



NEGOTIATED AGREEMENT BETWEEN



**National Energy
Technology Laboratory
U.S. Department of Energy**




**American Federation of
Government Employees
Local #1916**

July 6, 2006

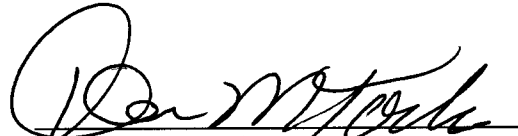
Signatures


This document is approved as the binding agreement between the parties and is approved on this 3 day of July 2006:

For Local 1916:


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President, Local 1916

For NETL:


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ARTICLE 1

Exclusive Recognition

SECTION A: The Employer recognizes that the Union, AFGE Local 1916, is the exclusive representative of all employees of the unit as defined in Section B of this Article. The Union recognizes the responsibility of representing the interests of all employees in the bargaining unit with respect to personnel policies, practices and working conditions without discrimination and without regard to Union membership.

SECTION B: The certified unit to which this Agreement is applicable includes professional and non-professional employees who occupy positions at the National Energy Technology Laboratory, Pittsburgh, PA site. This Agreement excludes all supervisors, management officials, confidential employees, and all employees engaged in Federal personnel work in other than purely clerical capacity.

ARTICLE 2

Effective Date and Agreement Duration

SECTION A: This Agreement is between AFGE Local 1916, hereafter referred to as the Union, and the National Energy Technology Laboratory, U.S. Department of Energy, hereafter referred to as Management. This Agreement is effective on the date indicated on the signature page of this Agreement.

SECTION B: This Agreement shall remain in effect for five years from the effective date.

SECTION C: If at the expiration date of this Agreement, a new Agreement has not been placed into effect, the terms of this Agreement shall continue in full force and effect. If neither party serves notice to renegotiate this Agreement, it shall automatically renew for one-year periods. If either party wishes to renegotiate or modify this Agreement, they shall give written notice to the other party at least 90 days prior to the expiration date. Negotiations shall commence within the 90-day period prior to expiration date after that written notice has been received. During any negotiations on a new Agreement, this Agreement shall remain in effect until such time that a new Agreement is finalized. Notwithstanding any other provisions of this Agreement, it is further agreed that in the event this Agreement terminates, the Recognition and Dues Withholding Article shall remain in effect, provided the Union retains exclusive recognition status.

ARTICLE 3

Partnership

SECTION A: Partnership is a relationship between two entities in which each has equal status and a certain independence, but also an implicit or formal obligation to the other to work together to more effectively achieve shared objectives.

Section B: Management and the Union believe that active and healthy Labor-Management Partnership will promote a quality work environment for employees, a more efficient administration of agency programs and this Agreement, and improved service to customers. While neither Management nor the Union waives their inherent rights and duties, both recognize the potential benefits in operating as partners.

SECTION C: Management and the Union agree to discuss issues, share information, and work to solve problems as partners in the most constructive manner possible. The intent of joint problem solving is not co-management, but to seek input from the Union at the appropriate stage before final decisions are made by Management. Joint problem solving at the appropriate stage will achieve increased benefit from the partnership, show good faith efforts between the partners, allow for more informed decisions, and expedite Impact and Implementation negotiations. If either party believes they were not involved at an appropriate stage of problem solving, these concerns shall be addressed to and resolved by the LMPC.

SECTION D: The Union has the right to be represented at any formal discussion between one or more representatives of Management and one or more bargaining unit employees concerning any grievance, personnel policy or practice, or other general condition of employment. Management will provide the Union the option to appoint an appropriate number of representatives on any team considering workplace issues, such as but not limited to, personnel policies and practices, and working conditions. If either party believes the Union does not have an appropriate number of representatives the issue shall be addressed to and resolved by the LMPC.

SECTION E: Management and the Union agree to participate in the DOE-wide Labor Management activities.

ARTICLE 4

Management Rights

SECTION A: Management retains the rights set forth in 5 USC 7106 and other pertinent laws. The following is provided for information and reference to Management and the Union and is taken directly from 5 USC 7106.

“Sec. 7106. Management rights:

- (a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency –
 - (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
 - (2) in accordance with applicable laws –
 - (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - (C) with respect to filling positions, to make selections for appointments from
 - (i) among properly ranked and certified candidates for promotion; or
 - (ii) any other appropriate source; and
 - (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.
- (b) Nothing in this section shall preclude any agency and any labor organization from negotiating -
 - (1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
 - (2) procedures which management officials of the agency will observe in exercising any authority under this section; or
 - (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.”

ARTICLE 5

Union Rights and Responsibilities

SECTION A: Management recognizes that in order to perform its representational functions and duties, the Union will require officially designated Union Representatives. Management shall not discriminate against Union Representatives because of the performance of their duties. Union Representatives shall be defined as the Senior Union Official, DOE Vice President, Secretary, Chief Steward, Union Stewards, and other employees as specifically designated by the Senior Union Official

SECTION B: In all matters relating to personnel policies, practices, and other conditions of employment, Management and the Union will have due regard for the obligations imposed by applicable laws and this Agreement. Management shall not restrain, interfere with, or coerce Representatives of the Union in the exercise of their rights under applicable laws and this Agreement. The Union recognizes Management's rights under applicable laws. Nothing in this Agreement shall be construed as abrogating the Union's right to communicate with its membership, the public, public officials, or other parties.

SECTION C: The Union shall be notified in a timely manner and be given the opportunity to be present and to participate at any formal discussion between one or more representatives of Management and one or more employees in the Bargaining Unit or their representatives concerning any grievance, personnel policy or practice, or other general condition of employment. The Union shall also be allowed to be present and represent an employee at any examination of an employee in the Unit by a representative of Management in connection with an investigation, if the employee reasonably believes that the examination may result in disciplinary/adverse action against the employee and the employee requests representation.

SECTION D: Management agrees to furnish the Union with information that it is entitled to under the provisions of 5 U.S.C. 7114(b)(4). All other requests for information by the Union will be considered in accordance with this Agreement and governing laws and regulations.

SECTION E: The Senior Union Official will provide the Human Resources Office with a current roster of the names of Union Officers and designated Stewards. The Union will notify the Human Resources Office of any change in the designations of Union Officers and Stewards. The roster will indicate the Representative's position in the Union and telephone extension. No employee will be recognized as a Steward or Union Officer unless his or her name appears on this current listing.

SECTION F: It is agreed that the administration of this Agreement shall be between the Senior Union Official and the designated Management Representative. If the two parties fail to resolve the matter, either party may utilize the Labor-Management Partnership Council (LMPC) or the Negotiated Grievance Procedure to obtain resolution.

SECTION G: The Union will not strike against the Government of the United States nor any agency thereof, nor assist or participate in such strike, nor impose a duty or obligation to conduct, assist, or participate in such a strike.

SECTION H: Management agrees that a designated National Union Representative may be admitted to the site for representational purposes, subject to normal security regulations.

SECTION I: Management shall quarterly provide the Union with current listings of Bargaining Unit members, their position titles, series, grades, and organizational unit. Management shall provide the Senior Union Official with any changes to this listing.

SECTION J: Management shall advise new Bargaining Unit employees during orientation of the exclusive recognition granted the Union and of their unrestrained right to form, join, or assist any labor organization or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Management shall provide a copy of this Agreement to each new Bargaining Unit employee at this orientation. Sufficient notice shall be given to the Senior Union Official prior to any orientations of new employees and authorizing the Senior Union Official or his designee up to 30 minutes to explain the role of the Union and address this Agreement during this orientation with new Bargaining Unit employees.

ARTICLE 6

Employee Rights

SECTION A: All employees shall be treated fairly and equitably, and without discrimination with respect to personnel management and Union activity. It is therefore agreed that the Management and the Union shall endeavor in good faith to establish working conditions that will be conducive to enhancing and improving employee morale and efficiency. Employees shall have the right to fully pursue their private lives, personal welfare, and personal beliefs without interference, coercion, or discrimination by Management or the Union, except as restricted by laws, regulations, or clear job responsibilities.

SECTION B: Each employee shall have the right, freely and without fear of penalty or reprisal, to form, join, or assist any labor organization or to refrain from any such activity. The right to assist the Union extends to participation in management for a labor organization when duly elected or appointed and acting for a labor organization in the capacity of a representative, including presentation of its views to officials of the Executive Branch, the Congress, or any other appropriate authorities. Each employee shall have the right to exercise their First Amendment rights without fear of penalty or reprisal. This right also extends to engaging in collective bargaining with respect to conditions of employment through representatives chosen by employees in conformance with the exclusive representation rights of the Union.

SECTION C: Nothing in this Agreement shall require a Unit employee to become or to remain a member of this Union organization or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deduction in accordance with Article 9, Dues Withholding.

SECTION D: The employee has a right to be represented by the Union without discrimination and without regard to labor organization membership where provided for by law, rule, or regulation. Each employee shall have the right to bring matters of personal concern, either informally or formally in accordance with Article 33, Negotiated Grievance Procedure, or Article 34, Unfair Labor Practices, to the attention of Management officials having the authority to resolve the concern, subject to the exclusive representation rights of the Union. The parties agree there will be no restraint, harassment, intimidation, reprisal or coercion against the employee in the exercise of this right. If an employee wishes to discuss a problem, potential grievance, or unfair labor practice with a Union Representative, the employee shall have the right to contact and meet with a Union Representative on duty time.

SECTION E: An employee has the right to review his or her official Personnel Folder during normal duty hours.

SECTION F: An employee has the right to raise as a defense to a performance-based adverse action, the lack of necessary training that has been previously requested and documented by the employee and denied by Management.

SECTION G: The employee has the right to be represented by the Union at any examination by a representative of Management in connection with an investigation if the employee reasonably believes the examination may result in disciplinary action against the employee and the employee requests representation. Management shall inform employees of this right annually.

SECTION H: If the employee requests a representative under Section G above, no further questioning will take place until the representative is present. Management will delay the examination and reconvene when the employee and representative are prepared to meet.

SECTION I: Management shall make every good faith effort to ensure that the employees being questioned by representatives of the Employer during the course of an administrative investigation will be informed as to the identity of the investigator(s) and investigation topics reasonably in advance of the beginning of the investigation's questioning or other investigatory efforts.

SECTION J: Employees shall be protected against reprisal of any nature for the proper disclosure of information not prohibited by law or Executive Order, which the employee reasonably believes evidences a violation of law, rule, or regulation; or evidences mismanagement, waste of funds, an abuse of authority, or danger to public or employee health or safety.

SECTION K: Employees have the right to refuse orders that would clearly require the employee to violate law, rule, regulation, or cause injury to themselves or other employees.

SECTION L: Employees shall have the right to report and request inspections of unsafe or unhealthful working conditions and refuse to perform tasks without fear of reprisal if the employee feels that the conditions are unsafe.

SECTION M: If an employee is to be served with a warrant or subpoena on the organization's premises, it shall be done, where reasonably possible, in private and without the knowledge of other employees.

ARTICLE 7

Facilities and Communications

SECTION A: Facilities

- (1) Management shall provide the following facilities and resources for Union use, subject to applicable government regulations.
 - a. Management shall provide the Union with on-site office(s) space.
 - b. Management shall provide and maintain telephone service, normal office furniture, and supplies in the Union office for official Union business. Management agrees to consider requests for additional equipment for use in the Union offices and meeting rooms.
 - c. The telephone directory shall list the names and telephone numbers of the Union office and Union Representatives designated by the Senior Union Official.
- (2) Management shall provide at least 15 bulletin boards for Union use. The Union bulletin board spaces will be identified as such and accessible to the Bargaining Unit employees. All postings on the bulletin boards must be authorized by the Union. Postings shall not violate any laws nor jeopardize the operational security of the organization.
- (3) Management shall permit the use of internal mail, computer services, photocopiers, fax machines, transportation, conference rooms, and other resources and services necessary to conduct official Union business and training.

SECTION B: Communications

- (1) Publications of the Union may be distributed on Government property by Union Representatives.
- (2) The internal mail system may be used for distribution of Union mail.
- (3) The electronic mail system may be used by the Union to distribute general announcements and for communications purposes with and between Bargaining Unit members. Management shall provide and maintain a public Bargaining Unit e-mail list that shall be updated at least quarterly.
- (4) Management shall provide, at no cost to the Union, copies of this Agreement, printed in at least 12 point font size, to all Bargaining Unit employees, both current staff and future hires. The initial distribution shall be made within 60 days after the effective date of this Agreement. Management shall also provide the Union with 25 additional copies for internal Union use. A copy of this Agreement shall be posted on the Intranet or any equivalent successor.
- (5) Management will make communications resources available to the Union for representational activities.
- (6) Employees are to be permitted privacy of their mail subject to normal security regulations and procedures.

- (7) The Union shall be given the opportunity to author a monthly column and other articles to be published in the employee newsletter subject only to normal editorial review.
- (8) Communications shall be professional and respectful.
- (9) Management shall provide a direct and clear link to the Union website from the organization's Intranet.

ARTICLE 8

Official Time

SECTION A: For the purpose of this article, official time is defined as time granted to Union representatives to perform representational functions while otherwise in a duty status without charge to annual leave or loss of pay. Union representatives include elected officers, stewards, and Union appointees. Management and the Union recognize that time spent by Union representatives contributes to the development of orderly and effective labor-management relations.

SECTION B: For the President and Vice President of the Union, the Union and Management agree that a reasonable amount of official time is necessary to produce orderly and effective labor management relations which are applied consistently throughout the organization, and to effectively carry out the duties of their offices.

SECTION C: Union representatives, other than those provided for in Section B of this Article, will request prior approval, from their supervisor, for use of official time to conduct representational activities. Official time for these purposes shall be granted consistent with 5 USC 7131 and organizational priorities. In the opinion of the supervisor, if the granting of official time will negatively impact organizational priorities, the supervisor and Union Representative will seek a mutually agreeable rescheduling of official time. In their disclosure to the supervisor, the Union representative will not be required to compromise the confidentiality of the grievance, potential grievance, or other confidential Union business, relating to representational activities. Management has no intent, as defined by law and regulations, to regulate Union activities.

SECTION D: When an individual employee elects self-representation in a grievance or administrative procedure, official time will be granted consistent with 5 USC 7131.

SECTION E: The Union and Management recognize the necessity to accurately record the amount of official time used for representational purposes. Union representatives will submit a record of their official time used at the end of each pay period. For the President and Vice President of the Union, in addition to recording time by pay period, a quarterly report of time usage and a plan for the next quarter will be provided to the LMPC and their supervisor of record.

ARTICLE 9

Dues Withholding

SECTION A: An employee officially assigned to a bargaining unit position and who is a member in good standing of the Union may authorize an allotment from his or her pay for Union dues provided that:

- (1) normal pay is sufficient, after legal deductions and other authorized allotments, to cover the full amount of dues; and
- (2) that the individual has voluntarily completed Standard Form 1187, Request for Payroll Deduction for Labor Organization Dues, and has been provided with information on the limitations on revocation of authorization as stated in Section L of this Article.

SECTION B: The Union within 10 days of the effective date of this Agreement, shall notify the Human Resources Office in writing of the names and titles of officials authorized to make the necessary certification of Standard Form 1187, the Union treasurer's name and the address to which remittances should be sent, and how the check should be inscribed. If any of this information should change, the Union shall promptly notify the Human Resources Office in writing.

SECTION C: The Union will inform each of its members of the voluntary nature of the dues authorization, of the procedure for authorizing the allotment, and the conditions under which the allotment may be revoked. The Union agrees to obtain and distribute to its members Standard Form 1187 and to receive completed forms from members. The Union shall receive completed forms from members, enter the amount of dues to be deducted each pay period, determine if the member is in good standing in the Union, complete the required certification, and submit the forms to the Human Resources Office.

SECTION D: Allotments authorized on properly completed and certified forms which are received by the Human Resources Office will be processed to the DOE Payroll Office within 10 days of receipt. The authorized amount to be withheld from the employee's pay will begin the first full pay period after the date of receipt in the DOE Payroll Office. Withholding of the authorized amount will continue until the allotment is terminated under one of the conditions provided in Sections H through L of this Article.

SECTION E: The DOE Payroll Office will withhold the regular Union dues from the pay of each employee for whom it has a properly executed current allotment authorization. Dues will be withheld on a biweekly basis conforming to a regular pay period. Only the regular, periodic amount required to maintain an employee in good standing with the Union will be deducted. No special assessments, fines or similar fees shall be deducted except for dues erroneously omitted after receipt by the employer of an employee's Standard Form 1187 or notification of dues increase as covered in Section G of this Article.

SECTION F: After the close of each pay period, the DOE Payroll Office will certify for payment the net amount to be remitted. A check for this amount will be mailed to the Union. Administrative errors in underpayment of remittance checks will be corrected and adjusted in the next remittance check. The Union upon discovery of an overpayment error will promptly refund overpayment to the DOE Payroll Office. The remittance check will be accompanied by a list of Union members with current allotment authorizations, the amount withheld from each person's pay, a statement showing the total amounts withheld during the pay period, any administrative adjustments, names of those whose pay was not sufficient to cover the full amount of the deduction and the net balance remitted.

SECTION G: If the amount of regular dues is to be changed, the Union shall inform the Human Resources Office who shall forward the change to the DOE Payroll Office within 10 days of receipt of the request for change. Only one such change may be made in any 12-month period. The change will be effective the beginning of the first pay period after receipt of the change notice by the DOE Payroll Office.

SECTION H: If the Union loses exclusive recognition, the Human Resources Office will notify the DOE Payroll Office who will terminate allotments for all members effective with the beginning of the pay period following the one in which the notification is received by the DOE Payroll Office. The allotment of all employees in the organization will be terminated on the effective date of the first complete pay period after the Union ceases to have exclusive recognition.

SECTION I: The Union shall provide to the Human Resources Office in writing the name of any employee who ceases to be a member in good standing in the Union within 10 days of the date of such a determination. The Human Resources Office shall forward a termination request to the DOE Payroll Office within 10 days of the date of receipt. The allotment of an individual employee will be terminated effective with the first complete pay period after which the DOE Payroll Office receives written notice from the Human Resources Office.

SECTION J: The allotments of an individual employee will be terminated on the effective date of his or her separation from the organization. Allotments will not be prorated, however, and full allotments will be taken from the check covering a final partial pay period.

SECTION K: If the employee is promoted, reassigned, or otherwise moved out of a bargaining unit position, the Human Resources Office will notify the DOE Payroll Office, the Union, and the employee that he or she is no longer eligible for dues withholding under this Agreement, unless the employee elects to continue dues withholding. If the employee does not elect to continue dues withholding, the Human Resources Office shall execute Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues, within 10 days of the notification and forward this request to the DOE Payroll Office. The allotment of an individual employee will be terminated effective with the first complete pay period after which the DOE Payroll Office receives written notice from the Human Resources Office.

SECTION L: An employee who wishes to revoke his or her dues allotment shall complete Standard Form 1188 and provide this form to the Human Resources Office. A properly executed request to revoke an authorization to deduct dues will be effective on the next anniversary date of the employee's dues authorization. The Human Resources Office, upon receiving a written revocation notice Standard Form 1188 from an employee, will notify the Union and the DOE Payroll Office within 10 days of receipt of the request. The DOE Payroll Office will terminate the allotment at the beginning of the pay period on the anniversary date of the last dues authorization.

ARTICLE 10

Labor-Management Partnership Council

SECTION A: Both Management and the Union agree that the existing Labor-Management Partnership Council (LMPC) is beneficial to the operation of the organization.

SECTION B: The existing LMPC shall operate according to its established charter. The present charter of the LMPC is considered adequate by both Management and the Union; however, the charter may be changed by consensus of the LMPC.

SECTION C: The LMPC may address negotiable and non-negotiable issues. The LMPC is an available forum for mid-term bargaining, negotiation over negotiable issues, discussion of non-negotiable issues, and for addressing potential grievances and unfair labor practices that may have organizational impacts.

SECTION D: The LMPC may identify issues that will be negotiated and become part of this Agreement. Issues negotiated by the LMPC shall be considered fully negotiated when they are reduced to writing and approved by the LMPC. Negotiated issues shall be communicated to all employees and shall have the full force of this Agreement.

SECTION E: Nothing in this Article nor participation on the LMPC by either Management or the Union shall abridge the rights of Management or the Union to bargain in good faith as prescribed by law.

ARTICLE 11

Midterm Bargaining

SECTION A: Midterm bargaining may occur concerning implementation and impact, new matters, any re-opener clause issues as described in this agreement, or by mutual consent.

SECTION B: Either Management or the Union may enter into midterm bargaining by notifying the other party in writing of the desire to enter into midterm bargaining, the issue to be negotiated, and the chosen method and means for midterm bargaining. Labor shall send the notification to the Director and Management shall send the notification to the Senior Union Official.

SECTION C: The responding Party shall reply in writing to the initiator within 14 days by either:

- (1) agreeing to midterm bargaining or
- (2) setting forth reasons as to why the issue cannot be negotiated or
- (3) stating that there is no material change to the contract and therefore do not wish to exercise their right to bargain.

SECTION D: Regardless of the source of the request for midterm bargaining, if Management is the responding party and agrees to negotiate, the response shall be provided to all Senior Union Officials representing any bargaining units along with an invitation to enter into the negotiations. Senior Union Officials shall indicate their intent to enter into the negotiations by accepting the invitation within 14 days.

SECTION E: If the use of midterm bargaining teams is the chosen method and means for midterm bargaining and more than one local is involved in the negotiations, then management shall appoint no more than four Management representatives and each local shall appoint two Union Representatives to form the negotiation team. The team shall create ground rules for negotiations and enter into negotiations on the identified issue.

SECTION F: If only one local is involved in the negotiations, then each Party shall appoint no more than two members to form the negotiation team. The team shall create ground rules for negotiations and enter into negotiations on the identified issue.

SECTION G: Agreements reached by the Parties on additional negotiable items in accordance with this article shall become effective on the date they are approved by the Union and Management. Such agreements shall become a part of this Agreement.

ARTICLE 12

Impact and Implementation

SECTION A: Management and the Union agree to conduct good faith impact and implementation negotiations with full disclosure of information relating to the impact and implementation as obligated by 5 U.S.C. 71, other relevant policies and procedures, and this Agreement.

SECTION B: Management recognizes that early involvement (i.e., the planning stage) by the Union on issues related to the administration of this contract and the effective operation of this organization will facilitate negotiations associated with Impact and Implementation.

SECTION C: By mutual agreement, Management and the Union may refer Impact and Implementation negotiations to the LMPC.

ARTICLE 13

Use of Leave

SECTION A: An employee's supervisor shall make every effort to approve employees' requests for leave. To facilitate timely approvals leave requests should be made in advance. Requests for leave of one workday or less may be verbal. Credit hours and compensatory time shall be considered as annual leave in this Article.

Supervisors shall approve or deny a request for leave of three workdays or less within two workdays of the request. Failure to respond to a request for three workdays or less within two workdays will be considered as approval. Supervisors will normally respond to a request for greater than three workdays within five workdays of the request. If the employee does not receive a response within five workdays after submission, the employee has the right to submit the request to the next level supervisor. Denials must be based on work requirements, subject to official leave restrictions. Employees and/or their Union Representatives shall receive written denial or revocation of pre-approved leave decisions and supporting rationale upon request. All leave usage shall be subject to 5 CFR 630, Absence and Leave.

SECTION B: Employees may request use of annual leave at any time, in any duration, or pattern. Since employees' reasons for requesting annual leave are often personal in nature, the reasons are not normally required in the annual leave request. With regard to annual leave:

- (1) Each employee shall schedule annual leave so as to avoid forfeiture at the end of the leave year. When properly scheduled annual leave is lost at the end of the leave year because of urgent necessity of public business or documented medical reasons, leave shall be restored by Management upon request of the employee.
- (2) If conflict arises when two or more employees cannot be granted annual leave at the same time because of workload requirements, leave requests will be honored on the basis of seniority determined by length of service. Once annual leave has been scheduled, an employee's request for a change in his scheduled leave will be honored, subject to the needs of the Organization, only if the change does not adversely affect the leave schedule of another employee.
- (3) Under certain circumstances, annual leave may be advanced by management only in an amount that does not exceed the leave the employee can be expected to accrue by the end of the leave year.

SECTION C: Authorization for sick leave use, because of its nature, is not usually obtained in advance, except for cases where the employees know they will be unable to work because of medical examination or treatment, a period of convalescence, a lengthy illness, etc. With regard to sick leave:

- (1) Accrued sick leave shall be granted when an employee:
 - a. is absent to receive medical treatment or examination;
 - b. is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement;
 - c. is required to give care and attendance to a member of the immediate family.
- (2) The Union and Management recognize the insurance value of sick leave and agree to encourage employees to conserve sick leave so it will be available to them in cases of extended illness. A medical certificate signed by a qualified physician or medical practitioner shall be acceptable evidence for determining that an employee was incapacitated for duty. A medical certificate is only required for more than three consecutive sick days.
- (3) Employees who are injured while on duty will be counseled on the provisions of the Federal Employee's Compensation Act; and when such injury requires subsequent visits for medical treatment, the employee will be granted appropriate administrative leave.
- (4) Under certain circumstances, sick leave, not to exceed 30 days, may be advanced to employees in cases where an employee experiences a serious disability or ailment.

SECTION D: With regard to leave without pay:

- (1) Employees may request leave without pay.
- (2) The Union may designate a reasonable number of employee members as delegates to any Union activity. For such purposes where that activity is not covered by official time, request for leave without pay at the option of the employee shall be submitted one week in advance. Such requests will be approved to the extent possible subject to mission requirements.
- (3) Employees on approved leave without pay may return to their former position or an equivalent position in accordance with regulations.
- (4) In the event of a reduction in force during their absence, which affects their position, employees on leave without pay will be given consideration in accordance with appropriate regulations concerning reduction in force actions.

SECTION E: With regard to leave for parental and family responsibilities, the Union and Management recognize that family situations carry certain responsibilities that cannot be ignored or postponed, but that prolonged absences for these purposes make it harder to achieve organizational goals. It is agreed that leave to meet parental and family

responsibilities shall be considered as an appropriate use of annual leave, sick leave, or leave without pay as authorized by 5 CFR 630.1201.

SECTION F: Requests for advances of leave and voluntary leave transfers shall be granted in accordance with applicable DOE and OPM regulations.

SECTION G: Management agrees that when, in its judgment, it becomes necessary to close the duty station because of inclement weather or any other emergency condition, employees shall be given Administrative Leave. Management will make its best effort to give employees the earliest possible notice of closures or delays in opening for inclement weather or other emergency reasons.

SECTION H: When Management imposes an official leave restriction on an employee, it shall be in the form of a written memorandum to the employee and shall be based on conduct, performance, or mission requirements

SECTION I: For other types of leave not explicitly addressed in this Article, leave will be granted in accordance with 5 CFR 630 and other applicable laws and DOE Orders, along with any position restoration rights. These types of leave may include, but are not limited to, religious leave, court-related leave, military leave, etc.

ARTICLE 14

Details and Temporary Promotions

SECTION A: Management and the Union agree that Details and Temporary Promotions are an effective mechanism to cross-train, and provide career development opportunities for employees.

SECTION B: Details of employees will be kept to the shortest practical duration, and normally shall not exceed one year.

SECTION C: Temporary promotions and details to a higher grade are limited to 120 days, unless competed. Competed temporary promotions will normally not exceed one year in duration, but may be extended for a longer period in accordance with applicable regulations.

SECTION D: All Details and Temporary Promotions shall be described in writing and placed in the employee's Official Personnel Folder.

ARTICLE 15

Training and Career Development

SECTION A: The Union and Management agree that development of employee's knowledge, skills and abilities through effective training is an important factor in maintaining efficient operations.

SECTION B: Management acknowledges its responsibility to provide training and career development opportunities for employees. The employee is encouraged to construct career development plans (i.e. individual development plans, internships, or other special training/development programs) with their supervisor on an annual basis. Elements of this plan should be formulated in conjunction with the annual employee performance review.

SECTION C: Management will determine employee development and training that is essential to meet work force needs, and will provide such training subject to the availability of training and travel funds. NETL is committed to providing employees opportunities to upgrade and improve their skills and capabilities.

SECTION D: Selection for training will be in accordance with merit procedures when such training is given primarily to prepare employees for advancement and is required for promotion.

SECTION E: The Union and Management agree that group training is a cost-effective method for employee development.

SECTION F: Employees taking college classes which are relevant to the NETL mission and that have been approved by their supervisor shall have 100 percent payment or reimbursement for tuition, books and fees. Payment of tuition, books and fees shall be paid upon submission of an invoice by the employee. After the course is completed, employees must provide Human Resources with verification of successful completion of the course. If an employee fails to successfully complete a course, in the future this employee may only be eligible for tuition, books and fees reimbursement after the successful completion of a course and at the discretion of the supervisor. To receive payment, the employee will be required to submit a passing grade certified by college transcript and a paid receipt.

SECTION G: Employees in a graduate level program that fulfills a current need of NETL will be on official duty time to attend one graduate level course each semester. Employees taking college level courses are eligible to have one course per semester approved for official duty time upon showing that the course fulfills a current need of NETL. Employees may request official duty time for additional courses. Official duty time for travel if approved by the supervisor may not exceed the actual time spent in class. The employee will not be reimbursed for travel expenses for college courses.

ARTICLE 16

Reorganization/Relocation Notification Procedures

SECTION A: Management and the Union agree that a stable and healthful office environment which contributes to employee comfort, productivity and job satisfaction is an important organizational objective. When Management determines that it is necessary to reorganize or to physically relocate employees, it will provide advanced notification to the Union to begin a cooperative discussion. The objectives are for the reorganization/relocation to be thoroughly coordinated with the Union, well planned and implemented promptly, in accordance with procedures outlined in this Article, and to minimize adverse impact upon staff and organizational disruption. This Article does not apply to moves of employees based on merit promotion, reassignment, or detail.

SECTION B: Definitions

For the purpose of this Article:

- (1) "Relocation" means a physical move of the employee(s) in a work unit from one office, suite of offices, shop, or 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 arrangements are changed formal notification will be made.
- (2) "Reorganization" means at a minimum, organizational change involving the elimination, addition, or realignment or redistribution of functions, employees, or responsibilities among or within Departmental components.
- (3) "Advanced Notice" means written notification submitted as soon as there has been a determination to reorganize or physically relocate employees.
- (4) "Notice" means written notification, submitted as much in advance of the proposed implementation date as possible.

SECTION C: Disclosure of Plans

- (1) Where Management wishes to reorganize, Management will give Notice to the Union in most cases three weeks in advance and provide, as appropriate, the following initial information:
 - a. reason(s) for the reorganization,
 - b. a list with the names, position titles and grades of all affected employees,
 - c. approved mission and function statements for the existing and the proposed organizations,
 - d. organizational charts for the existing and the proposed organizations,
 - e.
 1. a list of officially classified position descriptions then complete, if any, with copies of each position description listed,
 2. a list of positions for which classification action is pending,

f. a proposed implementation schedule.

(2) Where Management wishes to relocate employees, Management will give Notice to the Unions and provide, as appropriate, the following initial information. The parties agree that the following information will be provided:

- a. reason(s) for the relocation
- b.
 - 1. a list with the names, position titles and grades of all affected employees and their supervisors,
 - 2. a list of names, job titles, and the employer of all contractors occupying work space in existing and/or proposed sites seating charts.
- c. whether the proposed relocation is intended to be temporary or permanent and the expected duration of residency in temporary space,
- d. a proposed implementation schedule.

(3) After receipt of the initial Notice and the information described in this Section, the Union may, as soon as possible, but no later than five (5) work days after receipt, request to meet with Management 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. Union concerns raised at the meeting regarding adverse impact which will result from the proposed change will be discussed. Either Union or Management may request an extension of the time for conducting the meeting. Such an extension must be mutually agreed to. Such meeting shall not preclude formal negotiations.

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

(5) If prior to final implementation, Management concludes that minor modification of the original plan is necessary and employee assignments will change as a result, Management shall notify and discuss these changes with the Union. Minor adjustments to the original plan will not constitute a separate proposal for the purposes of this Article.

SECTION D: When allocating office space in conjunction with a relocation, or, if appropriate, subsequent to a reorganization, the NETL Space Management Process (NETL P 570.1-1) will be followed.

SECTION E: Nothing in this Article shall be construed to waive the Union's statutory right to bargain.

ARTICLE 17

Position Descriptions

SECTION A: A position description is a set of duties and requirements for the employment of a full- or part-time employee.

SECTION B: Each employee is entitled to a current copy of his/her position description which describes the major duties and responsibilities of the position. Management shall notify the employee prior to any change in his/her position description.

SECTION C: Management is responsible to assure that an employee's position description is current and relative to the duties of the position.

SECTION D: Bargaining Unit employees shall be specifically assigned to one immediate supervisor for administrative and supervisory purposes.

ARTICLE 18

Unacceptable Performance

SECTION A: This Article applies only to Bargaining Unit employees who have completed their probationary or trial period, except to the extent prohibited by laws.

Unacceptable performance is performance by an employee for which the employee receives a rating of Fails to Meet Expectations on their performance. Unacceptable performance may result in reduction in grade or removal of an employee.

An employee has the right to representation at a meeting between an employee and management during which the employee reasonably believes that disciplinary action may result. If such a request is made by an employee during a performance meeting, management shall honor the request by stopping the meeting and rescheduling at the earliest possible time.

Any action based upon unacceptable performance will be fair, equitable, and administered as timely as possible.

SECTION B: Prior to issuing a notice of proposed action based on unacceptable performance, management will issue a letter to the employee that contains the following:

- (1) an identification of the critical elements and performance standards for which performance is unacceptable;
- (2) a performance improvement plan (PIP) to attempt to bring the employee performance up to an acceptable level;
- (3) a statement that the employee has a reasonable period of time (specified in calendar days), not less than 90 days in which to bring performance up to an acceptable level;
- (4) a description of what Management will do to assist the employee to improve the allegedly unacceptable performance during the performance improvement period; and
- (5) a meeting time and date to discuss the performance improvement plan with the employee.

The Union will not grieve either the substance or procedural aspects of this notice until a final decision is issued. When an employee meets the requirements of the PIP this process ends.

SECTION C: Management 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 D: In all cases of proposed action based on unacceptable performance, the employee will be given 30 calendar days advance written notice of the reasons and specifications of unacceptable performance on which the proposed action is based.

The advance written notice proposing either to remove or downgrade an employee for unacceptable performance will include:

- (1) specific instances of unacceptable performance by the employee on which the proposed action is based;
- (2) the critical element(s) of the employee's position involved in each specification of unacceptable performance;
- (3) the performance standard(s) of the employee's position involved in each specification of unacceptable performance;
- (4) a statement of the employee's right to be represented by an attorney or representative;
- (5) a statement of the employee's right to answer orally and/or in writing; and
- (6) a statement of the employee's right to review the material relied upon to support the reasons and specifications in the notice.

The employee will be given the opportunity, but will not be obliged, to respond orally and/or in writing to Management prior to a decision on the reasons and specifications for the proposed action. Any written response by the employee must be provided within 15 calendar days of the receipt of the letter of proposed action. The employee has a right to request an extension of an additional 15 days to respond, subject to the agreement of Management.

SECTION E: The Reviewing Official will set forth findings with respect to each reason and specification for or against the employee in the final decision letter. The final decision and subsequent action to either remove or downgrade an employee because of unacceptable performance will be completed no later than 30 calendar days after the expiration of the advance notice period, and will be based only on those instances of unacceptable performance by the employee which occurred during the one-year period ending on the date of the advance notice letter. In taking an action based on unacceptable performance, management will consider the employee's performance during the performance improvement period. Any entry or other notification of the unacceptable performance shall be removed from any agency record relating to the employee upon completion of an acceptable level of performance earned during the performance improvement period, coupled with a continued acceptable level of performance for one year thereafter.

SECTION F: An employee will, upon request, be furnished a copy of that portion of all written documents which contains evidence relied on by Management to form the basis for the reasons and specifications for the action. If the action is based on an investigative report, portions of all written documents from the investigative report which directly relate to the specifications and are favorable to the employee will be furnished to the employee upon request. If probable cause exists and is demonstrated to the arbitrator by the Union on appeal that favorable information provided for in this section has not been furnished by Management, upon request of the arbitrator the report will be furnished for an "in camera" inspection to be made in conformity with the Privacy Act (5 U.S.C. 552a).

Material determined by the arbitrator to be favorable under the criteria of this section and not previously furnished to the Union will be furnished to the Union. Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

SECTION G: If Management's final decision is to effect an action based on unacceptable performance against a bargaining unit employee, the employee may appeal the decision to the Merit Systems Protection Board (MSPB) in accordance with applicable law or, with the consent of the Union, submit the decision to binding arbitration. Under no condition may an employee appeal an action based on unacceptable performance to both MSPB and arbitration.

If the Union elects to appeal an unacceptable performance action to arbitration, it will be done in accordance with Article 35, Arbitration, of this contract.

The notice of appeal must be given by certified mail or by hand delivery to the appropriate deciding official. Notice of appeal by certified mail shall be effective when mailed and notice of appeal by hand delivery shall be effective when received.

The standard of proof in any arbitration over this matter will be substantial evidence. Management will raise no cases against the employee other than those cited in the notice of proposed action except to the extent necessary to rebut defenses or arguments raised in the employee's behalf, such as an argument that the cited cases are but a small portion of the employee's total work product which is otherwise acceptable.

The arbitrator shall have the obligation of assuring that all necessary facts and considerations are brought before him or her by the representatives of the parties. This may include drawing an appropriate inference when either party fails to present facts or witnesses that the arbitrator deems necessary and relevant.

SECTION H: With the employee's written concurrence, Management will provide the Union copies of the employee's unacceptable performance action proposal and decision letters at the same time as their issuance to the employee.

ARTICLE 19

Disciplinary Actions

SECTION A: A disciplinary action for the purpose of this Article is defined as an oral admonishment, a written reprimand, or a suspension of 14 calendar days or less. Employees will be advised of their grievance rights before receiving any form of disciplinary action.

SECTION B: Reference DOE Order 3750.1: Investigations of situations that could lead to disciplinary actions should be initiated while the information is fresh and readily available. If a substantial delay in effecting an action can be anticipated, the employee affected by the action shall be informed by Management that the action is being considered, that a determination will be made when possible on a course of action, and that the formal document will be provided when the decision is made. When possible, notices of proposal, decision and reprimand will be delivered personally and explained to the employee. The employee shall acknowledge receipt in writing on a copy of the notice.

The Management shall, for disciplinary actions except for oral admonishments:

- (1) furnish the employee with a letter at least 15 calendar days in advance of a decision on a disciplinary action stating the specific reasons for the proposed disciplinary action;
- (2) provide a period of 10 calendar days from the receipt of the letter for the employee to answer in writing, and to, if desired, furnish affidavits or other documentary evidence in support of his/her answer;
- (3) provide a written decision and the specific reason(s) therefore not less than 15 calendar days from the date of the letter proposing the disciplinary action. This written decision shall include applicable appeal rights; and
- (4) inform the employee of the right to represent themselves or to be represented by the Union in the processing of the actions occurring as a result of disciplinary action or with respect to grievances resulting from such actions.

SECTION C: Oral admonishments are the lowest level corrective action without a permanent written record. They are informal discussions or meetings for correcting unacceptable behavior. An employee will be informed by the supervisor that the discussion is considered an oral admonishment. Oral admonishments are not subject to the notice requirements of the above paragraph.

SECTION D: Any meeting between a Bargaining Unit employee and Management during which the employee is being examined with respect to an investigation and the employee believes disciplinary action may occur as a result of the meeting, the employee has the right to request Union representation at any time before or during such meeting. Management shall schedule such meetings in advance so that the employee can contact and obtain union representation. However, Management is not responsible for notifying the employee of this right in individual cases. Management will notify employees of the

right to Union representation at least annually as prescribed by 5 USC, Section 7114 (a) (3).

SECTION E: The Management must advise an employee of his/her right to Union representation or representation by a third party of the employee's choice prior to the taking of a written or sworn statement or when an employee is going to be interrogated before witnesses. The employee does not have this right if such an interrogation is part of an informal meeting as defined by case law. This provision does not apply to outside investigative organizations.

SECTION F: Management will grant upon request to the employee and employee-representative a reasonable amount of official time to prepare and present any oral or written reply and other defense. The employee must make the request for official time in writing to their supervisor of record.

SECTION G: Management and the Union endorse the concept of progressive discipline by management (i.e. admonishment, warning, reprimand, suspension, reduction in rank or pay, removal). Management retains the right to determine the level of discipline to be applied in any given situation subject to challenge consistent with applicable laws, DOE Orders and regulations.

SECTION H: Whenever a written disciplinary action as defined in this Article is taken affecting unit employees, Management agrees to provide an extra copy to the employee, which he or she may furnish to the Union if desired.

SECTION I: No record of a complaint, determined to be unfounded, will be placed in the unit employee's Official Personnel Folder. Such complaints may, in the interest of the unit employee or Management, be maintained in a subject file but will not under any circumstances be considered as a factor in connection with any disciplinary action, promotion, etc. Such subject file will be maintained in accordance with the Management's records retirement program.

SECTION J: Management and the Union agree to the timely disposition of investigations and disciplinary/adverse actions.

SECTION K: When appropriate, management and union will consider the use of the Employee Assistance Program as part of remedial action for substance abuse issues.

ARTICLE 20

Adverse Actions

SECTION A: An adverse action for the purpose of this Article is defined as a suspension for more than fourteen (14) calendar days, reduction in grade or pay, furlough for 30 calendar days or less, or removal. The procedures of this Article do not apply to the removal of any bargaining unit employee serving a probationary or trial period or an employee under a temporary appointment except as provided by law.

The Management shall, for adverse actions:

- (1) furnish the employee with a letter at least 30 calendar days in advance stating the specific reason(s) for the proposed adverse action;
- (2) provide a time period of 15 calendar days for the employee to answer orally, in writing, or both and to, if desired, furnish affidavits or other documentary evidence in support of his/her answer;
- (3) provide a written decision and the specific reason(s) therefore not less than 30 calendar days from the date of the letter proposing the adverse action. This written decision shall include applicable grievances and appeal rights.

SECTION B: It is the responsibility of Management to inform the employee of right of choice with respect to representation within the content of the initial letter pertaining to the notification of the adverse action. The representation rights of the employee are covered specifically by statute. For information purposes only, the employees have the choice to be represented by the Union or other individual of their own choosing or by an attorney as retained by the employee. If the employee chooses to be represented by the Union, the Union may recommend and on approval of the employee seek representation by a third party. Union members (at their request) shall be represented by the Union in statutory appeals, but the Union is not required to provide representation for non-Union members in statutory appeals.

SECTION C: Adverse actions may be appealed, at the option of the employee, through the negotiated grievance procedure or the statutory appeals procedure, but not both.

SECTION D: Materials and documentation on which notice of a proposed action is based and which are relied upon to support the notice, including statements of witnesses, and investigative reports or extracts there from, shall be assembled and made available to the employee for his/her review. Employee shall sign to certify receipt of materials and documentation received as part of a proposed adverse action. Management will keep the records and receipt on file per documentation regulations. Management forfeits the right to use supporting materials or documentation not disclosed to the employee in the prescribed manner.

SECTION E: Management will grant upon request to the employee and the employee's representative a reasonable amount of official time to prepare and present any oral or written reply and other defense. The employee must make the request for official time in

writing to his/her supervisor of record. The employee's representative will also make a written request for official time to his/her supervisor of record. Management will respond with a written reply that the employee shall sign certifying the receipt, and this documentation shall become part of the official file for the adverse action. If the employee chooses to make an oral reply, his/her representative also has the right to attend. The person who will make the final decision on the adverse action will hear an oral reply.

ARTICLE 21

Employee Assistance Program

SECTION A: The Parties recognize alcohol abuse, drug abuse, and/or an emotional problem as treatable illnesses that may impair an employee's attendance and/or job performance. Accordingly, pursuant to the provisions of Employee Guide to Federal Leave and Family Friendly Programs, Management agrees to provide, on a confidential basis, counseling for employees who voluntarily acknowledge alcohol abuse, drug abuse, and/or emotional problems and seek counseling or referral assistance.

SECTION B: Management agrees that:

- (1) Employees having alcohol, drug or emotional problems will receive the same consideration and offer of assistance that is extended to employees having other illnesses.
- (2) No employee will have his/her job security or promotion opportunities jeopardized by his/her request for counseling and/or referral assistance.
- (3) Records of employees with alcohol abuse, drug abuse, and/or emotional problems will be maintained confidentially in accordance with applicable regulations.
- (4) Sick, annual, or leave without pay will be granted for the purpose of treatment or rehabilitation, as it would be for any other performance limiting condition.
- (5) Management will extend assistance toward rehabilitation in accordance with The NETL Employee Guide to Federal Leave and Family Friendly Programs.

SECTION C: The Union agrees that, to the extent possible:

- (1) It will encourage bargaining unit employees to discuss any problems they might have such as those identified in Section A of this Article with their supervisors and/or to seek appropriate treatment and rehabilitation.
- (2) It will cooperate with and support Employer alcohol and drug abuse education programs.

ARTICLE 22

Employee Surveillance, Searches, and Incident Reports

SECTION A: Searches of vehicles and packages shall be done in accordance with NETL Order 473.1A, Vehicle and Package Inspections, Prohibited Controlled Articles, dated February 24, 2004. It is the intention that inspection/searches at entrance gates will be done on a random basis, as determined by management, except under unusual circumstances.

SECTION B: Should management determine to modify camera location or usage, it will notify the Union and give the Union the opportunity to bargain to the extent required by law.

SECTION C: Cameras used for experimental process monitoring are not covered by this Article.

SECTION D: Incident reports provided to NETL Management will be provided to the employee consistent with law, rule, or regulation.

ARTICLE 23

Merit Promotion and Internal Placement

SECTION A: The organization will maintain a merit promotion and internal placement program in order to develop and retain a competent work force, and stimulate an employee's highest potential by offering opportunities for growth and advancement.

SECTION B: All merit promotions will be processed in accordance with the NETL Merit Promotion and Internal Placement Procedures set forth in Appendix A. The provisions of 5 CFR Part 335 and applicable DOE orders also apply to all promotion and internal placement actions where competitive procedures are required.

SECTION C: Merit promotion is one of several methods that may be used for filling a vacancy. Other methods include, but are not limited to, reassignment, transfer, reinstatement, appointment through delegated examining procedures, reemployment priority lists, or special emphasis appointing authorities.

SECTION D: All merit promotion actions will be taken without regard to political, religious or Union affiliation, marital status, sexual orientation, race, color, national origin, sex, age, or disability.

ARTICLE 24

Part-Time Career Employment/Job Sharing

SECTION A: Consistent with the Federal Career Part-Time Career Employment Act of 1978, a part-time permanent employee has a career or career-conditional appointment (or a permanent appointment in the excepted service), works between 16 and 32 hours each week on a prearranged schedule, and is eligible for benefits.

SECTION B: Consistent with resource and mission requirements, Management agrees to give bona fide consideration to requests from employees for part-time career employment opportunities, especially in connection with:

- (1) Balancing routine and/or unexpected work and family demands;
- (2) Recovering from an illness;
- (3) Pursuing an education;
- (4) Devoting time to a volunteer activity in the community;
- (5) Participating in a special hobby or interest; or
- (6) Making time for themselves.

SECTION C: Written requests to work part-time must be submitted from the employee to the supervisor. The request should include a proposed strategy that indicates how the full-time job can be restructured into a part-time job, and a record of the important tasks, a suggestion of how the tasks could be done in fewer hours, be discontinued, or done by someone else. The request should also include the proposed work schedule, including the days and hours proposed to work, not to exceed more than 32 hours in a week.

The supervisor will review the request and determine if restructuring the job into a part-time position would meet the needs of the organization. The supervisor will inform the employee within 30 working days of the decision, and if the request is denied, will provide the basis for the denial.

SECTION D: During a part-time work assignment, an employee may request approval to work extra hours during the pay period if the work situation demands it, but the increase is not permitted for more than two consecutive pay periods.

An employee's request for temporary adjustment of an established part-time work schedule may be granted if made in advance of the pay period, and is based on personal need or to permit participation in Management-approved details, other assignments, or training. Such adjustment shall not result in a permanent change of the established work schedule.

SECTION E: Part-time employees are not precluded from being promoted on a noncompetitive basis within the career ladder or selected for promotion through competition. Part-time employees are eligible for career ladder promotions, subject to applicable qualification requirements and the ability to perform at the next higher grade.

If a position can accommodate a work schedule other than full-time, it will be noted on the vacancy announcement.

SECTION F: When a position is staffed on a full-time basis, the supervisor may consider job sharing as an option consistent with resources and mission requirements. Job sharing is a form of part-time employment in which one full-time position is filled with two or more part-time employees. Job sharers must be good communicators, be willing to consult and cooperate as members of a team rather than as competitors, be flexible, and have a strong commitment to the job and to making the job sharing arrangement work. They must have complementary skills, knowledge, and abilities and compatible work styles. Employees working in the same occupational series and grade, or in the same line of work, may request the opportunity to enter a job sharing arrangement.

(1) Dividing and Sharing Responsibilities

Written requests to job share must be submitted to the supervisor from the job team. The request should include a proposed strategy that indicates how the full-time job can be restructured into a job sharing arrangement. The request should also include the proposed work schedule for the job sharing team, including the days and hours proposed to work.

The supervisor will review the request and determine if restructuring the job into a job share arrangement can be accommodated and if it will meet the needs of the organization. The supervisor will inform the employees within 30 working days of the decision, and if denied, will provide the basis for the denial.

If the job sharing arrangement is approved, the job sharers with the supervisor shall prepare a Job Sharing Agreement.

The decision on whether job sharers should be jointly responsible for the entire position or only for separate functions depends on the job and the abilities of the job sharing team. To determine the arrangement for a particular job, the supervisor shall examine the position description and decide which tasks will be shared. Most job sharing arrangement will probably fall somewhere between the job sharers being individually responsible for certain aspects of the job and jointly responsible for other.

Although they share the duties of a full-time position, job sharers are considered to be individual part-time employees for all personnel and employment purposes.

(2) Position Descriptions

When two job sharers at the same grade level are jointly responsible for all the duties and responsibilities of the full-time position, there is no need for the supervisor to restructure the job. Each team member shall have a copy of the position description to which a statement has been added to show that the incumbent is a job sharer jointly responsible for carrying out all the duties and responsibilities of the position.

When job sharers will be individually responsible for portions of the job, or when the job sharers are at different grade levels, separate position descriptions are required to reflect the actual duties and responsibilities for each employee. Each job sharer shall have a position description that accurately reflects his or her duties and responsibilities.

(3) Scheduling Work Hours

At the supervisor's discretion and within available resources, each job sharer can work from 16 to 32 hours per week. The specific work schedule depends on the nature of the job, the needs of the organization, the job sharing team, and the supervisor's approval.

A variety of different work scheduling arrangements can be used as long as each job sharer is scheduled to work no less than 16 hours and no more than 32 hours each week. For example, the arrangement can split days (one job sharer works mornings, the other afternoons), or split the week (one job sharer work some days, the other on other days), or a mix of the two. Although most job sharers split the hours of a full-time position in half, this is not a requirement. The number of scheduled hours each employee works within the team, as well as the amount of scheduled overlap time, depends on the needs of the particular position and the resources available as determined by the supervisor.

(4) Performance Evaluations

Each member of a job sharing team shall have his or her own performance standards. These will be identical if the job sharers are jointly responsible for the entire position. Each job sharer shall be evaluated separately although the evaluation will often be based on the work to which both have contributed.

(5) Shared Space and Equipment

Space and equipment shall be shared by the job sharers unless additional equipment is available and would cause no undue burden on the organization. Job sharers who use the same desk, telephone, computer, etc., will need to agree on the basics so they do not lose time searching for or rearranging items.

(6) Communications

The job sharers must have a workable communication system which serves the purpose without detracting from their ability to get the work done.

(7) Ending or Changing a Job Sharing Arrangement

The decision to approve or to terminate a job sharing arrangement is at Management's discretion. In the event one of the job sharing participants leaves, or otherwise needs to discontinue the job sharing arrangement, and Management concludes that the needs of the position require full-time staffing, Management shall make every reasonable effort to assist the remaining job sharing partner in finding another partner. The remaining participant will be given a reasonable

amount of time to find another partner. If the remaining participant is required to increase their tour of duty, they will be given as much advance notice as possible, but no less than two weeks advance notice prior to increasing the tour of duty.

(8) Applying for Merit Promotion Vacancy Announcements

Management may not refuse to accept applications from individuals solely because they submitted their applications as a job sharing team. Each job sharer must be evaluated individually to determine eligibility. If both are among the best qualified, they must be referred as a team to the selecting official.

However, in situations where a job sharing arrangement would not be appropriate, the selecting official can select a single candidate from among the best qualified. However, a member of a job sharing team must also apply as an individual to be considered on that basis.

SECTION G: Part-time employees under permanent appointments are eligible, on a prorated basis, for the same benefits as full-time employees.

(1) Leave

Employees shall earn annual and sick leave on a prorated basis depending on the number of hours worked per pay period. An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours worked; with 3 but less than 15 years of service, the employee earns 1 hour for each 13 hours worked; and with 15 or more years of service earns 1 hour for each 10 hours worked.

Part-time employees shall earn 1 hour of sick leave for each 20 hours worked. Part-time employees are also eligible for other kinds of leave and are covered by the rules governing the Family and Medical Leave Act of 1993 and the Federal Employees Family-Friendly Leave Act.

(2) Holidays

If a holiday falls on a day the employee is scheduled to work, the employee is paid for the number of hours he or she was scheduled to work, not to exceed 8 hours. A part-time employee is not entitled to a holiday which falls on a day the employee is not normally scheduled to work.

(3) Retirement

Retirement annuities are based on an employee's length of service and the highest annual base pay received for any three consecutive years. Each year of part-time service counts as one full year toward the length of service requirement. However, the annuity calculation for periods of part-time service after April 6, 1986, is prorated to reflect the difference between full-time and part-time service. Employees who are considering a change to a part-time work schedule should obtain an estimate of their estimated retirement benefit projection from the Human Resources Division.

(4) Health Insurance

Part-time employees who participate in the Federal Employees Health Benefits Program receive the same coverage as full-time employees but pay a greater percentage of the premium because the Government's share is prorated based on the number of hours the employee is scheduled to work each week. For an example, an employee on a 20-hour-per-week schedule receives one-half the Government contribution towards the premium.

(5) Life Insurance

The amount of life insurance for which an employee is eligible is based on the part-time employee's annual salary applicable to his or her tour of duty.

(6) Qualification for Merit Promotion Determinations

Part-time work is prorated for determining qualification requirements. For example, an employee who works 20 hours a week would receive credit for 6 months of experience at the end of 12 months of work.

SECTION H: Before accepting a part-time position, employees should carefully consider and consult with the Human Resources Division regarding all personnel issues that may affect part-time employment.

(1) Pay

Gross pay is computed by multiplying the employee's hourly rate of basic pay by the number of hours worked during the pay period. Overtime rates apply only to the hours in excess of 8 hours in a day or 40-hours in a week. Non-overtime hours above those normally scheduled are paid at the basic rate of pay (5 U.S.C. 5542 and Fair Labor Standards Act).

(2) Reduction In Force

In a reduction in force (RIF), part-time employees compete separately from full-time employees in accordance with the requirements of 5 CFR 351. A part-time employee can compete only for other part-time jobs and has no assignment rights to full-time positions. Similarly, a full-time employee has assignment rights only to full-time positions and cannot displace a part-time employee.

(3) Adverse and Performance-Based Actions

Part-time employees have the same rights as full-time employees when disciplinary actions or performance-based actions are taken against them. Adverse and/or performance-based actions include suspensions, removals, furloughs, and reductions in grade. A reduction in scheduled hours is not subject to adverse action procedures.

(4) Service Credit

A part-time employee earns a full year of service for each calendar year worked, regardless of schedule, for the purpose of computing dates for:

- a. Retirement eligibility;
- b. Career tenure;
- c. Completion of probationary period;
- d. Within-grade pay increases; and
- e. Time-in-grade restrictions on advancement.

SECTION I: Employees with a work schedule of at least 8 hours in a workday are entitled to a one-half hour, unpaid lunch break. Employees whose work schedule includes workdays of less than 8 hours are not entitled to a lunch break.

SECTION J: A full-time employee shall not be required to accept part-time employment as a condition of employment. A vacant, part-time position may be offered to a full-time employee in lieu of separation by RIF; however, it is not considered a “reasonable offer” under the RIF assignment rights. Further, a part-time employee shall not be separated to make the part-time position available to a full-time employee.

SECTION K: Management agrees to provide part-time employees access to employee activities, e.g., exercise facilities, and not to deny opportunities for attendance at training solely because of part-time status.

ARTICLE 25

Performance Management System

SECTION A: Chapters 43 and 45 of Title 5, United States Code (USC) provide the basis for the appraisal and recognition of Federal employees. 5 CFR Parts 430 and 451 contain the basic legal and regulatory requirements for the establishment of the Agency performance management system. Other applicable authorities related to the performance management and award system include 5 USC, Chapter 43 and 5 CFR, Part 432 (Performance Based Action) and 5 CFR Part 531 (Within-Grade and Quality Step Increases).

SECTION B: The Secretary, Department of Energy, has approved the conversion of the Department's entire performance system to one standard system for non-supervisory employees. The new system will link individual and organizational achievement; result in performance ratings that clearly identify individuals who significantly exceed performance expectations as well as those employees who need assistance and/or corrective action as a result of overall performance that fails to meet prescribed expectations; and reward employees with monetary recognition commensurate with their performance ratings.

SECTION C: Employees will be notified at the beginning of the performance year, or at any time a change takes place, who will act as their rating official. Employees will also be told if other employees such as team leaders will have input into their performance rating.

SECTION D: Performance Appraisal Plans shall:

- (1) Include between four and five elements, all of which are critical. A critical element is one that is so important that unacceptable performance in any one critical element would constitute an overall "fails to meet" summary performance rating. Employees will be provided the opportunity to participate in the preparation of the performance plan. Job elements and standards may be modified, deleted, or adjusted during the rating period in the same manner as the initial development of the job elements and performance standards, including employee participation. The Rating Official has the final authority regarding the substance of the performance plan, subject only to the plan's approval by the Reviewing Official. An employee who disagrees with his/her performance plan may provide written comments on the plan to the Reviewing Official. The Reviewing Official, who is the next higher level supervisor, shall either approve or reject the performance plan. In the event that the plan is rejected by the Reviewing Official, it will be returned to the Rating Official to work out the details with the employee. In establishing the performance plan, the Rating Official is responsible for ensuring that the employee understands both the substance of the performance expectations and how the employee's performance results will be assessed.

- (2) Contain three to four critical job performance elements that address individual job performance on major functional activities/responsibilities, important mission objectives/goals or key programmatic accomplishments.
- (3) Contain one critical element that addresses a series of employee performance attributes that each employee should demonstrate, including: Responsibility and Accountability, Communication, Innovation/Quality Improvements, Teamwork, and Customer Service (see Glossary for a description of Employee Performance Attributes).
- (4) Establish performance standards for the job performance critical elements. Define performance standards at the Meets Expectations level for all critical elements. Performance standards shall be measurable, obtainable, and mission related. Performance standards will be clear and specific to the work of the employee, and the standards will provide the employee with an understanding of what performance is expected of them.
- (5) Assign a weight to each critical element for use in deriving summary performance rating levels.
- (6) Utilize the following performance rating levels in assessing the level of performance on each critical element as well as determining the overall assigned summary rating level: Significantly Exceeds Expectations (SE), Meets Expectations (ME), Needs Improvement (NI), and Fails to Meet Expectations (FME). This rating pattern corresponds to pattern F of the requirements of Title 5, Code of Federal Regulations, section 430.208;
- (7) Be established (signed and dated by the employee and Rating Official) within 30 days following the beginning of: (1) the annual appraisal period; (2) any work assignment expected to exceed 120 days (e.g., temporary promotion, detail, etc.); or (3) appointment or permanent assignment to a new position more than 90 days in advance of the end of the appraisal period.

SECTION E: Performance Rating Level Definitions are used both as a summary performance rating to convey overall performance as well as to convey a performance rating level on an individual critical element.

- (1) Significantly Exceeds Expectations (SE) – the highest level of performance -- performance at this level is dramatically higher than that typically described at the Meets Expectations level in terms of work products and/or results. This type of performance is characterized by such outcomes as extremely high cost savings or cost avoidances and/or extremely high levels of efficiency, effectiveness, and timeliness.
- (2) Meets Expectations (ME) – the prescribed level of expected overall performance - performance standards for all critical elements are defined at this level.

- (3) Needs Improvement (NI) – the level of overall performance that falls short of prescribed performance expectations. Performance at this level is clearly lower than that prescribed at the ME level in terms of work products and/or results, but above unacceptable and requires supervisory intervention to assist the employee in meeting prescribed levels of performance. Although a formal Performance Improvement Plan (PIP) is not required, it is recommended that the supervisor prepare a Performance Counseling memorandum that focuses on: a) the critical elements upon which performance needs to improve and the corresponding performance standards, b) work expectations, c) what the employee must do in order to meet performance expectations on such critical elements, and d) a reasonable amount of time (not less than 90 calendar days) in which to bring the performance up to an acceptable level of performance. The employee will have the opportunity to respond in writing to the Performance Counseling memo. The Rating Official shall meet with the employee on a bi-weekly basis to discuss the progress of the employee's performance.
- (4) Fails to Meet Expectations (FME) – the lowest level of overall performance. Performance at this level is clearly unacceptable and triggers formal corrective action. If, after being covered by a performance appraisal plan for at least 90 calendar days, the employee fails to meet performance in one or more critical elements, then he/she will be formally placed on a Performance Improvement Plan (PIP). The PIP focuses on each critical performance element upon which the employee fails to meet expectations; provides a reasonable amount of time for improvement (not less than 90 calendar days); specifies what must be done to bring performance up to the ME level (such as job mentoring and training, among other things); and explains the consequences of continued failure. The PIP will explain what the employee must do to improve the unacceptable performance during the PIP period, and will indicate a meeting time and date to discuss the on-going performance. The Rating Official shall meet with the employee on a bi-weekly basis to discuss the progress of the PIP. At the end of the PIP period, the supervisor will complete a rating of record addressing the employee's performance during this period.

An employee who is afforded an opportunity to improve, but continues to perform at a "Fails to Meet Expectations" level at the end of that period, may be reduced in grade or removed from employment. Management 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 F: Assigning Weights to Critical Elements:

- (1) The total weight assigned to all critical elements must equal 100 and only whole numbers may be used in assigning weights.

- (2) Job performance critical elements are assigned weights in order to convey distinctions in the importance of key job responsibilities. The collective weight assigned to these critical elements must total 90.
- (3) The critical element for Employee Performance Attributes is assigned a fixed weight of 10. Accordingly, the weight assigned to each attribute may only range from 1 to 3 and only whole numbers may be used to assign weights to these attributes.
- (4) A weight shall be assigned to each job performance critical element by the Rating Official with input from the employee. The minimum weight for any job performance critical element must be at least 10 and expressed as a whole number. Note that it is not necessary to assign equal weights to all critical elements. Examples of factors to be considered in the assignment of weights for job performance critical elements include the:
 - a. relative importance of the job responsibility as related to mission objectives,
 - b. complexity of assignments,
 - c. costs, both in terms of resources and staff time,
 - d. risk factors, and
 - e. impact on the immediate organization and the Department/NETL as a whole.
- (5) The process of assigning weights to critical elements shall be completed during the performance plan development phase of the appraisal process, with input from the employee. Adjustments in the assignment of weights for critical elements shall be considered, along with other performance appraisal information, during the progress review. Rating officials must discuss the impact of assigned weights with the employee during all key “milestones” of the performance appraisal process—the initial development of the performance plan, the progress review meeting, and the assignment of the summary rating after the completion of the performance period.

SECTION G: The performance plan is not an inflexible record of performance expectations that may not be changed. Instead, each performance plan should be reviewed during the appraisal period and be revised whenever meaningful changes are warranted (e.g., a change in the availability of resources, direction or strategy may trigger the need to amend, revise, or delete portions of the employee’s performance plan). At a minimum the appropriateness of the performance plan will be reviewed for its applicability at the formal mid-year progress review discussion, or as applicable throughout the performance year. When a change is needed to the performance plan, the Rating Official shall discuss the matter with the employee, both will initial changes that are annotated on the appraisal form, and the Reviewing Official shall review and approve the changes.

SECTION H: Supervisors shall conduct two informal performance progress discussions during the performance appraisal year. One shall be held at approximately the end of the first quarter, with the second being held at approximately the end of the third quarter. The content of the informal discussions is not grievable. A notice shall be posted on the NETL Intranet at the appropriate times during the appraisal year that information performance discussions shall take place over the next 30 days.

Supervisors shall conduct an official progress review mid-year through the performance cycle (usually in April). In the event that it is necessary to rate the employee for less than six months of job performance, the employee shall receive the progress review at the mid-point of their rating period. The Rating Official and employee will document the discussion by completing Part II, Progress Review, of the Non-Supervisory Performance Plan and Appraisal form. The Rating Official shall provide comments/assessments of the employee's performance.

SECTION I: In addition to the formal progress review, supervisors must facilitate open communications regarding performance with the employee throughout the performance period. In the event that performance is not meeting expectations, supervisors shall immediately bring it to the employee's attention by providing verbal or written performance counseling. If there is failure by the employee to correct the performance deficiency, then the Rating Official shall provide the employee written guidance, through a Performance Counseling Memorandum, identifying the critical elements upon which performance needs to improve and the corresponding performance standards, and what the employee must do in order to meet performance expectations on such critical elements.

SECTION J: At any time during the performance year, and in particular prior to the progress review and annual rating discussion, individual employees and the employee's supervisor are encouraged to solicit performance feedback on the employee, using the Performance Feedback for Non-Supervisory Employees form (NETL F 331.1-1), from a variety of individuals, such as customers, peers, and stakeholders. The feedback should be solicited from individuals who can best measure the results achieved by the employee during the rating period. These individuals can be internal or external to DOE. Supervisors are also encouraged to seek verbal feedback on their employees throughout the performance year. The supervisor shall provide a copy of any written feedback to the employee during informal or formal performance discussion. Any feedback received will not be maintained as an official document of the performance folder.

Employees are encouraged throughout the appraisal year to provide management with information about their performance.

SECTION K: Performance Rating Requirements:

- (1) The performance appraisal rating period shall extend 12 months, beginning on October 1 and ending on September 30. Circumstances may exist (e.g., reassignment, new appointment to NETL) for which an employee may not be

rated for a full 12 months of performance. Under such circumstances, the employee may be rated for a period of less than 12 months. However, the performance rating period shall be at least 90 calendar days in length. The performance period may be extended up to 45 days from the end of the rating period for the purpose of allowing sufficient time to rate those individuals who otherwise would have not been covered by a performance plan for the required minimum of 90 calendar days.

- (2) Employees shall receive their annual performance rating as soon as practicable after the end of the appraisal period, but no later than 45 days from the end of the rating period.
- (3) Performance shall be assessed solely on the accomplishments during the current rating period and not on the basis of any prior rating period. Written documentation used by the Rating Official concerning the employee's performance rating shall be shared with the employee during the annual performance rating discussion.
- (4) Performance ratings shall be signed by the Rating Official and concurred upon by the Reviewing Official.
- (5) If any critical element is considered non-ratable (e.g., no opportunity for the employee to achieve the desired results), it should be noted as non-ratable on the appraisal form, with the initials of the Rating Official and the employee, and the date of such determination. Under this situation, it would also be necessary for the weight assigned to this non-ratable critical element to be redistributed to the remaining critical elements in collaboration between the Rating Official and the employee.
- (6) An advisory rating is (1) a closeout rating given to the employee by the supervisor if the employee has been reassigned or promoted to another organization when there are more than 90 days remaining in the performance year; or (2) a rating given to an employee who is on a detail of more than 120 days during a performance year, by the supervisor of the employee during the detail. The detail supervisor of the employee will prepare a performance plan for the detail.

If the employee has received an advisory rating during the performance cycle, it shall be considered when the final critical element rating is determined. The employee shall be provided the opportunity to discuss the advisory rating with the management official preparing the advisory rating.

- (7) The employee shall acknowledge the discussion of the final overall summary rating by completing Part IV of the Non-Supervisory Performance Plan and Appraisal form. 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. The failure of an employee to sign the appraisal form does not affect its validity. If the employee does not acknowledge Part IV of the appraisal form within 5 working days of the performance rating discussion, the Rating Official will indicate on the form that the employee refused to acknowledge the rating discussion.

- (8) Employees may request from the Rating Official a copy of any documentation used to prepare their performance rating.
- (9) An employee may provide written comments regarding the performance rating to the rating official within 5 working days after the performance rating discussion. Any comments provided by the employee will become an official part of the performance file.

SECTION L: Summary performance rating scores are computed by multiplying the weight assigned to each critical element by the point value assigned to each respective critical element. The exception would be the summary rating of a Fails to Meet Expectations (FME). If one critical element is rated FME, then the overall summary rating would be FME. Critical element rating levels and their assigned point values are listed in Table 1 below:

Table 1. Assigned Point Values for Critical Element Ratings

Critical Element Rating Levels	Assigned Point Values
Significantly Exceeds Expectations (SE)	1
Meets Expectations (ME)	.5
Needs Improvement (NI)	0
Fails to Meet Expectations (FME)	Summary Rating of FME

- (1) A sample calculation of the approach for arriving at a summary performance rating score is illustrated in Table 2. Simply multiply the weight assigned to each critical element by the rating point value to compute each critical element score. The summary performance rating score is then computed by adding the individual critical element scores.

Table 2. Sample Calculation of a Summary Performance Rating Score

Sample Critical Elements	Assigned Weight	X	Rating Point Value (Rating)	= Critical Element Score
Project Management	35	X	1 (SE)	35
Customer Support	15	X	1 (SE)	15
Special Projects	25	X	.5 (ME)	12.5
Research	15	X	.5 (ME)	7.5
Employee Attributes	10	X	See Table 3	7
Totals	100			77

Table 3: Sample Calculation of the Attributes Critical Element Score

Sample Critical Elements	Assigned Weight	X	Rating Point Value (Rating)	= Critical Element Score
Responsibility and Accountability	3	X	1 (SE)	3
Communication	2	X	1 (SE)	2
Teamwork	2	X	.5 (ME)	1
Innovation/Quality Improvement	2	X	.5 (ME)	1
Customer Service	1	X	0 (NI)	0
Totals	10			7

- (2) Overall Critical Element Rating Score for this Sample Attributes Critical Element = 7 points. This score is then added to the other critical element scores to compute the overall summary rating score used to derive the overall performance rating.

* A rating of Needs Improvement on the Attributes Critical Element is assigned if an employee receives either:

- a rating of Needs Improvement on two or more attributes; or
- a rating of Fails to Meet Expectations on one attribute and Needs Improvement on another.

** A rating of Fails to Meet Expectations on the Attributes Critical Element is assigned if an employee receives a rating of Fails to Meet Expectations on two or more attributes. (Note that in computing the Attributes Critical Element score, 0 points must be assigned to each individual attribute rated at the Fails to Meet Expectations level.)

- (3) The summary performance rating score is converted to the overall Summary Performance Rating as follows:
- (a) Total Score of **80-100** = Summary Rating of SE
 - (b) Total Score of **50-79** (with no critical elements rated FME) = Summary Rating of ME
 - (c) Total Score of **49 and below** (with no critical elements rated FME) = Summary Rating of NI
 - (d) One or More Critical Elements rated FME = Summary Rating of FME
- (4) Overall Summary Rating for this sample in Table 2: **ME** – 77 points fall within the range established for the Meets Expectations Summary Performance Rating Level (50 – 79 points).

SECTION M: An employee has the right to representation at a meeting between an employee and Management during which the employee reasonably believes that disciplinary action may result. If such a request is made by an employee during a

performance meeting, Management shall honor the request by stopping the meeting and rescheduling at the earliest possible time.

Any action based upon unacceptable performance will be fair, equitable, and administered as timely as possible.

SECTION N: The rating given and any action taken by the Rating Official as a result of the application of the performance appraisal system is subject to the negotiated grievance procedure.

SECTION O: If Management's decision is to take an action based on unacceptable performance against a Bargaining Unit employee, the employee may appeal the decision to the Merit Systems Protection Board (MSPB) in accordance with applicable law or with the consent of the Union, to binding arbitration. Under no circumstances may an employee appeal an action based on unacceptable performance to both MSPB and arbitration.

ARTICLE 26

Employee Awards

SECTION A: Chapter 45 of Title 5, United States Code (USC) authorizes agencies to pay a cash award to, grant time-off to, and incur necessary expenses for the honorary recognition of an employee (individually or as a member of a group). Chapter 43 of Title 5, USC, provides for recognizing and rewarding employees whose performance so warrants and 5 CFR Part 531 discusses Quality Step Increases.

SECTION B: The Director has the discretion to establish award funding levels up to 4% of aggregate base pay with this computation performed at the beginning of each fiscal year when the budget is established. The Director's discretion also extends to the establishment of individual performance award amounts and the distribution to the Special Recognition Award pool. Based on budget, the Director will establish award pots for: 1) Director's Discretionary Award Pot, which shall not exceed 5% of the total award pool after allocation for SES awards; 2) Special Recognition Award Pot; and 3) Performance Award Pot.

SECTION C: The Special Recognition Award pot will be available for use throughout the fiscal year. The Special Recognition Award process is used throughout the year to immediately recognize employees for a special act or service above and beyond expectations. The funds will be distributed using a per capita method, based on the number of employees and known recruitments as of the date that the fiscal year pot is allocated. The last date for acceptance of Special Recognition Awards by the HRD will be the last Friday of August of each year. This date is imposed in order to ensure processing and funds reallocation, if any remain, before the end of the fiscal year. Supervisors are encouraged to use their award funds throughout the year as appropriate recognition opportunities arise. The Special Recognition Awards include On-the-Spots and Special Acts.

- (1) The On-the-Spot award recognizes significant deeds generally of shorter duration or lesser level-of-effort than a Special Act award. Guidance for determining the appropriate award amount is described on page 2 of the NETL F 332.1-1, Nomination for On-the-Spot Monetary Award form. There is no limit to the number of on-the-spot awards within a 52-week period. The minimum on-the-spot award is \$100 and the maximum is \$500.
- (2) Special Act awards are generally for larger amounts, rewarding significant or sustained accomplishments. Supervisors should put emphasis on presenting Special Act Awards for significant accomplishments. The justification for the award must include a written recommendation stating the circumstances and the employee(s) contribution(s) which the award would recognize. It must describe the "value of the benefit" and the "extent of the application" and include data which clearly demonstrates the tangible benefit cited. For Special Act awards involving teams, where the amount recommended is not to be divided equally among the nominees, the

justification must address the varying contributions, or the respective roles of each team member. The award tables for intangible and tangible benefits, which are described on nomination form, NETL F 332.1-2, Nomination for Special Act Award, should be utilized in determining the amount of the award.

SECTION D: The non-supervisory Performance Award Pot will be distributed to each Directorate Office based on the Director's total performance award allocation and the percentage of the total non-supervisory salary for the each Directorate. All employees earning a Significantly Exceeds (SE) performance rating are entitled to a performance award. If less than 90% of the performance award pot for non-supervisors is used for performance awards, then the amount remaining will be distributed to the Meets Expectation (ME) level on a rank order basis. Notwithstanding the above, the Director has the discretion to grant performance awards to employees who earn a summary rating of ME in accordance with Section (1) below.

- (1) If the Director wishes to provide performance awards to employees with a summary rating of ME, a ranking using the summary performance rating score shall be compiled and a threshold established for monetary recognition. Performance awards granted to employees earning summary performance ratings of Meets Expectations must be proportionately less than those granted to employees with summary performance ratings of Significantly Exceeds Expectations.
- (2) Performance awards will be distributed as follows:

Summary Rating Point Score	Performance Award Payout
Rating Score: 95 to 100	5% of salary
Rating Score: 88 to 94	3% of salary
Rating Score: 80 to 87	1.5 % of salary
Rating Score: 70 to 79	1% of salary*

*subject to the requirements of this section

- (3) The parties acknowledge there may be a need to adjust the payout amounts based on future circumstances.
- (4) Employees earning a summary performance rating of Needs Improvement or Fails to Meet Expectations are not eligible for performance awards.
- (5) Employees who have not been covered by a performance plan for the minimum appraisal period of 90 calendar days during the annual appraisal period are not eligible for performance awards.
- (6) Employees who have been covered by a performance plan for a period of 90 to 180 days during the annual appraisal period will have any performance award prorated against the fractional part of the performance period.

- (7) Employees who have been covered by a performance plan for a period of more than 180 days during the annual appraisal period will receive the full amount of any performance award.
- (8) In the event of severe funding limitations, the Director has the discretion to eliminate performance award payouts, with HQ approval.

SECTION E: Quality Step Increases (QSI):

- (1) Only employees receiving a Significantly Exceeds (SE) summary rating are eligible for QSI consideration.
- (2) On a fiscal year basis, the Director will establish the SE cut-off score for QSI eligibility. The Director will also determine, on a fiscal year basis, if QSIs will be supplemented with an additional performance award.
- (3) When approving a QSI in combination with a performance award to an individual, the performance award percentage must be reduced so that the combined percentage from the award and the QSI does not exceed the percentage that would have been otherwise payable solely as a performance award. For purposes of computing these adjusted performance award percentages, 3% of base pay is to be used as the standard percentage increase resulting from the granting of a QSI.
- (4) QSIs shall be nominated by the Rating Official and approved by the Reviewing Official.
- (5) A QSI may not be granted to an employee who has received a QSI within the preceding 52 consecutive calendar weeks.
- (6) The QSI should be made effective as soon as practicable after it is approved.

SECTION F: When the Director has approved the annual funding level for the total award allocation and the award distribution for each pot, the Union will be provided with the following information:

- (1) The approved Director's Discretionary Award Pot allocation.
- (2) The approved Special Recognition Award pot allocation and per capita amount for each employee.
- (3) The approved Non-Supervisory Performance Award pot allocation and distribution of funds to each Office based on percentage of total salary. An estimated distribution will be determined when the allocation is made at the beginning of the fiscal year; but the final distribution of the performance award pot for each Office will be made in August of each year, based on the salary of the employees on-board as of August 1.

SECTION G: On a quarterly basis, the Union will be provided with a list of Bargaining Unit employees who have received awards, the type of award, the amount of the award, the organization, and the site location.

SECTION H: The Time-Off Award is another form of employee recognition. Time-Off awards are not charged to the Special Recognition Award pool and are granted to an individual or group, without loss of pay or charge to leave, to recognize a superior accomplishment or other personal effort that contributes to the quality, efficiency or economy of Government operations. A written justification is required and must be attached to the time-off award nomination form, NETL F 332.1-3, Nomination for Time-Off Award.

The maximum number of hours that may be granted for a single contribution is 40. The total amount of time-off an employee may be granted during one leave year is 80 hours. Time-Off award nominations must include specific reference as to the “value of benefit” and “extent of application” which was met in arriving at the recommended time-off hours. A table is included on the nomination form that will assist nominators in preparing the justification.

SECTION I: All employees are encouraged to make a Special Recognition or Time-Off award nomination. For Special Recognition Award nominations, the first approval consideration is with the supervisor of the employee making the nomination. If the nominator’s supervisor does not approve the recommendation and the use of funds, and the nominated employee resides in another organization, the nomination should be sent for consideration to the nominated employee’s supervisor for approval and use of his/her funds. If the nominated employee’s supervisor does not approve the recommendation, there are no other steps to pursue.

A nomination will not automatically result in an award; a supervisor must determine that the accomplishment is worthy of the award and that the use of his/her funds is approved. Supervisors may alter the amount of the award, the type of award, or the person/persons being nominated. The nominated employee’s supervisor is responsible for certifying that the employee has not received prior recognition for the same accomplishment

ARTICLE 27

Equal Employment Opportunity

SECTION A: Management and the Union agree to cooperate in providing equal opportunity for all qualified persons and to prohibit discrimination because of age, sex, race, religion, color, national origin, disability, or sexual orientation, and to promote the full realization of equal employment through a positive and continuing effort. In all aspects of personnel management the Management shall be bound by Title VII of the Civil Rights Act, the Rehabilitation Act, Equal Pay Act, all other applicable statutes and the regulations of the Equal Employment Opportunity Commission, including 29 CFR Part 1614.

SECTION B: Counselors shall be chosen by the Labor-Management Partnership Council (LMPC) from a list of volunteers. The LMPC is encouraged to consult with the EEO/Diversity Program Manager before the selection is made. The LMPC shall strive to have a balance of counselors between sites. The term of appointment of counselors shall be for five years. Any counselor may be re-appointed at the end of his or her term with no term limits imposed.

SECTION C: EEO Program Manager and Counselors shall at the first meeting with the aggrieved employee:

- (1) Provide the aggrieved employee with a written list of their rights and responsibilities and review this list with the employee.
- (2) Clearly state that:
 - a. Neither the EEO Counselor nor the EEO/Diversity Manager (or equivalent) are advocates for the aggrieved employee. Rather they are advocates for the process and are expected to remain a neutral party.
 - b. The aggrieved employee has the right to Union representation.
- (3) Obtain a signed statement from the aggrieved person that the above two items have been communicated to them. This and all documents pertaining to the case shall be maintained in accordance with applicable laws and regulations.

SECTION D: It is agreed that the Union has the right to appoint one member to any EEO or Affirmative Action Activities or Committees. This member shall have full rights and responsibilities of the other members.

SECTION E: Management will notify the Union of any EEO Settlement Agreements which when implemented have adverse effects on Bargaining Unit employees.

SECTION F: Management agrees to provide reasonable accommodations for employees with qualifying disabilities.

ARTICLE 28

Environment, Safety and Health

SECTION A: Management and the Union agree to cooperate in a continuing effort to avoid and reduce the possibility of and work to eliminate accidents, injuries, and health hazards in all work areas. Management will make best efforts to ensure all people coming on NETL sites are aware of all applicable safety and environmental rules and regulations.

SECTION B: Management shall provide a safe and healthful work environment for all employees that complies with Occupational Safety and Health Administration (OSHA) regulations, Department of Energy (DOE) directives, and other applicable statutes, codes or regulations.

SECTION C: The Union will appoint two Union representatives as Environment, Safety and Health (ES&H) representatives. A Union ES&H representative shall participate in all environment, safety and health matters, including committees, and both representatives shall be invited to participate in all formal ES&H inspections. Union stewards of the area being inspected may accompany the inspection team on the inspections. Union members shall be on official time during ES&H meetings and inspections.

SECTION D: Management shall ensure that site ES&H policies and directives, and ES&H program activities comply with the laws, regulations, and standards listed in Section B of this Article.

SECTION E: First line supervisors shall ensure that operations under their authority comply with site ES&H directives and are conducted in a safe and environmentally sound manner.

SECTION F: Employees shall follow ES&H Directives. If they are unable to comply with the Directive, they shall notify their immediate supervisor who shall resolve the issue through the appropriate process.

SECTION G: All employees shall have the right and responsibility to report unsafe or unhealthful conditions or equipment to their supervisor, and then may report the condition to the Union. Management shall not subject any employee to restraint, interference, coercion, discrimination, or reprisal for reporting unsafe or unhealthful working conditions.

SECTION H: All employees and the Union have the right to request inspections of unsafe and unhealthful working conditions. Management shall ensure these requests for inspection are completed within one working day.

SECTION I: Employees concerned that gas cylinders or chemicals are not located, stored or used in a safe location may request a safety analysis be performed by an industrial hygienist. Management shall ensure the analysis is performed within three working days

by a certified industrial hygienist. The analysis shall be provided to the employee, the responsible supervisor, and the Union.

SECTION J: All employees have the right to refuse to perform assigned tasks and suspend operations without reprisal if the employee feels that the conditions are unsafe.

SECTION K: The line supervisor shall take immediate and appropriate action to protect employees as soon as he or she becomes aware of unsafe or unhealthful conditions or equipment. When Management determines that a condition exists that may affect employee health and safety and that cannot be remedied immediately, the Union ES&H Representatives will be promptly notified.

SECTION L: Personal protective equipment and clothing shall be supplied by Management as recommended by a safety analysis as performed by the ES&H Division. The Union will encourage employees to use proper personal protective equipment and clothing.

SECTION M: Management will provide employees with the appropriate and required orientation and training to perform their jobs safely. The Union will encourage employees to complete required training.

SECTION N: Upon request, Management shall give the Union any ES&H information or documentation unless doing so would violate an employee's right to privacy.

SECTION O: Management shall arrange to have at least one Union ES&H Representative participate on all decisions concerning reclassification of all areas including electrical and hazardous areas.

SECTION P: Application of pesticides and herbicide will be scheduled for the weekends when practical. A copy of the Material Safety Data Sheet shall be posted at least one day in advance on all exterior doors of the building in the building to be treated or in the immediate area of the treatment.

SECTION Q: Comprehensive health examinations shall be offered or required based on DOE guidance, a hazard analysis of the employee's position, past exposure, and the health and health history of the individual. During comprehensive health examinations, a prostate-specific antigen (PSA) test shall be offered to men and a Pap test shall be offered to women.

SECTION R: Management and the Union agree on the need for wellness programs for employees. The LMPC, in consultation with appropriate representatives of the health unit, shall each year study and recommend to the Director wellness programs for employees.

ARTICLE 29

Time and Attendance

SECTION A: General

- (1) Official Hours of Operation - The normal tour of duty for those working under a regular work schedule is from 8:00 a.m. to 4:30 p.m.
- (2) Employee Responsibilities:
 - a. Each employee is expected to be present during the core time of 9:00 a.m. to 2:30 p.m. on scheduled workdays, and to fulfill the commitment to account for a full 80-hour bi-weekly period. Part-time employees and employees under special training agreements are expected to conform to their agreed upon schedules.
 - b. Each employee is expected to cooperate with co-workers, supervisors, and managers to ensure that the mission is accomplished. While managers and supervisors are expected to make every effort to schedule meetings and other special activities during core times, there may be times when a supervisor will ask an employee to arrange his/her schedule to meet the needs of the organization.
 - c. Each employee is responsible for the proper use and tracking of credit hours earned and taken.
- (3) Supervisor Responsibilities
 - a. Adequate supervisory controls must be provided at all times. It is the responsibility of the supervisor to manage his/her staff in such a way that adequate staff is available to accomplish the organization's mission. There will be no overtime or compensatory time granted in order to provide adequate supervision or office coverage resulting from credit hours time off. Needs should be anticipated and employee work schedules made accordingly. The supervisor shall approve deviations from the schedule. A written explanation is required to be given to the employee each time a mutually agreeable schedule is not reached between the employee and the supervisor.
 - b. Supervisors are responsible to ensure the proper certification of attendance and the proper reporting of information to timekeepers. Supervisors are responsible for certifying that an employee is in attendance for his/her 80 hours of work per pay period.
- (4) Overtime/Compensatory Time - If an employee is in any way required by management to work hours which are in excess of the basic tour of duty,

these hours must be compensated in accordance with the premium pay provision of Titles 5 of the United States Code and the overtime provisions of the Fair Labor Standards Act. Overtime must be scheduled and approved in advance by using NETL F3600.1/2, NETL Worksheet (Overtime/Comp. Time/Extra Hours). For purposes of compensatory time that is earned and used under the Overtime provisions, increments in 15 minutes are authorized.

Based on the provisions of the Federal Workforce Flexibility Act of 2004, employees may now earn compensatory time off for official travel during uncompensated, non-work hours, under certain conditions. For purposes of compensatory time that is earned and used for travel purposes, increments in 15 minutes are authorized.

There is no limitation on the amount of compensatory time off for travel an employee may earn, but accrued compensatory time off for this purpose must be used by the end of the 26th pay period after the pay period in which it was earned or it will be forfeited. If an employee separates from Federal service before the compensatory time off for travel is used, it will be forfeited.

To qualify for this purpose, travel must be officially authorized and be approved by an authorized agency official.

- (5) Provision for Alternate Work Schedule – The Federal Employees Flexible and Compressed Work Schedules Act of 1978 (PL 95-390) authorized Alternate Work Schedules (AWS) as an experimental program in 1978. In 1985, legislation providing permanent authorization for agencies to use AWS was enacted (PL 99-196). These acts authorize Federal agencies to allow employees the flexibility to vary their daily arrival and departure times, and, under some options, to vary the length of their workday or workweek. The AWS Program is fully supported by Management and the Union as a demonstration of the organization's commitment to offer employees a family-friendly work environment. The AWS Program offers three important benefits to the organization: 1) serves to balance the working lives of employees with their personal needs and family situations, 2) positively contributes to employee morale, and 3) allows the organization to attract and retain high quality workers who seek an employer who offers a family-friendly work environment. Section B of this article describes the Flexible Work Schedule and Section C describes the Compressed Work Schedule.
- (6) Cameras and other devices under NETL control shall be used for safety and security purposes, and there is no intention to use these as time clocks or employee tracking devices unless exceptional circumstances exist.

SECTION B: Flexible Work Schedule (FWS)

- (1) Eligibility - All employees, with the exception of those listed below, or those excluded by statutory requirements, are eligible to participate in the FWS Program.
 - a. Employees appointed under the Student Temporary or Student Career Experience Programs cannot earn credit hours, but may adjust their work schedules within the allowable tour of duty start and end times with supervisor approval.
 - b. Those employees who are presently working on the Compressed Work Schedule. See Section C of this Article for Compressed Work Schedule Policy.
 - c. Special provisions and restrictions may apply to part-time employees. Those individuals under special training agreements are eligible to participate in the FWS Program at the supervisor's discretion.
- (2) Policy
 - a. All supervisors are encouraged to provide maximum flexibility for their employees to voluntarily participate in the FWS Program. Supervisors have the authority and the responsibility to require work hour adjustments to meet special work situations, as well as account for the overall performance of the organization. Consequently, all FWS preferences are subject to supervisory approval. Supervisors may require an employee's presence during specific hours for a certain period or a particular meeting. Additionally, supervisors may, at any time and subject to notification to the effected employee, alter a previously approved schedule to accommodate other mission-related activities such as travel, training, conferences, and other essential work.
 - b. Any employee who elects not to participate in the program will continue to work the official standard service hours of operation, 8:00 a.m. to 4:30 p.m. with a one-half hour lunch period to be taken between 11:00 a.m. and 1:00 p.m. Core hours are from 9:00 a.m. to 2:30 p.m. and must be worked by all employees on FWS. Employees on FWS may start as early as 6:00 a.m. and work until 7:00 p.m. Starting times must be on one-half hour increments.

c. Credit hours may not be used prior to being earned. They may, however, be earned and used within the same pay period provided they have been earned before they are used. For example, an employee may work to earn credit hours Monday through Thursday with the intent of using credit hours to take Friday off; they may not, however, take a Monday off and then work credit hours Tuesday through Friday to pay back the credit hours used.

d. All full-time employees not identified as “exempt” by law must account for 8 hours per day, 40 hours per week, and 80 hours per biweekly pay period. An employee may account for these hours by working a tour of duty, being on leave status (annual, sick, etc.), approved holidays, special administrative leave, or the use of credit hours. Examples of how an employee may use credit hours include the following:

- An employee may use credit hours in a manner similar to annual leave. Thus, if an employee has earned 24 credit hours, the employee can use these 24 credit hours as leave, given supervisory approval.

- An employee may work four consecutive 10-hour days, thus accruing 8 credit hours per week. The employee could then obtain supervisory approval to use 8 credit hours, giving the employee the equivalent of a four 10-hour day work week.

e. The following conditions apply under the FWS Program for each of the following circumstances:

Time Accounting: Employees who wish to participate in the FWS Program are responsible for submitting a schedule, using NETL F3600.1, Flexible Work Schedule, in advance to the time keeper. The supervisor is responsible for reviewing and approving the requested schedule in the context of accomplishing the mission. The supervisor is also responsible to initiate discussions with the employee to resolve issues and achieve an approved schedule.

The agreed upon schedule will remain in effect until such time that a change is requested by either Management or the employee. When a change occurs, another NETL F3600.1 will need to be completed and approved by the supervisor. Management may request that an employee change his/her schedule at any time. Employees desiring to change schedules may do so by the Wednesday preceding the beginning of a pay period. The request will be reviewed by the supervisor and discussed with the employee. If approved, the new schedule will become effective the beginning of the following pay period.

Every reasonable effort will be made by the supervisor to provide an opportunity for an employee to utilize the options provided in this Article to design a flexible work schedule. The supervisor has one day to approve or deny the request. Failure to deny the request shall be considered an approval. In cases where the supervisor and the employee cannot agree as to the employee's work schedule, at the employee's election, each must submit a written justification within one day to the second-level supervisor. The second-level supervisor must sustain or reverse the decision within one day of the receipt of both justifications. An employee dissatisfied with the action of the second-level supervisor may seek recourse through the negotiated grievance procedure only after following the sequence outlined in this Article.

Travel and Training: Employees on travel or training outside of the NETL site locations may not earn credit hours. They may, however, earn credit hours while at NETL on the same day as leaving or returning from a trip or prior to or after local training courses. Employees may use credit hours while on travel or training in lieu of pre-approved leave. The employee's schedule will be 8:00 a.m. to 4:30 p.m. or that required by official travel.

Shift Work: Employees who are scheduled to engage in shift work will not be allowed to participate in the FWS Program, as long as the activities which require the shift work continue. Once shift activities are discontinued, the employee may choose to participate in the FWS Program at that time.

Team Efforts: In those instances where team efforts are necessary, individuals on the team must coordinate their schedules in the spirit of cooperation with the team to ensure the accomplishment of the assigned mission.

Meetings: Managers and supervisors should make every effort to schedule meetings during the core time. However, there may be occasions when employees will be required to attend meetings which, because of special circumstances, must be scheduled outside of the core time. Employees are responsible for altering their schedules and providing the appropriate input to the timekeeper when these situations arise.

Leave Usage: Employees will accrue sick and annual leave in one-hour increments, and may use sick and annual leave in 15-minute increments. The FWS Program does not affect an employee's right to request annual or sick leave. However, it is the employee's

responsibility to ensure that all "use or lose" annual leave is taken by the end of the year. At the end of the leave year, if an employee is in a situation where he/she must use annual leave or lose it, the employee must first use annual leave before using any credit hours.

Emergencies: Delayed openings, early dismissals, or non-workdays caused by weather conditions or emergencies will usually not affect FWS. Some examples are:

(1) If the opening of the facility is delayed because of hazardous weather, those employees scheduled to start work earlier than the revised starting period will receive credit for their full tour of duty. Since credit hours must be worked, they may not be earned prior to the employee's tour of duty unless they are actually worked. Those employees scheduled to start their tour of duty at or later than the revised starting period will work their full tour of duty.

(2) If the facility closes early for hazardous weather or some other reason, those employees scheduled to work beyond the revised closing period will receive credit for their full tour of duty. Since credit hours must be worked, they may not be earned following the end of the employee's tour of duty, unless they were actually worked.

f. Maximum Credit Hour Earning: Employees may earn credit hours in one-half hour increments with a maximum of 3 hours being earned each day, not to exceed 20 credit hours being earned in one pay period.

g. Carryover of Credit Hours: The FWS Program allows for carrying forward into a subsequent pay period a maximum of 24 credit hours.

h. Credit Hour Usage: Credit hours may be used in 15 minute increments. The use of credit hours will require supervisory approval exactly as annual leave. Credit hours may not be taken prior to being earned.

i. Part-time Employees: Permanent part-time employees may earn credit hours in proportion to the hours worked per 40-hour week providing such accumulation of credit hours is not in conflict with any controlling regulation for their part-time employment. For example, a permanent part-time employee working 32 hours per week could earn 16 credit hours per pay period and carry over 19 credit hours from pay period to pay period. If the number of part-time hours being worked changes, the credit hour carry forward capacity will change proportionally; that is, hours could be lost if working hours are being reduced.

j. Pay for Earned Credit Hours: When an employee leaves the organization, the employee must be paid for earned credit hours at his/her current rate of pay. Payment for earned credit hours is limited to not more than 24 hours for a full-time employee, and for a part-time employee, not more than 30% of the employee's biweekly work requirement. Credit hours may not be traded or exchanged in any way between employees.

SECTION C: Compressed Work Schedule (CWS)

(1) Eligibility. Employees currently participating in the existing CWS may elect to continue to participate, subject to the restrictions provided below. No new employees will be permitted to participate in the CWS. It is strictly at the employee's discretion as to whether the employee wants to continue to participate in the CWS. Continued participation in the CWS will not be arbitrarily denied to any employee. Every reasonable effort must be made by the supervisor to continue to provide an opportunity for an employee on the CWS to continue to participate in it. Written justification to the Director is required to exclude employee(s) from participation. Within 10 working days, the Director will approve/disapprove a Division Director's request to exclude an employee's continued participation.

(2) Policy.

a. The CWS features are:

- it is limited to four 10-hour days
- employees are divided into groups A and B with distribution to the groups as equal as practical
- group A will be off each Monday
- group B will be off each Friday
- all employees are required to be present on Tuesday, Wednesday, and Thursday unless on leave or travel status.
- fixed schedule, i.e., group A or group B (see subsections c. and d. below)

b. Base Work Requirement: A full-time employee has a 10-hour daily work requirement, a 40-hour weekly basic work requirement, and an 80-hour biweekly basic work requirement.

c. Non-Overtime Work: Non-overtime work is performed during an employee's CWS and not in excess of 10 hours in a day or 40 hours in an administrative workweek.

d. Hours of Duty: Hours of duty will be 7:00 a.m. to 5:30 p.m.

e. Absence and Leave: A full-time employee who is relieved or prevented from working on a day designated as a holiday is entitled to pay with respect to that day for 10 hours. When an employee has 3 consecutive non-workdays off and the holiday falls on one of these non-workdays, the following rules shall apply in designating the workday as the "in lieu of" holiday:

- When the holiday falls on a Sunday, and is officially observed on Monday and that Monday is the employee's scheduled compressed day off, the employee will receive Tuesday as their "in-lieu of" holiday.

- When the holiday falls on a Monday, an employee with a Monday compressed day off would have the preceding Friday off as their "in-lieu of" holiday.

- When a holiday falls on a Friday, and the employee with a compressed day off as Friday, would receive the preceding Thursday as their "in-lieu of" holiday.

- When a holiday falls on a Saturday, and is observed on a Friday, an employee with a Friday compressed day off would have the preceding Thursday off as their "in-lieu of" holiday.

Time off during an employee's basic work requirement must be charged to the appropriate leave category unless the employee is authorized compensatory time off or an excused absence. For example, a full-time employee who takes one day of annual leave will be charged 10 hours. This results in 40 hours of annual leave for an entire workweek similar to a full-time employee on a normal 8-hour/5-day tour of duty.

f. Credit Hours: Employees participating in the CWS may not earn or use credit hours.

g. Biweekly Scheduling: On a biweekly basis, coinciding with the employee's pay period, the employee shall prepare a tour-of-duty schedule consistent with his or her Compressed Work Schedule. This shall indicate:

- starting time
- ending time
- number of annual leave hours to be taken
- number of sick leave hours to be taken (i.e., medical appointment)
- number of overtime hours to be worked, as applicable, during each day for the subsequent two-week pay period.

This proposed tour-of-duty schedule shall be submitted by the employee to his supervisor by the second Wednesday of the preceding pay period. The tour-of-duty schedule must be signed and dated by the employee's supervisor in advance of the two-week period signifying approval by the supervisor.

h. Conversion From CWS: An employee may elect to convert from the CWS to the regular Tour of Duty or the Flexible Work Schedule (FWS) upon written notification to his supervisor at least three working days prior to the beginning of the pay period in which the employee desires to have the conversion be effective. This is the only conversion option available to the employee. An employee who thus converts from the CWS forfeits his eligibility to future participation in it.

During participation in the CWS, employees will be required to revert to the Tour of Duty and FWS program only upon written documentation by the supervisor that the employee's schedule must be changed to meet unforeseen demands of the position. Such reversions shall be only in pay period (two week) increments. Upon termination of such unforeseen demands of the position, the employee shall revert back to his CWS. Employees engaged in shift schedules at any time during a pay period are excluded from the CWS during that pay period.

ARTICLE 30

Flexiplace (Telecommuting)

SECTION A: General Provisions.

Flexiplace or Telecommuting means working at home or at another approved location away from the official worksite. A Telecommuting program can be beneficial to the organization and its' employees. A flexible workplace program provides the Telecommuting employee more options to balance work and family responsibilities. It also recognizes the fact that certain tasks may best be accomplished at locations other than one's regular office. However, Flexiplace agreements must be consistent with mission accomplishment and customer service. Participation in the Flexiplace program will be voluntary for both the employee and the supervisor, and both parties must be comfortable with and agree to the Flexiplace schedule. Participation in the program requires advanced supervisory approval. Approval to participate in this program is not an assurance that this work option will continue indefinitely.

SECTION B: Authority.

- (1) An Executive Memorandum dated July 11, 1994, signed by President William J. Clinton, directed each executive department and agency to establish a program to encourage and support the expansion of flexible, family-friendly work arrangements, including Telecommuting and satellite work locations.
- (2) On June 21, 1996, President Clinton issued a second memorandum, directing executive departments and agencies to review their family-friendly programs and, to the extent feasible, expand them. The President's Management Council endorsed a National Telecommuting Initiative to increase the number of Federal employees who telecommute to 15% by the end of FY 2002.
- (3) On March 15, 2000, Secretary of Energy Bill Richardson called for Department implementation of a DOE-Flex Program initiative aimed at supporting the Department's energy efficiency and environmental missions, increasing the Department's ability to attract and retain employees by improving their work life and helping them to balance work and family responsibilities, and enhancing worker productivity. Participation goals established in the memorandum are as follows: FY 2000-5%; FY 2001-10%; and FY 2002-15%.

SECTION C: Eligibility.

- (1) A Telecommuting employee should be an organized, highly disciplined self-starter who requires minimal supervision and has an acceptable performance rating over the most recent appraisal period.

- (2) Work suitable for Telecommuting depends on a job's content, rather than title. Telecommuting is appropriate for both routine work that requires little interaction with others and for some work that is best done with a minimum of distractions. Such work might include tasks that involve thinking and writing, but could also include telephone intensive or computer-oriented tasks. Examples of work activities that are conducive to Telecommuting include technical proposal review, literature review, report writing, word processing, data entry and analysis, writing assignments, and computer modeling activities.
- (3) Telecommuting may not be suitable in situations where the employee needs frequent face-to-face interaction with fellow employees, clients or the general public, access to materials that cannot be removed from the office, or special facilities or equipment not available off-site. It is also not appropriate if the alternative work site is unsafe or otherwise not conducive to the work.
- (4) Work to be done must be measurable and fulfill the mission of the Agency. The decision to allow it will generally be made based on the employee's past job performance and the nature of the task(s) to be completed, but may also be a response to compelling personal reasons. Supervisors should consider whether NETL productivity would be sustained or enhanced by the arrangement; if not, the arrangement is not appropriate. Work performed at the alternate workplace will be evaluated by the same performance standards and procedures that apply at the official duty station.
- (5) Dependent care is generally not a rationale for Telecommuting. However, NETL does allow parents of newborn or recently adopted children short-term considerations for part-time Telecommuting. The nature and duration of such arrangements must be agreed to by both the employee and the supervisor, but would normally not exceed 6 months.

SECTION D: Implementation.

- (1) Flexiplace arrangements are appropriate for both medical and non-medical work situations. Agreements may be for regular and continuous periods, such as one or two days per week, or for special short-term (short-term is generally considered assignments that do not exceed one month) circumstances related to a specific project or a special task. The latter arrangements are referred to as situational agreements, and are approved by the first line supervisor. Examples of the latter would include an agreed-upon time to complete a manuscript or to review relevant literature without distractions. Agreements that are regular and continuous are approved by the first line supervisor, but also require the concurrence of the Associate

Director. The necessary forms for Flexiplace approval are available from HR. If either the employee or management is uncertain whether Flexiplace is appropriate, a trial period should be considered.

- (2) An employee or supervisor has the right to suspend or terminate participation, with reasonable notice, if the situation changes, if it is established that the organization's needs are no longer being served, if the telecommuter's home site does not meet safety standards, or if the telecommuter's conduct or performance give cause for concern.
- (3) A Telecommuting agreement should be designed with scheduling flexibility in mind. For example, when work requirements preclude the use of a scheduled Flexiplace workday, the supervisor, with adequate notification, should be able to modify the Flexiplace schedule, to accommodate both the organization and the employee. If meetings should occur when face-to-face interaction is needed on an employee's Telecommuting day, it is important that the telecommuter make every effort to be present at the meeting. Also, when changes in home life warrant scheduling flexibility, scheduling may be adjusted, with supervisory approval. The change should be documented and filed, and the timekeeper should be kept informed.
- (4) One of the intents of Flexiplace is to improve the employee's ability to productively contribute at the organization and to improve overall productivity. The overall interests of the office must take precedence over working at alternate sites. Telecommuting should not put an undue burden on staff remaining in the office. An equitable distribution of workload should be maintained, and methods should be instituted to ensure that main office employees are not saddled with the telecommuter's responsibilities.
- (5) Disapproval of a Telecommuting arrangement request will be documented on the Telecommuting request form.
- (6) A change or an extension to a Telecommuting agreement will only require initialed changes by the parties involved to the original or a copy of the Agreement. A copy of the revised form should be sent to HR and to the timekeeper.
- (7) The administrative workday is 6:00 a.m.- 7:00 p.m. Employees working a full day on Flexiplace must be working, at a minimum, during the hours of 9:00 a.m. - 2:30 p.m. local time (with a ½ hour lunch break to be taken between 11:00 a.m. and 1:00 p.m.). Alternative arrangements may be appropriate for employees working under a part-time Flexiplace arrangement. Agency personnel must be able to contact the employee by telephone or email during the employee's work hours. The supervisor will be notified in advance of absences from the duty station.

- (8) Credit time cannot be earned while working at home. Individuals currently on compressed work schedules cannot retain that schedule while Telecommuting, but may return to the compressed work schedule when not Telecommuting.
- (9) A Flexiplace employee may sometimes, but not always, be affected by an emergency requiring the regular office to close. For example, on a "snow closing day," the agency should not excuse a Flexiplace employee unless he or she cannot perform work because the regular office is closed. When both the regular office and the alternative work site are affected by a widespread emergency, the agency should grant the Flexiplace employee excused absence as appropriate. When an emergency affects only the alternative work site for a major portion of the workday, the supervisor can require the Flexiplace employee to report to the regular office, approve leave or leave without pay, or authorize an excused absence.
- (10) The employee's timekeeper will have a copy of the employee's Flexiplace Agreement, and should be notified of any approved changes in the schedule. The employee will maintain time and attendance records as done presently. The employee's time and attendance will be recorded as performing official duties at the official duty station.
- (11) The Government will not be responsible for operating costs, home maintenance, or any other incidental cost (e.g., utilities, insurance) whatsoever, associated with the use of the employee's residence. By participating in this program, the employee does not relinquish any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute and implementing regulations.
- (12) In the event long-distance telephone calls must be made from the alternate work site, these calls, to the extent possible, should be made on the Agency designated calling card. A phone bill showing the number called and the charges must accompany claims for reimbursement for official, commercial, long-distance telephone calls. A toll-free 800 number is available for employees who need to use computer services from an alternate work site.
- (13) Telecommuting work sites should be safe and free of work hazards. Employees are required to self-certify the safety of their work sites at home by completing a safety checklist. Employees are responsible for complying with safety standards and building codes. Management can, with 24 hour notice, conduct a home safety inspection if an accident occurs or if there is concern that one might occur.
- (14) Any significant work-related accident or injury occurring at the alternate duty station must be brought to the immediate attention of the supervisor.

The supervisor and safety office must investigate all accident reports immediately following notification. The investigation may include an inspection of the alternate workplace.

- (15) Telecommuting employees are covered by the Federal Employee's Compensation Act (i.e., workers' compensation benefits) as long as the employee is actually performing his/her official duties, and the supervisor approves the schedule, and any deviations from the schedule.
- (16) Equipment will not be purchased by the organization solely to allow participation in Flexiplace. Employees must utilize equipment and supplies normally on hand. Software packages used on employee-owned equipment shall be in accordance with all applicable licenses and regulations governing them.
- (17) If the employee borrows Government equipment, the employee will protect the Government equipment in accordance with local policy and procedures. Government-owned equipment will be serviced and maintained by the Government. If the employee provides his/her own equipment, he/she is responsible for servicing, repairing, and otherwise maintaining it. There are no requirements for Management to cover home-office expenses.
- (18) Government liability for damages to an employee's personal or real property that might occur while the employee is performing official duties or using Government equipment in the employee's residence is limited by the extent that the Government is held liable by the Federal Tort Claims Act or claims arising under the Military Personnel and Civilian Employees Claims Act.
- (19) It is the responsibility of the participant to contact his/her homeowner's insurance agent or carrier regarding appropriate insurance coverage for government equipment and to make adjustments, if necessary.
- (20) The employee will apply approved safeguards to protect Government records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at Section 552a, titled 5 U.S.C.
- (21) The Human Resource Office will maintain a file of all Flexiplace agreements.

ARTICLE 31

Reduction in Force, Transfer of Function, and Contracting Out

SECTION A: Management and the Union recognize that Bargaining Unit employees may be seriously and adversely affected by a reduction-in-force (RIF), a transfer of function (TOF), and the contracting out of certain functions. The parties recognize that available alternatives to RIF include, but are not limited to, attrition, reassignment, furlough, hiring freeze, and early retirement. Management and Union will consider all practicable alternatives and proactive measures to minimize the adverse impact of any RIF; for example, the use of attrition or requests for buyout and early retirement opportunities, placement assistance throughout federal agencies, freezes on outside hiring, retraining, and significant cost cutting (e.g., travel, performance awards and furloughs). Whenever possible, vacancies will not be filled from outside the affected organization if employees facing separation are qualified and available for the vacancies.

SECTION B: A reduction-in-force is the release of an employee from his/her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, insufficient personnel ceiling, reorganization, transfer of function, an individual's exercise of re-employment rights or restoration rights, or reclassification due to an erosion of duties when it occurs within 180 days of a formally announced RIF in the competitive area. A transfer of function is the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, when that work is not already being performed at a significant or comparable level of effort in the new competitive area(s).

SECTION C: Reductions-in-force will be conducted in accordance with 5 CFR 351 and appropriate Office of Personnel Management Guidelines and the applicable DOE policies and procedures. An employee's retention standing in a reduction force is based on the requirements of the Code of Federal Regulations which include such things as years of service and retention service credit for performance. In the event of a RIF, Union and Management will negotiate over the impact on employees of the mixed rating system which has been in effect at NETL in accordance with 5 CFR 351.504(e).

SECTION D: Management shall notify the Union at the earliest possible time when conditions arise that may result in a RIF or a TOF and will furnish information about potential RIFs as soon as information is available. Management will continue to provide information to the Union throughout the RIF process as it is developed and revised. The purpose of this early notification is to allow Management and the Union the opportunity to find alternatives to the potential RIF or TOF. Prior to individual employee notification, Management will notify the Union in writing of its decision to conduct a RIF or TOF at the earliest possible date, but at least 60 days in advance of the effective date. This notification will outline the general scope of the RIF or TOF.

SECTION E: At least 10 days prior to individual Bargaining Unit employee notification, the Senior Union Official will be given written notification of the formal RIF or TOF

action. The notification will include the reason(s) for RIF, criteria used to identify the positions affected, number of positions affected, types and grades of positions affected, and the proposed effective date. The Senior Union Official shall hold this information confidential until the official notice is issued to the affected employees. The Senior Union Official and his designated Representative(s) shall have the opportunity to confidentially examine the retention registers for the Bargaining Unit employees at least 10 days before the official notice is given.

SECTION F: Employees separated by a RIF action shall be entitled to re-employment priorities established in existing regulations. The acceptance of a temporary appointment will not affect the employee's right to be offered permanent employment. Employees affected by a RIF action and offered reassignment, promotion, or change to a lower grade shall be given at least 10 days to respond to a position offer(s), indicating a choice of accepting such offer of a position or allowing the RIF action to take place, unless Management is prevented from doing so by unusual circumstances or emergency conditions.

SECTION G: In the event an employee is separated due to a RIF action, Management will notify the affected employee(s) in writing of their eligibility for Priority Placement Program (PPP), Career Transition Assistance Program (CTAP), and Interagency Career Transition Assistance Program (ICTAP) as well as registration on the Agency's Re-employment Priority List (RPL). The Human Resources Division will provide guidance and support to all affected employees on application procedures for each program including assisting employees with determining the types of positions for which the employee qualifies based on his/her knowledge, skills, and abilities. Management will make available reasonable use of official time and provide maximum assistance possible to affected employees.

SECTION H: In the event of a TOF without a RIF, Management shall inform the Union as fully and as soon as practical (at least 30 days prior to implementation) any decision(s) for the transfer of function(s) and, provide upon request, the governing regulations. The written notice shall include the reasons for the proposed transfer of function(s), the number and types of positions affected, and the anticipated date of the action. Management shall identify the employees to be transferred in accordance with applicable rules and regulations. Management will explore options to avoid separating, downgrading, or transferring employees as a result of the loss of function.

SECTION I: Management retains the right to make determinations with respect to contracting out as provided in 5 USC 7106. Management agrees to comply with all provisions of the FAIR Act (and with any supplements or superseding circulars or directives) and with this Agreement. Management agrees to make every effort to minimize the impact of contracting out on employees, and to provide the Union and employees with frequent updates on the A-76 process,.

SECTION J: Management and the Union understand and agree that there will be separate

competitive areas for employees assigned to NETL. The Morgantown and Pittsburgh sites are separate competitive areas for purposes of RIF and TOF. Any employees stationed in Morgantown or Pittsburgh who are not assigned to NETL shall be in other competitive areas.

SECTION K: Should any employee desire not to transfer with the function, Management shall solicit voluntary requests from employees to transfer in their place and give careful consideration to such requests. If the total number of employees who volunteer for transfer exceeds the total number of employees required to be transferred, qualified volunteers will replace identified employees in order of retention list seniority. Management will consider using this process in appropriate directed reassignment actions. Management shall make every effort to place employees who decline the TOF in vacant positions for which they qualify at NETL or in the same commuting area and/or in the same competitive area. Management shall counsel the employees who decline the TOF regarding their statutory outplacement rights, placement potential, and individual rights relating to retirement and/or severance pay as well as provide assistance with application procedures for career assistance transition programs.

ARTICLE 32

Smoking

SECTION A: Management and the Union, in mutual agreement as to the adverse health effects of tobacco smoke on both the user and those who breathe "second hand" smoke, agree to limit smoking of tobacco on property owned or operated by the organization.

SECTION B: Smoking will not be permitted:

- (1) inside any buildings except designated smoking shelters,
- (2) within 20 feet of any doorway or other air intake, or
- (3) within the courtyard areas at each site. The courtyard areas are roughly defined by buildings 26, 1, 25, and 3 at the Morgantown site and by buildings 920, 921, and 922 at the Pittsburgh site.
- (4) inside any stairwells or elevators in parking garages.

SECTION C: Management shall provide smoking shelters. Currently designated smoking shelters will continue to be so designated and shall only be changed as negotiated by Management and the Union. Management and the Union consider the current number, locations, and types of shelters adequate and shall negotiate any changes to the provisions of this Article.

ARTICLE 33

Negotiated Grievance Procedure

SECTION A: This Article provides the sole Negotiated Grievance Procedure for the processing of Management, Union, and employee grievances as required by P.L. 95-454. This Procedure shall be the exclusive avenue available to the Union, Management and the employees in the Bargaining Unit for resolving grievances, except as provided in Section B of this article. Portions of this Procedure may be used to attempt resolution of Unfair Labor Practices (ULPs) as per Article 34. All time limits in this Article may be extended by mutual consent in writing. The use of the term “time limits” in this Article is in terms of “work days” and includes any such extensions. Management and the Union agree that:

- (1) The success of their relationship depends on a spirit of cooperation. Grievances and ULPs do occur and shall be addressed in order to maintain a harmonious work environment.
- (2) The filing of a grievance or ULP shall not reflect unfavorably on an employee's good standing, an employee's performance, or his or her loyalty to the organization. Grievances and ULP's should not be viewed as personal attacks on supervisors or other managers and should not negatively reflect on their credibility or ability to perform.
- (3) Most grievances and ULPs arise from misunderstandings or disputes that can be settled promptly and satisfactorily on an informal basis at the immediate supervisor or Division Director level. Management and the Union agree that every effort will be made to settle grievances at the lowest possible level.
- (4) Management and the Union will discourage the processing of frivolous grievances or ULPs.

SECTION B: The parties shall comply with 5 U.S.C. 7121 (d), which is presented below:

“(d) An aggrieved employee affected by a prohibited personnel practice under Section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to Section 7702 of this title in the case of any personnel action that could have been appealed to the

Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.”

SECTION C: A grievance means any complaint defined under 5 USC 7103(a)(9) and a substantive or threshold issue may be raised at any time during the grievance and arbitration process. All disputes of grievability or arbitrability shall be deferred to arbitration as a threshold issue. The Agency will deal with merits of the grievance even when there is a claim of non-grievability, violates timelines, and has procedural defects.

(1) This procedure applies to Bargaining Unit employees and shall be the exclusive procedure for resolving grievances which fall under its coverage.

a. A grievance means any complaint:

1. by a Bargaining Unit employee concerning any matter relating to the employment of the employee;
2. by the Union concerning any matter relating to the employment of any Bargaining Unit employee(s); or
3. by a unit employee, the Union, or Management concerning:
 - (a) the effect or interpretation or a claim of breach of the collective bargaining agreement; or
 - (b) any claimed violation, misinterpretation of any law, rule, or regulation affecting conditions of employment.

b. This procedure shall not apply to any grievance concerning:

1. any claimed violation of Subchapter III of Chapter 73, Title 5 U.S.C. (relating to prohibited political activities)
2. retirement, life insurance, or health insurance;
3. a suspension or removal under Section 7532 of Title 5 U.S.C.;
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. termination of a trial period employee;
7. termination or expiration of temporary employees; and
8. non-selection for promotion or transfer from lists of properly ranked eligibles; and

c. Employee Options:

A Bargaining Unit employee may raise the following matters under statutory procedures (Merit System Protection Board (MSPB), Equal Employment Opportunity (EEO) or negotiated grievance procedure but

not both. For the purpose of this article an employee shall be deemed to have exercised his/her option to grieve or appeal only when the employee files a written, timely notice of appeal under the appellate procedures or files a timely written grievance under the negotiated grievance procedures.

1. Adverse Actions: Removals, Suspensions for more than 14 days. The reduction in grade or pay and furlough for 30 days or less.
2. Unacceptable performance: Demotions and removals.
3. EEO Complaint: An allegation of discrimination based upon race, color, religion, sex, age, national origin, marital status, political affiliation or a physical handicap. If an employee appeals to the MSPB he/she cannot file a grievance under the grievance procedure or EEO complaint process.

(2) A Bargaining Unit employee may present a grievance on his/her own behalf under this procedure and the Union shall be given the opportunity to be present during the grievance proceedings. Any resolution reached with the employee or Union shall be consistent with all applicable laws, rules, regulations and the provisions of this collective bargaining agreement. A grievance will automatically be terminated on request of an employee or upon the death of the employee or resignation or separation for reasons not connected with the grievance, provided there is no question of pay involved or other relief that could be granted to the employee or his/her estate or is a union Policy Grievance that affects the working conditions of other bargaining unit employees.

(3) Steps

Step 1 – Informal

The Parties agree that informal resolution of employees' grievances is desirable. To this end, Bargaining Unit employees(s) and/or their Union representative(s) should present any grievance informally to the manager/supervisor prior to reducing a grievance to writing. Such informal presentation should take place within seven (7) work days of the act or incident giving rise to the grievance. The supervisor/manager should arrange for a meeting within five (5) work days of the informal presentation of the grievance to fully discuss the issue and attempt resolution.

Step 2 – Formal

- a. Notwithstanding the provisions of Step 1, the Bargaining Unit employee or his/her Union representative must present the grievance, in writing, to the appropriate supervisor/manager within twenty (20) work

days of the act or incident giving rise to the grievance, or after they became aware of the act or incident.

b1. The supervisor/manager shall issue a written decision within seven (7) work days from the date the written grievance was received by the supervisor/manager. Such decision shall be transmitted to the grievant and grievant's Union representative, if any.

b2. The grievant or his/her Union representative shall have ten (10) work days after the receipt of the supervisor/manager's written decision to advance the grievance to the next level. If the grievant has not received a written decision from the supervisor/manager within the seven (7) work days heretofore referred to, then the grievant may advance the grievance to Step 2 of this procedure within ten (10) work days after the seven (7) day period has elapsed.

b3. When the grievance has not been resolved at the supervisory level [as described above] the grievant or his/her union representative shall have ten (10) working days to submit the grievance in writing to the next supervisory level or his/her designee within ten (10) work days after the completion of Step b2. The next level supervisor or his/her designee will meet with the grievant and his/her union representative within five (5) working days after receipt of the grievance. Within ten (10) work days after the meeting the next level supervisor or his/her designee shall provide the grievant and his/her union representative with a written answer.

Step 3 – Review

When the grievance has not been resolved at Step 2, the grievant or his/her Union representative may submit his/her grievance in writing to the Director or his/her designee with ten (10) work days after the completion of Step 2. The Director or his/her designee will meet with the grievant(s) and his or her Union representatives(s) within five (5) work days after receipt of the written grievance. Within ten (10) work days after the meeting, the Director or his/her designee shall provide the grievant(s) and his or her Union representative with a written answer.

Step 4 – Arbitration

If Management and the Union fail to settle any grievance processed under this Negotiated Grievance Procedure, such grievance, upon written request by either party within twenty (20) working days after issuance of the final decision by the Director or designee (Step 3), shall be submitted to arbitration. Only Management or the Union may invoke arbitration.

SECTION D: In processing matters under these procedures, grievants and the Union Representative(s) are entitled to the use of a reasonable amount of official time.

SECTION E: When a group of Bargaining Unit employees has an identical grievance, it will be considered as an individual grievance of one Bargaining Unit employee and will be processed as a single grievance in the name of the Bargaining Unit employee designated by the others to act for them. All Bargaining Unit employees electing to join in the grievance must be identified and must sign the grievance at the stage it is put in writing. There will be only one (1) Union representative for the group and the final grievance decision will apply to all members of the group and each member of the group will receive one (1) copy of the final decision.

SECTION F: It is agreed that there must be an attempt to informally resolve any grievance at the lowest practical levels. Failure of the Union or employee to meet the time limits prescribed in the Agreement shall be grounds for withdrawal and termination of the grievance. Should Management fail to comply with the time limits at any step, the grievance may be advanced to the next step up to and including arbitration. Management will provide a detailed written response to the employee at each step of the grievance explaining the reasons why the grievance is denied or sustained.

SECTION G: At each step of the above Grievance Procedure (excluding arbitration procedures), the parties including the grievant, his or her Representative(s), and Management may call witnesses to provide information relevant to the grievance.

SECTION H: It is agreed that when a grievance decision is accepted or terminated by the grievant at any step, it will be considered to be settled in its entirety, and no further action will be taken regarding that specific grievance.

SECTION I: An alternative dispute resolution process (ADRP) may be invoked when mutually agreed to by the disputing parties any time after a formal grievance is reduced to writing. The use of ADRP will not restrict an employee from using the existing grievance process. If no settlement is reached in the ADRP, the grievant may continue to pursue the dispute through arbitration. If ADRP is selected as a method to resolve grievances, then Article 36, Alternate Dispute Resolution is used. This process will be executed in a timely fashion. The normal timeframes in the grievance process will be suspended during the ADRP.

SECTION J: Management will use the following procedure for filing any grievance against the Union and by the Union for any grievance in which the Union is the grievant. The moving party (either Management or Union) will inform the other party's appropriate Representative(s) in writing of such dispute within twenty (20) working days of the occurrence of the action or when the aggrieved party became aware of the complaint. The Senior Union Official and the designated Management Representative will meet within 10 working days of such notification and make an earnest effort to resolve the matter

through discussion. Within 15 working days of the meeting, the respondent party will reply, in writing, to the moving party on its position concerning the disputed issue(s). If upon receipt of the respondent party's reply, the matter remains unresolved, the moving party may refer the dispute to arbitration. Prior to submission of any such dispute to arbitration, the parties shall meet in a good faith attempt to mutually agree on the issue(s) to be submitted to the arbitrator. Other representative(s) in the meeting will be of an equal number for each side.

ARTICLE 34
Unfair Labor Practices

SECTION A: The parties mutually recognize the rights of all employees to file an Unfair Labor Practice (ULP) as stated in the Federal Service Labor Management Relations Statute (5 USC 7116).

SECTION B: Any party intending to file an Unfair Labor Practice agrees to notify the affected party (or parties) and attempt to resolve it informally at least five working days prior to formally filing the ULP.

ARTICLE 35

Arbitration

SECTION A: Arbitration Procedure

Binding arbitration shall be the procedure used for any grievance not satisfactorily settled under the negotiated grievance procedures. Both parties agree that good faith resolution of all grievances shall be attempted through the grievance process, settlement and mediation procedures.

- (1) If Management and the Union fail to settle any grievance processed under this Negotiated Grievance Procedure, such grievance, upon written request by either party within twenty (20) work days after issuance of the final decision by the Director or his/her designee (Step 3), shall be submitted to arbitration. Only Management or the Union may invoke arbitration.
- (2) Not later than twenty-five (25) work days after receipt of the final decision, the FMCS form shall be forwarded to the Federal Mediation and Conciliation Service for referral of an arbitration panel. Normally, within fifteen (15) work days after receipt of an FMCS referral, the Parties will select an arbitrator by alternately striking names from the referral with the name of the last arbitrator becoming the selection. The initial grievant shall strike the first name. The FMCS shall provide a list of five (5) names of impartial persons qualified to act as an arbitrator. Management and union can mutually agree to request a new list from FMCS and the parties shall share any cost associated with requesting the new list.
- (3) The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in event one party refuses to participate in the selection of an arbitrator.
- (4) With the consent of both parties, more than one arbitration case may be consolidated for review by the same arbitrator.
- (5) Grievances will be arbitrated in the order in which arbitration was invoked and any grievance that is passed over for arbitration will not be considered at a later date.
- (6) If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard. The arbitration normally will be conducted at the work site, unless the Agency decides otherwise.
- (7) All Bargaining Unit employees who are participants, including witnesses, in the hearing shall be in a duty status. The costs of any witnesses or

relevant participants who are not Bargaining Unit employees shall be borne by the party requesting the appearance of said personnel.

- (8) The arbitrator shall be requested to render his/her decision not later than thirty (30) work days after the conclusion of the hearing unless the parties mutually agree to extend the time limit.
- (9) The arbitrator's authority will be limited only to the issue involved, and his/her decision must be in accordance with law, rule, or regulations. The arbitrator's decision will be binding on both parties unless an exception to the award is filed in accordance with the Federal Service-Labor Management Relations Statute. Any dispute over the application of an arbitrator's decision shall be remanded to the arbitrator no more than sixty (60) work days after the arbitrator's final decision. The arbitrator shall not have the authority to change, modify, alter, delete or add to the provisions of this agreement.
- (10) The cost for arbitration shall be borne equally by the Union and Agency. Arbitration costs will include the arbitrator's fee, travel, per diem, and the costs of the transcript of the hearing where mutual agreement was reached on sharing said costs or where the arbitrator requests a transcript. Travel and per diem cost of the arbitrator shall not exceed the applicable rates authorized for U.S. Government employees in accordance with the Federal Travel Regulations. It is further agreed that if one party obtains a transcript at its own cost, the other party shall not be entitled to receive or obtain such transcript or a copy thereof unless it is provided to the arbitrator. If one party withdraws the grievance from the scheduled arbitration it will bear the full costs of any arbitration costs or fees.
- (11) Upon mutual consent of the parties, the grievance case file and current collective bargaining agreement may be sent to the arbitrator.
- (12) Bargaining Unit witnesses shall be granted a reasonable amount of official time to prepare for and testify at the arbitration hearing. The Union will request and obtain approval, in writing, for official time to prepare Bargaining Unit witnesses for its case. Management will promptly respond in writing to such requests. Management will verbally and/or in writing notify the Union of its intent to interview Bargaining Unit witnesses and afford the Union the opportunity to be present at such interviews.

SECTION B: Time Limits

- (1) All time limits under this procedure may be extended in writing by mutual consent and, in addition, both parties agree to make a maximum effort to comply with time lines established in the grievance procedure.

- (2) The parties shall exchange witness list at least fifteen (15) work days prior to the date of the arbitration and the parties shall have the opportunity to challenge witnesses.
- (3) A Bargaining Unit employee may challenge a rating of meets expectations or above under this grievance procedure, except that such challenge shall not be subject to the arbitration procedures.

SECTION C: Employee Election

Under 5 U.S.C. 7116 and 7121, Bargaining Unit employees may raise certain matters under this negotiated procedure or under a statutory procedure, but not both. For purposes of this Article, the Bargaining Unit employee or his/her representative shall be deemed to have exercised his/her option as a procedure when a timely grievance is filed or an EEO charge, appeal, or complaint under the applicable statutory procedure is initiated, whichever event occurs first.

ARTICLE 36

Alternative Dispute Resolution

SECTION A: An Alternative Dispute Resolution Process (ADRP) may be invoked when mutually agreed to by the disputing parties any time after a formal grievance is reduced to writing. The use of ADRP will not subjugate the existing grievance process. If no settlement is reached in the ADRP, the grievant may continue to pursue the dispute through arbitration. If ADRP is selected as a method to resolve grievances, then the Article on ADRP is used. This process will be executed in a timely fashion. The normal timeframes in the grievance process will be suspended during the ADRP.

SECTION B: The ADRP includes a variety of means to resolve disputes. Any one or combination of methods may be used to resolve disputes.

- (1) Neutral Fact-finding – Fact-finding is the use of an impartial expert (or group) elected by the parties, an agency, or by an individual with the authority to appoint a fact-finder in order to determine what the "facts" are in a dispute. The rationale behind fact-finding is the expectation that the opinion of a trusted and impartial neutral will carry weight with the parties. Fact-finders are not permitted to resolve or decide policy issues. The fact-finder(s) will be authorized only to investigate or evaluate the matter presented and file a report establishing the facts in the matter. If mutually agreed to in the agreement to ADRP, the neutral fact-finder is authorized to issue a situation assessment or a specific non-binding procedural or substantive recommendation as to how a dispute might be resolved. In cases where such recommendations are not accepted, the data (or facts) will be organized and collected in a fashion that will facilitate further negotiation or be available for use in later procedures.

Both the Union and Management will prepare a list of neutral fact-finders when neutral fact-finding is invoked. A minimum of one neutral fact-finder will represent each side. The list of fact-finders will be presented to the parties and the opposite side will select a representative from the opposing party's list. The neutral fact-finders will determine the relevant facts of the grievance based on such issues as:

- a. review of applicable laws, regulations, policies and standards;
- b. equal treatment between employees;
- c. comparison of employee/supervisor narratives;
- d. data input from other employees;
- e. for performance related grievances--a review of data compared with generic standards; or
- f. other subjects deemed relevant by representatives.

The findings of the neutral fact-finders will be compiled into a written report. The report will be made available to both parties. The report will

include, at a minimum, a report of the findings, and may include possible non-binding alternative solutions. Neutral fact-finding may be invoked at any time after the informal grievance through the formal grievance process (if not previously invoked). However, it is recognized that early neutral fact-finding often leads to a mutually acceptable resolution. Therefore, it is recommended that neutral fact-finding be introduced as early as possible.

- (2) **Mediation** – Mediation is the intervention into a dispute of an acceptable, impartial, and neutral third party, which has no decision-making authority. The objective of this intervention is to assist the parties to voluntarily reach an acceptable resolution of issues in dispute. Mediation is useful in highly polarized disputes where the parties have either been unable to initiate a productive dialogue, or in cases where the parties have been talking and reached an impasse. A mediator makes primarily procedural suggestions regarding how parties can reach agreement. A mediator may suggest some substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. A mediator often works with the parties, in caucuses, to explore acceptable resolution options or to develop proposals that might move the parties closer to resolution. The mediator performs the role of catalyst that enables the parties to initiate progress toward their own resolution of issues in dispute. The mediation process may be invoked after the informal grievance fails to be resolved at Step 1 of the Negotiated Grievance Procedure. For disputes involving performance ratings, in which a Reviewing Official is involved, mediation will be invoked after Step 2 of the Negotiated Grievance Procedure. This will provide both the rating and approving official an opportunity to resolve the performance dispute. The mediator will be provided from an external source (such as the Pittsburgh Federal Executive Board Alternative Dispute Resolution Consortium, the Federal Mediation and Conciliation Service, or the Pittsburgh Mediation Center).
- (3) **Mini-trials** -- Mini-trials involve a structured settlement process in which each side presents abbreviated summaries of its case before the major decision makers for either party. These decision makers have authority to settle the dispute. The summaries contain explicit data about the legal basis and merit of a case. The rationale behind a mini-trial is that if the decision makers are fully informed as to the merits of their cases and those of the opposing parties, they will be better prepared to successfully engage in settlement discussions. The process generally follows more relaxed rules for discovery and case presentation than might be found in the court or other proceeding and usually the parties agree on specific limited periods of time for presentations and arguments. A third party, which is often a judge or individual versed in the relevant law, is the individual who oversees the mini-trial. That individual is responsible for explaining and maintaining an orderly process of case presentation and usually makes an advisory ruling regarding a settlement range, rather than offering a specific solution for the

parties to consider. The parties can use such an advisory opinion to narrow the range of their discussions and to focus in on an acceptable settlement option, settlement being the ultimate objective of a mini-trial. The mini-trial method is a particularly efficient and cost-effective means for settling disputes. The third party neutral will be selected from an external source. Each party will select two individuals to represent them as the decision makers. Selected decision makers will have the authority to resolve the dispute. Selected decision makers will not have any direct involvement in the dispute. During the process, the parties may ask for an advisory opinion from the neutral. However, the final decision rests with the designated decision makers.

SECTION C: The ADRP will progress in the following manner:

- (1) A dispute or complaint surfaces and informal discussions do not lead to satisfactory resolution. An informal grievance is filed (Step 1 of the Negotiated Grievance Procedure). Neutral fact-finding may be invoked at this time. If the grievance is not resolved, then the mediation process may be invoked (except in the case of a dispute concerning the annual performance rating).
- (2) If mediation fails to provide a mutually agreed to resolution, a formal grievance may be filed, using Step 2 of the Negotiated Grievance Procedure. If the grievance is not resolved at this step, then mediation (if not previously used) or a mini-trial may be invoked. If the grievance is not satisfactorily resolved using the ADRP, the formal Negotiated Grievance Procedure continues.
- (3) Neutral fact-finding may be invoked only once for any specific grievance.

SECTION D: Settlements made in this process will be non-precedent setting and apply only to the specific dispute for which invoked. All settlements will be binding on each party, and the dispute cannot be advanced any further in the grievance process. Any costs (which normally would be minimal, e.g., travel costs of third-party neutrals) will be borne equally by both parties. All settlements under this process shall be reduced to writing and signed by both parties. An original of the ADRP settlements shall be forwarded to the Director of Human Resources and filed with the original grievance.

ARTICLE 37
Past Practices

SECTION A: Past Practices are existing workplace practices sanctioned by use and acceptance that are not specifically included in this Agreement. To qualify as an enforceable established practice, the practice cannot be in violation of law, must be a working condition, in effect for a certain time, and known or acquiesced in by Management.

SECTION B: Any past practices that are not unlawful or inconsistent with the terms of the contract will continue under this contract. The parties acknowledge that changes in past practices may come about as a result of such things as budgetary constraints.

ARTICLE 38

Official Travel

SECTION A: All official travel will be scheduled and arranged to occur during normal duty hours whenever possible. If it is necessary to travel during non-duty hours, the employee will be paid overtime or given compensatory time in accordance with applicable Government-, Department-, and NETL-wide rules and regulations, including Section 5542, Title 5 USC. Management shall not require an employee to be subjected to any unreasonable travel arrangements in order to achieve a reduction in per diem costs.

SECTION B: An employee on travel or assignment for three weeks or more will be authorized to return to his/her permanent-duty station to be home on weekends at least once every two weeks at Government expense. Consideration will be given in terms of scheduling the return trip home for holidays such as the Fourth of July, Thanksgiving, Christmas, and New Year's Day.

SECTION C: If an employee is expected to be on travel or away from his/her normal duty station for 30 days or more, the employee must be given written notification of the date of departure 30 days in advance, unless Management is prevented from doing so by unusual circumstances or emergency conditions.

SECTION D: Subject to the right to assign work, a supervisor will allow an employee to take personal days in conjunction with official travel. A supervisor denying such use of personal days shall provide, in writing, the reason(s) for the denial to the employee at least three working days prior to departure. Personal days that occur during the employee's approved work schedule must be charged to the applicable leave category.

Glossary of Terms

Adverse Action - a suspension for more than fourteen (14) calendar days, reduction in grade or pay, furlough for thirty (30) calendar days or less, or removal.

Bargaining Unit - all professional and non-professional employees who occupy positions at the National Energy Technology Laboratory, Pittsburgh, PA site. This Agreement excludes all supervisors, management officials, confidential employees, and all employees engaged in Federal personnel work in other than purely clerical capacity.

Core Time - The core time for the FWS plan is from 9:00 a.m. to 2:30 p.m.

Credit Hours - Hours in excess of an employee's tour of duty which, when previously arranged for and voluntarily worked, allow the employee to vary the length of a succeeding workweek or workday. Employees may earn credit hours in one-half hour increments, with a maximum of 3 hours being earned each day, not to exceed 20 hours in a pay period. An employee may use credit hours in 15 minute increments.

Critical Element - an assignment or work responsibility so important that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable.

Day - Days referred to within this Agreement, unless otherwise specified, are considered working days.

Disciplinary Action - an oral admonishment confirmed in writing, a written reprimand, or a suspension of 14 calendar days or less.

Employee Performance Attributes - The following categories of performance attributes are required of all non-supervisory employees. At the beginning of the performance appraisal period, the employee and the Rating Official should review and discuss each Attribute to ensure a mutual understanding of the generic performance standards provided for each. Not all Attributes are of equal importance and weights should be assigned to reflect such differences. Also during this discussion, the need for additional standards should be determined and documented as amendments to the appropriate attribute's performance standard. Such additional performance standards should be written in manner that is within the employee's control to achieve. "Control to achieve" is defined as a result that the employee is able to: (a) achieve directly through the employee's own personal efforts; or (b) significantly influenced through the employee's actions, including leadership of other employees (as in the management of a special project).

Responsibility and Accountability

- Sets well-defined and realistic professional goals; displays initiative, effort and commitment toward completing assignments in a timely manner while maintaining the integrity of the organization.
- Identifies problems; determines accuracy and relevance of information; uses sound judgment to generate and evaluate alternatives and to make recommendations.
- Willingly accepts personal responsibility and accountability for individual contributions and those made as a member of a team.
- Completes professional development requirements and opportunities to maintain state-of-the-art skills.
- Adheres to relevant government and organization policies and regulations.
- Practices safe work habits and takes action to resolve unsafe conditions.

Communication

- Shares information openly and regularly with others.
- Presents complex/technical information in a logical, understandable and persuasive manner, where appropriate.
- Written/oral communications are clear, accurate, concise, and well organized.
- Listens to other's ideas and points of view, and seeks to clarify for understanding.

Teamwork

- Builds and maintains collegial, effective relationships that facilitate achieving desired goals.
- Uses collaborative decision making techniques to facilitate teamwork.
- Exhibits willingness to support others in the accomplishment of their assignments.
- Actively contributes to accomplishment of organizational goals.
- Supports organizational decisions once they are made.
- Shares knowledge, expertise, information and credit freely across levels and functions.

Innovation/Quality Improvements

- Initiates and/or supports quality improvements in systems, services, or work processes.
- Recommends alternatives to established thinking, policies, practices, methods and approaches designed to achieve organizational efficiency, cost savings/avoidance, etc.
- Is cooperative, constructive, and adaptable in response to new ideas, to changing situations, and to technological innovations.

Customer Service

- Responds appropriately and in a timely fashion to customers/stakeholders concerns and requests, reacting constructively to changes in needs and priorities.

- Consistently helps customers and partners overcome problems or difficulties.
- Keeps customers and partners up to date on progress.
- Designs and adapts products and services to meet customer needs.
- Meets schedules and commitments.

Flexible Starting Time Band - Hours between 6:00 a.m. and 9:00 a.m. where an employee's normal tour of duty, including credit hours worked, will begin.

Flexible Ending Time Band - Hours between 2:30 p.m. and 7:00 p.m. where an employee's normal tour of duty, including credit hours worked, will end.

Flexiplace - Working at home or at another approved location away from the normal work location.

Management - Management of the National Energy Technology Laboratory, U.S. Department of Energy.

Organization - The National Energy Technology Laboratory, U.S. Department of Energy, located in Morgantown, WV and Pittsburgh, PA

Past Practice - Past Practices are existing workplace practices sanctioned by use and acceptance that are not specifically included in this Agreement. To qualify as an enforceable established practice, the practice cannot be in violation of law, must be a working condition, in effect for a certain time, and known or acquiesced in by Management.

Performance Award - A lump sum cash award granted to an individual or group in recognition of overall performance which exceeds expectations.

Performance Plan - All of the written, or otherwise recorded, performance elements that set forth expected performance.

Performance Standard - A work requirement or expectation typically conveyed in measures of quality, quantity, timeliness, and manner of performance.

Representation - The act of creating and espousing a position for defined group of individuals or acting on their behalf.

Senior Union Representative - The most senior DOE Local Union Official.

Smoking Shelter - Any room, trailer, building, or structure that has been designated as a smoking shelter.

Standard Form 1187, Request for Payroll Deduction for Labor Organization Dues - Form which an employee voluntarily completes and the Union certifies to formally request dues withholding from the employee's biweekly pay.

Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues - Form which an employee voluntarily completes or the Union or Management completes when the employee is no longer eligible for due withholding to revoke the withholding of dues from the employee's biweekly pay.

Standard Service Hours - Traditional hours of operation, 8:00 a.m. to 4:30 p.m., Monday through Friday. All organizational components must be sufficiently staffed to function adequately during these hours.

Telecommuting - See Flexiplace.

Tour of Duty – For employees under the FWS, any continuous 8 1/2-hour work period including one-half hour for lunch. Tours of duty, with supervisor approval, may be arranged as follows:

<u>Starting Time</u>	<u>Ending Time</u>
6:00 a.m.	2:30 p.m.
6:30 a.m.	3:00 p.m.
7:00 a.m.	3:30 p.m.
7:30 a.m.	4:00 p.m.
8:00 a.m.	4:30 p.m.
8:30 a.m.	5:00 p.m.
9:00 a.m.	5:30 p.m.

Union - refers to AFGE Local 1916.

Union Representative - An individual designated by the Union to represent the Union and the Bargaining Unit's interests in activities such as on teams, contract negotiations, the Labor-Management Partnership Council, grievances, and other activities involving the Union.

Appendix - A

NATIONAL ENERGY TECHNOLOGY LABORATORY (NETL)

Merit Promotion and Internal Placement Procedures for Bargaining Unit Employees

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I. RECRUITMENT

A. Request to Recruit

A completed SF-52, "Request for Personnel Action," with Position Description and a cover sheet shall be submitted by a supervisor to the Human Resource Division (HRD) for review and approval before any recruitment efforts are initiated. The HRD, in consultation with the subject supervisor, shall determine the most appropriate method for filling the vacant position.

B. Geographic Location of Positions

Most NETL positions could be geographically located at either Bruceton, Pennsylvania, or Morgantown, West Virginia. However, there may be some positions which must be located at one specific site. In this latter situation, the NETL Director must approve the specific site location before a vacancy announcement is issued.

C. Areas of Consideration

1. The following areas of consideration may be used to publicize NETL vacancies:
 - a. NETL Only – Federal Career Conditional & Career Employees Only
 - b. Department of Energy (DOE) - Commuting Area
 - c. Department of Energy (DOE) - Nationwide
 - d. Federal Government - Commuting Area
 - e. Federal Government - Nationwide
2. Unless otherwise indicated and documented, the minimum area of consideration will be as follows:

<u>Grade Level</u>	<u>Minimum Area</u>
GS-1 through GS-13	NETL
GS-14 through GS-15	DOE - Nationwide

The HRD Director may grant exceptions to the minimum area of consideration when it is expected that there will be an adequate number of qualified applicants in a smaller minimum area and when the prescribed minimum area would be administratively impractical. If the minimum area of consideration for any merit promotion action is to be reduced in accordance with this paragraph, the merit promotion case file must contain documentation showing the basis for and approval of the exception.

3. Applicants from outside the area of consideration which is identified on the vacancy announcement shall not be considered unless a decision is made to re-advertise the vacancy with an extended area of consideration.

D. Vacancy Announcements

1. All vacancies to be filled through competitive merit promotion procedures shall be announced through normal communications means to NETL employees and the designated area of consideration including posting on the Intranet.
2. Vacancy announcements shall be prepared by the HRD and distributed throughout the designated area of consideration after review and approval by the supervisor of the position (who is also the Selecting Official).
3. Vacancies announced within the NETL commuting area (Bruceton and/or Morgantown) will be posted for a minimum of 14 calendar days; vacancies announced in all other areas of consideration will be posted for a minimum of 21 calendar days.
4. Vacancy announcements may be open continuously for a period not to exceed 6 months for positions having a high rate of turnover, a low rate of applications, and/or a history of being hard to fill.
5. If a vacancy announcement is canceled, all applicants and the Unions shall be notified in writing, and the cancellation notice shall be posted on the NETL Intranet.
6. If a vacancy announcement is issued for a team leader position, such announcement will indicate whether the position is considered in or out of the Bargaining Unit.

E. Receipt of Applications

1. Applicants must complete and submit an application or resume, a copy of the most recent annual performance appraisal for his/her current or last job, and all other forms required by the announcement. It is strongly recommended that a supplementary information statement describing knowledge, skills, and abilities relevant to each quality ranking factor shown on the vacancy announcement be included in the package.
2. Only the material submitted by an applicant in the application package shall be considered in the qualification and evaluation process.
3. All applications must be postmarked on or before the closing date and received by the HRD within 5 calendar days after the closing date.

II. EVALUATION OF APPLICANTS

A. Determination of Minimum Qualifications

1. All applicants shall be evaluated against the Office of Personnel Management's (OPM's) "Qualification Standards for Positions Under the General Schedule." Applicants shall also meet time-in-grade requirements of 5 CFR 300 and any selective placement factors (if used in the vacancy announcement) as described in Paragraph 2 below.
2. Selective placement factor(s) may be added to the minimum requirements where such factor(s) are essential for successful performance in the position to be filled. In the event that a selective placement factor appears to be required, the supervisor of the position shall request approval of the use of the factor(s) by the HRD. The request shall include sufficient justification to clearly demonstrate the relationship of the selective factor(s) to successful performance in the position.
 - a. Selective placement factors must be job related; clearly reflected in the Position Description, job analysis, or position classification standards; and be knowledge, skills, or abilities that a candidate would not obtain through normal on-the-job training or orientation.
 - b. When the HRD approves the use of a selective placement factor, it shall be included and identified as such on the vacancy announcement and applied uniformly to all applicants. The request, justification, and any subsequent determinations regarding the selective placement factor(s) must be documented in the merit

promotion case file.

3. Those applicants who do not meet the above minimum qualification requirements within 30 days of the closing date of the vacancy announcement will be determined to be “not qualified” and will not be considered any further or referred for the position. Those applicants will be notified by the HRD of their “not qualified” status and reasons why.

B. Rating Qualified Applicants

1. The applicants who have met all the minimum qualification requirements shall be designated as “Qualified” and will be rated and ranked against all of the quality ranking factors (QRF) in the vacancy announcement in order to determine the candidates to be referred to the Selecting Official.
 - a. Quality ranking factors are derived from the subject Position Description and represent specific knowledge, skills, and abilities which will contribute to successful performance in the position being filled. Selective placement factor(s) must be identified as quality ranking factor(s).
 - b. Quality ranking factors shall be: (a) job related, (b) measurable using the submitted written application materials, (c) numerically weighted, and (d) such that meaningful distinctions may be made between applicants.
2. The evaluation process will be initiated only for Qualified applicants who must compete for appointment or internal placement. Qualified noncompeting applicants who apply under the vacancy announcement will not be rated with competing applicants and will be referred noncompetitively, at any time during the selection process. Final selection cannot be made by the Selecting Official until all Merit Promotion Certificates have been reviewed. Applicants who are non-competitive but apply under the Career Transition Assistance Program (CTAP) or the Interagency Career Transition Assistance Program (ICTAP) will be rated in accordance with CTAP/ICTAP regulations in order to determine if their final score on the quality ranking factors is at the acceptable or higher level in order to be eligible for priority consideration.

C. Rating Panel

1. A Rating Panel shall be convened to evaluate/rate, rank, and

designate the candidate(s) to be referred for all positions for which there are more than five qualified competing candidates. A Rating Panel may be used when there are five or fewer qualified competing candidates at the discretion of the Human Resources Specialist and the Supervisor (Selecting Official) of the position.

- a. Rating panels will normally be comprised of a minimum of four voting members including Union representatives unless Management and the Unions agree to less. The Selecting Official, in coordination with the Human Resources Specialist, will designate Rating Panel members with each Union Local having the discretion of appointing a representative to serve as a voting Panel member. The Panel can designate one member to serve as a Chairperson.
- b. On or before the date the vacancy is issued, the HR Specialist will have a phone conference between the Selecting Official and the Union Presidents (or their designated representative) to discuss briefly:
 - Duties of position and knowledge required by SME to rate applicants.
 - Possible SMEs (either from the organization where the vacancy was announced or throughout NETL).
 - Need for management support to ensure that SMEs are given time to perform the rating/ranking process.

The Selecting Official will give the Union Locals the first opportunity to identify and notify subject matter experts (SMEs) to serve on a panel. The Selecting Official and Unions will identify SMEs as soon as possible but no later than 7 calendar days before the vacancy announcement closes for NETL-Wide announcements and no later than 11 calendar days before the vacancy announcement closes for Nationwide announcements.

- c. All voting Rating Panel members must have a good understanding of the knowledge, skills, and abilities needed to perform that job. At least one Rating Panel member must be at the same grade or higher than the full performance level of the position to be filled.
- d. A Human Resources Specialist (non-voting) will serve on every Rating Panel as an advisor to the Panel to answer questions and assure that all applicable personnel management regulations are followed.
- e. An EEO official (non-voting) may serve as an advisor to the Rating Panel.

- f. A person who is in the supervisory chain of the subject position or a person who is related to any applicant may not serve as a Panel member.
 - g. The Supervisor (Selecting Official) of the position may be asked to elaborate on the quality ranking factors or other duties/responsibilities of the position if the Human Resources Specialist, the Rating Panel members, or both, require a better understanding of the demands of the position.
 - h. Each panel member will sign a confidentiality agreement prior to the start of a panel and certify that in no case shall Rating Panel members or advisors reveal to other individuals the deliberations, rankings, contents of application material, performance appraisals, or other information discussed during a panel process. Potential panel members who are unwilling to sign the confidentiality agreement will be replaced. The confidentiality agreement does not prevent a panel member from divulging inappropriate or unlawful panel activities to appropriate agency and union officials.
2. If a Rating Panel is not used when there are five or fewer qualified candidates, the Supervisor of the position will designate one subject matter expert (SME) and the Union Locals will designate one union representative with subject matter knowledge to represent both Locals to rate, rank and designate the candidates to be referred for selection. SMEs will follow the procedures as described below under Ranking of Applicants.

D. Rating of Applicants

- 1. The following rating and ranking process shall be used to evaluate each Qualified candidate against the predetermined quality ranking factors presented in the vacancy announcement.
- 2. Each QRF shall have a weight assigned by the Supervisor of the position based on the relative importance of the QRF to the position being filled. The weight shall be listed next to each QRF on the vacancy announcement. Total percentage of weights assigned to all quality ranking factors must equal 100%.
- 3. Applicants will be awarded from 0 to 10 points for each quality ranking factor based on the degree to which they possess the knowledge, skill, or ability identified in the crediting plan written specifically for the position. At a minimum, the crediting plan will

define three levels--2, 5 and 8. Panel members will be strongly encouraged to provide written comments with each point value assigned. A sample crediting plan (without specific examples or level descriptors) is provided as Appendix I.

4. The point value given by each panel member for a given QRF shall be multiplied by the corresponding weight assigned in the vacancy announcement to determine each quality ranking factor score. These scores shall be totaled for all the quality ranking factors. The final total score for each applicant shall be determined by an arithmetic average of all voting Rating Panel members' total ranking scores for the applicant.
5. Scores may be discussed by the panel when individual scores differ by 2 or more levels (i.e., 10 versus 5 or 8 versus 2) on any QRF.
6. Applicants will be ranked by final scores derived from steps 2-5 above.
7. If a position is advertised at two or more grades, applicants will be rated and ranked separately for each grade level for which they are applying and competing. For example, if the announced position is multi-graded at the GS-7 and GS-9 levels and an applicant, who is currently a GS-7, applies at both levels, the applicant would compete at both the GS-7 and the GS-9 level, due to the promotion potential of placement at the lower level. This applicant would be ranked and rated separately at each competing level. Presumably, the applicant should receive a higher score at the GS-7 level than the GS-9 level. Continuing this example, if an applicant at the GS-9 level were to apply, this applicant would be non-competing at both the GS-7 and GS-9 levels. Usually, this applicant would only apply for the GS-9 position.

III. CANDIDATE REFERRAL AND SELECTION

A. Referral and Consideration of Candidates

1. Once candidates are rated and ranked (highest to lowest score), the Rating Panel or Subject Matter Expert:

Designates a "Best Qualified" group based on a natural break between scores. Documents the names, scores and decision on natural break used to identify the "Best Qualified" candidates. "Best Qualified" candidates will be listed alphabetically (without scores) on the selection certificate(s) referred to the Selecting Official.

2. The Human Resources Specialist:

- a. Issues Selection Certificate(s) designating the “Best Qualified” applicants and attaches applications.
- b. Refers all “Qualified” noncompeting candidates in alphabetical order on a separate list either prior to or at the same time the “Best Qualified” competing candidates are referred.
- c. Routes Selection Certificate(s) through the Human Resources Officer and EEO Manager to verify that efforts to recruit diversity candidates have been made and candidates are certified for selection in accordance with merit systems principles, EEO requirements.

3. The Selecting Official:

- a. May request from the HRD all working material of the Rating Panel or SMEs, including the rating scores of the candidates.
- b. Decides how or whether to interview. The Selecting Official may choose to interview none, some, or all of the candidates referred on a Selection Certificate(s).
- c. Elects to convene an Interview Panel to provide additional insight into the selection process. If an Interview Panel is used, the Selecting Official shall be the Chairperson of that Panel. The Chairperson with the human resources specialist will organize and facilitate the interview process.
- d. Gives selection priority to surplus and displaced Department and Federal Government employees who qualify under the Career Transition Assistance Program (CTAP) and Interagency Career Transition Assistance Program (ICTAP) and have a final score on the quality ranking factors that is at the “fully acceptable” or higher level.
- e. Takes one of the following actions:
 - (1) Selects one of the “Best Qualified” candidates or a “Qualified” noncompeting candidate and returns the Selection Certificate to the HRD with his/her signature, the next higher level (if applicable) and Director; or
 - (2) If no selection is made, requests additional applications from

HRD who will refer the “Qualified” applicants.

- (3) Selects a candidate certified as “Qualified” and returns the Selection Certificate with written documentation for the rationale used in the selection process. If a “Qualified” candidate is selected over a “Best Qualified” candidate, written documentation, at a minimum, must include a statement that all “Best Qualified” candidates certified were interviewed and the rationale for the selection based on the knowledge, skills and/or abilities required for the subject position.
- (4) Returns the Selection Certificate(s) on or before the due date or requests an extension for additional time from the Director.
- (5) Returns the Selection Certificate without a selection and requests that the vacancy be re-advertised to locate more applicants.
- (6) Returns the Selection Certificate without a selection, documenting the reason(s) for not making any selection.

B. Reuse of a Vacancy Announcement for Additional Selection Certificates

1. Issuance of additional Selection Certificates from a previous vacancy announcement is authorized if:
 - a. The previous vacancy and the new vacancy have the same title, series and grade, basic qualifications, and identical evaluation criteria including any selective placement factor(s); and
 - b. The new Selection Certificate is issued taking into consideration the Career Transition Assistance Plan (CTAP) / Interagency Career Transition Assistance Plan (ICTAP) and appropriate OPM timeframes to allow selection within 45 days following the closing date of the vacancy announcement. After that time, vacancies will be re-advertised.

IV. POST SELECTION

A. Processing Certificates of Eligibles After Selection

1. The HRD will notify the selected and non-selected candidates by letter in a timely manner. Selections will be posted under the “Status of NETL Vacancy Announcements” on the HRD home page accessible

both by the Intranet and Internet.

B. Employee Complaints

1. Employees have the right to file a complaint relating to a promotion action. Such complaints shall be resolved under appropriate grievance procedures outlined in the Collective Bargaining Agreement.
2. All parties involved in a merit promotion-related complaint should exert their utmost effort to resolve the complaint through informal discussion and mutual understanding of the different points of view. Complainants are encouraged to consult both the supervisor and human resources specialist to seek a rapid solution of the issue. After consultation with both the supervisor and human resources specialist, parties may present the complaint to the next level of supervision for resolution.
3. If the complaint cannot be settled at this level, the employee may seek recourse as follows:
 - a. File a grievance in accordance with the provisions of the negotiated grievance procedure. While the procedures used by an agency to identify and rank qualified applicants may be proper subjects for formal complaints or grievances, nonselection from a group of properly ranked and certified applicants is not an appropriate basis for a formal complaint or grievance. There is no right to appeal to OPM.
 - b. File a discrimination complaint in accordance with EEOC regulations if an employee believes that unlawful discrimination was practiced in the administration of the Merit Promotion Plan.

C. Available Information

1. Upon request, an employee will be provided the following:
 - a. Their own QRF scores and comments, if any, to assist the employee in identifying areas to improve their chances of future selection.
 - b. Average score of all qualified applicants.
 - c. If a competing applicant was referred to the Selecting Official, he/she will be given an opportunity for a debriefing with the Selecting Official.

V. DOCUMENTATION

A. Case File Documentation

1. A record of each personnel action made under a merit promotion vacancy announcement will be maintained in HRD for two years from the date of the action. This information is subject to release during an OPM review or EEO investigation. It must contain sufficient information to allow reconstruction of the action. At a minimum, the record must include:
 - a. A copy of the Request for Personnel Action (SF-52) and position description.
 - b. A copy of the vacancy announcement.
 - c. Documentation that states approval of exceptions to the minimum areas of consideration.
 - d. A copy of qualification standard(s) and/or statement of modified qualifications, if applicable.
 - e. Justification for use of any selective placement factors.
 - f. A Crediting Plan.
 - g. An Applicant Roster and Qualifications Analysis.
 - h. CTAP/ICTAP and repromotion priority consideration referrals and results, including the names of eligibles and reasons for non--selection.
 - i. A copy of all application material submitted by candidates.
 - j. Separate ranking sheets prepared and signed by each panel member (if a panel is used).
 - k. A completed Panel Averaging Rating Sheet.
 - l. Selection Certificate(s) showing action taken, signature, and date of selection or decision.
 - m. Written test results, if used.

SAMPLE CREDITING PLAN APPENDIX I

Point Values	Definition of Assigned Point Value	Evidence of Level of Possession
10	Superior Level	Panel members assign this level when the applicant has extensive experience and/or education which demonstrates a superior level of knowledge, skill or ability.
8	Highly Acceptable Level	Panel members assign this level when they feel the applicant's experience is above the fully acceptable level. Rating is assigned based on experience and/or education which required application of the knowledge, skill or ability identified in the QRF. The evidence for this level could be based on: (1) duration of time which the candidate demonstrated the knowledge, skill or ability; (2) level of accomplishment or degree of responsibility that the candidate possessed; (3) how the knowledge, skill or ability was applied, i.e., in a specific setting or a variety of settings; and (4) any planning, administrative or supervisory work requiring application of this factor.
5	Fully Acceptable Level	Panel members assign this level when they feel the applicant's experience and/or education required the applicant to fully apply the knowledge, skills or abilities identified in this QRF on a continuing basis.
2	Marginally Acceptable Level	Panel members assign this level when they feel the applicant's experience and/or education is limited. The assignment of this level may result from the lack of relevant experience/ education or of such a short duration or such questionable relevance that one cannot be confident that the person has firm possession of the QRF.
0	Unacceptable	Usually, panel members assign this score when there is no evidence of the applicant possessing any applicable experience and/or education relative to the knowledge, skills or abilities identified in this QRF.

APPENDIX II

CAREER LADDERS

1. Generally, the promotion of employees is by competitive procedures. This mechanism provides that each employee receive equal consideration for advancement to

higher grades for which they are qualified and that each position is filled by the best-qualified candidate. However, once an employee competes and is selected for a position (either through competitive examination for entry into Federal service or through competitive merit promotion procedures) he/she need not compete for promotions again within the same position until the "career ladder" potential, or full promotion potential as advertised, has been attained.

2. Listed below are common career ladders for NETL as determined by the HRD. Other career ladders may exist for individual positions. The full performance level represents the grade to which employees may aspire due to the nature of the position and the availability of work in the particular job area. The career ladders listed represent the potential for promotion, not a guarantee. Decisions regarding promotions remain within the discretion of management.

Series	Position Title	Basic Entry Level	Full Performance Level
00018	Safety Management	GS-05	GS-12
00201	Human Resources Specialist	GS-05	GS-12
00203	Human Resources Assistant	GS-05	GS-08
00301	Administrative Specialist	GS-05	GS-09
00303	Staff Assistant (OA)	GS-03	GS-07
00343	Management/Program Analyst	GS-05	GS-12
00400	Biology (All professional series)	GS-05	GS-13
00500	Budget, Accounting, & Financial Management (All two-grade interval Series)	GS-05	GS-12
00800	Engineer (All professional series)	GS-05	GS-13
00802	Engineering Technician	GS-05	GS-11
00856	Electronics Technician	GS-05	GS-11
01035	Public Affairs Specialist	GS-05	GS-12
01102	Contract Specialist	GS-05	GS-12
01301	Physical Scientist(All professional series)	GS-05	GS-13
01311	Physical Science Technician	GS-05	GS-11
02210	Information Technology Specialist (All Titles)	GS-05	GS-12

The above list may be amended at any time.

APPENDIX III

DEFINITIONS OF TERMS

The following are definitions of terms used in the National Energy Technology Laboratory Merit Promotion and Internal Placement Procedure.

1. Area of consideration is the organizational and geographic scope in which NETL made an intensive search for eligible candidates in specific promotion actions.
2. Bargaining Unit of AFGE Local 1916 or 1995 includes all professional and nonprofessional DOE NETL employees except supervisors, Management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, and confidential employees.
3. Best-qualified candidates are those eligible candidates who rank at the top when compared with other eligible candidates.
4. Career ladder positions consist of a group of positions, normally in the same organizational unit, where the level of work has been previously defined to allow for the creation of positions ranging in grade from the basic entry level to the full performance level. The full performance level will be determined by the level of available work and the application of valid classification principles. Career ladder positions are documented in Appendix II and will be noted on the vacancy announcement for specific positions.
5. Career promotion is the promotion of an employee without current competition when:
 - a. Competition was held at an earlier stage; that is, the employee was selected from an Office of Personnel Management register or under competitive promotion procedures, for an assignment intended (with the intention made a matter of record) to prepare the employee for the position being filled.
 - b. An employee's position is reconstituted at a higher grade because the employee gradually assumed additional duties and responsibilities at the higher grade which was not the result of planned management action.
6. Career Transition Assistance Plan (CTAP) - DOE policy which implements the President's memorandum of September 12, 1995 and provides assistance to surplus and displaced DOE employees in the form of selection priority, reemployment priority and career transition services.
7. Competing Candidates for merit promotion purposes are those current or former Federal employees who must compete through the Merit Promotion and Internal

Placement Procedure. Actions which must be competitive are listed in NETL Order 323.1, Merit Promotion Plan, dated June 27, 1997.

8. Commuting Area means the geographic area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

9. Competitive status means having the basic eligibility for assignment to a competitive position. A person on a career or career-conditional appointment acquires competitive status upon satisfactory completion of a probationary period. It may also be granted by statute, executive order, or OPM rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination subject to the conditions prescribed by the OPM rules and regulations.

10. Crediting Plan is the written basis for assigning points in evaluating candidates' training and experience backgrounds against the knowledge, skills and abilities important to the position.

11. Displaced employee means a current Federal employee serving under an appointment in the competitive service, in career, tenure group I, or career-conditional, tenure group II, who has received a specific reduction-in-force separation notice.

12. Eligible candidates are those who meet (or will meet within 30 days after the closing date of the announcement) the OPM's qualification standard for the position including appropriate selective placement factors, plus time-in-grade requirements of 5 CFR 300.

13. Entrance level positions include all competitive positions at the entrance or trainee levels within any given occupation.

14. Evaluation of candidates is the process of assessing eligibility for promotion and the degree to which candidates possess the knowledge, skills, and abilities needed for successful performance in the job to be filled.

15. Full performance level is the highest grade level in an occupational career ladder to which all employees in the job series may be promoted noncompetitively.

16. Interagency Career Transition Assistance Plan (ICTAP) implements the President's memorandum of September 12, 1995 and provides assistance to surplus and displaced Federal employees in the form of selection priority, reemployment priority and career transition services.

17. Merit promotion vacancy announcement is the announcement form to be used at NETL to advertise vacancies open to Federal career-conditional/career employees.

18. Minimum area of consideration is the area in which it can reasonably be expected to locate enough well-qualified candidates to fill vacancies.

19. Noncompeting candidates for merit promotion purposes are those current or former Federal employees who may be considered for actions without competition through the Merit Promotion and Internal Placement Procedures. For example, an applicant is considered a noncompeting when promoted, reassigned, demoted, transferred, reinstated, or detailed to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service (or in another merit system with which OPM has an interchange agreement approved) and did not lose because of performance or conduct reasons. Additional actions for which candidates need not compete are listed in paragraph 4.c. of NETL Merit Promotion Order 323.1.

20. Promotion is the change of an employee to a position at a higher grade level within the same job classification system and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay schedule.

21. Promotion guidelines are policies and procedures prescribed by the Office of Personnel Management and the Department of Energy which govern development of promotion plans.

22. Promotion potential means that it is clearly established that a given position has higher grade potential.

23. Qualified candidates are those who meet established OPM qualification requirements for a given position and time-in-grade requirements of 5 CFR 300.

24. Quality ranking factors are the knowledge, skills, and/or abilities which indicate potential success in the announced position. These factors are used as criteria to evaluate the relative standing of candidates for a position.

25. Ranking of candidates is the process of arranging eligible candidates in order of merit according to their ratings.

26. Reassignment is the change of an employee from one position to another without promotion or demotion.

27. Reinstatement is the reemployment in the competitive service of a person formerly employed in the competitive service as a career or career-conditional employee.

28. Selective placement factors are knowledge, skills, and/or abilities that are in addition to the minimum qualification requirements, are essential for satisfactory performance on the job, and cannot be acquired on the job within a reasonable period of time (normally 90 days). Candidates must meet both the OPM Qualification requirements

and the selective placement factor in order to be rated and ranked. (Example: A vacancy announcement for a Personnel Specialist working at a Naval Base in Spain might have a selective placement factor such as the ability to speak and write fluently in Spanish, in addition to the qualification requirement for one year of specialized experience at the next lower level.)

29. Subject matter expert is an individual who has in-depth knowledge of the occupational field and of the knowledge, skills, and abilities required for successful performance in the position being filled. Generally, the subject matter expert is a NETL employee but could be any individual who has in-depth knowledge of the position being filled.

30. Transfer is the change of an employee, without a break in service of one full workday, from a position in one agency to a position in another agency that can be filled under the same appointing authority.

31. Union Representative is an employee appointed by an Official of the AFGE Local 1916 and/or 1995 to serve as a representative(s) on a merit promotion panel.

32. Well Qualified Candidate used to define an eligible employee who satisfies the following "career transition" criteria under the CTAP/ICTAP programs only:

- a. Meets the qualification standard and eligibility requirements for the position, including any medical qualifications, minimum educational and experience requirements, and selective factors;
- b. Attains a final score at or above the fully acceptable level on the quality ranking factors;
- c. Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position; and
- d. Meets any special qualifying condition(s) approved by the Office of Personnel Management.