



June 12, 2012

Mr. Jason Franklin  
National Weather Service Designee  
for Labor Relations  
1325 East West Highway  
Silver Spring, MD 20910

*Electronically transmitted*

RE: Proposed Furloughs

Dear Jason:

This letter is in response to your email of June 7 in which you notified me that “the NWS proposes to furlough all agency employees for 13 days in FY 2012 because of a \$26M budget shortfall.” I am writing to seek a clarification of your proposal in accordance with Article 8, section 4 of the collective bargaining agreement, assuming that your email was intended as a notice of a proposed change in conditions of employment within the meaning of Article 8, section 3c. This request for clarification, and the additional requests for information contained in this letter, constitute a request for data within the meaning of 5 U.S.C. section 7114(b)(4) and Article 6, section 2 of the CBA. The clarifications and information being sought are necessary for a full and proper understanding of the notice and attached “fact sheet,” as well as to draft responsive impact and implementation bargaining proposals.

1. Was your email of June 7 intended as a notice of change in conditions of employment within the meaning of Article 8, section 3, or was it intended to comply with the predecisional requirements of Article 8, section 1? The confusion arises because it appears from the content of the reprogramming fact sheet, that you attached, that the agency has not yet made a decision whether a furlough is necessary, and because we have not been provided our right to predecisional input on whether a furlough should or needs to be conducted, or how it would be executed.

2. If the email was intended to constitute a notice that the NWS will be conducting a furlough, please explain the apparent inconsistency between your email and the second sentence of the “fact sheet” you attached which states that

“The Administration’s plan is to avoid furloughs of National Weather Service employees.” If your email was intended as a notice to the union to initiate impact and implementation bargaining over a 13 days furlough, why has the NWS initiated bargaining over a change in conditions of employment that the Administration plans to avoid? Or, has the NWS decided to engage in a course of action that is contrary to the Administration’s plans?

3. The “fact sheet” states that there are insufficient funds in one subaccount “Local Warnings and Forecast.” Your email states that the NWS is proposing to “furlough all agency employees.” However, not all NWS employees are funded from the “LWF” budget line or subaccount. For example, the fact sheet states that the furloughs “would reduce staff available and would potentially impact critical weather operations, including those at the National Hurricane Center and Storm Prediction Center.” Those offices are funded from the line or subaccount “Central Forecast Guidance,” not LWF. (See pp. 697-700 of FY 12 Budget Justification and pp NWS-20 – NWS-22 of FY 13 Budget Justification). Either 29 or 26 are employees funded through PAC (see page 677 of FY 12 Justification and, page NWS-1 of FY 13 Justification). Of the total number of employees funded through the lines under ORF, 188 employees are funded through Systems Operations and Maintenance (p. NWS-1 of FY 13 Justification and p. 677 of FY 12 Justification). In addition, the salaries of the meteorologists at the Center Weather Service Units are fully reimbursed by the FAA. Would you please clarify why the NWS contemplates furloughing hundreds of employees whose salaries are paid from other subaccounts when it is reported that the only subaccount that is in potential deficit is LWF?

4. The fact sheet you have provided states that there may be a need to implement a furlough “to ensure the agency remains compliant with the Anti-Deficiency Act.” However, while the Ant-deficiency Act generally prohibits Federal agencies from incurring obligations in excess of appropriated funds, the Act itself provides that the government may accept the services of employees “for emergencies involving the safety of human life or the protection of property.” 31 U.S.C. section 1342. While the Act speaks in terms of accepting volunteer services, formal Opinions issued by several Attorneys General have determined that despite the use of the term “voluntary services,” the legislative history makes clear that the government may indeed obligate itself to pay for these services. 30 Op. Att’y Gen. 129, 131 (1913); U.S. Department of Justice, Office of Legal Counsel, *Government Operation in the Event of a Lapse in Appropriations*, memorandum from Walter Dellinger, Assistant Attorney General, for Alice Rivlin, Director, Office of Management and Budget, August 16, 1995, fn. 5. The Department of Commerce has prepared contingency plans for operations in the event of a lapse in appropriations, which can be found

at <http://www.commerce.gov/blog/2011/04/07/united-states-department-commerce-plan-orderly-shutdown-due-lapse-congressional-appr>. In this document, at pages 39 and 48-49, DOC has identified 4016 employees of the National Weather Service who as "exempt" from furlough under the section of the Anti-deficiency Act cited above because they are necessary to respond to emergencies involving " a significant and imminent threat to the safety of human life and property." (Ironically, the description found in the right hand column on page 48 includes the IT specialists employed at the Weather Forecast Offices whom the agency now claims are unnecessary). In light of the fact that the agency has full legal authority to obligate funds to pay the salaries of almost all NWS employees under the section of the Anti-Deficiency Act discussed above, would you please clarify why you believe it is necessary to conduct a furlough "to ensure the agency remains compliant with the Anti-Deficiency Act?" Would you also please provide a listing of all bargaining unit employees who are classified as "exempt" by the Department.

5. How will you calculate the length of the furlough for those employees who work a compressed work schedule or who are part-time?

6. Would you please clarify whether the agency considers the proposed furlough as an "emergency" or as a "save pay" furlough as those terms are used by OPM and the rationale for that determination?

7. We understand that the NWS completed a reprogramming request by mid-February. Would you please explain why the submission to Congress of this request was delayed for over three months, and by whom?

8. The Antideficiency Act, 31 U.S.C. section 1512, requires that appropriations available for a definite period of time "be apportioned to prevent obligation or expenditure at a rate that would indicate the necessity for a deficiency or supplemental appropriation for the period." In short, the Act ensures that an agency does not run out of funding before the end of the fiscal year. In light of the clear mandate of the Act, would you please clarify why the NWS will run out of funds before the end of the fiscal year? Has the agency violated the Antideficiency Act? Would you also please provide copies of the periodic apportionment schedules from OMB covering the LWF subaccount for the current fiscal year, (see OMB Circular No. A-34), and would you please explain whether the NWS has exceeded the apportionments it was given.

9. Please clarify how the agency would execute service back up if WFOs and RFCs were to be closed as a result of the furloughs? Would that not require calling in additional staff on overtime at the backup office, thereby eliminating any cost savings from the furlough of the employees at the office

which was closed? If no additional staff is to be called in at the back up office, how would the additional work stations needed during back up operations be manned? Will managers be required to work shifts, and, if so, how often?

10. How would the agency fulfill its upper air responsibilities at a WFO that is closed due to a furlough?

11. The fact sheet states that the furloughs will be on non-consecutive workdays. However, this may disqualify employees from receiving unemployment compensation in a number of states as many require a waiting period of a week of unemployment to qualify for benefits. Has the NWS considered the impact on its proposal to furlough employees for non-consecutive workdays on their eligibility for unemployment compensation, and, if not, why not? Would the agency be willing to negotiate over the substance of the issue of whether the furloughs would be on consecutive workdays, as well as their timing?

12. What impact will the furlough have on employees' previously scheduled annual leave? Will that need to be cancelled or adjusted in an attempt to keep offices open while other staff members are being furloughed?

13. The fact sheet states "weather operations would likely be affected to some degree." Would you please clarify each aspect of operations that would likely be affected and precisely describe their impact on bargaining unit employees?

14. What other NWS programs will be affected by the reprogramming described in the fact sheet? Please clarify precisely how the reprogramming of funds from the other accounts will impact the conditions of employment of unit employees. For example, we understand that \$1.5 million originally appropriated for WFO Construction will be reprogrammed to LWF. Which forecast offices or other facilities will be affected by the loss of this funding? Precisely how will they be affected?

15. Will each unit employee be given a personalized proposal to furlough? How will this be delivered to him/her, and how does the agency plan to ensure that each employee timely receives such notice and has a full period to reply?

16. What is the maximum number of managers, forecasters or employees in the HMT/Intern unit that can be furloughed at any one time at a WFO, or the maximum number of employees at an RFC that can be furloughed at any one time without reducing the hours of operations at the WFO or RFC? There are currently forecast offices with one or more operational vacancies. Please

identify those offices and the vacancies in each, and explain whether this will affect the maximum number of employees who can be furloughed at any one time without reducing the hours of operations at those offices.

17. Please clarify whether the agency intends to reduce staffing to single person coverage, as prohibited by the Missoula WFO arbitration decision, during the furlough period?

18. What outside activities or focal point duties will be reduced or eliminated during the furlough period to maximize employee availability for operational shift coverage? How will this impact employees' ability to fulfill the requirements of their performance plan, obtain awards, and promotions?

19. Will any scheduled training, such as AWIPS 2 residential training in Kansas City, be curtailed in an effort to maximize employee availability for operational shift coverage? Please identify each training that will be cancelled or postponed. Will this impact the deployment schedule for AWIPS 2?

20. Will met qualified ITOs be assigned to forecaster shifts to maximize employee availability for operational shift coverage? If so, will those employees be provided any refresher training? How will the agency ensure that they are proficient? Please identify each ITO that you intend to assign to operational shifts, and how long it has been since he or she has routinely worked operational shifts.

21. Please provide the name, job title, grade and duty location of each unit employee to be furloughed, and indicate whether their salary is funded from the LWF subaccount, or other subaccount, and if so, the particular subaccount.

22. In order to have a full and complete understanding of the fact sheet which you have provided us and the information and rationale contained therein, please provide a copy of the 60 page investigative report into the financial irregularities referred to in the fact sheet you provided us, along with all attachments. Please remember that under the provision of information necessary for collective bargaining under the FSLMR Statute is one of the "routine use" exceptions to the Privacy Act.

23. Senators Mikulski and Hutchison have called into question the agency's claim that it has a nearly \$36 million shortfall. In a June 7, 2012 letter to the Inspector General, they wrote that "we do not have confidence in NOAA's estimates." Would you please clarify why we should have confidence in your claims that there is a shortfall that may necessitate the furlough of the employees we represent when the Chair and Ranking Member of the Senate Appropriations Subcommittee do not? Please provide copies of all the accounting documents,

worksheets and calculations on which the agency has relied to determine that there is a shortfall in the LWF subaccount, and was used to determine the amount of that shortfall, and that a 13 days furlough was necessary.

24. Please provide copies of all sections of each WFO and RFC station duty manual that addresses backup operations, as well as any regional and national policies, directives and manuals that describe how the backup operations described in the fact sheet you provided are to be conducted.

Please direct your response to this request for clarification and information request to our counsel, Richard Hirn, whose address is 5335 Wisconsin Ave, NW, Suite 440, Washington, DC 20015.

If your email was intended as a notice of proposed change in conditions of employment, we will be prepared to draft and submit impact and implementation bargaining proposals expeditiously upon receipt of the clarifications and information requested above, and we will be prepared to begin bargaining in a similarly expeditious manner. We note from the fact sheet you provided that the agency believes that it may implement the furloughs without completing bargaining “under emergency circumstances.” The NWS knew, as early as last fall at the latest, that it did not have sufficient funds to complete the fiscal year. We understand that a reprogramming request had been completed by mid-February but, as noted, there was a three-month delay in its submission to Congress. It appears that any “emergency” situation has been artificially manufactured by the agency and was completely avoidable. As such, this delay – and any future delays – cannot be used as a justification for implementation before the completion of bargaining.

Thanking you in advance for your prompt and complete cooperation in responding to this inquiry.

Sincerely yours,

/s/

Daniel A. Sobien  
President