

Collective Bargaining Agreement

Between

National Oceanic and Atmospheric Administration
National Ocean Service
Office of Response and Restoration
Emergency Response Division

And

International Federation of Professional and Technical Engineers
Local 8A
ERD Chapter

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ARTICLE 1. Preamble

This Collective Bargaining Agreement (CBA) is entered into by and between the National Oceanic and Atmospheric Administration (NOAA) Office of Response and Restoration (OR&R) Emergency Response Division, hereinafter referred to as Management, and the International Federation of Professional and Technical Engineers (IFPTE), Local 8A, as the exclusive representative of all full-time and part-time non-supervisory personnel of the Emergency Response Division of OR&R, hereinafter referred to as the Union.

The parties mutually recognize that the Congress of the United States has expressed public policy concerning labor relations in the Federal Government as follows (5 U.S.C. §7101): "...the right of employees to organize, bargain collectively and participate through labor organizations of their own choosing in decisions which affect them, safeguards the public interest, contributes to the effective conduct of the public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment; and 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.

Management and the Union agree to abide by the Federal Labor-Management Relations Statute. Both parties agree to recognize the rights of the other as established by this Statute. Both parties also recognize the rights of the bargaining unit employees as established by this statute. The parties acknowledge the importance of free and open communications and the importance of building a partnership that enables the workforce to develop its full potential and be aligned with NOAA objectives. The Parties endorse the use of formal and informal meetings to promote the exchange of information and the discussion of appropriate matters of concern. The parties do not intend by this CBA to discourage or impede in any way open communications among the Union, individual employees and Management representatives. Management and Union share in building an organization that can successfully meet NOAA goals and objectives. The partnership that is needed for a high-performing organization requires the ability to demonstrate:

- A. A genuine concern for people, whether employees, environmental stakeholders, or the public.
- B. An unflagging desire to improve in every possible way

- C. A clear alignment of all strategies, processes, and activities with visions and missions.
- D. A wise use of data and information to measure and improve performance
- E. A strong position as leaders in our fields

The Parties agree that should the IFPTE request certification to include subsequently organized groups of employees in OR&R, such certification will not be opposed by Management if the groupings would be considered an appropriate unit under the law.

ARTICLE 2. Governing Laws and Regulations

Section 1

In the administration of all matters covered by this agreement, the parties are governed by government-wide rules and regulations in effect on the effective date of this agreement and not in conflict with existing agreements between the parties. Where the terms of this agreement conflict with government-wide rules and regulations issued after the effective date of this agreement, the terms of this agreement shall be controlling. All applicable Federal laws also govern this agreement. Such laws will take precedence over this agreement.

Section 2

This agreement supersedes all previous agreements between Management and the Union and any negotiable past practices in conflict with this agreement. Any prior benefits and practices and understandings which were in effect on the effective date of this agreement and are not specifically covered by this agreement and do not detract from it will not be changed except in accordance with this agreement and 5 USC §71.

ARTICLE 3. Terms of Agreement

Section 1

This Agreement will be implemented and become effective when it has been approved, ratified and signed by the parties, including review pursuant to 5 U.S.C. § 7114.

Section 2

This Agreement will remain in full force and effect for a period of three (3) years after its effective date. It will be automatically renewed for one (1) year periods unless either party gives the other party notice of intention to renegotiate no less than sixty (60) days prior to its termination date.

Such proposal will be accompanied by written proposals to be renegotiated unless mutually agreed otherwise by the parties. Negotiations will begin no later than thirty (30) days after these conditions are met. This CBA will be automatically extended until a new agreement is negotiated.

ARTICLE 4. Employee Rights

Section 1

Employee rights are codified in the FLSMRS at 5 USC § 7102:

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.

Section 2

Both parties recognize that employees have the right to refrain from participation in bargaining unit activities and to do so, freely, without fear of penalty or reprisal. Therefore, both parties agree that there will be no undue pressure placed on employees to become active members of the Union. This section is not intended to limit the reasonable recruiting efforts of the Union in their attempts to increase active membership.

Section 3

All employees shall be treated fairly and equitably in all aspects of personnel management, and without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, handicapping condition, Union membership, and with proper regard and protection of their privacy and constitutional rights.

Section 4

Employees will be protected against reprisal for the disclosure to NOAA officials, members of Congress, or appropriate legal authorities, information that the employee believes evidences a violation of law, rule, or regulation, or evidences mismanagement, a waste of funds, or an abuse of authority. However, in the case of misconduct associated with the disclosure of information, employees may be subject to disciplinary action.

ARTICLE 5. Management Rights

Section 1

Management rights are codified in the FLSMRS as 5 USC § 7106: Management Rights

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

ARTICLE 6. Representational Rights and Duties

Section 1

Consistent with 5 U.S.C. § 7114 (a)(2)(B) the Union shall be given an opportunity to be present at any examination of an employee in the unit by a Management representative in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation. At any examination of an employee as part of an investigation which may lead to disciplinary action against that employee, the Management representative will explain the purpose of the meeting to the employee prior to the examination.

Section 2

If the employee being interviewed requests representation, no further questioning will take place until the employee has been given a reasonable amount of time, normally one (1) work day, to contact an appropriate representative.

Section 3

Consistent with 5 U.S.C. § 7114 (a)(2)((A), the Union will be afforded an opportunity to be represented at any formal discussion between one (1) or more representatives of Management and one (1) or more employees or their representatives concerning (a) any grievance (a meeting concerning a grievance is, by definition, a formal discussion), or (b) any personnel policy or practice or other general condition of employment. For formal discussions as in (b) above, the Union will be given advance notice of the meeting via electronic mail and/or telephonically by contacting the designated Union representative, when practicable, at least five (5) work days in advance of the discussion. The Union representative need not be present at routine informational meeting during which no discussion occurs regarding changes in personnel policy, or practices, or general conditions of employment.

Section 4

At those meetings where the Union is represented, Management will acknowledge the attendance of the Union representative at the start of the meeting. Furthermore, Management will permit the Union representative to ask questions, and to present a brief statement before the end of the meeting outlining the Union position concerning the issues. The Union Representative will refrain from activities designed to disrupt the meeting. All issues to be discussed at the meeting by Management will be listed in a written agenda, where practicable, which will be forwarded to the Union at the same time that the Union receives prior notice of the meeting.

ARTICLE 7. Official Time

Section 1

Consistent with 5 U.S.C. § 7131, the employer agrees to allow Union representatives a reasonable amount of official time to effectively complete their representational duties. Elected and appointed Union officials may use four hours per week without notification or additional explanation to Management and eight hours of official time with a written explanation to Management. Bargaining unit members representing the Union in official representational duties must request official time through their supervisors. If additional official time is required for a given pay period the Union representative will normally request and receive approval from their supervisor for the use of official time in advance. The request shall include an explanation of the circumstances establishing the need for additional time.

In the event the supervisor is unavailable, or in emergency situations, the Union Representative may proceed to use a reasonable amount of official time as provided by this contract and provide to the supervisor a record of the amount of official time used. No more than eight (8) hours will be approved in these instances.

Section 2

Official time may only be used on the days and during the times that a local Union official would be otherwise in a duty status. The Union shall provide Management with the name of local Union officials authorized to use official time within 10 business days of Union elections or appointments. The employee will enter on their timesheet, per standard time and attendance procedures, official time used for Union business. The term official time shall include the purposes set forth in 5 U.S.C. § 7131, as well as other representational activities including:

- A. Attendance at formal meetings;
- B. Attendance at meetings involving unfair labor practice charges or unit clarification petitions and preparation time for such meetings;
- C. Representation of employees in disciplinary matters in which employees are entitled to representation;
- D. Presentation of appeals in connection with statutory or regulatory procedures in which the Union is a party or is designated as the representative, (e.g., MSPB and EEOC proceedings);
- E. Attendance at Employer examinations of any bargaining unit employee, in connection with an investigation at which an employee requests such representation;
- F. Attendance at grievance meetings and arbitration hearings;
- G. Attendance at meetings of committees or workgroups when the Employer has given authorization for Union attendance;

- H. Attendance at negotiations as a member of the negotiations team;
- I. To confer with employees with respect to any matters for which remedial relief may be sought pursuant to the terms of this agreement wherein the employee has elected to have a representative and is entitled to such representation;
- J. To complete research in preparation for labor-management related meetings, negotiations, and hearings;
- K. To prepare and maintain records and reports required of the Union and its representatives by any Federal Agency;
- L. To respond to Congressional contacts relative to representational matters;
- M. Time spent in preparing replies to Employer proposals and proposed Employer policy changes submitted to the Union for comment or consideration;
- N. Time spent in labor-management meetings, or special projects mutually agreed to by the parties.

Section 3

Internal Union business will be conducted on non-duty time. The term internal Union business shall include the purposes set forth in 5 USC § 7131(b), including such actions as

- A. the solicitation of membership,
- B. elections of labor organization officials, and
- C. collection of dues.

Section 4

Employees covered by this agreement will be accorded reasonable duty time to consult with a Union representative for representational purposes or for representing themselves consistent with the terms of this agreement and applicable regulations and law. This includes time for preparation, attendance (at meetings and/or hearings) and travel of the employee for matters such as, grievance/arbitration, FLRA, MSPB, EEO, or other disciplinary actions, adverse action proceedings, and ULP charges and/or complaints. The employee will make every reasonable effort to request and have advance approval of such use of duty time. The employee will continue to administer and control his/her work-load in a manner that is in the best interest of the Division.

Section 5

It is understood that nothing in this agreement is intended to limit the statutory rights to official time provided pursuant to 5 U.S.C. § 7131 or any other statute or regulation.

ARTICLE 8. Communications

Section 1

Management agrees that the Union may have reasonable use of telephone service, fax machines, e-mail, photocopy machines, computers and printers, and regular mail/postage (including priority, express, or overnight mail) for the purpose of preparing for or facilitating labor-management relations, or any other purpose for which official time is permitted under this Agreement. The Union will ensure that its use of the above-listed equipment does not unduly interfere with the normal operations of the office.

Section 2

The above-listed equipment may not be used to conduct internal Union business. Furthermore, the parties agree that employees using the above-listed equipment shall be in non-duty or official time status, and shall not impede the work of the Agency.

Section 3

Management will make a 3' x 4' bulletin board near the staff offices in Seattle available to the IFPTE Local 8A to post information. Management will also provide a link to the IFPTE Local 8A website on the OR&R intranet site, provided such a site exists.

Section 4

Management will use a checklist job aid for ensuring new bargaining unit employees to the Division are oriented satisfactorily. A Union representative may take up to 15 minutes of official time to meet with new employees in the bargaining unit to provide appropriate orientation information. Management will provide new bargaining unit employees with a copy of their position description and a pre-approved, single sheet (8.5" x 11") piece of literature for the IFPTE Union.

Section 5

Employees will be annually informed of their rights to have Union representation in connection with an investigation, as specified in Federal Service Labor-Management Relations Statute, § 7114(a)(3).

ARTICLE 9. Dues Withholding

Section 1

Eligible employees who are members of the Union are permitted to pay dues through the authorization of voluntary allotments from their compensation. This Article covers all eligible employees:

- A. Who are members in good standing with the Union;
- B. Who voluntarily complete Standard Form 1187, Request and Authorization for Voluntary Allotment of Compensation for payment of Employee Organization
- C. Dues;
- D. Who receive compensation sufficient to cover the total amount of the allotment;

Section 2

The Union is responsible for:

- A. Purchasing and distributing Standard Form 1187;
- B. Notifying the Human Resources Office in writing of:
 - 1. Current authorized names and titles of officials who will make the necessary certification of Standard Form 1187 in accordance with this Article.
 - 2. Any change in the amount of dues to be deducted.
 - 3. Any employee who is no longer in good standing within ten (10) days of the date of such determination.
 - 4. Forwarding properly executed and certified Standard Form 1187 to the Work Force Management Office on a timely basis;
 - 5. Keeping the Human Resource Office informed of the name, title and address of the allottee to whom remittance should be sent.

Section 3

NOAA is responsible for:

- A. Permitting and processing voluntary allotment of dues in accordance with this Article;
- B. Withholding dues on a bi-weekly basis;
- C. Notifying the Union when an employee is not eligible for an allotment.
- D. Withholding new amounts of dues upon certification from the authorized Union official;
- E. Transmitting remittance checks each pay period to the allottee designated by the Union; and

- F. Providing the Union, upon request, a list of amount withheld per employee

Section 4

Joint Stipulations

- A. The amount of the dues to be deducted as allotments from compensation will normally not be changed more frequently than once each twelve (12) months.
- B. Administrative error in remittance checks will be corrected and adjusted as soon as practicable in a check to be issued to the employee organization. If the Union is not scheduled to receive a remittance check after discovery of an error, the gaining party agrees to promptly refund the erroneous remittance.

Section 5

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

- A. Starting dues withholding: First pay period after date of receipt by Work Force Management Office of properly executed Standard Form 1187. An employee must remain on payroll deduction for one (1) year after commencement of dues withholding.
- B. Changes in amounts of dues: First pay period after receipt of certification by Workforce Management Office.
- C. Revocation by employee: First pay period after receipt of properly executed and signed by appropriate Union official of a Standard Form 1188 or Request for Revocation Memorandum from the employee.
- D. Termination due to loss of membership in good standing: First pay period after receipt of notification by Human Resources Office.
- E. Termination due to the agreement between the Agency and the exclusive representative involved ceases to be applicable to the employee; or the employee is suspended or expelled from membership in the exclusive representative. Termination will be effective the first pay period after receipt of notification is provided to the designated Human Resources Official.

ARTICLE 10. Information Requests

Section 1

The Union will make all requests for information, in accordance with 5 USC 7114 (b) Federal Service Labor-Management Relations Statute, in writing. The written request will include a description of the specific information needed and an explanation of the particularized need for the information that explains how the Union intends to use the requested information and how that use of the information relates to the Union's role as the exclusive representative.

Section 2

- A. Management will provide a written response to the Union within ten (10) work days. The response will include the information or a detailed explanation as to why the information is not being provided. If Management is unclear about the Union's stated reason for needing the requested information, Management will, within five (5) work days, ask the Union to clarify the request.
- B. The Union will agree to any reasonable Management written request for delay in providing any or all of the requested information provided such a delay does not interfere with the timeliness of the underlying issue. Such a request must include an explanation for the delay and expected delivery date.

Section 3

In order to encourage exchange of information, Management may, but is not required to, have Union representation or observers on management committees that recommend changes in workplace conditions affecting the bargaining unit.

ARTICLE 11. Grievances

The grievance procedure is pursuant to the Federal Service Labor-Management Relations Statute (FSLMRS), subchapter III, 5 U.S.C. § 7121 et. seq.

Section 1

Both parties recognize the importance of prompt and equitable disposition of any grievance at the lowest organizational level possible using flexible and informal procedures. The Union or any bargaining unit employee shall have the right to present a grievance and have it promptly considered on its merits. The initiation of a grievance by any bargaining unit member shall not cast any adverse reflection on his or her standing as an employee and Management will refrain from any reprisal or adverse action to the employee or Union representative due to the initiation of a grievance. Likewise, the initiation of a grievance by Management shall not cast any adverse reflection on Management and bargaining unit members will refrain from any reprisal or adverse action to Management due to the initiation of a grievance.

Section 2

A grievance is defined as any complaint by any employee concerning any matter relating to the employment; a complaint by the Union concerning any matter relating to the employment of any employee; or, a complaint by any employee, the Union, or the Management concerning the effect or interpretation, or a claim of a breach of, this agreement. The Union also has the right to file, as a grievance under this contract, any alleged unfair labor practices. When it does so, however, it waives its right to file an unfair labor practice charge over the same issue with the appropriate authorities under law and regulation.

Section 3

Excluded from this grievance procedure are the following:

- A. Any claimed violation of subchapter III of Chapter 73 of Title 5, United States Code, relating to prohibited political activities;
- B. Retirement, life insurance, or health insurance;
- C. A suspension or removal under Section 7532 of Title 5, United States Code (national security);
- D. Any examination, certification, or appointment;
- E. The classification of any position that does not result in the reduction in grade or pay of an employee;
- F. Termination of a probationary employee in accordance with Office of Personnel Management regulations and appropriate United States Code.
- G. Notice of proposed personnel action;

H. Matters excluded by law or government-wide rule not in conflict with this agreement;

I. Complaints or appeals from persons outside the bargaining unit;

Nothing in these exclusions is intended to prevent any employee from filing an EEO complaint using the established protocols for such complaints.

Section 4

Any bargaining unit member or group of members may present such grievances to Management and have them adjusted, without involvement of the Union, as long as the adjustment is not inconsistent with the terms of this agreement. In these cases the Union must be given an opportunity to be present at any meeting with the grievant regarding adjustment of the grievance. A bargaining unit member or group of members proceeding without the involvement of the Union must follow the negotiated grievance procedure. When an employee files a grievance and does not designate the Union as his or her representative, if the Union requests, Management shall furnish the Union with a copy of the filed grievance, and the response issued at each step.

Section 5

For discussions with bargaining unit members concerning grievances, the member will be given reasonable time to notify a Union representative.

Section 6

Under circumstances involving EEO complaints a bargaining unit member has the option of filing a grievance under the negotiated grievance procedure or an EEO complaint under the EEO complaint procedure, but not both. For the purpose of this Article an bargaining unit member shall be deemed to have exercised his/her option at such time as the bargaining unit member timely initiates an action under the applicable statutory procedure or timely files a grievance in writing in accordance with the provision of the procedure in this Article, whichever occurs first.

Section 7

The Parties acknowledge that this grievance procedure neither expands nor contracts the jurisdiction of the Merit Systems Protection Board as provided by law. Further, nothing in this Article is intended to limit the arbitrator's authority to determine questions of arbitrability.

Section 8

The grievance shall be filed at the step at which the subject matter of the grievance arose, except in the case of grievances involving disciplinary actions that may be filed at the next higher supervisory level. In the event that Management decides that the grievance can effectively be resolved at a lower level than that at which it was initiated, Management may remand the grievance to the appropriate level and the remand shall be accomplished in a timely manner. In such cases the time

requirement for an answer shall be fifteen (15) working days from the date of the remand.

The grievance procedure shall consist of the following steps:

STEP ONE. Any bargaining unit member may refer a grievance to the Union if he or she desires. At step one in accordance with this Article, a grievance is to be presented to the first level supervisor of the grievant, or his or her designee, in writing. The grievance must be received not later than thirty (30) working days following the date on which the grieving party knew or should have known of the facts giving rise to the grievance. When the basis for the grievance is a continuing practice or condition then the grievance can be filed at any time. The bargaining unit member or his/her representative may request an oral presentation of the written grievance. If requested, the oral presentation will take place within ten (10) working days following the date the grievance was received. A written grievance answer will be issued by the first level supervisor within thirty (30) working days following the date on which the grievance was received.

The written grievance shall include:

- A. The name and office address of the bargaining unit member;
- B. A statement with details of the issue and the grounds for the grievance, including, any law, rule or regulation violated, if known;
- C. Corrective action requested and the reasons for such action; and,
- D. The name of the designated representative, if any.

STEP TWO. Absent resolution of the grievance at step one, the bargaining unit member and/or his or her representative may present the grievance at step two. The step two grievance must be in writing and signed by the grievant or his or her representative, and received by the second level supervisor or his or her designee within twenty (20) working days of the issuance of the step one answer. The bargaining unit member or his/her representative may request an oral presentation in the written grievance. If requested, the oral presentation will take place within ten (10) working days following the date the grievance was received unless the parties mutually agree otherwise. The step two answer will be issued in writing, within twenty (20) working days following the date on which the step two grievance was received.

Failure on the part of Management to meet any of the time requirements of this procedure during step one will permit the grievance to advance to step two upon written initiation by the bargaining unit member or designated representative. Failure on the part of Management to meet any of the time requirements of this procedure during step two will mean that Management agrees to the position of the bargaining unit member or designated representative, provided that the position is

consistent with applicable law or government-wide regulation. If the bargaining unit member or representative fails to prosecute the grievance within the stated time frames, the grievance will be terminated.

Section 9

Management grievances must be filed within thirty (30) working days of the date Management knew or should have known about the matter, unless the matter is a continuing practice or condition, which may be filed at any time. Management grievances shall be in writing addressed to the Chief Steward. In the event the Chief Steward is the subject of the grievance, the grievance shall be addressed to the chapter president. The Chief Steward or his or her designee, shall issue a written answer addressed to the Employer representative who signed the grievance. The answer shall be provided within thirty (30) working days after receipt of such grievance. Management may request an oral presentation of the written grievance. If requested, the oral presentation will take place within ten (10) working days following the date the grievance was received.

Section 10

Nothing herein should be deemed as foreclosing either the Union or Management from attempting to adjust the grievance by using alternative dispute resolution procedure.

Section 11

Any of the foregoing time requirements can be extended by mutual written consent of all parties. During response emergencies any of the foregoing time requirements can be extended up to 30 days upon reasonable written request by either party. All correspondence between the parties for grievance and arbitration processing shall be by United States Postal Service, a commercial delivery service, fax machine, electronic mail or delivered in person. Time limits under this Article shall commence on the date of receipt

ARTICLE 12. Arbitration

Section 1

If the answer at the final step of the grievance procedure does not resolve the grievance, the Union or Management may refer the grievance to binding arbitration by mailing or otherwise transmitting written notice to the other party within twenty (20) working days after receipt of the last answer. If Management fails to issue a timely decision at the last step of the grievance procedure, or fails to deliver the decision to the Union, the Union may invoke arbitration under Section 7 below within forty (40) workdays of the date when a decision should have been issued by Management.

Upon referral of a grievance to arbitration, the party invoking arbitration shall request the Federal Mediation and Conciliation Service (FMCS) to submit a list of five arbitrators having federal sector experience. The party requesting the list of arbitrators shall pay the fee charged by the FMCS for production of the list. The parties will meet within ten (10) days of receipt of the list of arbitrators.

If the parties cannot mutually agree upon one of the listed arbitrators, they shall alternately cross off one name at a time until one arbitrator remains, who shall then be the arbitrator selected by the parties. The right to be the first to cross off the name of an arbitrator shall be determined by coin toss.

Section 2

The parties agree that arbitrations will be held in Seattle unless mutually agreed otherwise. To the extent available, the arbitrators will be from the Seattle area.

Section 3

The parties may mutually agree to consolidate grievances containing substantially common issues of law and fact. The parties will endeavor to accomplish any mutually agreed upon consolidation five (5) days after a grievance has been referred to arbitration.

Section 4

The arbitrator will be requested by the parties to render a decision as soon as possible, but no later than thirty (30) days after the conclusion of the hearing unless the parties agree otherwise.

Section 5

The Arbitrator is bound by 5 USC 7117 § (a)(1). Further, the Arbitrator shall have no authority to alter the terms of this agreement. The decision of the arbitrator will be final and binding on the Parties, subject to the right of appeal set forth in the FSLMRS.

Section 6

Any arbitration involving alleged prohibited personnel practices will allow the arbitrator to order a stay of any personnel action in a manner similar to the manner described in 5 USC 1221 (c) with respect to the Merit Systems Protection Board (MSPB); and the taking, by an agency, of any disciplinary action identified under 5 USC 1215 (a)(3) that is otherwise within the authority of such agency to take.

Section 7

Should either party refuse to participate in arbitration or should either party fail to respond in a timely manner at the last step of the grievance procedure, the other party may unilaterally employ an arbitrator and present the case to the arbitrator. The arbitrator will have the authority to render a decision. At least ten (10) work days before an arbitrator is contacted by a party under this section, that party will send written notice to the party refusing to participate in arbitration of its intention to contact an arbitrator. The parties acknowledge that refusal to participate does not include reasonable requests for postponements made by either party.

Section 8

- A. The Union and Management will share the arbitrator's fees and expenses equally, and the cost, if any, of a mutually agreed upon hearing facility if government space is not available.
- B. A transcript of the proceedings will be made unless the Union and Management mutually agree that one is not needed. The cost of the transcript will be shared equally.
- C. Each party will be responsible for the costs of their own representation unless otherwise directed by the arbitrator.

Section 9

In the event the party invoking arbitration fails to contact the arbitrator selected by the parties for the purpose of scheduling a hearing date(s) within 60 calendar days of the date the party invoked the arbitration process, the arbitration shall be deemed dismissed with respect to subject grievance, unless the parties agree otherwise. The parties will cooperate in agreeing upon arbitration dates in an effort to resolve the dispute.

ARTICLE 13. Official Travel

Section 1

The Division shall follow the NOAA Travel Regulations (NTR), provided such regulations do not conflict with this agreement. If there is no reference in the NTR that deals with the issue in question, the agency will consult the Department of Commerce Travel Regulations (DOCTR), then the Federal Travel Regulations (FTR). If any changes are made to either the DOCTR or the NTR regulations during the term of this agreement, the provisions of this agreement shall be binding.

Section 2

Management will make a reasonable attempt to ensure that travel assignments are made in a fair manner. When practical, Management will solicit volunteers from among qualified employees for travel assignments. Both parties understand that management has the final authority to determine all the qualifications necessary to perform all assignments and to assign work to individual employees. Upon employee request, Management will provide an explanation in writing as to why an employee was not selected for a specific assignment.

Section 3

When practical, time spent on travel status will be scheduled during normal working hours of the traveling employee. However, employees may travel at other times provided it does not impede the mission or increase costs to the Division.

Section 4

Employees will use government issued travel cards for official travel expenses unless such use is impractical or would cause exceptional inconvenience to the traveler or where exemption from use of the travel card is specified in the FTR. Upon request, supervisors will help employees overcome any administrative issues that may delay reimbursement for any timely submitted travel voucher.

Section 5

Employees will not be required to use privately owned vehicles (POVs) for official travel. However, an employee may elect to use a POV if the Agency mission is not impeded. Employees will be responsible for any additional cost, beyond what is authorized, that is incurred by their use of their POV.

Section 6

Employees will not be required to share lodging accommodations unless emergency conditions require this. Management will make every reasonable effort to find individual lodging. If sharing of lodging is required, this will be discussed with the employee as a condition of, and prior to, the travel. Employees will not be required to share lodging with a person of the opposite gender under any circumstance. Employees may, at their discretion, agree to share lodging with persons of the opposite gender in a bunkhouse, RV or dormitory type setting in which 4 or more

people share accommodations. No employee will be penalized for deciding not to share lodging with a person of the opposite gender, although such a decision may require management to assign the job in question to another person if no other arrangement for lodging is available. Management will not preclude participation of an employee in a response or project without first giving the employee the opportunity to accept or decline available or reasonable alternative lodging arrangements.

Section 7

- A. The Union may request travel and per diem expenses related to any official time activities listed in Article 7 Official Time of this agreement. Such requests must explain the need for the Union's physical presence and the unavailability of local representation. The parties agree to utilize teleconferencing capabilities to minimize travel cost whenever practicable. Management will approve, on a case-by-case basis, any reasonable request that is necessary to avoid impeding the effectiveness of the meeting provided funds are available and travel does not negatively impact the Division.
- B. Travel requests necessary for one ERD Union representative to attend the Department of Commerce Labor Management Forum and/or any Forum subgroup meetings (one person per trip) will be funded subject to budget constraints. Such travel will not exceed two (2) trips in a calendar year nor more than five (5) days in duration per any one trip as long as Executive Order 13522 is in effect.
- C. Subject to budget constraints, Management will fund travel and per diem expenses, not to exceed five (5) days, or one trip per year, for one (1) Union official to attend training related to official representational duties of the Union. This training may not be before internal Union activities.
- D. The Union may request travel and per diem expenses for employees who are officials/ stewards of the Union who have been designated in writing and who are otherwise in a duty status to participate in activities, including special projects mutually agreed to by the parties, labor-management meetings, or partnership activities. Management will consider on a case-by-case basis any reasonable request that is consistent with the objectives and goals of the organization. The Union shall make every practicable effort to rely on employees who are locally available for participation in such activities.
- E. When the Union files a grievance, and the parties agree that travel is necessary (i.e., alternative forms of meeting such as conference calling would fail to provide for an effective grievance meeting and no local representative is available), Management and the Union agree to equally share the travel costs and per diem for one Union representative when necessary to represent the bargaining unit.
- F. In the event of arbitration, Management and the Union agree to pay for their own witnesses.

ARTICLE 14. Computer Security and IT Policy

Section 1

Personal entertainment files, such as music files and movie files, may not be downloaded to government owned computers. Such files that are for official government business may be downloaded to government-owned computers or transferred to personal computers subject to the restrictions in this Article.

Section 2

- A. Software that is to be used on government computers is to be purchased by the government. Employees that need such software for the performance of their official duties should make the purchase request through their supervisor. Management should respond to any employee software request within 10 workdays.
- B. Management will acknowledge the suggestions of the NOAA/ERO Labor-Management committee on Division IT policy and requested employee preferences in choosing IT equipment and software. Management will engage in pre-decisional consultation with the Union prior to alterations in existing IT procedures as long as EO 13522 is in effect and to the extent permitted by law.
- C. Employees shall request permission from Management prior to installing applications on government-supplied IT equipment. Management will respond to such requests within 10 workdays and will provide, in writing, an explanation for any installation refusal. Such refusals cannot be capricious or arbitrary.

Section 3

Employees may elect to use their own personal mobile IT devices to perform their work provided such devices are not directly connected to a government internal network or contain PII or classified documents and comply with all existing DOC, NOAA and NOS policies concerning the handling of data and information provided such policies do not contradict this CBA or other existing agreements between the Union and Management. The employee agrees to pay for all costs required to use such personal IT devices and maintain reasonable anti-virus protection on them. The employee will allow access to the devices to respond to legitimate discovery requests for civil or criminal proceedings and shall comply with all directives of the Agency with respect to litigation holds, data preservation (including backups), data integrity and protection.

Section 4

Should Management require the Employee to use government provided IT equipment in the office, field or at an alternative worksite, Management will be responsible for the cost of all such equipment and associated operational expenses for said equipment. Management is not responsible for any employee supplied IT equipment at an alternative worksite.

Section 5

Employees may use government-provided mobile IT devices in-off duty time for limited, personal, non-commercial use provided such usage does not increase the cost to the government, threaten IT security, or access inappropriate material.

ARTICLE 15. Research Programs and Demonstration Projects

Section 1

Any research or demonstration project as defined under 5 U.S.C. § 4701, approved by OPM and affecting the bargaining unit employees, will be negotiated with the Union and not implemented until agreement is reached. Terms of this CBA will take precedence over any provision of the research or demonstration project unless specified by law or otherwise agreed to by Management and the Union.

Section 2

Employee participation in research and demonstration projects under this Article will not be construed as a forfeiture of an employee right provided for by law, regulation, or this Agreement.

ARTICLE 16. Public and Scientific Communication

Section 1

- A. Management supports employees in conducting, presenting, and publishing scientific and technical research consistent with Division priorities and will not unreasonably restrict or interfere with employees' opportunity to do so.
- B.
 - 1. Subject to budget and mission constraints, employees are encouraged to participate in and give technical presentations at scientific and technical conferences. Permission to submit a paper to a conference does not obligate management to send the employee to the conference. However, Management will consider acceptance of a paper at a conference as a criterion in determining who may attend the conference.
 - 2. Employees may request annual leave before and after the conference, provided that it does not add to the expense of attending the conference or impede the Agency mission. Management may not use conference location as a reason to deny annual leave.
- C. There are a number of overarching policies and regulations addressing public and scientific communications. Particularly relevant documents include:
 - 1. Information Quality Act (Public Law I 06-554) and associated Departmental and subordinate policies;
 - 2. Office of Management and Budget memorandum of December 16, 2004 "Issuance of OMB's 'Final Information Quality Bulletin for Peer Review'";
 - 3. Department of Commerce Administrative Order DAO 219- 1 "Public Communications";
 - 4. Department of Commerce Social Media - Web 2.0 policy (20 11); and,
 - 5. NOAA Administrative Order 202-735D "Scientific Integrity". Dec 7, 2011.
 - 6. White House Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity. Dec 17, 2010.

Section 2

- A. All scientific publications or presentations that represent an official view of the Agency will follow the guidelines contained in the Information Quality Act (Section 515 of Public Law 106-554) and Office of Management and Budget (OMB) Bulletin M-05-03. Information products that do not represent an official view of the Agency are not covered by the IQA and OMB guidelines.
- B. No public communication may
 - 1. contain classified or other material restricted by law or regulation,
 - 2. violate ethics regulations and statutes, or

3. improperly attribute personal views of the employee to the Department or views that could reasonably be perceived by the public as doing so.

C.

1. Official communications are public communication by an employee that relates to the Department's programs, policies, or operations and takes place or is prepared
 - a. at the direction of their superior;
 - b. substantially during official working hours of the employee;
 - c. with substantial use of U. S. government resources; or,
 - d. with substantial assistance of U.S. government employee(s) on official duty.

Typically, official communications involve matters of policy, budget or management.

Official communications are subject to agency pre-approval.

2. Employees may remove their names as author or contributor from any official report or communication if the employee concludes that it does not represent their best professional judgment or conclusions on the subject matter covered by the report or communication.

Section 3

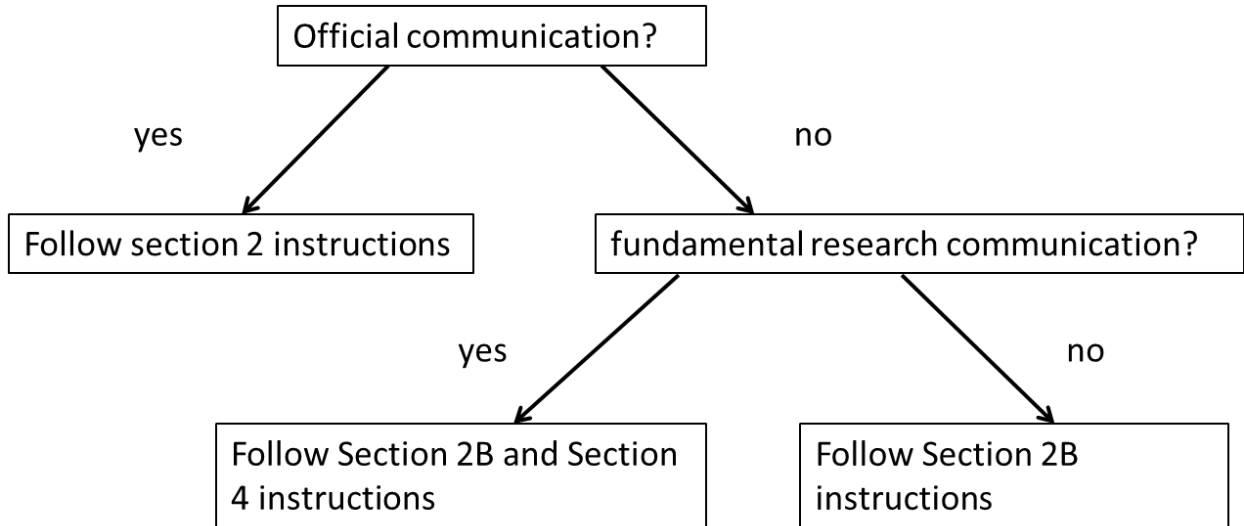
- A. To be open and transparent about their work, and consistent with the NOAA Scientific Integrity Policy NAO 202-735D (Dec 7, 2011) and their official duties, ERD bargaining unit members may freely communicate to the media, their peers, and the public about scientific and technical matters based on their official work, including scientific and technical ideas, approaches, findings, and conclusions that are based on their official work, provided such communication does not violate the restrictions of Section 2(B) of this Article.

B.

1. If a bargaining unit employee finds it difficult to distinguish between an official communication and non-official communication, they should consult with their supervisor or other appropriate Management official for a determination.
2. If adverse action is proposed against an employee for activities that involved the determination of whether a communication is an official or non-official communication, then the employee may request a management-appointed independent advisory review of that determination.
3. Any employee who foregoes submitting a non-official and non-emergency communication to Management for approval assumes sole responsibility for

adherence to the restrictions in Section 2(B) of this Article. Unless impractical, the employee will inform their supervisor or other appropriate Management official prior to the nonofficial communication if the communication involves Agency programs, policies, or operations.

4. The following diagram is to be used only as an aid to assist in understanding this Article.



Section 4

- A. A brief definition of a Fundamental Research Communication is a public communication prepared as part of the employee's official work regarding the products of basic or applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. Matters of policy, budget, or management are not considered Fundamental Research Communications.
- B.
1. Management may require peer review and/or a disclaimer for fundamental research communications.
 2. Fundamental research communications that have undergone peer review by reputable scientific journals or conferences, as recognized by Agency past practice, will be assumed to have met the peer review requirement unless Management specifies otherwise in advance and provides reasonable justification for any additional peer review.
 3. Such additional review should be based solely on assessment of scientific suitability and merit and be consistent with the timely release of the communication. The employee will submit the draft fundamental research communication material to the approving official in a timely manner and confirm they have received it. The approving official will inform the

employee of the expected date of reply. If the approving official fails to respond by the specified date and further delay would prevent or impede the fundamental research communication, then the employee may take this failure as approval of the fundamental research communication.

- C. An example of an acceptable disclaimer notice for a fundamental research communication, as per DAO 219-1 Section 7.03 is "The information in this document reflects the views of the author, and does not necessarily reflect the official positions or policies of the National Oceanic and Atmospheric Administration or the Department of Commerce." Upon Management approval, alternative disclaimers may be used.

Section 5

Responders engaged in communicating on-going spill incident information to those outside the U.S. Government will be considered to be engaged in emergency official communications governed by the requirements of Section 10 of DAO 219-1.

ARTICLE 17. Promotion and Hiring

Section 1

If a bargaining unit employee is promoted to a position in the bargaining unit, and within one year after the promotion, is demoted for inability to perform at the higher level, Management agrees to make reasonable efforts to return the employee to a position equivalent to the one held before the promotion occurred, whenever practical.

Section 2

Career advancement is the intent and expectation of the career-ladder system. While career ladder promotions are neither automatic nor mandatory, they will be considered when:

- A. An employee's performance demonstrates the ability to perform the duties at the next higher grade level as determined by their supervisor ("demonstrates the ability to perform" does not mean that the employee currently performs duties at the next higher grade level); and
- B. The most recent performance appraisal ratings of record are at or above the fully successful level; and
- C. Other requirements of law and regulation are met (e.g., time in grade requirements).

Management may not add additional criteria to this list.

To facilitate career-ladder progression, management should:

- A. Ensure career-ladder employees are provided increasingly difficult assignments and training to prepare them for the next higher grade.
- B. Ensure funding plans accommodate subsequent promotions of employees selected below the full performance level.
- C. Promote employees who demonstrate the ability to successfully perform the next higher level duties and responsibilities in the career ladder and who have completed time-in-grade and qualification requirements.
- D. Work with employees who are not ready for promotion to enhance their performance.

Section 3

In filling an existing position as per H. R. Bulletin #20, the selecting official may, at his or her discretion, limit the area of consideration for ERD competitive personnel actions to members of the bargaining unit. When conducting a competitive personnel action drawing on applicants from outside of the bargaining unit, the selecting official will give first consideration to any bargaining unit employees listed

on the certificate. The selecting official will expand consideration to other candidates listed on the certificate when, in the judgment of the selecting official, it would be in the best interests of the government to do so.

Section 4

With respect to the NOAA Merit Assignment Plan:

- A. A vacancy announcement will be open for a minimum of 10 working days.
- B. Job vacancies (including competitive promotions) within the bargaining unit will be announced to bargaining unit employees via email as early as practical.
- C. If a ranking panel is established by NOAA Workforce Management to evaluate candidates for a position within the bargaining unit, the Union will be given the opportunity to designate a representative to be an observer. The Union representative's purpose will be to help prevent foreseeable adverse effects in the selection process by helping to ensure that bargaining unit employees are rated accurately based on the written application. The Union representative will not: 1) participate in determining the ranking criteria, nor 2) participate in the final ranking discussions.

Section 5

If an appropriate authority decides there was an unjustified or unwarranted personnel action as defined by the Back Pay Act (5 U.S.C. 5596) and applicable decisional law, and the employee would have been selected for promotion, the employee will receive appropriate compensation and allowances as pursuant to the Back Pay Act.

ARTICLE 18. Details and Temporary Positions

Section 1

A detail is a temporary assignment of an employee, without an official personnel action to change his/her position assignment of record, to perform duties other than those of the position he holds under his/her current appointment. An employee may be detailed only when there is statutory authority for such a detail. Proper use of details is specified in DAO 202-334, Section 2.04. If management determines that more than one employee possesses the requisite qualifications for a particular detail, it will request volunteers unless it determines that there are strong programmatic reasons not to do so. Management will provide a written explanation of their choice, if requested by the Union or affected employee. If temporary relocation is required for an involuntary detail, Management will approve payment of employee relocation expenses as provided by law and regulation. If temporary relocation is required for a voluntary detail, Management may approve payment of employee relocation expenses as provided by law and regulation unless stated in the detail announcement that relocation funds are not available.

Section 2

Employees recovering from a serious illness or injury may submit a written request to their supervisor requesting temporary assignment commensurate with their illness or injury and qualifications. Management will consider such requests in accordance with applicable rules, regulations, and medical recommendations.

Section 3

Employees will not be assigned to details exceeding 120 days unless authorized as per DAO 202-334, government-wide regulation, or law. Selection for details of more than 60 days to a higher grade position or a position of known promotional potential will be done through the competitive process.

Section 4

Any employee detailed to a higher graded position will receive a temporary promotion to that higher grade, pursuant to government wide regulation, existing Department of Commerce policy, and the employee's qualifications for holding a higher graded position. An employee being temporarily assigned to a lower-graded position will not have his/her salary or classification adversely affected.

Section 5

Temporary work assignments, particularly those of a higher grade, may be rotated among qualified employees to the extent practicable.

Section 6

Work that, as a result of the detail, is distributed to other members of the bargaining unit will be parceled out in a fair and equitable manner.

ARTICLE 19. Part-time Employment and Job Sharing

Section 1

Job sharing involves an arrangement between two or more employees under which they share a full-time job. Employees wishing to job-share must make a written request to Management, including requested work-schedules. Management agrees that entry into job-sharing should be strictly voluntary and initiated by the employee without coercion. Employees who are job-sharing are considered part-time.

Section 2

Part-time career employment is regularly scheduled work from 16-32 hours a week in either the permanent competitive or excepted service in Tenure Group I or II. Employment on a temporary or intermittent basis is not included. Any full-time employee wishing to convert to part-time must submit a written request to his/her supervisor. Management will make a good faith effort to accommodate the request and will provide a written explanation to the employee within 10 working days if the request is denied. Management will notify the employee that this action may affect employee benefits, and the employee should inform himself/ herself of the expected impact on benefits. There is no guarantee that an employee converting to part-time employment may subsequently convert back to a full-time employee.

Section 3

Management will notify the Union when recruiting for a temporary employee to staff a bargaining unit position that was previously filled with a permanent employee. Employees with temporary appointments will be considered members of the bargaining unit and are entitled to representation.

ARTICLE 20. Incident Response

Section 1

Response, for the purposes of this Article, is construed to mean answering telephone calls, faxes or emails on technical queries with respect to actual spill events or other emergencies or reacting to said events in person by reporting to the employee's place of work or on scene to perform work. Compensation means one of the many forms of pay or benefits that are afforded to employees for their time, to include, but not limited to: pay, premium pay, credit hours, and compensatory time.

Section 2

When practical, Management will solicit volunteers from among qualified employees for field assignments involving emergency response and try and provide opportunities to all qualified staff. Management may consult with the appropriate Scientific Support Coordinator with regards to needed skills for the response but Management retains the right to determine qualifications necessary to perform any particular field assignment.

Section 3

- A. If an employee, either in a duty status or on an unannounced recall, responds to an emergency response incident outside of his/her scheduled working hours, the employee may claim a minimum of 1 hour of compensation. If the employee is required to travel from his/her present location to his/her office or alternative work location to fulfill the duties of the response, a minimum of 2 hours of compensation may be credited to the employee.
- B. Although employees are encouraged to choose overtime rather than compensatory time off, they may choose either as a premium pay compensation option except as noted in this Article.
 1. Supervisors may approve bargaining unit members to earn premium pay compensation only during an emergency or to meet extraordinary program needs. The determinations of "emergency" and "extraordinary program needs" will be made by the employee's supervisor. Incident response will generally meet the definition of "emergency."
 2. Employees shall not exceed the 80-hour cap for unused compensatory time off.
 3. Management may put a time limit on the use of any accrued compensatory time of not less than 26 pay periods. Compensatory time that is not used within the time limit or that exceeds the 80 hour cap in 3 B.(4) may revert to overtime pay at the rate at which it was earned.
 4. Nothing in this section applies to the earning or use of travel compensatory time.

Section 4

If an employee is away from his/her residence while on approved leave and is recalled into duty status, travel from his/her present location he/she will be compensated as per Federal Travel Regulations and the Department of Commerce Travel Handbook.

ARTICLE 21. Awards

Section 1

Management and the Union believe that there should be transparency in award procedures and that all employees should have a fair and equitable opportunity to receive awards.

Section 2

Management may establish and chair a committee to make recommendations to the Chief, ERD, for all awards except for awards linked to performance ratings. The Union will appoint employees, in equal number to Management appointees, from the bargaining unit to serve on the committee for up to one year in length. The Union shall rotate appointments, to this committee amongst as many bargaining unit members as possible.

ARTICLE 22. Time and Leave

Section 1

Employees will accrue leave in accordance with government-wide rules and regulations. Employees should apply in advance for approval of all anticipated leave. All leave requests will be responded to by the approving official in a timely manner. Leave will not be denied as a disciplinary measure but may be denied based on the needs of the organization. Management will not force employees to use personal leave against their will in a manner inconsistent with government-wide regulations.

Section 2

The use of accrued annual leave is a benefit of the employee and will not be denied for frivolous reasons or in an inequitable manner. Employees should apply in advance for approval of all anticipated annual leave to permit orderly scheduling. Leave may also be granted when it is not scheduled in advance and operations allow. Leave for personal emergencies will be granted unless there is an operational exigency that requires the employee presence. Management shall notify employees when there is potential "use or lose" leave, and employees shall take appropriate action to ensure that they use this leave prior to the end of the leave year. Any employee denied leave will receive a brief written explanation by the approving official on the leave request form. When scheduling conflicts arise, managers should attempt to allow employees to resolve the conflict themselves. Unresolved conflicts will be settled on a fair basis.

Section 3

The use of sick leave is an employee benefit. Grants of, requests for, and substantiation of sick leave must be done in accordance with federal law and government-wide rules and regulations. Employees will not be required to substantiate a request for sick leave unless the sick leave exceeds three days or Management has identified a pattern of leave abuse. An employee with a chronic medical condition that results in periodic absences from work of more than three days will not have to substantiate individual absences if the employee provides every six months an updated medical certificate that clearly states the continuing need for periodic absences, unless Management has a credible reason to suspect that the leave request is not valid. Sick leave of up to 30 days may be advanced in cases of serious disability or ailment when required by the exigencies of the situation as determined by the approving official. The employee must request advanced sick leave in writing. Sick leave cannot be advanced when it is likely that the employee will be separated from government employment before the advanced leave will be earned.

Section 4

Employees are entitled to leave without pay under situations covered by the Family and Medical Leave Act of 1993 (FMLA) and situations covered under other applicable laws and government regulations. At the discretion of Management, leave

without pay may be granted for other reasons. Employees should consider consequences to retirement and other benefits before requesting such leave.

Section 5

Administrative leave may be granted for activities that are in the government interest. These include, but are not limited to, blood, organ or tissue donation, military leave and jury duty. Employees must give to the government any compensation earned for jury duty but may retain reimbursement for expenses accrued.

Section 6

- A. Employees, as specified below, may utilize any flexible or compressed works schedules as authorized by the Federal Employees Flexible and Compressed Work Schedules Act (FEFCWA) and defined in 5 U.S.C. 6122 and 5 U.S.C. 6121 (5). Participation in an alternative work schedule by any employee is voluntary, however, employee participation is not a right.
- B. Employees enrolled in any alternative work schedule plan will follow the guidelines specified in the NOS Alternative Work Schedule Plan of January 24, 2004.
- C.
 - 1. Not more than 20% of collective bargaining unit personnel may use a compressed work schedule, known as “four tens”, at any one time during this agreement.
 - 2. Personnel interested in working such a schedule will submit a request to their supervisor to be placed on the program when an opening(s) is(are) available. Employees eligible for placement on these schedules will be determined by management based upon the guidelines specified in the NOS Alternative Work Schedule Plan of January 24, 2004. Management will determine eligibility of an employee and inform said employee within 10 business days of receipt of request. Employees have the right to grieve any eligibility rejection within 30 days pursuant to Article 11-Grievances.
 - 3. Should there be more eligible employees than openings, a lottery system will determine the employees selected for usage of the four-ten schedule.
 - 4. Placement in the four-ten schedule will be for the term of this agreement. Should an employee selected for the four ten schedule choose to change or alter their schedule or if management exerts any option to alter the employee’s schedule otherwise, the employee’s subsequent placement on the four ten schedule will revert to the process described in Section 6 C 2 above.
- D. Employees may be removed from an alternative work schedule if they abuse the schedule or perform at less than fully successful. Employees have the right to grieve any removal.

- E. Management may refuse or cancel any particular flexible or compressed alternative work schedule for all or some employees provided it can show that such a schedule will have or has an adverse effect as specified in 5 U.S.C. Section 6131 (b) and may re-open for negotiation this agreement with regard to flexible or compressed work schedule only as specified in 5 U.S.C. 6131 (c) (3).
- F. While temporarily detailed or deployed to a response or another program, office, or project, the needs of the other mission will dictate the employee's schedule, notwithstanding the employee's approved schedule while at ERD.

Section 7

Any employee who knows he/she will be out of the office when time sheets are due will make arraignments with his/her supervisor or timekeeper to enter time and attendance data in the WebTA system. If a situation of extenuating circumstances occurs that results in no or incomplete data entry for WebTA (e.g. an employee travels unexpectedly or for extended periods of time) the employee will have "straight eights" (10 business days of 8 hours per work day) entered on their time sheet by the timekeeper for the pay period with incomplete data; the affected employee will then have one pay period (two weeks) in which to correct the original timesheet. If the employee does not meet the due date for correction of the timesheet, the supervisor will have the option of exerting disciplinary action on the employee.

ARTICLE 23. Dependent Care

Section 1

Management recognizes that employees may have childcare, dependent-care or other family-care needs during normal working hours. The parties also recognize the need for such employees to secure adequate child, dependent and family care arrangements.

Management agrees to reasonably accommodate the child-care and dependent-care needs of employees in accordance with applicable laws, rules and regulations in effect at that time (e.g., leave, hours of work, overtime, part-time employment, and alternative workplace arrangements).

Section 2

Management agrees to consider initiatives by Federal government agencies to establish or improve availability of childcare to bargaining unit members. The Union is responsible for bringing such initiatives to the attention of Management. Management agrees to promote the mutual interests of bargaining unit members and Management to the appropriate Federal contract officer(s) or management contact when aware of bargaining unit issues with childcare providers. For issues outside of Management's purview, Management agrees to convey the Union's interests to the parties mentioned in this Section.

ARTICLE 24. Outside Activities and Employment

Section 1

Employees may pursue outside employment or business opportunities except under the following conditions:

- A. Conflict of interest (as described in 18 U.S.C. §§ 201-203, 205, 207-209)
- B. Activities inconsistent with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635)
- C. Adverse effect on performance of an employee's official duties
- D. Prohibited by Federal statute.

Section 2

Management encourages employees to jointly review proposals for outside activities or employment with the Department of Commerce Ethics Law and Programs Division prior to engaging in such actions.

ARTICLE 25. Employee Assistance Program

Healthy employees and healthy work environments are important to the Department of Commerce. Good relationships at work, and at home, allow employees to focus on the tasks at hand and to accomplish more. If difficulties occur, professional counselors are available through the Employee Assistance Plan (EAP) to provide guidance and support to employees and their families. The Employee Assistance Plan (EAP) is a counseling service offered to Department of Commerce employees. Through this program employees are offered a certain number of free counseling sessions. For more information regarding this program please contact your servicing Human Resources Advisor.

ARTICLE 26. Parking and Transportation

Section 1

Commuter parking will be provided to Seattle-based employees according to WRC regulations. Commuter parking for field personnel may be provided on a case-by-case basis, subject to available facilities, leases and/or other allowable resources (e.g., subsidies) specific to each location.

Section 2

Both the Management and the Union agree to promote alternative commuting options. These may include, advertising ridesharing opportunities, telecommuting when appropriate, and taking advantage of any NOAA transportation subsidies available to employees.

ARTICLE 27. Health and Safety

Section 1

Management and the Union agree to work together to provide a work environment free of recognized hazards and to prevent and eliminate accidents and injuries. It is both the Union's and Management's goal to comply with applicable federal, state, and local laws and regulations protecting the working environment, health, and safety of the employees covered by this Agreement.

Section 2

Employees will report unsafe and/or unhealthy conditions or incidents to their supervisor or other appropriate authority. If requested, the anonymity of the employee will be protected to the extent possible. No reprisal will be taken against the employee for reporting suspected health and safety violations

Section 3

Employees will be provided at no cost to them the necessary safety equipment and clothing to perform their assigned duties. Requests for safety equipment may be made by bargaining unit members to their supervisor. This may be done in consultation with the OR&R Health and Safety Officer. The bargaining unit member's supervisor will then determine the best way to meet the request.

Section 4

When confronted with unsafe working conditions, an employee should let his or her supervisor know about the problem and discuss solutions before refusing to work. The employee has the right to decline to perform assigned tasks because of a reasonable belief that, under the circumstances, the tasks pose an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures.

Section 5

Stress and/or exhaustion can create an unsafe working environment through both direct and indirect impacts on an employee's health and safety. Extended overtime or lengthy deployments during response operations may increase the likelihood and severity of the risks associated with stress and exhaustion. Employees are encouraged to monitor and assess their continued ability to perform during such activities. If an employee notifies his/her supervisor or the lead SSC on-scene that stress and/or exhaustion from ongoing response operations are either creating a potentially unsafe working environment or affecting his/her ability to perform his/her duties, he/she may request and may be granted either

- A. leave for a short duration (e.g., one to two days) using appropriate work leave options, or
- B. a temporary reprieve from field deployment, with proper documentation.

Many unique personal factors can affect an individual's susceptibility to stress and/or exhaustion. If the employee needs to be absent or unavailable for response deployment for a longer period of time, he/she will be required to provide documentation from a licensed health care professional. This documentation should address any limitations on the employee's assignments or working conditions and any requested job modifications, if applicable. No adverse action will be taken against an employee whose availability for field deployment or for overtime work is limited due to stress or exhaustion.

Management agrees to consider and address employee stress and exhaustion in staffing response activities and will address documented stress hazards when they are identified by employees.

Section 6

The policy and procedures established in NOAA Aviation Safety Policy, NAO 209-124 will be followed. Requests for aviation safety equipment beyond that required by the NOAA Aviation Safety Policy may be made by bargaining unit members to their supervisor. This may be done in consultation with the OR&R Safety Officer. The bargaining unit member's supervisor will then determine the best way to meet the request. Upon request, supervisors will help employees overcome administrative issues related to certifications, to the extent possible.

ARTICLE 28. Position Classification

Section 1

When Management changes Position Descriptions (which are more than de minimis) for bargaining unit employees, Management will notify the Union. Management will provide affected employees and the Union with copies of their modified Position Description a minimum of 15 days in advance of implementation. The Union may bargain the impact of a substantial change that affects working conditions by a Position Description revision of all positions within a series group within the bargaining unit.

Section 2

Any bargaining unit employee, who believes that his/her position is inaccurately described, may request, through their Rating Official, that a job audit be conducted. If the Rating Official concurs with the employee, the Rating Official may request a job audit of that position. If the Rating Official does not concur, the employee may officially submit a classification appeal to the Department's Office of Human Resources Management or to the Office of Personnel Management (OPM) in accordance with Department Administrative Order 202-511 (Position Classification). The employee may seek the assistance of the Union in formulating this appeal.

Section 3

When a job audit is conducted for any reason, the affected bargaining unit employee may request Union assistance. Any written evaluation statement prepared by Work Force Management following a job audit shall be furnished to the employee prior to the resolution of the classification appeal. The employee shall have the right to make written comments within ten (10) workdays after receipt of the evaluation statement, and those comments shall be attached and forwarded with the written evaluation statement.

ARTICLE 29. Contracting Out and Outsourcing

Section 1

Management shall ensure that contracting out civil service work does not contradict employee rights and protections under this Agreement or the law.

Section 2

If it becomes necessary to contract out bargaining unit work, Management will make every reasonable effort to minimize impacts to bargaining unit employees. Management will consider allowing current employees to take on duties as career enhancements, prior to making the decision to contract out work. Management will adhere to all government wide regulations regarding placement of affected employees as specified in Federal statute and regulations (including OMB Circular A-76 and Federal Acquisition Regulations).

Section 3

Management agrees to review and respond to concerns that the Union may wish to raise with regard to the utilization of contractor personnel on-site work similar to, or formerly performed by, bargaining unit employees.

The Union recognizes management's right to assign work. Management will not direct contractors to perform inherently governmental work. Management will direct contractors to perform work only within the scope of their contracts.

In the event that employees witness defective, deficient or unethical work being performed by a contractor working within the Division they are encouraged to report it to ERD management. If employees disagree with the technical decision of a contractor, employees may express their concern either orally or in writing to ERD Management. Within 10 working days ERD management will follow-up with the concerned employee.

Section 4

Upon request, Management shall provide the Union with a sanitized, i.e., no Privacy Act Information, copy of the FAIR Act Inventory for bargaining unit employees. The Union copy shall include the position, series, and status of bargaining unit employees (inherently Government or Contract position).

ARTICLE 30. Reduction in Force and Transfer of Functions

Section 1

Management will give the Union at the earliest possible date written notice of its intention to submit a reduction in force (RIF) request to NOAA or conduct a transfer of function that involves geographical relocation of employees (TOF). The notice will include the reason for the RIF or TOF, the approximate number of employees who may be affected by the action, and anticipated effective date that the action will be taken.

After the notice has been given, but before Management has submitted its input to a NOAA request to DOC for a RIF/transfer, Management and the Union agree to consult. This is not a bargaining session, but rather an exchange of ideas on how to avoid or minimize the RIF/transfer and method for implementation of any RIF/transfer. Following the consultation, Management agrees to provide to the Union a copy of that portion of its input to the NOAA request for a RIF/transfer that pertains to the ERD bargaining unit. Thereafter, Management will provide to the Union a copy of the DOC approval of the request.

Section 2

Whenever possible and to the extent practicable, and before conducting a budget-driven RIF/transfer, Management will attempt to avoid the use of a RIF by considering other cost-saving methods, including attrition. At the request of the Union, Management will provide a cost study of savings methods considered in order to avoid a RIF /transfer. A cost study, for the purposes of this section, may be comprised of a summary of cost saving methods management may have developed, used, or considered in arriving at its decision.

Management will provide the Union, at the earliest possible date, with the notice list containing the names of bargaining unit members who are affected by the RIF/transfer and will be receiving RIF/transfer notices and, if applicable, a list of any bargaining unit employees who received Certificates of Expected Separation.

Section 3

Before the issuance of specific RIF notices, the Union will be provided a copy of the annotated retention register(s) to be used to issue any notices that could go to members of the bargaining unit. Amended registers will be provided to the Union as soon as they are prepared. The retention register will include: the employee's tenure group, competitive level, and service computation date; and the adjusted service computation date.

Employees and/or their designated representative(s) will be permitted to review the applicable retention register so that the employee may consider how the retention register competitive level was constructed and how the relative standing of the employee was determined.

Section 4

Management will give a specific notice in writing to employees who will be affected by a RIF, with a copy to the Union. This notice period will be no less than 90 calendar days prior to the implementation date except, when a RIF/transfer is caused by circumstances that are not reasonably foreseeable, the Office of Personnel Management (OPM) at the request of the Department of Commerce may authorize a notice period of less than 60 days but at least 30 full calendar days before the effective date of release. The parties agree to be bound by the OPM decision.

Section 5

Management will consider using vacancies, to the maximum extent possible and practicable, to avoid or lessen the impact of the RIF within the affected competitive area at the onset of and during the RIF, by making job offers to an individual within the competitive area who is affected by position abolishment, and who meets WFMO qualifications for the position. Management will make a reasonable effort to train an employee affected by a RIF, where necessary upon reassignment in lieu of separation.

Costs of relocation will be paid under applicable government regulations.

A bargaining unit employee offered a vacant position may decline the offer without any prejudice, except as specified by law or by government-wide regulations, to the employee's other RIF rights and options. An offer of a vacant position shall be held open for seven (7) business days to allow the offeree time to evaluate the offer and accept or reject.

Section 6

Eligible employees separated by a RIF may apply for placement on a reemployment priority list (RPL). Former bargaining unit employees on an RPL will receive first consideration for ERD vacancies for up to two (2) years.

Section 7

Management will make a good faith effort to provide outplacement assistance to employees adversely affected by RIFs. This includes employees who are unable to accept assignment to another commuting area. Management also encourages employees subject to a RIF to apply to employee placement programs such as ICTAP, CTAP and RPL.

Employees may use additional assistance provided by Department of Commerce to the RIF/transfer affected individual. This may include information on the placement assistance programs available through OPM; individual job counseling and referral; stress and mental health counseling through the Employee Assistance Program; job testing, assessment, and evaluation; training on self-directed job search, resume preparation, and interviewing; and financial planning.

Section 8

The Union reserves its statutory rights to negotiate on the impact or implementation of any individual RIF/transfer with respect to matters not specifically covered by this Agreement.

Section 9

Employees who are relocated as a result of a transfer of function are entitled to reimbursable expenses allowable under the Federal Travel Regulation (FTR), Department of Commerce (DOC) Travel Regulation, and NOAA Travel Regulations (NTR)

Section 10

Management will seek to identify and take cost saving actions that could reduce or eliminate the need for a RIF or TOF. Management will engage the Union in pre-decisional discussions prior to the announcement of any RIF or TOF. Management will entertain, review and provide written response to any suggestion by the Union on cost saving actions that could reduce or eliminate the need for a potential RIF or TOF.

ARTICLE 31. Furloughs

Section 1

A furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons. Furloughed employees are not, however, separated from Federal employment.

Section 2

Management will seek to identify cost saving actions that could reduce or eliminate the need for potential furloughs. Management will engage the Union in predecisional discussions prior to the announcement of any administrative furloughs as long as EO 13522 remains in effect. Management will consider and respond to any reasonable suggestion by the Union on cost saving actions that could reduce or eliminate the need for potential furloughs.

Section 3

Management has the right to determine the total number of furlough days for the bargaining unit. When requested by the Union, Management will provide written explanation if some, but not all, of the employees in a competitive area were selected for furlough. The Union may grieve such selective furlough exclusion through the negotiated grievance procedure in the CBA.

Section 4

If a determined number of furlough days are to be taken within a given period of time, the employee will have the option to select the specific furlough dates unless Management reasonably determines that doing so would seriously impact the Division's ability to manage its workload with a reduced workforce.

Section 5

In the case of a furlough of more than five (5) consecutive days total per fiscal year, reasonable administrative leave may be granted by Management to employees seeking to apply for unemployment benefits and to contact job placement and/or employment agencies.

Section 6

Employees who are furloughed during a lapse of appropriation will be retroactively paid and otherwise compensated when appropriations are approved, to the extent permitted by law and regulation.

ARTICLE 32. Equal Employment Opportunity (EEO)

Section 1

Management and Union agree that there shall be no discrimination against any employee on the basis of race, color, national origin, age, sex, sexual orientation, disabilities, or religion. Toward this end, Management will administer an EEO program in accordance with applicable laws and regulations.

Section 2

Management agrees to meet at the request of the Union to review and discuss specific issues relating to equal opportunity as they arise. The parties further recognize that EEO plans and reports are developed in accordance with guidelines and instructions promulgated from the EEO commission. Management agrees to provide copies of such plans and reports at the request of the Union.

Section 3

The bargaining unit will have one representative on NOAA's NOS Equal Employment Opportunity and Diversity Advisory Committee contingent upon the continuing approval of the NOS Assistant Administrator. Selection of the representative will be at the discretion of the Union. Management agrees to fund travel costs for one representative for the purposes of training related to committee membership, not to exceed one trip per year.

Section 4

Any meeting requested by or initiated by the Department of Commerce Office of Civil Rights or NOAA Office of Civil Rights is not considered a formal discussion as described in 7114 (a)(2)A of 5 U.S.C Chapter 71. Management is not obligated to notify the Union of such a meeting. However, the employee may elect to be accompanied by a representative, who may be a Union representative.

Section 5

The bargaining unit representative designated in Section 3 above shall provide the names, addresses, and phone numbers of all EEO counselors who are authorized to accept informal EEO complaints from employees and shall ensure that this information is conspicuously posted and updated annually.

ARTICLE 33. Disciplinary or Adverse Action

Section 1

Discipline or adverse action is intended to correct unacceptable conduct, attitude or work habits. The goal is not to punish the employee, but to encourage acceptable conduct and work habits. Discipline should be fair and reasonable in its degree of severity. Disciplinary or adverse action should be initiated in a timely manner. DAO 202-751 includes a table of offenses and penalties that serves as a guide for determining the appropriate penalties for common offenses. For offenses listed in Appendix 8 of DAO 202-751, penalties should not exceed those recommended except for exceptionally egregious activity.

Section 2

For the purpose of this Agreement, a "disciplinary action" is defined as a written reprimand or a short-term suspension without pay of 14 days or less. An "adverse action" is defined as a removal, suspension of more than 14 days, or a reduction in pay or grade. A written or verbal "admonishment" is a possible precursor to disciplinary or adverse action, but is not considered a disciplinary action in and of itself.

Section 3

Management may take disciplinary or adverse action for just and sufficient cause as will promote the efficiency of the Service and may not take disciplinary action against an employee for any reason prohibited by 5 U.S.C. 2302.

Section 4

Disciplinary actions will be taken in such a way as to respect the employee's privacy and to avoid embarrassment to affected employees.

Section 5

Management will generally conduct an investigation to collect evidence relevant to the disciplinary or adverse action under consideration. The deciding official will rely upon all the information collected that is relevant to the disciplinary or adverse action, both favorable and unfavorable to the employee, in making decisions about whether to take action and the severity of any action taken. When requested by the employee or the employee's representative, Management will provide copies of all material collected in the investigation that Management relied upon in deciding whether to take disciplinary or adverse action and/or determining the penalty. Nothing in this Article shall limit the right of the Union to request information in accordance with 5 USC 7114.

Section 6

Written reprimands or admonishments that are maintained by the employee's immediate supervisor or in the employee's Official Personnel File should be purged from the records according to the schedule prescribed in the reprimand or

admonishment. Any written reprimand or admonishment persisting in the file past the specified purge date will be considered as purged. Purged records may not be relied upon or referred to in subsequent actions, or transferred to any subsequent supervisor of the employee.

Section 7

Reasonable time will be given to the employee or his/her representative to prepare a defense to any proposed adverse or disciplinary action. The employee or his/her representative and Management may mutually agree to an extension of time frames stated in this Article.

Section 8

Employees are entitled to representation in most phases of a disciplinary or adverse action, as provided by federal law and regulation. Management is not responsible for the cost of such representation except as specified in this Agreement, or as required by policy or statute.

Section 9

Disciplinary Action (reprimand and/or a short-term suspension without pay of 14 days or less).

- A. For a written reprimand, the employee has the right to file a grievance after the reprimand is issued, as spelled out in this Agreement except that the grievance will be initially filed with the employee's second level supervisor.
- B. For a short-term suspension, the employee will receive advance notice stating the specific reasons for the proposed action and notice of his/her right to a representative. The employee will be allowed 10 working days to provide either an oral or written defense to the designated deciding official. Once the decision is issued, the employee has the right to file a grievance as spelled out in this Agreement except that the grievance will be initially filed at the next organizational level above the deciding official.

Section 10

Adverse Action (i.e., removal, suspension of more than 14 days, or a reduction in pay or grade).

- A. The employee is entitled to a minimum 30-day advance written notice unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed adverse action and the right to representation. The employee will be allowed 15 working days to provide either an oral or written defense to the designated deciding official. The designated deciding official will be at a higher organizational level than the employee's immediate supervisor. If an adverse final decision is rendered, the employee has the right to file a grievance

as spelled out in this agreement, except the grievance will be initially filed at the next organizational level above the deciding official.

- B. The employee has the right, rather than filing a grievance, to appeal the Management action to the Merit System Protection Board, but may not do both. If the employee's appeal is based, in whole or part, on allegation of discrimination, the employee may file an EEO complaint with the Agency under statutory procedures.

ARTICLE 34. Management Initiatives during the Term of this Agreement

Section 1

- A. The Union recognizes that Management has the right to exercise its management rights as set forth in the Federal Service Labor-Management Relations Statute, this agreement, and in accordance with applicable law, rule, and regulation to initiate changes in operational and administrative procedures and programs when Management determines it is in the interest of the program to do so. Management recognizes that the Union, in accordance with law, has the right to receive timely advance notice and to engage in good faith negotiations, when applicable, with Management on any changes in the conditions of bargaining unit employees' employment.

Section 2

- A. The Union and Management agree to follow applicable existing law with regard to labor management relations. The Union and Management acknowledge that representatives from the Agency and IFPTE signed the Department of Commerce Labor-Management Forum Charter on April 21, 2010. Furthermore, the parties acknowledge that the Charter language encourages both pre-decisional labor involvement in all workplace matters, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S. C. 7106, and also good faith consideration by Management in certain limited circumstances of Union proposals involving subjects set forth in 5 U.S.C. 7106(b)(1).
- B. Management, to the fullest extent practicable, will engage the Union in pre-decisional discussions on proposed changes in conditions of employment. In addition, Management, to the fullest extent practicable, will engage the Union in pre-decisional discussions on workplace matters, when appropriate. The Union may submit proposals involving subjects set forth in 5 U.S.C. 7106(b)(1) and otherwise negotiable. Management will provide the Union a written explanation if it elects to not bargain over a Union proposal that Management believes is permissive pursuant to 5 U.S.C. 7106(b)(1).

Section 3

- A. Management agrees not to unilaterally establish or change any personnel policy, practice or condition of employment not specified by this agreement, except as provided by this section or by law or existing agreements between the parties or existing government-wide regulations. Management recognizes its duty to fulfill its statutory bargaining obligations regardless of whether or not the issues in question involve activities directly under the control of ERD management.
- B. Management shall provide the Union with reasonable advance notice (but normally not less than 10 workdays), of intended changes in terms and conditions of bargaining unit member's employment. The notice shall include the following:
1. A description of the desired change;

2. An explanation of how this change shall be implemented;
3. The proposed implementation date, if known; and
4. The identity of Management's representatives if someone other than the designated management official. Management's representative shall be someone who has the authority to negotiate in good faith and enter into a binding agreement with the Union. This does not affect the right of Management's representative, prior to entering any such agreement, to confer with higher-level management, legal advisors, and others as the representative deems appropriate.

Section 4

The Union shall have five (5) work days in which to request a Clarifying Discussion with the appropriate management representatives in order to ask questions and request additional information regarding the proposed change(s).

Section 5

- A. The Union shall have ten (10) work days from the date of notification or the date of Clarifying Discussion (as described in Section 4), whichever is later, in which to invoke its right to negotiate over the requested change by submitting written notice of its intent to do so.
- B. The written request to negotiate shall include the following:
 1. A description of any adverse impact created by the change;
 2. A list of negotiable proposals intended to mitigate the adverse impacts;
 3. An explanation as to how each proposal mitigates the adverse impacts created by the change.
- C. Where negotiating meetings are required, the meeting shall be conducted as follows.
 1. The bargaining teams at any meeting shall be limited to more than four (4) members for each Party unless the Parties mutually agree otherwise.
 2. Management shall provide the Union negotiating team with reasonable services such as office supplies, access to personal computer, printer, e-mail, telephone, FAX, and photocopy equipment.
 3. Negotiations shall commence on a mutually agreeable date. Absent such mutual agreement, negotiations shall commence within ten (10) working days after Management received the Union request to negotiate.

Section 6

If the Parties fail to reach agreement sixty (60) calendar days after notification of the proposed change, either Party may declare impasse and pursue an appeal with the Federal Service Impasse Panel. If this procedure is invoked, Management shall postpone the implementation of any change until the impasse is resolved, except

where the implementation is otherwise permitted by law. Management retains the right to implement its last, best and final offer in the event the Union fails to seek timely assistance from the Federal Service Impasses Panel but will give advance notice to the Union of at least ten (10) working days of its intent to do so. The Union may invoke its right to pursue an appeal with the Federal Service Impasse Panel within these ten (10) working days of notification.

ARTICLE 35. Performance Evaluation

Section 1

- A. This Article supersedes any previous collective bargaining agreement and/or memoranda of understanding (or agreement) between the agency and the Union regarding the subject of performance evaluation.
- B. Employee performance will be rated following all applicable laws, applicable government-wide regulations, and the general policy listed in Department of Commerce Administrative Order 202- 430 and accompanying Department of Commerce Performance Management Handbook, except where Department of Commerce Administrative order 202- 430 conflicts with this Collective Bargaining Agreement (CEA). In such a circumstance, the CBA will prevail over Department of Commerce Administrative order 202-430 but not government-wide regulations implemented before the CBA.
- C. Employee performance standards will be uniform for like duties in like circumstances, and be related to the duties of the position. "Other duties as assigned" will not be used to rate performance. The Agency will provide employees with guidance and materials necessary to perform their jobs in a satisfactory manner.
- D. External factors beyond the control of the employee, but that affect performance results of the employee, will be taken into consideration by the supervisor when evaluating the employee's performance. Performance measures should be objective, measurable, realistic, and stated clearly. If employees have concerns regarding any of the measures in their performance plan, they should raise them to their supervisor at the beginning of the performance cycle or promptly as they arise.
- E. The employee may share their performance plan with a Union representative. During the performance of representational duties a Union representative may request and obtain a copy of the employee's performance plan from the employee's supervisor after presenting the supervisor with written documentation from the affected employee that identifies the Union representative.
- F. Documentation of success in completion of milestones by the employee is voluntary and highly recommended. Failure of the employee to submit documentation to the supervisor prior to the requested due date shall not be cause for adverse rating of the employee. The supervisor will provide written justification for a score of any element at level 2 or below and at level 3 if requested by the employee.

Section 2

- A. Employee evaluation will begin with a Pre-Appraisal meeting between the employee and their supervisor. The Pre-Appraisal Meeting will be followed by an Appraisal Meeting during which the employee will receive their Rating of

Record. At the Appraisal Meeting, the employee will state if they agree or disagree with the supervisor's appraisal in order to provide management with an indication of potential disagreements. If an employee is dissatisfied with their Rating of Record, they may request an informal reconsideration of their Rating of Record as described in DAO 202- 430. Employees seeking to dispute their ratings are strongly encouraged to utilize the request for reconsideration process.

- B. The employee may formally grieve the rating of record under the negotiated grievance procedure. Employees or Union officials considering disputing a performance rating should inform management of that intention as soon as possible.
- C. Notice of an unacceptable performance will be given to the employee at least 30 days prior to the issuance of any proposed notice of corrective action (demotion or removal). If a notice of proposed corrective action is issued, the employee or employee's designated Union representative will have fifteen (15) business days to respond under the negotiated grievance procedure or take other appropriate action.
- D. Employees will receive periodic training on the performance rating system as specified in this Article and their rights and responsibilities in its implementation. The Agency will ensure that supervisors are familiar with their responsibilities under the rating system.

Section 3

- A. Except for employees who are re-rated after a period allowed in 5 CFR 432, annual performance appraisals for the purpose of retention standing will be frozen 120 days prior to the issuance of reduction in force notices.
- B. The three most recent annual appraisals of record prior to the freeze will be used to determine eligibility for additional credit toward an employee's service computation date. OPM regulations at the time of this contract for 5-level grading will be used to determine additional service credit allowed for performance ratings.

Section 4

- A. Performance cash awards will be based solely on performance for bargaining unit members. No bargaining unit employee with a lower summary performance rating than another bargaining unit employee will receive a greater performance award (as measured by percentage of salary) than the other employee with the higher summary performance rating.
- B. Provided funds are available, ERD will allocate funds each fiscal year for performance based awards under the 5-tier system that is approximately equal to the percentage used for the bonus pool under CAPS multiplied by ERD bargaining unit labor costs. Funds set aside for performance awards to bargaining unit members, but not actually spent for this purpose, may be used

for other awards or other Division purposes provided such awards or purposes are not in conflict with applicable law, regulations, this contract, or the intent of this Article. The performance award amount set aside represents the maximum amount that may be awarded to bargaining unit employees; the total actually awarded will be based on performance during the rating period.

- C. If requested in writing by the Union, Management will provide to the Union within 10 working days after such information becomes available, or 10 working days after the request is received, whichever is later, annual reports on the amount of money allocated to the 5 tier performance award pool, the CAPS bonus pool percentage, the estimated ERD bargaining unit labor costs, and the amount of money actually awarded for performance bonuses to the bargaining unit.

ARTICLE 36. Telework

I. INTRODUCTION

Consistent with OPM guidance, it is the intent of Management and the Union that the telework instructions in this article serve as a useful and practical resource for employee and manager. Telework is a flexible work arrangement under which an employee performs the duties and responsibilities of his/her position and other authorized activities from an approved alternate worksite other than the employee's designated traditional Federal workplace.

An employee's decision to elect to telework is entirely voluntary (unless the employee is designated an "emergency" employee or is designated as a member of the Continuation of Operations Plan, COOP).

Although participation in the Telework Program is voluntary and subject to the discretion of the supervisor, participation is encouraged at a rate of at least 2 days per pay period for employees that choose and are approved to telework.

Both parties recognize the positive impact that an effective telework program can have on our ability to contribute to the OR&R mission. Management is committed to the use of the telework program to the maximum extent possible without diminishing employee or organizational performance.

This Article supersedes any previous CBA or MOU/MOAs between the Agency and the Union regarding the matter of telework.

Telework procedures will be governed by this Agreement, applicable law, government-wide regulations at the time of this agreement, and to the extent that it does not conflict with applicable law, government-wide regulations, and this Agreement, or involve conditions of employment that have not yet undergone required collective bargaining.

The law and policies are intended to promote:

- recruiting and retaining the best possible workforce;
- continuing operations during emergency conditions;
- management effectiveness; and enhancing work-life balance by allowing employees to better manage their work and personal obligations.

II. DEFINITIONS

The following definitions are intended to guide all employees and their supervisors:

Ad Hoc Telework – Telework performed on an irregular basis, chosen by the employee, to address a specific need of the employee. Ad hoc telework must be requested and approved by the supervisor in advance.

Alternate Worksite – The employee's residence or a location other than the traditional worksite, which has been approved by the manager/supervisor for the performance of the employee's official duties

Approving Official – Manager who approves the employee telework agreement, usually his/her supervisor.

Eligible Employee – All employees are considered eligible to telework unless: 1.) the employee has been officially disciplined for being absent without permission for more than five (5) days in any calendar year (there are no exceptions); or, 2.) the employee has been officially disciplined for violations of 5 CFR Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch) for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties (there are no exceptions).

Eligible Participation – A position is an eligible position unless the official duties require on a daily basis (every workday) the direct handling of secure materials determined to be inappropriate for telework by the head of the bureau/operating unit; the employee performs on-site activities that cannot be performed at an alternate worksite; or the employee's performance does not comply with the terms of the written agreement between the approving official and the employee¹.

Emergency Relocation Group (ERG) Member – A person assigned responsibility to report to, be on call, or serve as backup to an alternate site, as required, performing agency-essential functions or other continuity-related operations. Staff assigned responsibility to continue essential functions from an alternate site in the event that their primary operating facilities are threatened or have been incapacitated by an incident [Federal Continuity Directive 1 (FCD 1) October 26, 2012]

Essential Functions – Functions that enable the Federal Government to provide vital services, exercise civil authority, maintain the safety and well-being of the general populace, and sustain the industrial/economic base in an emergency.

Mandatory telework – Requiring the employee to either use personal leave or do involuntary telework as ordered by Management on a day when the employee would not normally telework.

¹ Length of this exclusion is at the office director's discretion

Official Duty Station – Location of an employee's position of record where the employee regularly performs his or her duties. If the employee's work involves recurring travel or their work location varies on a recurring basis, the duty station is the location where the work activities of the employee's position of record are based, as determined by the manager/ supervisor. An employee's official duty station determines the appropriate locality area for pay purposes for General Schedule or equivalent employees.

Regular/Recurring Telework – Telework that is performed according to a pre-determined schedule on the same day(s) of the week on the employee's regularly scheduled tour of duty.

Remote Worker – The employee is teleworking full-time from an alternate work site. The alternate work site becomes the employee's official duty station for pay purposes.

Telework – Telework, known as "telecommuting," refers to a paid, flexible work arrangement under which an employee performs the duties and responsibilities of his/her position, and other authorized activities, from an alternate worksite, not the traditional worksite.

Telework-Ready Employee – An employee who has completed Telework 101 for Employees via the Commerce Learning Center (CLC); has a signed individual telework agreement; and has the required necessities to telework for their entire work schedule.

Traditional Worksite – The traditional worksite is where the employee would work absent a telework arrangement.

III. TELEWORK STRATEGIES

- A. **Agreeing to Telework.** An employee's decision to telework is voluntary, except that where ERD is operating under a continuity of operations plan, that plan shall supersede any telework policy.
- B. **Types of Telework.** It is the policy of the National Oceanic and Atmospheric Administration (NOAA) to allow eligible employees to work at alternate work sites away from their official duty stations, consistent with the needs of their office, during their regular tour of duty. There are three (3) types of telework:
 1. **Regular/Recurring Telework** occurs as part of a preapproved ongoing, regular schedule. Once the schedule is established, the employee may not change the assigned telework day(s) without prior

approval of the approving official. An employee may combine teleworking with an alternative work schedule with the prior approval of the approving official.

2. **Unscheduled Telework** occurs under an announcement by the Office of Personnel Management (OPM) or other appropriate authority (but the employee's office is open). When OPM makes an announcement of "Unscheduled Telework" and it is not the employee's regularly scheduled telework day, the employee may choose to perform unscheduled telework. The employee's decision is not subject to prior approval by the supervisor. However, the employee must notify his/her supervisor in accordance with the applicable policy of the office. In rare circumstances, management may find it necessary to require a non-emergency, telework-ready employee to report for an assignment that requires presence at the worksite (e.g., providing a presentation or performing administrative duties at a pre-scheduled conference). This should not be a last minute surprise, but a special work circumstance that both the supervisor and employee know about, discuss, and plan in advance as the special work requires.

3. **Ad Hoc Telework** occurs on an irregular basis, chosen by the employee, to address a specific need of the employee. Ad hoc telework must be requested and approved by the supervisor in advance.

C. **Telework May Not be used as a Substitute for Dependent Care.** If elders, children, or other dependents are able to care for themselves, and their self-care is not prohibited by local or state law(s), then their presence at the telework location would not interfere with the employee performing telework.

D. **Teleworkers and Non-Teleworkers Shall, as Set Forth in 5 U.S.C. §6503, be Treated the Same for Certain Purposes:**

1. Periodic appraisals of job performance of employees;
2. Training, rewarding, reassigning, promoting, reduction in grade, retaining, and removing employees;
3. Work requirements; and
4. Other acts involving managerial discretion.

E. **Training Requirements.** It is the policy of NOAA that all eligible employees must successfully complete Telework 101 for Employees via the Commerce Learning Center (CLC) before they can request to telework. The approving official for individual telework agreements is the applicable office director, or designee, and he/she must have completed Telework 101 for Managers via CLC before they can approve any individual telework agreements.

F. **Maximum Amount of Teleworking.** The maximum number of days an employee (including part-time employees) may telework during a pay period is left to the discretion of the approving official or designee (i.e., employee's supervisor) . This includes regular/recurring telework and ad hoc telework. See Section VII below for further information.

IV. ELIGIBILITY CRITERIA

A. **Employee Eligibility.** This document covers all bargaining unit employees. Participation in telework is open to all eligible employees without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization~ parental status, military service, or other non-merit factors, unless cited as one of the exceptions identified below and in the Title 5 reference. 5 U.S.C. § 6502(a) (2).

1. **Employee Exceptions.** NOAA employees who meet any of the following exceptions are ineligible to telework:
 - a. The employee has been officially disciplined for being absent without permission for more than five (5) days in any calendar year; or
 - b. The employee has been officially disciplined² for violations of 5 CFR Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch) for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties³.
2. **All employees are initially considered eligible to telework.** If an employee is determined to be ineligible to work due to 5 U.S.C. § 6502(a) (2), the employee will receive a written determination from

² Definition of Officially Disciplined - A disciplinary action that results in the placement of a document in an employee's official personnel file (OPF) ; the bar on telework participation remains in effect as long as the document stays in an employee's OPF. A suspension or termination related to the items mentioned in Public Law 111-292 that results in a document (Standard Form 50) that permanently remains in the OPF would result in permanent prohibition in telework participation.

³ No authority to waive provisions "a" or "b."

the office director or designee (i.e., employee's supervisor) within 10 working days of the employee's request to telework.

- B. **Precluded Due to Nature of Work of Position.** If the official duties of the employee's position require the employee to perform direct handling of secure materials determined to be inappropriate for telework by the agency head; on-site activity that cannot be handled remotely or at an alternate worksite, or the employee is a mobile worker (not eligible due to the nature of work) then the employees' position is not eligible for telework.

V. ACCOMMODATIONS FOR EMPLOYEES WITH DISABILITIES

It is important to distinguish between ordinary requests to telework and requests from persons with disabilities for reasonable accommodation. Approving officials/supervisors should consult Department Administrative Order (DAO) 215-10, "Reasonable Accommodation Policy," and the Disability Program Manager as part of the interactive process established by the Rehabilitation Act, in order to fully understand supervisors' responsibilities under the law.

As governed by Section 501 of the Rehabilitation Act of 1973, as amended, 29 O.S.C. § 791 et. seq., the Rehabilitation Act and DAO 215-10, the determination as to whether an employee may be granted telework as a reasonable accommodation due to a disability should be made through the Reasonable Accommodation Coordinator, the employee's first-line supervisor, and the employee.

VI. EXTENT OF TELEWORK

- A. All eligible employees may telework at the alternate worksite up to 60% of their pay period work hours or six (6) days per pay period, whichever is less, as a regular schedule. Management may restrict the amount of telework for any individual employee if it can show that it is essential for the employee's duties to be performed in the traditional worksite more than 40% of the pay period.
- B. Employees may telework more than 60% of the pay period work hours or six (6) days per pay period as a regular schedule only with the mutual consent of the employee and his/her supervisor and/or approving official. Permission to telework greater than 60% must be exercised in a fair and equitable manner.
- C. An employee may request fulltime (40 hours/week) telework for a specified time period under unusual circumstances. The employee will explain to their supervisor the need for the fulltime telework and the expected duration of this need. Reasons for the request may include, but are not limited to, unique work projects, health considerations (including reasonable accommodations

as discussed in Section VI above), or special circumstances affecting the employee's normal commute or telework site.

VII. AD HOC AND UNSCHEDULED TELEWORK

Employees may request ad hoc telework from their supervisor for a variety of circumstances. Their supervisor may disapprove any unscheduled telework request if it is essential for the employee to be in the traditional worksite. The amount of ad hoc telework in a particular pay period is not restricted if agreed to by both the employee and their supervisor.

VIII. OPTIONAL TELEWORK PLANS

NOAA recognizes that some employees will opt not to telework at all, others will choose to telework only on a limited ad hoc basis, and others will telework to the maximum extent possible. NOAA offers two levels (Plans) of telework.

Plan A:

1. Total regularly scheduled telework hours do not exceed one day per pay period and total teleworked hours do not exceed 80 hours during a fiscal year. This number excludes telework hours granted under Section 3 (D&E) of this article.
2. Employees on Plan A are not subject to mandatory telework; the employee is not required to telework when the office is closed for reasons other than Federal law (i.e., Federal Holiday) or Executive Order.
3. The employee may switch to Plan B at any time prior to reaching the 80-hour limitation, and the individual telework agreement is modified to reflect the change. If an employee on Plan A exceeds the 80-hour limitation, Management may switch the employee to Plan B and modify the individual telework agreement to reflect this change. If the employee is not switched to Plan B, the employee remains on Plan A and may exceed the 80-hour limitation.

Plan B:

1. Includes employees on a regular/recurring telework schedule of more than 1 or employees who desire the option of doing more than 80 hours ad hoc/unscheduled telework during the fiscal year.
2. An employee under Plan B may return to Plan A only with Management permission. As specified in this agreement, the Plan B employee can be

subject to mandatory telework when his/her office is closed for reasons other than Federal law (i.e., Federal Holiday) or Executive order

Employees on either plan must obtain supervisory approval before performing ad hoc telework. No supervisory approval is needed for unscheduled telework under OPM or other appropriate authority announcement. However, employees must notify their supervisor in accordance with the terms of the written telework agreement. If telework is requested by the employee, the employee is responsible for ensuring that he/she has sufficient work for the period of telework scheduled to be performed.

IX. TELEWORKING CONDITIONS

As conditions for teleworking, all of the following must be readily available:

- A. Telework-ready employees scheduled to telework during their regular tour of duty on a day when their office is closed (or when other employees are dismissed early) are not entitled to receive overtime pay, credit hours, or compensatory time off in lieu of overtime payment for performing work during their regularly scheduled hours.
- B. All time teleworked in a pay period will be recorded per instructions in the appropriate time and attendance system.
- C. All employees designated as "emergency" or with COOP responsibility must have an approved individual telework agreement.
- D. An employee's supervisor may direct an employee to report to the office on a scheduled telework day when the employee's personal attendance at the traditional worksite is specifically required. In such cases the employee and their supervisor will work to reschedule the telework day during the same pay period when possible. Teleworking employees will normally be allowed to teleconference to meetings called by Management. Management must provide a valid reason for requiring teleworking employees to report to the office for meetings if other bargaining unit employees are joining the meeting via teleconference.

X. PERFORMANCE STANDARDS

Performance standards for telework-ready employees must be the same as performance standards for non- telework-ready employees. Expectations for performance should be clearly addressed in each employee' s performance plan, and the performance plan should be reviewed to ensure the standards do not create inequities or inconsistencies between telework-ready and non-telework ready

employees. Like non-telework-ready employees, telework-ready employees are held accountable for the results they produce. Resources for performance management are available from OPM at www.opm.gov/perform; and NOAA' s performance management resources portal: <https://secure.wfm.noaa.gov/noaa-only/perfmgmt/index.html>.

XI. PREPARING FOR THE INDIVIDUAL TELEWORK AGREEMENT

A telework agreement between the Agency and employee must be in place for all types of telework. Telework agreements may be different for each employee and can be either ad hoc with no specified schedule for teleworking or set a regular schedule for teleworking.

The following actions are to be taken when establishing an individual telework agreement:

- A. The employee completes the "11Telework Application/Agreement and Modification of Telework Agreement" (See Appendix A) and submits it to his/her supervisor along with the certificate showing successful completion of Telework 101 for Employees via the Commerce Learning Center (CLC) .
- B. The employee and supervisor discuss the expectations in the proposed telework agreement, including the performance levels required of the employee.

XII. TELEWORK AGREEMENTS

A. Length of Telework Agreements

1. Individual telework agreements cover the period from October 1 through September 30 of the current fiscal year. All telework agreements expire at the end of the fiscal year.
2. An employee may not telework if they do not have a current approved telework agreement in place.
3. In accordance with 5 U.S.C. § 6502(b) (3), an employee is not authorized to continue teleworking if the performance of that employee does not comply with the terms of the written telework agreement between the approving official and the employee.

B. Denial, Modification, and Termination of Telework Agreement. The operational needs of NOAA are paramount and employees who telework do not have an automatic right to continue to telework.

1. Denial

- a. Management will provide a written justification within ten {10} working days to any employee whose telework application is denied. Any denial decision must be based on operational needs, conduct, or performance in accordance with the law and this agreement.

2. Modification

- a. An employee may request to modify the current telework agreement (e.g., change the regular teleworking day) by submitting a new "Telework Application/ Agreement and Modification of Telework Agreement" (check "Modification") with only the requested changes indicated;
- b. The supervisor and employee shall discuss the employee's requested modifications within five (5) working days of submission;
- c. If the supervisor is not the approving official, the supervisor will forward the request to the approving official with his/her recommendations within five (5) working days;
- d. The approving official will issue a written decision within five (5) working days (of the discussion in (b));
- e. Unless extraordinary circumstances require immediate action, management will provide ten (10) working days notice to the employee prior to any significant involuntary modification of an employee's telework agreement.

3. Termination.

- a. An employee may terminate his/her written telework agreement by providing the approving official with written notice of a decision to terminate his/her written telework agreement.
- b. An employee may request a modification to their current telework agreement by providing written notice to their supervisor or other designated approving official. The official will notify the employee of his/her decision within five (5) working days.
- c. The approving official must provide documentation for the termination to the affected employee. Consent or acknowledgement via signature by the affected employee is not required for the termination of telework to take effect;

- d. The approving official must deny or immediately terminate the individual telework agreement, as applicable, if the employee fails to be eligible to telework due to 5 U.S.C. §§ 6502 (a) (2) or (b) (3);
- e. Unless extraordinary circumstances require immediate action, management will provide ten (10) working days notice to the employee prior to any involuntary termination of an employee's telework agreement. Management will provide the Union notification within ten (10) days of an involuntary termination.

B. Appeals

1. The employee may, within five (5) days of notification of an application denial, or of a significant involuntary modification, request reconsideration of the denial/reduction to the appropriate deciding official, as designated by Management. If the deciding official disapproves of the request, he/she must provide written justification to the employee within 10 working days indicating when or if the employee would be eligible to reapply, and if applicable, what actions the employee should take to improve his/her chance of future approval. Deciding officials are to provide employees copies of signed written denials or terminations of telework agreements.
2. Employees may grieve any teleworking agreement/application denial, termination or modification under the grievance procedure in this CBA.
3. Employees may choose either the appeals process or the negotiated grievance procedure to challenge the referenced telework decisions, but not both.

XIII. ESTABLISHING THE WORK SCHEDULE

Work schedules identify the days and times an employee will work while teleworking. Normally, telework schedules parallel those at the traditional worksite; however, they can differ to meet the needs of the organization and participating employees' needs. Work schedules may also include fixed times during the day for manager/supervisor/employee telephone conversations, which may be helpful to ensure ongoing communication. For additional information on hours of duty, please visit:

http://hr.commerce.gov/Practitioners/CompensationAndLeave/DEV01_006627 .

Employees may request intermittent/ad hoc telework from their supervisor for a variety of circumstances. Their supervisor may disapprove any unscheduled telework request if it is essential for the employee to be in the traditional office. The

amount of intermittent telework in a particular pay period is not restricted if agreed to by both the employee and their supervisor.

- A) Employees may request intermittent/ad hoc telework from their supervisor for a variety of circumstances. Their supervisor may disapprove any unscheduled telework request if *it* is essential for the employee to be in the traditional office. The amount of intermittent telework in a particular pay period is not restricted if agreed to by both the employee and their supervisor.
- B) An employee's supervisor may direct an employee to report to the office on a scheduled telework day when the employee's personal attendance at the traditional worksite is specifically required. In such cases the employee and their supervisor will work to reschedule the telework day during the same pay period when possible. Teleworking employees will normally be allowed to teleconference to meetings called by Management. Management must provide a valid reason for requiring teleworking employees to report to the office for meetings if other bargaining unit employees are joining the meeting via teleconference.

XIV. DETERMINING THE OFFICIAL DUTY STATION (5 CFR 531.605)

- A. Pay during Telework Agreements.
 - 1. If the traditional worksite and telework site are within the same locality pay area, the official duty station is the location of the traditional worksite;
 - 2. If the traditional worksite and the telework site are NOT within the same locality pay area:
 - a. The official duty station is the location of the traditional worksite as long as the employee physically reports to the traditional work site at least twice each biweekly pay period on a regular and recurring basis;
 - b. The official duty station is the telework location (i.e., home or other alternate worksite) if the employee does NOT report at least twice each biweekly pay period on a regular and recurring basis to the traditional worksite;
 - 3. If a telework employee with a varying work location works at least twice each biweekly pay period on a regular and recurring basis in the same locality pay area in which the traditional worksite is located, the employee does not have to report twice each pay period to the official worksite to maintain the locality payment for that area.

4. Telework arrangements may in rare situations entail a change in an employee's official duty station affecting their locality pay and other relevant circumstances. Requests for full time telework that would require an official change in duty location will be considered and granted only on a case-by-case basis with special consideration given to any increased costs to ERD.
 5. The same premium pay rules apply to employees when they telework as when they are working at the traditional worksite.
- B. Pay during Temporary Telework Arrangements.
1. In certain temporary situations, NOAA may designate the location of the traditional worksite as the official duty station of an employee who teleworks on a regular basis in a different locality pay area even though the employee is not able to report at least twice each biweekly pay period on a regular and recurring basis to the traditional worksite. The intent of this exception is to address certain situations where the employee is retaining a residence in the commuting area for the traditional worksite but is temporarily unable to report to the worksite for reasons beyond the employee's control (e.g., on a special assignment or working while recuperating from an operation);
 2. One key consideration is the need to preserve equity between telework-ready and non-telework ready employees and working in the same areas as the telework location. Also, the temporary exception should generally be used only in cases where: (1) the employee is expected to stop teleworking and return to work at the traditional worksite in the near future, or (2) the employee is expected to continue teleworking but will be able to report in the near future to the traditional worksite at least twice each biweekly pay period on a regular and recurring basis.

XV.PAY AND LEAVE

- A. Pay. An employee's locality rate of pay is based on the employee's official duty station, and is determined in accordance with 5 CFR 531.604. The line/staff office must determine and designate the official duty station for an employee covered by a telework agreement using the criteria above.
- B. Leave and Work Scheduling Flexibilities. Telework-ready employees are governed by the same procedures as non-telework-ready employees for requesting and obtaining leave approval.

XVI. OFFICE SPACE

- A. Employees who telework 60% of the pay period or less will be treated the same as non-teleworkers for the determination and assignment of office space (see Article 39).
- B. Management may require the employee to vacate or share their office space if the employee teleworks more than 60% for more than 90 days. If the employee is required to share an office, then Management will consider the wishes of both employees in office assignment. However, Management will first make a good faith effort to find alternative office space such as using office space assigned to telecommuting contractors. Any office change due to this Article will be done fairly and equitably.
- C. If an employee is required to vacate their existing office, a suitable office space will be provided to the employee during required work hours at the traditional worksite. Employees will not be vacated from their office until appropriate office space is located.

XVII. UNION DUTIES WHILE TELEWORKING

Union representatives may perform representational duties while teleworking on official time (see Article 7 of this agreement). That time will be recorded in WebTA (see Article 22 of this agreement) as Official Time. Internal Union business will not be conducted on official time regardless of the employees' worksite.

XVIII. TELEWORK SITES AND EQUIPMENT

An employee's residence or other pre-approved location may be used for telework provided it is conducive for telework and is deemed safe. Use of an employee's residence for telework requires the mutual consent of both Management and the employee. If an employee is using their residence as an alternative worksite, it is the employee's responsibility to ensure a proper and safe work environment is maintained. The Telework Safety Checklist, attached as Appendix C, will serve as evidence that the residential alternative worksite is *in* compliance with Agency guidelines. The Telework Safety Checklist signed by the employee will serve as official certification and shall be recertified quarterly.

The availability of an employee's personal property, including their residence, to perform government functions is at the discretion of the employee. An employee who teleworks from their residence will provide their supervisor with a timely notice if their residence becomes unavailable or unsuitable as a telework location and, if possible, will provide an estimate of how long it will remain unavailable. If an employee's only approved alternative worksite is their residence and this location becomes unavailable, the employee is not considered to be "telework ready" until the employee notifies management that their residence is once again available as a

telework location. During this period the employee is expected to work from their traditional worksite or request appropriate leave.

Teleworkers must have the necessary equipment and tools to effectively perform and complete work assignments while teleworking.

1. Management may provide employees with computer equipment, associated peripheral equipment (e.g., printer, copier, scanner), telecommunications, broadband card, and will provide basic office supplies such as copy paper, folders, pens, and pencils to the extent that such supplies would be used by the employee at his / her non-teleworking work location.
2. Management is not responsible for any operating costs associated with the use of the employee's residence as an alternative workplace, i.e. internet, phone , electrical, or home heating cost, etc. Management may provide employees with computer equipment, associated peripheral equipment (e . g., printer, copier, scanner), telecommunications, and broadband card and will provide basic office supplies such as copy paper, folders, pens, and pencils to the extent that such supplies would be used by the employee at his/ her non-teleworking work location.
3. Management will not provide at-home technical support other than remote technical guidance for government furnished equipment.
4. All equipment and materials provided or reimbursed by NOAA remain the property of NOAA.
5. Teleworkers must have the necessary equipment and tools to effectively perform and complete work assignments while teleworking.

XIX. IT SECURITY REQUIREMENTS FOR TELEWORK-READY EMPLOYEES

- A. Teleworking employees must follow all applicable laws, existing government-wide regulations, and future government-wide regulations not in conflict with this Agreement, on IT security. Teleworking employees must also follow Agency policies and practices on IT security, provided that such Agency policies and practices do not conflict with this Agreement and have undergone required collective bargaining as specified in this Agreement and in applicable law.
- B. Supervisors are responsible for ensuring that telework ready employees agree to comply with all existing IT security requirements and to ensure employees are held accountable to them.
- C. Management agrees to negotiate initiatives regarding IT security policy that are subject to collective bargaining following the effective date of this agreement in accordance with Article 34 of this CBA (Management Initiatives).

XX. THE PRIVACY ACT OF 1974, SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION (PII), AND BUSINESS IDENTIFIABLE INFORMATION (BII) REQUIREMENTS FOR TELEWORK-READY EMPLOYEES

All telework-ready employees are responsible for ensuring that records subject to the Privacy Act of 1974, sensitive Personally Identifiable Information (PII), and Business Identifiable

Information (BII) are not disclosed to anyone except those who have been authorized access to such information in order to perform their duties.

Bureaus/operating units must ensure that appropriate physical, administrative, and technical safeguards are used to protect the security and confidentiality of such records.

XXI. TELEWORKING DURING UNUSUAL CIRCUMSTANCES

- A. If the telework-ready employee faces a personal hardship that prevents him/her from working successfully at the telework site, the employee may request the appropriate leave (annual, sick, compensatory, credit hours, compensatory time for travel). The employee may also switch to an alternative work schedule day off, or use "flexing" consistent with the employee's alternative work schedule, if any.
- B. If a localized emergency situation (e.g. power or water failure) closes an employee's traditional worksite or results in an early dismissal, employees who are teleworking on that day and whose ability to work is not affected by the emergency situation, will continue to work. The employee shall notify their supervisor if they cannot continue working the rest of the regularly scheduled shift. If the emergency condition also affects the functionality of the telework site or if the telework-ready employee's duties are such that he/she cannot continue to work without contact with the regular worksite during emergency situation, the employee will be excused for the same time period as non-teleworking employees.
- C. If an early dismissal is announced due to inclement weather to allow employees to return home safely and the employee is working at a Federal Interagency Telecommuting Center, the employee will follow the dismissal procedures of the Telecenter.
- D. If the employee is working at their residence when an early dismissal due to inclement weather is announced for the traditional worksite facility, the employee shall exercise discretion in accordance with the current Policy as to whether they are capable of continuing work for the rest of the regularly scheduled shift and will notify their supervisor in a timely manner.

- E. When advance notice (no less than 2 hours prior to the end of an employee's work shift) is given of a closure or potential closure of the traditional worksite due to an emergency situation, e.g., a "snow closing day," telework ready bargaining unit employees will telework even if not scheduled to do so provided they are able to perform their normal work assignments at the telework location. If the employee is unable to perform their normal work assignments at the alternative work location, the employee will be excused for the same time period as non-teleworking employees. Possible situations that could preclude an employee from teleworking during a closure of the traditional work site include but may not be limited to:
1. The alternate worksite is in a manner that renders the employee unable to telework (e.g., remodeling activities have disrupted internet access; spouse is required to use the only computer available at the worksite; the home office space is being used by house guests or other cohabitants of the employee, etc.)
 2. The presence, due to the emergency, of dependents at the telework location that require the employee's supervision;
 3. The emergency event that closed the traditional worksite has also adversely impacted the alternate worksite;
 4. The employee has insufficient assigned work that can be accomplished while teleworking or lacks the necessary equipment or supplies, (and the supervisor is unable to provide additional work) or lacks the necessary equipment or supplies due to circumstances outside of the employee's control.
 5. Employees will not be required to telework during nonemergency closures of the traditional worksite (e.g. maintenance or construction activities).
- F. Employees are not responsible for ensuring that they will always have sufficient assigned work to accomplish while doing mandatory telework during an extended emergency closure of their traditional worksite. The employee will notify their supervisor as soon as practical if the alternate worksite is not available or if the employee has insufficient work.
- G. When an early dismissal of employees for non-emergency conditions is announced, such as on the day prior to a Federal holiday or two-hour early dismissal, employees who are teleworking or scheduled to telework will be similarly excused.
- H. When an emergency affects only the alternative worksite for a major portion of the workday, the employee is expected to report to the traditional worksite or request supervisory approval of leave.

- I. When an employee knows in advance of a situation that would preclude working at the alternative worksite, the employee must either come to the traditional worksite or request leave.
- K. Employees who are required to report to work during a COOP event shall follow the relevant COOP plan.
- L. Any single emergency (non-COOP) closure, employees on Plan B will be required to telework at the alternate worksite {AWS} designated in their telework agreement for up to six days of unscheduled telework. Following the sixth day of such unscheduled telework, employees will not be required to telework at the AWS designated in their telework agreement. Rather, if and once management is able to provide an alternate worksite, employees will be required to work at that site. Following the sixth day of unscheduled telework during the single emergency closure, to the extent management is not able to find an alternate worksite, employees will not be required to perform unscheduled telework.
- M. When advanced notice (no less than 2 hours prior to the end of an employees work shift) is given of a planned closure of the traditional worksite office the next day due to an emergency situation, e.g. a "snow closing day," telework-ready employees on Plan B will telework even if not scheduled to do so.
- N. Employees on Plan B will not be required to do mandatory telework during non-emergency closures of the traditional worksite (e.g. maintenance or construction activities), nor do mandatory telework for more than six (6) non-scheduled telework days for any single emergency closure, nor do mandatory telework of more than ten (10) days in any fiscal year except for ERG employees in a COOP event. The Agency agrees to expeditiously seek alternate work locations for extended emergencies that affect the traditional worksite.
- O. When an early dismissal of employees for non-emergency conditions is announced, such as on the day prior to a Federal holiday or two-hour early dismissal, employees who are teleworking or scheduled to telework will be similarly excused.
- P. When an emergency affects only the alternative worksite for a major portion of the workday, the employee is expected to report to the traditional worksite or request supervisory approval of leave.
- Q. When an employee knows in advance of a situation that would preclude working at the alternative worksite, the employee must either come to the traditional worksite or request leave.

- R. Employees who are required to report to work during a COOP event may request to telework from their residence or report to an alternative worksite determined by Management.

XXII. TELEWORK AND THE CONTINUITY OF OPERATIONS PLAN (COOP)

- A. Employees who are designated members of an Emergency Relocation Group (ERG) under a Continuity of Operations Plan (COOP) may be required to sign a mandatory telework agreement for COOP events only, provided such an agreement does not require the employee to find, provide, or pay for, the alternate worksite. ERG employees who are eligible may choose to sign a voluntary telework agreement.
- B. If an employee occupies a position deemed essential or serves as an emergency relocation group (ERG) member, he/she may be required to report to work. These designations may vary based on the nature of the emergency for inclement weather or natural or man made emergencies.
- C. If an employee is an ERG member for COOP purposes, management, along with the employee and supervisor, should make advance and/or situational decisions as to whether the employee must physically report for duty or may work from home or an alternative worksite. For example, if the purpose of the employee reporting for duty at the traditional worksite is to provide policy guidance or to notify specific individuals of emergency requirements, this may be able to be accomplished from home, provided the employee has access to the resources necessary to perform the required services. However, in some cases, the only way to obtain the services of the employee may be through telework from an alternative worksite. For example, if inclement weather or other emergency situation results in a transportation shutdown, but phone lines remain working, the employee may be able to work from home rather than reporting to the traditional worksite or COOP site.
- D. Employees designated as COOP Team Members may be required to telework during emergency closures or other emergencies, including pandemics and for COOP exercises, on any day, even if that day is not a regular telework day or a day with specific approval for situational/episodic telework. Telework-ready employees may also be required to perform duties outside of their usual or customary duties to ensure continuation of agency-essential mission or activities.
- E. Management will comply with applicable laws and regulations regarding the designation of the alternate worksite during a COOP event.

- F. In accordance with Public Law 111-292 Section 6504(d) (2) "Continuity of Operations Plans Supersede Telework Policy - During any period that an executive agency is operating under a continuity of operations plan, that plan shall supersede any telework policy."

XXIII. EQUAL TREATMENT FOR TELEWORKERS AND NON-TELEWORKERS

Teleworkers and non-teleworkers shall be treated the same for certain purposes:

- a. Periodic appraisals of job performance of employees;
- b. Training, rewarding, reassigning, promoting, reduction in grade, retaining, and removing employees;
- c. Work requirements; and
- d. Other acts involving managerial discretion.

This Article is consistent with the provisions of the Telework Enhancement Act (Act) of 2010 (Public Law 111 292, October 9, 2010), the Department of Commerce Telework Policy (October 2014), and the Office of Personnel Management's (OPM) policies contained in their Guide to Telework in the Federal Government and Washington, DC Area Dismissal and Closure Procedures (December 2014).

XXIV. REFERENCES

- a. Telework Enhancement Act of 2010, Public Law 111-292, December 9, 2010
- b. U.S. Office of Personnel Management (OPM) Guide to Telework in the Federal Government (2010)
- c. OPM, Washington, DC, Area Dismissal and Closure Procedures (December 2014)

Application

Modification

APPENDIX A: TELEWORK APPLICATION/AGREEMENT AND MODIFICATION
OF TELEWORK AGREEMENT

Section I - To be completed by the Employee

Date of Request: _____

Proposed Start Date: _____

Employee Name: _____

Organization: _____

Telephone: _____

Grade or Pay Band: _____

Supervisor's Name and Title: _____

Telephone: _____

Address, Telephone, and Description of Alternate Worksite: _____

Equipment Needed to Perform Work at Alternate Worksite: _____

Telework Level Requested: () Plan A () Plan B

Expiration Date of Agreement: _____

Type of Telework: () Regularly Scheduled () Ad Hoc
For Continuity of Operations or Emergency Purposes

Work Schedule Including AWS Day Off (If Applicable): _____

Telework Days at Alternate Worksite: _____

Identification of specific data types allowed being accessed: _____

_____ I have requested Plan A. I understand that I am limited to no more than 80 hours of ad hoc and/or unscheduled telework during the term of the individual telework agreement. I will not be required to telework when my office is closed due to unforeseen circumstances.

_____ I have requested Plan B. I understand that I must telework when my office is closed due to unforeseen circumstances, unless otherwise excused by my supervisor. I have the option of performing regular/ recurring and/or ad hoc telework for more than 80 hours during the term of the telework agreement. Working less than 80 hours of ad hoc telework does not change my election of Plan B. I may not change to Plan A during the term of the individual telework agreement.

_____ I certify that I have completed Telework 101- Employee via the CLC, the Telework Safety Checklist, and the Telework Assessment Tool.

_____ I understand that I may not care for children, elders, or other dependents while I am in a duty status and teleworking. I am not permitted to telework during time I am taking care of dependents. In these situations, I may request the appropriate leave from my supervisor.

_____ When unscheduled leave or telework is announced by the appropriate authorities, I understand that the election is mine but I must notify my supervisor. However, in rare situations, am aware that management may require me (a "non-emergency" employee) to deny my unscheduled leave/telework and require me to report for an assignment that requires my presence and management has discussed this with me in advance of the situation giving rise to unscheduled leave/telework.

Employee's Signature _____ Date: _____

Section II - To be Completed by the Approving Official

Approved: () Disapproved: ()
Reason Not Approved:

I certify that the employee is eligible and authorized to telework, that I have reviewed the employee's Safety Checklist as well as the Telework Assessment Tool.

Approving Official's Signature _____ Date: _____

Alternate Worksite Costs - The employee understands that the Government will not be responsible for any operating costs that are associated with the use of the employee's home as an alternate worksite, for example, home maintenance, insurance, or utilities. The employee also understands that any entitlement to reimbursement for authorized expenses incurred while conducting business for the Government, as provided for by statute or regulation, is not relinquished by this telework agreement.

Liability - The applicant understands that the Government will not be held liable for damages to his/her personal or real property while he/she is working at the approved alternate worksite, except to the extent the Government is held liable under the Military Personnel and Civilian Employees Claims Act and the Federal Tort Claims Act.

Injury Compensation - The applicant understands that he/she is covered under the Federal Employees Compensation Act if injured in the course of actually performing official duties at the alternate worksite. The applicant agrees to notify his/her supervisor immediately of any accident or injury that occurs at the alternate workplace and to complete any required forms. The supervisor agrees to investigate such a report as soon as possible.

Disclosure - The applicant agrees to protect Government records from unauthorized disclosure or damage and will comply with requirements of the Privacy Act of 1974, 5 U.S.C. § 552(a). Compliance with This Agreement The employee's failure to comply with the terms of this telework agreement may result in the termination of this telework agreement and the telework arrangement. Failure to comply also may result in disciplinary action against the employee if just cause exists to warrant such action.

Employee's Signature _____

Date: _____

Approving Official's Signature _____

Date: _____

APPENDIX B: TELEWORK ASSESSMENT TOOL

The decision to telework should be based on the ability of an employee to work in a setting that may be in his/ her home or a Federal facility other than the regular office, without immediate supervision. The following tool is to be used by the supervisor as a basis for discussing the option and appropriateness of telework for a particular employee. Employees are also required to use the assessment tool to help in determining if telework is suitable for their positions.

Please rate yourself or your employee, using the following scale:

5 – Always 4 – Usually 3 – Sometimes 2 – Rarely 1 -Never

1. Employee works without regular monitoring/ supervision.
2. Employee is comfortable working alone.
3. Employee independently identified required work products.
4. Employee successfully plans work production schedule.
5. Employee communicates hindrances to successful completion of a task or project in sufficient time to allow for alterations that improve the opportunity for success.
6. Employee is knowledgeable about your organization's procedures/policies.
7. Employee is fully aware of Department information technology security.
8. Employee meets deadlines.

9. If telework will be in the employee's residence, the residence has an appropriate work environment .
10. Employee is willing to provide his/her own equipment if Government – furnished equipment is not available.
11. Employee is computer literate.
12. Employee has successfully completed the Office of Personnel Management's online teleworking training course.

Approving Official's Signature _____

Date: _____

APPENDIX C: TELEWORK SAFETY CHECKLIST

This checklist is to be completed only if the proposed alternate worksite is in a private residence. This checklist is designed to assess the overall safety of the designated work area of the alternate worksite. Each applicant should read and complete the self-certification safety checklist. Upon completion, the checklist should be signed and dated by the applicant and submitted to the immediate supervisor.

Applicant Name: _____ Date: _____

Telephone: _____

Address, Telephone, and Location of Alternate Worksite : _____

Describe the Designated Work Area: _____

1. Are stairs with four or more steps equipped with handrails? () Yes () No () N/A
2. Are aisles, doorways, and corners free of obstruction?
() Yes () No () N/A
3. Are file/ storage cabinets arranged so that open doors / drawers do not create obstacles?
() Yes () No () N/A
4. Is the office space neat, clean, and free of combustibles? () Yes () No () N/A
5. Are phone lines, electrical cords, and surge protectors secured under a desk or alongside a baseboard? () Yes () No () N/A
6. Are circuit breakers/ hoses in the electrical panel properly labeled?
() Yes () No () N/A
7. Is electrical equipment free of recognized hazards that could cause physical harm (e.g., frayed, loose, and/ or exposed wires, bare conductors, etc.)? () Yes () No () N/A
8. Is electrical equipment (i.e., have three -prong receptacles)? () Yes () No () N/A
9. Is there a smoke alarm and clear access to a fire extinguisher?
() Yes () No () N/A

By signing this document, the applicant certifies that all of the above applicable questions were answered in the affirmative, or, if answered in the negative, that the applicant will take all necessary corrective actions to eliminate any hazard prior to beginning telework.

Applicant's Signature _____ Date: _____

APPENDIX D: OPTIONAL TELEWORK TERMINATION FORM

The telework option is a privilege and not an employee right. As such, it falls under the supervisor's discretion to determine how work should be accomplished with the organization. Termination from the telework agreement can be either voluntary or involuntary.

This is notification that the telework agreement, which was signed on _____ is no longer in effect and is hereby terminated.

Termination is based on (check one):

Voluntary Withdrawal

Involuntary Withdrawal

If telework is involuntarily terminated, the decision is based on:

Requirements of the current work assignment

Reassignment or change in duties

Failure to maintain employee eligibility standards

Breach in Information Technology Security policies and/or procedures

Other (please specify): _____

Receipt Acknowledged

Employee's Signature: _____

Date: _____

Approving Official's Signature: _____

Date: _____

ARTICLE 37. Training

Section 1

Appropriate and relevant training and career development are in the best interests of the NOAA and the employee. Maintaining proficiency in connection with assigned duties as stated in the job description is among the responsibilities of all employees. The assigned training and development activities for employees are the responsibilities of management.

Section 2

Management will provide and make known to employees, general training information, i.e., catalogs, brochures, etc., for employees to view and easily access. Additionally, management will advise individual employees of appropriate and relevant training opportunities that meet their individual training needs.

Section 3

Employees are encouraged to develop an Individual Development Plan (IDP) in coordination with their respective supervisors. If requested, Management will provide access to IDP training.

Section 4

Employees are encouraged to participate in technical, scientific, career and individual development conferences and meetings that are relevant to their positions and career development objectives and consistent with their IDPs. At Management's discretion, Management will provide funds for registration, travel and fees, resources permitting, for employees to attend such events. Attendance priority will be given to employees who will be presenting papers or posters, or speaking at such conferences/meetings.

Section 5

In accordance with the NOAA Interim Employee Development and Training Policy, Revised March 2007, Section 9.04(d), Guidance on Payment of Expenses to Obtain Professional Credentials and Organizational Membership, 5 U.S.C. 5757 allows, but does not require, agencies to pay for expenses related to professional credentials. This authority may not be used to qualify an applicant for a position. So long as the expense directly supports identified strategic interests of OR&R and ERO, appropriated funds can be used to pay for:

- A. Expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification.
- B. Examinations to obtain such credentials.
- C. Organizational membership in the association or society.

- D. Membership for a specific agency position that the incumbent uses to improve the conduct, supervision, or management of his/her function. Additionally, appropriated funds may be used to pay for attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities in accordance with 5 U.S.C. 4110.

Section 6

Employees are encouraged to participate in long-term training which supports the work of ERO. Employees may discuss long-term training with their supervisors and include such training in their IDPs. Approval long-term training will be done in accordance with applicable DOC policy and NOAA Interim Employee Development and Training Policy of March 2007, Section 10.

Section 7

In the event that multiple employees are interested in a similar training opportunity and resources restrict the number that can participate, those not selected to participate will receive consideration, for one calendar year, when the same or similar opportunity arises again. It is the responsibility of the employee to reapply for the training opportunity to receive this consideration.

Section 8

When practical, management will schedule formal work related, in house training courses to begin during core working hours excluding the lunch period hours, 11:30 AM to 12:30 PM, local time to the host venue.

Section 9

The employee recognizes their individual responsibility to keep his/her personnel records current and complete to fully reflect total employment experience, training and education.

ARTICLE 38. Labor-Management Activities

Section 1

Management and the Union agree to support the spirit of the National Labor Management Forum and the Department of Commerce Labor-Management Forum.

Section 2

Management will consider requests for official time for ERO employees who are officially designated Stewards or elected/appointed Union officials, workload permitting, to attend Union-sponsored or labor related training which management and the Union agree are of mutual concern and benefit.

Section 3

No employee may receive more than forty (40) hours every twelve (12) months for Union-sponsored or labor related training and the total hours allocated to the Union may not exceed one-hundred twenty (120) hours per calendar year unless agreed to by both management and the Union. Travel and per diem to the training venue may be considered for reimbursement on a case by case basis and in accordance with government-wide travel regulations.

ARTICLE 39. Office Space

Section 1. General Principles and Shared Offices

- A. To the extent practical, each member of the bargaining unit shall be furnished with office space that facilitates productivity and employee satisfaction.
- B. Management will usually attempt to assign individual offices to staff but may require shared offices in certain circumstances. In the case of a shared office, the employees in the office to be shared may be consulted by Management. Employees in a shared office should be reasonable and flexible regarding their concerns about potential office mates. At an employee's request, the Union may represent either or both employees during this consultation.

Section 2. Individual assignments at Western Regional Center (WRC)

- A. For the purpose of this Article, Vacant Staff Office Space is defined as non-temporary NOAA Western Regional Center office space that is to be allocated to or is presently used by ERD and is vacant (not used as primary office by any employee for greater than 90 days) or soon to be vacant and either:
 - 1. Management has determined qualifies as vacant ERD staff office space, i.e., space available for occupancy by bargaining unit employees; or
 - 2. Meets all of the following criteria:
 - a. is adjacent to or very near existing office space occupied by bargaining unit personnel; and
 - b. could be available to bargaining unit employees without interfering with Management's exercise of its right to determine the methods and/or means of performing work; and
 - c. is not intended to be occupied by managers or other federal employees who are not part of the bargaining unit.

Section 3. Formula

Unless there is a clear and justifiable reason for locating specific staff close to a common area or resource needed by Management to achieve its mission, Vacant Staff Office Space will be assigned as follows:

- A. Management will notify the Union and all bargaining unit employees within that commuting area about the availability of office space and request notification from all employees who are interested in occupying the office.

- B. If no bargaining unit employee applies for the space, then the method of this Section does not apply. If only one bargaining unit employee applies, he/she will be assigned the office space. If more than one bargaining unit member applies, Management will select the bargaining unit member to be assigned to the vacant office space based on the highest applicant score given by the following formula:

Score = 5 times GS level + years of service as determined by the Service Computation Date in WebTA.

- C. The Union will be notified in writing of the selection; this notification will include a list of staff who expressed interest in the vacant office and a brief rationale of the assignment based on the process and the criteria used. The Union reserves the right to grieve the selection with Management if factors other than the formula in Section 3(B) were used to make the assignment.

Section 4. Vacant office space outside of ERD's allotted space

In some instances, office space in the Western Regional Center allocated to the Office of Response and Restoration, that is neither to be allocated to nor in use by ERD, may become vacant. Where such office space meets all of the criteria in Section 1 (other than the requirement that the office space "is to be allocated to or is presently used by ERD") and the Union would like for the space to be assigned to a bargaining unit member, the Union may, in writing, notify Management of the specific office space it seeks. Management will thereafter raise the request with the division manager responsible for the office space at issue. Management will then provide an answer to the Union and the reason for its answer. Should ERD be able to secure the office space the Union requests, Management will assign the relevant office space in accordance with Section 3. When vacant space is available, Management recognizes that it is generally in the interest of both Management and the Union to secure office space that the Union finds desirable.

Section 5. Union records

Management shall provide the Union Chief Steward a secure storage location for Union documents in an office space dedicated to a Union officer chosen by or designated by the Union.

Section 6. Preservation of rights

Nothing in this Article should be interpreted as abridging the rights of Management or the Union under 5 U.S.C. §7106.

ARTICLE 40. Phased Retirement

Section 1

Management and the Union agree that it can be beneficial to both the employee and NOAA/ERD to facilitate the transfer of knowledge and experience of senior employees in succession planning and implementation. Therefore, Management and the Union support voluntary use of “phased” retirement as defined under section 100115 of Public Law 112-141 and OPM regulation 79 FR 46607. Rules for phased retirement will follow HR Bulletin #192 dated 3/21/16 except where that Bulletin conflicts with this Collective Bargaining Agreement (CBA), in which case the CBA will prevail.

Section 2

No employee will be forced to take phased retirement. Phased retirement is voluntary but not an employee right and the applicant must submit a written application form to the supervisor explaining his/her phased retirement plans. Management will respond to the employee’s phased retirement request in a fair and timely manner. The employee’s first-line supervisor (and second-line supervisor, if necessary) will generally either deny the application or complete Section E of the Phased Retirement Request Agreement within 30 business days of receipt from the employee unless the employee is to be reassigned to a new position. Denial of any application to otherwise qualified staff will be based on operational needs only, and the employee will be offered an explanation in writing.

Section 3

Any bargaining unit member who transitions to a phased or partial retirement status will remain a member of the bargaining unit.

Section 4

Bargaining unit employees may grieve any denial or dismissal of the phased retirement agreement using the negotiated grievance procedure.

Section 5

The Agency will temporarily suspend mentoring requirements for phased retirement employees involved in an emergency response if the Agency determines that it is impracticable for the employee to meet the mentoring requirement during the spill emergency. Management reserves the right to approve who the retiree mentors as part of the requirements for the program.