and function statements for the existing and the proposed organizations,
4. staffing charts for the existing and the proposed organizations,
5. a. a list of officially classified position descriptions then complete, if any, with copies of each position description listed,  
b. a list of positions for which classification action is pending,
6. a list of known vacancies in the new organization,
7. projected adverse impact resulting from the reorganization, if any,
8. a proposed implementation schedule, and
9. any proposed written employee notices.

B. Where the Employer wishes to relocate employees, the Employer will give Notice to the appropriate NTEU Chapter(s) and provide, as appropriate, the following initial information. The parties agree that a streamlined notification process may be appropriate for minor relocation:

1. reason(s) for the relocation
2. a. a list with the names, position titles and grades of all affected employees and their supervisors,  
b. a list of names, job titles, and the employer of all contractors occupying work space in existing and/or proposed sites seating charts.
3. floor plans and seating chart(s), drawn to scale, for both the existing and proposed organizational locations,
4. whether the proposed relocation is intended to be temporary or permanent and the expected duration of residency in temporary space,
5. information concerning anticipated changes in provision for NTEU office space, parking facilities, lunch facilities, security provisions,
6. health and safety testing and results, if any,
7. projected adverse impact resulting from the relocation, if any, and a statement concerning how the determination was made together with any relevant documentation.
8. a proposed implementation schedule, and
9. any proposed written employee notices.

C. Where NTEU and DOE cooperatively develop the reorganization or relocation proposal, they will jointly sign a memorandum indicating concurrence and transmit it to Headquarters Labor Relations Services, thus eliminating the need for formal notification.

D. After receipt of the initial Notice and the information described in Section 48.03.A, and 3.B., NTEU may, as soon as possible, but no later than five (5) work days after receipt, request to meet with the Employer for a detailed briefing and to discuss the proposed change and the information supplied with the notification, or to comment or otherwise make suggestions concerning the implementation plan. NTEU concerns raised at the meeting regarding adverse impact which will result from the proposed change will be discussed. Such meeting shall not preclude formal negotiations. For relocations which involve large numbers of employees (e.g. more than 100 employees) or relocations which involve significant geographical movement (e.g. from Germantown to Forrestal or Forrestal to Germantown), NTEU will be allowed a one-week extension of the normal three- week time frame upon written request to Headquarters Labor Relations Services within ten (10) days of the initial notice. In all other cases or where NTEU is making a further request for extension of time, NTEU will provide Headquarters Labor Relations Services notice within ten (10) workdays of initial notice or within two (2) days of the extension

referenced above, that an extension of time required for consideration of the proposal is needed. Such notice will state the length of extension needed and the reason for the extension.

E. NTEU requests under 5 U.S.C. 7114(b)(4) for additional information will be honored as required by statute. No formal Notice to NTEU, under this Article, will be considered completed until information required under 5 U.S.C. 7114(b)(4) has been provided.

F. If prior to final implementation, the Employer concludes that minor modification of the original plan is necessary and employee assignments will change as a result, the Employer shall notify and discuss these changes with NTEU. Minor adjustments to the original plan will not constitute a separate proposal for the purposes of this Article. However, such proposed modifications shall be processed, as necessary and appropriate, in accordance with this Article.

#### **Section 48.04**

When allocating office space in conjunction with a relocation, or, if appropriate, subsequent to a reorganization, employees will be given a choice in office selection. That choice will be consistent with work demands that necessitate that functions be adjacent to one another or in specific locations (e.g., sharing equipment or customer service). Moves will not be made only to accommodate individual promotions or additions to an organizational unit. The order in which employees will be offered a selection is as follows:

1. Full time employment status
2. Grade
3. Time in grade
4. DOE seniority
5. Service computation date
6. Flip of a coin
7. Part time employment status in the same sequence as above.

Federal employees will get priority for space over contractors.

#### **Section 48.05**

The Employer will not implement proposed reorganizations/relocations prior to the conclusion of negotiations and fulfillment of its bargaining obligations under statute or prior to the expiration of the appropriate time period if no proposals are offered. Nothing in this Article shall be construed to waive this statutory right. Administrative and Personnel officials will not implement reorganization or relocation changes prior to receiving clearance from Headquarters Labor Relations.

### **Article 49**

#### **Parking Management**

##### **Section 49.01 – Policy**

To ensure that DOE-controlled parking facilities are operated in a manner responsive to the needs of the Department , and for the maximum benefit to the employees, assignment of the DOE-controlled parking spaces will be in compliance with the national energy conservation policies, and the Government-wide parking policies issued by the General Services Administration (GSA) Federal Property Management Regulations (FPMR) Temporary Regulation D-69, Supplement II (Title 41, Code of Federal Regulations, Part 101-120, Federal Employee parking, 49, FR4469 (1984), the DOE Order and criteria set forth in the order. Parking fees shall be assessed to recover the cost of operating a parking facility.

#### **Section 49.02 - Parking Committee**

The Doe Parking committee shall be composed of a representative designated by Chapter 213 and another by management. They will select a mutually acceptable third member on an ad hoc basis or long term basis, should a dispute arise between the two designated members and be unresolved due to the lack of a third member. The appointment of a third member shall be resolved by a meeting between an NTEU staff person and a management representative. The two representatives will see if a majority decision can be reached with regard to the selection of a third party. If not they will select an impasse resolution process. The Parking Committee will be actively involved in the analysis of any recompetition regarding the rewarding of the contract to operate the Forrestal parking facility. Management reserves the right to make a final decision in awarding the contract. NTEU reserves the right to bargain impact and implementation.

#### **Section 49.03 - NTEU Parking**

The parties agree that NTEU Chapter 213 will be issued two (2) reserved and three (3) at-large permits in the Forrestal parking facility.

The parties agree NTEU Chapter 228 will be issued temporary passes whenever they have labor management business in the Forrestal Building. Chapter 228 understands that prior telephone notice will expedite the issuance of a temporary permit. Chapter 228 will be issued two at large permits for the Forrestal parking facility.

#### **Section 49.04 – Duration**

This article may be reopened for modification by mutual consent of the parties any time after the first year of its existence. Any request for reopener shall be reduced to writing and delivered to the lead management appointee of the Parking Committee, where the Union is the moving party, or to the Chapter President if management is the moving party. A meeting will be convened to discuss the reasons for the reopener. If agreed to, either party or both parties may offer changes and/or new language during the open period.

## **Article 50**

### **Headquarters Transit Subsidy Program**

In recognition of DOE's role in conserving energy and of Headquarters and NTEU's roles as positive supporters of energy-saving measures such as public transportation, the parties agree to the following measures to promote employee use of the Subsidy for Energy Employees' Transit (SEET) Program.

The Employer will participate in the transportation subsidy program to the maximum extent permitted by law so long as such participation does not adversely impact the availability of funds for employees' salaries, promotions, or awards. Such transportation benefits may include, but are not limited to, **authorized** mass transit, bicycle, parking, and/or car or van pool benefits.

In the event that the Employer claims the unavailability of funds to pay transportation benefits or foresees adverse impact on funds for employees' salaries, promotions, or awards at any level of the organization, the Employer will provide NTEU with documentation to support the claim and both parties shall reserve the right to reopen negotiations with respect to this claim.

The Employer shall maintain a website on the DOE Human Capital intranet webpage with information about available transportation benefits and how to apply and receive the transportation benefits. The Employer shall provide transportation benefits information, including the address of the aforementioned transportation benefits webpage, to new employees during the employee orientation. The Employer shall provide updates about transportation benefits to all employees via DOECast emails and the updates shall be posted on the aforementioned transportation benefit website.

In the event an employee is unable to receive the transportation benefits at his/her official duty station, the Employer shall provide employees with a reasonable amount of duty time to travel to an alternate site designated by the SEET Program to receive the transportation benefits.

The Employer agrees to establish a specific parking area in Germantown, in which to accommodate vans used for **SEET participating** van pools.

## **Article 51**

### **Duration and Termination**

#### **Section 51.01- Full and Complete Agreement**

This is the full and complete Agreement between the parties concerning the matters addressed herein.

#### **Section 51.02 – Mid Term Agreements**

- A. **Mid-Term Agreements** – This Agreement shall govern in the event that MOUs or practices established pursuant to MOUs are inconsistent with this Agreement.
- B. **Past Practices** - The terms of this Agreement supersede any past practices concerning matters covered by this Agreement.

#### **Section 51.03 - Effective Date and Renewal**

- A. The Agreement will remain in full force and effect for four (4) years with a mid-term reopener. The reopener will occur after two (2) years, at which time each party may elect to reopen two (2) Articles. The parties will negotiate ground rules prior to commencing bargaining per 51.03.D.
- B. Thereafter, this Agreement will automatically be renewed for one (1) year unless either party gives written notice to the other that it intends to renegotiate, amend, modify or terminate the Agreement.
- C. Written notice of a party's intent to renegotiate, amend, modify or terminate this Agreement must be served by the requesting party upon the other no earlier than 105 calendar days and no later than 30 calendar days prior to the initial expiration date or the anniversary date of any subsequent extensions.
- D. The parties shall begin ground rules negotiations within forty-five (45) calendar days after service of notice to the other party under this Section. The parties agree to exchange proposals subsequent to the completion of the negotiations of the ground rules.



## ***Glossary***

**NTEU Officers:** Any member of an NTEU Chapter who has been duly elected, in accordance with the NTEU Bylaws, to serve on a Chapter's Executive Committee. Currently, there are two such Committees, one for Chapter 213 and the other for Chapter 228. The Committee for Chapter 213 is composed of the President, Executive Vice President, 5 Vice Presidents, a Secretary and a Treasurer. The Committee for Chapter 228 is composed of the President, Executive Vice President, Vice President/Secretary, Vice President/Treasurer, and four Vice Presidents.

**NTEU Stewards:** Those non-elected individuals designated by Chapter Presidents to serve as Stewards for their respective chapters. Up to 32 individuals may be so designated. Additionally, NTEU Officers may engage in Stewardship activity and are entitled to official time for representation purposes and for appropriate steward training. Both NTEU Officers and NTEU stewards may present grievances. An updated list of Officers and Stewards is to be provided to the Employer, pursuant to Article 6, Section 6.02.

**NTEU Representatives:** All Officers and Stewards of NTEU. Additionally, this includes individuals specifically designated by Chapter Presidents or their designees to act on behalf of NTEU on a specific issue. These individuals will not present grievances. NTEU will notify the Employer of these designations as they are made.

**Days:** Normally means working days, unless specifically identified as calendar days. Working days refer to normal business days, and include AWS and flexiplace days, but exclude recognized government holidays and days in which the government is closed, such as snow days or closures due to agency-wide funding lapses associated with continuing resolutions.

**Official Time:** Duty time for which NTEU officers, stewards, and/or representatives have been approved to work on union business. It is sometimes also used in reference to the time approved for other bargaining unit employees to pursue grievances. This time, however, should be categorized as administrative time.

**Family:** (Reference Article 27) for purposes of requesting leave under the various family friendly provisions, family is defined to include the following:

- 1) Spouse and spouse's parents;
- 2) Children, including adopted children, and their spouses;
- 3) Parents;
- 4) Brothers and sisters, and their spouses;
- 5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

In witness whereof, the parties hereto have entered into this agreement.

For the Department of Energy Headquarters:

For the National Treasury Employees Union:

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Reesha K. Trznadel  
Chief Spokesperson, DOE Headquarters  
Negotiating Committee

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Kevin Fagan  
Chief Spokesperson, NTEU Negotiating  
Committee

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Stephen F. Durbin  
Member, DOE Headquarters Negotiating  
Committee

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Barry R. Clark  
Member, NTEU Negotiating Committee

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Sonja L. Green  
Member, DOE Headquarters Negotiating  
Committee

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Mary F. Haughey  
Member, NTEU Negotiating Committee

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Laurie S. Morman  
Member, DOE Headquarters Negotiating  
Committee

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Carolyn M. Haylock  
Member, NTEU Negotiating Committee

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Mark E. Petts  
Member, DOE Headquarters Negotiating  
Committee

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Richard H. Moore  
Member, NTEU Negotiating Committee

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Richard A. Reda  
Member, DOE Headquarters Negotiating  
Committee

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Donna R. Williams-Dixon  
Member, DOE Headquarters Negotiating  
Committee

Approved:

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Sarah J. Bonilla  
Chief Human Capital Officer

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Colleen Kelley  
NTEU, National President

Effective Date:

**APPENDIX A**  
**"WEINGARTEN" RIGHTS:**

5 U.S.C. 7114(a)(2) provides, in part:

"An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at ... any examination of an employee in the unit by a representative of the agency in connection with an investigation if

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation."

I, \_\_\_\_\_, hereby certify that I received the statement of warning printed above on \_\_\_\_\_.