

# TELEWORK AND REMOTE WORK PROGRAMS

## MEMORANDUM of UNDERSTANDING

Between the Forest Service and the National Federation of Federal Employees – Forest Service Council

This MEMORANDUM OF UNDERSTANDING (MOU) is between the United States Department of Agriculture, Forest Service (Management), and the National Federation of Federal Employees, Forest Service Council (Union), hereafter referred to collectively as “the Parties.” This MOU is a Supplemental Agreement under Article 11 of the 2019 Master Agreement between the Parties, and it documents the Parties’ full and final agreement on the Forest Service Telework and Remote Work Programs.

The Parties agree:

### 1. IMPLEMENTATION OF USDA DEPARTMENTAL REGULATION

With this MOU, Management has met all bargaining obligations related to the implementation of USDA DR 4080-811-002 (dated November 22, 2021) (USDA DR). The Parties will follow the USDA DR and associated Frequently Asked Questions (FAQs) addressing Telework and Remote Work except as modified by the provisions of this MOU. Where there are conflicts between the USDA DR or FAQs and the MOU, the Parties will follow the MOU. Where this MOU is silent on a topic, the Parties will follow the USDA DR and the associated FAQs.

### 2. DEFINITIONS

The following definitions are taken from USDA DR 4080-811-002 and, in some instances, summarized as follows:

- a. **Alternate Worksite.** A work location, other than the official worksite, that satisfies all requisite Federal health and safety laws, rules, and regulations pertaining to the workplace, where an employee performs their official duties.
- b. **Official Duty Station/Official Worksite.** For the purposes of this MOU, the terms “Official Duty Station” and “Official Worksite” are synonymous. The official duty station is the management-approved location where employees regularly perform their official duties.
- c. **Routine Telework.** Regularly scheduled telework that occurs on a recurring basis and is part of an approved telework schedule.
- d. **Situational Telework** (also referred to as ad hoc, episodic, unscheduled, and intermittent). Telework that is approved on a case-by-case basis, where the hours worked were not part of a previously approved, ongoing, and regular, telework schedule.
- e. **Telework.** A work arrangement in which an employee performs and completes official duties and responsibilities from an alternate worksite. Telework may be authorized for an entire duty day or a portion of one. Telework does not include the following: work performed while on official travel status; work performed at another USDA office; work performed while commuting to or from work; remote work; or mobile work.
- f. **Unscheduled Telework.** Telework that is authorized in response to specific duty status announcements issued by Office of Personnel Management (OPM) or authorized USDA officials for use during period of inclement weather or other emergency situations, or with prior supervisory approval, telework used to maintain productivity during short-term disruptions to normal operating procedures.

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- g. Remote Work. A workforce flexibility arrangement under which an employee is scheduled to perform work within or outside the local commuting area of their Mission Area, agency, or staff office's worksite and is not required to report to the Mission Area, agency, or staff office worksite on a regular and recurring basis.
- h. Remote Work Agreement. The Remote Work Agreement documents, in writing, the remote work arrangements that a supervisor approves for their remote work eligible employee.
- i. Remote Work Arrangement. A work arrangement in which:
  - 1. The employee performs assigned official duties and other authorized activities at an approved alternate work location, typically the employee's residence, within or outside of the local commuting area of the Mission Area, agency, or staff office worksite;
  - 2. On a regular and continuing basis;
  - 3. Is not required to physically report to the Mission Area, agency, or staff office worksite on any frequent, regular, or recurring basis; and
  - 4. The approved alternate worksite is, for pay and other purposes, the employee's official duty station, as indicated on the employee's SF-50, per 5 CFR §531.605, "Determining an employee's official worksite."

### 3. TELEWORK

- a. Management will make telework eligibility determinations and telework frequency determinations in a fair and equitable manner.
- b. Telework Participation– Employee participation in the telework program is voluntary except in emergency situations as described in Sections 3.m. and 3.n. of this MOU.
- c. Official Duty Station - A teleworker's official duty station will remain unchanged if the employee reports physically to their official worksite at least twice each biweekly pay period on a regular and recurring basis for a total of two full workdays (e.g. 16 hours for employees on an 8 hour/day work schedule, 18 hours for employees on a 5/4/9 work schedule, or 20 hours for employees on a 4/10 work schedule). If a holiday falls on a teleworker's day to work onsite or the teleworker takes leave on a scheduled onsite day, it is not required to add an alternate day or equivalent hours to the employee's requirement to physically report to the official worksite for that specific biweekly pay period.
- d. As long as the duty station requirements in 3.c. are met, and based on the duties of their position, eligible employees may be authorized to telework a portion of their workday on every day of the pay period.
- e. In accordance with 5 CFR §531.605(d)(2), Management may make an exception to the twice-in-a-pay-period standard in 3.c. in appropriate situations of a temporary nature, such as the following:
  - 1. The employee is in temporary duty travel status away from the official worksite.

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2. The employee is temporarily detailed to work at a location other than a location covered by their Telework Agreement.
3. The employee is recovering from an injury or medical condition or is experiencing a temporary personal hardship approved under Article 42 of the Master Agreement.
4. The employee is affected by an emergency (e.g. safety and health emergencies) which temporarily prevents them from commuting to their official worksite.
5. The employee has an extended approved absence from work (e.g., on paid leave).

NOTE: For a temporary exception to apply, the employee must be expected to return to the official worksite on a regular and recurring basis in the future. Temporary exceptions must be reviewed by Management at least once every 3 months and should generally not exceed 6 months.

- f. Management may call employees back to the office, even on scheduled telework days, as far in advance as possible, but generally no less than 48-hour notice unless there is an emergency. If Management is unable to give advance notice and employee is called into the official worksite on a scheduled telework day, the employee may be granted duty time for the time that the employee spends traveling from the alternate worksite to the official worksite subject to applicable travel regulations. This paragraph does not apply to general callback of employees following extended telework due to emergencies.
- g. Telework Eligibility – The Parties agree the following provisions apply to Management’s telework eligibility determinations:
  1. All employees, regardless of tenure, grade, job series, title, or supervisory designation are presumed eligible for some amount of telework (subject to supervisory approval) unless prohibited by other exclusionary provisions of the USDA DR, by the Telework Enhancement Act, or this MOU.
  2. Most positions are eligible for telework unless the positions do not have any portable or administrative work that can be accomplished from an alternate worksite and one of the following applies:
    - i. Position duties require daily physical presence;
    - ii. Position responsibilities require daily access to specialized equipment located at the official worksite; or
    - iii. Position activities require daily access to classified or other sensitive materials.
  3. Employee Temporary Eligibility: Supervisors may provide employees who are in positions that are not normally eligible to telework the option of teleworking on a temporary basis under the following circumstances:
    - i. Recovery from an injury or medical condition;
    - ii. Emergency conditions that prevent an employee from commuting to and working at the official worksite, such as a weather emergency or public health crisis; or

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- iii. The employee has an approved personal hardship request under Article 42 of the Master Agreement.
  4. Employee Ineligibility based on Performance or Conduct. There may be situations where Management deems a position eligible for telework but the employee occupying the position is not eligible. Management may identify employees as ineligible for telework based only on the following criteria:
    - i. Performance. The employee's performance is below fully successful. In such circumstances, supervisors are required to initiate corrective action in accordance with USDA DR 4040-430.
    - ii. Conduct. An employee may be found ineligible for telework if the employee was subject to formal disciplinary action, adverse action, or was placed on a leave restriction within the previous 12 months. Management will make these conduct-based ineligibility determinations on a case-by-case basis.
  5. Employee Permanent Ineligibility. An employee is permanently ineligible for telework for misconduct specified in the Telework Enhancement Act.
- h. Telework Agreements:
  1. All approved telework arrangements must be documented on a Telework Agreement using the automated form in use by the Agency.
  2. The Parties have developed a mutually-agreeable Telework Agreement form that is consistent with this MOU. Management will seek the Union's input on changes to the Telework Agreement form and the Parties will ensure changes are consistent with this MOU.
  3. Telework Agreements remain in effect until a change is initiated. Employees will not be required to recertify Telework Agreements annually.
  4. Permanent changes (e.g., change in position, supervisor, or change requested by management or employee) will require a new or updated Telework Agreement to be completed. For situations when an employee gets a new supervisor but remains in the same position with the same duties, a new agreement is required, but Management will continue to offer the same telework terms (type of telework, number of days or equivalent hours) unless there is a business need to alter the terms or the employee requests a change.
  5. A new Telework Agreement is not required for temporary changes in position or supervisor (e.g., due to detail, temporary promotion, or assignments of a short duration).
  6. With supervisory approval, employees on approved Telework Agreements may make short term changes (less than 30 days) or perform situational telework on days they are not scheduled to telework. In these situations, an employee will not be required to complete an additional agreement documenting the situational telework or short-term change.
- i. Eligibility Notification and Initiating a Telework Agreement
  1. Supervisors will notify employees of their eligibility to telework by initiating a Telework Agreement within 90 days of an employee starting a new position. This notification will include the employee's Continuity of Operations Plan Status to identify if their position is

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Emergency Essential or Mission Critical. Eligible employees will respond by completing the agreement to request telework, or to opt out of telework. Where an employee requests telework arrangements in the agreement, their supervisor will respond to approve, modify, or deny the request within 10 working days.

2. Where an employee has not heard from their supervisor on their telework eligibility, the employee may submit a request to their supervisor. Within 10 working days of receiving the employee's request to telework, Management will review the request and initiate the notification outlined in Section 3.i.1.
- j. Modifying a Telework Agreement.
1. Management may change, suspend, or terminate an employee's Telework Agreement in accordance with Section 3.l. of this MOU. The employee will be given a minimum of 45 days advance written notice, except in emergency situations where the time frame may be shorter. The notice will include the reason, as described in Section 3.l. of this MOU, effective date, and any appeals/grievance procedures available to the employee. Where possible, employees who request a hardship accommodation under Article 42 of the Master Agreement to continue to telework may be permitted to continue teleworking until the hardship process is completed, unless the reason for the management-directed change is due to the employee's performance or conduct.
  2. Employees requesting a change should give as much advance notice as possible, generally at least 7 days in advance, when they want to modify or terminate their Telework Agreement. Management may delay the agreement modification if space considerations necessitate a delay.
- k. Subject to local negotiations, employees who telework 3 or more days per week may be required to share desks or office space under normal operating conditions and absent employee health and safety concerns.
- l. When denying, terminating, or modifying (e.g. changes in type of telework and/or frequency of telework) an employee's Telework Agreement, the supervisor will demonstrate and document one of the following:
1. Changes in employee or position eligibility in accordance with Section 3.g. of this MOU;
  2. Continuation of telework will interfere the employee's ability to attain or return to a fully successful performance level; or
  3. Other business need to alter the terms of the Telework Agreement.
- m. Short term Unscheduled and Emergency Telework
1. Provisions related to performing telework during short term office closures (for example, weather-related closures) are covered under Section 5.b of the USDA DR and by Article 20 of the Master Agreement. Generally, employees with Telework Agreements are not eligible to receive Weather and Safety Leave. Consistent with Article 20 and in accordance with 5 USC §6329(c), employees will be granted weather and safety leave when weather or other

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safety-related conditions prevent them from safely traveling to or safely performing work at their normal worksite, their telework site, or other approved location.

2. Employees under approved Telework Agreements who are working in the office when an early departure is announced due to weather or safety generally may receive weather and safety leave for the amount of time required to commute home, if they complete the remaining time (if any) in their workday either by teleworking or taking leave or other paid time off once they arrive home.
- n. Extended telework due to emergencies.
1. Under 5 USC §7106(a)(2)(D), and in accordance with applicable laws, Management has the authority to take whatever actions may be necessary to carry out the Agency mission during emergencies. The Parties understand that this authority includes but is not limited to ordering employees to telework for extended periods of time even in the absence of a Telework Agreement.
  2. Upon request, the Union at the appropriate level will be provided with the emergency policy or authority which is being relied upon to direct emergency telework.
  3. When Management orders employees to telework due to major emergencies such as a major health emergency, significant damage to a facility making it unusable, or other long-term disruption of the work at the traditional worksite, employees in positions that normally would not be eligible to telework may be provided weather and safety leave if Management does not provide any other form of work (including temporary telework eligibility under Section 3.g.3.ii. above).
  4. Equipment for emergency telework will be provided as described in Section 3.r. below.
  5. The Parties agree that provisions specific to the nature of the emergency that requires extended telework may be negotiated, as appropriate, when such an emergency exists.
- o. Dependent Care - Teleworkers are not prohibited from teleworking while dependents are present at their telework location. However, employees may not use duty time for providing dependent care or any purpose other than official duties. Time used to care for dependents may be accounted for by using breaks, meal periods, appropriate leave, or flexing hours.
- p. Telework Grievances - Employees may file grievances related to telework in accordance with Article 9 of the Master Agreement. Nothing in the USDA DR is intended to modify the agreed upon grievance procedures found in Article 9 of the Master Agreement.
- q. Time, Attendance, Performance, Safety—
1. Supervisors may authorize teleworking employees to participate in flexible and compressed work schedules or other flexible work arrangements, similar to the way that non-teleworkers may participate in these alternative work schedules.
  2. Management will evaluate all teleworkers and non-teleworkers under the same employee performance management system and affording the same professional opportunities, assignments, and treatment with regard to work projects assigned, appraisal of job performance, awards, recognition, training and development opportunities, promotions,

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and retention incentives. This includes work requirements such as reporting on accomplishments and tasks completed during the workday.

3. In-person meetings between the supervisor or other representatives of the Forest Service and the employee will typically occur at the official duty station.
  4. Employees are required to follow Forest Service procedures for accurately coding time spent teleworking (currently, in Paycheck8, use Descriptor Code '11' for Routine telework and '17' for Situational telework).
  5. When teleworking, an employee is required to work from their approved alternate worksite as specified in their Telework Agreement. Supervisors may authorize telework from several alternate worksites. Temporary authorizations for changes in the location of designated alternate worksites do not require a new Telework Agreement.
  6. Safety – Management will provide guidance to employees regarding establishing ergonomically safe workstations at telework locations.
- r. Government Furnished Equipment for Telework
1. Management will provide support for any USDA-furnished device and service employees use while teleworking.
  2. USDA DR 3170-001, Section 5.b. allows for one computer and one phone per person. When feasible, the computer will be a laptop so it can be used at both the official and alternate worksites. Management will approve replacement of desktop computers with laptops, when possible, to facilitate a mobile and telework-ready workforce.
  3. Employees who telework must keep Government property and information safe, secure, and separated from their personal property and information.
  4. Management and employees are responsible for ensuring the government furnished equipment is documented either on the Telework Agreement or other Forest Service documentation.
  5. Management may authorize government equipment for employee use at the alternate worksite, including surplus ergonomic equipment (for example, chairs, standing desks), subject to equipment availability and budget.
  6. Employees who are required to telework in emergency situations will be provided with the necessary government furnished equipment (GFE) to adequately perform their tasks at an alternate worksite. Additionally, consistent with 5 CFR §550.409(b), in emergency situations Management may grant additional special allowance payments, based on a case-by-case analysis, to offset the added expenses incidental to performing work from home (or an alternative location mutually agreeable to Management and the employee).
- s. In August and in February during the first year after implementation of this MOU, Management will provide the Union with data related to Telework Agreements for bargaining unit employees. Data provided for each Forest, Station, Job Corps Center, Washington Office Staff, and Law Enforcement, will include:
- i. The total number of employees (bargaining unit and non-bargaining unit) on the unit.

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- ii. The total number of employees with Routine Telework Agreements for 5 or more days per pay period.
  - iii. The total number of employees with Routine Telework Agreements for 1-4 days per pay period.
  - iv. The total number of employees with Situational Telework Agreements.
- t. Upon request, and consistent with the Privacy Act, the Union at the National Level will be provided copies of reports provided to the USDA as required by the Telework Enhancement Act.

### 4. REMOTE WORK

- a. Parties will follow the USDA DR as it relates to remote eligibility. Additionally, in considering employee requests and subsequent approvals or denials, Management will follow the criteria and procedures in the USDA DR.
- b. To bring Forest Service terminology into alignment with the USDA DR, positions previously referred to as Virtual will now be referred to as Remote.
- c. Upon request, but no more often than twice per year, the Union at the national level will be provided a list of bargaining unit positions that are remote eligible and a sanitized list (no PII) of bargaining unit employees that have approved Remote Work Arrangements (including duty station location and organizational level).
- d. Positions that require access to confidential documents will not be automatically excluded from consideration as remote-eligible.
- e. Management will base any geographic limitations on remote work arrangements on business needs such as travel requirements and other mission requirements.
- f. The details of the remote work arrangement will be in accordance with government law and regulation and must be discussed with the employee. The arrangement will be documented through a written Remote Work Agreement. At a minimum, the Agreement will specify:
  - 1. Official duty station;
  - 2. Procedures for any government supplied equipment;
  - 3. Arrangements for storage of government vehicles, if appropriate;
  - 4. Travel reimbursements in accordance with the USDA DR and Federal Travel Regulations.
- g. Employees may request to work remotely, to change an existing Remote Work Agreement, or terminate an existing Remote Work Agreement following the procedures in Section 8.b. of the USDA DR. Additionally:
  - 1. When there is a change in supervisor and not a change in duties, a new agreement is not required, however the supervisor and employee will discuss the terms. Management will continue to offer the same remote terms unless there is a business need to alter the terms and in such cases a new agreement will be required and all relevant procedures in the USDA DR will be followed.



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2. An employee requesting a change must discuss the request with their supervisor. In addition to the items set out in the USDA DR, employees may consider addressing the need for the request, the benefits to the employee and any potential benefits to the Agency.
  3. Where Management denies an employee's request for remote work arrangement, Management will provide the written rationale for the denial in accordance with the USDA DR, including Section 6.e.2., within 28 days of the employee's request.
  4. The Parties will follow the DR for employee requests to terminate remote arrangements. Management may deny an employee's request to terminate a Remote Work Arrangement due to business needs outlined in the USDA DR, including office space limitations. If the requested location cannot be accommodated, Management will work interactively with the employee to identify and consider other options. See USDA DR for process and timeframes. Management will not be responsible for any costs related to voluntary relocations.
- h. If Management terminates a remote work arrangement based on a change in the requirements of a position, Management will provide the employee with reasonable notice (generally up to 90 days) and process a change of duty station as appropriate. In these circumstances, unless otherwise agreed to when the remote work arrangement was approved, Management will authorize travel reimbursements in accordance with Federal Travel Regulations.
- i. Government Furnished Equipment for Remote Work
1. Management will provide support for any USDA-furnished device and service employees use while remote working.
  2. USDA DR 3170-001, Section 5.b. allows for one computer and one phone per person. When feasible, the computer will be a laptop so it can be used both at the remote worksite and while on official travel. These allowances do not prevent management from supplying the employee with any additional devices for their work (e.g. extra monitors, tablets, personal data recorders, etc.).
  3. Employees who work remotely must keep Government property and information safe, secure, and separated from their personal property and information.
  4. Management and employees are responsible for ensuring the government furnished equipment is documented either on the Remote Work Agreement or other Forest Service documentation.
  5. Management may authorize government equipment for employee use at their duty station, including surplus ergonomic equipment (for example, chairs, standing desks), subject to equipment availability and budget.
  6. Employees who are required to work remotely in emergency situations will be provided with the necessary government furnished equipment (GFE) to adequately perform their tasks at an alternate worksite when their duty station is negatively impacted by the emergency. Additionally, consistent with 5 CFR §550.409, in emergency situations Management may grant additional special allowance payments, based on a case-by-case analysis, to offset the added expenses incidental to performing work at an alternative location, away from their duty station, and mutually agreeable to Management and the employee.

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7. Employees who work remotely will not be responsible for mailing/postage costs associated with their work as preapproved by their supervisor and subject to law and regulation.
8. Management will provide necessary office supplies to employees working remotely upon request and subject to Agency policy. Any shipping costs associated with requested office supplies/government furnished equipment will be paid by Management.
  
- j. Where a position has been designated remote eligible and requires the use of a government-owned vehicle (GOV), Management will assist employees to identify and arrange a storage location at a nearby government location.
- k. Remote employees will be treated equitably as set out in Section 7.d. of the USDA DR. This includes equitable treatment for wellness and fire assignments.
- l. Consistent with Article 20 of the Master Agreement and in accordance with 5 USC 6329c, employees will be granted weather and safety leave when weather or other safety-related conditions prevent them from safely performing work at their duty station or safely traveling to and performing their work at another approved location.
- m. Supervisors will consider opportunities for informal virtual engagement with and between employees.
- n. The Parties have developed a mutually-agreeable Remote Work Agreement template that is consistent with this MOU. Management will seek the Union's input on changes to the Remote Work Agreement template and the Parties will ensure changes are consistent with this MOU.
- o. Remote Work Agreements remain in effect until a change is initiated. Employees will not be required to recertify Agreements annually.
- p. Remote Work Grievances - Employees may file grievances related to remote work in accordance with Article 9 of the Master Agreement. Nothing in the USDA DR is intended to modify the agreed upon grievance procedures found in Article 9 of the Master Agreement.

## 5. INITIAL NOTIFICATION OF TELEWORK AND REMOTE WORK ELIGIBILITY

- a. Management will notify employees whether their positions are eligible for remote work or telework as soon as possible but no fewer than 45 days before the employee is expected to return to the physical workplace. Union will have an opportunity to review the draft notification and provide input.
- b. Supervisors will notify employees of their eligibility to telework by initiating a Telework Agreement prior to requiring that the employee return to the physical workplace.

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- c. Employees who enter into remote work arrangements, and prior to entering into a Remote Work Agreement, will have up to 90 days to sign a Remote Work Agreement from the date the remote work arrangement goes into effect.

### 6. IMPLEMENTATION, EFFECTIVE DATE, AND MODIFICATIONS

- a. A Human Resources Update will be sent to all employees providing a link to the MOU.
- b. This MOU becomes effective on the date of final approval by the Agency Head or that date on which the thirty-day time limit for Agency Head Review expires, whichever is earlier.
- c. This MOU remains in effect, unless either Party requests to modify or terminate this agreement using the procedures in Article 11 of the Master Agreement.

For the Agency:

For the Union:

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Elizabeth Feutrier  
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