



Agreement Between  
USDA Forest Service  
Kisatchie National Forest  
and  
American Federation of  
Government Employees  
(AFGE) Local #2528

## **PREAMBLE**

Pursuant to policy set forth in Chapter 71, Title 5, U.S.C. and subject to all existing or future applicable statutes and regulations issued by the Office of Personnel Management (OPM), the Department of Labor, the Department of Agriculture and the Forest Service, and to agreements and amendments that may be negotiated at a later date, the following articles constitute an agreement made in good faith, by and between the Kisatchie National Forest, hereinafter referred to as "Management" and Local No. 2528, American Federation of Government Employees, AFL-CIO, hereinafter referred to as the "Union". Management and the Union recognize that they have a mutual and cooperative interest in the effective accomplishment of the assigned responsibilities of the Kisatchie National Forest and that this mutual interest will be furthered by the establishment, and maintenance of labor-management cooperation pursuant to Chapter 71, Title 5, U.S.C. Management acknowledges that the participation of its employees, through the exclusive representative, in providing input into the implementation of personnel policies, practices, and procedures which affect conditions of employment, contributes to the effective operation of their facilities. The parties recognize that efficient and effective service is a paramount requirement and that public interest requires the continual development and implementation of modern and progressive work practices to facilitate improved efficiency. The parties recognize that the employees are the most valuable resource of the Agency, and are encouraged, and shall be reasonably assisted, to develop their potential as United States Forest Service employees to the fullest extent practicable. Both Parties agree that everyone should be treated with dignity and respect.

This Agreement and such supplementary agreements and memorandums of understanding by both parties may be agreed upon hereunder from time to time, together constitute a collective agreement between the Agency and the Union.

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## **ARTICLE 1**

### **RECOGNITION**

**Section 1.** Management recognizes the Union as the exclusive representative of all bargaining unit Employees in the unit as defined in Section 2 below, and the Union recognizes the rights and obligations of Management to manage the National Forest.

**Section 2.** The bargaining unit of the Kisatchie National Forest is as described in the certification by the Federal Labor Relations Authority. Includes all non-professional employees, excluding all management officials, supervisors, and employees described in 5 U.S.C. 7112(b) (2), (3), (4), (6), and (7).

## **ARTICLE 2**

### **DEFINITIONS AND GENERAL PROVISIONS**

**Section 1.** Appendix A – Definitions, defines terms or words agreed upon to assist in the clarification of the interpretation, application and administration of the terms of this agreement.

**Section 2.** The definition of terms or words in 5 U.S.C. Chapter 71, will apply to this agreement. Interpretation of terms or words will be governed in the same manner that the provisions of Chapter 71 of Title 5, U.S.C. are required to be interpreted under 5 U.S.C. 7101; in a manner consistent with the requirement of an effective and efficient Government.

**Section 3.** References to Employees (capitalized) or unit employees will refer only to Employees included in the exclusive representation unit. References to employees (lowercase) or Department employees will take the meaning of employees as generally defined in 5 U.S.C. 7103.

**Section 4.** References to first line supervisor or supervisor will refer to the immediate supervisor of an Employee or the supervisor's designated acting.

**Section 5.** References to "Union Representative" will refer to an official of the Union, or any other person specifically designated by the Union to represent the Union in dealings with Management, whether or not the official or representative so designated is employed by the Federal Government.

## ARTICLE 3

### PURPOSES SERVED BY THIS AGREEMENT

**Section 1.** 5 U.S.C. 701 (a) (1) (Whereas) experience in both private and public employment indicates that the statutory protection of the employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them--

- A. safeguards the public interest,
- B. contributes to the effective conduct of public business, and
- C. facilitates and encourages the amicable settlements of disputes between employees and the Employer involving conditions of employment; and

Whereas the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the government. Therefore, labor organizations and collective bargaining in the Civil Service are in the public interest.

**Section 2.** The Employer recognizes the right of employees to organize and express their views collectively, that participation of Union representatives when personnel policies change in the negotiation and implementation of personnel policies, practices or working conditions affecting them contributes to the effective conduct of the Kisatchie National Forest, that the effective administration of National Forest and the well-being of its employees require that orderly and constructive relationships be maintained between the Union and management officials, and that effective labor management cooperation requires a clear statement of the respective rights and obligations of the Union and the Employer.

**Section 3.** This agreement defines certain roles and responsibilities of the parties hereto; states policies, procedures, and methods that govern working relationships between the parties, and identifies subject matter of proper mutual concern to the parties who have entered into agreement primarily for the following reasons:

- A. to improve the efficient administration and management by means of obtaining the active interest, support and cooperation of employees in determining and maintaining general working conditions that are satisfactory to them and that contribute to the efficiency of the Federal service to the public. This includes the following objectives:
  - 1. to promote fair and reasonable working conditions;
  - 2. to promote improved programs designed to aid employees in achieving their acknowledged and recognized job-related objectives;
  - 3. to promote the highest degree of morale in the employee.

- B. to establish a basic understanding relative to matters affecting working conditions under this agreement;
- C. to facilitate the adjustment of grievances and disputes in carrying out the intent in U.S.C. 7121;
- D. to promote effective employee/management relations between the employer and employees; and
- E. to provide a safe and healthful work environment.

## **ARTICLE 4**

### **RIGHTS AND OBLIGATIONS OF MANAGEMENT**

**Section 1.** 5 U.S.C. 7106. Nothing in this agreement shall affect the authority of Management-

- A. to determine the mission, budget, organization, number of Employees, and internal security practices; and
- B. in accordance with applicable laws-
  - 1. to hire, assign, direct, layoff, and retain Employees, 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 operations shall be conducted;
  - 3. with respect to filling positions, to make selections for appointments from-
    - a. among properly ranked and certified candidates for promotion; or
    - b. any other appropriate source; and
    - c. to take whatever actions may be necessary to carry out the mission during emergencies.

**Section 2.** Nothing in this agreement shall preclude Management and the Union from negotiating 5 U.S.C. 7106 (b)--

- A. at the election of the Agency, on the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods and means of performing work;
- B. procedures which Management will observe in exercising any authority under this section; or
- C. appropriate arrangements for Employees adversely affected by the exercise of any authority under this section by such Management officials.

**Section 3.** To the extent that Management policies are in conflict with this agreement, the provisions of the agreement will govern.

**Section 4.** Management will observe all rules of conduct established by law, department regulation, Agency and Forest Policy.

## **ARTICLE 5**

### **RIGHTS AND OBLIGATIONS OF EMPLOYEES**

**Section 1.** 5 U.S.C. 71, each Employee will have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each Employee will be protected in the exercise of such right. Except as otherwise provided under this agreement such right includes the right-

- A. to act for the Union in the capacity of representative and the right, in that capacity, to present the views of the Union to Management and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- B. to engage in collective bargaining with respect to conditions of employment through representatives chosen by Employees under Chapter 71, U.S.C., Title 5.

**Section 2.** It is further agreed that the rights described in Section 1 preceding do not extend to participation in the management of labor organization or to acting as a representative of any such organization where such participation or activity would be incompatible with law or with the official duties of an Employee.

**Section 3.** Employees have the right to bring matters of personal concern to the attention of the appropriate official in accordance with applicable laws, rules, regulations and established policies. Employees have the right to bring concerns of conflict of interest to the attention of management.

**Section 4.** The Union and Management agree that all provisions of this agreement and of applicable laws, Chapter 71, Title 5, U.S.C., as amended, and regulations will be applied fairly and equitably to all Employees in the unit.

**Section 5.** It is agreed that Employees will have access to their official personnel folders in accordance with existing regulations. No material of any nature, which might reflect adversely upon an Employee's character or career, will be placed in the employee's OPF without the Employee's knowledge. Files maintained by Kisatchie National Forest should contain only information that is job related. The employee will have the opportunity to comment on and initial all such entries, which will merely acknowledge the entry but not the accuracy.

### **Section 6. Bullying**

- A. Workplace bullying is repeated abusive behavior that is threatening, humiliating, or intimidating. It may be direct or indirect, whether verbal, physical, or otherwise, by one

or more persons against another or others, at the place of work and/or in the course of employment.

- B. All Agency employees are expected to refrain from workplace bullying and adhere to a standard of conduct that is respectful and courteous to others.
- C. Where appropriate, the affected employee should speak to the alleged bully or bullies to object to the behavior. Each employee is responsible for reporting any incidents to their supervisor or any other management official.
- D. Upon receipt of a report of workplace bullying, Management will initiate an inquiry, address any inappropriate conduct, assist the affected employee, and act to prevent any retaliation by the bully or bullies. Management will not retaliate against any employee for reporting workplace bullying.

### **Section 7. Anti-Harassment**

Union and management agree that anti-harassment procedures will be in accordance with the most current Forest Service policy (FSM 1765 – Anti-Harassment).

### **Section 8. Weingarten Rights**

- A. An employee has the right (commonly known as the Weingarten Right) to be represented by the Union at any examination of the employee by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation.
  - 1. Annually, Management will notify employees of their Weingarten Right. The Union will advise all bargaining unit members of their right to Union representation at any other time they determine it necessary. The Union may have access to Management's internal mail systems including electronic mail, for supplementing this notice.
  - 2. Management will ensure new employees are informed of their Weingarten Right.
  - 3. The Weingarten Right will be permanently posted on employee information bulletin boards.
- B. An employee may be represented by an attorney or other representative other than the Union, of the employee's own choosing, in any appeal action not under the negotiated grievance procedure. The employee may exercise grievance or appellate rights which are established by law, rule, or regulation.

**Section 9.** When exercising the above rights and other rights under this Agreement, employees will be granted a reasonable amount of duty time for initiating, reviewing, preparing, and presenting the grievance. Any employee using duty time exercising their rights under this Agreement, will request from their supervisor of the approximate length of time needed and the location where the employee will be. If the employee cannot be released immediately due to work-related reasons pertaining to the mandatory short term coverage and/or critical mission of the functional area, the employee will be released as soon as the mandatory work requirement is met or appropriate arrangements are made. Ordinary workload will not preclude the release of the employee. If a delay in releasing an employee involves a situation with a contractual time limit, the time limit will be extended equal to the delay.

**Section 10.** Management will not take reprisal actions against employees for the exercise of any appeal right granted by law, rule, regulation, or this Agreement.

**Section 11.** Every employee has the right to be treated with common courtesy and consideration in an employee-employer relationship by Supervisors and Management Officials.

**Section 12. Outside Activities:** Employees shall have the right to engage in outside activities and employment of their own choosing, and otherwise conduct their private lives as they see fit, in accordance with 5 CFR 2635, 5 CFR 735, and 5 CFR 8301.

- A. Without prior approval, an employee may participate in the activities, not prohibited by law, of national or State political parties and may participate in the affairs of or accept an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, and nonprofit educational and recreational, public service, or civic organization. An employee shall not:
  - 1. Accept a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which the acceptance may result in or create the appearance of conflicts of interest.
  - 2. Engage in outside employment that impairs his or her mental or physical capacity to perform his or her job.
  - 3. Receive any salary or anything of monetary value from a private source as compensation for his or her Government services.
  
- B. Employees who are in positions subject to filing financial disclosure reports (OGE-450) must obtain supervisory approval prior to engaging in outside employment. All employees who engage in outside employment, whether or not prior approval is required, are subject to ethics regulations pertaining to conflict of interest. Employees are encouraged to seek advice from their ethics advisors on potential conflict of interest situations at any time.

- C. An employee may invest his or her money, donate to charity, and participate in similar types of activities freely and without coercion.

**Section 13.** An employee may request, in writing, a reassignment at any time. Management will consider the request and will respond in writing within 30 days, stating the reasons for the decision. When the request is due to conflict with his/her first line supervisor and the employee has tried to resolve the conflict, the employee may request the assistance and intervention of higher level Management. Management will intervene, as appropriate, and such intervention may include counseling, training, team building, details, reassignment, mediation, or physically separating the employees in conflict for a "cooling off" period, as some of the methods of resolving the conflict.

**Section 14.** Management shall make available the rules, regulations and policies under which employees are obligated to work.

**Section 15.** Employees shall not be given warnings or statements of disapproval, counseled on conduct or unacceptable performance, or given verbal warnings except in a setting that provides reasonable confidentiality. In special job related situations involving safety and/or well-being of employees, immediate public admonishment is appropriate, e.g., co-worker harassment or safety violations.

**Section 16.** Employee records held by the agency will be maintained according to agency policy and government regulation.

**Section 17. Employee Electronic Profiles:**

- A. Agency access to an employee's electronic profile or storage media will be in accordance with agency policy, law and government regulations.
- B. Employees are reminded of their responsibilities through various means such as training, informational messages, bulletins and log-on banners.

**Section 18.** Agency access to work related hardcopy information (for example, documents, files, materials) will be in accordance with agency policy, law and government regulations.

**ARTICLE 6**

**RIGHTS AND OBLIGATION OF THE UNION**

**Section 1.** 5 U.S.C. 7714, the Union, which has been accorded exclusive recognition, is the exclusive representative of the Employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering all Employees in the unit. An exclusive representative is responsible for representing the interests of all Employees in the unit it

represents without discrimination and without regard to labor organization membership. The Union agrees to represent all bargaining unit Employees in the unit in a fair and equitable manner with respect to grievances, bargaining, personnel policies, practices and working conditions without regard to Union membership, race, color, religion, sex, age, national origin, sexual orientation, political affiliation, marital status or disability. The employee, will be given the opportunity to be represented at-

- A. any formal discussion between one or more representatives of Management and one or more Employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment; or;
- B. A formal meeting between one or more management representative (supervisor, personnel specialist, etc.) and at least one unit employee to discuss: personnel policies, practices and or working conditions or an active grievance or appeal. All of the following factors MUST be present in order for there to be a "formal discussion":
  - 1. Attendance - At least one management representative and one unit (employee covered by the collective bargaining contract)
  - 2. Discussion Topic - Working Conditions (heating, smoking areas, desk location, parking, etc.), Grievances or appeals.
  - 3. Formality - Scheduled. Agenda. Notes/Minutes. Required.

### **Roles and Requirements**

*Management* -Notify union representative. Provide opportunity to attend.

*Union* - Attend as representative, if they desire. Relevant questions and comments.

**Section 2.** The right to be present during formal discussions between Management officials and Employees does not extend to informal discussions.

**Section 3.** The Union agrees to assist Management in efforts to improve safety practices, combat tardiness and absenteeism, encourage energy conservation, develop effective work relationships, promote understanding of personnel policies, practices, conditions of employment and provisions of this agreement, and to encourage the submission of suggestions and cost reduction ideas.

**Section 4.** It is agreed that internal business of the Union such as soliciting membership, collecting dues, electing officers, meetings, conferences, lobbying, and distribution of literature will be conducted during the non-duty hours of the employees involved.

**Section 5.** The Union has the right to represent an Employee at appeals and grievances proceedings if so requested by the Employee. It is agreed that the Union will be provided the opportunity to be present at the adjustment of a grievance of an Employee even though the Employee may not have chosen a representative of the Union.

**Section 6.** Management will recognize duly elected officials and Union representatives appointed by the Union, and those individuals designated, in writing, by the Union to be Union representatives. The union will provide management with a listing of representatives by name on a quarterly basis or as needed.

**Section 7.** Reports, recommendations, reviews, assessments, evaluations and costs incurred from management therefrom regarding all grievances and complaints involving the Employees will be given to the President of the Union or his/her designee upon request, subject to the availability of data and in accordance with government-wide laws/rules/regulations and information request requirements (5 U.S.C. 7114 (b) (4)).

**Section 8. Pre-notification for Unfair Labor Practice Charge**

- A. The Parties agree that prior to filing an unfair labor practice (ULP), the charging Party will serve written notice of the alleged ULP charge on the other Party. If the charged party requests the opportunity to discuss the issue(s), the parties will attempt resolution within five working days unless more time is mutually agreed to.
- B. The Parties will have full authority to mutually agree to any procedures necessary for resolution.
- C. Amendment of the ULP charges on the same issue will not necessitate a new PRE-NOTIFICATION of said charges.

**Union Representation**

**Section 9.** Management recognizes the need for Employees to have reasonable access to Union representatives in order to facilitate the accomplishment of Labor-Management relations business as provided in 5 U.S.C. 7101 and to further the Union's communication to the Employees whom it represents under exclusive recognition. It is also recognized by both parties that the supervisors and the Union representatives must work together in good faith and must cooperate with each other within the scope of their relationship in promoting and maintaining high morale and professional attitudes.

**Section 10.** Management recognizes the right of the Union to designate Union representatives. It is understood that the Union, in appointing such Union representatives, does so for the express purpose of improving Employee-Supervisor relationships by helping to settle problems at the lowest possible organizational level. The Union is entitled to designate a maximum of five Union stewards.

**Section 11.** Management and the Union recognize that first line supervisors are the key persons for Management and the union representatives are key persons for the Union. It is agreed that first line supervisors and the Union representative(s) will strive in good faith to:

- A. promote and maintain high morale and friendly relations;
- B. cooperate in their dealings; and
- C. respect each other's position.

**Section 12.** The Union and Management agree that the following conditions will be observed in performance of union representative functions.

- A. The union representative will observe all rules of conduct established by law, regulation, agency and Forest Service policy.
- B. The union representative will request release as far in advance as practical. The Union official will request release for use of official time from his/her first line supervisor to perform the union representative functions. This request by the union representative will normally be in writing and will contain the following information:
  - 1. The type of representation matter(s),
  - 2. The approximate length of time needed,
  - 3. Location, and
  - 4. A way to contact when away from their normal duty station.

The decision to approve, delay, or deny a request for release for official time will be made by Management. Union requests for official time will be granted based on workload, number of employees available, types of skills needed to accomplish the work, emergency conditions, etc. If official time request is denied, official time will be granted at the earliest available opportunity. It is anticipated that Union officials will spend the majority of their paid time, measured each fiscal year, performing agency business or attending necessary training (as required by the agency), in order to ensure that they develop and maintain the skills necessary to perform their agency duties efficiently and effectively. Authorization of official time under section 7131(d) of title 5, U.S.C., shall be reasonable, necessary, and in the public interest.

However, the total number of official time hours used by an employee/union in this unit will normally be no greater than 100 hours per year for representational activities for the Union or employees in grievances/appeals/complaints (Transaction Code 38); excluding term negotiations, policy negotiations, FLRA proceedings, FSIP proceedings, training, or joint meetings with the Agency. Union representatives of the local will still be authorized over and above the 100 hours, per release procedures in section 5 (B) when agreed to by the parties and deemed necessary and in the public interest (5 U.S.C. 7131).

Upon release from work, the union representative will call the supervisor of bargaining unit employee and request reasonable time to carry out union representation work. The union representative will inform his/her first line supervisor when he/she returns to his/her normal work functions and record timesheet according to the representational function. Generally, for recording union official time on their time and attendance (T&A) form, Union representatives will use appropriate transaction codes:

Transaction Code 35 – Negotiations (limited to Term Negotiations)

Transaction Code 36 – Mid-term negotiations under Article 7

Transaction Code 37 – All contract administration and representations activities, (such as meetings with Management) except negotiations and grievances/appeals/complaints

Transaction Code 38 – Representational activities for the Union or employees in grievances/ appeals/ complaints

- C. The union representative function will be performed only by the individual(s) listed on the Authorized Union Representative List, furnished in writing, in advance, by the Union to Management upon changes. During a union representative's absence, however, an acting union representative may be designated in writing, in advance of any absence, by the Union President for a period of time to be specified. Union President may designate a union representative based on circumstances known to the Union President. Union president will notify management as soon as practicable.

**Section 13.** Management Representatives, supervisory personnel, and Union Representatives should make a sincere effort to resolve problems at the earliest stage.

In the interest of furthering Labor-Management relationships, the Union's officials will be granted official time that is reasonable, necessary, and in the public interest for the following Labor- Management activities:

- A. Negotiation with Management on personnel policies, practices, and working conditions;
- B. Representation of Employees in disciplinary actions or appeals if requested by the Employee;
- C. Unfair Labor Practices.

## **ARTICLE 7**

### **NEGOTIATIONS**

**Section 1.** It is agreed and understood that matters appropriate for negotiation between the parties are policies, practices, and procedures related to working conditions which are within the discretion of Management including, but not limited to, such matters as safety, training, Labor-Management cooperation, methods of adjusting grievances, appeals, leave, promotion plans, details, and other issues; affecting conditions of employment that are more than de minimis as required by Chapter 71, Title 5, U.S.C. and case law.

**Section 2.** In prescribing directives relating to personnel policies, practices and working conditions, Management will have due regard for the obligation imposed by Chapter 71, Title 5,

U.S.C. However, the obligation to meet and negotiate does not include matters excluded by provisions of Article 4 and law as required by Chapter 71, Title 5, U.S.C. This does not preclude the parties from negotiating agreements on the procedures and impact of implementing substantive changes required by law or regulation issued at higher level.

**Section 3.** The Union and Agency representatives, when notified by the other party, will meet and negotiate on any and all policies, practices, and procedures which impact working conditions, where required by 5 U.S.C. 7106, 7114, and 7117, and other applicable government-wide laws and regulations, prior to implementation of any policies, practices, and/or procedures.

#### **Section 4. Mid-term Negotiations**

- A. In the spirit of bilateral relationship, the Parties agree that changes in working conditions will create a need for the Management and the Union to propose mid-term negotiations. The Parties may propose changes in working conditions not in conflict with this Agreement or contrary to law, case law, government wide regulations or agency wide policy.
- B. If negotiations are requested, the Parties are obligated to meet or otherwise communicate at reasonable times on a timely basis and bargain in a good faith effort to reach agreement with respect to the proposed changes to working conditions. Management may implement changes in working conditions after the Union has been notified in writing of the changes and given the opportunity to bargain, including conclusion of mediation and impasse procedures, or as otherwise authorized by the Labor Management Relations Statute. The Parties will use traditional bargaining.
- C. Management agrees that it will not unilaterally implement changes in personnel policy or practices or working conditions without proper notice to the union, except for emergencies [reference 5 U.S.C. 7106 (a)(2)(D)], or changes that are *de minimis* or where the topic is already covered in this Agreement. In addition and as required, Management will provide post implementation change notices to the Union whenever the effective date of a change is required by law. It is understood by the Parties that should Management refuse to negotiate based on any of these grounds, it would be doing so at its own peril and the Union may seek redress pursuant to the Federal Labor-Management Relations Statute.

#### **Section 5. Negotiations Procedure**

- A. Local Management will furnish written proposals delineating proposed changes affecting working conditions to the Local Union President. The Union has up to fifteen (15) days after receipt of the proposal to request mid-term negotiations by invoking to negotiate in writing to Local Management. The Agency and Union will then form any additional ground rules, if needed, per Section d. The Union will select their team and formulate their proposals. These will be submitted in writing within 15 days from the date the Union invoked negotiations. The Union may request a meeting with appropriate Management officials so as to better understand the proposal and/or to

work through the issue(s). If a meeting is held the time frame for Union submission of a counter proposal to Management will be fifteen (15) days after the meeting.

Negotiations will start within 15 days from the date the counter proposals are received and will take place at the Forest. Timeframes may be extended by mutual agreement.

- B. Using the same procedures and time frames, the Union will submit written Union initiatives to the designated Management official.
- C. Time Limits: When data is requested from the other Party, the time limits will be automatically extended to that equal to the number of days it takes to receive such data. The Parties agree that data requests will be prudent and necessary to respond to the proposal.
- D. Ground Rules for Mid-Term Negotiations: In the interest of expediting negotiations, Ground Rules for any mid-term negotiations will be agreed upon by the Parties to the extent that the ground rules minimize delay, set reasonable time limits for good-faith negotiations, and call for Federal Mediation and Conciliation Service (FMCS) and Federal Services Impasses Panel (FSIP) services when needed. Union negotiators in numbers equal to the number of Management negotiators will be entitled to official time if they are employed by the Forest Service. At Management discretion, travel and per diem may be paid for the Union negotiators, who are employed by the Forest Service. Additional ground rules may be established by the parties prior to negotiations. Such ground rules may include additional negotiators, in accordance with the Federal Labor-Management Relations Statute. The Parties will use most economical and efficient means to conduct negotiations, such as face-to-face, Video Tele-Conferencing (VTC), Skype, ConferenceMe, Video Chat, email, etc.

**Section 6. Past Practices** - Privileges of employees which by custom, tradition, and known past practice have become an integral part of working conditions shall remain in effect unless modified pursuant to negotiations, unless they are determined to violate law, or any Government-wide, Department or Forest Service Policy or Regulations.

**Section 7. Impasses in Negotiations** - In the event of an impasse, either Party may invoke mediation, and, if unsuccessful, may request the Federal Services Impasse Panel (FSIP) to consider the matter.

**Section 8.** If Management believes a written Union proposal is non-negotiable, it will raise the issue of negotiability in a timely fashion at the early stages of the negotiation process so that attempts can be made to cure any negotiability problems. The union will be provided on request with a written statement of the rationale for a claim of non-negotiability. The union may submit a negotiability appeal to the FLRA in accordance with applicable regulations.

## ARTICLE 8

### TRAINING

**Section 1.** Management and the Union agree that the training and development of Employees within the unit is a matter of primary importance to the parties. Through the procedures established for Employer-Labor cooperation, the parties will seek the maximum training and development of all Employees. Consistent with its needs, Management agrees to develop and maintain forward-looking, effective policies and programs designed to achieve this purpose.

**Section 2.** Selection for training which may lead to promotional opportunity or opportunities will be in accordance with Merit Promotion Program regulations.

**Section 3.** Management will identify areas of skill in which deficiencies exist and will establish training opportunities in these areas and inform the Employees how to apply for training to the extent it is consistent with available funds, Employee needs, and benefit to the unit.

**Section 4.** Within discretion of the Employee's Position Description (PD), Management may provide Employees on-the-job training to the maximum Employee benefit, employing such techniques as interchanging Employees when they share mutual desires and aptitudes to receive training in each of their respective positions.

**Section 5.** Supervisors will identify those situations in the specific work environment where training can aid the achievement of defined objectives and goals of Management.

**Section 6.** It is of mutual interest to Management and the Union to see that the Employees perform at the highest professional level at all times. Effort will be made by Management to see that Employees are given the opportunity to attend courses, conferences and seminars available in the community.

**Section 7.** Employees will discuss their training needs with their first line supervisors to develop individual training plans. Training provided by management will have primary focus on the present job and secondary on developmental activities, which will broaden Employees for further responsibilities. Employees have the responsibility to work with their first line supervisor to implement an annual Individual Development Plan (IDP) utilizing the Agency's learning management system (LMS), which is currently AgLearn. Individual training plans will be reviewed per the requirements of the current department regulation by the first line supervisor with the Employee to ensure that the plan is followed.

**Section 8.** The travel time to attend workshops, seminars, and training, etc., may be compensated for by Management in accordance with provisions of Federal Travel Regulations, Title 5, and the Fair Labor Standards Act.

**Section 9. Records:** AgLearn is the current depository for the employee training plan and certification of accomplishment.

**Section 10. Expenses:** Approved training expenses should be paid by the Forest Service and will not be reimbursed to the employee.

**Section 11. Use of Equipment:** Management agrees to make available to all employees enrolled in approved training courses academic aids, if available on the premises of the activity at mutually agreeable times during the employee's on duty and off duty hours.

**Section 12. Joint Training:**

- A. Orientation of employees to this Agreement may be arranged by the Parties. The Parties may agree to a joint training of managers, supervisors and employees regarding this Agreement.
- B. Arrangements including use of official time for attending the above may be mutually agreed to.

## **ARTICLE 9**

### **EQUAL EMPLOYMENT OPPORTUNITY**

**Section 1.** Management agrees not to discriminate on the basis of race, color, religion, sex, national origin, age, disability, reprisal (for prior participation in an EEO activity or having opposed discrimination), political affiliation, sexual orientation, marital status, parental status, or genetic information. Management and the Union agree to cooperate in supporting equal opportunity for all employees.

**Section 2.** Management and the Union agree to support the work environment program to eradicate every form of prejudice and discrimination based on age, sex (including sexual harassment or on the basis of marital status), race, religion, color, national origin, disability, or political affiliation, or other prohibited bases.

**Section 3.** Management will post current agency EEO complaint contacts and procedures.

**Section 4. Multicultural Advisory Committee (MAC):** At least one member of the Forest's Multicultural Advisory Committee (MAC) will be a Union representative. If at any time the Union representative changes, the Union will be allowed to have the outgoing representative and the incoming representative attend the same MAC meeting.

**Section 5. Workforce Diversity** - The Union will support the goal of becoming a multicultural organization with a diverse workforce.

**Section 6. Information and Data** - The MD-715 annual report will be provided for access at <http://fsweb.wo.fs.fed.us/cr/md-715-report.html>.

## **ARTICLE 10**

### **CONTRACTING OUT OF WORK**

#### **Section 1. General:**

- A. Management agrees to provide the Union an opportunity for input related to review of commercial activities and A-76 processes pursuant to Office of Management and Budget Circular A-76. Management will notify the Union of functions planned for study concurrently with notice to field Management and will consider their input.
- B. Management agrees to notify the Union when a decision is made to contract out work that adversely affects the working conditions of Bargaining Unit employees and will negotiate implementation, as appropriate.
- C. Management will notify the Union of any change in applicable law, rule, or regulation relating to contracting out work that affects Bargaining Unit employees.
- D. Prior to conducting any cost comparison study of Bargaining Unit work, Management may consider innovative alternatives.

**Section 2.** Upon request, Management will provide the Union representative at the appropriate level with all available and releasable information.

**Section 3.** Management will provide an opportunity, upon request, for a Union representative in the “walk through” of the function undergoing a cost study or a contracting decision that affects Bargaining Unit employees.

**Section 4.** The Union, upon request, may attend public bid openings and review independent Government estimates at the time of openings.

**Section 5.** Management will provide appropriate assistance to employees adversely impacted by contracting out decisions. Parties at the appropriate level may negotiate specific appropriate arrangements.

**Section 6.** Management will post a notice to the workforce about employee responsibilities in regard to reporting fraud, waste, and abuse.

## **ARTICLE 11**

### **PERFORMANCE MANAGEMENT**

**Section 1.** Union and management agree that performance management will be in accordance with the most current Department Regulation (DR 4040-430 – Employee Performance Management dated February 6, 2019) USFS performance management system (FSH 6109.13 dated June 6, 2006).

## **Section 2. Performance Ratings for Union Officials:**

- A. Employees who are Union officials are not rated for their representational work (Union duties). Employees are only to be rated on Agency-assigned work.
- B. Union officials while performing Agency-assigned work will be expected to perform that work at the Fully Successful level. The supervisor will describe this level in their performance standards and elements. The performance expectations will be adjusted for official time used to perform representational work from the performance of the agency assigned work, taking into consideration any impact on productivity and/or timeliness due to the performance of representational work.

## **ARTICLE 12**

### **WORK SCHEDULES**

**Section 1.** Work schedule assignments will be based on the nature of the assigned work. Work schedules must be approved in advance to assure work objectives are met and to give employees a reasonable advanced notice. The work schedules that may be utilized are: Standard-fixed, Compressed-fixed, and several flexible schedules; the Standard-fixed is the default work schedule.

**Section 2.** Fixed Work Schedules will be administered in accordance with 5 CFR § 610.102. There are two types of Fixed Schedules, Standard or Compressed. The following definitions apply to both:

- A. For those on a Fixed Schedule, the Regularly Scheduled Administrative Workweek (RSAW) means the period within an administrative workweek within which the employee is regularly scheduled to work including any regularly scheduled overtime hours. The term Tour of Duty (TOD) means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek. An employee's RSAW will be recorded in the header of their Paycheck record.

If Management has a need to change the RSAW, TOD and/or any on-call schedule, they will provide notice in writing to the employee of changes. Notice will be provided at least one pay period in advance, except for emergencies and unforeseen situations, which would result in undue hardship in mission accomplishment and/or substantial additional cost. Management will give consideration to an employee's personal needs prior to changing the RSAW, TOD and/or on-call periods.

Employees may request to change their schedule at any time throughout the calendar year. Such requests should be submitted as far in advance as possible, and will be processed on a first come, first served basis. Employees do not need to provide a business justification for the schedule change. Management will provide their decision in writing within 14 days. When approved, schedule changes will take effect as soon as the first pay period following the date of

approval. If the request is denied, the decision will state the reason for the denial. An employee may have Union representation, if requested, during discussions with Management about changes in their RSAW, TOD, and/or on-call period. Any remaining conflicts will be resolved in favor of the most senior employees, based on service computation date.

**Section 3. Standard-Fixed Work Schedules:** A standard work schedule consists of 5 consecutive 8 hour workdays, normally Monday through Friday, in which the employee has a set arrival and departure time. Exceptions may occur when work requirements make it necessary to include Saturdays and/or Sundays as part of the basic workweek for certain employees. Days off will normally be 2 consecutive days.

An employee's RSAW will generally fall between the hours of 6 a.m. and 6 p.m., on 5 consecutive days in each week of the pay period. The supervisor and employee will establish an initial work schedule, including start and end times for each day of the pay period. Upon supervisory approval, employees may permanently change the established starting and ending time of their RSAW. Management may make exceptions to these hours.

**Section 4. Compressed Fixed Work Schedules:** Compressed work schedules (CWS) are fixed schedules in which employees complete their basic work requirement in less than 10 days during a pay period, in accordance with 5 U.S.C. § 6120-6133.

Compressed schedules are fixed schedules, and employees may not vary the time of arrival or departure. Employees on a CWS will have scheduled hours of work that generally fall between 6:00 a.m. and 8:00 p.m. The supervisor and employee will establish an initial work schedule, including start and end times for each day of the pay period. Upon supervisory approval, employees may permanently change the established starting and ending time of their RSAW.

The following Compressed schedules may be approved by Management:

- A. 4-10: The employee works four 10 hour days per week. Employee schedules day off with supervisor.
- B. 5-4/9: The employee works eight 9 hour days with one 8 hour day. Employee schedules a choice of short day (8 hours) and a choice of day off with supervisor.

When approved for a CWS, employee selection of short days and off days, is subject to Supervisor approval. At the request of the employee, the supervisor may approve a temporary or permanent change in the scheduled off day or short day.

Employees on a CWS will receive pay for the number of hours they were scheduled to work on holidays, and will be required to account for the number of hours they were scheduled to work if they use leave. Full time employees on a CWS who are not scheduled to work on the holiday will receive an "in lieu of" holiday, normally on the preceding workday, in accordance with 5 U.S.C. § 6103.

## Section 5. Flexible Work Schedules

- (a) Flexible Work Schedules (FWS) are schedules for which an employee may vary the length of their workday and/or workweek. For FWS, the term Basic Work Requirement means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise. The administrative workweek for those on a Flexible Schedule is a period of 7 consecutive days beginning on Sunday. A flexible or compressed work schedule is a scheduled tour of duty and all work performed by an employee within the basic work requirement is considered regularly scheduled work for premium pay and hours of duty purposes (5 CFR § 610.111 (d)). Scheduled hours may vary from pay period to pay period, week-to-week, and day-to-day. An employee's tour of duty and established work schedule will be recorded in the header of the Paycheck record.
- (b) The following FWS may be approved by Management:
- (1) Variable day schedule is a type of FWS containing core hours on each workday in the week and in which a full-time employee has a basic work requirement of 40 hours in each week of the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday within the week within the limits established in this article. Employees must work 5 consecutive days in each week of the pay period. For a part-time employee, the basic work requirement is the number of hours the employee must work in a week.
  - (2) Variable week schedule is a type of FWS containing core hours on each workday in the biweekly pay period and in which a full-time employee has a basic work requirement of
    - i. 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established in this article. Employees must work 5 consecutive days in each week of the pay period. For a part-time employee, the basic work requirement is the number of hours the employee must work in a pay period.
  - (3) Maxiflex schedule is a type of FWS in which the employee may vary the number of hours per day and the number of days per week, accounting for at least 80 hours per pay period, including core hours. There are core hours on fewer than 10 workdays per pay period. For a part-time employee, the basic work requirement is the number of hours the employee must work in a pay period.
  - (4) Gliding schedule is a type of FWS in which a full-time employee has a basic work requirement of 8 hours in each day and 40 hours in each week. Employees may select a starting and stopping time each day within the established flexible hours. Employees must work 5 consecutive days in each week of the pay period.
- (c) A tour of duty under a FWS means the limits set by Management within which an employee must complete their basic work requirement. Employees and their supervisor are expected to communicate regularly about when and where the employee is working and what work activities are planned.
- (d) Flexible time bands are the times during the workday, workweek, or pay period within the

tour of duty during which an employee covered by an FWS may choose to vary their times of arrival to and departure from the work site consistent with the duties and requirements of the position. (See 5 U.S.C. § 6122 (a)(2)). Changes to the flexible time band for a flexible schedule may be negotiated to address work requirements of the work unit.

- (e) Core hours are a component of FWS, will be established with the supervisor and will ordinarily remain consistent after they are initially established. Core Hours are the time periods during the workday, workweek, or pay period that are within the tour of duty during which an employee covered by a flexible work schedule is required by the Agency to be present for work, or otherwise account for their time. Employees may request, and supervisors may grant permanent or temporary deviations from core hours on a case-by-case basis.
  - 1) The default core hours for employees on Maxiflex schedules will be determined by the Supervisor and employee and include 3 days of the employee's tour of duty from 9 a.m. to 12 p.m., excluding a meal break.
  - 2) The default core hours for employees on Variable Day and Variable Week schedules will be 9 a.m. to 12 p.m. on each day of the tour of duty, excluding a meal break.
  - 3) Changes to the specific clock hours designated as core hours and which days of the week are core days for the work unit may be negotiated by the Parties.
- (f) Credit hours are those hours within a FWS that an employee elects to work, with supervisor approval, in excess of their basic work requirement so as to vary the length of a workweek or workday. Employees on a fixed schedule (Standard or Compressed) are not eligible to earn or use credit hours.
  - 1) Credit hours are earned at the election of the employee and cannot be assigned. An employee may not be forced to earn credit hours. No coercion may be placed on any employee for the purpose of interfering with that employee's right under a FWS to elect a time of arrival or departure and to work or not work credit hours (5 U.S.C. § 6132).
  - 2) Employees must request approval from their supervisor to earn credit hours, by notifying the supervisor of their intent to earn credit hours at least 2 hours in advance, including the work they plan to perform and approximate time; however, supervisors have the right to deny the earning of credit hours if there is no assigned work that may be performed during that time. Employees and supervisors may mutually agree on alternate arrangements for exceptions to obtaining prior approval regarding the earning of credit hours on a continuing basis. In either case, the supervisor shall be informed as soon as practical that the hours were worked.
  - 3) Employees have the option of recording credit hours earned daily or after 80 hours.
  - 4) Credit hours may not be earned while an employee is in training. The earning of credit hours or compensation time for travel will be in accordance with existing law and regulation.
  - 5) The use of credit hours must be scheduled and approved in advance like any other absence from work. The employee will be released from work unless there are work-related reasons. Normally, ordinary workload will not preclude this release.
  - 6) Credit hours may be earned and used within the same biweekly pay period, but credit hours must be earned before they can be used.
  - 7) Credit hours may be used during core hours.
  - 8) Employees cannot be forced to use credit hours.

- 9) A maximum of 24 hours may be used as a credit hour carry-over from one pay period to another with flexible work schedules. Employees on part-time tours may carry over credit hours on a prorated basis of one-fourth of their part-time tour hours.

**Section 6. First 40 Hour Tour**

The first 40 hour tour of duty will be used only when extenuating circumstances preclude a regular schedule of definite hours of duty for each workday of a RSAW in accordance with 5 CFR § 610.111 (b). First 40 hour tours will not be used to circumvent overtime pay or compressed work schedules.

**Section 7.** Management may restrict an employee on an FWS from electing to perform work as part of their basic work requirement on a Sunday in order to avoid the increased operational costs associated with Sunday premium pay; however, such an employee may elect to earn credit hours on a Sunday. Only employees who are regularly scheduled to work on Sunday are entitled to Sunday differential.

**Section 8.** Management has the responsibility to approve and monitor the work schedules of the employees. An employee may not be assigned to a FWS unless they request one. All employees may request in writing a change from their assigned Fixed Work Schedule, either Standard or Compressed, to any other schedule, including all FWS options described in this article. Employees do not have an entitlement to a CWS or a FWS. In reviewing an employee's request for a change in schedule, Management will consider the needs of the business unit, as well as the employee's productivity, the level of direct or indirect services furnished to customers, and the cost of operations. Denials of employee schedule requests shall be in writing, transmitted to the employee within 14 days, and include the rationale for the decision and upon request the Union will receive a copy.

Upon request, Management will provide the Union with a list of all positions that have been determined to be ineligible for compressed or flexible work schedule, including the name of the organizational unit, which schedules are inappropriate, and the reason for the determination.

Upon an employee's request, Management will remove an employee from an FWS within one pay period.

**Section 9.** If the head of an agency finds that a particular AWS schedule has had an "adverse agency impact," the agency must promptly determine not to continue the schedule (5 U.S.C. 6131(a) (2)). The agency may reopen this agreement to seek its termination (5 U.S.C. 6131(c) (3)). If an impasse results, the dispute goes to the Federal Service Impasses Panel, which will determine within 60 days whether the agency's determination is supported by evidence. If it is, the Panel must act in favor of the agency. See 5 U.S.C. 6131(c) (3) (B) and (C)). The AWS schedule may not be terminated until agreement is reached or the Panel acts. (See 5 U.S.C. 6106 and 6131(a) (3) (D).)

Discontinuation or Denial of an Employee's AWS: Management may discontinue the CWS or FWS for an employee when they have identified an adverse impact to the Agency based on the following criteria (5 U.S.C. 6131(b)): (a) Productivity, (b) level of direct or indirect services furnished to customers, (c) cost of operations, other than reasonable administrative costs, or (d) to meet the mission of the Agency. Written notice shall be transmitted to the employee at least 10 days in advance and will include the rationale for the decision.

**Section 10.** Management will pay an employee reassigned from an FWS to a fixed schedule or CWS for all accumulated credit hours, not to exceed 24 hours, at the employee's regular rate of pay (5 U.S.C. § 6126 (b)) within three pay periods.

**Section 11.** When in official travel status away from their duty station, employees attending training that exceeds two days shall be temporarily placed on a schedule consisting of five 8 hour days and will be guaranteed 8 hours on each training day. Employees not in official travel status who attend training will remain in their normal work schedule and record their actual hours of training and work. For example, employees released from local training are expected to return to their duties or otherwise account for their time through leave, credit hours, or flexing their hours.

**Section 12.** Employees are required to take a minimum of 30 minutes for an unpaid meal break roughly halfway through their schedule on any day that they work more than 6 hours. Employees who are required to work during their scheduled meal period shall be compensated at the appropriate rate in accordance with 29 CFR § 785.19.

**Section 13.** The Agency agrees that employees will receive one 15 minute break per 4 hours worked, typically one before the lunch break and one after the lunch break. Breaks will not be combined with lunch or start/stop times, however may be used at any time before and after the lunch break.

Management will ensure that clean-up time or time spent preparing work for the next shift is compensated as hours worked. The Agency will consider situations where employees have clean-up needs and/or are working at sites located a distance from work facilities. Overtime is not authorized under this section unless directed by Management.

**Section 14.** Travel shall normally be scheduled to provide for the employee to travel during the basic workweek.

**Section 15.** Management may make short-term changes, of no more than one pay period, in work days and/or arrival and departure times that are necessary to accomplish the work objectives of the unit.

Decisions on short-term changes of any work schedule for any employee will not be arbitrary or capricious and will be based on work requirements. The changes must be administered fairly

and equitably in the work unit affected. The Union will be notified of the changes at least 30 days in advance when possible.

**Section 16.** Limit hours of duty to not more than 12 hours per day except in emergencies or when extenuating circumstances warrant, with Supervisory approval.

**Section 17.** Upon Management approval, an employee may be released to participate in fire assignments. Qualified employees register through Resource Ordering Status System (ROSS) and will not be selected in an arbitrary or capricious manner.

**Section 18.** An employee may have union representation, if requested, during discussion with Management about changes in their work schedule.

### **Section 19. Overtime**

- FWS: Overtime hours are all hours of work in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance by management. (See the definition of “overtime hours” at 5 U.S.C. 6121(6).). Overtime does not include hours that are worked voluntarily, including credit hours, or hours that an employee is suffered or permitted to work which are not officially ordered in advance (5 CFR 551.401(a)(2)).
- CWS: For employees under a CWS program, overtime hours are all officially ordered and approved hours of work in excess of the compressed work schedule. For employees who are covered by the FLSA (nonexempt), overtime hours also include any hours worked outside the compressed work schedule that are “suffered or permitted.” (See 5 U.S.C. 6121(7).)

#### **Compensatory Time Off in lieu of Overtime**

- FWS: An agency may grant compensatory time off in lieu of overtime pay at the request of the employee under an FWS for overtime hours of work that are regularly scheduled or irregular or occasional. (See 5 U.S.C. 6123(a) and 5 CFR 550.114(b).)
- CWS: An agency may grant compensatory time off in lieu of overtime pay at the request of the employee under a CWS for irregular or occasional overtime only. (See 5 U.S.C. 5543(a)(1) and 5 CFR 550.114(a).)

#### **Night Pay**

- FWS: Agencies must pay night pay for those hours that must be worked between 6 p.m. and 6 a.m. to complete an 8-hour daily tour of duty. Agencies must also pay night pay for any non-overtime work performed between 6 p.m. and 6 a.m. during designated core hours. (See 5 U.S.C. 6123(c).)
- CWS: An employee is entitled to night pay for regularly scheduled night work performed between the hours of 6 p.m. and 6 a.m. (See 5 U.S.C. 5545(a).)

#### **Holiday Pay**

- FWS: A full-time employee who is relieved or prevented from working on a day designated

as a holiday is entitled to his or her rate of basic pay on that day for 8 hours. (See 5 U.S.C. 6124.) A FWS employee cannot receive more than 8 hours of holiday pay.

- CWS: A full-time employee who is relieved or prevented from working on a day designated as a holiday is entitled to his or her rate of basic pay for the number of hours of the compressed work schedule on that day. (See 5 U.S.C. 6128(d) and 5 CFR 610.406(a).)

### **Holiday Premium Pay**

- FWS: A full-time employee who performs non-overtime work on a holiday (or a day designated as the “in lieu of” holiday under 5 U.S.C. 6103(b) or section 3 of E.O. 11582) is entitled to his or her rate of basic pay plus premium pay equal to his or her rate of basic pay for that holiday work. Holiday premium pay is limited to a maximum of 8 hours. (See 5 U.S.C. 5546(b).)
- CWS: A full-time employee who performs non-overtime work on a holiday (or a day designated as the “in lieu of” holiday under 5 U.S.C. 6103(b) or (d) or section 3 of E.O. 11582) is entitled to basic pay plus premium pay equal to his or her rate of basic pay for the work that is not in excess of the employee’s compressed work schedule for that day. (See 5 U.S.C. 6128(d) and 5 CFR 610.407.)

### **Sunday Premium Pay**

- FWS: An employee is entitled to Sunday premium pay for up to 8 hours for work performed during a regularly scheduled basic tour of duty that begins or ends on Sunday. (See 5 U.S.C. 5546(a) and 5 CFR 550.171.) However, an agency may preclude employees from working flexible hours during a basic tour of duty that begins or ends on Sunday.
- CWS: An employee is entitled to Sunday premium pay for all non-overtime hours the employee works during each regularly scheduled basic tour of duty that begins or ends on Sunday. (See 5 U.S.C. 6128(c).)

## **ARTICLE 13**

### **LEAVE**

**Section 1.** Management and the Union agree that it is not only the right, but also the duty, for Employees and Management to be aware of, and abide by applicable leave regulations, operating policy and provisions of this agreement. Sick leave is an entitlement. The Parties agree to follow current government wide-laws, rules and regulations (see FSH 6109.11, Chapter 30, dated August 23, 2017).

## **ARTICLE 14**

### **ENVIRONMENTAL DIFFERENTIAL FOR WAGE GRADE EMPLOYEES**

Environmental differential pay will be authorized and paid in accordance with applicable government wide laws, rules, and regulations (currently 5 CFR 532, Subpart E, Section 532.511, FSH 6109.11, chapter 10 dated July 26, 1996).

## **ARTICLE 15**

### **OVERTIME**

**Section 1.** Scheduling: Management will strive to provide employees with a 24 hour advance notice, or notice at the earliest possible time after a decision to assign overtime has been made except in cases of emergencies. The Parties recognize that in emergency situations, advance notice is not always possible. Advance notice is not necessary for pre-posted fire standby assignments. The Parties agree that Management will monitor overtime usage at the Forest level. Management agrees to provide information regarding overtime assignments and usage, to the Union upon written request.

**Section 2.** Employees who work overtime shall be allowed a fifteen (15) minute paid break for each 4 hour period worked. If an employee is working at least a block of 8 hours overtime, a thirty (30) minute non-duty lunch period will be authorized. Employees who are required to work during their scheduled meal period shall be compensated at the appropriate rate. As to bona fide meal periods, see 29 CFR 785.19.

**Section 3.** Employees called back to work outside of their basic work schedule shall be paid a minimum of two (2) hours pay, regardless of whether the employee is required to work the entire two hours. It is understood that this provision only applies when an employee is not already at the work site. The purpose of the 2 hour guarantee is to compensate employees for the special trip back to the work site. Employees called back to work outside their normal work week will be released promptly upon completion of the task they were called back to complete.

**Section 4.** When judged essential to Forest operations, Employees will be required to work on their properly determined holidays. Method of rotation may be negotiated, if requested by either Party, at the local level.

**Section 5.** Basis and Responsibility: The assignment of overtime work will be based upon mission, workload requirements, and compliance with appropriate legal and regulatory requirements. Furthermore the Parties recognize a mutual responsibility for expeditious and efficient service to the public. The Parties agree that the assignment of an individual to overtime work or the denial of such assignment will not be made to reward or discipline an

employee. Overtime may be ordered of an employee when work requirements so dictate. However, an employee will be excused from overtime assignments when the employee's health or safety would adversely be affected by the assignment or for other reasons acceptable to Management. In cases where working overtime work would create a personal hardship for an employee, management will consider other available options prior to assignment of the overtime work.

Overtime payments will be made in 15-minute increments for irregular/occasional overtime performed by FLSA nonexempt employees.

**Section 6. Assignments:** Overtime assignments will be distributed and rotated equitably among available qualified employees within a local unit. Method of rotation may be negotiated, if requested by either Party, at the local level. The Parties recognize that equitable is not necessarily equal in terms of number of overtime hours assigned or worked. It is understood by the Parties that certain specialized overtime needs will be required more than others and will be exempt from the rotational requirements, (such as contracting officers, inspectors, heavy equipment operators, fire fighters with special qualifications and skills). The Parties recognize that entitlement to overtime for hours worked varies considerably based upon tours of duty, the relationship of overtime needs to an employee's regular assignment, and the work schedules of individual employees. Units are encouraged at the local level to establish and maintain a rotation system for Fire Standby to ensure that all qualified employees have equal opportunity for standby assignments. **Mandatory overtime** - Method of rotation may be negotiated, if requested by either Party, at the local level.

- A. Employees are responsible for providing their supervisor up to date contact information. Employees assigned to overtime work will be given as much advanced notice of such assignments as possible.
- B. Overtime assignments may be assigned to any Forest employee, at Management's sole discretion, provided the terms this Article are complied with.
- C. Employees are required to obtain Management approval prior to working any overtime.

**Section 7. Irregular or Occasional Overtime:** The Parties agree that irregular or occasional overtime will be in accordance with appropriate government-wide laws, rules, and regulations. "Suffer and permitted" overtime is covered under the Fair Labor Standard Act, 29 CFR 785.11 and 785.12, and 5 CFR 551.

## **ARTICLE 16**

### **POSITION DESCRIPTION AND CLASSIFICATION**

**Section 1. Policy:** The position description (PD) serves as a method for organizing work and for informing Employees of their working relationship to their supervisor, as well as the major duties they are expected to perform.

- A. A PD is deemed to be accurate when the principal duties, knowledge requirements, and supervisory relationships are described, and it covers 80 percent or more of the work situation.
- B. All major duties must be covered in the PD. "Major duty" is defined as a grouping of tasks which is series or grade controlling if they 1) are a regular and continuing part of the job; 2) are performed 25 percent or more of the time; and 3) involve a higher level of knowledge and skill.
- C. Duties that require special training, performance, or credentials, which are necessary to perform the job, should be reflected in the PD even if they are less than 25 percent of the employee's time.

**Section 2.** The PD shall be reviewed annually by the employee and their supervisor, normally during the performance evaluation process to assure that position descriptions are current and properly classified.

**New or Revised Position Descriptions:**

- A. When an employee is assigned additional major, regular, and recurring duties, which are likely to exceed 12 months, not reflected in their position description, Management will revise the PD to reflect the changes in accordance with this Article.
- B. For new employees, or when a new PD has been approved and classified, the supervisor and the employee will review and discuss the PD and how it relates to performance expectations under Article 15. The employee may have a Union representative present. Management reserves the right to assign work per 5 U.S.C. 7106.

**Section 3.** Position Description Review/Classification Procedure:

- A. Employee Request for PD Review Any employee who feels that they are performing duties outside the scope of their PD, or that the PD is otherwise inaccurate, will make a written request to their immediate supervisor that the position be reviewed. The total aggregate timeframe for the process in (1)–(3) below will not exceed 45 days, unless mutually agreed in writing.
  - 1. Employee submits request for PD review along with a summary of inaccuracies and/or additional duties not described to their immediate supervisor. The employee and supervisor will discuss whether or not to submit a new PD.
  - 2. If the supervisor agrees that the PD is inaccurate, a proposed PD will be prepared by the supervisor, and the employee will be promptly provided with copies of all other documents the employee must complete. In preparing the proposed PD, the supervisor will consider the employee's written and oral comments, if applicable. If further modifications of the proposed PD occur prior to classification, the supervisor will discuss the changes with the employee. Agency documents to be completed by employees as

part of the PD review will be clear, concise, understandable, and similar for all employees and posted on the Classification section of the HRM website.

3. After the proposed PD and required documents are completed, the PD review package will be submitted to HRM by the supervisor for classification. A copy of the review package will be given to the employee.
- 
- B. Management initiated PD Review: When a PD review is initiated by Management (for example, new classification standards or supervisor perceives a change in duties), the supervisor will discuss proposed changes to the PD and will consider feedback from the employee prior to submitting the PD review package to HRM for classification. The employee and supervisor will complete the applicable documents required to provide a complete PD Review Package.
  - C. If the employee and supervisor do not agree on the accuracy of the PD, the employee may grieve the accuracy of the PD in accordance with Article 23.
  - D. For all PD reviews, Management will communicate the classification determination to the employee within 60 days from the time the completed PD review package was submitted for classification. The employee will be given a copy of the reclassified PD, cover sheet, and, if applicable, the classifier's evaluation statement.
  - E. The employee may have Union representation during any discussions between the employee and supervisor/management related to the review and classification. The role of the representative is to help the employee understand the process and articulate their duties.
  - F. Management shall refrain from temporarily reassigning an employee's work during the PD review if the sole purpose for reassigning the work is to avoid reclassification of the employee's position.

**Section 4.** Position Classification Review/Appeal Procedure: The classification of any position which does not result in the reduction in grade and pay of the employee is not subject to the negotiated grievance procedure. However, if the employee believes their position is not properly classified as to title, pay plan, series, and/or grade, the employee may:

- A. Request a Forest Service position classification review:
  1. To initiate a classification review, the employee may submit such a request, through their supervisor, to a Forest Service classifier to have the classification of the position reviewed by a different Forest Service classifier. The classifier will consider the employee's written and oral comments. The employee may have Union representation during any discussions related to the review. The findings, including the reviewer's evaluation statement, will be reported in writing to the employee no later than 90 days from the date of the employee's request to the Forest Service classifier.
- B. Appeal directly to the U.S. Department of Agriculture (USDA) or the U.S. Office of Personnel Management (OPM): The employee may use the USDA or the OPM Classification Appeal procedures directly, or upon completion of the Forest Service Position Classification Review

in Subsection 4.a, above. Employees may request information on the classification appeal rights and process from Management.

**Section 5.** Actions following reclassification at a higher grade: In accordance with 5 U.S.C. 7106, management has the right to assign work. As such, if a review of a position or PD reveals that there has been an accretion of duties, one of the following actions will be taken:

- A. If Management decides to promote the employee, they will be promoted at the beginning of the second pay period after the position has been classified at the higher level, in accordance with Article 19. In the event the promotion is delayed, Management will inform the employee of the reason for the delay and the pay period that the promotion will take effect.
- B. If Management decides to eliminate and/or redistribute the grade controlling duties, the employee will be advised in writing of this decision within 14 days of the completion of the review, including a summary of the duties that are being removed.
- C. If Management temporarily needs the employee to perform these higher graded duties, the employee will receive a noncompetitive temporary promotion, if otherwise eligible. Such temporary promotion will be effective at the beginning of the second pay period after the position has been classified.
- D. None of the above preclude the employee from filing a grievance.

**Section 6.** New or Revised Position Descriptions:

- A. When an employee is assigned additional major, regular, and recurring duties, which are likely to exceed 12 months, not reflected in their position description, Management will revise the PD to reflect the changes in accordance with this Article.
- B. For new employees, or when a new PD has been approved and classified, the supervisor and the employee will review and discuss the PD and how it relates to performance expectations under Article 15., The employee may have a Union representative present. Management reserves the right to assign work per 5 U.S.C. 7106.

## **ARTICLE 17**

### **PROMOTIONS AND DETAILS**

Union and management agree that merit staffing will be in accordance with the most current Department Regulation (DR 4030-335-002 – Merit Promotion and Internal Placement dated July 22, 2015).

## ARTICLE 18

### HEALTH AND SAFETY

**General:** The Parties mutually agree to cooperate in common efforts to create and maintain a safe and healthy workplace, safe and healthy working habits, and conditions to minimize accidents and prevent lost work time due to illness or injury. A safety and health program will be administered in accordance with FSM 6700, as may be changed or amended, and Executive Order 12196.

The Parties agree it is a violation to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner retaliate against any employee because the employee has raised any safety issues pursuant to 29 CFR 24.100(a) and 29 CFR 24.102.

- 1. Workplace Security:** Workplace facilities occupied on a regular basis will have a written workplace security plan, which will be evaluated annually. Each plan, notwithstanding national direction on workplace security, will be developed to meet local situations and may be subject to impact and implementation bargaining. At a minimum, the plan must address the following:
  - A. Occupant emergency plan procedures.
  - B. Security of buildings and surrounding areas, such as parking lots.
  - C. Workplace violence, including but not limited to the procedures for reporting concerns and for establishing threat assessment protocols, to include properly trained threat assessment teams, in accordance with the USDA Handbook on Workplace Violence Prevention and Response.
  - D. Continuation of Operation Plans, including current contacts and a list of positions essential for continued operation, which are updated when there are changes.
  
- 2. Agency Safety and Health Inspections:** Management will conduct an annual safety and health inspection by qualified personnel of Forest Service facilities that are regularly used. The Union will be notified and invited to participate at least 14 days prior to these safety and health inspections. Management will send the Union a copy of reports from the inspections. All first aid equipment will be part of this inspection and their contents shall be updated to meet published Agency standards.
  
- 3. Local Safety and Health Programs:** The Parties may agree through negotiations to establish safety and health programs, such as:
  - A. Health services.
  - B. Preventive medicine.
  - C. Smoking policies.
  - D. Other health and safety issues related to the local work environment.
  - E. Wellness programs.

- 4. Programs for Fitness Activities:** The Parties recognize the benefits of a physically fit and healthy workforce and agree upon the appropriate arrangements whereby employees may voluntarily participate in a wellness program in accordance with USDA Department Regulation (DR) 4060-630 Leave Administration – Leave and Absence which may not exceed 3 hours per week or calendar year limitation, if workload permits. Normal workload should not prevent employees from being eligible to participate in the wellness program, including use of administrative leave. The individual supervisor has the responsibility to determine whether a particular employee, or group of employees, can be spared to participate in fitness activities based on specific or unusual work assignments.
- A. The specific details for each unit’s wellness program will be left to the Local parties. The Parties fully expect collaborative negotiations at the local level to support the health and well-being of employees to the fullest extent practical. However, if disagreement arises through negotiations, or application of local agreements, 3 hours per week of administrative leave is the default.
  - B. The use of administrative leave for wellness activities is authorized only in accordance with a personal fitness plan (PFP), signed and approved by the supervisor. The PFP must specify the authorized activity/activities which are being performed and the authorized time at which they will be performed.
    - 1. For employees on a flexible work schedule, wellness activities should be performed during, immediately preceding, or immediately following an employee’s already established work schedule, unless specified otherwise in an employee’s PFP.
    - 2. For employees on fixed work schedules, wellness time must be taken during their established work schedule.
  - C. Administrative leave for wellness activities should not be granted when greater than 4 hours are previously scheduled for sick or annual leave or on non-work days.
  - D. d. Administrative leave for wellness is not intended to be the routine granting of additional work hours in a pay period. Authorization for administrative leave for wellness activities may be withdrawn where employees exhibit a continued pattern of earning credit hours, compensatory time, or overtime in conjunction with administrative leave for wellness.
  - E. Employees whose normal work schedule does not entitle them to night pay or night shift differential but who elect to exercise between 6 p.m. and 6 a.m. are not entitled to night pay or night shift differential.
  - F. Employees may not be paid Sunday premium pay when in leave status, including Administrative Leave. Sunday premium pay may only be paid for periods when an employee performs work on Sunday. Only employees who are regularly scheduled to work on Sundays due to the nature of the work (e.g., field work) may be granted administrative leave for fitness activities on a Sunday.
  - G. Time commuting to and from an employee’s duty station is not eligible for administrative leave for wellness.

- H. Administrative leave for wellness will be coded using TC 66 and 06 descriptor code. It is the employee's responsibility to ensure that they are participating in wellness activities during the period for which they are claiming administrative leave. The employee's submittal of their T&A certifies that the employee participated in fitness activities during the time administrative leave was charged.
- I. The Parties may mutually agree to exempt administrative leave as a provision of their wellness program. If use of administrative leave in lieu of duty time is not feasible, Parties are encouraged to consider some reimbursement for fees associated with off-duty wellness activities.
- J. These provisions do not affect the physical fitness requirements or policy for those employees who are covered by arduous duties covered by firefighters and Law Enforcement Officers.

**5. Safety and Health Committees:**

- A. The Parties may establish, through negotiations, local Safety and Health Committees to review local health and safety programs and formulate recommendations regarding ongoing problems and useful improvements. If such committees exist, the union will be afforded the opportunity to fully participate as representatives of the bargaining unit on such committees and any subgroups. The following arrangements may be negotiated:
  - 1. Size and composition of the committee.
  - 2. Frequency and scheduling of committee meetings.
  - 3. Publicizing of meetings and distribution or posting of agendas.
  - 4. Local safety award programs.
- B. Further details may be negotiated by the Local parties.
- C. In the absence of a local Safety and Health Committee, the Union will be provided safety policy documents to review prior to Management approval.

**6. Health and Safety Policies:**

- A. Management will provide safe and sanitary working conditions and equipment, consistent with standards promulgated under the Occupational Safety and Health Act of 1970 (OSHA). Consistent with 29 CFR Chapter XVII, Management shall post notices informing employees of the protections and obligations provided for in the OSHA.
- B. The Parties at the forest level agree to meet at least annually to review a safety and health program and to make recommendations. Management agrees to provide the Union, on a case-by-case request, when available, relevant Agency information on safety and health, insofar as it is compatible with the Privacy Act of 1974 as amended.

**7. Personal Protective Equipment (PPE)**

Consistent with applicable policy all employees shall wear or use protective clothing and/or equipment of the type required, approved, and supplied for safe performance of their work.

Management agrees to provide any special and/or unusual safety equipment or supplies (such as personal protective clothing or equipment and devices) necessary as identified in an approved job hazard analysis or Forest Service Handbook (FSH 6709.11 Chapter 70, 72-Exhibit 01). The Union may negotiate the type of safety equipment and safety supplies defined as a result of the job hazard analysis. Equipment and supplies shall be replaced when determined they are no longer acceptable for their intended purpose. Employees may request an inspection of supplies or equipment suspected to be defective and supervisors shall treat such requests as a priority.

**8. Safety Plans and Job Hazard Analyses (JHA)**

Safety plans and job hazard analyses will be reviewed at least annually by the Local parties or safety committees. The safety plan and the job hazard analysis will be jointly reviewed by the employee and supervisor as part of the job hazard analysis process. The job hazard analysis shall be recorded on Forest Service form, FS-6700-7. Management will provide access to copies of Job Hazard Analyses (JHAs), safety plans, and safety data sheets (SDS) information to the employees and the Union. The format for providing this information is negotiable at the Local level.

- 9.** Management agrees to provide adequate sanitary facilities, water, and indoor environmental conditions (including lighting; heating; relative humidity; ventilation; air quality; and absence of pests, airborne pathogens, and irritants) in work areas in accordance with laws and regulations (for example, OSHA). If it is determined that sanitary facilities, water, indoor environmental conditions, and/or space are not adequate to protect the health and safety of an employee in any work area, corrective action will be taken to the extent feasible within a reasonable amount of time after becoming aware of the condition(s). Inspections will be made in accordance with required state and federal standards. In facilities not controlled by the Forest Service, such corrective action will be requested by management at that location within a reasonable amount of time after becoming aware of the condition(s). Actions being taken shall be communicated to employees and the Union within 30 days.

- 10.** Management will, to the extent feasible, eliminate identified safety and health hazards. Whenever such conditions cannot be readily abated, Management shall inform the Union and the parties shall arrange a timetable for abatement, including a schedule of interim steps to protect employees. Arrangements shall include notifications; warnings; relocation of employees, if needed; information to employees exposed to the hazardous conditions; and other steps the parties may agree are necessary under the circumstance, such as holding informational meetings with affected employees.

- 11.** The parties, in the course of normal duties, shall encourage employees to work safely and to report any observed unsafe or unhealthy conditions to the employee's immediate supervisor. Stewards and other representatives of the Union, in the course of performing their normally assigned responsibilities, are encouraged to observe and report unsafe practices, equipment, and conditions, as well as environmental conditions in their

immediate areas that may represent safety and health hazards. The Parties are encouraged to work together to resolve issues related to employee health and safety as they arise, which includes ways to improve safety conditions.

**12. Unsafe Working Conditions:**

- A. Management will annually advise employees, in writing, that they may report any apparent unsafe or unhealthy working conditions without fear of retaliation.
- B. Management shall provide each employee information about the Safety Empowerment Authority and access to the Safety Empowerment Authority card within 30 days of entering upon duty, or upon request to their supervisor.
- C. When an employee feels that he or she is subject to conditions so severe that even a short-term exposure to such conditions would be detrimental to health and safety, he or she should report the circumstances to the immediate supervisor. The supervisor shall inspect the work area or substance in question and analyze the situation to ensure that it is safe (or may be safely handled) before requiring the employee to carry out the work assignment. If any doubt regarding the safety of existing conditions is raised by the supervisor, an appraisal shall be obtained from the appropriate Management official before proceeding. Safety and health specialists may also be consulted by supervisors, employees, or managers, in these situations. The Union will receive, upon request, a copy of any documentation of the inspection or appraisal of the alleged unsafe working conditions.
  - 1. Agency inspections will be conducted promptly in response to employee reports of imminent danger conditions, potentially serious conditions, and for other than serious safety and health conditions in accordance with 29 CFR 1960.28 (d)(3).
  - 2. An inspection may not be necessary if, through normal Management action and with prompt notification to employees, and safety and health committees, the hazardous condition(s) identified can be abated immediately.
- D. If the supervisor determines an unsafe or unhealthy circumstance exists and the supervisor cannot readily correct the hazard, the supervisor will take preventive action as specified in Section 10 above. The employee or group of employees who continue to believe that work is being required under conditions that are unsafe or unhealthy beyond the normal hazards inherent in the operations in question have the right to file a grievance. An employee or the Union may request an OSHA inspection at any time.
- E. In the absence of immediate access to the supervisor, the employee may suspend his or her work whenever any environmental condition or combination of conditions (including, but not limited to, temperature, relative humidity, wind, precipitation, and air quality) become so extreme as to pose an immediate danger to employee health and safety that cannot be readily mitigated by the use of appropriate, approved protective equipment or technology. The employee will then promptly contact the supervisor as appropriate.
- F. Employees may alternately choose to report any unsafe working condition anonymously through the electronic safety reporting system.

### **13. Hazardous Material**

- A. No employee will be required or permitted to handle potentially hazardous materials without the proper training and information as prescribed by Federal law or regulation. As required by laws and regulations (for example, OSHA), a chemical exposure-monitoring plan will be provided for employees working with hazardous materials that pose a threat of long-term physical damage, including appropriate medical examinations and testing at the Agency's expense.
- B. Employees will be made aware of any exposure to hazardous materials when required by OSHA regulations.
- C. Management will make every reasonable attempt to ensure that hazardous or poisonous substances are properly marked and stored in accordance with Federal labeling and storage regulations. Upon discovery of noncompliance with Federal labeling and storage regulations, Management will immediately initiate corrective action.

### **14. On-The-Job Injury or Illness:**

- A. The Agency will take appropriate action to secure emergency treatment for an employee during duty hours for job and non-job-related injuries or illnesses, if the employee's condition is such that they cannot arrange treatment for themselves. Employees shall report to their supervisor all injuries or occupational illnesses that occur on the job, and the information will be entered into the Agency's electronic reporting system. Management will provide assistance in case the employee is unable to do this. This requirement in no way affects the employee's rights and benefits under Office of Workers' Compensation Programs (OWCP) regulations. Management shall expeditiously process and forward to OWCP all documentation that is required by OWCP within the Agency's control when an employee sustains an on-the-job injury or contracts an occupational disease. Upon request, copies will be provided to the employee or the personal representative designated in writing by the employee. Management agrees to provide employees with assistance in processing claims under the Federal Employees Compensation Act.
- B. Where documented medical evidence shows the work environment is contributing to a medical problem, Management will correct identified safety hazards or will make every reasonable effort to place the employee in a suitable environment and/or provide alternate work until the hazard is corrected.

**15. Temporary Accommodation:** When employees are temporarily unable to perform their regularly assigned duties because of documented confirmed illness or injury, but may be capable of returning to or remaining in a duty status, Management may detail such employees to work assignments Management determines to be available and compatible with the employee's physical condition, or temporarily tailor the employee's regularly assigned duties to the physical limitations to the extent Management determines such changes are feasible and warranted.

**16. Permanent Injuries/Disabilities:**

- A. When an employee is permanently injured on the job, the agency shall first attempt to accommodate the employee in their original position.
- B. If the employee cannot be accommodated in their original position, the agency shall make every effort to place the employee in another appropriate position. The employee will be consulted regarding their skills and interests related to placement. At a minimum, placements will take into account the following factors:
  - 1. Maintaining the employee in the same retirement system as the position they were in when they sustained the injury.
  - 2. Maintaining the employee's pay grade, including keeping them on a career ladder if they were on one when injured.
  - 3. Employee's qualifications, including those that may have been obtained from prior work experience and/or experience gained outside the Forest Service.
  - 4. Employee's geographic preference.
  - 5. Short-term training needs.
  - 6. Any special needs or considerations identified by the employee and/or medical practitioner.
- C. If a temporary employee is permanently injured on the job, Management will provide information about where to seek certification under Schedule A to assist with future employment opportunities.

**17. Video Display Terminals (VDTs):** Continuous operation of VDTs over extended periods of time may cause physical problems. Therefore, VDT operators will be provided periodic breaks away from the terminal during their workday. For example, operators may be provided a diversion in work of at least 10 minutes per hour away from the terminal. Ergonomic furniture and preventive devices will be provided when identified in an approved Job Hazard Safety Analysis. Employees may request a temporary assignment that does not require extended use of the VDT.

**18. Blood Borne Pathogens Program:**

- A. Direction and guidance pertaining to this program is contained in FSH 6709.11 Chapter 52.3.
- B. Blood borne pathogens testing: When an employee believes he or she has been exposed to blood borne pathogens in the line of duty, the employee will be encouraged to take the appropriate test as soon as possible to establish a baseline and to file the appropriate documentation (for example, CA-1s and CA-2s). Employees shall be retested as directed by appropriate medical personnel. In any location where tests are not free, or where the employee has concerns about free testing clinics, the Forest Service will pay for the tests in accordance with regulations governing payment for employee testing.

C. No employee will be required to perform CPR or to expose themselves to body fluids without the appropriate protective equipment, except at his or her own discretion.

**18. Occupational Health and Safety Training:** Management recognizes the need for training and orientation regarding occupational health and safety, including training on blood borne pathogens, where appropriate, to ensure employee safety and a minimum loss of work time due to injuries. Management will inform all employees of safe working habits and practices appropriate to their job, with special emphasis on orientation of new employees. In addition, supervisors will instruct employees on safe working habits, practices, and procedures in regard to specific job assignments. The Health and Safety Code Handbook (FSH 6709.11), including applicable regional and forest supplements, will be provided to employees upon request.

**20. Law Enforcement:**

- A. Employees with law enforcement responsibilities will be properly trained and equipped to accomplish the job, providing for safety to employees and the public in accordance with FSM 5300.
- B. Employees with law enforcement responsibilities will normally be provided with radio contact or other provisions for adequate backup. When the law enforcement officer is in a hazardous situation, the law enforcement officer may temporarily absent themselves from the work situation with notification to their supervisor in accordance with Section 13 above.

**21. Communications:**

- A. Employees will be provided with two-way communication devices when identified as necessary by a JHA or as otherwise appropriate for the protection of the employee.
- B. A Satellite Emergency Notification Device (SEND) GPS locator is to be used only as a backup to Forest Service approved two-way communication devices.
  - 1. SEND GPS locators will be used primarily in emergency situations where two-way communication devices are not working or are unavailable to employees.
  - 2. The SEND GPS data will be stored no longer than 30 days, unless they are part of an ongoing administrative inquiry, investigation or subsequent law enforcement investigation.
  - 3. Employees will be provided information on the Standard Operating Procedures (SOPs) of the SEND units. These SOPs include a description of the tools capabilities and limitations. Additional implementation procedures for field use of SEND units are appropriate for local level negotiations.

**22. Notification of Serious Accidents and/or Fatalities:** For serious accidents and/or fatalities involving an employee, either as a victim or as a potential witness, the following procedure will be followed:

- A. Official release of information to the media or public will only be made by the responsible Management official. Release of identity to the media or public will not be made until next of kin has been notified.
- B. The Union will be notified as soon as practicable.
- C. OSHA will be notified immediately of any fatal accident.

**23. Safety Reviews:** Methods that result in organizational learning without employee blame, such as the Coordinated Response Protocol (CRP) and Facilitated Learning Analysis (FLA), shall be used when safety incidents are reported or accidents occur. However, this does not preclude any other investigation by civil authorities or other agencies.

- A. Employee Participation in Safety Reviews Conducted by the Forest Service - Employee rights in examinations are described in Article 5. All examinations associated with safety reviews (that are intended for organizational learning without employee blame) are voluntary examinations. Employees shall not be disciplined for declining to participate in a safety review or to answer any questions in a safety review.
- B. Union Participation in Safety Review Teams:
  - 1. The Union may be invited to participate as a team member in all forest level safety reviews, including serious accident investigations, FLAs or Learning Reviews, established under the CRP.
    - a) The representative serving on such teams will be expected to keep all the confidences that all team members must keep.
    - b) The Union may be invited to observe the accident review board.
    - c) The Union may be provided copies of all reports related to serious accidents or fatalities upon request after the Management review process is complete, which is normally within 60 days of the incident.
  - 2. Union representatives may not participate on teams formed for the purpose of criminal or disciplinary investigations. However, this does not preclude Union representation in Weingarten situations (see Article 5).
- C. The Union may be given the opportunity to review and make recommendations on all reports of unsafe conditions, minor safety incidents, or near misses and may be provided a copy of management's actions, if any, to abate the conditions.

**24. Safety Training for Union Representatives:** Within budget constraints, the Union will be offered to send a representative to attend Forest Service-sponsored national safety training sessions, including Facilitated Learning, Coordinated Response Protocols, and other such training events.

**26. Safety Meetings:** Each work unit will hold meetings that contain safety topics on a regular basis. This does not preclude the need for more safety discussions.

## ARTICLE 19

### DISCIPLINE AND ADVERSE ACTIONS

**Section 1.** General: Management and the Union agree it is important that supervisor/Employee relationship encourage early recognition and resolution of potential performance or conduct situations which could lead to disciplinary actions. Disciplinary actions against all Employees must be based on just cause, be consistent with applicable laws and regulations and be fair.

Discipline is any action taken against an Employee that results in a letter of reprimand, suspension without pay, reduction in pay or grade, or removal from the Forest Service.

When Management becomes aware of potential misconduct or misconduct by an employee, the employee will be contacted as soon as practicable and instructed to discontinue the misconduct.

**Section 2.** Prior to issuing a Letter of Reprimand or notice of proposed disciplinary action, the official issuing the letter of notice, or his/her designee, will undertake a preliminary inquiry to obtain pertinent facts relating to the disciplinary situation. The inquiry, when necessary, will include a discussion with the affected Employee.

The Employee may, in accordance with Article 6, Section 1, be represented by the Union. If involved in a discussion with Management, which may result in disciplinary action being taken, the employee may elect not to participate in the discussion and request reasonable time to secure a union representative. When necessary, disciplinary action will be initiated within a reasonable time period after the incident in question, or after Management knew or reasonably should have known of the incident, unless other official, legal or administrative action is in progress.

**Section 3.** For purposes of this Agreement, discipline will be divided into three types: (a) Letter of Reprimand; (b) suspension for fourteen (14) days or less; (c) suspension of more than fourteen (14) days, removal, furlough without pay, or reduction in pay or grade.

A. Letter of Reprimand: A Letter of Reprimand may be issued directly to an employee without a proposal letter after the employee has been counseled by the supervisor, and will be sufficiently specific to indicate why the letter is being issued and what the Employee can do to improve or take needed corrective action.

1. The Letter will advise the Employee that the reprimand will be retained in the Official Personnel Folder for a period of one (1) year.
2. Employees may file a grievance over the issuance of a Letter of Reprimand under the grievance procedure contained in this Agreement.

- B. All Other Disciplinary Cases: In the event an Employee is issued a notice of proposed disciplinary action, that Employee must be afforded and made aware of all the rights and privileges due him/her. In all cases, the Employee and/or a representative will be given the opportunity to review the evidence issued to support the charges, using the assistance of the Union as desired.

The Employee will be granted a reasonable amount of duty time to prepare an answer to the proposal. Arrangements for use of such time must be approved by the immediate supervisor.

- C. Suspension of fourteen days or less (5 U.S.C. 7503): The following applies to an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less. Such an Employee is entitled to:

1. an advance written notice stating the specific reasons for the proposed suspension;
2. a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer. Time limits for the employee's response may be extended upon written request and will be considered at management's discretion based on the reason for the request.
3. be represented by themselves, or a Union representative, or an attorney with a financial liability waiver of attorney's fees, or other representative;
4. written decision and the specific reasons therefore, at the earliest practicable date;
5. grieve the decision, if adverse, through the negotiated grievance procedure contained in Article 23. The written decision will advise the Employee of this right.

- D. Removal, suspension for more than fourteen days, furlough for thirty days or less, or reduction in pay or grade (5 U.S.C., Chapter 75): The following applies to (1) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed one year of current continuous employment under other than a temporary appointment limited to one year or less; and (2) a preference eligible in the excepted service who has completed one year of current continuous service in the same or similar positions. Such an Employee is entitled to:

1. At least thirty (30) days advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;
2. The advance notice should inform the employee of the specific time frame for responding, and note that requests for extensions will normally not be granted except for extenuating circumstances. Extenuating circumstances do not include: the time

needed to seek and secure representation, availability of a specific representative, the complexity of the case and/or size of the file containing the materials relied upon to support the proposal notice, or similar circumstances.

3. A reasonable time, not less than 7 calendar days, nor more than 14 calendar days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
4. Be represented by a Union representative, an attorney or other representative;
5. A written decision and the specific reasons therefore at the earliest practicable date;
6. The decision letter informing the employee of his or her option to appeal the action to the Merit Systems Protection Board (MSPB) or through the negotiated grievance procedure, but not both, and informing the employee that he or she will be deemed to have exercised his or her option to raise the matter under one procedure or the other at the time the employee timely files a written grievance or files a notice of appeal under the applicable MSPB procedure. If the employee chooses to use the negotiated grievance procedure, he or she must represent himself or herself or be represented by the Union.

**Section 4.** Action by the Deciding Official: After carefully considering the evidence and the Employee's response, if any, including any mitigating factors, the deciding official shall decide:

- A. to withdraw the proposed action; or
- B. to institute a lesser action; or
- C. to institute the proposed action.

A written copy of the Letter of Reprimand, or notice of proposed action or decision will be furnished to the Employee. Time limits for the employee's response may be extended upon written request and will be considered at management's discretion based on the reason for the request. Normally, the effective date of suspension actions will be stayed 10 days from the date of the decision letter, except when an indefinite suspension is warranted, in which case immediate suspension may be appropriate.

**Section 5.** Alternative Discipline

- A. In accordance with the provisions of USDA Personnel Bulletin No. 751-3, the Forest Service encourages the use of alternative discipline whenever appropriate. Alternative discipline provides an opportunity to better manage caseloads, reduce administrative costs, and rehabilitate employees for productive Government service.
- B. Alternative discipline agreements will promote the efficiency of the service and may contain nontraditional penalties such as community service, donation of annual leave to the leave transfer program, use of leave-without-pay instead of suspensions, or combinations of these or other agreed-to alternatives.
- C. Employees may offer suggestions for alternative discipline to the deciding official.
- D. The option to enter into an alternative discipline agreement is voluntary on the part of the employee. When offered an alternative discipline agreement, the employee will be

informed in writing that they may discuss the alternative discipline agreement with a Union representative before signing. Employees will not be required to make a decision on an offer of alternative discipline before receiving a written decision on the proposed discipline.

- E. In cases where the appropriate penalty is removal, alternative discipline may not be used. However, a proposed removal that is mitigated at the decision stage may be a candidate for alternative discipline.

#### **Section 6. Termination of Probationary/Trial Employees**

- A. The Parties recognize that the probationary/trial period is an extension of the examining process.
- B. Management officials should utilize the probationary period to its fullest extent to ensure retention of those employees who demonstrate suitability and potential for continued service, and to terminate those employees who do not meet performance or conduct expectations within the probationary period. Employees will have an opportunity to demonstrate their performance and conduct for continued employment to the fullest extent possible during their probationary period. If a decision is made to terminate an employee during the probationary period, a written notice will be issued to the employee containing the reasons for the action and its effective date. The reasons will include any Agency conclusions on performance and/or conduct deficiencies.
- C. Discipline of probationary/trial employees that is less than removal will follow the same procedure, above, except the employee will be advised in writing of his or her right to grieve the decision, according to Article 23.

## **ARTICLE 20**

### **USE OF OFFICIAL FACILITIES, EQUIPMENT, MAIL, AND BULLETIN BOARDS**

Agency facilities are available for Union business either representational or internal on a limited basis. The Union may use Agency email to distribute Union correspondence, however, the Union may not distribute internal union business with Forest Service resources.

## **ARTICLE 21**

### **GRIEVANCE PROCEDURE**

**Section 1.** The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of Employee grievances and disputes. This negotiated procedure shall be the exclusive procedure available to Employees in the bargaining unit in

accordance with Chapter 71, 5 U.S.C. The following matters are excluded from coverage under this grievance procedure:

- A. Any claimed violation of 5 U.S.C., Chapter 73, Subchapter III, relating to prohibited political activities (Hatch Act);
- B. Retirement, life insurance, or health insurance;
- C. A suspension or removal under 5 U.S.C. 7532 (National security reasons);
- D. Any examination, certification, or appointment;
- E. The classification of any position which does not result in the reduction in grade or pay of an Employee;
- F. Termination of probationary Employees;
- G. Non-selection for promotion from a group of properly ranked and certified candidates.

**Section 2.** Most grievances arise from misunderstandings or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Management and the Union agree that efforts will be made by management and the aggrieved party/parties to settle grievances at the lowest possible level. In as much as dissatisfactions and disagreements arise occasionally among people in a situation, the filing of a grievance shall not be construed as reflecting unfavorably on an Employee's good standing, performance, loyalty or desirability to the organization. An Employee may have a representative at any step of the grievance procedure.

**Section 3.** Employees, Union representatives and all other persons involved in the presentation of a grievance will be free from restraint, interference, coercion, discrimination or reprisals. Reasonable time during duty hours will be allowed, as approved by their supervisor, for Employees and Union representatives to discuss, prepare for and present grievances at all levels in accordance with the release procedures in Article 9, Section 5(B). Regardless of whether the grievant has requested Employee representation, the Union has the right to attend and will be informed of them.

**Section 4.** When a group of Employees have an identical grievance, it may be considered as an individual complaint of one Employee. However; any Employee may elect to have his/her grievance processed separately. Such an election must be made prior to entering into Step 2 of the grievance procedure.

**Section 5.** The Employee or representative may terminate the grievance at any time by giving written notice to the Forest Supervisor.

**Section 6.** A grievance file will be maintained by management for each case that goes beyond Step 1 below. The file will contain:

- A. the written complaints;
- B. the summary of discussions of all proceedings at each step;
- C. documentary evidence considered in resolving the grievance; and

D. the written decision rendered at each step.

On request, the Employee or Employee's representative will be furnished a copy of all materials in the grievance file.

**Section 7.** Any rejection of a grievance on the grounds that it is not a matter of subject to this grievance procedure, or is not subject to arbitration, will be served upon the Union in writing. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue in the related grievance.

**Section 8.** Employees using this grievance procedure must be represented by an individual approved by the Union, except in those situations where the Employee elects to represent him/her self. Any adjustment in which the Union does not represent the Employee may not be inconsistent with the terms of this agreement and the Union will be given the opportunity of being present at the adjustment. Only the Union will be entitled to invoke arbitration of an Employee grievance under the arbitration article of the agreement.

**Section 9.** The grievance procedure shall consist of the following steps:

#### Employee Grievance

Step 1 - The Employee will informally discuss and attempt to resolve the grievance with his/her first line supervisor within thirty (30) calendar days after the act or occurrence; or the date that the employee became aware of the act or occurrence. The employee should at this time submit his/her grievance in writing to his/her District Ranger/Staff Officer or designee, with a copy to the designated Labor Relations Specialist, at the time of the informal discussion. The District Ranger/Staff Officer or designee will give his/her decision in writing to the employee within thirty (30) calendar days after the informal discussion. A copy of the written grievance and the District Ranger/Staff Officer's written decision will be sent to the appropriate union representative.

The Employee may request the Union to represent him/her, but in any case the Union will be notified that the grievance has been filed with the District Ranger/Staff Officer and of the date, time and place which has been set up to discuss the grievance with the Employee. The Union will be given the opportunity to be present at the formal discussion and potential settlement discussions.

Step 2 - If the employee is still dissatisfied, he/she may refer the written grievance and the District Ranger/Staff Officer or designee's written decision to the Forest Supervisor, with a copy to the designated Labor Relations Specialist, within thirty (30) calendar days after the date he/she receives the District Ranger/Staff Officer or designee's decision. The Forest Supervisor, his/her designated acting, or designee will arrange to formally discuss the matter with the employee within thirty (30) calendar days after the date of receipt of the grievance and decision.

In the case of grievances filed in response to a written decision letter notifying the employee of an action under 5 U.S.C. 7512 (Adverse Actions) or 5 U.S.C. 4303 (Unacceptable Performance), no Step 1 grievance is required. An employee must file a Step 2 grievance within 30 days of the effective date of the action or within 30 days after receipt of the Agency's decision, whichever is later.

The Forest Supervisor, his/her acting, or designee will provide his/her decision to the Employee within thirty (30) calendar days after the date of the discussion of the grievance. The decision of the Forest Supervisor, his/her acting, or designee will be submitted in writing.

The Employee may request the Union to represent him/her, but in any case the Union shall be notified by Management that he/she has received the grievance and of the date, time and place which has been set up to formally discuss the grievance with the Employee and his/her Union representative. The Union will be given the opportunity to be present at the formal discussion.

If the responding official's written decision does not result in satisfactory settlement, the Union may initiate resolution of the grievance by arbitration by serving written request for arbitration to the Step 2 responding official, within thirty (30) calendar days after receipt by, the employee (copies to Union and his/her representative) of the responding official's written decision. Such request will be processed in accordance with Article 24.

#### Management Grievance

Step 1 - If Management is the grieving party, representatives of the two parties will informally discuss and attempt to resolve the grievance within thirty (30) calendar days after the act or occurrence or the date that the grieving party is aware of the act or occurrence. A copy of the grievance should be presented in writing at the time of the informal discussion.

The decision of the party receiving the grievance will be issued to the grieving party in writing within thirty (30) calendar days after the informal discussion. Such decision will include a statement of the grievance as well as the statement of the decision.

Step 2 - If the grievance is not resolved under Step 1 of this procedure, the grieving party will have the opportunity to present the grievance to arbitration in accordance with Article 24, Arbitration. A written request must be served on the other party within thirty (30) calendar days after receipt of the written decision in Step 1.

**Section 11.** All time limits in this article may be extended by mutual agreement of Management and the Union. Failure to observe time limits will entitle the grieved party to advance the grievance to the next step. Failure by the employee/union to meet time limits on grievances, or to request and receive an extension of time, will terminate the grievance unless mitigating circumstances prevail. Failure of Management to meet time limits on grievances, or to request and receive an extension of time, shall result in the deciding party's liability for the arbitrator's fees and expenses, unless mitigating circumstances prevail.

**Section 12.** Union representatives and aggrieved Employees will be permitted a reasonable amount of official time while preparing for grievance or appeals and hearings incident thereto.

## **ARTICLE 22**

### **ARBITRATION**

**Section 1.** The use of arbitration as set forth herein will apply to grievance over interpretation or application of the agreement. Arbitration shall be invoked only by the Union or Management. Striking first will be determined by a toss of the coin. Winner will strike first from the list of arbitrators.

**Section 2.** Unless otherwise agreed, the following process will be used:

- A. The invoking Party will submit a request to the Federal Mediation and Conciliation Service (FMCS) for a list of seven impartial persons qualified to act as arbitrator.
- B. Within 21 days after receipt of such list, Management and the Union shall confer to select an arbitrator. If either Party fails to participate in the selection process, the other Party will make a selection of the arbitrator from the list.
- C. If the Parties cannot agree on an arbitrator from the list, each Party shall strike one name in turn from the list. The determination of which Party shall strike first from the list will be determined by the flip of a coin. After each Party has struck three names from the list, the remaining person shall serve as the arbitrator.

**Section 3.** If, for any reason, either party refuses to participate in the selection of an arbitrator, the other party may then choose any person from the Federal Mediation and Conciliation Service Roster to be the duly selected arbitrator.

**Section 4.** The arbitrator will be requested to render the decision and remedy to the parties as quickly as possible, but, in any event, no later than 30 days after the conclusion of the process as described above unless the parties otherwise agree.

**Section 5.** Upon selection of the arbitrator in a particular case, the respective representatives for the parties will communicate jointly with the arbitrator and each other in order to select a mutually agreeable date for the arbitration hearing. The parties will endeavor to schedule the hearing within 60 days after arbitration is invoked. If the parties are unable to mutually agree and schedule a hearing date within 60 days, the arbitrator will select a date.

**Section 6.** The arbitrator's award will be final except that either party may file an appeal to the appropriate authority subject to the Authority regulations.

**Section 7.** Costs and fees of the arbitrator will be borne equally by Union and Management. Attorney's fees will be in accordance with appropriate laws, rules, and regulations.

**Section 8.** Transcripts: The cost of a transcript, requested by one party for its exclusive use and not shared, shall be borne by the requesting party. If it is mutually agreed to request a transcript, or the arbitrator requests one, the cost will be borne equally.

**Section 9.** The arbitration hearing will be held, if possible, on the Management's premises at a time during the period Monday through Friday, 8:00 a.m. to 5:00 p.m. All Employees in the hearing will be in pay status.

## **ARTICLE 23**

### **WORKFORCE RESTRUCTURING AND PLACEMENT SYSTEM (WRAPS) AND REDUCTION IN FORCE**

When advanced notice, knowledge of the impact of pending changes in function, organizations, and mission is available, it will be the responsibility of Management to plan for the maximum retraining of Employees involved. Management will follow all laws, rules, and regulations to maximize qualification and training requirements to place Employees in lines of work where their services can be utilized.

#### **Workforce Restructuring and Placement System (WRAPS)**

Union and management agree that WRAPS procedures will be in accordance with the most current Forest Service policy (FSH 6109.12 - Employment and Benefits, Chapter 20 Internal Placement).

#### **Reduction in Force (RIF)**

**Section 1.** Notice of a proposed RIF will be given in accordance to Government-wide regulations, allowing the Union an opportunity to negotiate to the extent required by the Labor Statute. The major purposes of this negotiation are to obtain the views and cooperation of the Union in regard to:

- A. increasing understanding of RIF procedures and employee rights to reduce insecurity;
- B. proposals for placement of Employees to reduce any unavoidable adverse impact;
- C. methods to keep Employees informed with regard to events as they occur and related procedures; and
- D. all other negotiable areas of impact and implementation.

**Section 2.** Options management will consider when a decision is made by Management to abolish bargaining unit positions at the Kisatchie National Forest:

- A. Attrition - Vacant positions will be reviewed for non-filling.
- B. Discontinued Service Retirement - Will be offered to affected employees who qualify.

- C. Reassignment – Management may reassign affected Employees to positions for which they qualify. Management will make an effort to find assignments for those employees who cannot be reassigned at the Kisatchie National Forest. If the Forest can find no position available, assistance will be provided to search for placement nationwide.
- D. Retraining- This will be considered an available option, and where appropriate, the same reassignment process described in item #C will be affected.
- E. Restructuring of positions will be considered. For example, combining of two positions making ½ time position of each. Each ½ position will have an adequate position description.
- F. Optional retirement will be made available to qualified Employees in accordance with general eligibility requirements.

The list of options is not exclusive, and the order listed does not necessarily represent the order of application. As any of the procedures create impact on the bargaining unit and have an impact on working conditions, the bargaining unit will be notified in writing of decision to contract out job abolishment, or reductions-in-force.

Management in consultation with Human Resources Management will explore alternatives to successfully minimize downsizing or avoid RIF such as through the development of a pre-WRAPS plan where movement of employees into the new organization can be accomplished by reassignment and where the plan allows for the placement of most (if not all) of the potentially affected employees.

## **ARTICLE 24**

### **ALTERNATIVE DISPUTE RESOLUTION (ADR):**

**1.** There are a number of ADR techniques by which disputes can be resolved at a level that usually does not include an administrative hearing or litigation (for example, informal consultation, group intervention, mediation, work group assessment, facilitation, etc.).

**2.** The parties involved in the dispute may use any mutually acceptable dispute resolution process and neutral third party, if they so choose.

**3.** Any neutral party used in resolving workplace disputes/grievances for bargaining unit employees will involve the appropriate Union representative, Labor Relation Specialist, and Conflict Management Program (CMP) Manager:

- A. ADR technique used (CMP, Positive Work Environment, negotiated, or other).
- B. Outcome of Resolution Process (successful or not).

**4.** The Conflict Management and Prevention Program has been established as a Forest Service ADR resource for workplace disputes.

5. If the parties elect to use the ADR technique of mediation, the neutral selected for mediation must meet the requirements of USDA Departmental Regulation 4710-001, dated April 5, 2006.

6. When an issue other than a grievance is settled through the use of ADR techniques, the Parties recommend that the settlement be documented in writing, and that the following items be considered in documenting this agreement:

- A. Terms and conditions of agreement, including steps to be taken if one of the parties does not comply.
- B. Timelines for action items: include who, what, when, how, and why.
- C. Monitoring and follow-up clauses.
- D. Degree of confidentiality.
- E. Duration of agreement.
- F. Signatures of the parties.
- G. Distribution of the agreement.

7. The use of ADR does not automatically extend any timelines in this Collective Bargaining Agreement. Grievance timelines may be extended under the provisions of Article 21.

## ARTICLE 25

### DRUG AND ALCOHOL TESTING PROGRAMS

This Article contains the procedures and arrangements for drug and alcohol testing of employees and applicants as required by Executive Order 12564 and Omnibus Transportation Employee Testing Act of 1991 as amended (Public Law 102-143). The testing program will be administered in compliance with Public Law 100-71, and the Health and Human Service (HHS) Mandatory Guidelines, and the Department of Transportation Regulations, 49 CFR Parts 382 and 40, USDA Department Regulation (DR) 4430-792-2, and the USDA Plan for a Drug Free Workplace.

#### Drugs for Which Individuals Are Tested:

- Marijuana (dope, herb, pot, hashish, hash, grass, weed, smoke) – A frequent user of marijuana will remain positive for 3-4 weeks after the last use of the drug. *Prescriptions for medical marijuana will not be accepted as justification for a positive test for marijuana.*
- Cocaine (coke, crack) – Cocaine use generally can be detected within 24-48 hours of use.
- Phencyclidine (PCP, angel dust)
- Opiates (heroin, morphine – “designer drugs”)
- Opioids - Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone (OxyContin, Vicodin, Percocet, Dilaudid)

- Amphetamines (speed, bennies, uppers, methamphetamine)
- Alcohol (testing only under DOT regulations): Blood alcohol content, above 0.04 as determined by breath testing, shall be deemed a positive test.

**1. Identification of Test Designated Positions (TDP):** Management has the right to designate positions for applicant and random drug and alcohol testing (Test Designated Position or TDP).

- A. TDPs shall be only those positions that have duties and responsibilities documented in the position description, reflecting the assignment of actual work, which make the position subject to applicant and random testing. National Parties may agree to documentation other than the Position Description to identify TDPs. Employees may be designated for testing by:
1. Executive Order TDPs. Positions listed in Appendix A of the USDA DR4430-792-2, and/or
  2. Department of Transportation TDPs. Position descriptions that include the operation of vehicles requiring the possession of a Commercial Driver's License (CDL) are designated as TDPs. The Forest Service will not apply state CDL testing exemptions available under Department of Transportation (DOT) regulations; that is, USDA and Forest Service testing requirements take precedence over any State or local laws to the contrary.
- B. Changes to Existing Positions: Management will notify an employee of any change in their TDP status. If an employee's position is newly included in the random testing program, or if the employee is detailed to a TDP, they are entitled to 30-days written notice prior to being subject to random testing, (not withstanding reasonable suspicion and post-accident testing).
- C. An employee's TDP status will be reviewed by the supervisor and the employee annually at the time of the performance review for the purpose of determining if the testing designation is still appropriate.
- D. An employee may contest their TDP status through the grievance/arbitration procedures. An employee who has filed a grievance prior to being called for a random drug or alcohol test may receive a testing deferral until a final grievance/arbitration decision is made. This deferral does not apply to Reasonable Suspicion or Post-Accident testing.
- E. An employee who is not in a designated TDP may volunteer for inclusion in the Executive Order or Department of Transportation drug-testing program. Volunteers remain in the testing pool for the duration of the position which the employee holds, or until the employee withdraws from participation by notifying in writing their supervisor of such intent before being notified of a scheduled test.

**2. Vacancy Announcement TDP Notification:** Vacancy announcements for TDPs (including competitive details and temporary promotions) will include written notice that applicant pre-appointment and random (a) drug or (b) drug and alcohol testing is a requirement of the

position, and that appointment to the position and continued employment is conditional on negative test results. Each vacancy announcement for a TDP will incorporate the required language outlined by the USDA and HHS Drug Free Workplace Plans (DFWP). Failure of the vacancy announcement to contain this notice will not preclude applicant testing if a 30-day advance written notice is provided to the applicant. Employee may agree to waive the 30-day advance notice and agree to be tested earlier.

**3. Permanent Seasonal Bargaining Unit Employees:** This section applies only to permanent seasonal bargaining unit employees (PSE's) who are working in a testing designated position. Because these employees are neither applicants nor changing their assignment, they shall not be subject to annual applicant, pre-employment, or pre-assignment testing upon return to a pay and duty status.

However, PSEs shall remain in the random testing pool during their seasonal non-pay/non-duty period. The drug tests for those PSEs in non-pay/non-duty status who are selected for random testing shall be delayed until the employee returns to duty at the beginning of the following season. Employees will not be alerted to the selection until they receive notice once returned to work. Upon such notice, the procedures of Article 28 shall apply. Employees will not be required to submit to a test while in a non-pay/non-duty status.

PSEs who have been selected for random testing and had their test delayed will be tested within one week of their return to duty. While awaiting the results of the test, management has determined that employees will not be assigned to perform safety sensitive work.

Management will maintain an up to date list of Drug Testing staff personnel on the HRM website who will be available for follow-up questions from field supervisors/managers and employees.

**4. Training:** DFWP training is intended to be accomplished primarily through computer-based training, and may be supplemented with other means such as formal orientation, written material, videos, lectures, and awareness training.

- A. Generally, all employees will receive annual training on the DFWP.
- B. Employees shall receive DFWP training within 30 days of entry into a TDP (or conversion to a TDP), with annual refreshers. New employees shall receive DFWP training within 30 days of receipt of access to the training modules. Training shall cover topics outlined in USDA DR4430-792-2 and this Article including: (1) USDA drug and alcohol testing program; (2) employee safeguards in the testing program including Safe Harbor and the right to union representation; (3) employee assistance and counseling programs; (4) types of drugs and their effects; (5) laboratory procedures; (6) Medical Review Officer duties; and (7) protections associated with reporting suspected drug use by co-workers and supervisors.
- C. Supervisors or managers of bargaining unit employees shall receive appropriate training prior to requesting reasonable suspicion testing.

**5. Self-Identification:** The parties encourage voluntary disclosure by an employee of substance use (legal or illegal drugs or alcohol) that would impair them from performing safety sensitive duties.

- A. Self-identification is deemed to occur when an employee, after becoming aware of a safety sensitive work assignment (for example, vehicle operation), notifies their supervisor or the responsible Management official of the employee's potential impairment at the first reasonable opportunity and before beginning to perform the assignment. If an employee self identifies and is unable to perform an assignment, Management will not initiate disciplinary action regarding the first instance of impairment. Additional instances of impairment may be subject to discipline. However, the employee may still be subject to disciplinary action for any other related or unrelated misconduct beyond this instance of impairment.
- B. Safe Harbor: Executive Order 12564 mandates disciplinary action shall be initiated for illegal drug use by any employee regardless of TDP status except when an employee self identifies and seeks "safe harbor."

1. In order to be eligible for Safe Harbor, the employee must:

- a) Voluntarily identify himself/herself as a user of illegal drugs or volunteer for drug testing prior to being identified through other means,
  - b) Obtain counseling or rehabilitation through an Employee Assistance Program; and
  - c) Thereafter, refrain from using illegal drugs.
2. Safe Harbor is not available to an employee who requests Safe Harbor protection from discipline after being directed to submit to a test.
3. Employees eligible for Safe Harbor are removed from safety-sensitive duties until the treatment program is completed and a return-to-duty test is passed. Employees are then subject to a regime of follow-up tests.
4. Safe Harbor only protects the employee from action being taken based on the admission of substance abuse. It is not a shield from disciplinary action based on misconduct. Neither does it shield the employee from corrective action based on drug use determined by other means, or misconduct/poor performance related to substance abuse.

**6. Reasonable Suspicion Testing:** Reasonable suspicion is a belief that an employee has violated alcohol or controlled substances prohibitions based on direct observations of drug use or possession and/or the physical symptom(s) of being under the influence of a drug (for example, a pattern of abnormal conduct or erratic behavior).

- A. Executive Order Testing for All Employees. All Forest Service employees are subject to testing when there is a reasonable suspicion of on-duty illegal drug use or impairment.

- B. Employees in Executive Order TDPs may be subject to testing when there is a reasonable suspicion of illegal drug use on or off duty.
- C. Executive Order Reasonable Suspicion testing will be initiated in accordance with the USDA DR4430-792-2 after first making appropriate factual observations, documenting those observations, and obtaining appropriate authorization to conduct the test. However, failure of observers to receive training on reasonable suspicion testing procedures shall not invalidate otherwise proper reasonable suspicion testing. Testing will be administered within 32 hours of the last observed behavior or event which prompted the supervisor or agency official to request testing unless delayed by events beyond the control of either the agency or the employee. In no case will tests be conducted beyond 72 hours of the last observed behavior or event.
- D. Employees in DOT TDPs are subject to alcohol and drug testing when there is a belief that an employee has violated alcohol or controlled substances prohibitions based on specific and timely observations that can be clearly articulated concerning the appearance, behavior, speech, or body odors of the employee made just before, during, or just after the period of the work day in which the employee was expected to be in compliance with drug and alcohol standards. The observations may include indications of the chronic and withdrawal effects of controlled substances. The term "just" as used above, is defined as meaning the time period immediately prior to and/or after work hours while the employee is physically at the duty location or work site.
  - 1. Reasonable suspicion testing for employees in DOT TDPs will be requested based on the direct observation and documentation of one or more supervisors trained in detecting the signs and symptoms of possible alcohol/drug use. Training records will be furnished to the union upon request.
  - 2. Alcohol testing will be administered promptly within 2 hours, and no later than 8 hours after the employee is asked to submit to testing, in accordance with 49 CFR 382. Testing for any other substances will be conducted within established timeframes under DOT regulations.
- E. General Provisions for Reasonable Suspicion Testing:
  - 1. The appropriate trained supervisor or Management official will gather and document all information including dates and times, facts, information sources, and circumstances leading to and supporting the suspicion. This information is submitted to the Director, Human Resources Management, or appropriate delegate who has the authority to approve reasonable suspicion testing requests. Copies of these records will be provided to the Union upon request in conjunction with representational matters in accordance with the Privacy Act.
  - 2. Before the testing occurs, the employee will be informed of the reasons for the test and provided with the documentation described in 1. Above, excluding information sources.
  - 3. Under no circumstances shall reasonable suspicion testing be used as a punitive measure.

## 7. Post-Accident Testing:

- A. Post-accident testing applies to all employees if they meet Executive Order post-accident testing criteria. Employees in DOT Test Designated Positions are covered by DOT provisions while they are driving a commercial motor vehicle. Accidents that do not meet the criteria for post-accident testing may still result in an employee being tested under the reasonable suspicion program if criteria for testing under that program are met.
- B. Executive Order post-accident testing for illegal drugs covers all employees who are reasonably suspected of having caused or contributed to an accident that occurred within the scope of their employment or while in official duty status; the Director, Human Resources Management, or appropriate delegatee will use objective evidence to make this determination.
- C. Executive Order post-accident testing for illegal drugs is also required when the accident results in:
  - 1. Death or personal injury requiring immediate hospitalization for in-patient treatment (as opposed to short-term emergency room care), or
  - 2. Damage to Government or private property estimated to be in excess of \$10,000. The damage estimate shall be made by an agency official using an objective basis.
- D. Executive Order post-accident tests for illegal drugs must be completed within 32 hours of the accident.
- E. DOT post-accident testing applies to drivers involved in accidents while performing safety-sensitive functions associated with operating a commercial motor vehicle, and requires testing for both alcohol and controlled substance use. Alcohol testing will be administered promptly within 2 hours, and no later than 8 hours following the accident; drug testing must be administered within 32 hours of the accident. Testing is required when the accident results in:
  - 1. Loss of human life, or
  - 2. Citation to the driver for moving vehicle accident and accident results in:
    - a) Injury requiring medical treatment away from scene of accident, or
    - b) One of the vehicles has to be towed.

## 8. Random Testing:

- A. Employees who are eligible for random testing under **both** the Executive Order (that is, drug testing) and DOT regulations (that is, drug and alcohol testing) will be randomly selected only under the DOT program.
- B. Prior to scheduling testing, the supervisor will confirm the employee's availability. Whenever possible, Management will schedule testing so it can be completed during the employee's normal workday. At the time of notification, employees will proceed to the test site immediately or as soon as possible, as instructed by the supervisor.

- C. A deferral of a random drug test may be granted if the employee is unavailable due to being:
  - 1. In an approved leave status (sick, annual, administrative, or leave without pay);
  - 2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification; or
  - 3. A grievant pursuant to Subsection 1.d of this Article. An employee whose random drug test is deferred will be subject to an unannounced test within the following 60 days.

**9. Travel Time and Attendance:**

- A. Employees shall be on official time for Management-directed drug and alcohol testing related activities, including travel.
- B. The agency shall pay travel expenses and/or provide transportation for testing in accordance with Federal Travel Regulations.
- C. Overtime shall be paid or compensatory time approved in accordance with applicable laws and the Collective Bargaining Agreement.

**10. General Testing Procedures:**

- A. Urinalysis is the only testing method used for drug testing in this program. Use of any other drug testing method may be negotiated, as appropriate.
- B. Employees selected for drug testing will be provided a checklist, the contents of which will be negotiated.
- C. Collection of samples will be done in accordance with applicable HHS Mandatory Guidelines under Executive Order provisions, and in accordance with DOT regulations for DOT-covered positions. Employees are permitted to provide specimens in private unless there is a legitimate need for observation. Examples of when a sample would be observed include return-to-duty testing and suspicion of tampering. Observation must be approved by an authorized Agency official and performed by an individual of the same gender.
- D. Employee may be required to provide another sample based on suspicion of tampering with the specimen.
- E. An employee who is subject to being observed while providing a urine sample may request a written statement specifying the reasons for the observation, and may ask to have a Union representative present. The observed collection shall be delayed a reasonable amount of time to permit a Union representative to travel to the collection site, provided the sample collection will occur on the designated test day, and within the time limits prescribed for reasonable suspicion and post-accident testing, to preserve sample integrity.
- F. All reasonable available means will be used to protect the dignity and privacy of employees with physical handicaps or other impairments that may prevent them from providing urine specimens in the usual manner.

- G. If an employee is unable to provide a volume of urine adequate for testing purposes, they will be given a reasonable amount of liquid (water, tea, or coffee). The Forest Service will allow the employee up to 3 hours on the same testing day to provide a sufficient volume.
- H. If the employee is unable to provide the required specimen quantity, the testing will be discontinued and the clinic will notify the Medical Review Officer (MRO) and the Agency's Drug Testing Coordinator. They will be contacted by the MRO who will request satisfactory medical documentation or arrange for a medical evaluation to determine whether there is a genuine reason for the employee's inability to provide a specimen or a refusal to test. (49 CFR 40.193)
- I. Employees shall not be required to disclose the legitimate use of specific drugs at the outset of the program. Employees will have an opportunity to provide documentation to the MRO supporting legitimate usage upon a positive test result. Only verified positive test results are reported to the Agency.
- J. An employee may arrange for private testing within 24 hours of providing an Agency-directed urine sample. A reasonable amount of appropriate leave may be approved.

**11. Split Sample Collection and Testing:** Split sample testing procedures as contained in DOT regulations will be followed for all sample testing. If the first sample produces a positive result, and the employee requests a test of the split sample within 72 hours, then the second test will be performed.

**12. Second Sample Collection and Testing:** Employees being tested may elect to have a second sample collected at the same time as the USDA sample and have it submitted by the sample collector at the employees' expense to an HHS accredited laboratory of their choice in accordance with HHS and USDA procedures pertaining to drug testing. If a reasonable suspicion test has been conducted and the first sample tests positive for drugs whereas the second sample tests negative, the employee may request and shall receive reimbursement for the cost of the second test.

**13. Response to a Positive Drug or Alcohol Test:**

- A. Management shall review any positive drug test, that is, consider an employee's explanation, the accuracy of the lab procedures, etc.
- B. The Parties recognize alcoholism and other drug dependencies as illnesses. It is the intent of the Parties to support rehabilitation of these employees so they can be retained in the workforce. The employee shall be referred to the Employee Assistance Program (EAP).
- C. Currently under Executive Order 12564, the agency shall initiate action to remove from the service any employee who is found to use illegal drugs and
  - 1. Refuses to obtain counseling or rehabilitation through an Employee Assistance Program (EAP) or
  - 2. Does not thereafter refrain from using illegal drugs.

- D. Management shall meet its obligations under the Rehabilitation Act of 1973 as amended.

**14. Records Retention:**

- A. Records pertaining to an employee's drug and alcohol tests are confidential and releasable on a need to know basis and as otherwise required by law. These records are covered by the Privacy Act of 1974 as amended and shall be maintained in the Agency's secured files.
- B. Positive drug test results will be retained—
  - 1. In accordance with disciplinary or adverse action record retention policy (FSH 6209.11), when the document is part of a disciplinary or adverse action file;
  - 2. In accordance with DOT regulations as they pertain to records retention;
  - 3. In accordance with Executive Order, HHS, CFR, OPM, and USDA regulations and policies.

**15. Union Representation:**

- A. Employees may invoke their Weingarten Right to Union representation as appropriate (see Article 5).
- B. TDP information:
  - 1. Designation of new classes of TDPs is a change in conditions requiring appropriate notifications per Article 7.
  - 2. Annually in July, Management will furnish the Local President or designee a forest wide list of any and all:
    - a) Positions in the random test pool, including, at a minimum, the employee name, position title, series, grade, organization coding, and test pool designation code for each position,
    - b) Employees who were randomly selected for testing during the past year, and
    - c) Employees who were tested during the past year.
- C. Laboratory Information:
  - 1. Upon request, Management will make available to the Union a list of the clinics and laboratories being used.
  - 2. The Parties agree to jointly pursue an approval from the USDA for Union inspection of any testing facilities or certified laboratories used in the agency's testing program. Article 6 release procedures for the Union representative are to be followed.

## ARTICLE 26

### AWARDS PROGRAM

1. The Parties agree that the employee suggestion, incentive, and performance award programs are beneficial to both management and the employee. The Awards Program will be administered in accordance with 5 CFR Parts 451, 430, and 531, the USDA Guide for Employee Recognition, or as any of the foregoing are superseded.

The Parties mutually agree that safety, civil rights, productivity, efficiency, and public service may receive emphasis in the awards program. Management agrees to provide the Union an opportunity for input related to the unit's Awards Program to ensure the administration of the Awards Program is fair, effective and understandable.

**2. Employee Recognition:** An award is something bestowed or an action taken to recognize and reward individual or team achievement that contributed to meeting organizational goals or improving the efficiency, effectiveness and economy of the Forest Service operations or is in the public interest. Awards may have the effect of motivating employees to increase their productivity and creativity for the benefit of the agency and its customers. Awards programs will be fair in the distribution of awards. All employees will be given an opportunity to work at a level sufficient for award eligibility. Employees must have received at least a Superior or Outstanding summary rating to be eligible for a performance bonus. All awards other than quality step increases are available to temporary employees. However, Term employees are eligible for quality step increases.

The following recognition categories are available:

- A. Nonmonetary Extra Effort Awards: recognition given for a specific outstanding accomplishment such as a superior contribution on a short term assignment or project, an act of heroism, scientific achievement, major discovery or significant cost savings. Types of these awards include; time off awards, keepsakes, letters of appreciation and honorary awards.
- B. Monetary Extra Effort Awards: recognition given for a particular accomplishment such as those defined in Section 2.a above. Dollar amounts are determined by the value of benefit and application of the contribution to the Forest Service's mission or goals. Nonmonetary awards can be given in conjunction with monetary recognition. Types of these awards include extra effort and spot.
- C. Performance Bonuses: monetary recognition given for performing well over the appraisal cycle. Types of these awards include lump sum performance bonuses and Quality Step Increases.

3. Management will schedule an appropriate presentation of an award for an employee.

4. Upon request from the union and in accordance with applicable laws, management will provide the awards list for the last 3 years. The standard report will include: type of award, amount, date of award, pay plan, grade, series, title, bargaining unit status code, and organizational codes to Level 5.
5. A peer award program, wherein employees may recommend co-workers both monetarily or non-monetarily, may be established and is encouraged by management.
6. Whenever possible, recipients may be allowed a choice in the type of recognition they receive. For example, an employee may be offered the opportunity to select from amongst several kinds of non-monetary keepsakes for length of service recognition, or to select a time off award in lieu of monetary spot award. Once granted, time off awards cannot be converted to a cash payment.
7. All other aspects of the Awards Program may be discussed where appropriate, e.g. in accordance with government-wide law, rule, regulation, severe budget constraints, or other budget driven factors.
8. Management will make a good faith effort to include anticipated monetary awards in its yearly budget requests. Management shall also provide necessary training to employees to ensure understanding of the Awards Program consistent with the USDA Guide for Employee Recognition and Forest Service or Region 8 policies.

## **ARTICLE 27**

### **FIRE AND OTHER INCIDENTS**

**Section 1.** Although the following relates primarily to fire incidents, the Parties recognize that many of the following provisions apply to other emergency incidents.

- A. The Parties jointly and wholeheartedly are committed to “zero tolerance” of carelessness and unsafe actions.
- B. The Parties jointly agree to adopt and support the following firefighting doctrine:
  1. “The Forest Service believes that no resource or facility is worth the loss of human life. We acknowledge that the wildland firefighting environment is dangerous because its complexity may make events and circumstances difficult or impossible to foresee. We will aggressively and continuously manage risks toward a goal of zero serious injuries or fatalities.
  2. The intent of wildfire suppression is to protect human life, property, and at-risk lands and resources.
  3. Demonstrated fitness for command is a requirement for leadership positions associated with firefighting.

4. When it is time to fight fire, we do so in a manner that maximizes effectiveness of effort, has highest regard for firefighter and public safety, and controls costs.
5. Every fire suppression operation is directed toward clearly defined, decisive, and obtainable objectives.
6. Command and control must be decentralized to cope with the unpredictable nature of fire. To achieve their leader's intent and accomplish operational objectives, subordinate commanders are required to make decisions on their own initiative, and to coordinate their efforts.
7. Using principles requires judgment in application, but adherence to rules does not. In combination principles and rules guide our fundamental wildland fire suppression practices and behaviors, and are mutually understood at every level of command.
8. We practice risk management to minimize the exposure and effects of the hazards inherent in fire suppression while maximizing the opportunities to achieve leader intent."

- C. All Forest Service employees have a responsibility to support fire suppression emergencies in a manner that meets identified needs and is within their qualifications and capabilities.

**Section 2.** The Parties agree to follow the National Wildfire Coordinating Group (NWCG) Standards for Interagency Incident Business Management – PMS 902

**Section 3. Union Representation at Incidents:**

- A. Union officials or their designees have the right to represent Bargaining Unit employees at all incidents. The Union may designate a sufficient number of representatives to assure up to 24-hour coverage, based on representational need, at any incident where the Local's bargaining unit employees are present.
- B. The need for an onsite Union representative(s) will be based upon anticipated or actual representational workload as determined by the appropriate Local President. If the appropriate Local President or designee determines a need to send a Union representative(s) to an incident command post, they will contact the Incident Commander (IC). The IC or designee will make arrangements for dispatch of the specified Union representative(s) designated by the Local President or designee to the incident. When a representative is dispatched, dispatch will be through the normal incident dispatch procedures. Initially, one Union representative may be dispatched. Based on anticipated or actual representational workload, as agreed upon by the Local President or designee and Incident Commander, additional Union representatives may be dispatched.
- C. When assigned in official capacity as a Union representative, overtime and compensatory time is not authorized.
- D. If there is a serious accident, turnover, or fatality on any incident in which the Local's bargaining unit employees are potentially involved, the Local President or designee will be notified as soon as practicable within 24 hours.

- E. If no representative(s) is dispatched to the incident, the Local President or designee's name and contact information will be made available to bargaining unit employees. If the need arises for an employee to contact the Local President, facilities will be made available to make this contact.
- F. Union representative(s) will check in with the IC or designee on arrival and departure.
- G. When a dispute arises from a situation on an incident, the timeline for raising that issue to the appropriate official under Article 23 will not start until the day after the employee returns to their official duty station. If the grievant is dispatched to another incident or temporary duty assignment that prevents them from preparing and presenting a grievance in a timely manner, the time limit will be extended as stated in the first sentence of this paragraph.

**3. Restricted Facilities:** Management will not restrict employees to facilities while in a non-pay status.

**Section 4. Work Capacity Test Program:** The Work Capacity Test Program is the process used to facilitate preparation and testing of an employee. In accordance with Agency policy and the annual Work Capacity Test (WCT) for Wildland Fire Qualifications Implementation Guide, each employee involved with or wanting to be involved with fire programs will be required to meet the required fitness standards (FSH 5109.17). If the employee is interested and will be available for fire assignments but fire duties are not included in their position description they will follow the same guidelines and be afforded the same rights under this Section as those for employees in fire positions. Further information on implementation can be found in the current Work Capacity Test Implementation Guide.

**5. All-Hazard Response:**

- A. The Agency responds and supports all-hazard responses by providing trained personnel to use their skills, capabilities, and assets without requiring significant additional training and preparation. Support to cooperators requiring Forest Service resources will be consistent with employee's core skills, capabilities, and training.
- B. Agency employees will be provided with appropriate risk mitigation (for example, vaccinations, personal protective equipment, etc.) to operate in the all-hazard environment to which they are assigned.
- C. All employees involved in all-hazard response will be supported and managed by an Agency leader, Agency liaison, or interagency incident management team.

**Section 6. Dispatch of Employees:** Appropriate arrangements and procedures such as notification to employees, how to contact employees, rotation of assignments, etc., are negotiable at the appropriate level.

**Section 7. Professional Liability Insurance (PLI):**

- A. Bi-annually or upon review of the FSH 5109.17, Management and the Union will discuss which positions may become eligible for PLI.
- B. "Temporary fireline managers" are eligible to be reimbursed for up to one-half of the cost incurred for professional liability insurance including any administrative processing

cost charged by the insurance company. To qualify, these “temporary fireline managers” must meet one of the following three criteria:

1. Provide temporary supervision or management of personnel engaged in wildland or managed fire activities,
  2. Provide analysis or information that affects a supervisor’s or manager’s decision about a wildland or managed fire, or
  3. Direct the deployment of equipment for a wildland or managed fire.
- C. For more information including policy and procedures go to:  
<http://fsweb.asc.fs.fed.us/HRM/benefits/PLI.php>.

## **ARTICLE 28**

### **PERSONAL HARDSHIP**

**1. Introduction:** The purpose of this article is to establish a process under which Management will consider employee requests for personal hardships. Management reserves the right to determine whether a personal hardship exists and what action, if any, should be taken. Management will consider hardship requests, but it is recognized that Management may not be able to satisfy the request. The employee may request assistance and advice through the Employee Assistance Program (EAP) and may authorize the EAP counselor to share information regarding the hardship situation with Management.

The provisions of this article do not apply to Reasonable Accommodation requests for employees with disabilities.

**2.** Any employee may request a personal hardship consideration. Personal hardships are situations outside of the employee’s reasonable ability to control that affect the health and/or welfare of the employee and/or family member as defined in 5 CFR 630.201. Some examples of hardship include, but are not limited to:

- A. A specific long-term medical situation where services or care are more accessible in a specific location.
- B. Special education needs for children related to physical or mental disability.
- C. Significant and recurring harassment or discrimination against the employee or his or her family at work or in the community.
- D. Specific situations such as divorce, reconciliation, and sibling care issues, and eldercare.

### **3. Process:**

- A. The employee will submit their request to Management for determination of whether a hardship exists and to request accommodation of the hardship. The request must be in writing and include the nature of the hardship and the accommodation requested. Requests should indicate whether they are long-term or short-term in nature.

- B. When Management receives a personal hardship request, Management must first determine if a hardship exists. Before making the final determination, the Management official may request additional information from the employee and/or the employee may submit additional information to the Management official.
- C. When Management has determined that an employee has a hardship, and upon request of the employee, Management will assist them in finding vacancies in the geographic location(s) in which they are interested.
- D. Management will notify the employee as quickly as possible, but no later than 30 days, with a written decision on the hardship request. The decision will include a determination of whether a hardship exists and what can be done to accommodate the hardship.
- E. Confidentiality regarding an employee's hardship situation will be maintained to the extent possible.
- F. Alleged violations of this article are grievable in accordance with Article 23.
- G. Upon the employee's request, employees may be represented by the Union in this process.
- H. When considering a hardship request, the decision should not create any hardship, loss of rights, or benefit to another employee. Changes or requests by individual employees that may affect working conditions of other employees shall be negotiated per Article 7 prior to implementation.

## **ARTICLE 29**

### **FURLOUGHS**

1. This article sets forth procedures that will be followed if Management determines it necessary to furlough career employees because of lack of work or funds or other non-disciplinary reasons.
2. Management will notify the Union at the appropriate level(s), depending on the scope of a proposed furlough, at least 15 days before the employees are notified. At that time, Management will advise the Union of the reason for the furlough; the number, names, titles, series, and grade of all employees affected; and the measure that Management proposes to take to reduce the adverse impact on employees. The employees will be given specific notice (30-days' notice) for furlough of less than 30 days, 60 days for furloughs in excess of 30 days).
3. Furlough documents will be made available to the affected employee and to the Union.
4. The following furlough matters are appropriate for negotiations between the parties at the appropriate level:
  - A. The content of furlough notices.
  - B. The content of solicitation of volunteers for furlough.
  - C. Scheduling of consecutive or nonconsecutive furlough days.

- D. Programs for counseling employees about furloughs and unemployment compensation, benefits, etc.
- E. Provisions for keeping the Union informed of furlough developments.
- F. Any impacts on Union representation during the furlough.
- G. The process for recall from furlough.

5. Management will not schedule the number of workdays per week for the purpose of disqualifying furloughed employees from unemployment compensation.

**6. Furloughs for More Than 30 Days:**

- A. Where furlough involves only a segment of an organization within a commuting area and the furloughs are for more than 30 days, Management will consider the following:
  - 1. Detailing or reassigning employees to vacant positions.
  - 2. Restructuring of positions, including unfilled trainee positions to allow adversely affected employees to fill positions.
  - 3. Waiving qualifications in order to assign an employee subject to furlough to a vacancy for which he or she might not otherwise qualify.
- B. Management will not fill a vacant position, except by internal placement, when an employee on furlough in the same competitive area is qualified and available for a position at the same or lower grade from which they were furloughed.
- C. If Management elects to use any of the above options in Section 6.a, the Local will be entitled to negotiate appropriate arrangements for implementation at the local level.

**7. Identification of Furloughed Employees:**

- A. Furloughs of 30 days or less:
  - 1. Volunteers: When it has been determined to furlough some, but not all, employees in the same competitive level within one Bargaining Unit, Management agrees to first solicit volunteers. If more volunteers are available than furloughed positions, selection will be based on the service computation date (SCD) starting with the longest reduction-in-force (RIF) service computation. Non-selection of volunteers will be based on legitimate job-related reasons.
  - 2. If a sufficient number of volunteers are not available for furloughed positions, selection for furlough beyond the volunteers will be based on SCD starting with the least RIF service computation.
- B. Furloughs for more than 30 days will be performed in accordance with 5 CFR 351 and Office of Personnel Management (OPM) guidance.

**8. Recall of Employees From Furlough:**

- A. Furloughs of 30 days or less: When Management recalls employees to duty in the same competitive level, from which they were furloughed, it will be in order of SCD ranking

starting with the longest RIF service computation. Recall from furlough for placement in other competitive levels is determined by the qualifications, availability, and SCD ranking of the furloughed employee.

- B. Furloughs for more than 30 days will be performed according to 5 CFR 351 and OPM guidance.

**9.** Employees on furlough have rights at least equal to those they would have had if they had been separated and placed on the reemployment priority list.

**10.** An Internet-based site and a toll-free number will be established to give furloughed employees a “place” to get updates on furloughs when away from work.

**11.** Employees will be asked to provide Servicing Human Resources Office and supervisors with updated contact information for callbacks (for example, phone number, personal e-mail address, address, etc.).

**12. Scheduling:**

- A. For furloughs of 30 days or less (short furlough), the total number of days that the employee may be furloughed shall not exceed 30 days (if consecutive) or 22 workdays (if non-continuous).
- B. Furloughs can be for consecutive or nonconsecutive days normally at the employee’s option. Management will inform the employees how many consecutive days of furlough will qualify them for unemployment benefits. Management will consider employee personal needs such as child care and outside employment as relevant factors in determining which days will be worked during nonconsecutive furloughs. Furloughs will be recorded in the correct manner to ensure unemployment benefits are afforded to eligible employees.
- C. Management may reduce the number of days of the furlough if it finds that fewer days are necessary due to changed circumstances. To increase the number of days, a new notice and identification process is required. The parties will negotiate as appropriate.

**13. Leave During Furloughs:**

The provisions of leave restoration will apply to “use it or lose it” annual leave.

**14. Emergency Furloughs:** Consistent with 5 CFR 752.404(d)(2), advance written notice to employees with an opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as equipment breakdown, act of God, or sudden emergencies requiring the immediate curtailment of activities. When Management is made aware of a possible Government shutdown, it will:

- A. Notify the Union and provide copies of any official notices that advise the agency of a potential furlough.

- B. Provide Bargaining Unit employees potentially affected by such a furlough with written information addressing their rights, benefits, and obligations.

15. Management may accept voluntary service to perform the work of a furloughed Bargaining Unit employee only if authorized by law.

## **ARTICLE 30**

### **TRANSFER OF FUNCTION**

**1. Transfer of Function (TOF):** TOF is the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected, or the movement of the competitive area in which the function is performed to another commuting area. The TOF will follow 5 CFR 351. The parties at the appropriate level will negotiate per Article 7 to the full extent permitted by law.

**2.** Management will notify the Union at the appropriate level of a proposed TOF at least 15 days before employees are notified. At that time, Management will advise the Union of the reason for the TOF; the number, names, titles, series, and grades of all employees affected; and the measures that Management proposes to take to reduce the adverse impact on employees.

**3.** Competitive levels will be as described in 5 CFR 351.403.

## **ARTICLE 31**

### **VOLUNTEERS AND GOVERNMENT SPONSORED WORK PROGRAMS**

**1.** In accordance with law, the Agricultural Conservation Experienced Services (ACES) Program and other human resource programs will not displace employees or positions or their grade-controlling duties. No Forest Service employee will be required or requested to perform as a volunteer. Volunteers' or other enrollees' experience will not be used to give unfair preference or advantage for appointment to Forest Service positions. Employees will not be supervised by volunteers.

#### **2. Impacts:**

- A. The Parties recognize that Human Resource Programs may impact the working conditions of bargaining unit employees. Furthermore, the Parties agree that adverse impacts, when identified by the Union, such as changes in duties, responsibilities, training, safety, availability of other amenities, are subject for negotiations, upon request of the Union.

B. In order for the Union to determine adverse impacts, all available data concerning the use of volunteers or other enrollees, such as number of volunteers or enrollees, their assigned duties, work locations, periodic reports, or announcements will be provided the Union upon request. The Union will be informed where to request the data if not available locally.

**3.** When using ACES authority on a unit represented by an AFGE Local, Management will provide the following information to the Local Union President:

- A. a copy of the Agency guidance or operating procedures for the use of ACES authority;
- B. how that authority will be used on the unit;
- C. descriptions of specific ACES projects to be accomplished on the unit;
- D. name and contact information of the ACES coordinator for the unit;
- E. type of skills being acquired including position duties/responsibilities; and
- F. duration of the work.

**4.** Upon request, Management will provide the Local Union with certification of no displacement statements, organizational charts, and staffing data to address any concerns that ACES is displacing bargaining-unit employees.

**5.** When operating government-owned or leased vehicles or other equipment in proximity to bargaining unit employees, ACES enrollees will be held to the Forest Service's training and certification requirements and safety protocols. Management will exercise due diligence to ensure that bargaining unit employees are not at risk from ACES enrollees and will take prompt and appropriate action should incidents occur.

**6.** The Union will be informed of the name and contact information of Management's national ACES Program Manager. All employees will have access to the ACES information site, currently at <https://ems-team.usda.gov/sites/fs-aqm-aces/>.

**7.** Management and Local Union will discuss any questions or concerns at the appropriate level as they arise.

## **ARTICLE 32**

### **NEW EMPLOYEE ORIENTATION**

- 1.** All new employees shall be informed by management that the Union is the exclusive representative of employees in the unit. When the Union supplies management a Union packet, it will be mutually agreed to and included in the orientation package for the employees.
- 2.** Representatives of the Union will be granted a period of time to speak at orientation sessions which are held for employees. Such time will normally not exceed one hour, although additional amounts may be negotiated, the additional time must be approved in advance by management. The time provided to the Union for meeting and speaking with employees cannot be used for internal Union business such as soliciting members or recruiting stewards. Appropriate subject matter includes, among other things, the exclusive role of the Union in representing employees, the existence and impact of any negotiated agreements, the grievance procedure, general information about Labor rights in the Federal sector, information about the Bargaining Units in the Forest Service, and links to the Albuquerque Service Center, Human Resource Management Website, the collective bargaining agreement, and the SF-1187 payroll deduction form. The Union will receive a reasonable notice of at least thirty (30) days prior to the session(s).
- 3.** Upon the Union's request, the Union will be notified of all new employees added in the bargaining unit.
- 4.** Union representatives may, if desired, remain in attendance during all of the orientation session(s) while conditions of employment are discussed.

## **ARTICLE 33**

### **DUES WITHHOLDING**

**Section 1.** This Article covers all employee-members in exclusively recognized unit, who:

- A. are members in good standing in AFGE;
- B. voluntarily completed Standard Form 1187; and,
- C. who receive compensation which is not subject to deductions of a higher priority and is sufficient to cover the total amount of the allotment.

**Section 2.** The Union and the Employer agree that the provisions of this Article are subject to and will be governed by applicable Federal laws, rules and regulations, including the regulations of the Office of Personnel Management. The Employer agrees to deduct dues in accordance with the Union's scheduled amount.

**Section 3.** The specific officer in the local Union designated to receive the dues deductions will be the elected treasurer.

**Section 4.** The Union's Responsibilities: The Union agrees to assume the responsibility for:

- A. Informing and educating its employee-members on the voluntary nature of the system for the allotment of labor organization dues, including conditions under which the allotment may be revoked.
- B. The employee shall obtain SF-1187, "Request for Payroll Deductions for Labor Organization Dues", and shall file the completed SF-1187 with the designated Union representative.
- C. Keeping the employee-member's servicing payroll office informed, in writing, of any changes in the person authorized to sign SF-1187.
- D. Forward properly executed and certified SF-1187 to servicing payroll office through personnel on a timely basis indicating amount of dues to be withheld.
- E. Inform the servicing payroll office of the names of any participating employees who have been suspended or ceases to be a member in good standing in the Union within three (3) workdays of the date of receipt of final determination, and
- F. Inform the servicing payroll office of any change in the amount of membership dues.

**Section 5.** The Employer's Responsibilities: The Employer agrees that it is responsible for:

- A. Permitting and currently processing voluntary allotment of dues in accordance with this agreement.
- B. Withholding dues on a biweekly basis.
- C. Withholding dues in accordance with the amount certified by the authorized Union official.
- D. Providing a remittance listing to the Union containing the following information:
  - 1. A listing by:
    - a. the name of each employee for who deduction is being made during the current pay period; and
    - b. the name of each employee-member for whom deductions have been authorized.
  - 2. The total amount deducted and the total number of deductions.

**Section 6.** Joint Stipulations: Parties to this Agreement agree the administrative errors in remittance payment will be corrected and adjusted in the next remittance payment issued to the employee organization.

**Section 7.** Effective Dates for Actions Under this Agreement: The effective dates for actions under this Agreement are as follows:

- A. Starting Dues Withholding: Beginning the first pay period after date of receipt of properly executed and certified Standard Form 1187 in Payroll Office.

- B. Change in Amounts of Dues: Beginning the first pay period after receipt of certification in Payroll Office.
- C. Revocation by Employee: An SF-1188 may be filed by an employee with HRM during the thirty (30) calendar-day period beginning forty-five (45) days prior to the anniversary date of his/her first dues withholding and ending fifteen (15) days prior to the anniversary date. It is the employee's responsibility to ensure timely filing of the revocation forms. The Agency shall discontinue withholding the dues from the employee's pay effective on the employee's anniversary date. HRM shall notify the local Secretary-Treasurer, in writing, of all revocations and provide a copy of the SF-1188 at the time the revocation is made effective.
- D. Termination due to Loss of membership in Good Standing: Beginning the first pay period after date of receipt of notification in Payroll Office.
- E. Termination due to Loss of Exclusive Recognition upon which Allotment was based: Beginning of first pay period following loss of receipt of recognition.
- F. Termination due to Separation, Transfer, or Other Personnel Action
  - 1. If action is effective first workday of pay period, termination of allotment will be at end of preceding pay period.
  - 2. If action is effective on any workday other than first day of a pay period, termination of allotment will automatically be at end of such pay period.
  - 3. In case of death, no deduction will be made for the pay period in which death occurred.
- G. Other Reasons for Non-Deduction of Dues
  - 1. No deduction will be made during a pay period where an employee's earnings (part-time or intermittent) are not regularly sufficient to cover the amount of the allotment.
  - 2. If deductions are stopped temporarily because of insufficient salary, back dues will not be deducted from future earnings.
  - 3. No dues will be withheld if net salary after other legal and required deductions is not sufficient to cover the amount of dues.
  - 4. Dues would be stopped on effective date of a temporary or permanent promotion to supervisory position or into a non-bargaining position.

## **ARTICLE 34**

### **DURATION OF AGREEMENT, AMENDMENTS AND SUPPLEMENTS**

**Section 1.** The effective date of this agreement or supplement or amendment thereto will be the date of its approval by the Department due to the Agency Head Review process. However, any Article not approved or disapproved within thirty days from the date of execution will go into effect on the 31<sup>st</sup> day without the required approval of the Department and will be binding on the parties subject to the provisions of law and any other applicable rules or regulations.

**Section 2.** This agreement will remain in full force and effect for five (5) years from its effective date. Either party may give written notice to the other party not more than ninety nor less than sixty days prior to the end of the contract period of its intention to reopen the agreement. When such notice is given, the parties will meet for the purpose of negotiations within thirty days prior to the end of the contract period. Such notice will give the reasons for the proposed action.

If negotiations are not concluded prior to the expiration date, the agreement will continue in full force and effect until a new agreement has been concluded.

**Section 3.** Either party may reopen provisions at any time where this agreement conflicts with government-wide laws, rules or regulations. Before reopening, the initiating party will submit at least thirty (30) days prior to the desired reopening date, an agenda stating the reasons for reopening and the changes that are desired.

**Section 4.** After approval of this agreement by the Department , or after 45 days from the date of execution, whichever comes first, the Forest Supervisor or his/her representative and the Union President or his/her representative will jointly schedule and conduct a training meeting for the purpose of reviewing this agreement. The participants of this meeting will be, as a minimum, all Management and supervisory personnel and all of the Local officers and union representatives.

**Section 5.** All current Memorandums of Understanding (MOUs) will remain in effect unless they conflict with the provisions of this Agreement.

## **ARTICLE 35**

### **COPIES OF AGREEMENT**

**Section 1.** Management will type up the contract.

**Section 2.** This agreement will be made available to all bargaining unit employees. Management will provide the Union twenty five (25) hard copies of the agreement.

An electronic copy of the agreement will be available for employee access. New employees will be furnished notice of availability and hyper-link. Bargaining unit employees are authorized to print a personal copy of this agreement.

## Appendix A - Definitions

For the purpose of this Master Agreement, the terms listed below are defined as follows:

- 1. Day:** Unless stated otherwise, day means calendar day. If a due date falls on a Saturday, Sunday, or holiday, the next official workday will be considered the due date.
- 2. Designated Labor Relations Specialist:** An individual that management has designated as the labor relations contact. The current list of Labor Relations Specialists designated for each unit is located on the HRM Labor Relations web site.
- 3. Emergency Situation:** Any situation that is temporary in nature and poses sudden, immediate, or unforeseen work requirements as a result of natural phenomena or other circumstances beyond Management's reasonable control or ability to anticipate.
- 5. Employee:** An individual employed by the Forest Service who is included in a represented unit or otherwise recognized by the Parties during interim situations. Such an employee is also called a Bargaining Unit Employee. 5 U.S.C. 7103(a)(2) defines an "employee" as only those individuals currently employed. This definition does not include individuals who are applicants for employment. Temporaries cease to be employees after termination regardless of rehire eligibility.
- 9. In Writing:** Email is an acceptable method for all transmittals with reference to the Collective Bargaining Agreement (CBA).
- 10. Local Level:** References to "local level" or "Local Level" pertain to activities which occur at the level of an "Organized Unit."
- 11. Local:** A unit of AFGE that represents one or more organized units.
- 12. Local Management:** All levels of Management on the.
- 13. Local Parties** – The Union and Local Management at the level of an organized unit. (The level of an organized unit is the same as the local level.)
- 14. Management:** Means all levels of Management to which the Forest Service assigns managerial or supervisory duties. This term is equivalent to employer or agency.
- 15. Midterm Negotiations:** Bargaining changes affecting conditions of employment during the life of this Agreement that are not in conflict with the Agreement.
- 16. Notification:** All notification specified in this Agreement must be in writing, unless otherwise stated.
- 17. Organized Unit:** An organized unit is a Forest Service unit for which the Federal Labor Relations Authority has issued a certification.
- 18. Parties:** Normally, Parties with an upper case "P" indicates the national Management and Union collectively.
- 19. Service Computation Date:** For purposes of seniority in this Agreement, service computation date will be computed on the basis of each employee's leave service computation date, unless specified otherwise.

**20. Supervisor:** An individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees; to adjust their grievances; or to effectively recommend such action. The exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. For units that include firefighters or nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority (5 U.S.C. 7103(a)(10)).

**21. Subordinate Agreements:** Any agreement negotiated by the Local parties.

**22. Threshold Issues:** Threshold issues are typically procedural and or legal issues that are of such significance to the proceeding that they must be addressed prior to the other issues in the proceeding.

**23. Union:** Local officers of the Union, Union stewards, and other authorized representatives designated by any of the above.

**24. Union Official and/or Union Representative:** A representative or designee of AFGE, any accredited business representative of the AFGE, or the duly elected or appointed Union representative of a Local AFGE Union.

**25. Work Unit:** A work unit is an entity with a specific mission, with homogenous procedures or technology, and headed by a supervisor or manager authorized to approve time and attendance reports and approve leave.