

**Memorandum of Understanding
between the
Food and Drug Administration and
the National Treasury Employees Union, Chapter 282
regarding the Impact and Implementation of CDER's Proposed Desk Sharing program at the
White Oak Complex**

BACKGROUND

The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER) is out of office space and with employee growth projections management must enact innovative measures to address space shortages. As a practicable alternative, CDER plans to extend its Flexible Workplace Arrangements Program (FWAP) pursuant to Article 3 (Mid-Term Bargaining) and Article 26 (FWAP) of the Collective Bargaining Agreement (CBA) between the Department of Health and Human Services (DHHS) and the National Treasury Employees Union (NTEU) to include Desk Sharing as a CDER program initiative at the White Oak Complex only Pursuant Article 26, each BUE participant must have an existing approved FWAP agreement-of-record that is duly filed with the CDER FWAP coordinator. Nothing contained in this MOU is intended to supersede the CBA. If there is a conflict in language the CBA governs.

DEFINITIONS

Desk sharing: The desk sharing concept is a work arrangement in which two or more employees share the same workstation in a pre-arranged manner. This arrangement would allow each employee to have sole access to their assigned workstation on given days while the other employee works at their approved alternate work site.

Approving Official: The office director or if designated the second level supervisor shall be the person responsible for final approval or disapproval of requests and agreements to participate in the Desk Sharing Program. Office Directors at the super office level or their designees, but no lower than division directors will be responsible for final approval or disapproval of employee requests and agreements within their offices.

APPLICABILITY

Situations appropriate for desk sharing depend on the specific nature and content of the job, rather than just the job series and title. Participation in the Desk Sharing Program is voluntary and will require two levels of supervisory/management approval. Voluntary participants, if approved for the Desk Sharing Program will sign a desk sharing agreement. This agreement will specify the employee is willing to share an assigned workstation with another employee and adhere to all guidance applicable to the Desk Sharing Program.

Participation in the Desk Sharing Program is voluntary from two distinct perspectives:

- 1) The Super/Office directors may choose to have their Office to voluntarily participate or to not participate in the program.

2) Employees within a participating office may choose to volunteer to participate or to not participate in the Program.

Nothing contained in this program herein prohibits management at its own election based on business necessity or otherwise require employees to work at an alternate work site.

The duration or length of Program participation within a given Office will be set by the Super/Office directors. In the event that the Program is terminated for any cause, reason or superseding/intervening Departmental, Agency, Government-wide policy, rule or regulation, then reasonably appropriate steps will be taken by the Center to assure that the tenets of the Collective Bargaining Agreement are maintained.

Participants can work at the official duty station from his/her assigned office on a rotating basis of no more than a total of 5 days per pay period (e.g., 3 days at the official duty station on week 1 and 2 days at the official duty station on week 2). For the remaining work tour (5 days), the employee will be permitted to work away from the official duty station at an approved alternate work site. Participation in the Desk Sharing Program as with the Flexible Workplace Program will be determined by the approving official. The approving official in conjunction with the employee's immediate supervisor will determine and approve schedule rotations.

GUIDANCE

- This procedure provides the broadest parameters under which the desk sharing plan may operate in CDER given existing FWAP guidance (i.e., DHHS/NTEU CBA).
- Office directors at the super office level are responsible for implementing office specific supplemental plans outlining limitations and restrictions, and submitting the supplemental plans to the CDER FWAP Coordinator.
- Employee participation in the Desk Sharing Program may be terminated at any time, either at the request of the employee or at the discretion of management. The period of participation is determined by the length of the Desk Sharing Program as set by the Supper/Office directors.
- Whenever one member of a two member desk sharing pair is terminated from the Desk Sharing Program, the remaining employee will be allowed to continue to participate in the program. Management upon identifying a qualified participant will assign the individual to share the office space with the remaining employee.
- Employees may not terminate participation in the program with the expectation they will be allowed to transfer their approved desk sharing work schedule to a standard FWAP agreement pursuant to the CBA.

- CDER employees are eligible to participate in the Desk Sharing Program if the following criteria have been met:
 - 1) The employee's latest rating of record is "fully successful" or better, and there is no reasonable cause to believe this level of performance will drop.
 - 2) The employee is not on leave restriction.
 - 3) The employee is not on a performance improvement plan (PIP).
 - 4) The employee has not received any disciplinary or adverse action in the last twelve (12) months that would adversely impact the integrity of the Flexible Workplace Program or the Employer.
 - 5) The employee has demonstrated the ability to initiate his/her own work, to work without direct supervisory oversight, and recognizes when supervisory or other assistance is needed on a project.
 - 6) The employee's fully successful performance of the work does not require:
 - a. Daily and frequent use of specialized equipment or technology that is available only at the official duty station.
 - b. Daily and frequent face to face contacts with co-workers, managers and/or customers.
 - c. Daily and frequent access to confidential or sensitive data and/or information (not attainable from home) such as personnel and/or payroll records or proprietary information protected from unauthorized disclosure by the Privacy Act of 1974 and it's implementing regulations.
 - 7) Funds are available to provide and install necessary equipment, i.e., personal computer, telephones, etc., needed to perform work.

The approving official will make the final determination on which days and with what frequency an employee participating in the Desk Sharing Program will report to the official duty station. An employee will work at least 5 days per pay-period at the official duty station. The employee's approved FWAP agreement-of-record must already exist and be duly filed with the CDER FWAP Coordinator.

- If an employee's participation in the program is terminated at the request of the BUE or management, the supervisor will communicate such to the FWAP Coordinator.
- If participation in the program is terminated at the request of management or the employee; management will return employees to a similar office space held prior to participation in the Desk Sharing Program, recognizing there may be a transition period. Example: employees will be assigned to available office space or required to share an office until an office similar to the one previously occupied becomes available.
- As a minimum level of accessibility, the employees in the Flexible Workplace Program are expected to be as available to managers, co-workers and customers by telephone, e-mail, voice mail or other communications media during their scheduled daily tours of duty at the alternative work site as when working at the official duty station.

- For the purposes of timekeeping, participants will sign an office approved certification form each pay-period indicating hours worked or any exceptions to the scheduled tour of duty specified in their desk sharing agreement. Misrepresenting timekeeping records is cause to terminate participation in the program and could be grounds for other adverse or disciplinary action.
- Employees participating in the Desk Sharing Program are expected to attend certain meetings as specified for divisional needs at the official duty station even when such meetings are scheduled on the employee's day to work at an alternate work site. Failure to attend such meetings may result in the termination of the employee's participation in the program. CDER management will make reasonable efforts to provide alternative methods, such as teleconferencing, use of fax and e-mail, and/or other methods to avoid unplanned situations requiring the employee to report to the conventional work site. However, when situations occur that require the employee to return to the official duty station, travel to and from the office is normal commuting time and as such is not considered hours of work. Employees will not be paid for this travel.
- Employees participating in the Desk Sharing Program while at their alternate work location are not expected to work if the Government is closed for the day because of hazardous weather. However, if employees are dismissed early (and the Government is not closed) due to hazardous weather, an employee working from an alternate site during the Desk Sharing Program is expected to complete his or her tour of duty, unless the lack of contact with dismissed employees makes it impossible to continue working.
- The work schedule approved for an employee participating in the Desk Sharing Program must be observed. Employees should not block their calendars when working away from their official duty stations. Duty time may not be used for purposes other than official work. Although participation in the Desk Sharing Program may provide employees more time to accomplish family responsibilities, the Desk Sharing Program is not to be used by employees to care for young children or other dependents during the agreed upon scheduled hours of work.
- Employees participating in the Desk Sharing Program may earn credit time, with prior supervisory approval; however, credit time may not be earned by SES employees.
- During the Desk Sharing Program employees and managers must observe all pertinent time and attendance, leave, and pay regulations. Supervisors and approving officials will be expected to certify that the above conditions have been met.
- Employees participating in the Desk Sharing Program while at their official duty station are expected to share office equipment such as:
 - 1) All permanent/stationary office equipment will be shared (e.g., desk, keyboard, telephone, chair, etc.).

- 2) Telephone will be shared. All telephones have the capacity to carry up to 6 lines; each employee would have a dedicated phone line.
- 3) Open bookshelves and file cabinets space will be shared.

RESPONSIBILITIES AND PROCEDURES

Super/Office Directors or designated Approving Official (when appropriate) will:

- Identify positions that are eligible for participation in the Desk Sharing Program and office-specific supplemental plans, if needed, outlining limitations or restrictions.
- Approve or disapprove individual desk sharing agreements and forward them to the CDER FWAP Coordinator through the appropriate Management Officer

Supervisors will:

- Review and sign the desk sharing agreement indicating initial approval, and forward to the Approving Official
- Determine on a continuing bases when the work requirements of certain positions preclude employees in those positions from participating in the Desk Sharing Program

This MOU will become effective upon Agency Head review under 5 USC 7114 (C/2) or on the thirty-first (31st) day after its execution date, which ever occurs first.

The Parties may choose to proceed with implementation, subject to the Union's right to reopen no later than the last working day of the final week of the ninth full month after the date of notice. This period may be extended by mutual agreement. Nothing herein shall be deemed to waive the Union's right to file an unfair labor practice charge in the event that such implementation occurs without mutual agreement.

For FDA CDER:

<u>Mary Milline</u>	<u>11/9/10</u>
Mary Milline	Date
<u>Tony Malloy</u>	<u>11/9/10</u>
Tony Malloy	Date
<u>Jacquita Johnson-House</u>	<u>11/9/10</u>
Jacquita Johnson-House	Date
<u>Bob Gates</u>	<u>11/08/2010</u>
Bob Gates, DHHS/OHR/LER	Date

For NTEU Chapter 282:

<u>Philip Orticke Jr.</u>	<u>11/8/2010</u>
Philip Orticke Jr.	Date
<u>Michael Theodorakis</u>	<u>11/9/2010</u>
Michael Theodorakis	Date
<u>Michelle Jackson</u>	<u>11/8/2010</u>
Michelle Jackson	Date