Collective Bargaining Agreement

between

The National Climatic Data Center

and

The American Federation of Government Employees, Local 446

Bargaining Agreement between the National Climatic Data Center and American Federation of Government Employees, Local 446

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Preamble

In accordance with Title VII, Civil Service Reform Act of 1978, hereinafter referred to as the Statute, this Agreement is made and entered into by and between the Department of Commerce (DOC), National Oceanic and Atmospheric Administration's (NOAA), National Environmental Satellite, Data and Information Service (NESDIS), National Climatic Data Center (NCDC), hereinafter referred to as the Employer, and American Federation of Government Employees (AFGE), Local 446, hereinafter referred to as the Union. Collectively, they are referred to as the "Parties."

The Employer and the Union agree that labor-management relations within the NCDC are strengthened through a constructive and cooperative relationship between the Employer and the Union.

The Parties affirm that 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.

The Parties enter into this Agreement with the mutual intent of preserving and protecting work and job opportunities for the employees covered by this Agreement.

Scope, Duration and Amendments of the Agreement

The Employer, the Union, and the employees covered by this Agreement and any supplements, riders, addenda, or memoranda of understanding thereto, shall constitute one (1) bargaining unit. It is understood that the printing of this Agreement and any supplements, riders, and/or addenda created after the effective date are for convenience only and are not intended to create separate bargaining units.

The effective date and the anniversary date of this Agreement shall be the date of approval by the DOC. This Agreement shall remain in effect for three years from its effective date and shall automatically be renewed for one year on the anniversary date thereafter. Between 120 and 60 calendar days prior to the renewal date, either Party can give written notice to the other of its desire to amend, renegotiate, or terminate the Agreement. The notice must be acknowledged in writing by the other Party within fifteen (15) calendar days of receipt. Such a notice will be accompanied by written proposals to be renegotiated. Negotiations shall begin no later than sixty (60) calendar days after these conditions have been met. The Parties may extend this timeframe by mutual agreement. If the agreement is renewed for one year, the present Agreement will remain in full force and effect only during the one year automatic renewal period, unless,

A. there is current negotiation on the contract; or

B. both Parties mutually agree to a three-year renewal.

Amendment to this Agreement may be required due to changes in applicable laws, rules, regulations, or policies issued by higher authority after the effective date of this Agreement. In this event, the Parties shall meet for the purpose of negotiating new language that will meet the requirement for such higher authority. Such amendments will be duly executed and will become effective on the date determined to be appropriate under the circumstances necessitating the amendment.

The Parties agree to equally share the cost for the reproduction of fifty (50) copies of this agreement. Management will ensure that this agreement will be available electronically to all employees.

Article 1
Parties and Purpose

Section 1. *Parties*

This Agreement is between the Department of Commerce (DOC), National Oceanic and Atmospheric Administration's (NOAA) National Climatic Data Center (NCDC), Asheville, North Carolina, hereinafter referred to as the "Employer" and the American Federation of Government Employees (AFGE), Local 446, Asheville, North Carolina, hereinafter referred to as the "Union."

Section 2. *Purpose*

This Agreement establishes appropriate procedures for the operation of the NCDC.

Section 3. *Cooperation*

The Parties will make a concerted effort to assure that employees are in compliance with this Agreement at all times.

Article 2
Recognition and Unit Designation

The Union may only represent those specifically identified employees found in the AFGE, Local 446 bargaining unit. The bargaining unit consists of all professional and nonprofessional Demonstration Project personnel employed by the DOC/NESDIS/NCDC, Asheville, North Carolina.

Excluded from the bargaining unit are all confidential employees, management officials, supervisors and employees described in 5 United States Code (USC) 7112 (b)(2), (3), (4), (6), and (7). Employees of the NCDC Paleoclimatology Branch located in Boulder, Colorado, and employees of the NCDC located in the Silver Spring, Maryland, and Washington, District of Columbia, areas are also excluded unless amended by law, rule or regulation. The confidential employees at the NCDC are the employees in the NCDC Director's Office and the administrative support employee to the NCDC's Support Services Division.

The Employer recognizes the Union as the exclusive representative of all Federal employees in the bargaining unit. The Union recognizes its responsibility of representing the interests of all such employees in accordance with 5 USC 7114.

Article 3
Laws and Regulations

In the administration of all matters covered by this Agreement, the Parties and employees are governed by the following:

Section 1. *Laws and Regulations*

No part of this Agreement may conflict with

A. existing and future laws; and

B. 5 USC 2302 (Prohibited Personnel Practices) or any rules and regulations promulgated thereunder.

Section 2. *Additions to NCDC*

To the extent provided by law, the Parties agree that this Agreement shall be applied to all subsequent additions to NCDC and all newly established operations of the Employer, which are utilized as part of expansion of current operations of the Employer, without additional evidence of Union representation of the employees involved.

Section 3. *Negotiations*

To the extent that future Employer policies, laws, rules or regulations are in conflict with this Agreement, the provisions of this Agreement shall govern, subject to negotiation between the Parties.

Article 4
General Provisions

Section 1. The Parties enter into this Agreement with the mutual intent of preserving and protecting work and job opportunities for the employees covered by this Agreement. No employee work will be subcontracted, transferred, leased, assigned or converted except as provided in this Agreement.

Section 2. It is the intent and purpose of the Parties to promote and improve the efficient administration of the NCDC, Asheville, North Carolina; to establish a basic understanding relative to personnel policies, practices and matters affecting conditions of employment; and to provide a means for discussion and adjustment of grievances and other matters of mutual interest and concern of employees of the Employer.

Section 3. Definitions of terms used in this Agreement shall be as defined in the Statute (Title VII, Civil Service Reform Act of 1978).

Section 4. The Union, as representative of the employees within the bargaining unit, as specified in Article 2 (Recognition and Unit Designation) shall have the right and responsibility to present its views to the Employer either orally or in writing concerning grievances, personnel policies and practices or other matters affecting general conditions of employment of employees in the unit.

The Union shall have the opportunity to be represented at formal discussions between representatives of the Employer and bargaining unit employees or their representatives concerning grievances, personnel policies and practices, and other general conditions of employment of the employees in the bargaining unit.

Section 5. The Parties recognize that the efficient and effective operation of the NCDC is in the public interest, and the provisions of this Agreement will be interpreted in a manner consistent with the requirement of an effective and efficient government.

Section 6. The Parties agree to provide information on employee benefit plans including, but not limited to U.S. Savings Bonds and the Federal Thrift Savings Plan. Participation in these programs will be strictly voluntary.

Section 7. The Parties agree to support efforts to eliminate waste and promote a safe and productive work environment.

Article 5
Rights of the Employer

Section 1. Subject to Section 2, and pursuant to 5 USC 7106 (a), nothing in Title 5, Chapter 71 USC, shall affect the Employer's authority:

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

B. in accordance with applicable laws:

1. to hire, assign, direct, layoff, and retain employees in the NCDC, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees.

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

3. with respect to filling positions, to make selections for appointments from:

(a) among properly ranked and certified candidates; and

(b) any other appropriate source; and

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

Section 2. Nothing in this Article shall preclude the Employer and the Union from negotiating:

A. at the election of the Employer, 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 the work;

B. procedures which Employer officials will observe in exercising any authority under this article;

C. appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such Employer officials;

Article 6
Rights of Employees

Section 1. Each bargaining unit employee shall have the right to join or assist the AFGE, Local 446 labor organization, or 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 hereinafter provided and pursuant to the Statute, such right includes acting for a labor organization in the capacity of a Union representative, and the right in that capacity to present the views of the labor organization to officials of the Employer and to engage in collective bargaining with respect to conditions of employment through representation in accordance with the Statute.

Section 2. The rights described in this Article do not extend to participation in the management of a labor organization, or representation of any such organization, where such participation or representation would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of an employee.

Section 3. This Agreement does not preclude any bargaining unit employee, regardless of Union membership, from bringing matters of personal concern to the attention of appropriate officials of either Party in accordance with applicable laws, rules and regulations without fear of reprisal or intimidation.

Section 4. The Employer may question bargaining unit employees regarding incidents in the workplace. Pursuant to 5 USC Section 7114 (a)(2)(b), the Union shall be given the opportunity to be present at any examination of an employee in the bargaining unit by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against him/her and the employee requests representation.

Section 5. The provisions of this Agreement shall not be construed to preclude an employee from being represented by another representative, other than in the negotiated grievance procedure. In choosing representation for any grievance, proposed administrative action, or in exercising their appellate rights as established by law, rule, or regulation, employee(s) must get the consent of the exclusive representative.

Section 6. Nothing in this Agreement will require an employee to become or remain a member of the Union, or to pay money to the organization except pursuant to a voluntary written authorization by a member for payment of dues through payroll deduction.

Section 7. Employees have the right, either individually or collectively, to petition Congress, or any member thereof. All employees shall be provided the full protection extended to them by law, regulation, and this Agreement. These rights will not be interfered with or denied.

Section 8. A bargaining unit employee has the right to seek representational assistance on duty time from a Union steward or designee, subject to Employer supervisory approval for both individuals. Procedures for approval of official time are found in Article 8 (Negotiation and Consultations over Proposed Conditions of Employment).

Section 9. An employee has the right to refuse orders that would require him/her to violate the law or government-wide regulations.

Section 10. No employee shall be discriminated against by the Employer because of race, color, religion, gender, national origin, age, marital status, sexual preference, handicapping condition or lawful political affiliation.

Section 11. The Employer agrees to annually inform all employees of their rights under 5 USC Section 7114 (a)(2)(b). Each new employee will be given a copy of the Weingarten Rights upon starting employment.

Section 12. The Employer will preserve the privacy rights of employees with regard to administrative actions.

Section 13. When employees receive conflicting orders, they have a right to follow the last order given provided that the employee advises the responsible official in a timely manner that there is a conflict with previous instruction(s).

Section 14. The Employer will make reasonable efforts to provide in-house security to protect employees' personal belongings. Each employee will be provided with lockable storage space. The Employer reserves the right to access said space for cause. When the Employer needs to access locked employee workspace, the Employer will have a witness, from the Union, if practicable. The Employer will notify the employee of such action in a timely manner.

Section 15. The Employer agrees to provide on-site retirement planning information or counseling to employees on a recurring basis.

Section 16. Pursuant to 5 USC 2105 (a), an employee is generally defined as an individual that is appointed to the Civil Service by an authorized Federal official in an official capacity, engaged in the performance of a Federal function under the authority of law, and subject to the supervision of an authorized Federal official in performing these duties. A contractor is not a Federal employee. Therefore, pursuant to the above regulation and Federal Acquisition Regulation (Section 7.5, Inherently Government Functions), a bargaining unit employee cannot be supervised by a non-Federal employee.

Section 17. Pursuant to 5 USC 2302, employees shall be protected against reprisal for the disclosure of information that the employee believes evidences a violation of laws, rules, or regulations, or evidences mismanagement, a waste of funds, or an abuse of authority.

Section 18. The Parties agree that employee participation in the Combined Federal Campaign, Blood Donor Drives, Bond Campaigns, and other worthy projects will be on a voluntary basis. This does not preclude giving general publicity and encouragement to employees to contribute. Participation or non-participation will not advantage or disadvantage employees.

Section 19. Employees have the right to engage in employment outside of the NCDC that is not in violation of applicable laws, rules, and regulations or does not conflict with his/her official

duties. Employees are strongly encouraged to discuss such opportunities with the NCDC Deputy Director or designee prior to engaging in outside employment or activity. As necessary, the Deputy Director will contact the DOC Office of General Counsel, Ethics Division to obtain an official advisory opinion on the conflict or potential conflict that exists with the outside employment or activity.

Disciplinary action for violating ethics regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of the Department's Ethics Officer, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. However, an employee may be subject to disciplinary action for violation of ethics regulations if they engage in outside employment or an outside activity against the advice provided by the Department's Ethics Officer or if they fail to seek an advisory opinion and the activity is later found to be in violation of ethics regulations.

Article 7
Rights and Representational Responsibilities of the Union

The Union is comprised of four (4) units, one each: at the NCDC, Asheville, North Carolina; at the Veterans Administration Hospital, Asheville, North Carolina; at the Blue Ridge Parkway, Asheville, North Carolina; and at the Forest Service at Franklin and Pisgah Forest, North Carolina. The Union has certain officials that cover both units (i.e., President, Executive Vice President, Secretary, and Treasurer). Therefore, there may be occasions when the Employer may be required to deal on NCDC matters with Union officials who are not NCDC employees.

The Employer recognizes that in furtherance of good labor-management relations, Union officials have the responsibility of carrying out representative duties. The Parties also recognize that Union officials, when not engaged in authorized labor-management activities, are expected to accomplish the duties of the position to which they have been assigned.

The Union agrees to accept employees in the bargaining unit as members without discrimination as to race, color, religion, gender, national origin, age, marital status, sexual preference, handicapping condition, civil service status (preferential or non-preferential), or lawful political affiliation.

In accordance with this Agreement, the Employer will recognize Union officials designated by the Union as appropriate users of official duty hours for Union representational activities and labor-management relations functions.

Section 1. *Recognition of Union Representation*

The Employer agrees to recognize only the designated local Union officials and on-site bargaining unit representatives. A representation roster will be provided to the Employer as follows:

A. the President of the local Union will provide the Employer (Director and Deputy Director) in writing within thirty (30) calendar days of the signing of this Agreement (and within thirty (30) calendar days of any subsequent changes), the names, duty station addresses, telephone numbers and e-mail addresses of all local officers of the Union;

B. the local Union officer(s) will provide the Employer (Director and Deputy Director) in writing within thirty (30) calendar days of the signing of this Agreement, and within thirty (30) calendar days of any subsequent changes, the names of appropriate Union stewards; and

C. the Vice President and Chief Steward of the NCDC Unit are at large representatives for the Union at the NCDC. The Union shall designate in writing no more than one Union steward per NCDC division from the bargaining unit employees. These Union stewards shall be chosen by the Union from bargaining unit employees and will serve as representatives of the Union in bringing matters to the attention of the Employer.

These stewards shall only represent the Union and employees in the bargaining unit to which they are officially assigned as employees. The list of Union stewards will be posted in accordance with Article 23 (Communications and Facilities).

Section 2. *Information Requests*

The Union may request any information which is not prohibited by law, is normally maintained in the regular course of business, is reasonably available, and is necessary for full discussion, understanding and negotiation of subjects within the scope of collective bargaining. Each request must be made in writing and specify the identification of the data requested and its necessity and relevance.

The Union agrees that it will honor all requests returned for clarification or relevance. The Employer will make a good faith effort to provide requested information within twenty-five (25) calendar days of receipt of the request. If the Employer is unable to provide the information requested within 25 calendar days, it will notify the Union in writing of the reason for the delay and the expected date the request will be answered.

Section 3. *Official Management Correspondence*

For the purposes of this Article, official management correspondence will be forwarded to:

Union (AFGE, Local 446)
Local Union President
Local Vice President/NCDC
Local Chief Steward/NCDC

Section 4. *Work Stoppage*

The Union shall not call or participate in a strike, work stoppage, or slowdown of the Employer's facility or agency in a labor management dispute. Informational picketing is permitted but may not interfere with Agency operations.

Section 5. *Formal Discussion*

The Union shall be given advance notice and afforded the opportunity to be represented at any formal discussion between one (1) or more representatives of the Employer and one (1) or more bargaining unit employees or their representatives concerning any grievance, personnel policy or practice, or other general condition of employment.

Section 6. *Meetings with New Employees*

A Union representative will be permitted up to 30 minutes to meet with each newly hired employee assigned to the bargaining unit for the purpose of explaining the role and responsibilities of the Union. This time will be made available within the first two pay periods after the employee reports for duty. It is the Union representative's responsibility to schedule the meeting through the new employee's supervisor.

Section 7. *E-mail and Bulletin Board Use*

The Employer agrees that the Union can use the e-mail services to send notices and correspondence to Union representatives and Unit members. In addition, the Employer agrees to provide a bulletin board in accordance with Article 23 (Communications and Facilities).

Section 8. *Representation of Non-Members*

The Union has the right to refuse to represent non-members in matters outside this Agreement (e.g., statutory appeals of adverse actions, Equal Employment Opportunity (EEO) complaints).

Section 9. *Hours of Union Representative Training*

The Employer shall grant up to twenty-four (24) hours of official time for each Union representative each fiscal year to take Union sponsored training in subject matter areas within the scope of 5 USC 71. This official time will be used at the discretion of the Union and will be for the life of this Agreement. The Union will forward a memorandum, for each desired training session, to the Employer. This memorandum will identify the trainees and will include course subject matter. Requests for attending training on official time will be made by the employee to the Deputy Director/NCDC no later than thirty (30) calendar days in advance of said training. Absent exigent circumstances, the Employer will make every effort to accommodate such requests. Training under this section shall not be counted against the employee's official time.

Section 10. *Recognition of Union Stewards*

Stewards shall be recognized by the Employer in their official capacity as Union representatives with authority to officially represent the Union. Both the Union and the Employer shall recognize the stewards' dual relationship. Normally, the steward functions as an employee under the supervision of the designated supervisory personnel. However, when the steward meets with the Employer to discuss appropriate representational matters under this Agreement, recognition shall be given to the role of the steward as an official representative of the Union with equal status. It is agreed that the interests of both Parties will be best served by mutual respect and good working relationships within the ranks of their respective representatives.

Section 11. *Grievance Representation*

Under normal circumstances, a Union representative will represent an employee concerning a grievance at the first and second steps of the grievance process as outlined in Article 9 (Grievance Procedures). This does not preclude the Union representative from obtaining guidance, advice, or assistance from other Union officers and/or Union representatives; however, only one Union representative will normally be given official time to serve in a representational capacity on a particular case.

Section 12. *Use of Official Time*

A. Union stewards shall be permitted reasonable amounts of official time to conduct Union representation. Reasonable time for communicating, receiving, investigating, and presenting a grievance must necessarily depend on the facts and circumstances of each case.

B. Union representatives will be excused by the Employer during official duty time consistent with the workload and operational needs of the NCDC. For all authorized situations where an employee requires official time to engage in representational activities, the employee must specifically request excused time from his/her duty station from the immediate supervisor, or other designated official in accordance with this Agreement. If operational necessity prohibits the release of employee at the time requested, the Employer will provide an alternate time within one (1) business day or as soon as practicable.

C. A designated Union representative must obtain the permission from the supervisor of any employee he/she wishes to contact on the employee's duty time regarding a representational matter. The employee's supervisor or designee makes the final determination on the release of the employee.

D. The Union agrees that in the interest of efficient government, all efforts will be made to use approved time expeditiously. The Employer may express its concerns over perceived misuse of official time including misuse of representational responsibilities to the local Union president.

E. The Employer will not pay overtime or travel and per diem in connection with Union representational activities. Internal activities of the Union cannot be conducted on official duty time.

F. Official time recording for Union representation is a bi-lateral system to meet the Office of Personnel Management's (OPM) requirement that a record of official time be kept in the performance of representational duties. Each Union representative will maintain an account, which will show the authorized total time spent on representational duties and the specific purpose for usage. At the conclusion of each period of official time for which the representative is released, the representative will document the use of the official time on the log (Appendix 1) and present the log to the appropriate supervisor for his/her initials of approval. The Appendix 1 time log shall be provided to the appropriate supervisor by each representative following the end of any pay period during which representational time was used.

Article 8
Negotiation and Consultations
Over Proposed Conditions of Employment

Section 1. *Bargaining Philosophy*

The Federal Service Labor Management Relations Statute establishes an obligation upon the Parties to bargain in good faith over the impact and implementation of, and in some cases the substance of, changes in working conditions which are proposed by one or the other of the Parties during the term of this Agreement. The purpose of this Article is to establish a complete and orderly process to govern mid-term negotiations. The Parties agree to use an interest-based bargaining approach in all mid-term negotiations and will ensure that negotiators are trained in this approach prior to the inception of bargaining.

Over the term of the previous agreement, the Parties have successfully bargained and reached mutual agreement on various terms related to conditions of employment. It is the intent of the Parties to continue to build on these achievements. The Parties recommit themselves to building trust and respect for one another; respecting each other's interests, integrity and motivation; being open to consideration of each other's perspectives and ideas on how to deal with issues; promoting at all levels direct dealing with one another; and sharing information required to make informed decisions, as permitted by law, rule or regulation.

Section 2. *Advance Notice*

The law requires the Employer to provide the Union reasonable advance notice of any proposed changes in personnel policies, practices and matters affecting conditions of employment of employees in the bargaining unit. The law has identified a few exceptions to this general rule. The Employer need not give the Union advance notice of any proposed changes in matters which are non-negotiable (for example, matters the Employer cannot legally bargain over with the Union). The following matters are non-negotiable:

A. matters specifically covered in any Federal law, Hatch Act violations or position classification matters (other than a dispute over the accuracy of a classification description);

B. government-wide rules and regulations (i.e., Code of Federal Regulations (CFR) and Federal Personnel regulations, etc.); and

C. the exercise of the Employer's rights set out in Article 5 (Rights of the Employer);

Except as otherwise provided for in this Agreement, the Employer shall provide reasonable advance written notice of intended changes in terms and conditions of employment to the Union President and his/her designated representative at the NCDC. The date of receipt shall be documented on a form agreed upon by both Parties.

The Union will, within fourteen (14) calendar days of receipt of the notice, submit to the Labor Management Relations Designee a request to bargain and written proposals related to the proposed change. The date of receipt shall be documented on a copy of the request retained by the Union. The request to bargain shall designate the Union's Chief Spokesperson. Upon request, the Union will be briefed on the intended change(s) prior to the demand to bargain. This notice should enable both Parties to identify and understand the major issues to be bargained and facilitate the negotiation process;

A. The advance written notice will include the following:

1. a brief description of the desired change;

2. a brief explanation of how this change will be implemented;

3. an explanation of why the proposed change is necessary;

4. the proposed implementation date;

5. the Employer's Chief Spokesperson and a point of contact for additional questions or information; and

6. if the Union does not exercise its option to request bargaining, the Employer may implement the changes on the proposed date.

Negotiations are a formal and structured procedure followed by the Parties in their attempt to address and resolve issues related to changes in conditions of employment. Interest-based bargaining is the desirable method of negotiations. Negotiations result in the Parties' final agreement being memorialized in a jointly executed Memorandum of Understanding. If the Parties cannot reach a mutually agreeable resolution to the issue in dispute, either Party may seek assistance from the Federal Mediation and Conciliation Service (FMCS) and, ultimately, the Federal Service Impasses Panel (FSIP). The FSIP has authority to unilaterally resolve a dispute between the Parties.

Section 3. *Bargaining Routine*

The following bargaining process will be utilized during the term of this Agreement:

A. negotiations shall commence as soon as possible but no later than seven (7) calendar days after the receipt of proposals from the Union. The beginning of negotiations may be extended by mutual consent;

B. the Employer will provide a meeting room for negotiations and an area that either Party may use for caucusing;

C. the Employer's bargaining obligation is triggered when the Union submits a proposed mid-term change. The Employer will have fourteen (14) calendar days to review the proposal;

D. the Union will be authorized the same number of negotiators as the Employer but in no case less than three (3). The Parties will exchange the names of the members of their bargaining teams for the specific issues to be negotiated prior to bargaining. This does not preclude the attendance of subject matter experts of the Parties;

E. if any proposal is claimed to be non-negotiable by the Employer and is subsequently determined by the Federal Labor Relations Authority (FLRA) to be negotiable or the Employer withdraws its allegation of non-negotiability, the proposal will be reopened within ten (10) calendar days. Nothing in this proposal will preclude judicial appeal of the FLRA decision;

F. if the Parties are unable to reach agreement by traditional negotiations within a reasonable period of time, interest-based bargaining sessions will be conducted with the presence of a mutually agreed upon facilitator. The Parties retain their statutory rights to proceed to FMCS; and

G. any provisions disapproved by the Agency head review, under 5 USC 7114 (c), may be referred to the FLRA by the Union. Any provision held negotiable will be incorporated into this Agreement. The Parties will commence negotiations within a reasonable period (normally thirty (30) calendar days) after receipt of an FLRA decision.

Article 9
Grievance Procedures

The Parties recognize and endorse the importance of settling grievances promptly and equitably at the lowest possible level and in an orderly manner consistent with the principles of good management. In as much as dissatisfaction and disagreements may arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, his/her performance, loyalty or desirability to the organization.

Employees may bring concern(s) to a Union steward, the Employer, or both, on an informal basis, prior to the use of these procedures. The steward will advise the employee and, if requested, speak to the appropriate management official about the concern(s) as soon as possible. For all practical purposes, the appropriate management official is the first-line supervisor. However, under extenuating circumstances, a higher-level supervisor may be the appropriate management official. The provisions of this Agreement shall not preclude a bargaining unit employee from bringing a matter of personal concern to either the Employer or the Union.

When concerns are not resolved on an informal basis, this negotiated procedure shall be the exclusive procedure available to the Union, the Employer and the employees in the bargaining unit for resolving such grievances except as otherwise provided in this Article or under statute.

An employee may present a grievance to the Employer without the services of the Union. However, as the exclusive representative for bargaining unit employees, the Union shall have the right to observe formal discussions and proceedings during all steps of the negotiated grievance procedure. The Union retains its right to intervene in the adjudication of the final resolution in order to ensure that it is in conformance with this Agreement and does not adversely impact other members of the bargaining unit. In its capacity as an observer, the Union agrees to respect confidentiality of all information obtained.

Bargaining unit employees should recognize that the Union's right to information for grievance processing and other representational rights pursuant to 5 USC 7114 (b) may supersede the employee's right to privacy provided by the Privacy Act 5 USC 552 (a).

The Parties agree to establish a joint committee consisting of an equal number of Union and Employer members to study the implementation of an alternate dispute resolution process at the NCDC.

The Parties also agree to cooperate fully in processing grievances and to make every reasonable effort to ascertain, document, and present the relevant facts relating to any matters processed under this procedure.

Section 1. *Time Limits*

All time limits specified in this Agreement are binding. Additional extensions may be granted by mutual agreement of the Parties. In considering an extension, the Parties will consider (1) the

length of the delay, (2) the existence of circumstances beyond the control of the Party, and (3) whether prejudice to the Employer or the Union would result from a waiver of time limits.

Failure of the Union, the grievant, or the grievant's representative to observe any time limit shall nullify the grievance.

Failure of the Employer to observe any time limit shall automatically elevate the grievance to the next step.

Section 2. *Definition of Grievance*

A grievance is defined as any complaint:

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

B. by the Union concerning any matter relating to the employment of any employee; or by an employee, the Union, or the Employer concerning the effect or interpretation, or a claim of breach of this Agreement; or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 3. *Scope of Grievance Process*

In adverse actions (5 USC 7512), EEO discrimination complaints [5 USC 2302 (b)(1)], and removal or reduction–in–grade for unacceptable performance (5 USC 4303), an aggrieved employee may use either the negotiated grievance procedure or the statutory appeals procedure [Office of the Special Counsel, Merit Systems Protection Board (MSPB), or Equal Employment Opportunity Commission (EEOC)], but not both. An employee shall be deemed to have exercised his/her option at such time as the employee initiates a timely complaint or appeal under the applicable statutory procedure or timely files a grievance in writing, in accordance with provisions of this negotiated procedure, whichever event occurs first. Issues which are raised under this procedure may not be raised under the complaint procedure of 5 USC 7116.

This negotiated grievance procedure does not apply to any grievance concerning the following:

A. any claimed violation of 5 USC, Chapter 73, subchapter III (relating to prohibited political activities);

B. actions relating to retirement, life and/or health insurance, awards, and recognition;

C. actions relating to any examination, certification, or appointment;

D. a suspension or removal predicated or accomplished in the interest of national security under USC 7532;

E. classification of any position which does not result in the reduction-in-grade or pay of an employee;

F. non-selection for promotion from a group of properly ranked and certified candidates, or a lateral assignment;

G. non-adoption of a suggestion or invention;

H. notices of proposed disciplinary or adverse action;

I. decisions of the Office of Workers' Compensation Programs (OWCP) reviewable under Part 810 of the CFR; or

J. any issue where a statutory appeal or complaint system has been implemented, except adverse actions, 5 USC 7512; EEO complaints, 5 USC 2302; and removal or reduction-in-grade for unacceptable performance, 5 USC 4303. Should the Employer or the Union question the grievability of a matter presented under the terms of this Agreement, the grievance will be presented to an arbitrator in accordance with Article 10 (Arbitration).

Section 4. *Multiple Grievances*

Grievances over the same issue may be initiated as a group grievance, or combined with an existing individual grievance at any time during the grievance process. Grouping it with later occurring incidents does not extend the time frame for any individual grievance. Grievances may be combined and decided as a single grievance at the later steps of the grievance procedure by either Party.

Section 5. *Grievance Resolution*

The filing Party may terminate the processing of a grievance at any time. Once terminated, that grievance may not be re-instituted by the filing Party.

If any bargaining unit employee who has filed a grievance departs the bargaining unit before a decision is reached on a grievance which is being processed, the grievance is null and void unless the employee can be granted tangible relief.

If, at any step, the Union and the Employer agree that no grounds existed for a grievance or they agree to the means of resolving the grievance, they shall state their agreement in writing, signed by the Parties. This will constitute the final resolution of the grievance.

If a settlement is reached in a disciplinary or adverse action, neither the grievant nor the Union may proceed with the grievance or appeal.

Any resolution resulting from a successful grievance mediation initiated under this Article shall be in writing and shall be binding on the Employer, the employee, and the Union for that specific

grievance, subject to any required reviews by NOAA and the DOC. Mediated resolutions shall not be considered as a precedent for any other grievance covering the same or similar matters.

Section 6. *Representation and Employee Official Time*

The Union is the exclusive representative for bargaining unit employees under the negotiated grievance procedure. The designation of a representative at Step One does not prohibit the grievant from changing representation at any subsequent step. Any changes in Union representation thereafter shall be documented in writing to the appropriate management official. The Union representative will be afforded appropriate official time for grievance processing in accordance with Article 7 (Rights and Representational Responsibilities of the Union).

Once a representative has been designated, all correspondence and communications will be sent to the representative with courtesy copies to the grievant. The Employer shall not contact the grievant directly, either in writing or verbally, if the grievant has designated a representative. If during the course of a grievance, a Union representative contacts the appropriate management official, the representative will inform the official in writing of his representation role and the purpose of the contact. If the Union representative at Step One is an attorney, the Employer has the option of first consulting the Agency's representative of record in the DOC Office of General Counsel.

An aggrieved bargaining unit employee, if otherwise in a duty status, shall be granted a reasonable amount of official time without charge to leave or loss of pay to prepare and present his/her grievance, including time to secure advice on his/her rights, obtain information or assistance, to prepare documents, and to prepare for an arbitration hearing in accordance with Article 10 (Arbitration). The granting of official time is subject to the approval of the appropriate management official on a case-by-case basis, depending upon the exigency of the needs of the Employer. It is understood that an alternate suggested time is an acceptable accommodation, within the time frame referenced in this Agreement.

Section 7. *Employee Grievance Procedure*

The Parties recognize and endorse the importance of settling grievances promptly and equitably at the lowest possible level. Under those circumstances where the Union has reasonable cause to believe that communication can better be served at a higher level, the Union will then proceed directly to that level of management.

Step One (1)

When a bargaining unit employee chooses to file a grievance, the grievance must be submitted, in writing, to the immediate supervisor within fourteen (14) calendar days of the date the employee is harmed, becomes aware of, or should have been aware of the action or incident that gave rise to the grievance. Upon written request from the Union during this initial fourteen (14) calendar-day period, the Employer will extend the filing period an additional fourteen (14) calendar days. The grievance will be initiated with the lowest level management official with

authority to resolve the grievance. If the grievance is not submitted according to this time frame, it will be considered untimely.

The written grievance shall contain the following:

A. the name and duty location of the grievant;

B. must clearly state that this is a grievance and must provide a brief description of the facts (in accordance with Appendix 3, Formal Grievance Form);

C. the specific provision of this Agreement (cite Article and Section if a contract violation is being grieved);

D. any past practice which is claimed to have been violated;

E. the specific law, rule, or regulation claimed to have been violated (if known to the grievant);

F. an explanation of how the grievant was harmed;

G. the remedy being sought;

H. the name and address of the grievant's Union or other representation, or a statement that the grievant is representing himself/herself; and

I. all grievances must be signed and dated.

A grievance which does not contain the information necessary to reach a decision, or is otherwise unclear, may require a meeting of the Parties for the purposes of clarification. In the interim, the rights of both Parties, including time frames, will be preserved.

New issues may not be raised by either of the Parties or the grievant after the decision is rendered at Step One of this Article; however, the Parties may mutually agree to include new issues to a grievance in progress. The Parties may mutually agree to amend a grievance at any step.

Upon receipt of the written grievance, the appropriate management official will contact the appropriate Parties to schedule a meeting within seven (7) calendar days to discuss the grievance. Additional time may be granted by mutual consent of the Parties. The appropriate management official shall give a written decision to the grievant within fourteen (14) calendar days after receipt of the grievance or after the date of a meeting with the grievant, if one was held.

Step Two (2)

If the grievance has not been satisfactorily resolved under Step One, the grievant and his/her representative may appeal the grievance decision in writing to the second-level management

official within ten (10) calendar days after receipt of the Step One decision. The Step Two written grievance must include a copy of the Step One grievance and Step One decision and a general statement as to why the Employer's Step One decision is not acceptable. The second-level management official, or their designee, shall render a written decision within fourteen (14) calendar days following receipt of the grievance.

Step Three (3)

If satisfactory settlement is not reached at Step Two, and further review is necessary, the grievant or his/her representative may submit the grievance in writing to the Director of the NCDC, or his/her designee, within seven (7) calendar days after receipt of the Step Two decision. The written grievance at this step must include a copy of all documents developed during the first and second steps and general statements as to why the grievant feels the Employer's Step Two response is not acceptable. The Director of NCDC, or his/her designee, shall render a written decision within twenty-five (25) calendar days after receipt of the grievance.

Section 8. *Arbitration*

If the grievant is dissatisfied with the Step Three decision, the Union may, on the employee's behalf, invoke arbitration in accordance with Article 10 (Arbitration). The Union is not compelled to invoke arbitration for any and all aggrieved employees who are not satisfied with the Step Three decision. The decision whether or not to invoke arbitration shall be made by the Union.

Section 9. *Union/Employer Grievance Procedures*

Grievances may be filed by the Employer or the Union on any action that concerns an alleged violation of the provisions of this Agreement.

A. Employer grievances shall be initiated in writing by the Director of the NCDC, or his/her designee, and presented to the Union President, or their designee, within fourteen (14) calendar days of the date the Employer is harmed, becomes aware of, or should have been aware of the action or incident that gave rise to the grievance. Upon written request from the Employer, during this initial fourteen (14) calendar-day period, the Union will extend the filing period an additional fourteen (14) calendar days. A decision by the Union President, or designee, will be provided to the Director of the NCDC, or his/her designee, in writing no later than twenty-five (25) calendar days following receipt of the grievance. Should the issue remain unresolved, arbitration may be invoked by the Employer in accordance with this Agreement.

B. Union grievances shall be initiated in writing by the Union President, or his designee, and presented to the Director of the NCDC within fourteen (14) calendar days of the date the employee is harmed, becomes aware of, or should have been aware of the action or incident that gave rise to the grievance. Upon written request from the Union during this initial fourteen (14) calendar-day period, the Employer will extend

the filing period an additional fourteen (14) calendar days. A decision by the Director of the NCDC, or their designee, shall be rendered in writing no later than twenty-five (25) calendar days following receipt of grievance. Should the issue remain unresolved, arbitration may be invoked by the Union in accordance with this Agreement.

Article 10
Arbitration

Within thirty (30) calendar days after receipt of the final decision under Step Three, Article 9 (Grievance Procedures) or following the effective date of a suspension or adverse action taken by the Director of NCDC, either the Employer (Director or Deputy Director) or the Union (Local President or designee) may invoke arbitration by notifying the other Party in writing.

Section 1. *Invoking Arbitration*

The grieving Party will advise the FMCS that a dispute exists and shall request a list of seven (7) impartial arbitrators who are qualified by virtue of experience, background or training to arbitrate grievances in the Federal Sector. The grieving Party shall request that a copy of the list be furnished to each Party. A copy of the correspondence and the designated representative's name shall be provided simultaneously to the other Party on the day of the request. The receiving Party will then provide a written designation of its representative. The designated representatives should contact each other within fourteen (14) calendar days after receipt of the list to arrange for the selection of an arbitrator. Normally, within twenty (20) calendar days after receiving the list, the Parties will make the final selection.

Section 2. *Selection of Arbitrator*

The Parties will meet in the time frame referenced above to select an arbitrator. If the Parties cannot mutually agree upon one of the listed arbitrators, each Party will alternately strike one name from the list and repeat the procedure until one name remains. The remaining name shall be the duly selected arbitrator. The first Party striking will be decided by mutual agreement. If the selected arbitrator is not available, the Parties may agree to request another list or select someone else from the same list. Each Party will notify, in writing, with a copy to the other, the FMCS and the arbitrator of his/her selection.

The FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event:

A. either Party refuses to participate in the selection of an arbitrator; and/or

B. upon inaction or unreasonable delay on the part of either Party.

Section 3. *Preparation for Arbitration*

A. A grievance file will be established by the Employer which is to be referred to arbitration. Copies of this file will be provided to the arbitrator within fifteen (15) calendar days after the selection. The file shall contain:

1. grievance and response(s);

2. a copy of this Agreement; and

3. where appropriate, a copy of any Statute, rule, regulation, or policy alleged to have been violated.

B. The arbitrator will hold a pre-hearing conference (by telephone or as agreed) with the Parties to assist in framing or narrowing the issues; to receive joint stipulations; to schedule the hearing, and to assist in resolving remaining questions regarding the arbitration procedures.

C. Unless the Parties agree that the matter may be resolved solely on the basis of the written jointly stipulated record (as required by A and B above) of the grievance procedure, the arbitrator shall hold a hearing, and the Parties shall be permitted to call witnesses and present evidence and oral or written arguments.

Section 4. *Site and Time*

A. The arbitration will be held at the Employer's location during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. It is agreed that, should an arbitration hearing extend beyond these hours, overtime or other premium pay will not be paid to the grievant, to his or her representative or to witnesses on his or her behalf.

B. The arbitrator will set the date of the hearing with the concurrence of the Parties' representatives. Once that date has been established, any Party that unilaterally requests an arbitration hearing be delayed, postponed, and/or canceled for whatever reason shall pay any and all fees. Otherwise, the arbitrator's fee and expenses will be paid equally by the Parties. In any arbitration where both Parties mutually agree to delay, postpone and/or cancel an arbitration proceeding, the Parties will equally pay all fees. An official transcription of the hearing will be made if requested by either Party or the arbitrator. The transcript will be made by a qualified court reporter and the cost will be borne by the requesting Party. If the transcript is requested by the arbitrator, the cost will be shared equally by the Parties. Cost will be limited by the General Services Administration (GSA) regulations for the court report and transcript.

Section 5. *Witnesses*

A. The grievant, the grievant's representative and all employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave. The Employer shall arrange to release from work those employee witnesses requested by the Union. Should the Employer and Union fail to agree on the number or necessity of witnesses the arbitrator will determine the necessity of the witnesses in dispute. The Union will be granted reasonable time to brief their witnesses. Also, the Parties will exchange lists of witnesses at least ten (10) calendar days prior to the hearing. Each Party will bear the travel costs of its witnesses.

B. If the Employer determines that it is not practicable operationally to comply with a request for a witness, the Employer representative will notify the arbitrator and the Union of the reasons for that determination. If, in the arbitrator's judgment, the witness is essential to a full and fair hearing he/she may postpone or continue the hearing until such time as the Employer is able to comply with the witness request.

C. Witnesses will not be permitted to remain in the proceedings after giving testimony. However, a Union representative, who is also a witness, may remain during the entire proceedings. Either Party may utilize, if so desired, technical assistants. An Employer representative who is also a witness may remain during the entire proceedings.

D. Under no circumstances will Employer witnesses or Union witnesses be authorized overtime pay or premium pay as a result of participating in any arbitration proceedings.

Section 6. *Arbitrator's Authority*

A. The arbitrator will have authority to interpret this Agreement and to apply it to the particular case under consideration. However, the arbitrator will have no authority to change, modify, alter, delete, or add to the provisions of this Agreement. The arbitrator shall have the authority to make all grievability / arbitrability determinations. The arbitrator will have the authority to make an aggrieved employee whole to the extent such remedy is not prohibited by Statute, decisions of appropriate authority, or this Agreement. The arbitrator's decision will be final and binding; however, the Parties may file exceptions to an arbitrator's award with the FLRA under regulations prescribed by the Authority.

B. The arbitrator will rule first on grievability if that issue is raised by either Party. If the grievance is determined by the arbitrator to be grievable, then the arbitrator will hear the merits of the grievance. The arbitrator will be requested to render his/her decision as quickly as possible, but in any event, not later than thirty (30) calendar days after the conclusion of the hearing.

Section 7. *Arbitrator's Decision*

A. The arbitrator shall have jurisdiction over the hearing and shall be empowered to fashion an appropriate remedy that does not modify, add, delete, or vary in any way the terms of this Agreement and only in accordance with applicable laws, rules, or regulations, to include the awarding of back pay and attorney fees in accordance with 5 USC 5596.

B. Either Party shall have the right to argue before the arbitrator its views on what an appropriate remedy should be. As appropriate and if warranted, both Parties may submit pre-hearing and/or post hearing briefs.

C. The arbitrator shall retain jurisdiction over the case in any dispute over the application of an award and shall be returned to the arbitrator for settlement, including any award remanded by the FLRA.

D. Arbitration awards shall be fully implemented in a timely manner.

Section 8. *Arbitration Costs*

A. The Parties will each pay one-half of the regular fees and expenses of the arbitrator hearing the case.

B. If the arbitrator requires a transcript, each Party will pay one-half the cost. If a transcript is not required by the arbitrator, but mutually desired by the Parties, each Party will pay one-half the cost. In the event that either Party desires a transcript, the requesting Party shall bear the entire cost. However, the other Party is not entitled to a free copy. The transcript will be made by a certified court reporter. Cost will be limited by GSA regulations for the court reporter and transcript.

C. Where a Party has been accorded full opportunity to appear before the arbitrator and be heard, the Party cannot complain with the result if they voluntarily choose not to appear. In this case, the Party failing to appear shall pay the whole cost of the arbitration.

Section 9. *Time Limits*

The time limits provided herein may be extended by mutual agreement of the Parties.

Section 10. *Proposals or Reprimands*

At the request of the employee, the Employer will forward a copy of adverse/disciplinary action proposals or reprimands to the Union. This request must be specified in writing by the employee within fifteen (15) calendar days. The Employer will respond to this request in a timely manner.

Article 11
Disciplinary Actions

The Parties agree that the objective of discipline is to correct and improve employee behavior in a timely manner to promote the efficiency of the service. The Parties agree to the concept of progressive discipline designed primarily not to punish but to correct and improve employee behavior. Employees will not be the subject of disciplinary or adverse action except for just cause.

Section 1. *Disciplinary Actions*

Disciplinary actions are of two (2) types – Disciplinary and Adverse. A suspension means the placing of an employee, for disciplinary reasons, in a non-duty status without pay.

A. Disciplinary actions shall consist of written reprimands and suspensions of fourteen (14) calendar days or less.

B. Adverse actions, which fall under the coverage of 5 CFR Part 752, include suspensions of more than fourteen (14) calendar days, removal, furlough of thirty (30) calendar days or less and reduction-in-pay or -grade.

Disciplinary actions will be proposed after the Employer becomes aware of an alleged infraction, the Employer receives an investigative report from an investigating authority, or there has been a final disposition of a criminal prosecution. This does not preclude the Employer from proposing an action before the final disposition of a criminal prosecution if the Employer deems it appropriate to do so.

Section 2. *Counseling and Warnings*

A. Counseling, including oral warnings that are informal in nature, will normally precede discipline except in cases where such behavior warrants immediate action.

B. If at any point during a counseling session an employee reasonably believes that a disciplinary or adverse action may be taken against him/her, the employee may request Union representation pursuant to their Weingarten Rights.

C. Counseling and warnings shall be confidential and not disclosed to any other employees or management officials, except to those with a need to know.

Section 3. *Letters of Reprimand*

A. A Letter of Reprimand is a written disciplinary action that specifies the reasons for the action. The Letter of Reprimand will also specify that the employee may be subject to progressively severe disciplinary action for subsequent misconduct. Letters of Reprimand will remain in an employee's Official Personnel Folder (OPF) for two (2) years from the effective date of the action, with the following exceptions:

1. An employee may request, in writing, that any such document be removed after one (1) year.

2. The Employer may remove the Letter of Reprimand at any time, if the employee's record indicates no intervening disciplinary actions.

After two (2) years, all documents pertaining to the Letter of Reprimand shall be expunged from the employee's OPF. Whenever the letter is removed, the employee will be notified of this action in writing.

Section 4. *Suspensions of Fourteen (14) Days or Less*

A. In the case of a proposed suspension for fourteen (14) calendar days or less, the employee is entitled to:

1. a proposal letter which provides advanced written notice stating the specific reasons for the proposed action. The proposal letter shall inform the employee of his/her right to representation and provide the material relied upon to propose the action. The proposal letter shall also inform the employee of the deciding official to whom the response should be addressed; and

2. fifteen (15) calendar days to answer orally and/or in writing. This time frame may be extended by mutual consent.

B. After considering the employee's response, the deciding official will issue a written decision within fifteen (15) calendar days. If the decision is unfavorable to the employee, the decision may be grieved beginning with the deciding official.

Section 5. *Removal, Suspension for More Than Fourteen (14) Calendar Days, Reduction-in-Grade, Reduction-in-Pay*

A. An employee against whom such an action is proposed is entitled to:

1. a proposal letter which provides thirty (30) calendar days advanced written notice, except in the case of criminal proceedings in which case the employee is entitled to seven (7) calendar days advanced notice, stating the specific reasons for the proposed action. The proposal letter shall inform the employee of his/her right to representation and provide the material relied upon to propose the action. The proposal letter shall also inform the employee of the deciding official to whom the response should be addressed; and

2. thirty (30) calendar days to answer orally and/or in writing except in the case of criminal proceedings where the employee is entitled to seven (7) calendar days. This time frame may be extended by mutual consent.

B. After receiving the employee's response, the deciding official will issue a written decision. The decision letter will specify the action to be taken, the specific reason(s), the effective date of the action, and the employee's appeal rights.

C. In accordance with 5 USC 2301, the employee may appeal the decision to the MSPB and/or the EEOC, or the employee may file a written grievance under the terms of this Agreement, but not both.

D. An employee shall be deemed to have exercised his/her option at such time as the employee timely initiates an action under the statutory procedures or timely files a written grievance, whichever occurs first.

E. An employee shall be entitled to representation in all phases of these procedures.

Section 6. *Medical Allegation*

If, after receiving a letter proposing suspension, removal, or a demotion for cause, a bargaining unit employee wishes to raise the allegation that he/she is suffering from an illness, alcohol or drug addiction, and by raising that allegation intends that the Employer should consider the allegation of substance abuse before making any final decision, the employee must at the time of the reply, support the allegation with evidence that:

A. the employee is, in fact, ill or addicted;

B. the misconduct or poor performance was caused by the illness or addiction; and

C. the employee is currently receiving or seeking appropriate treatment for the illness or addiction.

Reasonable extension of time to obtain medical documentation will be granted.

The Employee Assistance Program (EAP) (reference Article 30, EAP) is available as a resource to refer employees who may be experiencing work-related or personal difficulties. Although participation in the EAP is voluntary, employees will be advised of its existence.

Section 7. *Alternative Discipline*

Alternative discipline may allow the Parties to reach mutually satisfactory resolutions regarding incidents of misconduct in the workplace. The Parties are committed to the use of alternative discipline as a method to foster positive employee behavior as well as a good labor management relationship and to avoid costs associated with litigation. Those involved in the use of alternative discipline shall be trained in relevant principles and methods. Although it is not appropriate in addressing all types of misconduct as listed below, when used it can serve to improve communication between supervisors and employees and maintain productive working relationships.

Alternative discipline reflects the combined efforts and capabilities of management and employees (and employees' representatives, if applicable) to reach voluntary agreement on the type of discipline that accomplishes the objective of both Parties. It can be used at any stage of the discipline process – proposal or decision. Managers and supervisors may use alternative discipline if they decide it has a good probability of preventing further misconduct by the employee and sends the appropriate message that such misconduct is not acceptable.

Supervisors are encouraged, but not required, to consider the use of alternative discipline when appropriate. Its use must be determined on a case-by-case basis. Employees may utilize alternative discipline to resolve proposed disciplinary actions with the mutual consent of the Union and the employee as well as the Employer.

A. *Exclusions*: Alternative discipline is not appropriate for:

1. misconduct that warrants removal;

2. criminal offenses;

3. misconduct that requires by statute a particular penalty (e.g., misuse of a government-owned vehicle); or

4. when the employee's continued presence in the workplace may pose a threat to the employee or others, may result in loss of or damage to government property, or may jeopardize legitimate government interests.

B. *Process*: The supervisor and the employee must agree to use alternative discipline. It cannot be unilaterally imposed by a supervisor. The Union representative will have the right to participate in all stages of the process. The Parties agree that, consistent with the Privacy Act, the employee may elect to proceed without Union representation. Flexibility and creativity within the bounds of reasonableness and fairness are encouraged when exploring and developing alternatives to traditional discipline.

1. *Preliminary Employer Responsibilities*: Before entering into an Alternative Discipline Agreement (reference item C. below), a supervisor must prepare a written analysis that identifies the employee's misconduct, the violated rule(s), regulation(s), and/or law(s), and management's selected penalty that would have been imposed in the absence of alternative discipline. (If alternative discipline is initiated before the *decision* stage, the *proposed* penalty would become the penalty listed in the Alternative Discipline Agreement.)

2. *Agreement on Discipline Type*: The supervisor, employee, and the employee's representative, if applicable, must decide the appropriate discipline for a given offense – the terms and conditions that the employee agrees to fulfill. The terms and conditions are non-precedential and they cannot be cited, for any reason, including comparison, in another employee's case or traditional disciplinary

documents. Accordingly, identical offenses committed by different employees may result in different forms of alternative or traditional discipline.

If the alternative to traditional discipline involves performing community service, the supervisor must determine a method to assure such service was completed (for example, certification from the community service organization). Further, to prevent the possibility of bringing off-duty volunteer service within the scope of Federal employment, the supervisor must assure he/she does not perform any action that can be perceived as directing an employee to perform volunteer service.

3. *Fullfillment*:

   (a) When the terms of an Alternative Discipline Agreement are satisfied, the supervisor will certify completion in writing to the employee.

   (b) If the terms and conditions of the Alternative Discipline Agreement are not satisfied, the supervisor must immediately issue a violation notice – not a traditional decision letter – to the employee. Such notice is to inform the employee that the agreement has been breached and the penalty specified in the agreement will be effective immediately.

   (c) If the employee is unable to fulfill the terms and conditions of the Alternative Discipline Agreement due to circumstances beyond their control, the supervisor and employee may revise the agreement.

C. *Alternative Discipline Agreement*: A component of every alternative discipline action must be a written agreement, developed between management and the affected employee, which convey the terms and conditions that the employee agrees to fulfill. Such a written agreement may be referred to as an *Alternative Discipline Agreement*. The template for this agreement is provided in Appendix 4.

1. *Authority*: Only managers and supervisors with delegated authority may negotiate and enter into Alternative Discipline Agreements. All affected parties must sign the Alternative Discipline Agreement. Specific parties include the employee, the employee's representative (if applicable), and the supervisor who is authorized to enter into such an agreement.

2. *Terms and Conditions*: The terms and conditions of the Alternative Discipline Agreement must be clear, and they are considered fulfilled when the supervisor determines that it is clear the employee has made a "good faith effort" to satisfy the Alternative Discipline Agreement.

3. *Employee Responsibilities*: To enter into an Alternative Discipline Agreement, the employee must acknowledge in writing his/her understanding that:

(a) he/she admits to the misconduct/wrongdoing;

(b) he/she voluntarily enters into an Alternative Discipline Agreement;

(c) his/her failure to satisfy the terms of the Alternative Discipline Agreement will result in the immediate imposition of the original penalty contained in the agreement.

(d) by entering into an Alternative Discipline Agreement, he/she waives all grievance, appeal, and/or EEO complaint rights with respect to this particular action, and that these rights are waived in connection with this instance of misconduct even if traditional discipline is imposed because of failure to satisfy the terms of the agreement (the waiver of EEO rights does not bar the employee from citing the incident and/or punishment as background in a later complaint or from filing a complaint about any other matter);

(e) if applicable, no salary or wage compensation can be received for any off-duty volunteer service and such service is not covered under Workers' Compensation;

(f) the Alternative Discipline Agreement does not preclude the supervisor from taking appropriate action regarding any other misconduct not covered by the agreement;

(g) the misconduct addressed through an Alternative Discipline Agreement constitutes an offense and may be used to support future progressive disciplinary actions;

(h) the original Alternative Discipline Agreement and any supporting documents will be retained, pursuant to National Archives' General Records Schedule, in the servicing Workforce Management Office (WFMO) in employee relations files – *not in an OPF*; and

(i) the provisions of the Alternative Discipline Agreement may be discussed, on a need-to-know basis, with such parties as management, Human Resource Specialists, and representatives from the Office of General Counsel, as well as the employee representative(s), if applicable.

Article 12
Performance Plans and Appraisals

The DOC Demonstration Project Operating Procedures Manual will serve as the basis for performance appraisal at NOAA's NCDC. The Employer and the Union will use performance management to improve organizational effectiveness. In achieving this objective, this performance management Article is designed to integrate management processes.

Section 1. *Performance Management Program*

The NCDC Performance Management Program provides for:

A. establishing critical elements and related performance standards for each covered position at the NCDC, which to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the position;

B. using performance plans to communicate DOC goals and objectives, NOAA, NESDIS, NCDC strategic and operating plans, and to identify individual accountability for their accomplishments;

C. using performance appraisal results as a basis for providing information to employees on their performance and how it may be improved; and for training, rewarding, reassigning, promoting, reducing in rank, retaining, granting pay band increases, and removing employees;

D. evaluating and improving individual and organizational performance; and

E. involving employees in improving organization effectiveness and in assessing their own, as well as team, effectiveness and performance thereby, encouraging employees to take responsibility for continuous improvement, support team endeavors, develop professionally, and perform at their full potential.

All bargaining unit employees will receive a performance appraisal in accordance with the NOAA Performance Management Program, which will be based on a comparison of the employee's performance with the standards and elements established for the appraisal period.

When an employee is on a detail for 120 calendar days or more, the supervisor, or management designee of the detail shall provide a performance review in accordance with NOAA Administrative Order (NAO) 202-430.

When an employee is on a detail for 119 calendar days or less, or is a member of a team outside the direct supervision of the employee's immediate supervisor, the employee may request feedback on his/her performance from the supervisor or team leader, for use in the employee's annual performance appraisal. The supervisor or team leader is encouraged to provide the employee and the employee's immediate supervisor with written input.

Employees will receive a complete copy of the performance plan, the mid-term review, and the end-of-year appraisal.

Section 2. *Performance Plans*

The Parties agree that the performance appraisal process is not a unilateral process. It involves participation on the part of the rating official and the employee.

A. Before the start of the appraisal period, the rating official and the employee will begin developing written performance plans for the next appraisal period. Employee input at this stage is important. The rating official will document the critical elements in Section 1 of the Performance Appraisal and Position Review within thirty (30) calendar days after the beginning of the rating period.

B. The Parties agree that the final determination on the content of critical elements rests with the supervisor and is not grievable. If the rating official and the employee disagree on the contents of the performance plan, the rating official and the employee should attempt to resolve the disagreement informally. If they cannot reach agreement, the reviewing official will make the final decision regarding the contents of the plan.

C. When the performance plan is finalized, the rating official will discuss the plan with the employee. The employee will be requested to sign and date the final plan and a copy will be provided to the employee. By signing the plan, the employee acknowledges that the performance plan has been received.

D. Performance plans for bargaining unit employees can contain a maximum of six (6) critical elements. Examples are:

1. leadership and management;
2. customer/client service responsiveness;
3. support of corporate NOAA;
4. development and communication; and/or
5. EEO and diversity.

E. Performance Plans and Position Descriptions

1. Each employee will have an approved, documented, written performance plan based on job duties and responsibility (Form CD-541).
2. Performance plans will be provided to employees at the beginning of each appraisal period or as soon as practicable. This applies to permanent assignment

to a new position or each detail or temporary promotion expected to last 120 calendar days or longer.

3. Prior to implementation of any changes of new/revised position descriptions for a category of employees, the supervisor will provide a copy to the Union for review and negotiation.

4. The performance elements will not contain any operational duties inconsistent with the official position description.

5. The supervisor shall encourage and involve the affected employee(s) in the establishment of all major activities for the rating period. The only items on the performance plan shall be the performance elements for the evaluation.

6. The Employer will not use "other duties as assigned" to expand the position description.

Section 3. *Progress Reviews*

The Parties agree that progress reviews are a part of the appraisal process. These reviews, scheduled at approximately the midpoint of the rating period, are a key factor in identifying how well an employee is progressing toward meeting or exceeding performance standards on all critical elements.

A. Additional progress reviews may be scheduled by the rating official when performance deficiencies are observed. The rating official will provide specific recommendations on how the employee can improve his/her performance.

B. Progress reviews and any changes to the performance plan must be documented and initialed by the employee and a copy provided to the employee.

C. Meetings for the purpose of addressing and resolving performance issues are within the context of performance assistance (or coaching). The purpose and method of assistance provided is to help the employee improve their performance. These meetings are not disciplinary or adverse actions and, therefore, do not entitle the employee to Union representation. Some examples of such assistance include mentoring, training, and suggestions for improvements.

Section 4. *Appraisal*

A. Employees will participate in a pre-appraisal meeting with their rating official prior to the formal appraisal meeting. In the pre-appraisal meeting, the employee will present their accomplishments with respect to the standards; inform the rating official about aspects of work of which the rating official is or may be unaware; and identify changes necessary for the next performance plan and cycle.

B. The employee will provide documentation for the meeting to support his/her assessment. When the employee provides relevant data to support his/her performance appraisal, the rating official will take this data into consideration on the final rating.

C. Rating officials must give the employee at least two (2) calendar days advance notice of the time for the mid-term review and the appraisal meeting at the end of the rating cycle.

D. For employees assigned a summary level of "Meets or Exceeds Expectations," the rating official is encouraged to include narrative comments in Items 4 and 5 of the Performance Appraisal and Position Review. For employees assigned a summary level of "Does Not Meet Expectations," the rating official must provide a written explanation describing the specific areas in which the employee failed to achieve critical elements and the employee must be placed on a Performance Improvement Plan (PIP).

E. Officials shall review performance appraisals, recommended performance ratings, and any employee comments, and actual accomplishments that support the recommended rating. They shall assign the final performance ratings, respond to employee comments on the final rating, and when warranted, sign performance-related personnel actions as reviewing officials.

F. Ratings, bonuses, salary adjustments and Reduction-In-Force (RIF) credit will be discussed at the formal appraisal meeting.

G. If the employee disagrees with the rating, he/she must comment in writing, providing supporting documentation to the reviewing official, within ten (10) calendar days of receipt of the rating. Reviewing officials will respond in writing to the employee's comments within ten (10) calendar days.

H. If the employee is still dissatisfied with their rating, they may seek assistance of the Union and/or grieve their rating under the negotiated grievance procedure.

I. The final rating on an employee's performance for the most recent rating period will be considered the appraisal rating of record until replaced by another rating. When a rating official changes positions or leaves the NCDC during the last 119 calendar days of the appraisal period, he/she must complete appraisals and ratings for subordinate employees before departing (for example, a close-out evaluation). These ratings will serve as the employee's rating of record for the appraisal period. The remaining calendar days of the appraisal period will be included in the following appraisal cycle.

Section 5. *Performance Improvement Plans (PIP)*

A. The purpose of a PIP is to return the employee to an acceptable level of performance as soon as possible. An employee placed on a PIP shall be given a written notice which includes:

   1. the critical element(s) of the employee's plan for which performance is unacceptable;

   2. the action(s) that must be taken by the employee to improve performance to the "Meets or Exceeds Expectations" level;

   3. the assistance that will be provided by supervisory personnel including regularly scheduled progress meetings; and

   4. the action (i.e., reassignment, reduction-in-grade, or removal) that will be taken if the employee does not improve performance to the "Meets or Exceeds Expectations" level.

B. As part of this notification, the employee will be given a reasonable time period to reach the "Meets or Exceeds" level and that level of performance must be sustained at least until one year from the start of the opportunity to improve period. Reasonable time means an amount of time commensurate with the duties and responsibilities of the employee's job that is also sufficient to allow the employee to show whether he/she can meet minimum performance standards documented in writing. A minimum of sixty (60) calendar days is considered reasonable. At the end of the stated period, the employee's performance will be re-evaluated and the employee will be informed in writing of one of the following options:

   1. he/she performed at an acceptable level, and must maintain an acceptable level of performance for one year from the start of the PIP;

   2. the opportunity to improve period shall be extended;

   3. he/she will be reassigned to another appropriate position for which qualified; or

   4. his/her removal or reduction-in-grade is proposed.

C. Remedial training assigned during the PIP is not discipline. Remedial training will be tailored to correct or improve a bargaining unit employee's performance. Training and the duration of such training is assigned on a case by case basis, and has no bearing on the training assignments of any other employees.

D. An employee who is proposed to be reduced in grade or removed, based on unacceptable performance, will be given thirty (30) calendar days advance written notice of the proposed action which:

1. states the reasons for the proposed action in detail;

2. identifies specific instances of unacceptable performance by the employee;

3. identifies the critical elements of the employee's performance plan for which performance is unacceptable;

4. describes the efforts management has taken to bring the employee's performance to the "Meets or Exceeds Expectations" level;

5. states that the employee may review the material relied upon in proposing the action. The notice will include a copy of such material;

6. informs the employee of the right to reply orally or in writing, or both, within thirty (30) calendar days from receipt of the proposed notice; and

7. informs the employee of the right to be represented by the Union or another representative.

E. Any action for performance deficiency must be based only on performance exhibited during the PIP. Performance issues prior to or unrelated to the PIP cannot be considered as a basis for this action. If an employee successfully completes a PIP and maintains acceptable performance for a year, any reference to a performance deficiency will then be removed from the record. An employee may file a response to all performance evaluations which becomes a part of an agency record, or personnel file relating to the employee.

Article 13
Awards

Section 1. *Background and Purpose*

The awards program(s) reflects the Employer's commitment to promote continuous quality and productivity throughout the organization. The awards program is intended to motivate employees to strive for excellence. Individual and team performances are critical components in achieving continuous improvement. The Employer is committed to the principles of employee empowerment and ownership in achieving continuous productivity enhancement.

Section 2. *Policy*

A. Awards are to serve to promote a positive work environment and will be linked to employees' contributions that enhance NCDC performance. Awards will be distributed in a fair and equitable manner.

B. All employees are entitled to be considered for awards. Employees are not limited in the number or types of awards they may receive or the frequency with which they may receive them. However, employees should not receive more than one monetary award (including time off) for the same act or occurrence.

Section 3. *Cash-in-Your-Account*

A Cash-in-Your-Account award is a form of Special Act award that gives supervisors the opportunity to provide immediate feedback to their employees and co-workers when they observe, or become aware of an employee who has performed a special deed or act that is beyond the normal bounds of an employee's position. It is intended to reward exceptional performance beyond the normal bounds of an employee's position. The award may be either cash or time off.

The amount of time off may be granted in amounts of up to forty (40) hours for a single contribution. An employee may be granted up to eighty (80) hours of time off during a leave year (or, in the case of a part-time employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty). Additionally, the time off must be scheduled in accordance with Article 20 (Leave) and used within one (1) year after the date the award was approved. It may not be converted to a cash payment. The total amount of Cash-in-Your-Account awards is limited by DOC/NOAA policy.

The Union may not determine the budgetary allocation of award monies.

Section 4. *Honorary Awards*

The DOC encourages and provides honorary awards to recognize exceptional and meritorious service, noteworthy suggestions and superior accomplishments, length-of-service, retirement,

and achievements in safety. Honorary awards may be granted independently of, or in concert with, cash/time off awards.

Article 14
Probationary Employees

Section 1. *General*

All probationary employees of the bargaining unit shall be covered by the terms of this Agreement to the extent consistent with applicable laws, rules, and regulations.

Section 2. *Probationary Employees*

A. The Employer agrees to provide probationary employees with the opportunity to develop and to demonstrate their proficiency.

B. Toward that end, probationary employees are entitled to at least quarterly one-on-one supervisory counseling sessions with written feedback about their conduct and performance and their standing for conversion to career conditional status.

C. Consistent with applicable regulations, the employee's pre-employment background will be investigated.

D. Probationary employees have the right to Union consultation.

Article 15
Merit Assignment Program

The identification, qualification, evaluation and selection of candidates shall be made without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, gender, sexual orientation, national origin, age, and non-disqualifying mental or physical disability. The Employer will evaluate candidates and make selections for promotion only on the basis of merit and job-related factors.

The actions covered by this Article are governed by the procedures of the DOC/NOAA Merit Assignment Program (MAP) Plan, October 2005, unless otherwise stated.

Section 1. *Coverage*

A. This Article applies to selection for competitive service bargaining unit positions resulting in the following types of actions:

1. promotion;

2. transfer or reinstatement to a higher-level position;

3. reassignment or change to a lower-level position with known greater promotion potential than the position last held;

4. temporary promotion for more than 120 calendar days or assignment to a detail of more than 120 calendar days to a higher-level position or to a position with known promotion potential within the bargaining unit (all prior service in a temporary promotion or detail to higher-level position during the twelve (12) month period immediately preceding the current action is counted toward the 120 calendar day limitation); and

5. training required for promotion to a bargaining unit position unless the training is available to all qualified bargaining unit employees.

Section 2. *Definitions*

A. *Applicants*: Bargaining unit employees who express interest through proper written application in accordance with the requirements of the vacancy or training announcement within the bargaining unit.

B. *Area of Consideration*: The minimum area in which a search is made for eligible candidates.

C. *Career Promotion*: The promotion of an employee without current competition when the employee was selected previously for a position with known promotion potential.

D. *Competitive Procedure*: The process of evaluating bargaining unit applicants by applying job-related merit factors to determine the best qualified applicants.

E. *Consideration*: The observation, examination and/or review and decision made by proper authority in the determination of an applicant's knowledge, skills, and abilities, in conjunction with other regulatory or statutory requirements, to perform in the advertised position. It is a continuous process culminating in final consideration by the selecting official. An applicant, upon failing to meet requirements at one step in the process, would not progress and receive further consideration.

F. *Eligible Applicants*: Those applicants who meet all the minimum eligibility and qualification requirements, including time-in-band at the time the vacancy announcement closes, or in the case of "open" announcements at the time application is made.

G. *Qualified*: The rating given to an applicant who meets all of the established qualification requirements for a particular position, including selective placement factors.

H. *Best Qualified*: The rating given to qualified candidates determined by a Rating Board to be the most capable of successfully performing all of the specific duties of the vacancy when compared to other eligible applicants.

I. *MAP (Selection) Certificate*: The form used for submitting the names of qualified candidates to the selecting official for consideration.

J. *Merit Program Vacancy Announcements*: A form used to publicize current or anticipated vacancies.

K. *Non-status Applicants*: Applicants who respond to bargaining unit vacancy announcements who do not appear to have a current notice of eligibility from OPM and do not appear to be eligible for transfer or reinstatement.

L. *Promotion*: The change of an employee to a higher-level position when both the old and the new positions are under the general schedule, under the same wage schedule, or to a position with a higher rate of pay when both the old and new positions are under the same type ungraded wage schedule or in different pay-method categories.

M. *Position with Known Promotion Potential*: A bargaining unit position which is filled at a level lower than the officially classified highest level for that position. Career promotions may subsequently be made from these lower-level positions.

N. *Reassignment*: The change of an employee from one position to another without promotion or demotion within the DOC.

O. *Selective Placement Factors*: Knowledge, skills, or abilities essential for satisfactory performance on the job and which represent part of the basic qualifications for a position.

P. *Selecting Official*: An Employer official with authority to select an applicant for assignment to a position, subject to final regulatory approval of the appropriate Personnel Officer.

Q. *Supervisory Appraisal*: Those evaluations of an applicant by current and/or former supervisors that will be considered by the selecting official in the selection process.

Section 3. *Responsibilities*

Bargaining unit employees are responsible for:

A. being knowledgeable of the provisions of this Article and complying with its requirements;

B. ensuring their application documents are current with respect to qualifications, special training, and educational achievements which may not be a routine matter of record;

C. demonstrating competence and readiness for advancement by effective performance in current positions; and

D. accessing position vacancies and applying via the Internet (e.g., USA Jobs).

Section 4. *Exceptions*

This Article does not apply to government-wide regulation in the following instances:

A. appointments from OPM registers provided that requests for certificates contain selective factors, if any, which would be used in advertising;

B. selection for a position with known promotion potential as a result of a RIF;

C. re-promotion of employees demoted without cause or not as a result of their personal request;

D. If a third party rules that an employee failed to receive proper consideration in a promotion action, the employee will be given priority consideration for the next appropriate vacancy in competition with any other employees with similar entitlement to this special consideration as an exception the regular competitive procedures in this Article. The selecting official is not required to select this employee. An employee is entitled to only one consideration under this provision for each instance of lost consideration. For purposes of meeting the requirement of this section, an employee is deemed to be "Reconsidered" when his/her name is referred to a selecting official.

This does not restrict the employee from being considered for positions in other areas of consideration for reassignment, other non-competitive or competitive actions. The WFMO will coordinate the priority consideration process;

E. Career promotions may be made in the situations noted below:

1. *Reclassification*: An employee whose position is reclassified to a higher level because of the accretion of additional duties and responsibilities may be promoted non-competitively. To be eligible for a career promotion, an employee must continue to perform the same basic function, with the duties of the former position absorbed into the new one;

2. *Result of New Classification Standard or Correction of Error*: Employees in positions upgraded without significant changes in duties and responsibilities on the basis of either the application of a new classification standard issued by the OPM or the correction of a previous classification error, who meet all requirements for the higher level position, may be promoted or be removed from the position by appropriate personnel action; and

3. *Career Promotions Under Training Agreements*: An employee who satisfactorily completes training under an OPM-approved training agreement which specifically provides for promotion, if the employee was chosen for the training opportunity through competitive procedures;

F. permanent promotion to a position held under temporary promotion or detail when originally made under competitive procedures and the possibility of the action becoming permanent was indicated in the vacancy announcement or recruitment bulletin;

G. promotion of an employee when directed by authorized authorities (i.e., judges, arbitrators, FLRA);

H. A series of details or temporary promotions to a higher level for one hundred twenty (120) calendar days or less, each of which is less than one hundred twenty (120) calendar days, but cumulatively do not exceed one hundred twenty (120) calendar days in the preceding twelve (12) months, may be made;

I. lateral assignments to bargaining unit positions with no greater known promotion potential may be made without regard to this Article. The Employer has no obligation to reassign employees for hardship reasons. However, the Employer will reasonably evaluate situations on a case-by-case basis. Hardship situations are not to be confused with requests for reasonable accommodations;

J. handicapped employees normally appointed under excepted authority to Schedule A may be considered under this plan. A separate certificate of qualified applicants will be prepared. When such persons are selected and are to remain in the excepted

service their positions will be removed from the competitive service while they occupy them;

K. Upward Mobility Program positions for which selections are made and filled through the merit process; and

L. the filling of vacancies subject to the Priority Placement Program shall take precedence over any procedures of the MAP.

Section 5. *Actions Requiring Competitive Procedures*

A. Reinstatement to a position at a higher level or one with potential to a higher level than that previously held under a permanent appointment in the competitive service.

B. Selection from the Re-employment Priority List for a position at a higher level than that from which separated.

C. Temporary or time-limited promotion of more than one hundred twenty (120) calendar days (prior service under all temporary promotions and details to higher-level positions during the previous twelve (12) months counts toward the one hundred twenty (120) day limitation).

D. Selection for training that is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for promotion.

E. Reassignment, transfer, or demotion to a position with known promotion potential or special experience required for a higher-level position than the employee's current position or that previously held on a permanent basis in the competitive service (except as permitted under RIF regulations).

F. A personnel action that changes an employee (1) to a position at a higher level within the same job classification system and pay schedule or (2) to position with a higher rate of basic pay in a different job classification system and pay schedule (e.g., from Demonstration Project to General Schedule).

G. Promotion by transfer from another Federal agency or by change of appointing office.

H. Selection for a detail of more than one hundred twenty (120) calendar days to (1) a higher level position, or (2) a position with greater known promotion potential.

Section 6. *Certification*

A. Process:

1. All promotion candidates in MAP cases subject to competitive assignment procedures of the Plan will be evaluated on the factors applied to a particular vacancy announcement. The candidates rated best qualified are referred to the selecting official.

2. Where a rating and ranking process does not produce a sufficient number of best qualified candidates to evaluate, the selecting official has the option of requesting inclusion of the "qualified" applicants.

3. When it has been advertised that a vacancy "may be filled at a lower level" or will be given multi-level consideration, applicants for each level will be certified separately.

4. Additional positions may be filled from the selection certificate if the additional vacancies are the same as the one advertised, are in the same commuting area, and are announced when the vacancy is issued.

B. *Additional Sources of Recruitment*: The selecting official is not required to fill a vacancy by selection of one of the applicants listed on the selection certificate. Additional recruitment efforts may be requested or other recruitment action outside of MAP considerations may be taken.

C. *Decision*: The selecting official's decision to select a particular applicant will be indicated by electronic message to the WFMO.

Section 7. *Information to Employees*

A. The WFMO will make available, through the automated system, the outcome of each vacancy announcement. It is up to the applicants to check the automated system for the results. Within thirty (30) calendar days of notification of the outcome, the applicants whose names appeared on the MAP certificate may request a counseling discussion with the selecting official to answer questions about his/her non-selection.

B. Upon specific request to the appropriate WFMO Officer, any employee considered for a vacancy will be furnished the name of the individual selected and the following information about himself/herself:

1. all information pertaining to the inquiring employee concerning the particular action, including performance appraisals;

2. whether the employee was found to be qualified on the basis of the minimum standards;

3. whether the employee's name was on the selection certificate used to fill the position; and

4. any additional information which may be provided in a grievance situation will be released in such form as to protect the privacy of any individual (e.g., crediting or rating plan).

Section 8. *Coverage*

This Article covers bargaining unit positions and employees only.

Article 16
Reduction-In-Force (RIF), Transfer of Function and Reorganization

Section 1. *Notification*

The Employer will notify the Union after the final decisions have been made to conduct a RIF, transfer of function, or a reorganization which would adversely affect bargaining unit employees. All actions covered by this Article shall conform to Federal, Department, and NOAA laws and regulations. Due to the sensitive nature of this process, the Parties agree to maintain strict confidentiality until negotiations are completed between the Union and the Employer and official notice has been issued by the Employer.

Section 2. *Reduction-In-Force (RIF)*

In the event of a RIF, the Employer will provide the following information to the Union President or his/her designee from the designated contacts listed in Section 2 of Article 7 (Rights and Representational Responsibilities of the Union):

A. retention registers as developed;

B. records applicable to individual actions;

C. staffing authorizations; and/or

D. directives requiring official RIF, subject to regulatory or statutory exclusion.

Section 3. *Definitions*

For purposes of this Article, the following terms and expressions shall have the following meanings:

A. *RIF*: Release of an employee from his/her competitive level, by separation, demotion, reassignment requiring displacement, when the release is required because of a lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment rights or restoration rights, or reclassification of an employee's position due to an erosion of duties when such action will take effect after the NCDC has formally announced a RIF in the employee's competitive area.

B. *Transfer of Function*: The transfer of the performance of a continuing function from one competitive area and its addition to one (1) or more other competitive areas except when the function involved is, for all practical purposes, identical to functions already being performed in the other competitive area affected or the movement of the competitive areas in which the function is performed to another commuting area.

C. *Competitive Level*: A competitive level of a RIF consists of all jobs in a competitive area that are so similar in all important respects that the NCDC can readily move an employee from one to another without significant training and without loss of productivity or undue interruption.

D. *Undue Interruption*: A degree of interruption that would prevent the completion of required work is within the allowable limits of time and quality. For example, depending upon the pressures of priorities, deadlines, and other demands, an ordinary work program probably would be unduly interrupted if performance of the critical elements of a position were not regained within ninety (90) calendar days.

Section 4. *Rights of Employees*

Bargaining unit employees affected by a RIF have the right to inspect RIF records that pertain to their individual actions, in so far as it is permissible under the provisions of laws and regulations. In reviewing these records, the employee may, if he/she chooses, be assisted by a Union representative. Such reviews will be requested in writing at least five (5) calendar days in advance and include the name of the Union representative, if any, who will accompany the employee. Requests will be serviced as quickly as possible on a first-come, first-serve basis.

Employees who contend that the specific notice contains errors or is not in accordance with their employment history may submit their contention to the WFMO within thirty (30) calendar days of receipt of the notice. Employees who believe that the specific notice contains errors or is not in accordance with their employment history, but who need to review their OPF, may, within fourteen (14) calendar days of receiving their notice, request a copy of their OPF. Employees will be provided no less than fourteen (14) calendar days after receipt of the OPF to notify WFMO if they contend that the specific notice contains errors or is not in accordance with their employment history. The above language does not alter the provisions of the negotiated grievance procedure.

Section 5. *Employees Affected by RIF*

If the Employer determines that RIF procedures will be enacted, each competing employee selected for release from a competitive level will be given written notice at least sixty (60) calendar days before the effective date of such action. If it becomes necessary that the original written notice information needs to be supplemented by additional information, the information will be provided in writing to the employee not less than ten (10) calendar days prior to the effective date of the action. The written notice will provide the following information:

A. the specific action to be taken;

B. the reason(s) for the action;

C. the effective date of the action;

D. the employee's competitive area, competitive level, subgroup, service computation date, and the last three annual performance ratings of record within the last four years;

E. the place where the employee may inspect the regulations and records pertinent to his/her case and the procedures to be followed;

F. the reasons for retaining a lower standing employee in the same competitive level because of a continuing exception;

G. the reasons for retaining a lower standing employee in the same competitive level for more than thirty (30) calendar days because of a temporary exception;

H. grade and pay retention information;

I. notice of eligibility for reemployment and other placement assistance;

J. information on benefits (i.e., severance pay, unemployment compensation, health and life insurance, lump sum payments); and

K. the employee's grievance or appeal rights.

Section 6. *Employee Assistance*

In accordance with the above, the Employer shall provide the following information to employees:

A. on-line resources regarding vacancies; and

B. access to placement programs, which will include counseling for employees by qualified management personnel on opportunities and alternatives available to affected employees.

Section 7. *Employee Use of NCDC Facilities*

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of RIF under this Article will be entitled to reasonable use of the following facilities and/or services for the purpose of locating suitable employment:

A. telephone and fax;

B. reproduction equipment;

C. NCDC computer access;

D. counseling and review of job resources; and

E. use of NCDC e-mail system.

Section 8. *Employee Use of Excused Time*

Employees who are identified for transfer of function, separation, or change to a lower grade as a result of a RIF under this Article shall be entitled to reasonable time while otherwise in a duty status without charge to leave for:

A. preparing, revising and reproducing job resumes and/or job application forms;

B. preparing for employment interviews within the DOC and/or other job prospects;

C. using the telephone to locate suitable employment; and

D. reviewing job bulletins, announcements, etc.

Section 9. *Performance Appraisals*

Except for employees who are re-rated after a period allowed in 5 CFR 430, annual performance appraisals for purposes of retention standing will be frozen sixty (60) calendar days prior to the effective date of the action. The three (3) latest annual appraisals of record prior to the freeze will be used to determine eligibility for additional credit toward an employee's service computation date. Only valid annual performance evaluations shall be used.

Section 10. *Release from Competitive Level*

When an employee is to be released from his/her competitive level, the "best offer" is made. The offer will be as close to the employee's current grade as possible.

Section 11. *Employee Response to Specific Notice*

Upon receipt of specific notice notifying the employee that he/she is offered a reassignment or change to lower grade or will be released from his/her competitive level, the employee has fourteen (14) calendar days in which to accept or reject the offer made. If a position with a higher representative rate or grade (but not higher than the rate or grade of the employee's current position) becomes available in the local commuting area on or before the effective date of the RIF, the NCDC will make the better offer to the employee. This offer will not extend the notice period.

Section 12. *Details*

Employees on detail will not be released during a RIF from the position to which they are detailed but, rather, from the affected employee's permanent position of record.

Section 13. *Transfer of Function*

When a transfer of function occurs, the Employer may either:

A. solicit volunteers for transfer from among those employees in positions that have been identified for transfer. If there are not enough volunteers from among those affected employees, the Employer will solicit volunteers from the competitive area; or

B. offer the transfer to the employees who are occupying the positions being transferred.

If the Employer chooses the first option, and the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area shall give preference to the volunteers with the highest retention standing. If the total number of employees who volunteer does not exceed the number of employees required to perform the function in the gaining area, inverse order of retention standing will be used to determine which employees will be transferred.

Whenever possible, affected employees who do not volunteer to be transferred shall be reassigned to vacant positions for which they are qualified within the competitive area, or separated at the conclusion of the transfer.

In the event of forced reassignments that do not meet the definition of transfer of function, the Employer will notify the Union in accordance with Article 8 (Negotiation and Consultations over Proposed Conditions of Employment) at least sixty (60) calendar days prior to the effective date of the action.

Section 14. *Mitigating Considerations on RIFs*

In the event that the Employer determines a RIF is necessary, the Employer and the Union will attempt to fashion recommended actions to mitigate the adverse effect on employees, such as:

A. directed or voluntary lateral reassignments;

B. holding vacancies in lieu of filling positions (e.g., attrition);

C. limiting competition when filling positions;

D. reviewing employee qualifications for possible placement in other career fields; and

E. counseling and assisting employees in finding continued Federal employment.

Article 17
Details and Temporary Promotions

In the interest of effective employee utilization, detailing bargaining unit employees to unit positions that may require higher or different skills will be consistent with the spirit and intent of applicable regulations and the merit system. Details may be used to meet emergencies occasioned by abnormal workload, change in mission or organization, unanticipated absences, etc. A detail is a temporary assignment of an employee to a different position or the same position at a different location for a specified period with the employee returning to his/her regular duties at the end of the detail. The Employer is responsible for keeping details within the shortest practicable time limits and assuring that details do not compromise the open competitive principles of the merit system.

Section 1. *Process for Detailing*

A. The Employer will list the qualifications and performance attributes (i.e., relevant experience, knowledge skills, and training) determined to be necessary to perform the detail. Qualifications and performance attributes will be objective and job-related.

B. The selection will be made from the group of qualified candidates. Subsequent selections will be made on a rotating basis.

C. If there are no volunteers, then the least senior qualified employee may be given the assignment. Seniority in this circumstance is defined as the longest tenure in the current position.

The procedures in this section apply except when management can demonstrate that the position to which an employee must be detailed requires unique skills and abilities that are not possessed by any other qualified employee.

Section 2. *Documentation*

A. Details of more than thirty (30) calendar days will be documented by a Standard Form (SF) 52 that will be maintained as a permanent record in the employee's OPF, and will be provided to the employee as soon as possible.

B. Any employee detailed to a position shall be given a position description.

Section 3. *Higher Level Duties*

A. According to applicable laws, rules and regulations, an employee on detail to higher level work is entitled to compensation beginning on the thirty-first (31) calendar day of the detail. The duration of the detail into a higher level position will not be limited to avoid compensating employees for higher level work.

B. Compensation for higher level work will be six (6) percent of the employee's salary, unless capped by regulation. If the employee's salary is capped, compensation may be in the form of a cash award.

C. Compensation for higher level work does not preclude the eligibility of the employee for an award.

Section 4. *Detailing of Union Officials*

The Employer will make a reasonable effort to avoid placing Union officials on details that would prevent Union officials from performing their representational functions.

Section 5. *Temporary Promotions*

A temporary promotion is a promotion to a higher level position for a finite period of time.

A. A temporary promotion of one hundred twenty (120) calendar days or less to a higher level position or a position with known promotion potential may be done non-competitively.

B. Temporary promotions to higher level duties for more than one hundred twenty (120) calendar days must be competitive. Prior service during the preceding twelve (12) months under non-competitive time-limited promotions and non-competitive details to higher graded positions counts toward the one hundred twenty (120) calendar day total. A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that it might lead to a permanent promotion was made known to all potential candidates.

Section 6. *Termination of Detail or Temporary Promotion*

A temporary promotion and/or detail of a bargaining unit employee to a higher level position may be terminated at any time at the discretion of the Employer. When terminating a temporary promotion, salary is set at the rate the employee would have received had he/she remained in the lower level position.

Article 18
Training, Career Development and Individual Development Plans

Section 1. *Training and Career Development*

The Employer and the Union recognize that the training and development of employees are essential to efficient operation. Recommendations and selections will be made without regard to race, gender, sexual orientation, marital status, age, religion, handicap or national origin. The choice of subject matter, areas for training, selection of employees, and assignment of training priorities, is a function of the Employer. Training will not interfere with operational requirements as determined by the Employer.

Each employee is responsible for applying reasonable effort, time and initiative in increasing his/her potential value through self-development and training. The Parties will encourage employees to take advantage of training and educational opportunities, which will add to their skills and qualifications.

Training opportunities shall be offered to employees within occupational or position groupings as equitably as is practicable, considering:

A. the training needs of the NCDC in order to bring about more effective performance at the least possible cost;

B. the training needs of individual employees as they relate to overall NCDC program objectives as specified and written into each employee's Individual Development Plan (IDP); and

C. the short and long-range occupation and program needs of the NCDC.

The Employer agrees to distribute Training Announcements electronically, as they are received.

Section 2. *Assignment of Training*

Training will be assigned in accordance with applicable government, DOC and NOAA regulations and procedures.

Section 3. *Training Requests*

Requests for training will be submitted on a SF 182 and approved by the immediate supervisor prior to being sent to the NCDC Director's Office for final approval. Approval or disapproval of SF 182s will be promptly communicated to the requestor through normal supervisory channels. Detailed procedures are addressed in NCDC Guideline 200-010.

Training nominations and/or approval will be based on the potential use of the training in the employee's current position, or IDP, if any, and other criteria established by applicable laws, rules, or regulations. Nominating and approving officials will apply such criteria equitably.

Section 4. *Union Representative Training*

Union representatives may individually request up to thirty-two (32) hours of official time in a calendar year for the purpose of attending approved official seminars or courses related to labor relation issues. Training provided must be of demonstrable benefit to the Employer. The written request for use of official time must be submitted for review and approval/disapproval to the Deputy Director of NCDC, no later than fourteen (14) calendar days prior to the date of the training. The agenda for the training should accompany the request for official time and should give the training schedule, a brief summation of the requested training content, and the names of the instructors providing the training. Expenses for this type training will be paid by the Union and not the Employer.

Section 5. *Individual Development Plans (IDP)*

The Employer and the Union recognize the importance of training activities to furthering the agency mission through the enhancement of the knowledge, skills, abilities, and the potential of employees. Self-study is a useful method of training and career development. The Employer will make reasonable effort to ensure that all materials required for any approved self-study courses are made available to employees enrolled in such self-study courses.

The Employer agrees to give due consideration to Union recommendations concerning training for bargaining unit employees in the development of Center training plans, policies, and procedures.

Individual employee career development goals will be given consideration when Employer officials make decisions regarding the mission-related training and career development activities within their divisions and branches and the development of employee IDPs.

In developing an IDP, the first-line supervisor and the employee will consider the following approaches which will provide for:

A. identification of job patterns and promotional opportunities commensurate with employee skills and potential;

B. lateral detail(s)/reassignment(s) and bridge positions for employees whose current jobs do not provide an opportunity for further advancement;

C. education and training to provide employees the opportunity to enhance promotional qualifications;

D. staffing techniques; and

E. elimination, whenever possible, of non-performance related impediments as promotional factors.

Employees may be reimbursed for satisfactory completion of job-related courses. Reimbursement is contingent upon obtaining pre-approval for the courses.

Section 6. *Time and Cost*

It is further recognized that certain training is essential for the performance of duties. The Employer will make every reasonable effort to provide an appropriate amount of duty time to complete mandatory training.

When training is approved, the Employer will pay costs of tuition and required textbooks and other expenses as appropriate and shall pay travel costs subject to travel regulations and fiscal considerations. If travel funds are not authorized and the training would otherwise be approved, the employee will be notified of the option of attending the training without travel reimbursement (e.g., no cost to government travel). For those courses that are graded, if any employee does not obtain a passing grade (or pass in a pass-fail course), the employee may be required, consistent with applicable regulations, to reimburse the Employer for the cost of the training. Any materials obtained during training are the property of the Federal government and must be returned as such.

Section 7. *Employee Responsibility*

The employee has the responsibility to provide grades, proof of training (SF 182s and certificates), and/or college transcripts as appropriate for inclusion in his/her OPF. This applies to courses completed prior to, as well as during, employment with the NCDC.

Section 8. *Retirement Planning*

The Employer will make every effort, pending sufficient funding being available, to provide retirement planning seminars every other year in order to ensure that employees are adequately briefed on retirement planning.

Section 9. *E-Learning@noaa*

The Employer's goal is to train and develop its workforce and to support an organizational value of continuous learning. To serve this goal, the Employer fully supports E-Learning@noaa, or electronic learning. E-Learning refers to education provided via the Internet or CD-ROM.

The Employer's managers and supervisors fully understand the purpose and capabilities of E-Learning@noaa courses and how to utilize them. These managers and supervisors will work with employees to meaningfully participate in E-Learning, allow adequate duty time for study, and ensure that employees adhere to the E-Learning policy for training during duty hours. These managers and supervisors are responsible for using this learning and developmental tool to meet individual employee and organizational needs.

Bargaining unit employees are responsible for adhering to the policy established for use of the E-Learning@noaa courses. Employees must obtain approval from their supervisor prior to taking courses on E-Learning@noaa during duty hours except for periodic just-in-time learning.

Section 10. *Development Training*

The Parties agree that there may be reorganization, re-engineering, technological changes, RIFs, or other major actions that could have an impact on job security. In recognition of this, the Employer will provide training that would allow employees to move into existing or projected vacancies consistent with budget and staffing restrictions. Subject to budget and staffing restrictions, the Employer shall provide training to all employees whose positions are abolished or significantly re-engineered as a direct result of organizational restructuring, work elimination, a Commercial Activities Study, introduction of new duties, transfer of work, or implementation of new technology before expecting employees to perform new or greatly altered duties.

Section 11. *Training Required to Meet NCDC Mission*

Employees who are required to backfill vacancies and are not trained for those new tasks will be trained as appropriate.

Section 12. *Other Training*

The Employer will provide training on career life issues, health and safety, and wellness to all employees as the schedule permits.

Article 19
Equal Employment Opportunity (EEO) and Diversity

This Article defines policy, responsibilities, and procedures pertaining to the bargaining unit's EEO and Diversity Program in support of the NESDIS and NOAA EEO and Diversity Plans. The Parties understand and accept EEO and diversity principles and agree to work fully with the bargaining unit workforce to meet the challenges of the future, to invest in developing and retaining the talents of its current employees, to attract new talent with its reputation as a quality employer, and to foster a spirit of common goals in an equal and diverse workforce.

The Employer fully supports NOAA's EEO and Diversity Plans which are firmly grounded in today's global realities and will have a positive, continuing and results-oriented program of affirmative action. EEO and diversity are priorities for the Employer. The Employer's EEO and Diversity Committee is charged with raising awareness of EEO and diversity by modeling appropriate behavior, by recommending, planning, and by supporting diversity in education and training programs, and highlighting EEO and diversity to all employees of the bargaining unit.

Section 1. *Support*

The Employer agrees to provide and the Union agrees to support EEO and encourage diversity for all qualified persons, to prohibit discrimination because of race, color, religion, gender, national origin, age, marital status, sexual orientation, handicapping condition, civil service stations (preferential or non-preferential), or lawful political affiliation, and to promote the full realization of EEO and diversity through a positive and continuing effort.

Section 2. *EEO/Diversity Plan*

The Parties recognize and understand the requirements imposed on Federal agencies by Title 5 USC, the Equal Opportunity Act of 1972, the Civil Rights Act of 1991, the Rehabilitation Act of 1973 as amended, the Age Discrimination in Employment Act (ADEA), Executive Order 11478, other authorizing legislation, and applicable regulations.

The Parties further recognize that EEO plans are developed in accordance with guidelines and instructions disseminated by the EEOC. The Employer agrees to provide copies of the NCDC EEO/Diversity Plan to employees.

Section 3. *Prohibited Discrimination*

A. A bargaining unit employee who believes that he or she may be the victim of prohibited discrimination may file a formal EEO complaint with the Employer or may file a grievance, but not both. The employee shall not be deemed to have selected the EEO complaint route merely because he or she has discussed the matter with an EEO counselor, but shall be deemed to have selected the EEO complaint route at the time he or she files a formal discrimination complaint. Any employee who has filed an EEO complaint or a grievance which alleges discrimination shall be free from coercion, interference, or reprisal.

B. Any meeting requested by or initiated by the DOC Office of Civil Rights, or NOAA Office of Personnel and Civil Rights does not meet the definition of a formal meeting as defined in this Agreement. The Employee is not obligated to notify the Union. However, the employee may be accompanied by a representative which may be the Union.

Section 4. *Counseling Service*

NOAA, in support of its EEO program, appoints and trains employees at appropriate NOAA installations to serve as EEO Counselors. In that way, counseling service is available for employees and job applicants. The Employer does not have EEO Counselors on site; however, the names and contact information of NOAA EEO counselors who are authorized to accept informal EEO complaints from bargaining unit employees will be conspicuously posted in each office where unit employees are located. Such a list will be kept current and an additional copy of the list will be provided to the Union. The list will be promptly revised when changes to this list become known. Any employee who files a complaint must first go through the NOAA EEO investigative process before they may ask for formal hearing with the EEOC.

Section 5. *EEO/Diversity Committee*

The NCDC EEO/Diversity Committee serves as an advisory body to the Employer and advances recommendations for consideration that make positive contributions to the EEO/Diversity effort at the NCDC. The NCDC EEO/Diversity Committee does not investigate discrimination complaints, but may refer complaints to the appropriate source.

Section 6. *Union Representation*

The Union will have the opportunity to provide a member to serve on the NCDC EEO/Diversity Committee.

Section 7. *Recording of Time*

In order to be responsive to report requests from higher headquarters on EEO and/or Diversity activities, the Employer utilizes a task number. It is vital that daily employee time sheets reflect time spent on such activities as EEO/Diversity Committee meetings, discussions, report preparation and review, reading of EEO or diversity material, etc. Time sheets should reflect the task number in effect for the current fiscal year. This number can be obtained from the Employer's Financial Management Branch, if not known.

B. Any meeting requested by or initiated by the DOC Office of Civil Rights, or NOAA Office of Personnel and Civil Rights does not meet the definition of a formal meeting as defined in this Agreement. The Employee is not obligated to notify the Union. However, the employee may be accompanied by a representative which may be the Union.

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Section 8. *Discovery Process*

When an employee chooses to file an EEO complaint under this contract, as opposed to an EEO hearing, the representative for the complainant will be afforded the rights of the Discovery Process. For a more detailed description of discovery procedures, reference EEOC Management Directive 110, Chapter 6.

Section 9. *Demographic Statistics*

When the Employer compiles demographic statistics, it will share them with the Union.

Section 10. *Complaint Rights*

Any employee who wishes to file or has filed a complaint shall be free from coercion, interference, and reprisal, and shall be entitled to expeditious processing of the complaint within the time limits prescribed by regulations. Any employee who seeks to file a complaint within the time limits prescribed by regulation shall have the right to select a representative of his/her choosing.

Section 11. *Complaint Choice*

Any employee has the option of filing either a complaint under Article 9 (Grievance Procedures) or under the NOAA EEO complaint procedure, but not both. The submission of a grievance form or a formal complaint to the NOAA Office of Civil Rights is a binding choice.

Section 12. *Statistical Reports*

Upon request, the Employer agrees to furnish the Union sanitized statistical reports concerning discrimination complaints filed by bargaining unit employees.

Section 13. *Statutory Complaints*

A reasonable amount of official time will be authorized to employees and/or to representatives who otherwise would be in duty status to participate in statutory complaints, in accordance with 29 CFR Section 1614.

Travel expenses for statutory complaints will be paid in accordance with applicable laws, rules, and regulations.

Section 14. *Sexual Harassment*

The Parties recognize that harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964. Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when the conditions described in EEOC guidelines, Section 1614.11, are present.

Section 15. *Hostile Work Environment*

The Parties recognize that the existence of a hostile work environment is counter-productive to accomplishing the NCDC's mission. A hostile work environment can exist where there is a detrimental effort to a person's physical or mental well-being and is considered a violation of Title VII and EEOC guidelines.

Section 16. *Individuals with Disabilities*

In accordance with Section 51 of the Rehabilitation Act of 1973 as amended, Section 403 of the Vietnam Veterans Readjustment Assistance Act of 1974 as amended, and other laws, rules, and regulations pertaining to the employment of individuals with disabilities, the Employer is committed to affirmative action for the employment, placement, and advancement of qualified individuals with disabilities and disabled veterans.

The Employer will offer reasonable accommodation to the known physical or mental limitations of qualified individuals with a disability regardless of type of appointment unless the Employer can demonstrate that the accommodation would impose an undue hardship on the operation of the Employer's program as defined in 29 CFR 1614.203.

The Parties recognize that individual accommodations will be determined on a case-by-case basis, taking into consideration the employee's specific disability, existing limitations, the work environment and any undue hardship imposed on the operation of the Employer's program as defined above. Qualified employees with disabilities shall request specific accommodations in writing.

The Parties agree that reasonable accommodation means an adjustment made to a job and/or the work environment that enables a qualified person with a disability to perform the duties of that position. The Employer will eliminate undue delay in considering requests for reasonable accommodations for employees with disabilities despite general fiscal constraints. Such accommodations are to be considered as exceptions to the general restrictions and will be evaluated on a case-by-case basis with regard to the merit of the request.

Should a non-probationary employee become unable to perform the essential functions of his/her position even with reasonable accommodation due to a disability, the Employer shall offer to reassign the employee when a funded vacant position is available and the other conditions in 29 CFR 1614.203 (g) are met.

Pursuant to 29 CFR Section 1614.203, there are many different ways to accommodate individual disabilities including making facilities readily accessible to and usable by individuals with handicaps, job restructuring, part time or modified work schedules, telework requests, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar devices. Individual requests for accommodation shall be addressed on a case-by-case basis.

The principal steps in restructuring jobs are:

A. identify which factor, if any, makes a job incompatible with a worker's disability;

B. if a barrier is identified in a non-essential job function, it may be eliminated so that the capabilities of the person may be used to the best advantage; and

C. job restructuring does not alter the essential functions of the job, rather any changes made are those which enable the person with a disability to perform those functions.

Both Parties agree that in many cases, changes in the work environment enable persons with disabilities to more effectively perform their job duties.

An employee may be provided assistive devices if the Employer determines that the use of the equipment is necessary to perform official duties. Such equipment does not cover personal items which the employee would be expected to provide such as hearing aids or eyeglasses.

The Employer shall not discriminate against employees who are qualified individuals with handicaps due to the inaccessibility of its facility.

The Employer will be liberal in granting leave to accommodate the condition of qualified employees with disabilities. This policy will cover but not be limited to the following:

A. supervisors will advise employees with mobility impairments of the administrative procedures to request administrative leave when weather conditions make it extremely difficult or hazardous to report to work;

B. Leave Without Pay (LWOP) may be granted for illness or disability; and

C. sick leave can be appropriately used by an individual with a disability who uses prosthetic devices, wheel chair, crutches, guide dog training and/or medical treatment.

The Employer will provide employees with disabilities full consideration for job related training opportunities. Once an employee is selected for training, the Employer will provide reasonable accommodations to the employee to attend and complete the training.

It is the intent of the Employer to provide on-the-job training opportunities to qualified employees with disabilities consistent with operational needs.

Reasonable accommodations for training, both formal and on-the-job opportunities, include such things as:

A. modification of training and reference (e.g., training guides in Braille);

B. provision for a qualified interpreter for deaf trainees;

C. use of a mentor (e.g., co-worker) to provide individualized training; and

D. assuring physical access to training facilities, restrooms, and lodgings.

As is the case with all bargaining unit employees, employees with disabilities may seek Union assistance and/or representation on their individual concerns, consistent with the terms of this Agreement.

For the purpose of continuing to provide reasonable accommodations for hearing-impaired employees, management agrees to provide interpreter services for those employees who seek Union assistance and/or representation of their individual concerns. To the extent possible, this should be arranged in advance unless the employee wants to retain confidentiality.

To provide employees with disabilities equal opportunity to perform official business travel, certain additional travel expenses necessarily incurred to accommodate the employee's disability may be reimbursed under the Federal Travel Regulations.

Article 20
Leave

Employees shall be entitled to accrue and use leave in accordance with laws, rules, regulations, and this Agreement. Leave requests will generally be approved in the light of the needs of the Employer, rather than solely on the desires of the employee. The use of accrued annual leave is the right of the employee subject to the right of the Employer to approve the time at which leave may be taken. Leave for personal emergencies will be granted unless there is an operational exigency, which requires the employee's presence. In general, the following apply:

A. all absences shall be charged in increments of a quarter (1/4) hour;

B. leave will not be denied as a disciplinary measure; and

C. no employee will be denied leave usage solely because of his/her leave balance so long as accrued leave is sufficient to cover the request.

Section 1. *Unscheduled Leave*

A. For the purposes of this Article, *unscheduled leave* means annual leave which is approved after the schedule for a pay period has been approved. Unscheduled leave may be granted by the supervisor, or designee, after considering the need, expressed by the employee for requesting unscheduled leave and the needs of the work in the unit. Unscheduled leave may be granted by supervisors or their designee if the workload is such that there will be sufficient personnel to handle it or a workload adjustment can be made. In all instances, the supervisor's decision is binding. If the supervisor determines that the workload needs of the unit preclude a grant of unscheduled leave, the supervisor may order the employee to report for duty.

B. There are two types of unscheduled leave:

1. *Emergency*: Emergency leave may be used for a variety of personal emergency reasons such as a death in the family.

2. *Non-emergency*: Non-emergency leave is unscheduled leave requested for the employee's convenience. The approval of this leave is at the supervisor's discretion based on the workload need of the unit.

Section 2. *Scheduling and Granting Annual Leave*

A. All employees must personally request and obtain annual leave approval from the supervisor or his/her designee.

B. All requests, except for emergency annual leave must be submitted in advance.

C. All requests for emergency annual leave must, normally, be made no later than two (2) hours after the start of the employee's regular tour of duty for that day and can be made via telephone or e-mail, if necessary.

D. Employees whose annual leave requests are denied may request written reasons for the denial from the supervisor or his/her designee.

E. The employee, as well as the Employer, is encouraged to make a good faith effort to address leave concerns in a fair and equitable manner. The supervisor at his/her discretion, may approve or disapprove annual leave subject to staffing, workload requirements, other previously approved leave requests, or other valid reasons not listed herein. Conflicts in annual leave requests will be resolved by the supervisor, in consultation with the employee and the Union steward, if so requested by the employee.

Section 3. *Sick Leave*

The Employer and the Union jointly agree in recognizing the insurance value of sick leave and agree to encourage employees to conserve sick leave in case of a personal extended illness or other family illness. Sick leave which is not used during the year in which it accrues shall accumulate without limitation on the amount and be available for use in subsequent years.

It is agreed that employees are responsible for notifying their immediate supervisors or designees when they are prevented from reporting for work because of an incapacitating illness or injury. Such requests for sick leave shall be made as soon as possible and normally not later than two (2) hours after the start of the employee's regular work start time.

A. *Purpose*: Sick leave is a period of approved absence with pay from official duty, authorized only:

1. when an employee is incapacitated for official duties because of sickness, injury, or confinement due to pregnancy;

2. for personal medical, dental, or optical examination or treatment;

3. in certain circumstances involving a contagious disease (one that is determined by appropriate medical authority, to be potentially contagious and requires isolation, quarantine or restriction of movement of the patient, e.g., influenza); or

4. in accordance with the Family and Medical Leave Act (FMLA) of 1993 and the Federal Employees Family Friendly Leave Act (FEFFLA) of 1994 to provide care of a family member, for adoption or birth of a child, or for bereavement purposes.

B. *Evidence of Entitlement*: For purposes of leave under this section:

1. when absence from duty exceeds three work days, the supervisor may request a statement by medical authority or other administratively acceptable evidence; and

2. supervisors may require supporting documents for absences of three work days or less when an employee has a history of sick leave abuse, has no sick leave balance, or there is a reasonable doubt as to the validity of the claim to such leave. If a physician was not consulted, a signed statement from the employee giving an explanation for the incapacitation resulting in their absence, coupled with the reasons for not having a physician's statement will be provided to the supervisor upon request. When documentation is required, the Employer shall specify the date such submission is due. If the Employer requires additional information to properly evaluate the request for sick leave, it is the employee's responsibility to provide such information (e.g., a statement from the physician that includes dates of employee incapacitation). The Employer may reasonably request additional documents, if deemed necessary.

C. *Inappropriate Use*: An employee shall not use sick leave to supplement annual leave. Sick leave shall not be used for rest, unless recommended by appropriate medical personnel.

When an employee appears to be abusing sick leave, the employee may be subject to disciplinary action or may be required to comply with more stringent procedures than those applied to other employees. The necessity for any leave requirements letter will be reviewed every six (6) months. Should a determination be made that an employee's leave record and/or pattern of use has improved to the extent that the restrictions or requirements placed on him/her are no longer necessary, the employee will be so notified in writing. In this case, the leave requirements letter will be removed from the employee's temporary personnel records.

D. *Recategorization*: Employees, upon request and with the approval of their supervisor, may change previously authorized annual leave to sick leave.

E. *Chronic Medical Condition*: An employee with a documented chronic medical condition that does not require medical treatment but does result in periodic absences from work for three (3) consecutive days or more will not be required to furnish a physician's certificate on a continuing basis.

Section 4. *Advanced Annual and Sick Leave*

A. Advanced annual leave is leave time requested on an OPM 71, approved by the delegated authority, and taken but not yet earned by the employee. An employee may be advanced all annual leave that will accrue up to the end of the current leave year. However, advanced annual leave may not be granted to a temporary employee beyond the date set for the expiration of his/her temporary appointment or to any employee if there is a likelihood that he/she will retire, separate, or resign from the NCDC before the date when he/she will have earned the leave. Upon separation,

employees must repay any annual leave advanced and not earned at the time of separation.

B. Sick leave up to a total of thirty (30) days may be advanced in cases of serious disability or ailment and when required by the exigencies of the situation. The leave approving official(s) must ensure that the illness is serious and that an exigency exists. An employee's request for advanced sick leave must be in writing. Sick leave cannot be advanced when it is likely the employee will retire, separate, or resign before the advanced leave will be earned. Advanced sick leave may be granted irrespective of whether the employee has annual leave to his/her credit and may be combined with annual leave when necessary to cover one continuous period of absence.

C. After the employee presents medical certification, all denials of requests for advanced sick leave must be conveyed to the employee promptly and must contain a specific explanation of the reasons for the denial.

Section 5. *Serious Health Condition*

The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

A. any period of incapacity or treatment in connection with, or consequent to, inpatient care (for example, an overnight stay) in a hospital, hospice, or residential medical care facility;

B. any period of incapacity requiring absence from work, school, or other regular daily activities of more than three (3) calendar days that also involves continuing treatment by (or under the supervision of) a health care provider; and/or

C. continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three (3) calendar days.

Section 6. *Parental and Family Leave*

Under the OPM application of the FMLA, an employee is entitled to a total of twelve (12) weeks LWOP during any twelve (12) month period in accordance with applicable laws, rules and regulations.

Employees may use up to forty (40) hours of sick leave in a year in accordance with the legal requirements and obligations under the FEFFLA:

A. to care for or otherwise attend to a family member having an illness, injury, or other condition which, if an employee had such a condition would justify the use of sick leave by such an employee;

B. for purposes relating to the death of a family member including making arrangements for and attending the funeral of such family member;

C. up to an additional sixty-four (64) hours may be used if that number of hours does not cause the employee's sick leave balance to fall below eighty (80) hours;

D. the amount of sick leave to which part-time employees are entitled is a prorated amount of full-time employee's entitlement in accordance with applicable laws, rules, and regulations;

E. as provided by law, an employee is entitled to a maximum of twelve (12) administrative weeks of unpaid parental and family leave during any twelve (12)-month period;

F. in accordance with applicable statutes, regulations, and Federal guidelines, a female employee may be absent on leave for maternity purposes. The length of such absence shall be proposed by the employee in consultation with the employee's physician. The employee may use sick leave, annual leave, or LWOP to the extent that she has leave (including "donated" leave) available, and meets the requirements for use of such leave.

   1. The employee shall make known her intent to request leave for maternity reasons, indicating the type of leave and expected date, at least thirty (30) calendar days in advance of the leave date, to allow the Employer to prepare for any staffing adjustments that may be necessary.

   2. No arbitrary date requiring a pregnant employee to cease work or prevent her from returning to work after childbirth will be established unless there are related physical requirements of the job. Normally these decisions will be made by the employee in consultation with her physician.

      (a) When a pregnant employee, after consultation with her physician, requests a temporary modification of her job duties, or a temporary assignment to other available work for which she is qualified, the Employer shall make a reasonable, good faith effort, consistent with staffing needs, to accommodate her request. The employee must present an acceptable medical certificate to support her request;

G. pursuant to the FMLA, a male employee is entitled to leave of up to twelve (12) weeks for purposes of aiding, assisting, or caring for the mother of his child or minor children while the mother is incapacitated for maternity reasons. A male employee may also request additional annual leave or LWOP. Sick leave, for purposes of meeting family responsibilities may also be used consistent with applicable laws and guidelines; and/or

H. employees may request leave for periods of absence for certain family and medical reasons as provided in applicable laws including the FMLA and the FEFFLA. If the necessity of such leave is foreseeable, employees shall provide the Employer with no less than thirty (30) calendar days notice. If the necessity is not foreseeable, employees shall provide notice as soon as practicable. To be eligible for leave under the FMLA, an employee must have completed at least one year of civilian service with the government. Copies of the above listed "family friendly" leave acts, as well as applicable NOAA guidelines, are maintained on the NOAA Home Page.

1. Leave for parental and family responsibilities consist of appropriate combinations of annual leave, sick leave, or LWOP. Sick and annual leave may also be advanced to employees, in accordance with applicable regulations. LWOP may be requested and granted without exhausting all other leave categories. Leave for adoption may be annual leave, LWOP, or sick leave. The Employer agrees to administer all such leave requests equitably and reasonably, taking into consideration both the needs of the employee and the NCDC.

2. The Employer will assure continued employment for an employee for whom extended leave has been approved who wishes to return to work, unless termination is otherwise required by expiration of appointment, by RIF, for cause, or for other reasons unrelated to the absence. The employee will be returned to the position formerly occupied, or, to the maximum extent practicable, to a position of like status and pay.

3. An employee returning from leave related to parental and family responsibility has all the entitlements provided under applicable laws.

4. The Employer may request certification from the health care provider pursuant to 5 USC 6383, when an employee requests leave:

   (a) in order to care for a spouse, son, daughter, or parent of the employee who has a serious health problem; or

   (b) due to a serious health condition that renders the employee unable to perform his/her job responsibilities.

Section 7. *Bereavement Leave*

In accordance with this Agreement, applicable laws, including the FMLA and the FEFFLA, an employee may be granted any combination of annual, sick, or LWOP, when there has been a death in the employee's family. The definition of family includes the following: a spouse, children (including adopted and foster), parents, brothers and sisters, grandparents, in-laws (mother, father, sister, brother), and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. Upon request, subject to any documentation requirements, leave approving official(s) shall approve up to five (5) days of annual leave, sick leave, or LWOP for an employee to mourn the death of a family member.

Section 8. *Restoration of Leave*

When "use or lose" leave has been approved using an OPM 71 and is subsequently canceled by management prior to the employee actually taking the leave, the employee will be advised of the cancellation and the reason for such cancellation in writing per regulation. The excess annual leave will then be restored in accordance with applicable rules and regulations.

Section 9. *Substitution of Paid Leave*

A. The employee may elect to substitute annual leave, sick leave, compensatory time off, or credit hours for unpaid family or medical leave for any part of the applicable period consistent with governing laws, rules, and regulations. An employee may not retroactively substitute paid time off for unpaid family and medical leave.

B. An employee may request to use leave on an intermittent basis or under a reduced leave schedule when medically necessary. The employee must consult with the supervisor and make a reasonable effort to schedule intermittent LWOP and/or paid leave so as not to disrupt the operation.

Section 10. *Notice of Leave*

Requests for use of family and medical unpaid leave under FMLA will be made in writing on OPM 71. The employee must include the following statement in Item 6 (Remarks) of the OPM 71: "I request absence under the OPM FMLA for (birth/care of child; adoption/foster care; care of family member; or personal health reasons)."

Section 11. *Medical Certification for FMLA* (when requesting leave for serious health conditions)

A. An employee shall provide written medical certification to the Employer in a timely manner.

B. The written medical certification shall include:

1. the date the serious health condition commenced;

2. the probable duration of the serious health condition;

3. the appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a statement as to the incapacitation, examination, or treatment that may be required by a health care provider; and

4. a statement that the employee is unable to perform the essential functions of his/her position.

C. The Employer shall not require any personal or confidential information in the written medical certification other than that required above.

Section 12. *Hazardous Weather Conditions With Regard To Leave*

All employees are to presume, unless otherwise notified, that their office or activity will be open each regular workday regardless of any weather or other emergency condition which may develop. Normally, employees are expected to be prepared to cope with difficult driving conditions and minor disruptions of public transportation facilities. However, on occasion, emergency situations can arise which are beyond the control of the Employer or employees, which prevents the opening on time of NCDC offices and activities, or create the necessity to dismiss employees early or to institute a liberal leave policy.

NCDC employees who are designated "Essential" employees should plan to report for work under hazardous weather conditions unless otherwise advised not to do so. Based on the nature and duration of the event, the NCDC Director or Deputy Director may also determine other employees are needed to meet the needs of the agency during the event.

A. *Opening of Offices*: All offices of the NCDC will be opened on all scheduled business days, except when severe weather conditions or other hazardous conditions exist. The granting of excused absence for those coming in late because of inclement weather is addressed further in this Section.

B. *Deviations*: Deviations will only be made by authority of the NCDC Director or Deputy Director.

C. *Determination of Leave Status for Early Dismissal*: Under the provisions of the DOC Handbook of Leave Administration, if bargaining unit employees are dismissed early because of weather conditions or other hazardous conditions, the absence from work for the remainder of the day will be considered "excused leave" and coded as appropriate on the daily Timesheet for the specific pay period. Whether an employee is or is not charged leave for the absence depends upon duty status at the time of dismissal:

1. if the bargaining unit employee was on duty and was excused, no charge to leave is made;

2. if the employee was absent on approved leave for the entire day, absence is charged to the appropriate leave category (i.e., annual, sick, or LWOP) previously approved;

3. if the employee reported for work but left before receipt of official word of dismissal, the entire absence (including the time which was subsequently excused) is charged to appropriate leave. Dismissal announcements will be made as soon as possible, but not later than one hour prior to dismissal time. Official dismissal notification will be made by e-mail; and/or

4. if the employee was on duty and departed on annual or sick leave after official word was received but before the time set for dismissal, leave is charged only from the time he or she departed until the time set for dismissal.

D. *Hazardous Conditions Developing During Non-working Hours*: If inclement weather or other conditions create a hazardous situation at the start of the work day, as determined by the NCDC Director or Deputy Director, the following applies:

1. *Late Opening*: If conditions are hazardous enough to warrant a late opening, employees should watch the local ABC affiliate WLOS-TV (Channel 13) or listen to WWNC-Radio (570 kHz) for an announcement. Employees may also access the NCDC website or dial the Center's customer service number (828-271-4800, press "8") for a recording that will indicate the Center's operation hours.

2. *Excused Absences*: Reasonable lateness in arriving at work (not to exceed two hours) may be excused by the employee's supervisor when conditions, as determined by the NCDC Director or Deputy Director, preclude employees arriving on time. However, employees are expected to make a good faith effort to arrive as soon as possible. If the employee does not report to work at all, there will be a charge of leave equal to the scheduled tour of duty for that day.

3. *Liberal Leave*: A liberal leave policy, as authorized by the NCDC Director or Deputy Director, will be followed to permit employees to utilize accrued annual leave or earned credit hours (under the Alternate Work Schedule (AWS) program) without the necessity of obtaining advanced approval or providing detailed justification. Normal requirements to notify the supervisor within prescribed time limits are suspended.

E. *Dismissal Based on Extreme Facility Conditions:* According to GSA facility recommendations, extreme conditions are currently defined as temperatures outside of the range of 55 to 90 degrees Fahrenheit. Other conditions may be determined by GSA to be extreme and warrant building closure.

Section 13. *Court Leave*

Court leave will be granted in accordance with applicable laws and regulations. An employee eligible for court leave shall be granted court leave to serve on a jury for the entire period of service, extending from the date on which he/she is required to report to the time of discharge by the court. If an employee is on annual leave when called for jury duty, court leave should be substituted. Employees granted court leave for jury service are entitled to the same compensation they would otherwise have received if they reported for duty as usual.

Court Leave is appropriate when summoned to court to serve in an unofficial capacity as a witness for, or supply evidence for, State and local government.

Section 14. *Military Leave*

Military leave will be granted in accordance with applicable rules, laws, and regulations. Employees absent on military leave are entitled to receive both their regular civilian pay, and military pay and allowances, to which they may be entitled, during a period of active duty as a member of a reserve component of the Armed Forces or the National Guard.

Section 15. *Excused Absence*

An excused absence is an absence from duty without loss of pay and without charge to the employee's accrued leave. It is synonymous with the term "administrative leave" and is distinct from absence for officially sanctioned purposes from the employee's usual work site or regular duties. An example of an excused absence is, but is not limited to, voting in local, state or national elections, etc. Each excused absence must be requested in advance, and approved by the employee's immediate supervisor or designee. Refer to the DOC Office of Human Resources Management for leave policies.

In accordance with 5 USC 6327, an employee is entitled to up to seven (7) days excused absence (e.g., administrative leave) for bone marrow donation and up to thirty (30) days of excused absence for organ donation.

Section 16. *Leave Without Pay (LWOP)*

A. Requests for LWOP will be given serious and bona fide consideration by the Employer;

B. LWOP is not a right that accrues to an employee and must not be demanded by an employee. LWOP is granted at the discretion of management, except in the following cases:

   1. when requested by a reservist or National Guard member for military duties. Employees may request such leave after their military leave has been exhausted, in accordance with applicable laws, rules and regulations;

   2. when requested by an employee who has suffered an incapacitating job-related injury or illness and is waiting adjudication of his/her claim for employee compensation by the OWCP;

   3. when an employee makes a request under the Employer FMLA; and/or

   4. when a disabled veteran requests LWOP for medical treatment.

C. Employees may request, and the Employer will consider, extended LWOP for educational purposes when the course of study or research is in line with a type of work performed by the Employer and would contribute to the mission of the

Employer. Such training requests shall be consistent with Section 3 of Article 18 (Training, Career Development and Individual Development Plans).

Section 17. *Voluntary Leave Transfer Program*

As authorized by 5 CFR 630, Subpart J, and agency regulations, employees are entitled to donate and receive leave for medical emergencies. By reference the definitions, eligibility criteria, and administrative provisions pertaining to a Voluntary Leave Transfer Program contained in 5 CFR 630, Subpart J, are incorporated into this agreement.

At the time of scheduling "use or lose" annual leave, employees may consider donating leave through the Voluntary Leave Transfer Program.

Section 18. *Religious Compensatory Time*

A. Requests for religious compensatory time for religious observances will be granted unless approval of the request would interfere with the timely and efficient accomplishment of the unit's work or would prevent the availability of a sufficient number of employees to perform the unit's work.

B. Employees must request approval for religious observances from the appropriate approving supervisor in advance and in writing. All requests will be submitted on OPM 71 (to include appropriate attachments). Requests must include all of the following information:

   1. the date(s) and number of hours requested;

   2. in the space provided for remarks, the employee must state "This leave is because my personal religious belief requires me to refrain from work for a religious observance for (the religious holiday name) or (portion of the day)"; and

   3. the proposed date(s) on which the religious compensatory work will be performed.

C. Credit hours may be used in lieu of compensatory time.

Article 21
Travel

Section 1. *Laws and Regulations*

Bargaining unit employees shall not be required to travel except under conditions and procedures prescribed by pertinent laws and regulations. Unless organization needs require otherwise, the Employer will schedule travel during official work hours. The content of all applicable travel laws and regulations are not grievable under this Agreement. The implementation of changes to travel regulations is subject to the provisions of Article 8 (Negotiation and Consultations over Proposed Conditions of Employment). All travel should be scheduled within employee's regular work hours when travel request is submitted. Compensatory time for travel will be granted only in emergencies when travel plans were disrupted by conditions beyond the employee's control or with prior approval.

When it is necessary that an employee travel during non-duty hours, and such travel is performed under conditions that constitute hours of work as defined by applicable stature, the employee will be paid overtime at premium rates or receive compensatory time as appropriate. The type and amount of compensation for travel during non-duty hours will be determined in accordance with applicable statute and the employee's status as exempt or nonexempt from the Fair Labor Standards Act. Required travel of the employee on weekends and holidays will be fully justified, with a logical justification, in writing to the employee. The exception to this requirement will be the travel of the employee to training and schools that start on Mondays.

Section 2. *Travel Compensation*

Employees required to travel by the Employer shall receive per diem or subsistence expenses and other allowable travel expenses subject to applicable laws and regulations.

Employees will not be required to use his/her privately owned vehicle (POV) for official travel. When an employee elects to use a POV instead of an available government furnished vehicle, mileage will be paid at the rate established by GSA.

If the employee believes that the mode of travel assigned poses a safety hazard, the employee shall refer the matter to his/her supervisor for appropriate action.

An employee on a long-term assignment may be authorized occasional return trips to his/her permanent duty station at Government expense on non-workdays. Approval for such return trips is at the administrative discretion of the authorizing official and may be authorized in accordance with published GSA regulations.

The Employer will notify the employee of travel requirements as soon as practicable. Employee concerns shall be immediately presented to the supervisor.

Section 3. *Government Travel Card*

Current law requires an employee to use a Government travel card for official Government travel if they travel at least five (5) times per year. Current regulations permit an employee to obtain an advance of travel funds via the employee's travel card if the employee holds one.

Should official travel regulations conflict with Federal law, Federal laws shall prevail. Links to the Federal, DOC, and NOAA Travel Regulations can be found on NCDC's local page.

Section 4. *Travel Delays*

When a bargaining unit employee learns of a travel delay which will extend the originally authorized travel time, he/she will immediately notify the appropriate Employer supervisor of the circumstances and receive instructions and authorization to cover the emergency. Examples of such circumstances include flight cancellation, hazardous weather, automotive breakdown, illness, etc. The employee must receive authorization for the delay to be reimbursed and be covered by government insurance, workers' compensation and leave. In the event that such contact cannot be made on a timely basis, the Employer may approve payments, where applicable, after the travel has been performed.

Article 22
Security, Safety and Health

The Employer recognizes its responsibility to provide a secure, safe and healthy work environment, and to follow operating practices that will safeguard all employees and result in secure and safe working conditions as well as ensure an efficient operation. The Employer will encourage and expect all employees to comply with all security and safety rules and regulations as established by the Employer, NOAA, the DOC, or the Department of Homeland Security.

The Employer will maintain an effective and comprehensive occupational loss prevention and health program consistent with the applicable standards of the Occupational Safety and Health Act of 1970. The Union agrees to cooperate with the Employer's efforts to provide and maintain secure, safe and healthy working conditions and will encourage all employees to work in such a manner. It is recognized by the Parties that employees have a primary responsibility for their own safety and an obligation to know and observe security rules and practices as a measure of protection for themselves and others. Employees are encouraged to make recommendations through their supervisor to the Employer that will promote and emphasize security, safety and health education, as well as identify areas which should receive increased emphasis. The Employer will, at all times, welcome suggestions from the Union and employees which offer practical and economically feasible ways to improve security, safety and health conditions.

Section 1. *Employee Compliance*

Each employee will comply with safety standards, rules, instructions and orders issued by DOC and NOAA. Employees are responsible for advising the Employer when unsafe conditions arise within their work area which they believe pose a threat. Reports should be made to the NCDC Safety Officer or his/her assistant. There will be no restraint or reprisal to any employee as a result of reporting an unsafe practice or condition. The NCDC Safety Officer will investigate all reports and determine whether unsafe working conditions exist. If necessary, the Employer will take steps to correct any such unsafe working conditions.

Section 2. *Accident Reporting*

Employees are required to immediately report to their supervisor any accident or injury, major or minor, which occurs on the job. When an employee becomes ill or is injured in the performance of his/her duty, the employee must advise the supervisor as soon as possible. In cases where the employee is medically unable to contact his/her supervisor regarding an on-the-job injury, an employee's family member or other representative may provide the required notification. The appropriate supervisor will provide the appropriate forms to be completed to document the accident or injury and assist the employee or other representative with the completion of the forms, if needed. The Parties recognize that the OWCP, under the Department of Labor, approves or disapproves compensation claims and the amounts to be paid, and that the Employer has no control over the OWCP. Regulations covering traumatic injury or occupational illness are defined in Department Administrative Order (DAO) 202-810. An employee who sustains a

traumatic injury may select, within thirty (30) calendar days, the continuation of regular pay for a period not to exceed forty-five (45) calendar days in lieu of sick or annual leave.

Section 3. *Temporary Assignments Related to Illness/Injury*

An employee recuperating from a non-job related illness or injury and is temporarily unable to perform the duties of his/her assigned position may submit a written request to his/her supervisor for temporary assignment to productive duties commensurate with the disability and the employee's qualifications. The employee shall provide a medical certificate signed by a licensed/registered physician, or other practitioner, attesting to the illness or injury and the probable length of the employee's disability. The Employer will give proper consideration to the employee's request. Such assignments, if granted, shall not be for more than thirty (30) calendar days in duration. A request for a longer period must be reviewed and approved by the NCDC Director or Deputy Director whose decision is final.

Section 4. *Wellness Center*

The Employer will provide, within the limits of available Federal funding and other program considerations, a health service program staffed by a full-time registered nurse and a part-time physician that shall be limited to: (1) emergency diagnosis and first treatment of on-the-job injury or illness; (2) in-service examinations of employees as the Employer determines to be necessary; (3) referral for private medical treatment; and (4) related preventive health programs.

Section 5. *First Aid Kits*

The Employer will ensure that well-stocked first aid kits are distributed and maintained in each division and staff area of the NCDC.

Section 6. *Danger to Health and Safety*

Any bargaining unit employee who is assigned to a job or task which he/she reasonably believes presents a clear and present danger to his or her health or safety must immediately notify his/her supervisor in writing. The appropriate Employer officials will determine whether the job or task is safe. If the employee is not satisfied with the determination, he/she may elevate the decisions to the next level of supervisory personnel.

Section 7. *Employee Safeguards*

In the event of construction or remodeling within the occupied facility, the Employer, by working with the local GSA office, will ensure that proper safeguards are maintained to prevent injury to employees. If the Employer has control over, and advance knowledge, of any use of chemicals or pesticides at the facility, the Union will be notified in advance of the nature and the purpose of their use.

Section 8. *Emergency Evacuation Plan*

An Emergency Evacuation Plan will be in place at all times and reviewed annually at the Employer's facility. Fire evacuation plans shall be conspicuously displayed in work areas. The Emergency Evacuation Plan will include specific instructions on the exit of handicapped personnel employed by the Employer. The Employer shall provide for an annual review of evacuation procedures by all personnel, and provide training in the operation of fire extinguishers and other related equipment at the facility.

Section 9. *Handicapped Employees*

To ensure that the safety and health of handicapped employees are met, the Employer, in conjunction with GSA, will make facilities accessible to the handicapped in accordance with applicable Federal laws, rules, and regulations.

If permanent relocation of a function occurs, whereby employees are moved from one area to another, the Employer will ensure that the area meets applicable safety and health requirements. When a temporary relocation of function occurs, not-to-exceed two (2) weeks, the Employer will provide a new work area that is adequate with regard to space, safety, and health. Relocations in excess of two (2) weeks will follow the criteria of permanent relocations.

The Employer will give the Union a copy of all reports (routine or special), generated or received by it, concerning matters related to the health and safety of its Employees. Such reports will include, but are not limited to, those concerning reportable incidents, accidents, and workers' compensation data (if permitted by the claimant in a workers' compensation issue).

The Parties agree that the Union shall have a representative on the NCDC Safety Committee to work together to identify and address actual or potential safety and health issues within the NCDC. Specifically, this representative shall:

A. become familiar with NCDC's personal injury, property damage, and health hazard experience and the potential conditions and hazards that may cause injury or illness;

B. recommend ways and means to eliminate, mitigate or control unsafe acts and correct unsafe or unhealthy mechanical, physical, or environmental conditions (potential and actual); and

C. the NCDC Safety Committee will meet, at the request of either Party, as often as necessary, but no less frequently than quarterly. Time spent functioning on this committee will be considered official time.

Section 10. *Notification*

The members of the Safety Committee will be notified in advance of scheduled visits by Federal or installation fire and safety inspectors and environmental survey personnel. The findings of any inspections, surveys or investigations will be shared with the Safety Committee.

Section 11. *Paint and Other Hazards*

The Parties agree that exposure to chemicals, paint fumes, insecticides, construction adhesives to include carpet glue, or cleaners can have a harmful effect on the health of employees. Therefore, the Employer agrees that application or use of these substances will be restricted to after hours or weekend use. Should it become necessary to use these substances during duty hours, employees will be evacuated from the area and provided alternate work arrangements or granted administrative leave until the effects have abated. The Parties agree that there will be an immediate cessation of work in areas that are found to be unsafe by management.

Section 12. *Healthy Workplace*

The Parties agree that employee wellness and the investment in programs to maintain employee health contribute directly to sustained productivity and reduction of lost employee time due to illness. Therefore, the Employer agrees to facilitate and/or encourage programs in such areas as weight reduction, stress reduction and management, nutritional counseling, smoking cessation, prevention of injuries, and exercise. If there are any past practices of the NCDC per a healthy workplace and exercise program they shall remain unchanged, as budget permits.

Section 13. *Ergonomics*

The Employer agrees to reasonably provide employees work space that has been ergonomically designed. This includes work surfaces, lighting, air-flow, seating (with adjustable lumbar support), wrist supports and foot rests.

Article 23
Communications and Facilities

Section 1. *Union Notification Space*

The Employer agrees to provide bulletin board space for posting of official Union material. The Union agrees that the material posted on the bulletin boards will be reasonable in size, reflect official matters, not reflect on or attack the integrity or motives of individuals, the Employer, or other Federal agencies, and will not be libelous or scandalous. Notices placed by the Union on bulletin boards may not contain material which would appear to identify it as the Employer's material, or as material sponsored or endorsed by the Employer. The Employer agrees to discuss any objection to posted material with the Union and may request its removal. The bulletin board shall be the official physical place for the display of Union material or notices, literature, and correspondence. In addition to this space, the Union will be provided with a web page accessible through the NCDC Local Page. The Union Vice-President shall be responsible for content of both the bulletin board and web page. The Union will maintain the bulletin board in a neat order and the material will be kept current.

Section 2. *Office Space and Furnishings*

The Employer recognizes the importance and value of the Union's mission and purpose. Accordingly, the Employer agrees to provide adequate space to the Union for carrying out its representational duties. When a Union representative is performing representational duties under this Agreement, the Employer shall make reasonable effort to provide a meeting place which will protect the confidentiality of any discussions. The Union representative must request the use of the space in advance through his/her supervisor. This space shall take the following form:

A. *Room*: The Union shall have priority access to a designated NCDC space for representational purposes. While this space will be available for other uses, the Union may use this room unilaterally with a minimum of 30 minute advance notification.

B. *Furnishings*: The designated space will have at least one filing cabinet for its exclusive use in which Union records can be stored. The filing cabinet(s), if not already in place, will be provided, installed, and maintained by the Union. The Union will be responsible for locking and securing the filing cabinet(s). In addition, a telephone will be provided, and the Union may use available photocopiers, computers, fax machines and laser printers located elsewhere at the NCDC for legitimate Union business.

Section 3. *Distribution of Union Material*

The Union may distribute material on NCDC premises in work areas to individual employees before and after scheduled working hours subject to internal security requirements, or in the non-work areas during scheduled work hours, provided both the employee distributing and the employee receiving such material are on their own time, and the work of others is not disrupted.

Section 4. *Union Telephone Usage*

Union representatives may have access to government owned or leased telephones within the NCDC occupied Federal facility for representational purposes authorized by this Agreement for calls made to numbers within the Federal facility. Telephone calls for authorized representational purposes made within the Federal facility to numbers outside the Federal facility are permitted. Extended periods of time spent on the telephone during duty hours for representation activities must be recorded on Appendix 1 (AFGE, Local 446 Representation Time Log), in accordance with Article 7 (Rights and Representational Responsibilities of the Union).

Section 5. *Union Meeting Space*

With reasonable advanced notice from the Union, the Employer will make meeting space available to the Union as necessary for representative activities during duty hours, provided no additional costs are involved and use of the space does not interfere with the effective operation of NCDC business. The Union shall be responsible for the proper use and care of any space that is made available.

Section 6. *Internet Use*

The limited personal use of the Internet/e-mail by bargaining unit employees in the workplace on an occasional basis is authorized, provided that the use: (1) involves minimal expense to the Government; (2) does not interfere with official business; and (3) makes clear that the e-mail is personal and not in any way identified as an official NOAA communication.

While the occasional, moderate personal use of government Internet/e-mail resources on official time (e.g., in a duty status) is acceptable, some uses are strictly prohibited. Prohibitions include, but are not limited to:

A. using resources to earn outside income or for private gain; and

B. using resources for activities which are inappropriate or offensive to co-workers or the general public, including accessing and/or transmitting sexually explicit materials or remarks.

Where there is reasonable cause to believe employees may be misusing the Internet/e-mail, supervisors may request that official inquiries be conducted on their employees' Internet/e-mail activities, including accessing computer file information. Employees found to be misusing government Internet/e-mail resources may be subject to disciplinary action for just cause up to and including removal from the Federal Service.

Section 7. *Bargaining Unit Employee Information*

The Employer will furnish, upon request by the Union, a list of bargaining unit employees after any major organizational changes or not more than quarterly, including name, position title, grade level, and organizational element and designation as permanent or temporary.

Section 8. *Surveys and Questionnaires*

A. Participation in surveys will be voluntary unless the Parties agree to require participation. Employee responses will be confidential unless otherwise noted.

B. Surveys originated by NCDC will be provided to the Union in advance for comment and the opportunity to bargain over the content. Results from surveys will be shared with the Union as they become available.

C. Third-party surveys and results will be shared with the Union when and if they become available.

Article 24
Alternate Work Schedule, Hours of Work and Overtime

The administrative work week is the period of seven (7) consecutive calendar days, Sunday through Saturday, within which the basic work week is included. It consists of various supervisory approved scheduled tours of duty, and regular days off.

The basic work week is fixed at 40 hours. Bargaining unit employees may participate in the Alternate Work Schedule (AWS) program. The AWS program offers employees maximum flexibility to balance work and family responsibilities and allows the Employer to be more sensitive to the diverse needs of its employees. At the same time, it allows the Employer to meet its mission goals and continue providing top quality service to customers.

Participation in the AWS program is voluntary. The AWS options apply to all full-time and part-time bargaining unit employees. Employer first-line supervisors may develop specific choices for their employees concerning any option or combination of options in the plan, based upon the work requirements of their unit. An individual's AWS plan must be approved by his/her supervisor prior to implementation.

Section 1. *Scheduling Options*

Bargaining unit employees have the choice of two work schedule options:

A. *Maxi-Flex (AWS) schedule*: A basic eighty (80) hour pay period (two (2) calendar weeks) is worked between the hours of 6:00 a.m. and 8:00 p.m., Sunday through Saturday; or

B. *Traditional fixed work schedule*: Eight (8) hours per day, five (5) days per week, which begin and end at the same time each day (8:00 a.m. – 4:30 p.m.).

Second level supervisors may approve schedules other than the two work schedule options listed above when circumstances warrant and in consideration of special Employer needs. Special schedules will be documented in writing and retained by the employee's supervisor.

Section 2. *Maxi-Flex Schedule*

A. *Work hours*: Employees working on Maxi-Flex schedule must complete their basic eighty (80) hours of work per pay period by working any hours between 6:00 a.m. and 8:00 p.m., Sunday through Saturday. Though the workday spans fourteen (14) hours and includes weekends, employees are routinely expected to work on weekdays at a maximum of ten (10) hours per day and between the hours of 6:00 a.m. and 6:00 p.m. Occasionally, there may be a circumstance which permits an employee to work longer than a ten (10) hour day or perform work on a weekend, but these instances are expected to be infrequent.

B. *Scheduled Work Hours of Five (5) or More Continuous Hours*: Scheduled duty of five (5) hours or more will include a one-half (½) hour unpaid break.

C. *Credit Hours*: Credit hours are available and may be worked with the pre-approval of the employee's supervisor. Hours worked beyond eighty (80) hours within the basic pay period will be recorded as credit hours earned. Credit hours are for work performed voluntarily with supervisory pre-approval, where overtime or compensatory time (under Maxi-Flex) is for work in excess of eighty (80) hours per pay period which has been ordered by the Employer. Employees should note that working credit hours (those hours beyond eighty (80) hours per pay period) is not an employee prerogative. The supervisor must assure that it provides a benefit to the government (there is work that must be accomplished which, in most cases, is time critical).

1. Credit hours may be earned and used in fifteen (15) minute increments.

2. A full-time employee may carry no more than twenty-four (24) credit hours into a subsequent pay period. This limit applies proportionately to the total hours worked by a part-time employee.

3. Employees cannot earn credit hours on a workday where leave has been taken.

4. Use of credit hours will be subject to the same criteria for approval as annual leave or sick leave. An employee may elect to use earned credit hours for all or any part of any approved leave.

5. Credit hours must be earned before they may be used.

6. Employees will request to use credit hours to their immediate supervisor (OPM 71 may be used to request the use of credit hours). When an employee is prevented by management from using credit hours for leave that was approved in advance, those credit hours will remain credit hours to be used at a later date.

   (a) Credit hours are hours of work performed voluntarily, with supervisor pre approval, by employees in excess of their bi-weekly work requirement. Typically, credit hours may not be earned for travel because travel is always ordered by management. Under certain conditions, employees may earn credit hours by performing productive and essential work while in a travel status. Since travel itself does not generally constitute hours of work, the work that is done must be approved and verified by a supervisor.

   (b) Credit hours cannot be earned for training or homework that is required by the Employer. If training is required, it does not constitute hours that an employee elects to work.

D. *Core Day and Hours*: "Core" is the time during which an employee covered by a flexible work schedule is required by the Employer to be present for work. NCDC's core day and hours for employees on Maxi-Flex are every Wednesday from 10:00 a.m. until 3:00 p.m. First and second level supervisors, at their discretion, may establish additional core days and hours in order to meet mission goals. Absences during core hours require approval of leave or use of credit hours as documented on an OPM 71.

E. *Flexible Hours and Days*: Flexible hours for employees on Maxi-Flex are from 6:00 a.m. until 8:00 p.m., Sunday through Saturday, with the exception of the "core" time period. Supervisors must ensure that there is adequate coverage during normal work hours.

F. *Work Schedule Approval*: Employees shall provide their supervisors with a proposed schedule not later than the Thursday prior to the next pay period unless an "indefinite schedule" (a schedule which basically remains the same pay period to pay period) had been previously approved. Supervisors have the right to request proposed schedules earlier in the week, for planning purposes, if they so desire.

   Employees wishing to change their schedule (including working credit hours) during a pay period must gain prior supervisor approval. Although there may be times when extenuating circumstances will not permit much advanced notification, employees are generally required to inform their supervisor twenty-four (24) hours prior to changing their schedule.

G. *Posting a Schedule*: Employees are expected to post current approved work schedules in a visible location in their work area so co-workers can easily determine if they are in the office. It is also advised that each work unit maintain an employee leave status board for the same reason. Employees are also expected to update their voice mail system's greeting if they are going to be out of the office for an extended time (four hours or more of NCDC's official operating hours), including off-duty hours in approved Maxi-Flex schedules. Employees should also enter their schedule in the Netscape calendar, using the Note feature, making it accessible to internal NCDC personnel.

H. *Energy Cost Considerations*: Heating and cooling systems in the Employer facility normally operate from 7:00 a.m. to 5:00 p.m., Monday through Friday, except on holidays. There is a substantial cost involved with extending these utilities beyond the current ten (10) hour period. Therefore, at the generation of this Agreement, there are no plans to provide extra utility coverage outside the 7:00 a.m. to 5:00 p.m. time frame. This normally doesn't present a problem except during periods of extremely hot or cold temperatures. Maxi-Flex will allow employees to adjust their schedules based upon these conditions if this becomes a problem.

Section 3. *Traditional Fixed Work Schedule*

Employees working a fixed schedule must work five (5), eight (8) hour days each week that correspond to the Employer's business hours. The official NCDC business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday.

A. *Lunch*: The traditional fixed schedule includes one-half (½) hour for lunch to be taken between 11:30 a.m. and 1:30 p.m. Scheduled duty of five (5) hours or more will include a one-half (½) hour unpaid break. The lunch period will not be used to shorten the work day.

B. *Tardiness*: An employee who is tardy may take leave in increments of fifteen (15) minutes. Supervisors may excuse tardiness of less than fifteen (15) minutes but keep such exceptions to a minimum.

Section 4. *General Provisions – AWS and Fixed Schedules*

A. *Breaks*: Breaks are authorized at the discretion of the supervisor. Breaks may not be more than fifteen (15) minutes in length during each four (4) hour period of work. They may not be taken immediately before or after lunch periods or at the start or end of a work day.

B. *Annual Leave, Sick Leave, LWOP, and Credit Hours*: Leave, including compensatory time and credit hours, may be earned and taken in fifteen (15) minute increments. Credit hours may be used in much the same manner as annual leave. All leave must be documented by an OPM 71 or by other means and must be recorded on the T&A worksheet and the certified T&A. It must clearly show the clock hours of the leave taken. Employees must remember that all leave must be approved by supervisors at least twenty-four (24) hours in advance of the leave taken except for emergency or unforeseen situations such as illness, family matters, transportation problems, etc. These situations still require employees to notify their supervisor of their absence preferably before, but not later than two (2) hours into their normally scheduled start time unless an emergency condition prevents them from doing so.

C. *Excused Absence*: The administrative schedule established for Maxi-Flex is from 6:00 a.m. to 8:00 p.m., Sunday through Saturday. For the traditional fixed work schedule, it is from 8:00 a.m. to 4:30 p.m., Monday through Friday.

1. *Site closed for the entire day*: A maximum of eight (8) hours of administrative leave will be granted. Since the Employer will not be making decisions on site closings for holidays or weekends, there will be no administrative leave granted should an individual be scheduled to work and an emergency condition (such as severe weather) prevents them from doing so. Supervisors will work with employees on a case-by-case basis to determine when and if the time will be rescheduled (e.g., overtime scheduled may or may not be rescheduled).

2. *Delayed Opening/Early Departure*: Since the Employer will not be making decisions on delayed openings/early departures due to emergency conditions

before 7:00 a.m. and after 5:00 p.m., Monday through Friday (outside normal building operation hours), there will be no excused leave for time scheduled outside that time frame unless a decision to close the building was made during normal work hours. This means that if, for example, an individual's regular work schedule lasts until 6:00 p.m. and it starts snowing at 5:00 p.m., and for safety purposes that individual decides to leave early, then that time must be accounted for by taking leave, credit hours, or working later in the pay period. If there was an Employer decision to close the facility prior to 5:00 p.m., due to an emergency condition, then the remaining number of hours in the employee's work schedule that day would be excused (up to a maximum of eight hours). It should be noted that there will be no official decision made on delayed openings/early departures for weekends or holidays, and therefore, no excused absences will be permitted during those days. Supervisors will work with employees on a case-by-case basis to determine when and if the time will be rescheduled.

D. *Holidays*: The maximum number of hours of administrative leave for a holiday is eight (8) hours in a day.

E. *Travel and Training*: The maximum number of hours creditable for travel or a combination of work and travel to fulfill a basic work day will usually be the same as the hours scheduled for that day if an "indefinite schedule" is in effect. If none is in effect then the number of hours will be determined by the supervisor on a case-by-case basis.

Section 5. *Resolution of Schedule Conflicts*

A. To ensure proper coverage of the workplace, the supervisor shall require employees to provide advance notification of the proposed work schedule. Employees will provide a proposed work schedule to their supervisor not later than the Thursday prior to the start of a new pay period unless an "indefinite schedule" had been previously approved. In those instances where the supervisor believes the work requires a schedule different from that proposed by the employee, the supervisor and the employee will work together to develop an acceptable schedule. If an acceptable schedule cannot be developed, the second level supervisor will function as mediator, assisting both sides to reach an agreement. The second level supervisor has the ultimate responsibility for rendering the final decision on scheduling conflicts.

B. If any individual's Maxi-Flex schedule creates an adverse impact on the Employer (e.g., reduced productivity, diminished levels of service to the public or customers, or unreasonable increases in operating costs) the employee and/or the position will be excluded from the Maxi-Flex option. The affected individual does not have the right to appeal this decision to his/her next level supervisor. Employees taken off the schedule for reasons related to reduced productivity or diminished service levels will not be eligible to return to AWS until the start of the next fiscal quarter.

C. Once operational needs are met, remaining conflicts in scheduling will be resolved in favor of the employee who has seniority with respect to length of time in current position.

Section 6. *Change in AWS*

Should the Employer desire to change the approved AWS procedures, negotiations will be held with the Union in accordance with Article 8 (Negotiation and Consultations over Proposed Conditions of Employment).

Section 7. *Overtime*

A. For employees on the traditional fixed work schedule, hours worked that exceed the basic work requirement of eighty (80) hours per pay period (over eight (8) hours in a day or forty (40) hours in a week) will be recorded as overtime or compensatory time when directed and approved by management in advance.

B. For employees on Maxi-Flex, time worked voluntarily with supervisory pre-approval, that exceeds the basic work requirement of eighty (80) hours per pay period, will be recorded as credit hours (fifteen (15) minute increments can be earned). If directed and approved by the Employer in advance, the time will be recorded as overtime or, if applicable, compensatory time.

C. Irregular or occasional overtime work performed by an Employee on a day when work was not regularly scheduled for the employee or for which the employee has been required to return to the place of employment shall be considered to be at least two hours in duration for the purpose of overtime pay or compensatory time.

D. The Employer will distribute overtime work as equitable as possible among qualified employees within each division and branch. In the assignment of overtime, the Employer shall normally give the employee(s) advance notice.

E. In no case will overtime work be assigned to any employee as a reward or punishment.

F. The Employer will make available to the Union, upon request, current records of overtime assignments.

Section 8. *Compensatory Time*

Compensatory time may be granted in lieu of overtime only upon the employee's request. There is no limit upon the amount of compensatory time an employee may accumulate. However, an employee may carry over only a maximum of eighty (80) hours compensatory time from one leave year to another. Unused Compensatory time at retirement will be paid at the overtime rate in effect when the compensatory time was earned.

Section 9. *Swapping Job Assignments*

Supervisors may permit employees to exchange workday assignments of same duties provided "swapping" will not create an interruption of work or increased cost for the Employer, such as the use of overtime.

Section 10. *Union Representational Scheduling*

In conducting approved or pre-scheduled labor-management activities, such as joint meetings and arbitrations, in which an employee or Union representative must participate, a change of tour, credit hours, or both, will be utilized should the labor-management activity be outside the normal tour of the employee or Union representative.

Article 25
Contracting Out and the FAIR Act

The Employer and the Union will openly cooperate and communicate to the maximum extent possible concerning Office of Management and Budget (OMB) Circular A-76 commercial activities, also referred to as the Federal Activities Inventory Reform (FAIR) Act of 1998. The Employer shall provide the Union with a list of all commercial activities affecting the bargaining unit employees who are performing the work which shall be current as of the effective date of this Agreement.

The Employer will maintain an inventory of all in-house OMB Circular A-76 commercial activities performed by the Employer and will provide such information to the Union.

Section 1. *Commercial Activities*

It is recognized by the Parties that although most activities performed by the Employer are "governmental" in nature, there are some activities performed by the Employer which can be considered as "commercial" in nature in accordance with the procedures established in OMB Circular A-76, and DOC/NOAA implementing instructions. The means for conducting new commercial activities, e.g., those not currently being performed by the Employer, is excluded from coverage by this Agreement.

Section 2. *Inventory of Commercial Activities*

The Employer may, from time to time, be required by NOAA or the DOC to develop an inventory of NCDC commercial activities performed by bargaining unit employees for subsequent study under OMB Circular A-76. The Employer may also determine that the conduct of certain well-established NCDC commercial activities by NCDC employees may be potentially accomplished by private sector firms in a more efficient, more effective, or less costly manner than the manner in which they are currently being performed by NCDC employees.

The Employer agrees to provide the AFGE, Local 446 President with the identification of any such commercial activities which have been determined to be studied, any available proposed schedules of key events for such studies, and any other pertinent information within ten (10) calendar days of the completion or alteration of such a listing. Updates of these schedules will be provided to the AFGE, Local 446 President within thirty (30) calendar days of their release.

Section 3. *Most Efficient Organization (MEO)*

The Employer recognizes that the most important factor in the OMB Circular A-76 decision process is the cost of performing the commercial activity. A decision to retain performance of the commercial activities by bargaining unit employees requires the timely implementation of the required MEO. The MEO implementation may positively or adversely impact existing employees in the bargaining unit studied.

The MEO documentation and cost comparison form can only be provided to the Employer, upon request, after the final decision to contract or retain by in-house performance is made. Final decisions of A-76 reviews are not grievable. Implementation of the results of an A-76 review is subject to the provisions of Article 8 (Negotiation and Consultations over Proposed Conditions of Employment).

Section 4. *Management Efficiency Study*

When Management is aware of a scheduled Management Efficiency Study (MES), the Union will facilitate employee input to ascertain recommendations as to how the Employer may best structure the work under study to reduce costs and/or increase productivity and efficiency, in order to enhance the competitiveness of the Government's bid. The Employer will give such input full consideration.

The Employer will openly involve the Union with the development of information concerning a MES such as:

A. providing correspondence from higher authority directing the study and correspondence initiating and directing the MES;

B. Plan of Actions and Milestone chart; and

C. Joint Establishment of the Performance Work Statements and other pertinent contractual documents for which the Employer is responsible in accordance with applicable laws, rules, and regulations.

Section 5. *Employee Replacement A-76*

A. When employees are adversely affected by an OMB Circular A-76 contract decision, the Employer will, to the maximum extent possible, restrict new hires, use attrition, and place affected employees in available positions for which they are minimally qualified. When the decision to contract out results in employees being demoted or otherwise affect by a RIF, the procedures set forth in Article 16 (Reduction-In-Force (RIF), Transfer of Function and Reorganization) will apply.

B. As part of the process when a contract is awarded, the Employer agrees to provide information to the Union and employees on the right of first refusal provisions. Failure of an employee to accept a position offered, pursuant to right of first refusal provisions, has no effect on the grievance rights of the employee under applicable laws, rules, regulations, and this Agreement.

C. The Employer recognizes the Union's right to file an Appeal of Tentative Waiver and Cost Comparison Decisions and to have necessary documentation for purposes of filing this Appeal. Additionally, consideration will be given to extending the appeal period for a maximum of thirty (30) calendar days if the cost comparison is particularly complex.

Section 6. *FAIR Act*

The FAIR Act requires all Federal agencies to provide a count of positions that could be considered for "contracting out" as required by law. The DOC web page provides links to actual legislation and some related information (http://www.doc.gov/oebam/fair/).

The Employer is required by law to provide FAIR Act inventory information on its positions and employees to its parent line office, the NESDIS, for inclusion in the consolidated NESDIS FAIR Act inventory input to NOAA and DOC, when requested. When required and submitted by the Employer, the inventory includes:

A. a narrative statement summarizing how the present Employer Federal positions were categorized;

B. a table showing counts of employees and contractors for the NCDC; and

C. a table itemizing the categories assigned to NCDC positions in each division.

All positions are categorized as "inherently governmental," "research," or "core capability." "Core capability" means although the position performs a commercial activity, it is recommended that it be excluded from consideration for "contracting out" because the government must maintain a core capability in that type of work.

The Employer information is submitted through NESDIS on to NOAA where it is forwarded on to the DOC. There may be changes based on the Department's review.

Article 26
Official Personnel Folders and Relevant Files

The maintenance, content, and release of information from a bargaining unit Employee's Official Personnel Folder (OPF), which is coordinated by the current servicing Personnel Office, shall be in accordance with rules and regulations of the OPM and the DOC.

Section 1. *Access to OPFs*

Password-protected access to OPFs is available electronically to the employee through the designated website. The electronic files will be maintained in accordance with OPM rules and regulations. Problems with access should be brought to the attention of the servicing Personnel Specialist and the supervisor as soon as possible. Official requests from a Union representative or management personnel to review the contents of an employee's OPF will be processed by the servicing Personnel Specialist.

Employees are ultimately responsible for the discovery and reporting of possible inaccuracies in their OPF. Possible discrepancies should be brought to the attention of the servicing Personnel Specialist and their supervisor for investigation and resolution.

Section 2. *Relevant Files*

Personal notes pertaining to an employee not qualifying as a system of records under the Privacy Act may only be kept and maintained for the use of the supervisor who prepared them. However, the personal notes shall not be used to circumvent proper disclosure to the employee(s) nor may they be used to retain information that should properly be contained in a system of records or to hinder an employee's promotional opportunities.

Section 3. *Disclosure*

Any records used in a disciplinary or adverse action must have been disclosed to the employee on a timely basis except where exempt.

Article 27
Position Descriptions

Section 1. *Definition*

Position descriptions are not assignments of work, but are intended to basically contain the principal duties and responsibilities of the position. It is further understood that, to the greatest extent practicable, the guidelines contained in the OPM job series guides will be used to develop position descriptions. It is recognized by the Parties that while many changes in an employee's duties can occur during the lifetime of a position description, the scope of those changes may range from very substantial changes to changes of an inconsequential nature. The Employer agrees to make reasonable efforts to ensure that position descriptions reflect substantial changes in employee duties.

Section 2. *Notification*

Employees will be provided a copy of their current position description and any updates reflecting substantial changes as soon as practicable. If an employee believes that his/her position description does not adequately or accurately reflect his/her assigned duties or responsibilities, he/she should, on an informal basis, discuss the matter with the supervisor.

When a position duty which is pay band determining, regular and recurring, and/or substantive in nature is not included in an employee's position description, the Employer will amend that description as soon as practicable to reflect that duty. Employees also have a responsibility in ensuring that their position descriptions are accurate.

The Employer shall provide the following to the Union prior to any discussion with employees:

A. any changes in the titles, series or grade of encumbered positions resulting from the application of changes in classification standards;

B. any changes in the duties and responsibilities of bargaining unit employees (as it pertains to position classification) resulting from reorganizations and/or mission changes; and

C. will bargain as appropriate over the changes in accordance with Article 8 (Negotiation and Consultations over Proposed Conditions of Employment).

Section 3. *Appeal*

A dispute regarding the accuracy of an employee's position description may be informally raised with their supervisor. However, an employee may grieve, pursuant to Article 9 (Grievance Procedures), a rating that results from a position description they believe to be inaccurate. Any employee who feels that his/her position is misclassified may request through his/her supervisor an audit and/or appeal of his/her position duties and responsibilities in accordance with government-wide laws, rules and regulations.

The appeal decision may result in a raising, lowering or substantiating the pay band of the position as the facts warrant. The effective date of any change will be stated in the appeal decision.

Article 28
Vacancy Announcements and Promotions

Section 1. *Vacancy Announcements*

All vacancy announcements for positions with the Employer will be placed on the OPM-approved website by the current servicing Personnel Office. These announcements will provide the full details regarding the vacancy including the opening/closing dates, information on required qualifications and experience, as well as information regarding the application process.

All responsibility with regard to applying for positions resides solely with bargaining unit employees.

Section 2. *Promotions*

Promotion actions involving employees and positions within the bargaining unit will be reviewed and processed in accordance with applicable OPM, DOC, and NOAA regulations.

Article 29
Controlled Substance Testing

Section 1. *General Provisions of Controlled Substance Testing of Bargaining Unit Employees*

The Parties agree that the methodology for all testing will be in accordance with the procedures of the DOC, Drug-Free Work Place (DFWP) Plan, the DFWP Guide and applicable government-wide laws, rules and regulations. Should other categories, modifications or types of testing be required by the U.S. Government, the Parties will meet as expeditiously as possible to develop a mutually agreeable procedure.

To the extend required by Statute, if the Employer proposes to modify or revise its DFWP and/or Guide, the Union will receive adequate prior notice of the proposed changes, and will be provided with an opportunity to submit bargaining proposals and enter into negotiations concerning these proposals.

Article 30
Employee Assistance Program (EAP)

Healthy employees and healthy work environments are important. 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 EAP to provide guidance and support to employees and their families.

The EAP is a counseling service offered to DOC employees and is intended to identify what problem is deterring the employee's satisfactory job performance and to offer the employee appropriate assistance in dealing with the problem. Through this program employees are offered, at no charge, a minimum of three, but not more than four counseling sessions. Some of the most common reasons individuals might choose EAP are:

- Marriage and Family Issues
- Stress
- Financial and Credit Issues
- Organizing Life's Affairs
- Elder Care
- Alcohol and Drug Dependency
- Critical Incidents
- Emotional Problems
- Pre-Retirement Planning
- Legal Questions
- Child Care
- Federal Tax Problems

The Parties realize that no employee is exempt from experiencing situations which disrupt their daily lives or the lives of family members. The Employer and the Union agree to encourage and support bargaining unit employee utilization of the EAP. Services and help are available to employees and eligible family members through this program. Through the EAP, employees can get a third party perspective on issues, as well as learn problem solving techniques.

Section 1. *Available 24/7*

Should employees find themselves facing difficulties which seem beyond their scope to handle, they are encouraged to take advantage of the EAP. Assistance is available 24-hours a day, 7-days a week through a toll free telephone call or through a TDD (Telecommunications Devices for the Deaf) line for hearing impaired individuals. A representative will answer the call and ask for such information as the employee's name, address and telephone number, job title, length of service, and a brief description of the problem. Shortly thereafter, a trained counselor as closely located to Asheville, NC, as possible will contact the employee. Master-level counselors will provide counseling over the telephone in the event an office visit is not convenient.

Section 2. *Employee Notification*

The Employer agrees to inform employees about the services available from the EAP at least annually. The EAP contact point and means of contact will be posted on bulletin boards in each of the staff and division areas of NCDC.

Section 3. *Misconduct/Unsatisfactory Performance*

A bargaining unit employee who is charged with misconduct or less than satisfactory performance and who contends that such misconduct or performance was caused by alcoholism, drug abuse, or other personal problems must submit evidence to the Employer to support this contention and to substantiate any treatment which the employee has undergone or is scheduled to undergo, and whether or not such treatment is obtained through the EAP. The Employer will give appropriate consideration to any such evidence presented by the employee.

Section 4. *Voluntary Participation*

Participation in the EAP shall be voluntary. Confidentiality shall be maintained in accordance with OPM, Heath and Human Services, and DOC policy.

Section 5. *Appropriate Leave*

Should a bargaining unit employee be referred to the EAP, the employee will be granted administrative leave for the initial counseling session. All other counseling sessions will be charged to the appropriate leave (i.e., sick leave, annual leave or LWOP).

Section 6. *Confidentially*

Discussion(s) with a counselor will be kept strictly confidential. However, counselors are legally obligated to report child or elder abuse, as well as intent to commit homicide or suicide, and they must provide information if records are subpoenaed. In certain circumstances, management may obtain confirmation of employee participation in the EAP.

Section 7. *Drug Testing and EAP*

A. EAP-related records and information concerning participants shall be kept in a strict confidential manner in accordance with Federal law and regulations. These records and information shall not be given to any Employer official without the written consent of the employee.

B. The Medical Review Officer (MRO) is responsible for determining when an employee may be medically cleared to return to critical or security duties. If the MRO determines that a bargaining unit employee is not cleared to return to his/her position, the employee may grieve that determination at Step 3 of the grievance procedures in this Agreement.

Section 8. *Notification*

The Employer will notify the Union of any changes to the EAP.

Article 31
Telework

The Employer recognizes that today's work environment brings many new challenges in the way the world works and conducts business. Information Technology (IT) is reshaping business practices in the Federal government, along with the private sector. Federal employees can now work virtually anywhere and anytime with the assistance of IT. The evolution of teleconferencing and the web have ensured that meetings can take place anywhere in the world without involving travel. This new way of conducting business is called "Telework." It is the NESDIS policy, and therefore the NCDC policy, to support telework as an ongoing management strategy to achieve its strategic goals and objectives.

Telework refers to paid employment performed away from the conventional office, either at home or at an alternative office site, for at least one day per week on a regular and recurring basis. Telework should not be confused with home-based businesses or independent contractor arrangements in the home. It also differs from situations where employees permanently work out of their home. Telework is also known as telecommuting, flexiplace, and work-at-home.

Employees are reminded that while in a telework status, leave must be scheduled in advance with the supervisor. However, during emergencies, a liberal leave policy is in effect; for example, making arrangements for dependent care.

The 2001 Department of Transportation Appropriations Act (Public Law 106-346) requires Federal agencies to establish policies allowing eligible employees to telework "to the maximum extent possible without diminishing employee performance." This policy implements the law within NESDIS and NCDC.

Section 1. *Purpose Statement*

The Employer telework policy incorporates any and all requirements stipulated in the NOAA and NESDIS Telework Policies. The NESDIS Telework Policy (Addendum to the NOAA Telework Policy) was signed December 18, 2004, by the Assistant Administrator for NESDIS and communicated to all NCDC personnel through a NESDIS All Employee e-mail from the Deputy Assistant Administrator for NESDIS on February 9, 2005. Any previous NESDIS staff or line office flexiplace authority was cancelled by the signing of the NESDIS policy, except for any authorities necessary due to existing collective bargaining agreements. The NESDIS Intranet telework site is https://intranet.nesdis.noaa.gov/telework/index.html.

Section 2. *Scope*

The provisions of the NESDIS Telework Policy apply to all NESDIS (including NCDC) employees except:

A. employees serving probationary or trial periods;

B. student interns unless an exception has been authorized by DOC Office of Human Resources Management (OHRM) based on operational need;

C. members of the Senior Executive Service; and

D. employees in Demo Pay Band V

Section 3. *Official Duty Station*

The official duty station of an employee who teleworks will remain unchanged for purposes of pay, leave, benefits, and other entitlements.

Section 4. *NCDC Program Oversight and Responsibilities*

A. The Office of the Employer's Deputy Director is responsible for ensuring the NCDC Telework Program's development, administration, operation and evaluation are in accordance with NESDIS requirements. The NCDC Deputy Director's office will work with the NESDIS Management Operations and Analysis Office (MOAO) Telework Coordinator regarding these requirements.

B. The NCDC Deputy Director has been designated as the NCDC Telework Contact to NESDIS. The NCDC Deputy Director will work with the NESDIS Telework Coordinator in the NESDIS MOAO Office to ensure that all information regarding telework is distributed to bargaining unit employees and to provide necessary information regarding any NOAA report requirements are provided on a timely basis.

C. The NCDC Deputy Director is the Approving Official for telework. The Approving Official is responsible for:

1. approving, disapproving, modifying, or terminating employees' telework application and/or agreements;

2. approving the function, or portion thereof, of a position suitable for telework; and

3. authorizing the expenditure of funds to cover expenses associated with approved telework arrangements, subject to NESDIS policy, funding availability and Government need.

4. notifying and negotiating with Union officials, when applicable, prior to implementation of the telework program;

5. ensuring that all employees are briefed on the basics of the NESDIS/NCDC Telework Program prior to participating and complete the web-based training exercise; and

6. reporting program participation and impact on mission, as requested by NOAA and NESDIS Telework Program Coordinators.

D. Employee supervisors are responsible for:

1. the overall management and success of teleworking within their work units, including day-to-day operations, and modifications to individual telework agreements to meet mission needs or changing circumstances;

2. maintaining telework records for use in monitoring the program's effectiveness to include, at a minimum, the total number of employees eligible to telework, total number of eligible employees actually teleworking and the total number of eligible employees given the opportunity to telework;

3. identifying functions, or portions thereof, of positions suitable to participate in telework and sharing this information with all employees;

4. identifying employees eligible to participate in telework based on position analysis;

5. developing and amending performance work plans, as needed, for work performed away from the official duty station;

6. assigning appropriate work to be performed at the alternative work site;

7. adjusting individual telework arrangements to meet the needs of the particular branch or division;

8. being familiar with DOC's Unclassified System Remote Access Security Policy and Minimum Implementation Standards which can be found at http://www.osec.doc.gov/cio/oipr/ITSEC/remote_access.htm and implement the policy, as needed; and

9. providing tools and training necessary for employees to be knowledgeable in IT communications.

E. Employees are required to:

1. actively participate in the development and completion of the NESDIS Telework Application, Agreement, and Safety Check List;

2. observe agreed-upon hours of work in accordance with established policies;

3. observe policies on requesting leave when leave is to be taken;

4. use Government equipment in accordance with regulations governing use;

5. adhere to and operate under the provisions of the telework agreement;

6. inform supervisors promptly of an injury or occupational disease occurring at the alternative work site;

7. pay for all operating costs incurred for set up and maintenance of an alternative work place not covered by the NESDIS implementing procedures;

8. ensure the security of the information and systems under their control; and

9. verify that the alternative work site complies with health and safety requirements, and maintain safety at the alternative work site.

Section 5. *Policy and Implementing Procedures*

In accordance with Section 359 of Public Law 106-346 and policy disseminated by DOC and NOAA, it is the NESDIS/NCDC policy to allow eligible employees to work at sites away from their official workplaces during a portion of their regular work week, within the guidelines established in the NESDIS Addendum to the NOAA Telework Policy, dated November 28, 2003.

Bargaining unit employee participation in telework is voluntary and employees may request to terminate their participation at any time. While telework is a management option, the Employer may not direct or coerce employees to participate. Written agreements documenting the terms and conditions of telework arrangements will be drafted and maintained in accordance with NESDIS policy.

Telework is a management option, not an employee benefit or entitlement. Telework does not change the terms and conditions of employment. The operational needs of the Employer are paramount. Bargaining unit employees who telework do not have an automatic right to continue to telework. Telework arrangements may be modified, adjusted, or terminated at any time deemed necessary by the Employer or when requested by a bargaining unit employee. The Employer has the right to end an employee's use of telework, if, for example, the employee's performance declines or if the arrangement no longer meets the organization's needs.

The Employer will provide notice of at least two (2) work weeks, when feasible, but not less than seven (7) calendar days before modifying or terminating a telework agreement to allow the affected employee to make necessary arrangements. The reason for termination will be documented on a NOAA Telework Termination Form A-3, signed by the Approving Official and furnished to the affected employee. This does not preclude the Employer from requiring an employee to report to work on a specific telework day when the needs of the Employer dictate.

Participation in telework is open to all eligible employees without regard to race, color, gender, religion, national origin, marital status, parental status, age, disability, or sexual orientation.

All bargaining unit employees, including those who telework, are expected to comply with the DOC Standards of Ethical Conduct, and DAO 202-735-A. Failure to comply with the standard while working at an alternative work site may result in termination of the telework agreement and disciplinary action for misconduct. DAO 202-735-A is available at http://www.osec.doc.gov/omo/daos/202-735a.htm.

Section 6. *Identifying Jobs and Duties Suited for Telework*

Though many positions are suitable for telework, Public Law 106-346 recognizes that not all aspects of all jobs can be performed at alternative work sites. Supervisors, with the concurrence of the Approving Official, are responsible for identifying positions that, when considered in their entirety, are not suitable for telework.

Work suitable for telework depends on job content, rather than job series or title, type of appointment, or work schedule. Jobs not entirely suited for telework may contain some duties that can be performed at an alternative work site either on a regular or intermittent basis.

Functions, duties, and tasks of positions suitable for telework typically include:

A. work activities that are portable and can be performed effectively outside the employee's conventional work station with limited or no additional cost to the Employer;

B. job tasks that are measurable or project-oriented;

C. client or customer contacts that are predictable or may be satisfied by frequently checking voice mail for messages; and

D. work contacts that can be adjusted to allow for telephone communications or conducted when the teleworking employee is at the conventional office.

Additional functions, duties, tasks and capabilities required in regard to telework and the duties and tasks that normally would not be performed at an alternative work site location can be found in the NESDIS Telework Policy Addendum to the NOAA Telework Policy, dated November 28, 2003.

Section 7. *Participation in Telework*

Although the Approving Official has decision authority, a bargaining unit employee and his/her supervisor should work together to determine if telework is appropriate. An employee may be authorized to telework if:

A. the supervisor certifies there are sufficient duties or work activities that can be suitably performed at an alternative work site;

B. the employee's most recent performance appraisal is "Meets or Exceeds Expectations" and in the performance of his/her duties, the employee consistently meets performance plan objectives in terms of quality and quantity of work, demonstrates a high level of proficiency in solving problems as they arise, and produces high quality written products which are unambiguous and convincing. The employee must demonstrate a high level of reliability in following supervisory and organizational policies and procedures in the performance of assigned duties;

C. the employee's record of attendance shows no pattern of leave abuse or excessive absence, as determined by the organizational unit, and the immediate supervisor certifies that no additional factors preclude the employee from entering into a telework agreement; and

D. the employee signs a written telework agreement.

Additional Requirements can be found in the NESDIS Telework Policy Addendum to the NOAA Telework Policy, dated November 28, 2003.

Section 8. *Authorized Telework Arrangements*

The NESDIS/NCDC telework policy authorizes two types of telework arrangements: Intermittent and Regular.

A. *Intermittent and/or Episodic*: Infrequent periods of time when projects/assignments have short turn-around times and require intense concentration.

B. *Regularly Scheduled*: An arrangement based on other than a temporary accommodation or condition, in which an employee works at an alternative work site for at least one day of the workweek on a regular and continuing basis.

Note: Federal Management Regulation Bulletin 2006-B3 recognizes only B as telework (reference Federal Register dated March 17, 2006).

Section 9. *Telework Agreements*

Bargaining unit employees must submit the following items to request a telework arrangement:

A. NOAA Telework Application and Agreement, A-1;

B. NOAA Telework Safety Checklist – Private Residence, A-2;

C. Addendum to NOAA/NESDIS Telework Agreement: IT Security; and

D. Telework Training Certificate.

Termination of the Telework arrangement will be documented on Form A-3, NOAA Telework Termination.

Section 10. *Work Schedule, Hours of Duty, Time and Attendance, Pay and Leave*

Bargaining unit employees should refer to the NESDIS Telework Policy Addendum to the NOAA Telework Policy, dated November 28, 2003, for details related to work schedules, hours of duty, time and attendance, as well as pay and leave information related to telework.

Section 11. *Alternative Work Site Issues*

There are numerous work site issues related to telework that must be considered by the Employer and the employee prior to requesting approval for telework for a bargaining unit employee. These include Workers' Compensation, workplace environment, dependent care, official duty station, alternative office, government owned equipment, including security issues, computer software copyrights, commercial computer software, personal computer equipment, computer software updates, installation of telephone lines, personal expenses, accountability of property, secure operations, etc.

Further information on these issues can be obtained by referring to the NESDIS Telework Policy Addendum to the NOAA Telework Policy, dated November 28, 2003.

Section 12. *Preparing for the Telework Arrangement*

Bargaining unit employees are encouraged to refer to the NESDIS Telework Policy Addendum to the NOAA Telework Policy, dated November 28, 2003.

Section 13. *Office Closures*

Because of the nature of telework, participants may or may not be entitled to the same excused absences as those reporting to the regular duty station. For instance:

A. *Full Day Closing*: If there is a general Federal government dismissal for the commuting area, the teleworking employee will be entitled to excused absence for the same period of time. However, if the NCDC is closed due to facility limitations, the teleworking employee does not receive the excused absence and must complete their normal tour of duty.

B. *Late Openings*: If the NCDC opens late due to hazardous weather, the teleworking employee does not receive the excused absence and must complete their normal tour of duty.

C. *Early Dismissals Due to Hazardous Weather*: If the NCDC dismisses early due to hazardous weather, the teleworking employee does not receive the excused absence and must complete their normal tour of duty.

D. *Holiday Dismissals*: Teleworking employees are entitled to the same excused absence as employees at the regular duty station.

Section 14. *Suspension of Telework*

The Employer reserves the right to temporarily suspend the Telework Program for employees where operational exigencies, (other than the normal workload) require a return to regular office requirements. The Union reserves the right to bargain over the impact of the suspension. Neither Party waives its statutory rights.

Article 32
Voluntary Allotment of Union Dues

Section 1. *Employer Responsibility*

The Employer shall deduct specified Union dues from the pay of all eligible bargaining unit employees who voluntarily authorize such deduction.

Section 2. *Employee Authorization*

A bargaining unit eligible employee may authorize an allotment from his/her pay to cover Union dues provided he/she is a member of the Union in good standing or has indicated by their signature their Union membership subject to payment of his/her first month's dues through voluntary allotment and his/her net salary after other legal and required deductions is regularly sufficient to cover the amount of the authorized allotment.

Section 3. *The Union agrees to:*

A. purchase the standard allotment forms (SF 1187/Revised 2003). A copy of SF 1187 can be found in Appendix 2 (Payroll Deduction Exhibits), of this Agreement;

B. distribute the allotment forms to bargaining unit employees desiring membership in accordance with Article 8 (Negotiation and Consultations over Proposed Conditions of Employment);

C. certify as to the amount of Union dues;

D. provide completed allotment forms to the NCDC servicing Personnel Office;

E. inform bargaining unit members on the program for allotments for payment of Union dues, its voluntary nature, and the uses and availability of the required forms;

F. promptly notify the NCDC servicing Personnel Office when a Union member is expelled, suspended, or for any reason ceases to be a member in good standing;

G. inform Union members of the conditions governing revocation of allotments; and

H. cooperate with the Employer in resolving any claims and disputes arising from the Employer acting to include repayment of erroneously collected dues. The latter situations will be processed in accordance with applicable law, regulation and decisions of appropriate authorities.

Section 4. *The Employer agrees to:*

A. promptly notify the Union of the revocation of an allotment for Union dues by an eligible employee; and

B. maintain revocation of allotment forms (SF 1188) and furnish revocation forms to employees requesting them. A written request for revocation of an allotment, which is otherwise in order and signed by the employee, will be accepted and acted upon even though not submitted on the SF 1188. A copy of SF 1188 can be found in Appendix 2.

Section 5. *Eligible bargaining unit employees:*

A. may obtain SF 1187 for payment of Union dues from the Union or Union representatives;

B. may initiate voluntary allotments at any time to become effective at the start of the first pay period beginning after the completed SF 1187 has been received in the NCDC servicing Personnel Office;

C. may obtain SF 1188 for revocation of Union dues from the Employer; and

D. may not revoke his/her Union dues withholding authorization within the first year of such authorization. Having satisfied the above requirement, an employee may revoke his/her dues authorization as follows:

1. *First Anniversary*: An employee may revoke his/her dues withholding authorization effective the first pay period on or after their first anniversary date.

2. *Subsequent Years*: Revocation will not be effective until the second full pay period following any successive anniversary date, provided the formal request is received no later than such anniversary date and no earlier than thirty (30) days before such anniversary date. The Union is responsible for informing its members of the availability of the required forms and the procedures of revocation of an allotment.

In either case, the NCDC-servicing Personnel Office will not accept dues withholding authorization revocations except during the thirty (30) day period immediately preceding an appropriate effective date. Employees have the responsibility to ensure their written revocation is received in the NCDC servicing Personnel Office on a timely basis.

Section 6. *Change to Regular Hours*

If the amount of the regular dues is changed, the Union will notify such change in writing to the Employer. The request should be submitted by November of the preceding year of the desired

change. The newly certified withholding amount will be processed within the time allotted for processing. Only one such change will be made in any period of twelve (12) consecutive months.

Section 7. *Termination of Allotment*

An allotment for dues will be terminated at the end of the pay period during which an employee is separated by retirement, transfer, resignation, death or other causes, or when the employee is reassigned to a non-bargaining unit position.

Section 8. *Automatic Termination of Allotments*

Allotments will be automatically terminated in the event that exclusive recognition is no longer afforded to the Union or when this Agreement providing for dues withholding is suspended or terminated by an appropriate authority.

Section 9. *Allotment Summary*

Within ten (10) working days after each bi-weekly pay day, the Department of Agriculture Finance Center will furnish the AFGE, Local 446 a summary which will list each member of the AFGE, Local 446 who authorized a voluntary allotment and the net amount remitted to the Union. A single check covering the net amount due the AFGE, Local 446 will be forwarded within ten (10) working days after each bi-weekly pay period. The check will be forwarded to the AFGE, Local Union Treasurer, as designated by AFGE, Local 446.

Section 10. *Dues and Renegotiation Process*

When the renegotiation of this Agreement is pending or in process, and the Parties are unable to complete such renegotiating by the termination date of the Agreement resulting from third party proceedings (e.g., negotiability dispute or impasse, or a question of representation involving employees) payroll dues withholding shall be continued until resolution is effected.

Section 11. *Disputed Eligibility*

When the Employer believes a position subject to dues withholding is no longer eligible for such deduction, the Union will be notified in writing. When a dispute arises concerning the bargaining unit status of an employee on dues withholding, dues withholding shall continue until the matter is resolved through appropriate administrative remedies in accordance with applicable laws, rules, and regulations.

Article 33
Workers' Compensation

Section 1. *Counseling*

The Employer agrees that when an employee suffers or alleges illness or injury in the performance of duties, the supervisor will advise the employee as soon as possible of the appropriate Human Resources office to contact, which will inform the affected employee of his/her rights under the Federal Employees Compensation Act. These rights include the following:

A. the employee's right to file for compensation benefits;

B. the types of benefits available;

C. the procedure for filing claims; and

D. the option to use compensation benefits, if approved, in lieu of sick or annual leave.

Section 2. *Guidelines*

A. As soon as possible after experiencing a job related injury or illness, the employee must report the injury to his/her supervisor and contact the appropriate medical office.

B. The employee will then file the appropriate documentation.

Article 34
Parking

Section 1. *Employee Provision*

The Employer will provide parking for Federal employees subject to government-wide laws, rules, and regulations, as well as GSA controlling regulations.

Section 2. *Allocation of Spaces*

The Employer will allocate all spaces assigned to NCDC by GSA, except for space(s) needed for government vehicles and reserved spaces. Parking space allocation by GSA, at the Veach-Baley Federal Building, is based upon the square footage occupied by NCDC. Square footage is determined per GSA.

Section 3. *Cost*

All expenses related to parking per GSA regulation will be borne by the employee. If an employee fails twice to make their regular monthly payments as scheduled, they will forfeit their right to a space in the Veach-Baley Federal Building parking lot.

Section 4. *Potential Tax Benefits*

Employees are strongly encouraged to declare a tax deduction for eligible parking expenses.

Section 5. *Changes in Space Allocation*

If parking arrangements/space allocations change, they will be subject to negotiations as appropriate.

Article 35
Labor-Management Council

Open communication is essential to the efficient and effective operation of the NCDC. Therefore, the Parties agree to the establishment and functioning of a Labor-Management Council. The Council will discuss issues of substance and concerns of the Parties in a non-adversarial and informal manner. It is understood by the Parties that the Council will not be a forum for negotiations nor an arena to present grievances. The Union will represent the interests of all bargaining unit employees.

Section 1. *Membership*

The Council will have an equal number of members from both Management and the Union.

Section 2. *Schedule*

The Parties agree to meet at the request of either Party and/or may meet quarterly.

Signature Page

This document constitutes agreement between the DOC, NOAA's National Climatic Data Center and the American Federation of Government Employees, Local 446 on the collective bargaining Agreement which precedes this signature page. The Director of the National Climatic Data Center shall approve the Agreement within thirty (30) calendar days from the date the Agreement is executed if the Agreement is in accordance with applicable laws, rules, regulations and the Statute.

For the Employer

Sharon LeDuc, Chief Negotiator
National Climatic Data Center

Thomas R. Karl, Director
National Climatic Data Center

Timothy W. Owen, Negotiator
National Climatic Data Center

Roderick X. Brown
NOAA Labor Relations Officer

05-01-2006
Date Executed

For the Union

Carl Gentile, Chief Negotiator
American Federation of Government Employees
(AFL-CIO)

John B. Roten, Sr., President
AFGE, Local 446

Ryan Nelson, Vice President
AFGE, Local 446

Joseph C. Klein, Chief Steward
AFGE, Local 446

05-01-2006
Date Executed

Appendix 1
AFGE, Local 446 Representation Time Log

Union Official's Name: _____

Payroll Period Number_____ Ending_____ Date_____

Date	Beginning Time	Ending Time	Purpose	Supervisor's Initials	Union Official Initials

Time Used: _____

Appendix 2
Payroll Deduction of Union Dues

REQUEST FOR PAYROLL DEDUCTIONS FOR LABOR ORGANIZATION DUES

Form 1187/Revised 2003

Section 5525 of title 5 United States Code (Allotments and Assignments of Pay) permits Federal agencies to collect this information. This completed form is used to request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction. Completing this form is voluntary, but it may not be processed if all requested information is not provided.

This record may be disclosed outside your agency to: 1) the Department of the Treasury to make proper financial adjustments; 2) a Congressional office if you make an inquiry to that office related to this record; 3) a court or an appropriate Government agency if the Government is party to a legal suit; 4) an appropriate law enforcement agency if we become aware of a legal violation; 5) an organization which is a designated collection agent of a particular labor organization; and 6) other Federal agencies for management, statistical and other official functions (without your personal identification).

Executive Order 9397 allows Federal agencies to use the social security number (SSN) as an individual identifier to avoid confusion caused by employees with the same or similar names. Supplying your SSN is voluntary, but failure to provide it, when it is used as the employee identification number, may mean that payroll deductions cannot be processed.

Your agency shall provide an additional statement if it uses the information furnished on this form for purposes other than those mentioned above.

Please print in **BLOCK UPPERCASE LETTERING** *using black ink.*

1. LAST NAME | FIRST | M.I.

2. HOME ADDRESS | APT. OR SUITE NO.

CITY | STATE | ZIP + FOUR

3. EMPLOYEE SSN | 4. DATE OF BIRTH | 5. HOME PHONE NUMBER:

6. NAME OF AGENCY

7. OFFICE PHONE NUMBER AND EXT.

EMAIL

ENTER YOUR EMAIL TO RECIEVE THE *FREE* AFGE ACTION NEWS

Section A—Authorization By Employee

I hereby authorize the agency named above to deduct from my pay each pay period, or the first full pay period of each month, the amount certified below as the regular dues of the (Name of Labor Organization and Local#):

L

and to remit such amount to that labor organization in accordance with its arrangements with my employing agency. I further authorize any change in the amount to be deducted which is certified by the below named labor organization as a uniform change in its dues structure.

I understand that this authorization, if for a biweekly deduction, will become effective the pay period following its receipt in the payroll office of my employing agency. I further understand that Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues, is available from my employing agency, and that I may cancel this authorization by filing Standard Form 1188 or other written cancellation request with the payroll office of my employing agency. Such cancellation will not be effective, however, until the first full pay period which begins on or after the next established cancellation date of the calendar year after the cancellation is received in the payroll office.

Contributions or gifts (including dues) to the labor organization shown at the left are not tax deductible as charitable contributions. However, they may be tax deductible under other provisions of the Internal Revenue Code.

GENDER (OPT.) M F | DATE | SIGNATURE OF EMPLOYEE

FOR COMPLETION BY AGENCY ONLY The above named employee and labor organization meet the requirements for dues withholding. (Mark the appropriate box. If "YES" send this form to payroll. If "NO" return this form to the labor organization.) YES NO

Section B—For Use By Labor Organization

Name of Labor Organization (Indicate Local)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL: **I.D. CODE:**

I hereby certify that the regular dues of this organization for the above named member are currently established at $ _____ per biweekly pay period.

SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL | DATE | COUNCIL# C

REBATE RECEIPT

Recruiter: _____ Date: _____

Rebate Amount: _____ _____

Sign for receipt

FOR THE PURPOSE OF COMPUTER SCANNING, ONLY AN ORIGINAL, NOT A PHOTOCOPY OF THIS FORM MAY BE USED

Appendix 2 (Continued)
Revocation of Union Dues

Standard Form 1188
Revised January 1979
Office of Personnel Management
FPM Chapter 560

CANCELLATION OF PAYROLL DEDUCTIONS FOR LABOR ORGANIZATION DUES

Privacy Act Statement

Section 5525 of Title 5, United States Code (Allotments and Assignments of Pay) permits Federal agencies to collect this information. This completed form is used to stop labor organization dues from being deducted from your pay and to notify the labor organization that the dues will be no longer deducted. Completing this form is voluntary, but it may not b e processed if all requested information is not provided.

This record may be disclosed outsid e your agency to: 1) the Department of Treasury to make proper financial adjustments; 2) a Congressional office if you make an inquiry to that office related to this record; 3) a court or an appropriated government agency if the Government is party to a legal suit; 4) to an appropr iate law enforcement agency if we become aware of a legal violation; 5) an organization which is a designated collection agent of a particular labor organization; 6) other Federa l agencies for management, statistical and other official functions (without your personal identification).

Executive Order 9397 allows Federal agencies to use the Social Security Number (SSN) as an Individual Identifier to avoid confusion caused by employees with the same or similar names. Supplying your SSN is voluntary, but failure to provide it, when it is used as the employee identification number, may mean that this payroll action cannot be processed.

Your agency shall provide an additional statement if it uses the information furnished on this form for purposes other than those mentioned above.

1. Name or Employee (Print - Last, First, Middle)	2. Employee I.D. Number (Social Security or other)
3. Agency Name (Include Bureau, Division, Branch, or other Designation)	4. Timekeeper Number
5. Name of Labor Organization	6. Cancellation Date (Completed by agency only)

I hereby cancel my authorization for the deduction of dues for the above labor organization from my pay. I understand that this cancellation will become effective on the first full pay period which begins on or after the next established cancellation date (indicated above) after this request is received in my agency payroll office.

7. Signature of Employee	8. Date (Month, Day, Year)

(Submit copies 1 and 2 to agency payroll office. Copy 1 is retained f or payroll records and Copy 2 is forwarded by the payroll office to the labor organization in accordance with the arrangement between the agency and the labor organization. Copy 3 is retained by the employee.)

1. Agency Payroll Copy 2. Labor Organization Copy 3. Employee Copy

Appendix 3
Formal Grievance Form

AFGE Local #446/National Climatic Data Center/NOAA/DOC
Asheville, North Carolina

Grievant(s): _____

Division/Branch Supervisor: _____

Representative of Grievant(s): _____

Today's Date: _____

Date of the issue or when aware of issue: _____

Contractual or other Violations, and dates of alleged violations:

Remedy Requested:

Signature of Grievant(s) **Signature of Representative**

_____ _____

_____

_____

Appendix 4
Alternative Discipline Agreement

Employee's Name, Title, Series, and Grade: _____

Name and Location of Organization: _____

Employee's Representative (if applicable): _____

Supervisor's Name, Title, Series, and Grade: _____

Designated Management Official (if applicable): _____

Description of Misconduct and the Violated Rule(s), Regulation(s), and/or Law(s):
(attach additional sheet(s), if needed)

Description of Traditional Discipline:
(attach copies of proposal and decision letters, if any)

Description of Negotiated Alternative Discipline (include all terms and conditions):
(attach additional sheet(s) if needed)

Employee Admission and Acknowledgement:

I, _____, willingly admit to the misconduct/wrongdoing described above, and recognize it is unacceptable behavior. I fully understand and realize that management would have imposed the above traditional discipline had I not elected to participate in the alternative discipline system.

I agree to not repeat this misconduct, or other acts of misconduct, in the future. Further, I understand management will deal more harshly with any further misconduct/wrongdoing in accordance with the progressive discipline principle.

I understand that this agreement does not preclude my operating unit from taking appropriate action against me for any other misconduct not covered by this agreement.

I understand if I fail to fulfill terms of this agreement with the timeframe established therein, due to circumstances within my control, the traditional discipline described above will be imposed immediately by written notification.

I understand that I cannot receive salary or wage compensation, if applicable, for any off-duty volunteer service and that such service is not covered by Workers' Compensation.

I understand that this agreement may be used to support any future progressive disciplinary action(s).

I understand that this agreement and related documentation will be retained in an employee relations file, not my official personnel folder, in my human resources office for seven years.

I enter into this agreement voluntarily without undue influence and fully understand and agree with its terms. I know and understand that if I had not participated in this alternative discipline system and been subjected to the traditional discipline action, I would have grievance, appeal, and/or equal employment opportunity (EEO) rights with respect to the charge and penalty discussed above. I fully understand that my election to participate in this agreement signifies my knowing waiver of any right to grieve, appeal, and/or file an EEO complaint, even if, after executing the positive action agreement, traditional discipline is imposed because of my failure to satisfy the terms of the agreement. I also understand that my waiving my EEO rights does not bar me from citing this incident and/or punishment as background in a later complaint.

I understand that the provisions of this agreement may be discussed with parties such as management, personnel lists, and representatives from the Office of General Counsel on a need-to-know basis.

Employee's Signature: _____ **Date:** _____

Supervisor's Acknowledgment and Established Effective Date of Agreement:

I, _____, believe that the content of this agreement promotes the efficiency of the Government Service and it will not negatively impact other employees. I enter into this agreement voluntarily.

Supervisor's Signature: _____ **Date:** _____
Effective Date of Agreement: _____

Representative's Acknowledgement (if applicable):

I, _____, agree with the terms and conditions of this agreement.

Representative's Signature: _____ **Date:** _____

Final Disposition:

Terms of agreement were _____ **Met** _____ **Not Met (See attached violation notice)**

Supervisor's Signature: _____ **Date:** _____

Appendix 5
Acronyms

AFGE ..... American Federation of Government Employees
AWS ..... Alternate Work Schedule
CFR ..... Code of Federal Regulations
DAO ..... Department Administrative Order
DFWP ..... Drug-Free Work Place
DOC ..... Department of Commerce
EAP ..... Employee Assistance Program
EEO ..... Equal Employment Opportunity
EEOC ..... EEO Commission
FAIR Act ..... Federal Activities Inventory Reform Act (of 1998)
FEFFLA ..... Federal Employees Family Friendly Leave Act (of 1994)
FLRA ..... Federal Labor Relations Authority
FMCS ..... Federal Mediation and Conciliation Service
FMLA ..... Family and Medical Leave Act (of 1993)
FSIP ..... Federal Service Impasses Panel
GSA ..... General Services Administration
IDP ..... Individual Development Plan
IT ..... Information Technology
LWOP ..... Leave Without Pay
MAP ..... Merit Assignment Program
MEO ..... Most Efficient Organization
MES ..... Management Efficiency Study
MOAO ..... Management Operations and Analysis Office
MRO ..... Medical Review Officer
MSPB ..... Merit Systems Protection Board
NCDC ..... National Climatic Data Center
NESDIS ..... National Environmental Satellite, Data and Information Service
NOAA ..... National Oceanic and Atmospheric Administration
OMB ..... Office of Management and Budget
OPF ..... Official Personnel Folder
OPM ..... Office of Personnel Management
OWCP ..... Office of Workers' Compensation Program
PIP ..... Performance Improvement Plan
RIF ..... Reduction-In-Force
SF ..... Standard Form
TDD ..... Telecommunications Devices for the Deaf
USC ..... United States Code
WFMO ..... Workforce Management Office