

5 February 2024

## MEMORANDUM OF AGREEMENT

ON

### Firefighter Trade of Time

#### References:

(a) *Office of Personnel Management (OPM) memorandum CPM 2022-21 of 14 December 2022*

(b) *National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81, December 27, 2021, 5 USC 55 V5542(h))*

1. The American Federation of Government Employees (AFGE) Council 214 and Air Force Materiel Command (AFMC), hereafter referred to as the Union and Management, hereby enter into this Memorandum of Agreement (MOA) regarding the implementation of Firefighter Trade of Time.

2. Trade of time is authorized in accordance with Reference (a). Pursuant to Congressional intent and the requirements of Reference (b).

3. **Purpose.** This agreement is instituted in accordance with the requirements of reference (a) and (b). Trade of time is intended to serve as an additional scheduling flexibility for employees to improve workplace satisfaction and quality of life. The end goal for both the Union and Management is to provide maximum flexibility for employees within the constraints of mission requirements and maintaining minimum safe staffing.

4. **Procedure.** Employees are permitted to exchange duty time for durations between one (1) hour and forty-eight (48) hours in length. Employees requesting to exchange time will normally submit a request to their Station Chief (as long as non-BUE), Battalion Chief, Assistant Chief or higher at least 48 hours prior to the exchange. The Employer acknowledges that unforeseen circumstances may arise which may prevent the requesting employee(s) from submitting a trade request 48 hours or more prior to the exchange. These requests will be considered by the Employer on a case-by-case basis in accordance with guidelines set forth in reference (a) and (b).

A. Approved trade of time arrangements may be cancelled prior to any work substitution only with the consent of both parties to the agreement. Previously approved trade of time arrangements may not be amended/modified without the consent of both parties to the agreement, and Management.

B. Regarding paragraph E 1. of Reference (a), if for any reason an employee fails to work during the agreed upon substitution period, that employee will have not more than thirty (30) calendar days to inform management of when he/she will work to repay the debt of hours to the Agency. If the employee fails to provide management with this information within 30 calendar days, the employer may mandate when the debt of hours will be repaid or allow the employee to repay the debt with 24 hours of annual leave. Debt repayment hours may be scheduled during the substituting firefighter's normal break days off (Kelly-days), but will normally not be mandated when annual leave has already been approved.

C. Employees will not be permitted to re-trade hours that they have already traded. It is understood that trade time will not be used too regularly after an employee's permanent work shift assignment/schedule.

5. **Written Trade of Time Agreement.** Appendix A is the Trade of Time Request/Agreement utilized to request and approve trade of time and comply with the record keeping requirements of Reference (a).

6. The parties agree to all of the aforementioned terms and agree to adhere to the specific terms contained in reference (a), specifically:

#### **A. General Information**

1. ***Section 1110 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117-81, December 27, 2021)*** added a new subsection (***h***) ***in section 5542 of subchapter V of chapter 55 of title 5, United States Code. Section 5542(h)*** authorizes covered Federal firefighters (those eligible under section ***5542(h)(2)(A)***) to exchange scheduled hours of work ("trading time"). In general, hours worked by a substituting firefighter are deemed to be worked by the excused firefighter. In this policy document, the following definitions apply:

*Qualified trade-of-time arrangement* means an agency-approved arrangement under which two firefighters voluntarily substitute for one another (switch work assignments) during scheduled work hours, subject to the conditions described in this policy document.

*Substituting firefighter* means the firefighter who is working in place of another firefighter during a designated period of time under a qualified

trade-of-time arrangement.

*Excused firefighter* means the firefighter who is excused from working during a designated period of time because another firefighter is scheduled to work in the firefighter's place under a qualified trade-of-time arrangement.

2. **Section 1110**-and thus the new section **5542(h)**-took effect on the date of enactment, December 27, 2021.
3. **Section 5542(h)** authorizes the Director of the Office of Personnel Management (OPM) to adopt necessary policies governing the treatment of both the substituting and the excused firefighter under a qualified trade-of-time arrangement, without regard to how those firefighters would otherwise be treated under other provisions of law or regulation.
4. Eligible firefighters may trade time during scheduled work hours, subject to the conditions and requirements set forth in this policy document and in any applicable supplemental agency policies (including policies established via collective bargaining).

## **B. Eligible Firefighters**

1. Under **5 U.S.C. 5542(h)**, a firefighter is eligible to trade time with another eligible firefighter if both have work schedules including 24-hour duty shifts and satisfy the other requirements under the definition of "firefighter" in **5 U.S.C. 5542(h)(2)(A)**. That definition covers an "employee" (as defined in **5 U.S.C. 5541**) who is covered by the title 5 premium pay subchapter and who is one of the following:

- a. A firefighter, as defined in **5 U.S.C. 8331(21)** or **8401(14)**;
- b. An employee covered by the Civil Service Retirement System (CSRS, **5 U.S.C. chapter 83, subchapter III**) who holds a supervisory or administrative position, but who does not qualify to be considered a firefighter within the meaning of section **8331(21)**, but who would qualify if the employee had transferred directly to such position after serving as a firefighter under section **8331(21)**;
- c. An employee covered by the Federal Employees' Retirement System (FERS, **5 U.S.C. chapter 84**) who holds a supervisory or administrative position, but who does not qualify to be considered a firefighter within the meaning of section **8401(14)**, but who would qualify if the

employee had transferred directly to such position after performing duties described in section **8401(14)(A)** for at least 3 years; or

- d. An employee who is not covered by CSRS or FERS but holds a position OPM determines would fall under paragraphs a, b, or c if the employee were subject to CSRS or FERS.

2. In addition to satisfying the requirements in B.1, both firefighters involved in a trade-of- time arrangement must be subject to the supervision of the same fire chief and must be capable of performing the core duties that could be required during traded hours (**5 U.S.C. 5542(h)(2)(B)**). If one firefighter who would be covered by an arrangement is at a lower grade, qualification, or certification level than the other firefighter under that arrangement, the fire chief (or authorized designee) may withhold approval if the affected unit as a whole would not have the necessary skills among those assigned to an affected shift to effectively accomplish its mission.

### **C. General Principles**

1. A qualified trade-of-time arrangement is an arrangement between two eligible firefighters, both of whom must voluntarily agree to the arrangement. The arrangement must also be approved by an authorized agency official – Station Chief, Battalion Chief, Assistant Chief, Deputy Chief, or Fire Chief.
2. The purpose of a trade-of-time arrangement is to trade hours of work. Thus, each firefighter who is a party to the arrangement must be planning on working during the hours the firefighter is assigned to substitute for the other. In the event of an unplanned absence during a scheduled substitution, the rules in section E apply.
3. For the purpose of determining credit for hours and associated pay, an hour of work performed by a substituting firefighter must be deemed to be worked by the excused firefighter (not the substituting firefighter), except for the purposes specified in this policy document. (In particular, see section F.)
4. This policy document must be read in conjunction with any applicable agency policies, including policies in collective bargaining agreements.

### **D. Elements of a Qualified Trade of Time Agreement**

1. *Eligible firefighters.* Both firefighters involved must satisfy the eligibility requirements described in section B above.
2. *Tradeable Hours.* Firefighters may trade only hours within the firefighter's regular tour of duty established for leave-charging purposes.
3. *Full shifts/partial shifts.* Firefighters may agree to substitute either entire

shifts or a portion of a shift, subject to requirements/conditions in agency policies (including policies in collective bargaining agreements) and approval by an authorized agency official (see Para C.1. above) .

4. *Conditions for approval.* A proposed trade-of-time arrangement may not be approved if:
  - a. a proposed substitution would occur more than one (1) year after the date of the approval of the qualified trade-of-time arrangement;
  - b. either of the involved firefighters owes a debt of hours to the Agency, as described in section E;
  - c. either of the firefighters does not meet a requirement or eligibility condition established under agency policies (including policies established via collective bargaining)-for example, a requirement that an arrangement not result in a firefighter being on duty for consecutive hours in excess of an established limit (including duty hours as a substituting firefighter and excluding hours as an excused firefighter), a condition that the employee has served as a firefighter for at least 90 days, or a condition that the firefighter has a fully successful performance rating; or
  - d. the arrangement involves the trading of hours for which pay is computed using a different methodology (e.g., a firefighter with a 56 or 60 hr regular tour of duty has 40 basic workweek hours computed using a GS hourly rate based on a 2,087-hour divisor and 16-20 overnight overtime hours computed using a 2,756-hour divisor; two firefighters with a 40+16 tour could (1) trade basic workweek hours, (2) trade overnight overtime hours, or (3) trade an entire 24-hour (8+16) shift that has the same mix of basic and overtime hours). In other words, shift firefighters may not trade time with non-shift firefighters.
5. *Agreement elements.* Each party to a trade-of-time arrangement must sign a written agreement (developed locally in cooperation between Management and Union leaders) between the parties that includes the following:
  - a. The periods of time when one firefighter will substitute for another (including the specific dates and hours);
  - b. Written signatures (including electronic signatures meeting standards established by the agency) of the two firefighters and the approving official;
  - c. Acknowledgement that credit for hours and associated pay for an excused firefighter will be determined as if the excused firefighter

performed the work actually performed by the substituting firefighter; likewise, a substituting firefighter will not receive credit for hours and associated pay based on periods of substitution (but will be eligible for workers' compensation benefits as provided in section F.4);

- d. Acknowledgement of any agency policies (including policies established via collective bargaining) under which a previously approved arrangement may be canceled before any substitution occurs;
  - e. Acknowledgement of the policies governing uncompleted qualified trade-of-time arrangements (including an arrangement terminated by the agency, as described in paragraph 7), including the possibility of a substituting firefighter being considered absent without leave (AWOL) for an unauthorized absence during a scheduled substitution and the possibility of owing a debt of hours to the agency for an uncompleted trade, which may be converted to a monetary debt at separation; and loss of participation in the Firefighter Trade Time Program for six (6) months.
  - f. Attestation that the substituting firefighter intends to perform work to complete the firefighter's trade obligation and that the parties will not exchange cash, goods, services (other than traded hours), or anything else of value in connection with traded time-with the exception of anything of such little value that it could not reasonably be found to be an inducement for the trade.
6. *Approval.* Any requested trade must be approved by an authorized agency official (see Para C.1. above) (e.g., the fire chief with supervisory responsibility for both firefighters). Agencies may require advance notice of any proposed trades to allow time to review the proposal and address any concerns prior to determining whether to approve the arrangement. Previously approved trades may be amended with the agreement of the firefighters involved and an authorized agency official.

**7. *Cancellation or Prospective Termination.***

- a. An authorized agency official may cancel (i.e., withdraw approval) a qualified trade-of-time arrangement under which substitution has not yet occurred, if a party to the arrangement is no longer an eligible firefighter or as otherwise allowed or required under agency policies (including policies established via collective bargaining). (See parallel rule regarding agency policies related to approval of an arrangement

in section D.4.e.)

- b. An authorized agency official may prospectively terminate a partially completed qualified trade-of-time arrangement when one of the firefighters under the arrangement is not available to fulfill the work commitment made by that firefighter. For example, one firefighter may separate from Federal service, have a long-term absence (non-duty status), transfer to a different agency, move to a position in which the employee is no longer an eligible firefighter, or move to a firefighter position in a different fire department. If, at the time of termination, a firefighter under the arrangement has completed the firefighter's obligation to serve as a substituting firefighter but has not been credited with hours of work as an excused firefighter as scheduled under the arrangement, such firefighter will be excused as scheduled, and the other firefighter will owe a debt of hours, which will be disposed of in accordance with section E. In other words, the arrangement is converted to an arrangement between each firefighter and the agency.

#### **E. Uncompleted Trades**

1. If a substituting firefighter fails to work during the agreed-upon substitution period, the excused firefighter will be entitled to credit for hours and pay as if the substitution had been made. The substituting firefighter will become indebted to the agency and will be required to later perform work outside the firefighter's tour of duty to satisfy the debt of hours---as assigned by an authorized agency official. Those debt-repayment hours are not credited as hours of work in determining the firefighter's pay entitlements in the pay period in which they are performed. (However, a firefighter may be found to be AWOL to report to duty during scheduled debt-repayment hours and will have workers' compensation protection during debt-repayment hours worked, consistent with the treatment of substituted hours described in section F.3 and F.4.)
2. As provided in section D.4.c, a firefighter with a debt of hours as described in paragraph 1 may not enter into a new trade-of-time arrangement until the debt is eliminated.
3. As provided in section F.3, a substituting firefighter whose absence during a scheduled period of substitution is unauthorized will be considered to be AWOL and will be subject to appropriate discipline.
4. If a firefighter owes a debt of hours when separating from Federal service, when

transferring to a different agency, or when moving to a position in the same agency in which the employee is no longer an eligible firefighter, the debt of hours must be recovered to the extent possible. Any remaining amount of the hours debt must be converted to a monetary debt owed to the agency. The amount of the monetary debt will be determined based on the firefighter's pay entitlements at the time of separation. Any remaining monetary debt is subject to the standard provisions that govern Federal debt collection, such as the **Federal Claims Collection Standards (31 U.S.C. 3711 and 31 CFR parts 900-904)**, salary offset procedures (**5 U.S.C. 5514 and 5 CFR part 550, subpart K**), and compensation overpayment waiver provisions (**5 U.S.C. 5584**).

## **F. Treatment of Hours for Pay and Other Purposes**

- 1. General.* Except as specifically provided in this policy document, credit for hours and associated pay for an excused firefighter must be determined as if the excused firefighter performed the work actually performed by the substituting firefighter; likewise, a substituting firefighter may not receive credit for hours and associated pay based on periods of substitution. For example, any hours worked by a substituting firefighter under a qualified trade-of-time arrangement must be disregarded when determining that firefighter's eligibility for overtime pay or calculating the amount of such pay under the provisions of the **Fair Labor Standards Act and title 5. (See 5 U.S.C. 5542(h)(1)(A).**) Instead, the excused firefighter must be credited with hours worked by the substituting firefighter in determining the excused firefighter's overtime pay entitlements.
- 2. Service credit.* Hours worked by a substituting firefighter under a qualified trade-of-time arrangement will be included in creditable service for leave accrual, retirement, and other purposes for the excused firefighter, not the substituting one.
- 3. Absent without leave.* A substituting firefighter who, without authorization, fails to report to duty when scheduled to substitute for another firefighter under a qualified trade-of-time arrangement will be considered to be AWOL and subject to appropriate discipline-unless the agency decides to retroactively approve the absence after reviewing the circumstances. Also, a firefighter who owes a debt of hours and, without authorization, fails to report to duty when scheduled to perform work to satisfy that debt will be considered to be AWOL and subject to appropriate discipline-unless the agency decides to retroactively approve the absence after reviewing the circumstances.
- 4. Workers' compensation.* The fact that a firefighter was injured while substituting for another firefighter under a qualified trade-of-time arrangement has no bearing on the substituting firefighter's possible entitlement to workers' compensation benefits. A substituting firefighter is considered to be in the performance of duty



during a period of substitution for workers' compensation purposes, except that any payments (e.g., continuation of pay) for the remainder of the affected biweekly pay period must be based on pay to which the substituting firefighter is entitled, without regard to pay for hours worked on behalf of an excused firefighter. The excused firefighter is not considered to be in the performance of duty during the period where a substituting firefighter is working on their behalf. If an employee had been scheduled (before the work injury) to work as a substituting firefighter during a future period when the firefighter is receiving continuation of pay or wage-loss compensation, the employee's leave status will be considered to satisfy the firefighter's work hours obligation, but only if the other firefighter under the affected qualified trade-of-time arrangement had already completed his/her part of the trade. If neither firefighter had completed their respective parts of the trade prior to the work injury leading to workers' compensation benefits, the trade-of-time arrangement will be automatically cancelled.

#### **G. Local Installation Responsibilities (which will require local bargaining obligations)**

1. Each local installation is responsible for establishing through proper procedures (including collective bargaining, as applicable) any necessary agency policies to supplement this OPM policy document.
2. Local installations should provide eligible firefighters who are unable to utilize a trade-of-time arrangement with information regarding alternative flexibilities such as compensatory time off.
3. Local installations must keep records of a qualified trade-of-time arrangement (including uncompleted arrangements) for 4 years after the last substituted work performed under the arrangement.
4. Local installations must keep current records that show pending-completion qualified trade-of-time arrangements for each firefighter, including the current balance of hours committed (but not yet executed) for substitution, as required to apply the rule in section D.4.a. Keep records of trade time in accordance with your local records management plan.
5. Local installations must manage any debts of hours resulting from an uncompleted qualified trade-of-time arrangement as prescribed in section E.

#### **H. Legislation**

*Section 1110 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 11781, December 27, 2021) added a new subsection 5542(h) in subchapter V of chapter 55 of Title 5, United States Code. § 5542(h)*

**(h)(1)(A)** Notwithstanding any other provision of this section or **section 5545b**, any hours worked by a firefighter under a qualified trade-of-time arrangement shall be disregarded for purposes of any determination relating to eligibility for, or the amount of, any overtime pay under this section, including overtime pay under the **Fair Labor Standards Act** in accordance with subsection (c).

(B) The Director of the Office of Personnel Management-

- (i) identify the situations in which a firefighter shall be deemed to have worked hours actually worked by a substituting firefighter under a qualified trade-of-time arrangement; and
- (ii) may adopt necessary policies governing the treatment of both a substituting and substituted firefighter under a qualified trade-of-time arrangement, without regard to how those firefighters would otherwise be treated under other provisions of law or regulation.

(2) In this subsection-

(A) the term "firefighter" means an employee-

(i) the work schedule of whom includes 24-hour duty shifts; and

(ii) who-

(I) is a firefighter, as defined in **section 8331(21) or 8401(14)**;

(II) in the case of an employee who holds a supervisory or administrative position and is subject to **subchapter III of chapter 83**, but who does not qualify to be considered a firefighter within the meaning of section **8331(21)**, would so qualify if such employee had transferred directly to such position after serving as a firefighter within the meaning of such section;

(III) in the case of an employee who holds a supervisory or administrative position and is subject to **chapter 84**, but who does not qualify to be considered a firefighter within the meaning of section **8401(14)**, would so qualify if such employee had transferred directly to such position after performing duties described in

**section 8401(14)(A) and (B)** for at least 3 years; and

(IV) in the case of an employee who is not subject to **subchapter III of chapter 83 or chapter 84**, holds a position that OPM determines would satisfy subclause **(I), (II), or (III)** if the employee were subject to **subchapter III of chapter 83 or chapter 84**; and

(B) the term "qualified trade-of-time arrangement" means an arrangement under which 2 firefighters who are subject to the supervision of the same fire chief agree, solely at their option and with the approval of the employing agency, to substitute for one another during scheduled work hours in the performance of work in the same capacity.

7. All remedies available under the MLA or 5 USC 71 will remain available to the parties if concerns cannot be cooperatively resolved.

## MANAGEMENT

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