

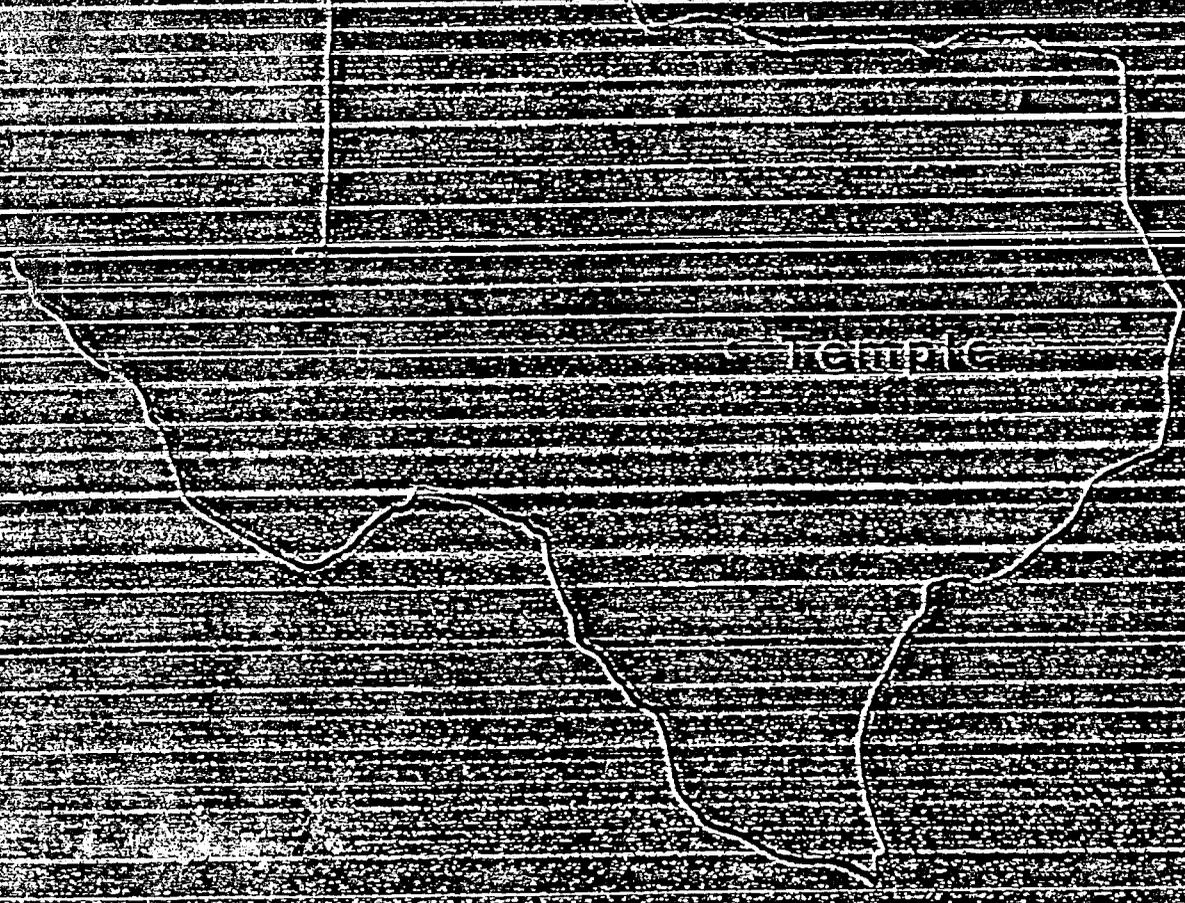
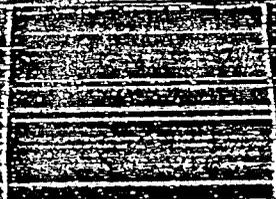
United States
Department of
Labor
Office of
Labor-Management
Programs
Washington, D.C.
20540
Circular 1000
1969

Labor-Management

Relations Agreement

National Federation of
Federal Employees

1969-1971



MEMORANDUM OF AGREEMENT

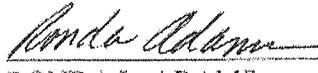
March 14, 2005

This Memorandum of Agreement (MOA) is between the American Federation of Government (AFGE) Local # 571 and the USDA, Farm Service Agency, Texas. This agreement applies to the adoption and implementation of the Agency's Pilot Flexiplace Program for State Office Employees. Said Program was distributed by copy of National Notice PM-2379 "Pilot FSA Flexiplace Program for State Office Employees." The parties agree to immediately adopt the policy as written.

This MOA will remain in effect, until such time that additional Flexiplace Directives are made available to the Agency.



JOHN T. FUSTON
State Executive Director
USDA Texas Farm Service Agency



RONDA L. ADAMS
President
American Federation of Government
Employees (AFGE) Local #571



UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
DALLAS REGION

United States Department of Agriculture
Farm Service Agency
State of Texas

- Activity

CASE NO. DA-RP-70023

and

National Federation of Federal
Employees, Local 571

-Labor Organization/Petitioner

and

American Federation of Government
Employees (AFGE)

-Labor Organization/Exclusive
Representative

AMENDMENT OF CERTIFICATION

Pursuant to Section 2422.1 of the Regulations of the Federal Labor Relations Authority, a petition was filed seeking to amend the certification granted to the National Federation of Federal Employees, Local 571 in Case No. DA-RP-60026 dated April 26, 1996, as the exclusive representative of certain employees of the United States Department of Agriculture, Farm Service Agency, State of Texas, by changing the designation of the exclusive representative for this existing bargaining unit, from the National Federation of Federal Employees, Local 571 to the American Federation of Government Employees (AFGE).

On July 16, 1997, I issued a Decision and Order finding that the certification may be amended as requested.

No timely application for review was filed with the Authority. Pursuant to the authority vested in me as Regional Director,

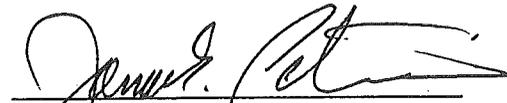
I ORDER that the certification granted to the National Federation of Federal Employees, Local 571, in Case No. DA-RP-60026, as the exclusive representative of the following unit of employees:

INCLUDED: All employees employed by the United States Department of Agriculture, Farm Service Agency, in the State of Texas

EXCLUDED: All management officials, supervisors, and employees described in Title 5, U.S.C. § 7112(b)(2),(3),(4),(6) and (7)

is amended by changing the designation of the exclusive representative from the National Federation of Federal Employees, Local 571 to the American Federation of Government Employees (AFGE).

Dated: 11/25/97



James E. Petrucci
Regional Director
Federal Labor Relations Authority
Dallas Region
525 Griffin Street, Suite 926, LB 107
Dallas, Texas 75202

Attachment: Service Sheet

SERVICE SHEET

I certify that I have served the parties listed below a copy of the Amendment of Certification:

Michael K. Klein, President
NFFE Local 571
P.O. Box 10532
College Station, Texas 77842

Sam Gill, Labor Relations Specialist
USDA, FSA
P.O. Box 419025
Kansas City, MO 64141

Nancy Anderson Speight
Director of Program Development
Federal Labor Relations Authority
Office of the General Counsel
607 14th Street, NW, Suite 210
Washington, D.C. 20424-0001

Dated this 25th day of November, 1997, at Dallas, Texas

Johnnie K. Jones



UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
DALLAS REGION

U.S. DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY
COLLEGE STATION, TEXAS
- Agency

and

CASE No. DA-RP-60026

*Classification order
1/9/94*

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 571
- Labor Organization

DECISION AND ORDER
ON
REQUEST FOR CERTIFICATION OF VOLUNTARY AGREEMENT

This case is before the undersigned Regional Director of the Federal Labor Relations Authority on a request filed by the U. S. Department of Agriculture, Farm Service Agency, College Station,, Temple, Texas (Agency) and the National Federation of Federal Employees, Local 571 (Union), pursuant to Section 291 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the Act)¹. The Act contains successorship provisions concerning existing bargaining units certified under Chapter 71 of Title 5, United States Code, which are affected by changes resulting from the exercise of the Secretary of Agriculture's authority under the Act. The Agency and the Union request the Federal Labor Relations Authority (Authority) certify the parties' agreement on a new appropriate unit created as a result of the Secretary's exercise of authority under the Act and the parties' agreement on the exclusive representative for the new unit.

In 1970, the Union was certified as the exclusive representative for the following unit of Farmer's Home Administration (FmHA) employees:

INCLUDED: All employees non-supervisory GS of USDA - Farmers Home Administration in State of Texas including professional employees.

¹ On November 28, 1994, Regional Directors of the Federal Labor Relations Authority were delegated the authority to certify, subject to Section 291(b)(2)(A) of the Act, the terms of voluntary agreements entered into pursuant to Section 291 of the Act. 59 Fed. Reg. 61615-61616 (December 1, 1994)

EXCLUDED: Supervisors, management officials, employees engaged in Federal personnel work other than a purely clerical capacity, guards.

The bargaining unit consisted of approximately 379 employees.

On August 27, 1970, the National Federation of Federal Employees, Local 577, was certified as the exclusive representative for the following unit of employees of the United States Department of Agriculture, Agricultural Stabilization and Conservation Service, (ASCS):

INCLUDED: All non-supervisory GS and Wageboard employees headquartered in or payrolled from Texas State ASCS Office.

EXCLUDED: All supervisory and management personnel, professional employees, employees engaged in Federal personnel work, other than in a purely clerical capacity, and guards.

The bargaining unit consisted of approximately 32 bargaining unit employees.

In accordance with the Act, the FmHA was reorganized into two new components. Approximately 238 unit employees were transferred to Rural Development (RD) and 141 unit employees were transferred to the Farm Service Agency (FSA).² The FSA employees carry out most of the same functions previously performed by FmHA Texas. The employees work in the same locations, are subject to the same personnel policies and practices, and are serviced by the same personnel office. Effective October 20, 1994, the ASCS employees became employees of the Consolidated Farm Service Agency which became the Farm Service Agency on November 8, 1995. On April 3, 1996, consistent with Section 291 of the Act,³ the parties agreed on a new bargaining unit consisting of the Farm Service Agency Texas employees and signed a Memorandum of Understanding that defined the Union's bargaining unit as follows:

INCLUDED: All employees employed by the United States Department of Agriculture, Farm Service Agency, in the State of Texas.

EXCLUDED: All management officials, supervisors, and employees described in Title 5, U.S.C. § 7112(b)(2),(3),(4),(6) and (7).

² The employees who transferred to the RD are not subject to this petition.

³ Section 291 of the Act provides, in relevant part, that: If the exercise of the Secretary (of Agriculture)'s authority under this title results in changes to an existing bargaining unit that has been certified under Chapter 71 of Title 5, United States code, the affected parties shall attempt to reach a voluntary agreement on a new bargaining unit and an exclusive representative for such unit.

A copy of the parties' Memorandum of Understanding is attached as Appendix A.

As noted, the parties agree that the Union is the exclusive representative of the bargaining unit of FSA Texas employees consisting of approximately 173 employees, the majority of whom the Union previously represented at FmHA. No objection has been raised by any party as to the voluntary agreement of the Agency and the Union to recognize the National Federation of Federal Employees, Local 571, as the exclusive representative of the employees of FSA Texas.

Based on the foregoing, noting the voluntary agreement of the Agency and the Union to recognize the Union as the exclusive representative of the employees in the FSA Texas bargaining unit, and lacking any evidence that the criteria set forth in Section 291(a)(2) of the Act have not been met or that a valid election has been conducted involving employees included in the unit proposed for certification, I find that the terms of the parties' agreement dated April 3, 1996, may be certified as requested.

According to Section 291(b)(3)(B) of the Act, any action taken by a Regional Director pursuant to the delegation in Section 291(b)(3)(A) will be subject to review under the provisions of Section 7105(f) of Title 5, United States Code, in the same manner as if such action had been taken under Section 7105(e) of such title, except that in the case of a decision not to certify, such review will be required if an affected party has filed application for review within the time specified in such provisions.

Having found that the voluntary agreement to certify the FSA Texas bargaining unit may be granted as requested, the parties are advised that this Decision and Order becomes the final and binding action of the Authority:

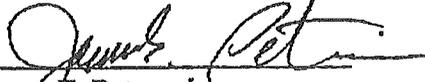
- (1) If no affected party, as defined in Section 291(c) of the Act, files an application for review of the Regional Director's Decision and Order with the Authority within sixty (60) days after the Regional Director's Decision and Order; or
- (2) If the Authority does not undertake to grant review of the Regional Director's Decision and Order to certify within sixty (60) days after the filing of a timely application for review.

Pursuant to Section 291(b)(3)(B) of the Act, review shall automatically be granted upon the timely application for review by an "affected party" of any decision not to certify. All other applications for review of Decisions and Orders of a Regional Director shall be filed and processed in accordance with 5 C.F.R. § 2422.17.⁴

The Authority's granting of review upon the timely filing of an application for review of a

⁴ Absent an appeal, or if one is filed and such is denied or not granted, this Decision and Order and Appendix will constitute the certification.

Regional Director's Decision and Order will not operate as a stay of such action ordered by the Regional Director, unless specifically ordered by the Authority. If the Authority grants review, the Authority may affirm, modify, or reverse any action reviewed.



James E. Petrucci
Regional Director
Dallas Region
Federal Labor Relations Authority
525 Griffin Street, Suite 926, LB 107
Dallas, TX 75202-1906

Dated April 26, 1996.

MEMORANDUM OF UNDERSTANDING
CONCERNING UNION SUCCESSORSHIP
between

USDA, FARM AND FOREIGN AGRICULTURAL SERVICE
FARM SERVICE AGENCY
STATE OF TEXAS
and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 571

SECTION I. AGREEMENT

The undersigned hereby agree, in accordance with the provisions of the Federal Crop Insurance and Department of Agriculture Reorganization Act of 1994 (Act), and the Agricultural Market Transition Act of 1996, that successorship should be granted to NATIONAL FEDERATION OF FEDERAL EMPLOYEES LOCAL 571 for the bargaining unit described in Section III of this agreement. We jointly seek certification of this unit and exclusive representation from the Federal Labor Relations Authority (FLRA) under the provisions of the Act and the Federal Labor Management Relations Statute (Statute.)

SECTION II. EXISTING AFFECTED UNITS

1. In 1970, the NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 571 was certified as the exclusive representative for the following unit:

INCLUDED: All employees non-supervisory GS of USDA - Farmers Home Administration in State of Texas including professional employees.

EXCLUDED: Supervisors, management officials, employees engaged in Federal personnel work other than (in) a purely clerical capacity, (and) guards.

2. In 1970, the NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 577 was certified as the exclusive representative for the following unit:

INCLUDED: All non-supervisory GS and Wageboard employees headquarters in or payrolled from Texas State ASCS Office.

EXCLUDED: All supervisory and management personnel, professional employees, (and) employees engaged in Federal personnel work; other than in a purely clerical capacity, and guards.

There are no other labor organizations previously representing these bargaining unit employees affected by this action, nor are there any petitions or elections pending. There is also no contention that the labor organizations are not recognized under 5 USC 7103 or that there is non-compliance with 5 USC 7111 and 7120 of the Statute. The NFFE exclusive representations covered a substantial majority if not all the employees being accreted into the new bargaining unit.

SECTION III SUCCESSOR UNIT

In the State of Texas, the former ASCS Texas State Office was represented by NFFE Local 577. There were 32 bargaining unit employees. In the Texas FmHA, there were a total of 379 bargaining unit employees, represented by NFFE Local 571. Of these, 141 were transferred to CFSA (which became FSA on November 8, 1995) and accreted with the former ASCS employees, making a total of 173 in the new bargaining unit. We therefore request that the NFFE Local 571 be recognized as the appropriate successor union.

The employees in the state have a clear and identifiable community of interest as Federal employees. Recognition of a single union in each State to represent the employees will contribute to greater efficiency of operation and will promote effective dealings within the State. Employees are currently under a negotiated agreement signed in 1981, amended in 1984 and again in 1994 by NFFE Local 571 and FmHA.

The agency and the union hereby request jointly that the following bargaining unit be created for all eligible employees of the Farm Service Agency in the state of TEXAS and be described as follows:

INCLUDED: All employees employed by the United States Department of Agriculture, Farm Service Agency, in the State of TEXAS.

EXCLUDED: All management officials, supervisors, and employees described in Title 5, U.S.C. 7112 (b) (2), (3), (4), (6) and (7).

SECTION IV. EXCLUSIVE REPRESENTATIVE.

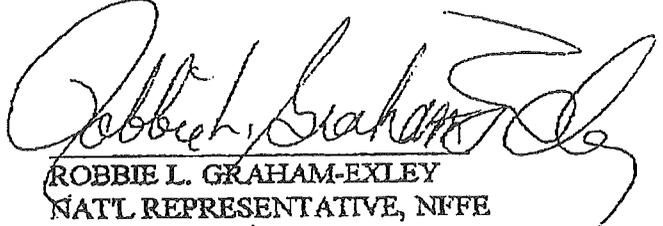
The exclusive representative for the unit described will be the NATIONAL
FEDERATION OF FEDERAL EMPLOYEES, LOCAL 571.

AGREED ON THIS 3 DAY OF April, 1996.



HAROLD BOB BENNETT

SED, FSA



ROBBIE L. GRAHAM-EXLEY

NAT'L REPRESENTATIVE, NFFE

INDEX

	Page
PREAMBLE	1
ARTICLE I - Recognition and Unit Designation	1
ARTICLE II - Definitions	1
ARTICLE III - Management Rights	3
ARTICLE IV - Employee Rights	4
ARTICLE V - Union Rights and Representation	6
ARTICLE VI - Provisions of Law and Regulations	8
ARTICLE VII - Negotiations	9
ARTICLE VIII - Grievance Procedure	10
ARTICLE IX - Arbitration	14
ARTICLE X - Use of Official Facilities and Services	15
ARTICLE XI - Orientation of New Employees	16
ARTICLE XII - Safety	16
ARTICLE XIII - Disciplinary and Adverse Actions	17
ARTICLE XIV - Actions Based on Unacceptable Performance	17
ARTICLE XV - Position Descriptions/Classification Review	17
ARTICLE XVI - Incentive Awards	18
ARTICLE XVII - Performance Standards and Evaluation	18
ARTICLE XVIII - Merit Promotion	20
ARTICLE XIX - Equal Employment Opportunity	20
ARTICLE XX - Labor Relations Training	20
ARTICLE XXI - Flexitime	20
ARTICLE XXII - Overtime	21
ARTICLE XXIII - Reductions-In-Force and Outplacement	21
ARTICLE XXIV - Annual Leave	24
ARTICLE XXV - Duration of Agreement	24
ARTICLE XXVI - Distribution	25
ARTICLE XXVII - Dues Deduction	26
EXHIBIT A - Grievance Form	
EXHIBIT B - Dues Withholding Agreement	
EXHIBIT C - Upward Mobility	

Farm Service Agency
 Texas State FSA Office
 2405 Texas Avenue South
 P. O. Box 2900
 College Station, Texas 77841

Article 21 Flextime

**LEAVE ADMINISTRATION AND
 ALTERNATE WORK SCHEDULES
 17-PM (REVISION 2)**

TX Amendment 1

Approved by: State Executive Director



Amendment Transmittal

A

**Reason for
 Amendment**

TX Exhibit 1 has been added to incorporate Maxiflex work Schedule provisions. These provisions are effective April 11, 1999 for all FSA personnel in Texas.

Supervisors are to duplicate this amendment and distribute one copy to each employee.

This amendment also establishes the official standard office hours in Texas to be 8:00 a.m. to 4:30 p.m.

Page Control Chart		
TC	Text	Exhibits
TX TC Page 5 (add)	TX Page 1-2 (add)	TX Exhibit 1 (add) TX Exhibit 2 (add) TX Exhibit 3 (add) TX Exhibit 4 (add)

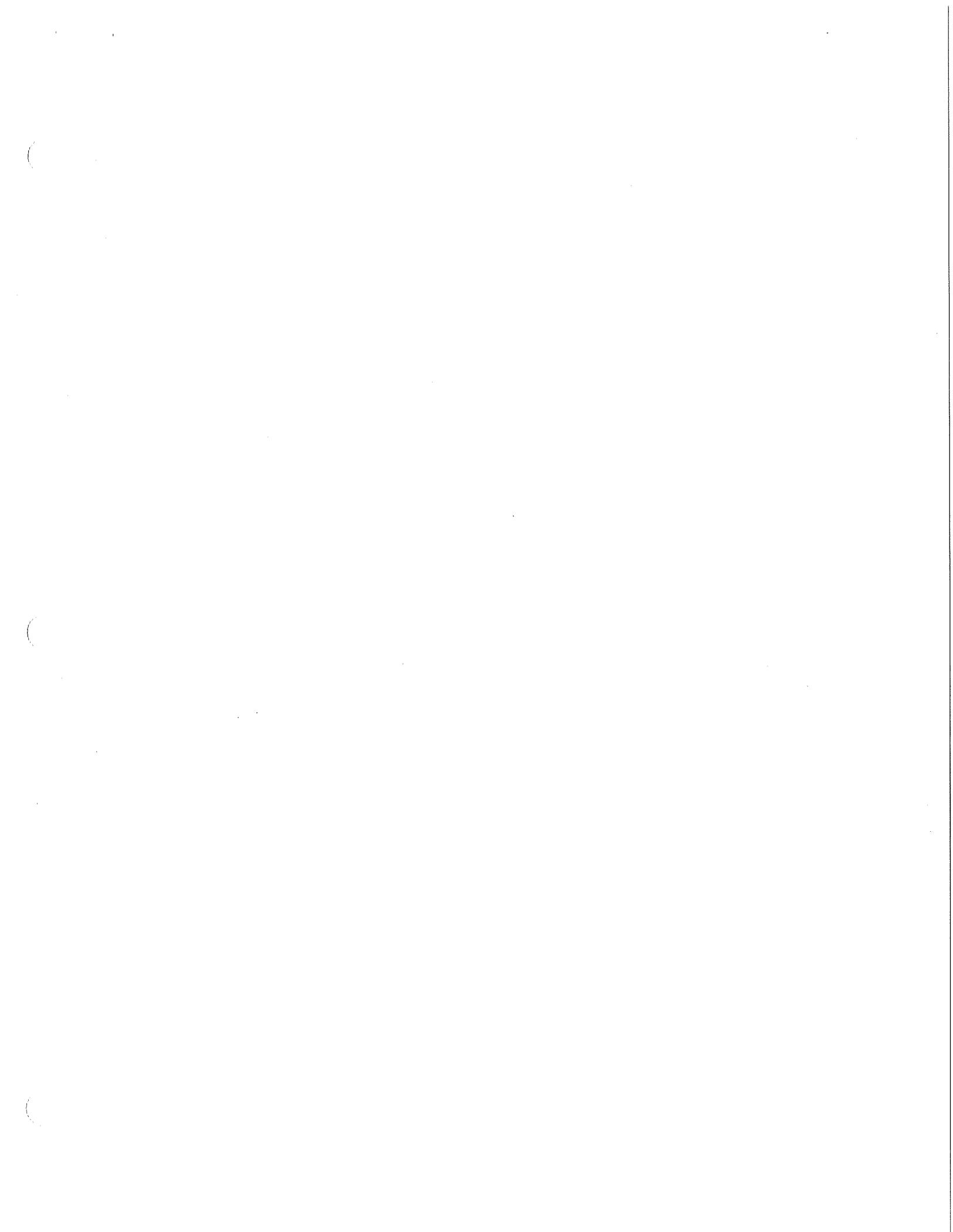
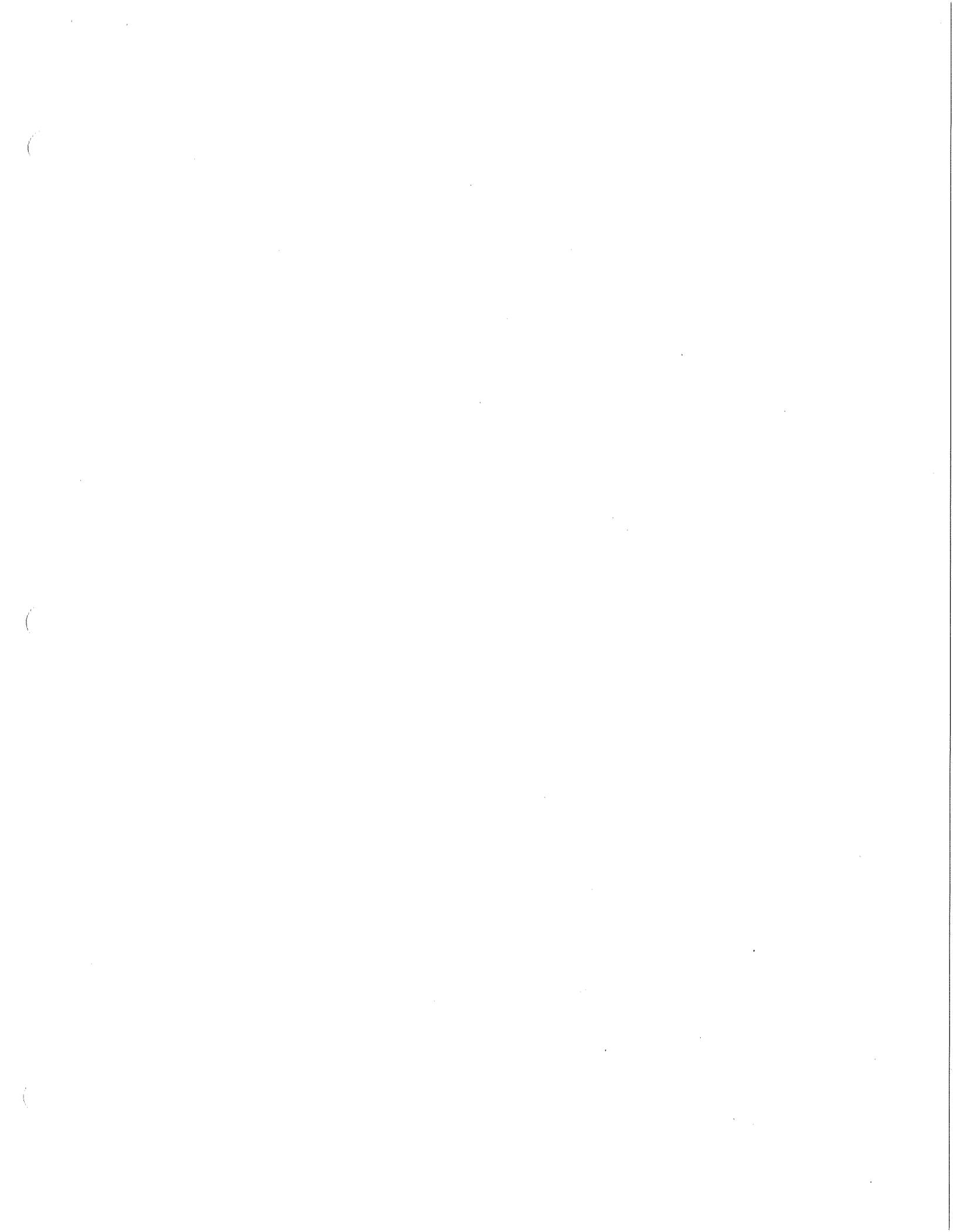


Table of Contents (Continued)

TEXAS EXHIBITS

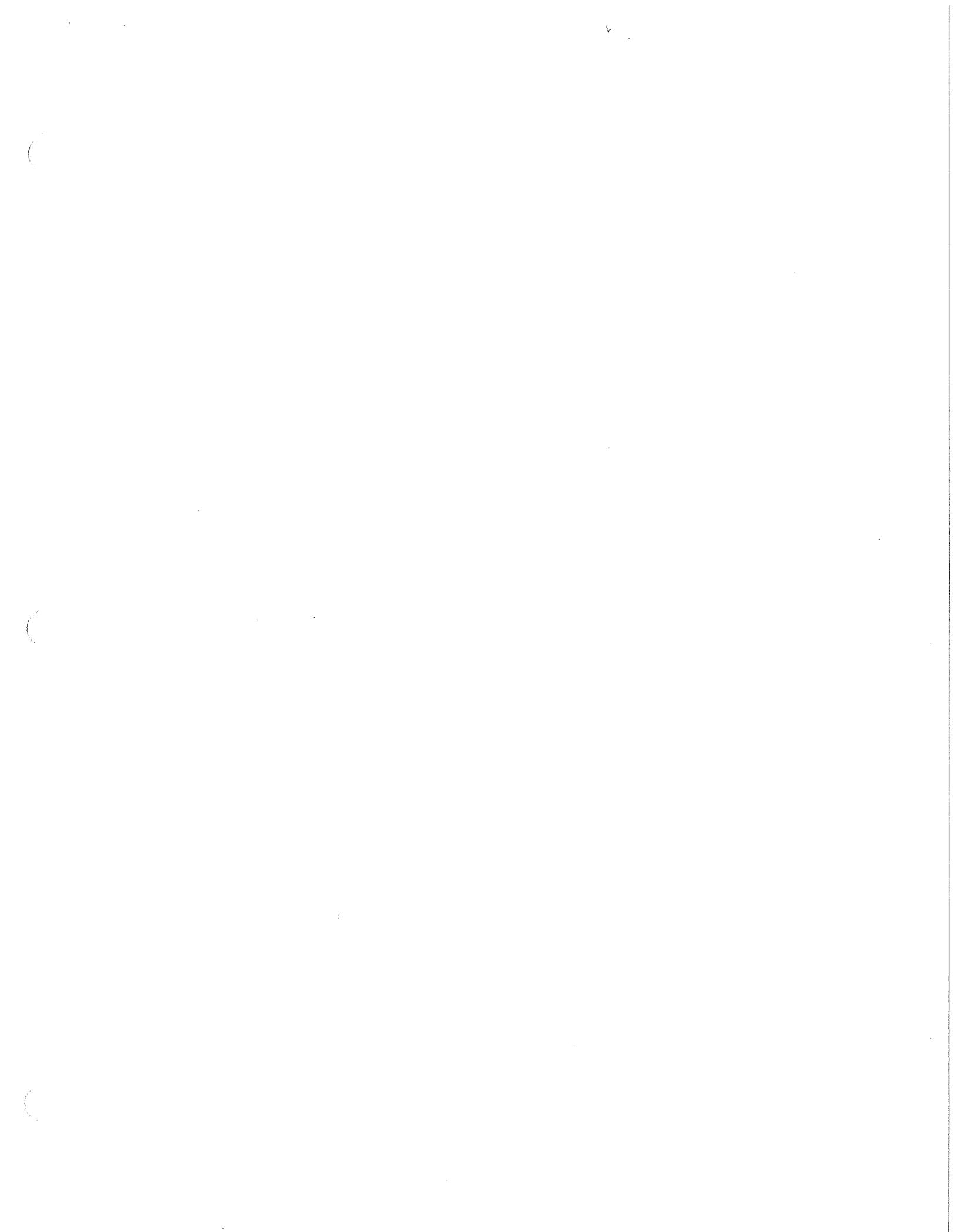
- 1 Texas Maxiflex Policy
- 2 Table of Maxiflex Questions and Answers
- 3 Form for "Designation of Tour of Duty"
- 4 8 Hour Maxiflex Chart



1 C
Maxiflex
Work Schedule

"Maxiflex" work schedule as outlined in TX Exhibit 1 will be the **ONLY** authorized work schedule policy, effective April 11, 1999.
All FSA offices in Texas will follow this new policy without exception.

Supervisors shall restrict Maxiflex or arrival and departure times to the minimal amount necessary to ensure continuous office operations.



I. Office Hours

- A. **OFFICIAL HOURS:** Official hours are the hours an office is open for business. This is normally 8:00 a.m. to 4:30 p.m.
- B. **CORE HOURS:** Core hours are the designated hours (9:00 a.m. to 2:30 p.m.) during which all full-time employees must be present during their normal tour, unless on approved leave or scheduled lunch period.
- C. **SUPERVISOR RESPONSIBILITY:** Supervisors are responsible for ensuring coverage during office hours.

II. Maxiflex Schedule

- A. **DEFINITION:** **Maxiflex Schedule** means a type of flexible work schedule that contains core hours on 10 or fewer work days in the biweekly pay period in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period. An employee may vary the number of hours worked on a given workday or the number of hours each week within the established building hours for the agency (6 a.m. to 6 p.m.). Employees may select a starting time each day and may change the starting time daily within the established flexible hours of 6:00 a.m. to 9:00 a.m., as long as the employee's scheduled number of hours for that day are completed by 6:00 p.m. Some employees will not be allowed to participate fully in this plan because of unique position requirements. The Supervisor is responsible for determining positions in which Maxiflex participation is restricted.
- B. **FLEXILUNCH:** **Flexilunch**, a 30, 45, or 60-minute lunch period requested by the employee and approved by the supervisor. The lunch band is between the hours of 11:30 a.m. to 1:30 p.m.
- C. **EMPLOYEE RESPONSIBILITY:** Under Maxiflex, the employee is responsible for choosing a biweekly schedule and submitting it in writing to his/her supervisor for approval. This schedule remains in effect until the employee submits a new schedule in writing, and it is approved by his/her supervisor.

Employees are responsible for choosing a 30, 45, or 60 minute lunch period. This choice should be communicated to the supervisor in writing. On occasion, employees may expand, with supervisory approval, and make it up at the end of the day without a charge to leave.

Employee is responsible for signing in when reporting to their duty station for work and signing out when leaving their duty station at the end of the day on Form FSA-958. The employee is also responsible for completing all required entries of data on this form. This includes categorizing all hours worked and leave taken.

The employee shall post their daily time spent at lunch on Form FSA-958 (on the blank line below the LWOP line).

The employee will post time worked (regular time, credit hours, and comp time or overtime) on the FSA-958 on a daily basis in quarter hour increments, without rounding but dropping remainder minutes.

- D. **SUPERVISOR RESPONSIBILITY:** Supervisors are responsible for approving or disapproving the biweekly schedule submitted by the employee. When a supervisor cannot honor an employee's request due to lack of office coverage, the supervisor will discuss the issues with the employee(s) involved to reach a mutually acceptable alternative schedule. If acceptable compromise cannot be reached at that time, the supervisor will make a final determination.

III. CREDIT HOURS

- A. **EARNING CREDIT HOURS:** Credit hours may be earned in the following manner.

- 15 minute increments
- on scheduled work days between the hours of 6 a.m. - 6 p.m., except in unusual situation, i.e., night meetings.

If an employee transfers to another agency or separates, the employee is paid for their balance of credit hours (not to exceed the limitation amount in subparagraph B) at the employee's base hourly rate.

- B. **LIMITATION**

A full-time employee may carry over, from one pay period to a succeeding pay period, a maximum of 24 credit hours. A part-time employee may carry over credit hours equal to one-fourth of their bi-weekly work requirement.

C. EMPLOYEE RESPONSIBILITY:

An employee is responsible for seeking concurrence from his/her supervisor prior to working credit hours.

An employee requesting to use credit hours must obtain advance authorization on an SF-71, Application for Leave.

D. SUPERVISOR RESPONSIBILITY:-

The first line supervisor has the authority to approve or deny the taking of credit hours based on the same criteria as annual leave, i.e., workload and work requirements.

IV. HOLIDAYS

A. DEFINITION: A day which agencies are closed due to the occurrence of a legal public holiday or when ordered by Federal Statute or Executive Order.

B. LEGAL HOLIDAYS: The following are legal holidays:

New Year's Day, January 1
Martin Luther King's Birthday, third Monday in January
Presidents' Day, third Monday in February
Memorial Day, last Monday in May
Independence Day, July 4
Labor Day, first Monday in September
Columbus Day, second Monday in October
Veterans Day, November 11
Thanksgiving Day, fourth Thursday in November
Christmas Day, December 25

C. HOLIDAY PAY: An employee will be paid for the hours scheduled to be worked on a holiday. The maximum holiday pay under Maxiflex is 8 hours, regardless of the employee's scheduled tour for that day. Employees scheduled to work more than 8 hours on that day will need to take leave for the portion of their workday exceeding 8 hours or make up the difference during the pay period. For example, if an employee is scheduled to work 9 hours on Monday and the holiday falls on Monday, the employee will only be paid 8 hours for the holiday. The employee must make up that lost 1 hour during the pay period or take 1 credit hour or use 1 hour of annual leave, compensatory time, or LWOP for that lost hour.

Part-time employees are only given holiday pay for actual hours scheduled to be worked on the holiday, not to exceed 8 hours.

Intermittent employees are not entitled to holiday pay.

- D. SCHEDULING: If the legal holiday falls on a Sunday non-workday, the employee will observe the holiday on the next scheduled workday.

If the legal holiday falls on a non-workday other than Sunday the employee will observe the holiday on the immediately preceding scheduled workday.

- E. IN LIEU OF HOLIDAY: If the holiday falls on the employee's scheduled non-workday, the in-lieu-of-holiday shall be the workday before the holiday regardless of the pay period it affects.

When a holiday falls on a part-time employee's non-workday, the employee is not entitled to an in-lieu-of-holiday.

- F. WORKING ON A HOLIDAY: An employee who works on a holiday (or a day designated as the holiday), within a scheduled tour of duty is entitled to the regular rate of pay plus premium pay equal to the rate of basic compensation.

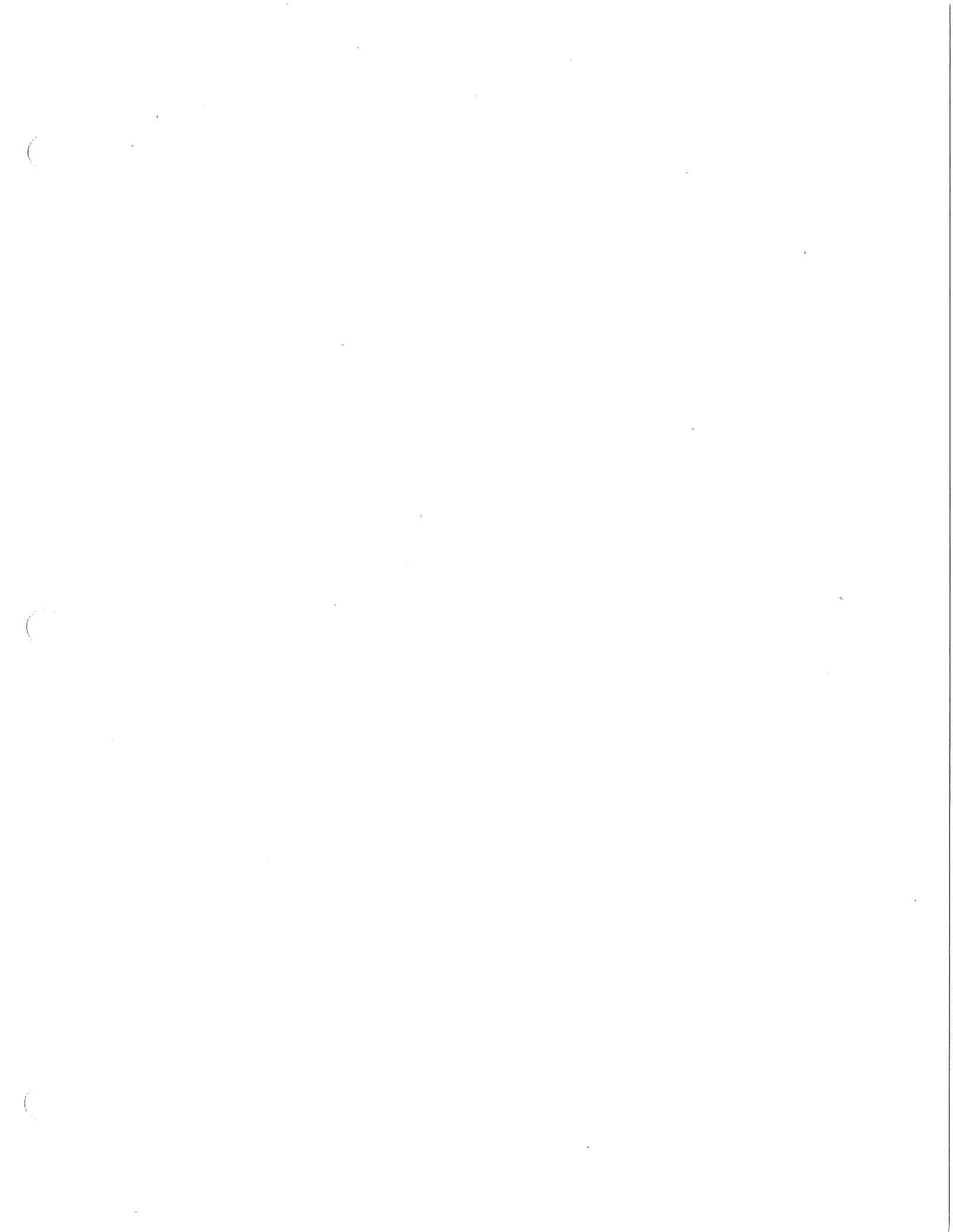


Table of Maxiflex Questions and Answers

No.	Questions	Answers
1.	Does Maxiflex restrict an employee from working a traditional 8 hour, 5 day workweek, a 5-4/9, or 4-10 hour workweek, etc?	<p>NO. Maxiflex is the Cadillac version of work schedules as it allows for an employee to work a traditional 8 hour, 5 day workweek, 5-4/9 schedule, 4-10 hour workweek plus various other schedules tailored to fit the needs of the agency and the employee.</p> <p>Employees can continue to have a scheduled non-workday, flex their arrival and departure times, and earn credit hours.</p> <p>For example: 1st week: M-10 hrs, T-10 hours, W-6 hours, Th-10 hours, F-8 hours; 2nd week: M-7 hours, T-7 hours, W-7 hours, Th-7 hours, F-8 hours.</p>
2.	What's the difference between Maxiflex and the compressed work schedule	<p>Under Maxiflex you may work what looks like a 5-4/9 schedule with a scheduled non-workday. However, under Maxiflex you may flex your arrival and departure time on a minute by minute basis, and earn credit hours. Under Maxiflex the most holiday pay you may receive is for 8 hours. You may account for the remaining time as described in question 11.</p> <p>Under a compressed work schedule you must have a fixed arrival time and you may not earn credit hours. However, you could receive holiday pay for the number of hours you were scheduled to work that day.</p>
3.	Must all employees submit a bi-weekly schedule in writing?	YES. Even those employees electing a traditional 5 day a week, 8 hours a day work schedule. The bi-weekly schedule should be submitted on a "Designation of Tour of Duty."
4.	Must an employee use whole hours in scheduling their Maxiflex bi-weekly schedule?	NO. Employees may schedule their work day in quarter hours as long as it is not less than 5 ½ hours nor more than 10.

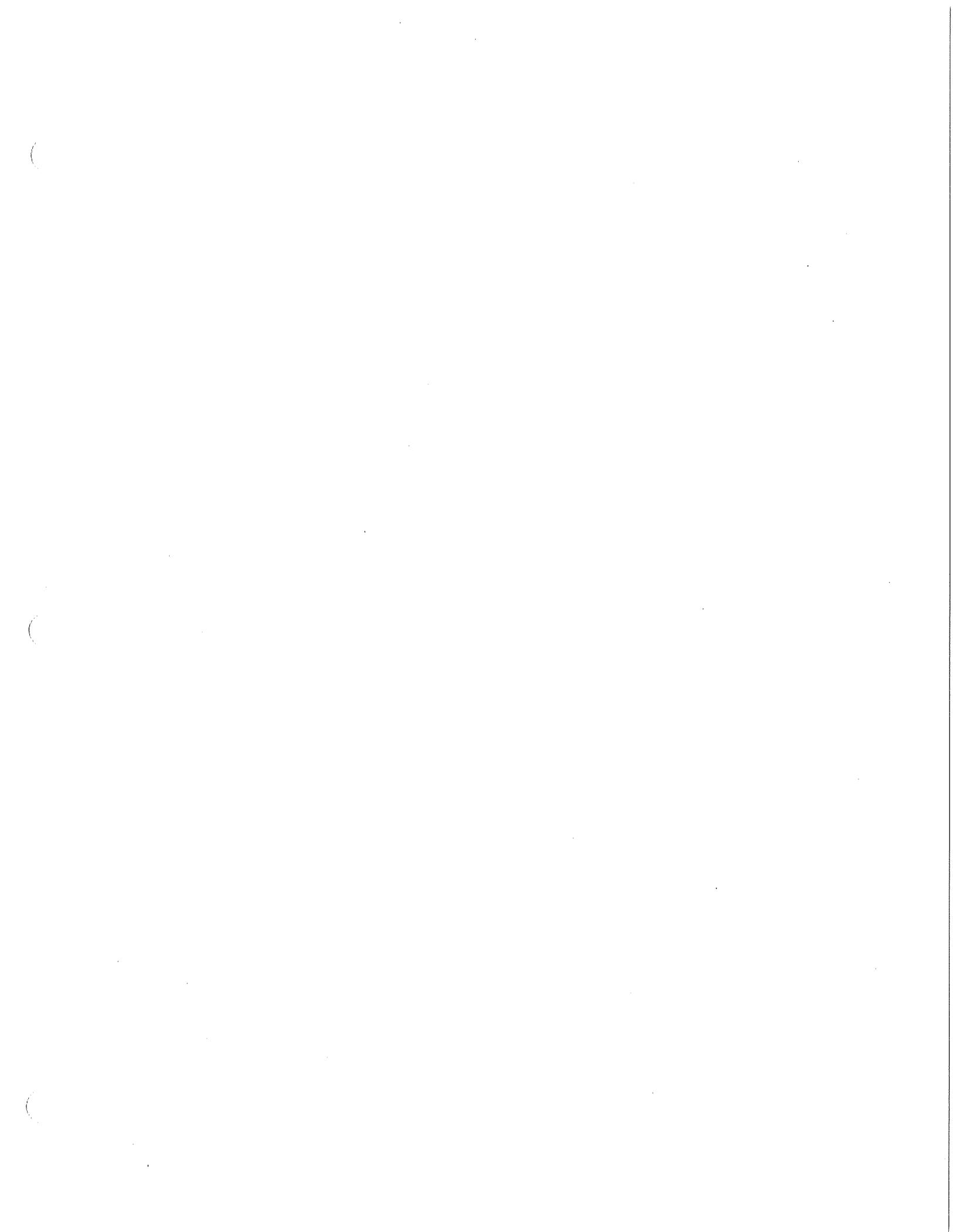


Table of Maxiflex Questions and Answers

No.	Questions	Answers
5.	Must I elect a tour of duty (i.e., 8:00 a.m. to 4:30 p.m.)?	NO. However, management is required to ensure office coverage during business hours. Therefore, management and employees must discuss expected arrival and departure times in order to ensure adequate office coverage. There may be times when an employee's arrival and departure time will be set by management.
6.	On days that I am scheduled to work, is there a minimum number of hours I am required to work?	YES. Full-time employees must be present during core hours (9:00 a.m. to 2:30 p.m.) unless on leave. Therefore, full-time employees must work a minimum of 5 ½ hours on any scheduled workday and must be present from 9:00 a.m. to 2:30 p.m., unless on approved leave.
7.	Does Maxiflex apply to part-time employees?	YES. Part-time employees may vary the length of their workday, workweek, time and length of lunch (within the lunch band) as long as they meet the number of hours scheduled to work in a pay period. Part-time employees do not have to be present during all of core time. Management and employees must discuss expected arrival and departure times in order to ensure adequate office coverage. There may be times when an employee's arrival and departure time will be set by management. Part-time employees may work less than 5 ½ hours per day and do not have to be present during all of core time, e.g., 9:00 a.m. to 2:30 p.m..
8.	Do part-time employees have to be at work at the start of core time?	NO. Part-time employees must complete the "Designation of Tour of Duty." They may flex in any time from 6:00 a.m. to 9:00 a.m. A part-time employee who wishes to report for work after 9:00 a.m. must establish a set tour of duty with his or her supervisor for that day or days for which the employee wishes to report after 9:00 a.m. For example, with supervisory approval, a part-time employee may flex his or her arrival time on Monday and Tuesday and set a tour of duty of 10:00 a.m. for Wednesday and Thursday (as long as the work day is completed by 6:00 p.m.) with Friday as a non-workday.

Table of Maxiflex Questions and Answers

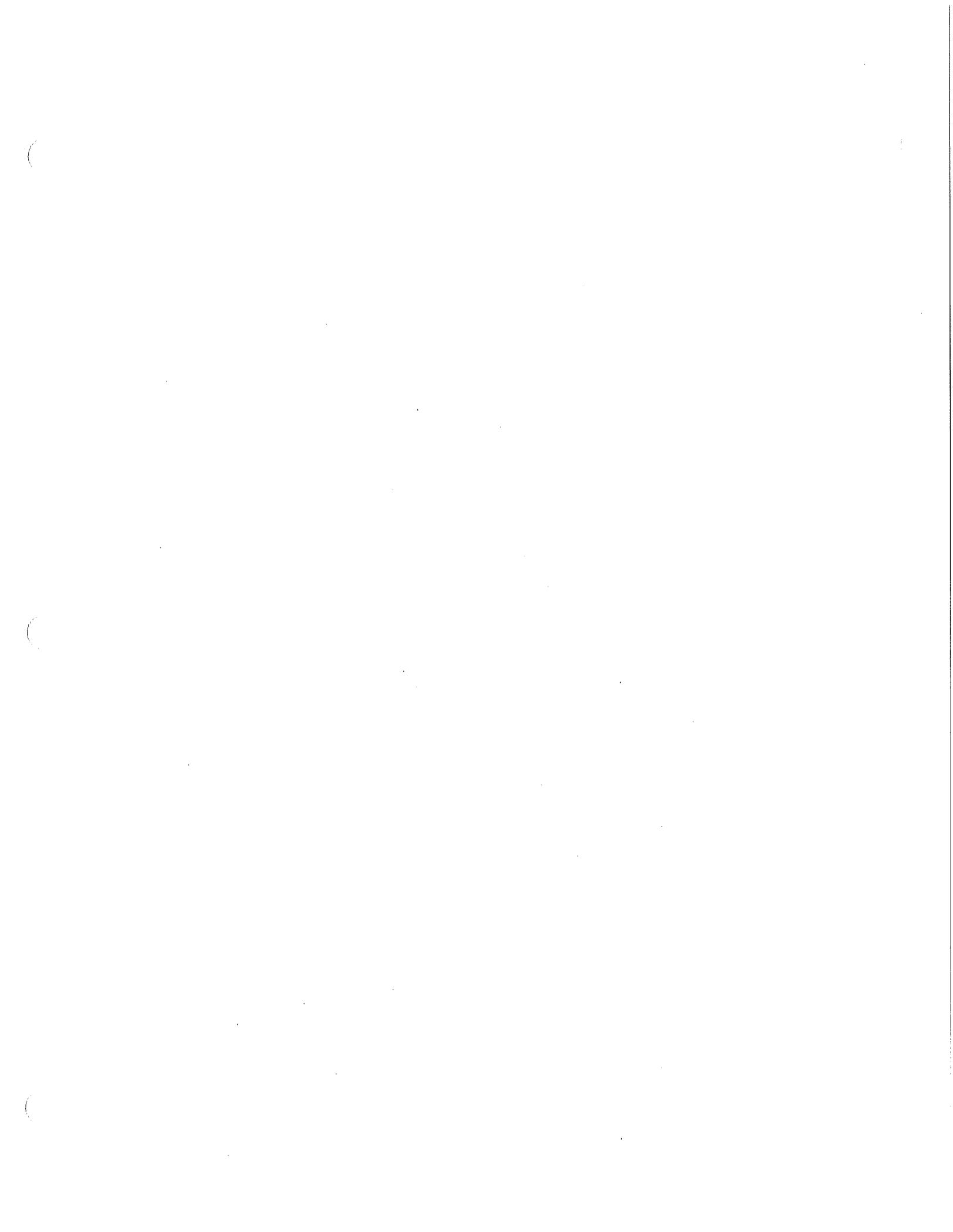
No.	Questions	Answers
9.	How do I change the bi-weekly schedule I submitted?	The employee must submit a new "Designation of Tour of Duty" to his or her supervisor. Employees may change their designation as often as they like as long as it's approved by the supervisor. The earliest that a change in designation can become effective is the pay period after it's approved.
10.	What procedures need to be followed for an employee to change their non-workday?	The employee needs to request prior approval, in writing, from the supervisor. If prior approval is not received, and the employee changes their non-workday anyway, the supervisor has two options; he or she may counsel the employee in writing that changes in non-workdays must be approved in advance and should this happen again he or she will be charged AWOL or the supervisor may charge the employee AWOL.
11.	If a 10 hour scheduled workday falls on a holiday and the maximum number of hours you can receive as holiday pay is 8 hours, how do I account for the other 2 hours.	The employee may elect to use 2 credit hours or charge the 2 hours to annual leave, compensatory time, LWOP, or any combination thereof.
12.	May a part-time employee change his or her bi-weekly schedule in order to get paid for a holiday?	NO.
13.	Can management allow a part-time employee to change their scheduled day off for the purpose of receiving pay for the holiday?	NO. A part-time employee is not entitled to holiday pay on a non-workday. The law states that when a holiday falls on the non-workday of a part-time employee, he/she is not entitled to an in-lieu-of day for that holiday.

Table of Maxiflex Questions and Answers

No.	Questions	Answers
14.	If an Executive Order closes the government and the employee is scheduled to work more than 8 hours that day, does the employee get paid for 8 hours or the number of hours he or she was actually scheduled to work?	It depends on how the Executive Order is worded: -If the Executive Order designates the day as a holiday, the employee would receive pay for 8 hours and would have to adjust their schedule to make up the difference by using credit hours or taking annual leave, compensatory time, or LWOP. -If the Executive Order authorized an office closure, without calling it a holiday, then the employee would receive pay for the number of hours he or she was scheduled to work that day.
15.	May an employee leave the worksite for personal business during the workday (flexible or core hours) without charge to leave, and make it up at the end of the workday?	NO. The workday must be completed in one shift broken only by the lunch period or authorized leave. There is no core time deviation.
16.	May an employee take a longer lunch period than is scheduled and extend their workday to make up the time?	YES. Maxiflex allows employees to expand their lunch period within the established lunch band, with supervisory approval and extend their work day to make up the time.
17.	How do I record my time and attendance?	Employees record their time and attendance on form FSA-958, Sign in/Sign Out Log. This log must be maintained at your desk or in a centrally located area, as determined by your supervisor.
18.	If an employee arrives after the start of core time, 9:00 a.m., should the supervisor allow the employee to make up the time at the end of the day?	NO. The tardiness excuse policy does not apply to employees on Maxiflex. The employee should request 15 minutes of leave. If it is a habitual problem, it should be addressed as discussed in the Leave Administration Handbook, section on AWOL.
19.	What should management do when an employee signs in or out at a different time than he or she actually arrived or left work?	The supervisor should contact their servicing Human Resources/Employee Relations Specialist for advice and guidance. Normally management should document the falsification and charge the employee AWOL. Management should not allow the employee to use leave to account for the time difference.

Table of Maxiflex Questions and Answers

No.	Questions	Answers
20.	Does an employee need to adjust his/her schedule in order to accommodate scheduled training?	YES.
21.	Is an employee required to take a lunch break?	An employee who works more than 6 hours on a workday must take a minimum of 30 minute lunch break. If working 6 hours or less, no lunch break is required.
22.	What is the difference between credit hours and overtime or compensatory time?	<p>Credit hours are extra work hours requested to be worked by the employee between 6 a.m. and 6 p.m. on a scheduled work day.</p> <p>Overtime or compensatory time is extra work hours of work ordered and approved in advance by the supervisor, may or may not be between 6 a.m. and 6 p.m., and may or may not be on a scheduled workday.</p> <p>By law, employees on flexible work schedules may not earn overtime pay as a result of including "suffered or permitted" hours (under the FLSA) as hours of work.</p>
23.	May an employee earn credit hours for travel time?	NO. Because travel in connection with government work is not voluntary in nature. In other words, travel itself does not meet the definition of credit hours in 5 U.S.C. 6121 (4), which provides that credit hours are hours within a flexible work schedule in excess of the employee's basic work requirement which the employee elects to work so as to vary a length of a workweek or workday. If travel time creates overtime hours of work, the employee must be compensated by overtime or compensatory time provisions.



DESIGNATION OF TOUR OF DUTY MAXIFLEX WORK SCHEDULE

EMPLOYEE'S NAME: _____

SOCIAL SECURITY NUMBER: _____

EMPLOYING OFFICE: _____

PAY PERIOD AND YEAR REQUESTED TO BE EFFECTIVE: _____

FLEXILUNCH REQUEST: I request a _____ minute lunch period.

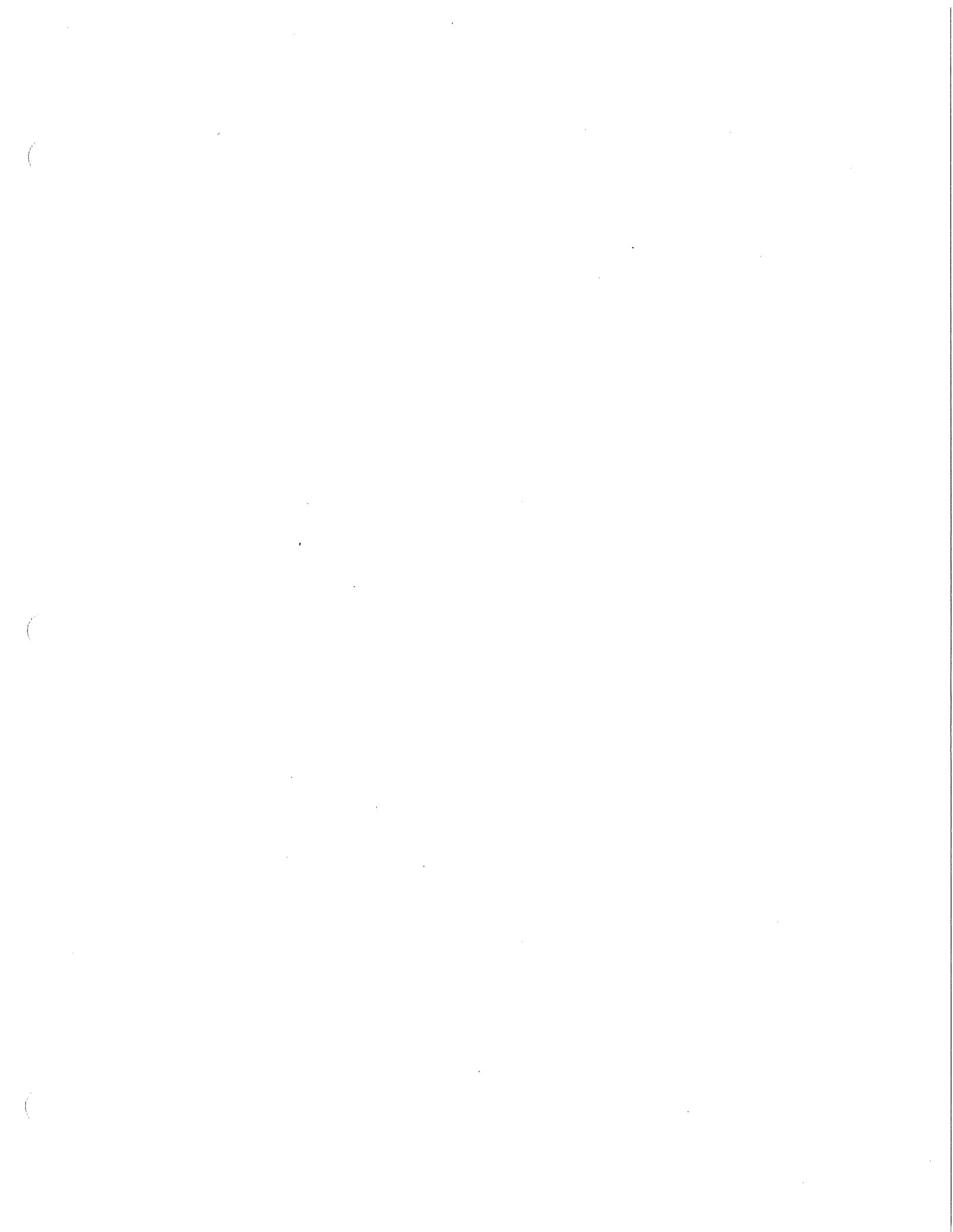
Under the Maxiflex Work Schedule, I am requesting the following daily work schedule as my tour of duty beginning the pay period indicated above:

WEEK 1 Daily Hours (minimum 5.5 and maximum 10)					
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	WEEK 1 TOTAL

WEEK 2 Daily Hours (minimum 5.5 and maximum 10)					
MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	WEEK 2 TOTAL

TOTAL HOURS PER PAY PERIOD =		
REQUESTED BY (Employee's Signature):	DATE	
APPROVAL (Supervisor's Signature):	DATE	
EFFECTIVE DATE:		

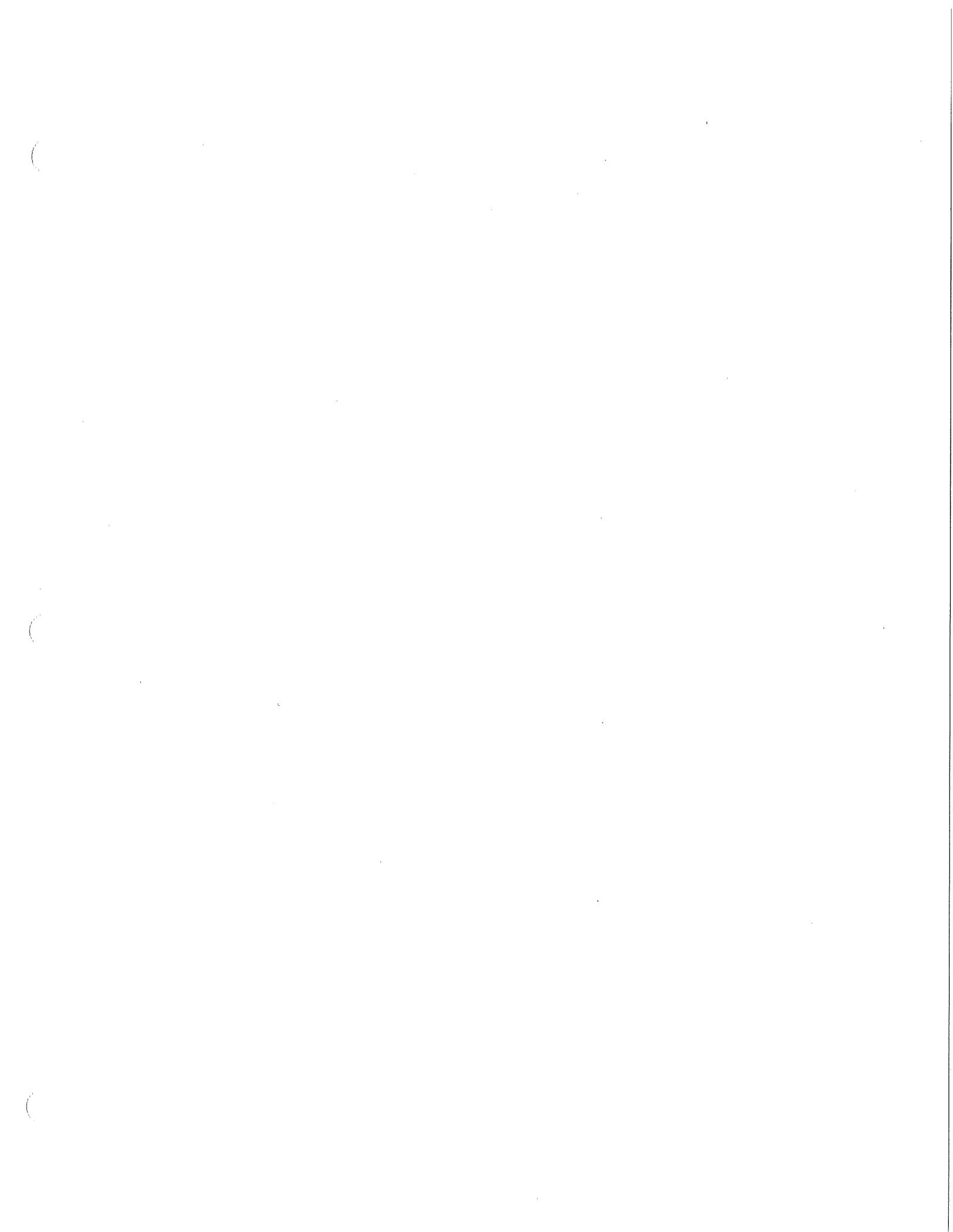
REMARKS:



TEXAS FSA 8 HOUR MAXIFLEX CHART

Workday Start Time	FLEXILUNCH TIME																		
	30 min	35 min	40 min	45 min	50 min	55 min	1 hour	1 hour 5 min	1 hour 10 min	1 hour 15 min	1 hour 20 min	1 hour 25 min	1 hour 30 min	1 hour 35 min	1 hour 40 min	1 hour 45 min	1 hour 50 min	1 hour 55 min	2 hours
06:00	07:30	07:35	07:40	07:45	07:50	07:55	08:00	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00
06:05	07:35	07:40	07:45	07:50	07:55	08:00	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05
06:10	07:40	07:45	07:50	07:55	08:00	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10
06:15	07:45	07:50	07:55	08:00	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15
06:20	07:50	07:55	08:00	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20
06:25	07:55	08:00	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25
06:30	08:00	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30
06:35	08:05	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35
06:40	08:10	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40
06:45	08:15	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45
06:50	08:20	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50
06:55	08:25	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55
07:00	08:30	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00
07:05	08:35	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05
07:10	08:40	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10
07:15	08:45	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15
07:20	08:50	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20
07:25	08:55	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25
07:30	09:00	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30
07:35	09:05	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35
07:40	09:10	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40
07:45	09:15	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45
07:50	09:20	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50
07:55	09:25	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55
08:00	09:30	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00
08:05	09:35	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05
08:10	09:40	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10
08:15	09:45	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15
08:20	09:50	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20
08:25	09:55	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25
08:30	10:00	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25	11:30
08:35	10:05	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25	11:30	11:35
08:40	10:10	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25	11:30	11:35	11:40
08:45	10:15	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25	11:30	11:35	11:40	11:45
08:50	10:20	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25	11:30	11:35	11:40	11:45	11:50
08:55	10:25	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25	11:30	11:35	11:40	11:45	11:50	11:55
09:00	10:30	10:35	10:40	10:45	10:50	10:55	11:00	11:05	11:10	11:15	11:20	11:25	11:30	11:35	11:40	11:45	11:50	11:55	12:00

INSTRUCTIONS: To find when an employee's 8 hour workday ends, locate the row along the left-hand column when the workday begins. Next, along the top Flexilunch Time find the column for the amount of lunch time used. The point at which the Workday Start Time row intersects the Flexilunch column is the ending time for an 8 hour day.



PREAMBLE

This agreement is made in compliance with the Civil Service Reform Act of 1978, by and between Farmers Home Administration (State of Texas), United States Department of Agriculture, hereinafter referred to as the "EMPLOYER", and the National Federation of Federal Employees, Local 571, hereinafter referred to as the "UNION", for employees of the described Unit, hereinafter referred to as "EMPLOYEES."

ARTICLE I: RECOGNITION AND UNIT DESIGNATION

1.1. RECOGNITION: The Employer recognizes that the Union is the exclusive representative of all employees in the unit described in Section 1.2 below.

1.2. UNIT: The unit to which this agreement is applicable is composed of:

Included: All employees non-supervisory GS of USDA - Farmers Home Administration in the State of Texas including professional employees.

Excluded: Supervisors, management officials, employees engaged in Federal personnel work other than a purely clerical capacity.

ARTICLE II: DEFINITIONS

The following definitions of terms used in this agreement shall apply.

2.1. UNION-MANAGEMENT MEETINGS: Meetings which are held for communication and exchange of views.

2.2. NEGOTIATION: Bargaining by representatives of the Employer and the Union on appropriate issues relating to terms of employment, working conditions, and personnel policies and practices, with the view toward arriving at a formal agreement.

2.3. IMPASSE: The inability of representatives of the Employer and the Union to arrive at a mutually agreeable decision concerning negotiable matters through the negotiation process.

2.4. ~~NEGOTIABILITY DISPUTE:~~ A disagreement between the parties as to the negotiability of an item.

2.5. AMENDMENTS: Modifications of the Basic Agreement to add, delete, or change existing portions, sections, or articles of the agreement.

2.6. SUPPLEMENTS: Additional articles, negotiated during the term of the Basic Agreement, to cover matters not adequately covered by the Basic Agreement.

2.7. GRIEVANCE: Grievance means any complaint:

A. by any employee concerning any matter relating to the employment of the employee;

B. by any labor organization concerning any matter relating to the employment of any employee; or

C. by any employee, labor organization, or agency concerning

1. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

2.8. EMERGENCY SITUATION: A situation which poses sudden, immediate, and unforeseen work requirements for the Employer as a result of natural phenomena or other circumstances beyond the Employer's reasonable control or ability to anticipate.

2.9. UNION OFFICIAL AND/OR UNION REPRESENTATIVE: Any accredited National Representative of the Union and the duly elected or appointed officials of the Local, including stewards.

2.10. AUTHORITY: The Federal Labor Relations Authority established by the Civil Service Reform Act of 1978.

2.11. AGENCY: As used in this agreement, Agency is defined as the Farmers Home Administration, U. S. Department of Agriculture.

2.12. EMPLOYER: The Farmers Home Administration, U. S. Department of Agriculture, Temple, Texas, hereinafter referred to as the "EMPLOYER."

2.13. UNION: The National Federation of Federal Employees, Local 571, hereinafter referred to as the "UNION", for employees of the described Unit, hereinafter referred to as "EMPLOYEES."

2.14. DISCIPLINARY ACTION: A letter of caution, warning or reprimand, or a suspension of fourteen (14) days or less.

2.15. ADVERSE ACTION: Removals, suspensions of more than fourteen (14) days reduction in grade, reduction in pay, or furlough of thirty (30) days or less.

ARTICLE III: MANAGEMENT RIGHTS

3.1. LAW: Subject to subsection 3.2 of this section, nothing in this chapter shall affect the authority of any management official of any agency

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

B. in accordance with applicable laws

1. 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;

2. to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

3. with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion; or any other appropriate source; and

4. to take whatever actions may be necessary to carry out the agency mission during emergencies.

3.2. NEGOTIATIONS: Nothing in this section shall preclude any agency and labor organization from negotiating

- A. at the election of the agency, on the numbers, type 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;
- B. procedures which management officials of the agency will observe in exercising any authority under this section; or
- C. appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

3.3. FUTURE AGREEMENTS: The requirements of this article shall apply to all supplemental, implementing, subsidiary, or informal agreements between the Employer and the Union.

3.4. NONABRIDGEMENT: The provisions of this article shall not nullify or abridge the rights of employees or the Union to grieve or appeal the exercise of the management rights set forth in this article through appropriate channels.

ARTICLE IV: EMPLOYEE RIGHTS

4.1. UNION MEMBERSHIP: Section 7102 of the Act provides that each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right

- A. to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive

branch of the Government, the Congress, or other appropriate authorities, and

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

4.2. **INFORMING EMPLOYEES:** The Employer and the Union shall have a member from the negotiating team conduct informative sessions relative to the effective administration of the agreement by the end of the calendar year 81 within each district.

4.3. **ACCOUNTABILITY:** The Employer affirms the right of an employee to conduct his or her private life as he or she deems fit, and to engage in outside activities and undertakings of his or her own choosing, as long as the conduct, activities or undertakings are in accordance with Farmers Home Administration, U. S. Department of Agriculture, and government-wide regulations governing employee responsibilities, conduct and political activities.

Neither the Employer nor the Union will pressure employees to contribute to any organization or cause.

4.4. **NONDISCRIMINATION:** No employee will be discriminated against by either the Employer or the Union because of race, color, creed, religion, sex, national origin, age, marital status, physical handicap or lawful political affiliation.

4.5. **RIGHT TO PETITION CONGRESS:** The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a Committee or Member thereof, may not be interfered with or denied.

ARTICLE V: UNION RIGHTS AND REPRESENTATION

5.F. RECOGNITION: Section 7114 of the Act provides, in part, that:

A. A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. An exclusive representative is responsible for representing the interest of all employees in the unit it represents without discrimination and without regard to labor organization membership.

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

1. any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment;

or

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

a. the employee reasonably believes that the examination may result in disciplinary action against the employee;

and

b. the employee requests representation.

C. An agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

D. The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from

1. being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

2. exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

5.2. STEWARDSHIP: The Union may designate stewards in the various Districts and a chief steward in the State Office. The total number of stewards, including the chief steward, shall not exceed eleven (11). The Union will furnish the Employer a list of designated stewards, specifying the areas represented by the individual stewards, on a semi-annual basis. In addition, the Union will inform the Employer of changes in the stewards as they occur.

A. The chief steward will handle all grievances at the formal step. If the chief steward is unavailable, the Union president may handle the formal grievance. The Employer and the Union agree that, to the extent feasible, representation duties will be handled by telephone. When travel for representation duties is necessary, the Employer will pay the travel and per diem costs. These costs will be held to a minimum .

B. The steward is responsible for representing employees in his/her designated area. The steward will be permitted reasonable time to receive, investigate, prepare and present (but not solicit) employee complaints, grievances or appeals during duty hours.

C. The steward must notify his supervisor and the supervisor of the employee to be represented before the steward can perform his representative duties or travel. Approval will be granted unless either supervisor determines that it should not be granted because of work deadlines or other extenuating circumstances. Stewards must report the time spent on representative duties to their supervisors.

D. A steward is a position in the Union, other than an officer, who is appointed to serve as a representative of the Union, its members, or unit employees. The steward is an employee in the bargaining unit.

E. Stewards shall be permitted reasonable time during working hours without loss of leave or pay to represent employees in accordance with this agreement.

5.3. RESTRAINT: There shall be no restraint, coercion or discrimination against any Union official because of the performance of duties within this agreement and the Act, or against any employee for filing a complaint or acting as a witness under this agreement, the Act, or applicable regulations.

ARTICLE VI: PROVISIONS OF LAW AND REGULATIONS

6.1. LAWS AND REGULATIONS: In the administration of all matters covered by the Agreement, officials and employees are governed by existing or future laws and regulations of outside authorities including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequent published agency policies and regulations required by law or by the regulations of outside authorities or authorized by the terms of a controlling agreement at a higher agency level. This agreement has the force and effect of regulation.

ARTICLE VII: NEGOTIATIONS

7.1. MANNER: The Employer and the Union recognize their responsibility for conducting negotiations and other dealings in good faith and in such manner as will further the public interest. The Employer agrees to give adequate notice to the Union and an opportunity to negotiate any new policy or change in established policy which is proposed during the life of the agreement. Negotiations of procedures to implement decisions which are management rights and impact bargaining on those decisions will also be handled in accordance with this section.

7.2. NEGOTIATION PROCEDURES: Negotiating sessions may be requested by either party. Such requests shall state the specific subject matter to be considered at such sessions. The following procedures shall be utilized:

- A. The number of members on either negotiating committee shall not exceed three (3), and one (1) alternate.
- B. Names of the members on each negotiating committee will be exchanged formally by the parties in writing no later than seven (7) calendar days prior to the beginning of negotiations. Any changes regarding committee membership will be submitted to the other party no later than one (1) day prior to the next negotiating session.
- C. Employees negotiating during regular duty hours on behalf of the Union shall be on official duty time. Travel and per diem for union negotiators will be paid by management.
- D. Mid-contract and impact bargaining sessions and preparation therefor shall be conducted on official time. Such bargaining is considered a part of the Union's duty to represent employees during the life of the agreement.

E. Upon reaching agreement on all articles, the agreement shall be signed by the Union and the Employer.

7.3. NEGOTIATION IMPASSE: When the parties to the agreement cannot agree on a negotiable matter and an impasse has been reached, the item shall be set aside. Either or both parties may seek the services of the Federal Mediation and Conciliation Service. When the services of mediation do not resolve the impasse, either party may seek the services of the Federal Service Impasses Panel.

7.4. NEGOTIABILITY QUESTION: When the employer believes that a matter is non-negotiable, it will advise the union of such belief. The Union has the right to proceed to the Federal Labor Relations Authority in accordance with Title 5 USC and appropriate regulations. Nothing in this procedure will prevent the parties from settling negotiable issues informally if they choose.

7.5. PAST PRACTICE: Those privileges of employees which by custom, tradition and known past practice have become an integral part of their working conditions shall not be abridged as a result of not being enumerated in this agreement.

ARTICLE VIII: GRIEVANCE PROCEDURE

8.1. COMMON GOAL: The Employer and the Union recognize the importance of settling grievances promptly, fairly, and in an orderly manner that will maintain the self-respect of the Employee and be consistent with the principles of good management. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest level of supervision.

8.2. LIMITATIONS: This negotiated grievance procedure shall not apply to:

- A. a violation relating to political activities;
- B. retirement, life insurance or health insurance;

- C. a suspension or removal for national security reasons;
- D. any examination, certification or appointment;
- E. classification of position which does not result in reduction in pay or grade for the employee;
- F. termination of probationary employees.

Nothing in this section shall prevent employees from exercising the option of appealing adverse actions to the Merit Systems Protection Board.

8.3. APPLICATION: A grievance may be undertaken by the Union, an employee, or a group of employees. Only the Union or representative approved by the Union may represent employees in such grievances. However, any employee or group of employees may personally present a grievance and have it adjusted without representation by the Union provided that the Union will be afforded an opportunity to be a party to all the discussions between management and the grievant(s).

8.4. PRESENTATION: The grievant(s) shall present the grievance in accordance with the following procedures:

A. INFORMAL PROCEDURE: The employee and the immediate supervisor discuss the problem with the hope of resolution without further action. If the problem is not resolved to the satisfaction of the employee, he may file an informal grievance under sub-section 1 below:

1. Employee(s) who believe they have a grievance will present it to their immediate supervisor within fifteen (15) work days of the occurrence which gave rise to the grievance, or when they became aware of the grievance. The employee will present the grievance on the form attached as Exhibit A of this agreement. The immediate supervisor will give the employee a written decision within ten (10) work days after receipt of pertinent information, or inform him immediately if he does not have the authority to resolve the grievance.

2. If the next level of supervision is the State Director, proceed to Section B 1; however, if the next level is not the State Director, the following procedure applies. If the grievance has not been resolved to the satisfaction of the grievant(s), or if the immediate supervisor does not have the authority to resolve the grievance, the grievant(s) will present the matter in writing within ten (10) work days of the immediate supervisor's decision, to the next higher level of supervision. The next level of supervision will attempt to resolve the grievance within fifteen (15) work days of the receipt of the matter. Decisions will be submitted in writing to the grievant.

B. FORMAL PROCEDURE:

1. The grievant(s) must submit the grievance to the State Director within fifteen (15) work days of receipt of the last response in the informal stage or within fifteen (15) work days of expiration of the time limit of the last step of the informal stage.

The informal procedure must be accomplished prior to initiating a formal grievance. The State Director receives all formal grievances in writing. The State Director or his designee will issue a decision within fifteen (15) work days of filing of the formal grievance. If the grievant is not satisfied with the decision of the State Director or his designee, the Union may invoke arbitration in accordance with Article IX.

8.5. TIME FRAMES: If the Employer fails to respond to a grievance within the specified time frame, the grievant has the right to move the grievance to the next step. If the grievant(s) fails to present the grievance to the next higher level within the specified time frame, the grievance is terminated.

8.6. UNION REPRESENTATION: When the grievant(s) chooses the Union to assist in processing a grievance, the steward for the designated area may assist the grievant(s) in a representative or advisory role under the negotiated informal grievance procedure. In this respect, the Union representative may be present with the grievant(s) in discussion with appropriate officials or may confer separately with the grievant(s) in an advisory role.

Except when the Union has approved a representative from outside the unit of exclusive recognition, only the chief steward may represent the grievant(s) under the negotiated formal grievance procedure. However, if the chief steward is unavailable, the Union president may represent the employee in the formal grievance. The Union agrees to select its chief steward from among those bargaining unit employees assigned to the State Office staff.

8.7. SOLICITATION: Union officials will not solicit complaints or grievances.

8.8. EMPLOYER GRIEVANCE: The Employer may file a grievance with the President of NFFE. The submission must be in writing. The Union will have 15 work days to respond and offer a resolution.

8.9. REQUESTING MEDIATION OF GRIEVANCE: Either party may request mediation of a grievance by the Federal Mediation and Conciliation Service prior to invoking arbitration provided that the steps in Sections 8.4 and 8.8 above have been exhausted. If the efforts of mediation cannot resolve the grievance, arbitration may be invoked in accordance with Article IX.

8.10. FILING GRIEVANCES: An employee shall be deemed to have filed a grievance when it is timely filed in writing in accordance with the provisions of the negotiated grievance procedure in section 8.4.

8.11. NOTIFICATION TO UNION: If the employee fails to designate a representative on Exhibit A when filing a grievance, the immediate supervisor of the employee will inform the designated steward for the area that the grievance has been filed.

8.12. UNION'S OPPORTUNITY TO BE PRESENT: The obligation to provide the Union the opportunity to be present at any discussion of the grievance may be fulfilled by means of a conference telephone call.

8.13. USING TELEPHONE: The Employer and the Union agree to handle representation duties by telephone to the maximum extent possible.

ARTICLE IX: ARBITRATION

9.1. CONDITIONS FOR INVOKING ARBITRATION: The Union or the Employer may invoke arbitration within thirty (30) calendar days after either party has determined that a satisfactory settlement cannot be reached in resolving disagreements under Article VII.

9.2. SELECTING AN ARBITRATOR: The party invoking arbitration will request the Federal Mediation and Conciliation Service (FMCS) to furnish the parties a list of seven (7) impartial persons qualified to act as arbitrators who live in Texas.

An informational copy of the request will be sent to the other party. The Employer and the Union shall agree, within ten (10) working days after receipt of the list, upon one of the listed arbitrators. If they cannot agree, they will each strike one name from the list and shall repeat the procedures. The party striking first will be decided by a flip of the coin. The remaining individual shall be the duly selected arbitrator. The arbitrator's decision shall be binding on the parties, unless either party files exceptions to an award with the Federal Labor Relations Authority under regulation prescribed by the Authority. The

fees and expenses of the arbitrator and the cost of the necessary expenses shall be borne equally by the parties. If either party desires its own copy of a transcript of an arbitration hearing, the party is solely responsible for paying for its own copy of the transcript.

9.3. PROCEDURE: The parties must mutually agree to any procedure other than a full arbitration hearing.

9.4. SCOPE OF ARBITRATOR'S AUTHORITY: As necessary to reach a decision, the arbitrator shall have the authority to interpret and define this agreement, agency instructions, the Federal and Department Personnel Manuals (FPM and DPM) and applicable laws. The arbitrator shall have no authority to add to, subtract from, alter, or modify any terms of the agreement, agency instructions, the FPM and DPM, and applicable laws.

9.5. TIME LIMIT: The arbitrator will be requested to render a decision and remedy to the Employer and the Union as quickly as possible, but in any event no later than thirty (30) days after the conclusion of the hearing unless the parties otherwise agree.

ARTICLE X: USE OF OFFICIAL FACILITIES AND SERVICES

10.1 SPACE: The Employer agrees that upon request, the Union may use available conference rooms or other suitable areas in the Farmers Home Administration offices after 5:00 p.m. for the purpose of holding membership drives or meetings. The Union agrees that facilities for such drives or meetings shall be used only after such hours and during non-duty hours of the employees attending. The Employer agrees that space in the buildings, when it can be made available by a proper official, may be used by Union Representatives. The Union shall arrange for use of the rooms or areas with the Employer and shall conform to all safety, sanitary, and security regulations.

10.2. BULLETIN BOARD: The Employer agrees to permit the Union to utilize available official bulletin board space for posting information approved by the Employer. A removal date will be shown on all such documents posted on the boards. The Union agrees to maintain allotted bulletin board space in a neat and orderly manner.

10.3. ACCESS TO REGULATIONS: The officers and members of the Union shall have access during official duty hours to all regulations and directives which are applicable in connection with Civil Service procedures and requirements.

ARTICLE XI: ORIENTATION OF NEW EMPLOYEES

11.1. ORIENTATION OF NEW EMPLOYEES: All new employees shall be informed by the Employer that the Union is the exclusive representative of employees in the Unit. Each new employee shall receive a copy of this agreement from the Employer, together with a list of the officers.

ARTICLE XII: SAFETY

12.1. SAFETY: The Employer and the Union have a common interest in the safety of the employee. There is an obligation of the Employer to provide safe working conditions and to act promptly when an employee is injured or an accident occurs.

12.2. SAFETY COMMITTEE: A mutual and cooperative attitude to accomplish safe working conditions and to report promptly on-the-job injuries or accidents requires representation of Employer and representation of the Union on the Safety Committee. The Employer will, when necessary ask for Union assistance in getting accidents reported to Personnel.

12.3. WORKMEN'S COMPENSATION: The Federal Employees' Compensation Act provides that immediately after an injury to an employee, the Employer shall make a report (Form CA 1 & 2) to the Office Workers' Compensation

Programs, U. S. Department of Labor, containing such information as may be required by the OWCP and shall thereafter make supplemental reports as the OWCP may require. In order to assure prompt payment of benefits for an employee injured in the performance of his duty, it is understood that the immediate supervisor will accept the written notice, Form CA 1 & 2, from the the employee or someone on his behalf, who may be any person, expressed or implied, acting on behalf of the employee.

es
ARTICLE XIII: DISCIPLINARY AND ADVERSE ACTIONS

13.1. CAUSE: Disciplinary and adverse actions will be taken for such cause as will promote the efficiency of the service.

13.2. ADVERSE ACTION PROCEDURE: Adverse actions will be taken in accordance with Title 5 of the U. S. Code and appropriate authorities.

13.3. DISCIPLINARY ACTION PROCEDURE: Disciplinary actions against all employees, including probationary employees, will be taken in accordance with applicable laws and regulations.

13.4. REPRESENTATION: An employee may choose to be represented by the Union when answering a proposal to take adverse action or when grieving or appealing an action taken against the employee.

ARTICLE XIV: ACTIONS BASED ON UNACCEPTABLE PERFORMANCE

14.1. UNACCEPTABLE PERFORMANCE: Actions based on unacceptable performance will be taken in accordance with Title 5 of the U. S. Code and appropriate regulations.

ARTICLE XV: POSITION DESCRIPTIONS/CLASSIFICATION REVIEW

er
15.1 INTENT: Each employee is entitled to a complete and accurate position description, which shall be reviewed annually. The phrase "performs other related duties as assigned" in an employee's position description shall not be construed to require the employee to perform

duties outside his/her regular field of work, if he/she is not qualified, or which might result in injury to the employee or fellow employees due to lack of knowledge of task.

15.2. AGENCY COMPLAINTS AND APPEALS: Any employee in the Unit who believes that he/she is performing duties outside the scope of the position description or that his/her position is inaccurately described or classified, may request, through the immediate supervisor, that the position description be reviewed. The Employer will acknowledge the receipt of revised position descriptions and will keep the Employee currently advised of any changes in status.

15.3. POSITION CLASSIFICATION REVIEWS: Position Classification Reviews will be taken in accordance with Office of Personnel Management rules and regulations.

15.4. DOWNGRADES: General Schedule employees in the unit whose positions have been downgraded as a result of reduction-in-force may appeal to the Merit Systems Protection Board. Notices of such actions shall include an explanation of the employee's options for review, including the address of the MSPB office. Saved grade and saved pay rights shall be afforded to those whose positions are downgraded.

ARTICLE XVI: INCENTIVE AWARDS

16.1. CASH AWARDS: For special achievement, cash awards shall be in dollar amounts at least equal to the recipients's latest within-grade step increase. A member of NFFE Local 571 will be appointed to the Texas FmHA awards committee.

ARTICLE XVII: PERFORMANCE STANDARDS AND EVALUATION

17.1. PERFORMANCE APPRAISALS: All requirements of Title V of U. S. Code Section 4302 shall be incorporated in the performance appraisal system.

AS FAZ

*SEE SEP 18 2001
EMAZ*

SEP 18 2001

TO: Chapter Presidents
FROM: LR Specialist *Sue A. Collins*
SUBJECT: Request for Additional Pre-Decisional Input—FY 2001 Annual Performance Appraisals for State and County Offices Using Pass/Fail Rating System

The attached material is forwarded for your review and pre-decisional comment. Any comments you wish to make or questions you may have should be directed to Ms. Cheryl Fuller, Personnel Management Specialist, Performance Management Benefits and Awards Branch, at telephone (202) 418-8973, or fax at (202) 418-9118 by COB, Friday, Oct. 5, 2001.

cc: SED's, AR, CO, KS, MS, MT, NJ, NM, NY, ND, OK and TXSTO's; Caribbean Area Office

UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice PM-XXXX

For: State and County Offices Using Pass/Fair Rating System
[Writer: For offices or employees?]

**FY 2001 Annual Performance Appraisals for State and County Offices
Using Pass/Fail Rating System**

Approved by: Deputy Administrator, Management

1 Overview

A

Purpose

This notice provides employees and supervisors with information needed to complete the annual performance appraisal for the rating period ending September 30, 2001, and reminds employees and supervisors that:

- performance elements and standards shall be established within 30 calendar days of an employee's assignment to a position
 - an employee must serve under elements and standards in the current position for **90 calendar days** or more before supervisors complete the employee's performance appraisal.
-

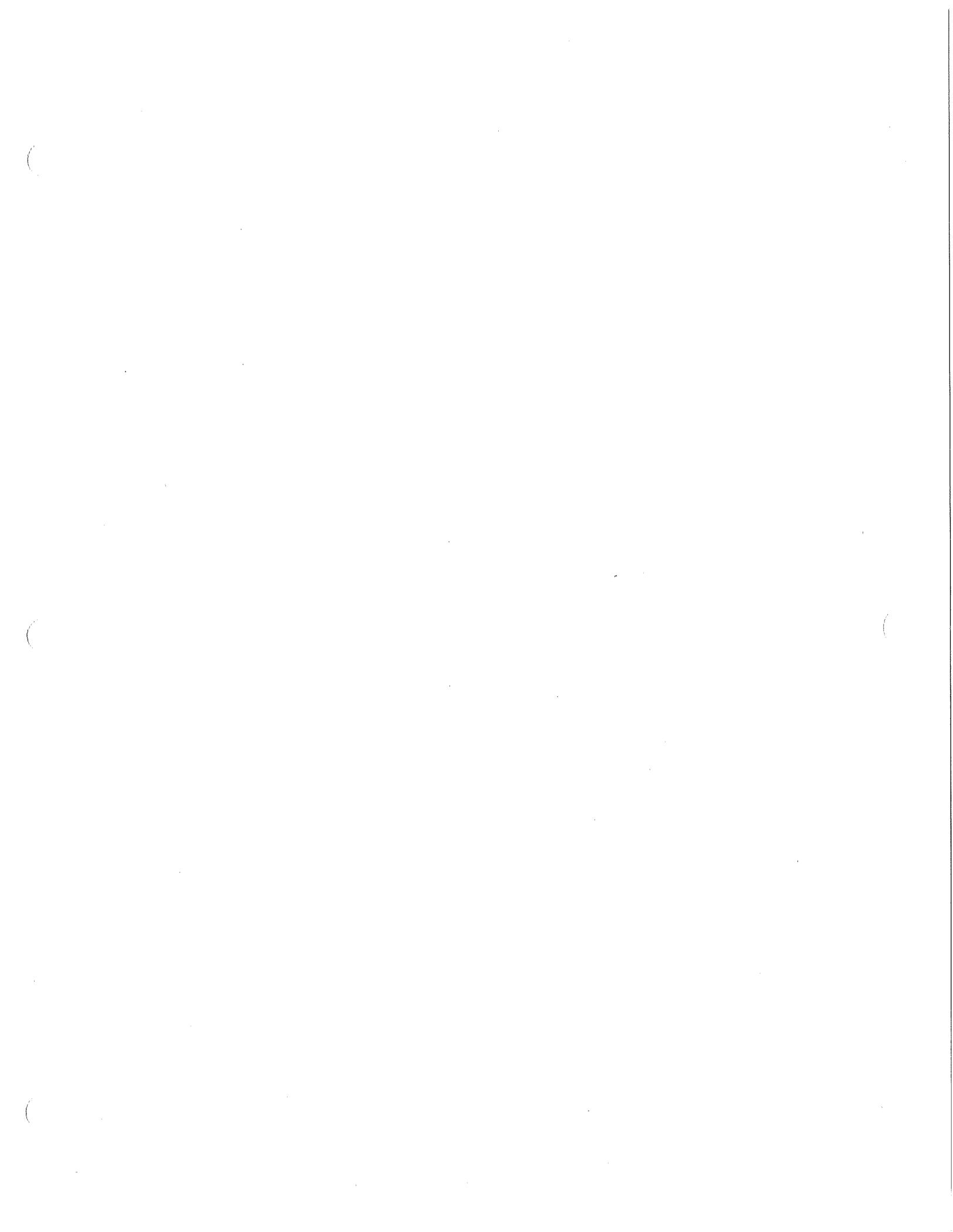
B

Changes in Positions, Assignments, or Supervisors

New or amended performance elements and standards must be in place within 30 calendar days after an employee has been given a new position or assignment.

When an employee works under different supervisors during the designated appraisal period, each supervisor of 90 calendar days or more shall document the employee's accomplishments and prepare a summary rating. The summary rating should be forwarded to the employee's current supervisor for appropriate consideration in preparing the employee's **rating of record**.

Continued on the next page



Disposal Date	Distribution
March 1, 2002	State Offices; State Offices relay to County Offices

Notice PM-XXXX**1 Overview (Continued)****C****Labor Relations
Obligations**

Where exclusive representation exists, this notice does not apply until bargaining takes place. Where contract language addresses these policies and procedures for bargaining unit employees, contract language prevails.

D**Combined
Administrative
Management
System (CAMS)
Users**

Offices with CAMS that have deployed the web to their employees should submit ratings using CAMS.

2 Supervisor Action**A****Supervisor
Responsibilities**

Supervisors shall review employee performance by:

- ensuring that the employee has served under elements and standards in their current position for **90 calendar days** or more
- if necessary, obtaining written documentation of the employee's performance under a previous position if:
 - the employee is on detail for 120 calendar days or more
 - the change in supervisor occurs and the employee works under a new supervisor for 90 calendar days or more
 - the employee changes positions and serves in the new position for 90 calendar days or more
 - the employee transfers outside FAS, FSA, or RMA

Note: The former supervisor should provide a copy of Form 4140 to the employee's new supervisor.

- the employee performs collateral duties, then the rating shall reflect both of the following:
 - primary duties of the position
 - primary collateral duty

- checking the appropriate rating level for each element on Form 4140.

Continued on
the next page

Notice PM-XXXX

2 Supervisor Action (Continued)

B

Providing Additional Documentation

Supervisors shall provide additional documentation if an employee receives a "Results Not Achieved" performance rating.

Note: The documentation shall be attached to Form 4140 and must be signed by the rating, official and the reviewing official before employee signs.

3 Completing Form 4140

A

Supervisor and Employee Responsibilities

Supervisors and employees shall:

- ensure that item 11 reflects that the employee has served under the elements for 90 calendar days
 - sign and date in item 12.
-

B

Reviewer Responsibilities

Sign in item 12 if summary of rating is "Result Not Achieved".

4 Distributing Form 4140

A

Distribution

Supervisors shall distribute the complete performance appraisals according to this table.

Step	Action
1	Forward the original, completed copies of Form 4140 to KCAO, Personnel Division (PD).
2	Provide the employee with a copy of Form 4140.
3	Retain a copy of Form 4140 for the supervisor's file.



Notice PM-XXXX

5 Unratable Employees**A****Rating
Requirement**

To be rated, an employee **must** have:

- elements and standards established on Form 4140
- been under signed elements and standards for at least **90 calendar days**.

Note: If the employee disagrees with elements and standards and refuses to sign them, the supervisor should note this in the employee's signature block on Form 4140.

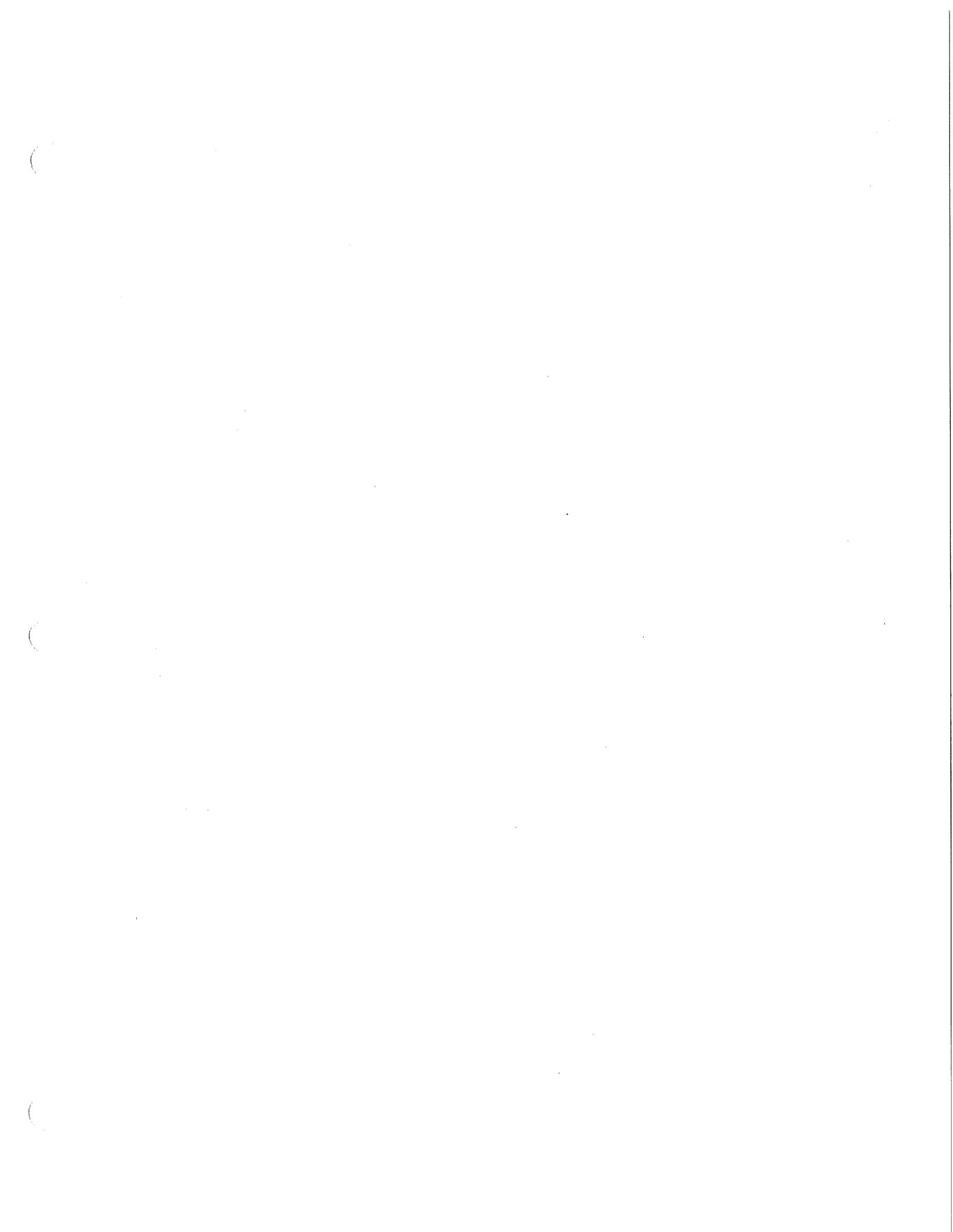
6 Additional Information**A****Contacts**

If there are questions about rating employees, supervisors may contact the appropriate servicing personnel office according to this table.

IF the supervisor is located in...	THEN contact...
1 of the following: <ul style="list-style-type: none"> • APFO • KCCO • KCAO • KCFO • KC-ITSTO • KC-ITSDO • State Office 	KCAO, PD, Employee and Labor Relations Branch at 816-926-6643 or TTY at 816-926-3063.
County Office	State Office.

B**Filing
Grievances**

Nonbargaining unit employees must grieve their performance appraisals under the Agency grievance procedure. Bargaining unit employees must use the negotiated grievance procedure.



17.2. In the interest of providing for objectivity in a supervisory appraisal, an employee should have been working under the evaluation supervisor for at least one hundred twenty (120) days. When this is not the case, then at the employee's request, the previous supervisory appraisal shall be obtained for use. A rating will be provided after an employee has worked for a supervisor for one hundred twenty (120) days.

17.3. During the quarterly review process, when a supervisor's review leads to the conclusion that the employee's work is not an acceptable level of competence, the supervisor will provide to the employee a copy of the Form AD 434a and b worksheet with the following in the accomplishment column:

- A. Aspects of performance in which the employee's service falls below an acceptable level.
- B. Advice as to what the employee must do to bring his/her performance up to the acceptable level.
- C. Remarks that his/her performance may be determined as being at an unacceptable level unless improvement to an acceptable level is shown.
- D. During the third quarter review, an employee performing at an unacceptable level will be advised that he/she has 90 days to bring performance up to an acceptable level.

17.4. Positions will contain a maximum of ten (10) elements with no more than two (2) classified as critical.

17.5. Training will be given to all covered employees prior to implementation of the F.P.A.S.

17.6. DEFINITIONS: Informal Discussion: Discussion held between the employee and first line supervisor in order to resolve differences resulting from a performance appraisal.

Formal Discussion: A meeting between the employee and the second line supervisor, or higher, called to specifically resolve an appeal of a performance rating.

ARTICLE XVIII: MERIT PROMOTION

18.1. MERIT PROMOTION: The Employer and the Union shall meet within 30 days after the signing of the agreement to negotiate the Merit Promotion Plan.

ARTICLE XIX: EQUAL EMPLOYMENT OPPORTUNITY

19.1. POLICY: Management shall not in any way discriminate against an individual regarding employment or conditions of employment because of race, color, religion, sex, national origin, age, lawful political affiliation, or handicapping condition.

19.2. UNION REPRESENTATION: An employee has the right to choose to be represented by the Union when discussing an allegation of discrimination with an EEO counselor or when processing an EEO complaint.

19.3. The Upward Mobility Program has been implemented as outlined in Exhibit C.

ARTICLE XX: LABOR RELATIONS TRAINING

20.1. UNION-SPONSORED TRAINING SESSIONS: The Employer agrees to grant administrative leave to employees who are Union officials for the purpose of attending Union-sponsored training sessions, provided the training is of concern to the employees in their capacities as Union officials.

20.2. ADMINISTRATIVE LEAVE: For this purpose, administrative leave will not exceed 850 hours total for all Union officials during the life of this agreement. The Union will distribute these hours as it sees fit. A written request for administrative leave will be submitted at least two weeks in advance by the Union president to the State Director. The request will contain information about the duration, purpose, and nature of the training. The Union agrees not to request any additional leave for this purpose.

ARTICLE XXI: FLEXITIME

21.1. FLEXITIME: The Union and the Employer agree that within nine (9) months after the signing of the contract, and after a complete polling of

the employees, negotiation will be held to determine whether flexitime will be implemented. If it is agreed to have flexitime, the procedures for implementation will be negotiated.

ARTICLE XXII: OVERTIME

22.1. EMPLOYEE ASSIGNMENT: When overtime is required, employees normally assigned to the duties performed on such overtime will perform the overtime work. Care will be taken to ensure that employees in the same job function performing the work during the normal duty hours receive the opportunity for such work on the basis of equal distribution. In no case will overtime work be assigned to any employee as a reward or as punishment.

ARTICLE XXIII: REDUCTIONS-IN-FORCE AND OUTPLACEMENT

23.1. REDUCTIONS-IN-FORCE: In the event of a reduction-in-force, the Employer will furnish the Union a copy of the retention registers and will afford the Union an opportunity to examine all records pertaining to the action. The Employer and the Union agree to engage in impact bargaining if a reduction-in-force is announced.

SUPPLEMENT TO ARTICLE XXIII

A. FISCAL YEAR 1982 REORGANIZATION: The Employer is conducting a reorganization beginning in June 1982 requiring the displacement of some employees from their current positions. This will be conducted using the Reduction in Force procedures in Farmers Home Administration (FmHA) Instruction 2054-AA, "Reduction in Force," and 2054-BB, "Conduct of a Reduction in Force." The Union agrees to this procedure for use on this occasion because placement of all employees is possible as set forth below.

B. NFFE COMMITTEE: The Union will name three (3) members of the bargaining unit to serve as NFFE Committee. To conserve time and travel expenses, the members of the committee will be employees of the State Office or within the commuting area of Temple, Texas. Upon notification of the names of the committee, the Employer will release to the committee the material submitted for the Administrator's approval and the information/records which support that material. The committee will be permitted a reasonable amount of time, not to exceed one (1) work week, to review the material for accuracy and to suggest corrections for the consideration of the Employer. Any substantiated errors will be corrected. Subsequently, the committee will be permitted reasonable time to review and to suggest corrections to any additional materials developed by the Employer, including notices of reduction in force, prior to implementation. The standard of review by the committee will be published Office of Personnel Management, U. S. Department of Agriculture, and Agency regulations.

C. BEST OFFER: Employees are entitled to a "best offer" under Agency RIF regulations as determined by the Employer. This is the sole "offer" to be made to employees; however, the Employer agrees to consider any request by an employee for placement in any available vacant position for which the employee qualifies. "Consideration" does not imply that the employee has a right to a vacant position. In accomplishing this, the Employer will follow these requirements:

1. Each displaced employee will be furnished a list of all vacant positions under the Employer's control. The vacancies will be positions listed on the Employer's staffing plan which are not encumbered and which the Employer can fill under its employment

ceilings. The Employer may reserve up to 25% of these vacancies. However, if the 25% results in less than eight (8) positions, at least (8) positions may be reserved.

2. Each displaced employee will have 14 days from the date of receipt of the specific RIF notice to state he/she will accept the "best offer" or wishes consideration for one (1) of the listed vacancies, but not both.

3. After the RIF notices are issued, the Employer will not fill vacancies by outside hiring or by promotion or by reassignment.

4. An employee who does not reply within the 14 day limit will be separated through reduction in force.

5. If more than one employee requests consideration for the same vacancy, the employee with greater retention rights will be awarded the vacancy. The employee(s) who does not receive the vacancy will have opportunity to request consideration for another vacancy.

6. Where authorized by regulation, the Employer will pay relocation expenses for employees who accept the "best offer" or who are selected for a vacancy for which they request consideration.

7. "Consideration" means the employee will receive the position for which he/she requests consideration if he/she meets the basic qualifications requirements and if no person with greater retention rights has requested consideration for the same position. Assignment will be made at the end of each round.

D. CONTINUATION OF BARGAINING: The parties agree that the "NFFE Committee" and "best offer", as agreed to by the parties in Articles 2 and 3 above, will remain the same for any subsequent RIF's within the FmHA in the State of Texas. However, the parties agree that they have serious differences on the question of applicability of FmHA Instruction 2054-AA and 2054-BB especially on the question of

competitive levels and areas. Therefore, the parties agree to continue bargaining on these issues to the fullest extent possible.

ARTICLE XXIV: ANNUAL LEAVE

24.1... SCHEDULING OF ANNUAL LEAVE: Annual leave will be scheduled according to the need of the Employer. Leave scheduled may include at least one period of eighty (80) hours for vacation purpose. However, leave may be rescheduled for any employee due to an emergency situation.

ARTICLE XXV: DURATION OF AGREEMENT

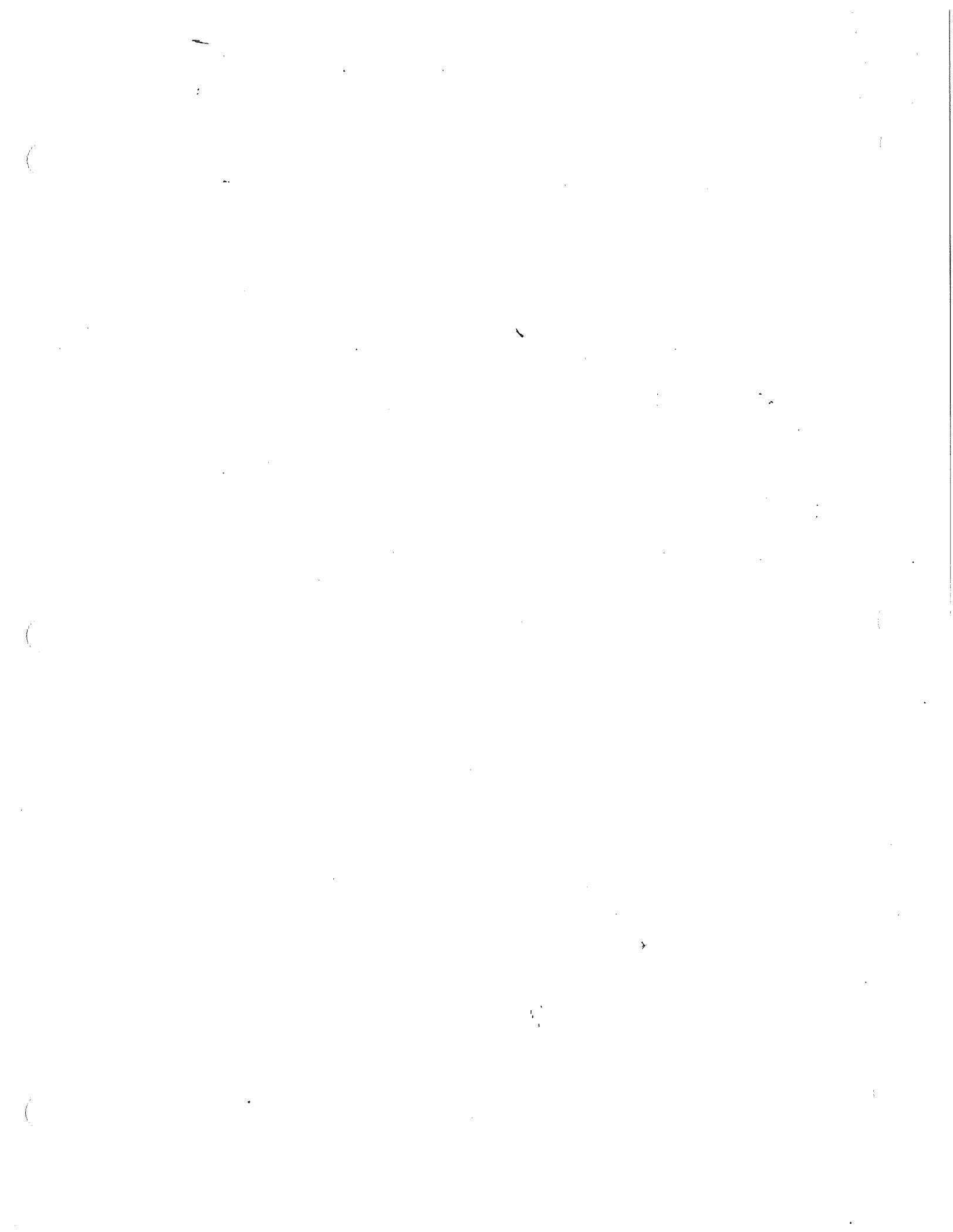
25.1. EFFECTIVE DATE AND TERM: The effective date of this agreement shall be the date of approval. It shall remain in effect for three(3) years. However, the agreement shall be automatically renewed on the third anniversary unless sixty (60) calendar days and not more than one hundred and five (105) calendar days prior to such date, either party gives written notice to the other of its desire to effect changes in the agreement. The nature of the proposed changes shall be included in the notice. The notice must be acknowledged by the other party within ten (10) days of receipt and negotiations on an amended agreement shall begin at least twenty (20) days prior to the anniversary date, the parties may mutually act to extend the agreement or any portion thereof for a specified time pending resolution of an impasse. Subordinate agreements, if any, likewise may be extended by the parties.

25.2. AMENDMENT: The parties may effect amendments or may add provisions to this agreement, at times other than provided for in section 25.1 if such action is necessary to reflect legal and regulatory changes or if both parties agree that it is expedient to do so.

25.3. SUPPLEMENTAL AGREEMENTS: Supplemental agreements and/or memorandums of understanding pertaining to personnel policies, practices and procedures and other matters relating to conditions of employment may be entered into from time to time as provided in Article 25.2. Following the effective date of this Basic Agreement, the parties may proceed to negotiate Supplementary Agreements on matters subject to collective bargaining. Negotiations shall begin within 30 days following notice of intent by either party.

ARTICLE XXVI: DISTRIBUTION

26.1. COPIES: After review and approval in its entirety by the Office of Farmers Home Administration, U. S. Department of Agriculture, the Employer will provide fifty (50) copies of the Agreement and any amendment(s) thereto to the Federal Employees, Local 571.



FARMERS HOME ADMINISTRATION

Temple, Texas

and

National Federation of Federal Employees

Local 571

Grievance Form

1. Name of grievant, position title, grade, and work location:

2. This grievance involves the interpretation, application or violation of: (Cite Labor-Management Agreement Article (s), and FmHA, U. S. Department of Agriculture and Government-wide policy and regulations.

3. Nature of the grievance as it affects the Union or employee(s):
(Describe the occurrence or condition, or the way in which the agreement of regulation has been interpreted, applied, or violated to give rise to this grievance. Include the name of the responsible management officials(s), if known. Additional pages may be used and documentation attached, as necessary.)

4. Corrective action desired:

5.

_____ (Name, Title, Address, and Phone Number)

is hereby designated as the representative in this grievance.

Signature of Grievant

Date

NOTE: This form is to be used for initial filing of a grievance at Step 4 of the negotiated grievance procedure. Employer will acknowledge receipt of the form and date received.

MEMORANDUM OF UNDERSTANDING
BETWEEN
DEPARTMENT OF AGRICULTURE
AND
NATIONAL FEDERATION OF FEDERAL EMPLOYEES

The parties to this memorandum, the National Federation of Federal Employees, hereinafter referred to as NFFE, and the U. S. Department of Agriculture, hereinafter referred to as USDA, enter into this agreement for the purpose of establishing a mutually beneficial dues withholding agreement.

1. This Memorandum of Understanding is subject to and governed by 5 USC 7115, by regulations issued by the Office of Personnel Management (5 CFR 550.301, 550.311, 550.312, 550.321 and 550.322), and will be modified as necessary by any future amendments to said rules, regulations and law. Reference is also made to DPM 550, Subchapter 3 for procedural guidance.
2. Any employee of the USDA who is included in a NFFE bargaining unit may make a voluntary allotment for the payment of dues to the NFFE. This memorandum of understanding shall be made a part of every current and future Local or National agreement and shall be the only authorized method for obtaining dues withholding.
3. The employee shall obtain SF-1187, "Request for Payroll Deductions for Labor Organization Dues", from NFFE and shall file the completed SF-1187 with the designated NFFE representative. The employee shall be instructed by NFFE to complete the top portion and Part B of the form. No number shall appear in block 2 of the form except the employee's Social Security number.
4. The President or other authorized official of the Local Union or the National Secretary-Treasurer will certify on each SF-1187 that the employee is a member in good standing of NFFE; insert the amount to be withheld, and the appropriate Local number; and submit the completed SF-1187 to the Servicing Personnel Office of the USDA Agency involved. The Servicing Personnel Office shall certify the employee's eligibility for dues withholding, insert the NFFE code (01) and, within five (5) work days after receipt, transmit the SF-1187 in duplicate to the National Finance Center (NFC).
5. The NFC will process the dues deduction effective as of the beginning of the first full pay period after NFC receives the SF-1187. The NFC will forward a copy of the SF-1187 to the NFFE National Treasurer at 1016 16th Street, N.W., Washington, D.C. 20036.
6. Deductions will be made each pay period by the NFC and remittances will be made promptly each pay period to the National Office of the NFFE. The NFC shall also promptly forward to NFFE, a listing of dues withheld. The listing shall be segregated by Local and shall show the name of each member employee from whose pay dues was withheld, the employee's Social Security number, the amount withheld, the code of the employing agency, and the number of the Local to which each employee belongs. Each Local listing shall be summarized to show the number of members for whom dues were withheld, total amount withheld, and amount due the Local. Each list will also include the name of each employee member for

that Local who previously made an allotment for whom no deduction was made that pay period, whether due to leave without pay or other cause. Such employees shall be designated with an appropriate explanatory term.

7. In lieu of the listings provided for in Section 6 of this Memorandum of Understanding, USDA agrees to provide the National Office of the NFFE a computer tape in a format to be agreed upon at such time as NFFE has the facilities to process tapes. USDA will be given two (2) months notice to implement this change.

8. The amount of dues certified on the SF-1187 by the authorized Union official (see Section 4) shall be the amount of regular dues, exclusive of initiation fees, assessment, back dues, fines, and similar charges and fees. One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be a change in the dues structure or amount, the authorized Union official shall notify the appropriate Servicing Personnel Office. If the change is the same for all members of the Local, a blanket authorization may be used which includes only the Local number and the new amount of dues to be withheld. If the change involves a varying dues structure, the notification must include the Local number, the name and Social Security number of each member, and the new amount of dues to be withheld for each member. The Servicing Personnel Office shall add the NFFE code (01) and promptly forward the certification to the NFC. The change shall be effected at the beginning of the first full pay period after the certification is received by the NFC. Only one such change may be made in any six month period for a given Local.

9. An employee may voluntarily revoke an allotment for the payment of dues by completing SF-1188, "Cancellation of Payroll Deductions for Labor Organization Dues", or by memorandum in duplicate and submitting it to the appropriate Servicing Personnel Office. The Servicing Personnel Office shall forward both copies of the revocation (SF-1188 or memorandum) to the NFC. The revocation will become effective as of the first full pay period after September 1 of each year provided that the revocation was received by the Servicing Personnel Office on or before August 15 of each year, and provided the employee verifies that he/she has had NFFE dues withheld for more than one year. The NFC shall forward to the NFFE National Office a copy of each revocation received as appropriate notification of the revocation.

10. The USDA will terminate an allotment:

(a) as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;

(b) at the end of the pay period during which an employee member is separated or assigned to a position not included in a NFFE bargaining unit;

(c) at the end of the pay period during which the Servicing Personnel Office receives a notice from the NFFE or a Local of NFFE that an employee member has ceased to be a member in good standing;

(d) annually during the first full pay period after September 1, after receipt of the employee member's written revocation of allotment (SF-1188 or memorandum in duplicate), provided that the revocation is received by the Servicing Personnel Office on or before August 15 of each year, and provided the employee verifies that he/she has had NFFE dues withheld for more than one year.

11. The Servicing Personnel Office and the employee members have a mutual responsibility to assure timely revocation of an employee's allotment for NFFE dues when the employee is promoted or assigned to a position not included in a bargaining unit represented by NFFE. If the dues allotments continue and the employee fails to notify his/her Servicing Personnel Office, the retroactive recovery of dues withheld from NFFE shall not be made, nor shall a refund be made to the employee.

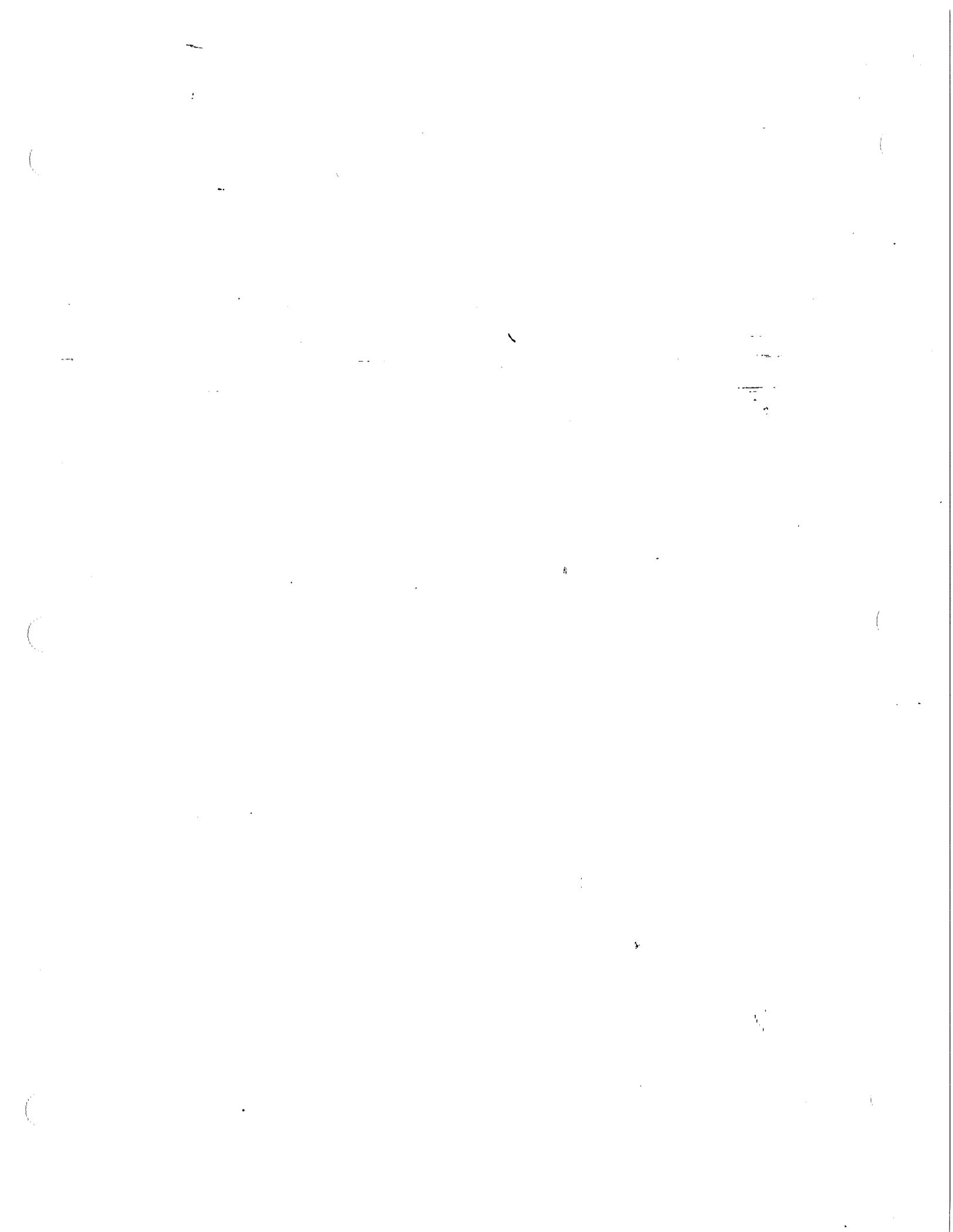
12. The parties to this agreement recognize that problems may occur in the administration of this agreement and the dues withholding program. The parties agree to exchange names, addresses and telephone number of responsible officials and/or technicians of NFFE and USDA to facilitate resolution of problems. These individuals shall cooperate fully in an effort to resolve any issue relating to dues withholding under the terms of this Memorandum of Understanding.

13. This Memorandum of Understanding shall remain in effect for as long as NFFE holds exclusive recognition in USDA, except that either party may propose amendments annually, before the anniversary date of the signing of this agreement.

Agreed to, signed at Washington, D.C. on October 20, 1983.

William J. Riley, Jr.
 Director of Personnel
 Department of Agriculture

James M. Lee
 National President
 National Federation of Federal
 Employees



TEXAS UPWARD MOBILITY PROGRAM

PURPOSE

The Texas Upward Mobility Program (UMP) is established to provide career opportunities for career-conditional and career employees in single interval series positions, GS-1 through GS-9. This on going career program will enable employees to enter and qualify for positions of different and/or greater responsibility to achieve their highest potential.

AUTHORITY AND INSTRUCTION

The State's Upward Mobility Program will be established and implemented in accordance with the provisions of the Federal Personnel Manual (FPM); Department of Agriculture Personnel Manual (DPM); the Office of Personnel Management Regulations; the Equal Employment Opportunity Act of March 24, 1972; Executive Order 11478; the Public Law-5057; the Government Employees Training Act; and the Civil Service Reform Act of 1978.

This program will be implemented as provided for in FmHA Instruction 2045-Y. These Instructions and DPM, Chapter 411 shall govern implementation of the Upward Mobility Program for Texas.

OBJECTIVES

The Farmers Home Administration's (FmHA) Upward Mobility Program is an in house training program designed to meet specific agency personnel needs and to improve career opportunities for employees. It is designed for employees who are the most able and most deserving of special career assistance serving in career or career-conditional appointments in single interval series positions, GS-1 through GS-9.

Specific objectives of the program are:

1. To effectively utilize the potential of Farmers Home Administration employees in the State to meet current and projected staffing needs.
2. To provide training and other opportunities for employees to acquire needed knowledges, skills, and abilities.
3. To provide an alternative method of filling positions compatible with the personal career goals of high quality employees currently in single interval series positions who have limited opportunities for advancement.
4. To meet unfulfilled agency recruitment needs.
5. To make Farmers Home Administration's Upward Mobility efforts consistent with the agency's Affirmative Action Plan and Federal Equal Employment Recruitment Plan.

PROGRAM RESPONSIBILITIES

The Administrative Officer, under the supervision of the State Director, will be responsible for implementing the program and ensuring that the program is carried out in accordance with current agency policies and procedures. Specific responsibilities for the Upward Mobility Program are outlined in FmHA Instruction 2045-Y.

DESCRIPTION OF THE PROGRAM

Initially, there will be six positions designated as Upward Mobility positions in the State. These positions will be three Loan Assistants, GS-1165-5, target level position will be Agricultural Management Specialist, GS-475-7 with promotion potential to GS-9; one GS-1165-5, Loan Assistant, entry level, target level will be Loan Assistant, GS-1165-7 with promotion potential to a Loan Specialist, GS-1165-11; and the two positions in the State Office which were previously designated and filled through Upward Mobility. When an incumbent of an Upward Mobility position is no longer in that position, the need for additional Upward Mobility positions will be evaluated and there will be no less than two and no more than six Upward Mobility positions at any given time.

The positions in the Upward Mobility Program will be selected to ensure that incumbents have access to adequate educational institutions to meet the college course requirements of the Qualification Standards.

The Upward Mobility positions will be announced in accordance with appropriate procedures and will be identified as Upward Mobility positions when announced. The Vacancy Announcements will be distributed to all employees within the State through the regular mail system.

BASIC ELIGIBILITY CRITERIA

To be eligible to apply for participation in the Upward Mobility Program an employee must:

1. Be in a single interval series position, GS-1 through GS-9 grade level.
2. Be employed by Farmers Home Administration in Texas for at least one year of continuous service prior to the application closing date.
3. Hold at least a competitive career; Career-Conditional Appointment; a Schedule A, Section 213.3102(u) (Physical Handicap) continuing excepted appointment; or a Veteran's Readjustment Appointment (VRA).

MOBILITY

Applicants selected for Upward Mobility positions will be subject to relocation based on Farmers Home Administration State Program needs in accordance with applicable FmHA procedure.

SALARY RETENTION

If the selected employee is otherwise eligible for the Upward Mobility Program and the salary cannot be accommodated within the rate range, the reassignment or demotion of an employee entering such a program is not "at the employee's request" and the employee will be entitled to salary retention.

EVALUATION AND SELECTION OF PARTICIPANTS

A review panel of at least three Farmers Home Administration employees will be established to review and evaluate applicants. One of the panel members will be a member of the State EEO Committee when one is established, one of the EEO counselors, the Federal Women's Program Coordinator or the Hispanic Program Coordinator.

Selection criteria and the review process will be conducted in accordance with Farmers Home personnel procedures and the Upward Mobility Instructions.

The State Director will be the selecting official.

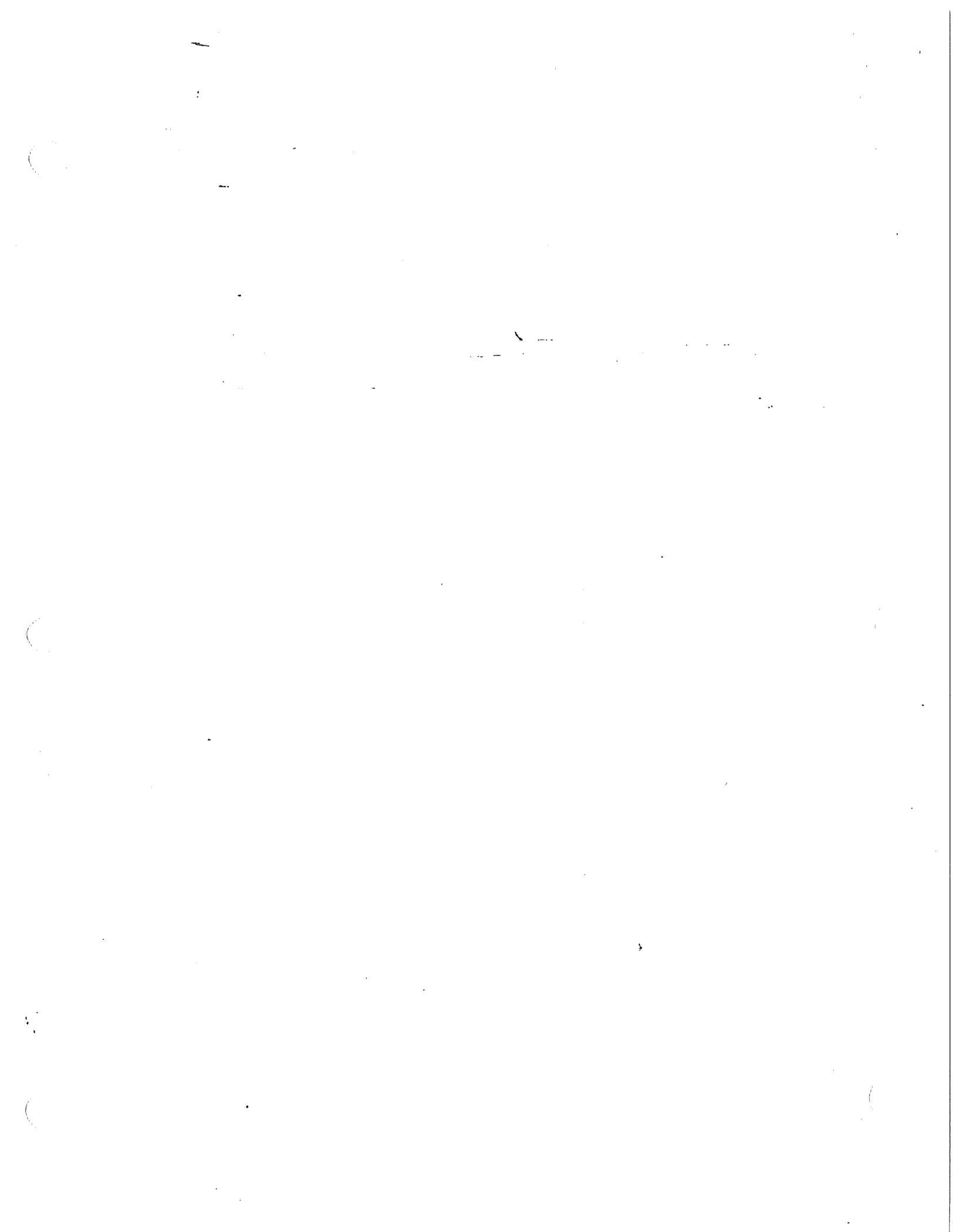
TRAINING PLAN

An individual training agreement and plan will be developed within thirty days after selection of an employee to the Upward Mobility Program. The employees shall be consulted and advised regarding the Upward Mobility training plan. The training plan shall be signed by the employee and the Administrative Officer.

EVALUATION

The employee's supervisor will conduct an evaluation of the Upward Mobility Program with the employee after three months and at three month intervals during the first year. This evaluation will be submitted to the Administrative Officer for review. After the first year, the evaluation of the trainees progress will be done at a six month interval. Prior to any promotions, the supervisor will certify that the trainee is progressing satisfactorily and has clearly demonstrated the ability to perform satisfactorily at the next higher level.

The Upward Mobility Program will be evaluated each year by the Administrative Officer in consultation with the Upward Mobility incumbents, the supervisor, and a representative from the EEO Committee when it is established. The evaluation will be made to determine the effectiveness of the program, the cost effectiveness of the program, and employee morale.



The Federal Service Labor-Management Relations Statute

(Chapter 71 of Title 5
of the U.S. Code
and Related Amendments
to 5 USC 5596(b)-the
Back Pay Act)

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

“Subpart F—Labor-Management and Employee Relations

“CHAPTER 71—LABOR-MANAGEMENT RELATIONS

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

- “7101. Findings and purpose.
- “7102. Employees' rights.
- “7103. Definitions; application.
- “7104. Federal Labor Relations Authority.
- “7105. Powers and duties of the Authority.
- “7106. Management rights.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

“Sec.

- “7111. Exclusive recognition of labor organizations.
- “7112. Determination of appropriate units for labor organization representation.
- “7113. National consultation rights.
- “7114. Representation rights and duties.
- “7115. Allotments to representatives.
- “7116. Unfair labor practices.
- “7117. Duty to bargain in good faith; compelling need; duty to consult.
- “7118. Prevention of unfair labor practices.
- “7119. Negotiation impasses; Federal Service Impasses Panel.
- “7120. Standards of conduct for labor organizations.

“SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

“Sec.

- “7121. Grievance procedures.
- “7122. Exceptions to arbitral awards.
- “7123. Judicial review; enforcement.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"Sec.

"7181. Official time.

"7182. Subpoenas.

"7183. Compilation and publication of data.

"7184. Regulations.

"7185. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

5 USC 7101.

"§ 7101. Findings and purpose

"(a) The Congress finds that—

"(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

"(A) safeguards the public interest,

"(B) contributes to the effective conduct of public business, and

"(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

"(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

5 USC 7102.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

5 USC 7103.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

“(2) ‘employee’ means an individual—

“(A) employed in an agency; or

“(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

“(i) an alien or noncitizen of the United States who occupies a position outside the United States;

“(ii) a member of the uniformed services;

“(iii) a supervisor or a management official;

“(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency; or

“(v) any person who participates in a strike in violation of section 7311 of this title;

5 USC 7311.

“(3) ‘agency’ means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans’ Canteen Service, Veterans’ Administration), the Library of Congress, and the Government Printing Office, but does not include—

5 USC 2105.

“(A) the General Accounting Office;

“(B) the Federal Bureau of Investigation;

“(C) the Central Intelligence Agency;

“(D) the National Security Agency;

“(E) the Tennessee Valley Authority;

“(F) the Federal Labor Relations Authority;

or

“(G) the Federal Service Impasses Panel;

“(4) ‘labor organization’ means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

“(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

“(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

“(C) an organization sponsored by an agency; or

“(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

“(5) ‘dues’ means dues, fees, and assessments;

“(6) ‘Authority’ means the Federal Labor Relations Authority described in section 7104(a) of this title;

“(7) ‘Panel’ means the Federal Service Impasses Panel described in section 7119(c) of this title;

“(8) ‘collective bargaining agreement’ means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint—

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning—

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

"(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

"(B) relating to the classification of any position; or

"(C) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

"(A) an employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

“(ii) requiring the consistent exercise of discretion and judgment in its performance;

“(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

“(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

“(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A) (i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

“(16) ‘exclusive representative’ means any labor organization which—

“(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

“(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

“(i) on the basis of an election, or

“(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter;

“(17) ‘firefighter’ means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

“(18) ‘United States’ means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

“(b) (1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

Presidential order.

“(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

“(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

“(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

Presidential order.

5 USC 7104.

"§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c) (1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

"(2) The General Counsel may—

"(A) investigate alleged unfair labor practices under this chapter,

"(B) file and prosecute complaints under this chapter, and

"(C) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

5 USC 7105.

"§ 7105. Powers and duties of the Authority

"(a) (1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

"(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

"(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative

Report to
President.

by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

“(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

“(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

“(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

“(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

“(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title; Hearings.

“(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

“(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

“(b) The Authority shall adopt an official seal which shall be judicially noticed.

“(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

“(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary. 5 USC 3105.

“(e) (1) The Authority may delegate to any regional director its authority under this chapter—

“(A) to determine whether a group of employees is an appropriate unit;

“(B) to conduct investigations and to provide for hearings;

“(C) to determine whether a question of representation exists and to direct an election; and

“(D) to supervise or conduct secret ballot elections and certify the results thereof.

“(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

“(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may

affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

“(1) the date of the action; or

“(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

“(g) In order to carry out its functions under this chapter, the Authority may—

Hearings.

“(1) hold hearings;

Administer oaths.

“(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

“(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

“(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

“(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

5 USC 7106.

“§ 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.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"§ 7111. Exclusive recognition of labor organizations

5 USC 7111.

"(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

"(b) If a petition is filed with the Authority—

Petition.

"(1) by any person alleging—

"(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

Hearing.

Election.

"(c) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

“(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

“(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

“(f) Exclusive recognition shall not be accorded to a labor organization—

“(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

“(2) in the case of a petition filed pursuant to subsection (b) (1) (A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

“(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

“(A) the collective bargaining agreement has been in effect for more than 3 years, or

“(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

“(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

“(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

5 USC 7112.

“§ 7112. Determination of appropriate units for labor organization representation

“(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

“(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

Post, 1215.

“(1) except as provided under section 7135 (a) (2) of this title, any management official or supervisor;

“(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

"§ 7113. National consultation rights

5 USC 7113.

"(a) (1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

5 USC 7114.

"§ 7114. Representation rights and duties

"(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

"(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

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

"(ii) the employee requests representation.

"(3) Each agency shall annually inform its employees of their rights under paragraph (2) (B) of this subsection.

"(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

"(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

"(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

"(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

"(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

“(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

“(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

“(c) (1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

“(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

“(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

“(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

“§ 7115. Allotments to representatives

5 USC 7115.

“(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

“(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

“(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

“(2) the employee is suspended or expelled from membership in the exclusive representative.

“(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

“(2) (A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

“(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

5 USC 7116.

"§ 7116. Unfair labor practices

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations,

or

"(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

Anse. p. 1114.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

"(1) to meet reasonable occupational standards uniformly required for admission, or

"(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121 (e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

"(e) The expression of any personal view, argument, opinion or the making of any statement which—

"(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

"(2) corrects the record with respect to any false or misleading statement made by any person, or

"(3) informs employees of the Government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

"§ 7117. Duty to bargain in good faith; compelling need; duty to consult 5 USC 7117.

"(a) (1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b) (1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a) (3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines that a compelling need for a rule or regulation does not exist.

Hearing.

"(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c) (1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

Appeal.

"(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

Petition.

"(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2) (B) of this subsection, the agency shall—

"(A) file with the Authority a statement—

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3) (B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

"(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation

informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

Hearing.

“(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

5 USC 551.

Transcript.

“(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

“(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

“(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

“(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

“(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

“(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

Rules and regulations, interpretation.

“(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

5 USC 7119.

“§ 7119. Negotiation impasses; Federal Service Impasses Panel

“(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"§ 7118. Prevention of unfair labor practices

5 USC 7118.

"(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person,

or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period, the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The General Counsel may prescribe regulations providing for

Regulations.

“(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

“(1) either party may request the Federal Service Impasses Panel to consider the matter, or

“(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

“(c) (1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

“(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

Membership.

“(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

“(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

“(5) (A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

Investigation.

“(i) recommend to the parties procedures for the resolution of the impasse; or

“(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

“(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

“(i) hold hearings;

“(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

“(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

“(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

5 USC 7120. § 7120. Standards of conduct for labor organizations

“(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

“(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

“(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

“(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

“(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

“(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

“(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

“(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

Filing of reports.

“(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

Regulations.

“(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

“(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential

employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

“(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

“(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

“(2) take any other appropriate disciplinary action.

“SUBCHAPTER III—GRIEVANCES

“§ 7121. Grievance procedures

5 USC 7121.

“(a) (1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

“(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

“(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

“(1) be fair and simple.

“(2) provide for expeditious processing, and

“(3) include procedures that—

“(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

“(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

“(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

“(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

“(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

“(2) retirement, life insurance, or health insurance;

“(3) a suspension or removal under section 7532 of this title;

“(4) any examination, certification, or appointment; or

“(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

“(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

5 USC 7321.

Ante, p. 1114.

Ante, p. 1140.*Ante*, p. 1133,
1136.*Ante*, p. 1138.*Ante*, p. 1143.

5 USC 7122.

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.

"(e) (1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

"(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701 (c) (1) of this title, as applicable.

"(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121 (f) of this title). If upon review the Authority finds that the award is deficient—

"(1) because it is contrary to any law, rule, or regulation; or

"(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

“(b) If no exception to an arbitrator’s award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator’s final award. The award may include the payment of backpay (as provided in section 5596 of this title).

“§ 7123. Judicial review; enforcement

5 USC 7123.

“(a) Any person aggrieved by any final order of the Authority other than an order under—

“(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

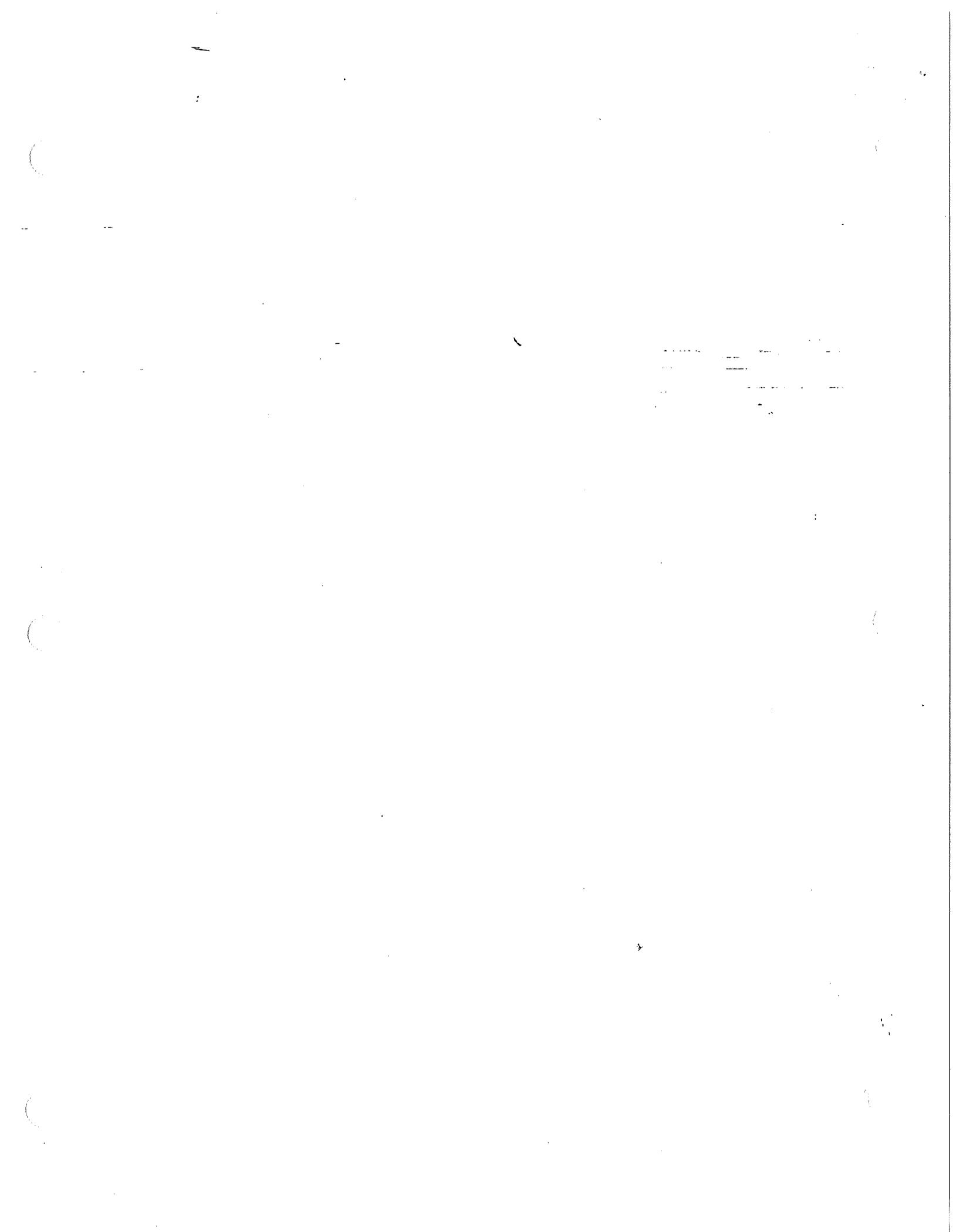
“(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority’s order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

“(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order. Petition.

“(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority’s order unless the court specifically orders the stay. Review of the Authority’s order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole,

5 USC 706.



shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

“(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

5 USC 7131.

“§ 7131. Official time

“(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

“(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

“(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

“(d) Except as provided in the preceding subsections of this section—

“(1) any employee representing an exclusive representative, or

“(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

5 USC 7132.

“§ 7132. Subpenas

“(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

5 USC 3105.

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

“(b) If no exception to an arbitrator’s award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator’s final award. The award may include the payment of backpay (as provided in section 5596 of this title).

“§ 7123. Judicial review; enforcement

5 USC 7123.

“(a) Any person aggrieved by any final order of the Authority other than an order under—

“(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

“(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority’s order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

“(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

Petition.

“(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority’s order unless the court specifically orders the stay. Review of the Authority’s order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole,

5 USC 706.

“(1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

“(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

“(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a) (1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

“(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

“§ 7133. Compilation and publication of data

5 USC 7133.

“(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

“(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

5 USC 552, 552a.

“§ 7134. Regulations

5 USC 7134.

“The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

“§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

5 USC 7135.

“(a) Nothing contained in this chapter shall preclude—

“(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

“(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

“(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions

5 USC 7301 note,
7701 note.

of this chapter or by regulations or decisions issued pursuant to this chapter.”

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code is amended to read as follows:

“(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

“(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

“(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

“(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701(g) of this title; and

“(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

“(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

“(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

“(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

“(3) For the purpose of this subsection, ‘grievance’ and ‘collective bargaining agreement’ have the meanings set forth in section 7103 of this title, ‘unfair labor practice’ means an unfair labor practice described in section 7116 of this title, and ‘personnel action’ includes the omission or failure to take an action or confer a benefit.”

Annc. p. 1191.

Annc. p. 1138.

5 USC 5551,
5552.

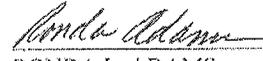
Annc. p. 1192.

MEMORANDUM OF AGREEMENT
March 14, 2005

This Memorandum of Agreement (MOA) is between the American Federation of Government (AFGE) Local # 571 and the USDA, Farm Service Agency, Texas. This agreement applies to the adoption and implementation of the Agency's Pilot Flexiplace Program for State Office Employees. Said Program was distributed by copy of National Notice PM-2379 "Pilot FSA Flexiplace Program for State Office Employees." The parties agree to immediately adopt the policy as written.

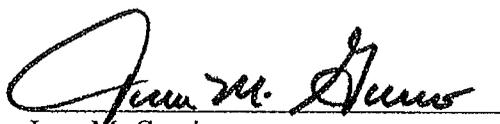
This MOA will remain in effect, until such time that additional Flexiplace Directives are made available to the Agency.


JOHN T. FUSTON
State Executive Director
USDA Texas Farm Service Agency

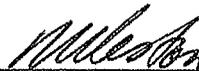

RONDA L. ADAMS
President
American Federation of Government
Employees (AFGE) Local #571

MEMORANDUM OF AGREEMENT
May 27, 2010

This Memorandum of Agreement (MOA) is between the AFGE Local #571 and USDA, Farm Service Agency, Texas State Office. This agreement allows the replacement of TX Exhibit 1 of "Leave Administration and Alternative Work Schedules", Short Reference 17-PM (Rev. 2) with the Exhibit attached to this agreement. Each page of the attached exhibit is initialed by the parties below to verify the pages agreed upon.



Juan M. Garcia
State Executive Director
USDA, Texas Farm Service Agency



Ronda Weston
President
AFGE Local #571

MEMORANDUM OF AGREEMENT

June 17, 2011

This Memorandum of Agreement (MOA) is between the AFGE Local #571 and USDA, Texas Farm Service Agency.

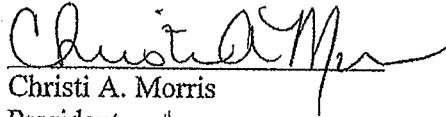
This MOA serves to codify negotiations between the parties for the implementation of the requirements of the Telework Enhancement Act.

The parties agree that Telework will not be approved on a regularly scheduled, recurring basis for any Bargaining Unit Members. Telework may occasionally be approved on a highly limited basis to address Ad-Hoc situations, which are deemed appropriate by the employee's supervisor.

It is the opinion of the parties that employees of the USDA, Texas Farm Service Agency have assigned duties, which require daily contact with other people and that only highly-limited Ad-Hoc and situational approvals may be deemed appropriate for approval. It is further the concern of the parties that the assigned duties of the employees of the Texas Farm Service Agency require the extensive use of privileged and Personally Identifiable Information (PII), which does not lend itself to the portability needs of the Telework Enhancement Act. When removed to offsite locations, providing adequate security for that information is of concern.



James B. Douglass
Acting State Executive Director
USDA, Texas Farm Service Agency



Christi A. Morris
President
AFGE Local #571