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PO Box 1450  
Alexandria, VA 22313-1450  
Email: [efoia@uspto.gov](mailto:efoia@uspto.gov)

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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OFFICE OF THE GENERAL COUNSEL

August 07, 2012

Re: Freedom of Information Act (FOIA) Request No. F-12-00190

The United States Patent and Trademark Office (USPTO) FOIA Office received your letter dated July 29, 2012, in which you requested, under the provisions of the Freedom of Information Act, 5 U.S.C. § 552:

A current copy of the USPTO Telework handbook/guidelines for USPTO employees.

The United States Patent and Trademark Office identified a document that is responsive to your request. A copy of this material is enclosed.

You have the right to appeal this initial determination to the General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. An appeal must be received within 30 calendar days from the date of this letter. See 37 C.F.R. § 102.10(a). The appeal must be in writing. You must include a copy of your original request, this letter, and a statement of the reasons why the information should be made available and why this initial determination was in error. Both the letter and the envelope must be clearly marked "Freedom of Information Appeal."

The processing fee was less than \$20.00, and is hereby waived.

Sincerely,

*Kathryn Siehndel*

Kathryn Siehndel  
USPTO FOIA Officer

Enclosure

# TELEWORK POLICY



UNITED STATES PATENT AND TRADEMARK OFFICE

SEPTEMBER 2011

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TELEWORK POLICY

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## TELEWORK POLICY

### I. PURPOSE

The purpose of this enterprise-wide telework policy is to provide guidance for designing, developing, and implementing telework programs at the United States Patent and Trademark Office (USPTO). It is intended that the USPTO telework policy promote:

1. Recruitment and retention of the best possible workforce,
2. Continuity of operations during emergency conditions,
3. Reduction in management costs related to employee turnover and absenteeism in addition to real estate and transit costs, and
4. Enhanced work life balance by allowing employees to better manage their work and family obligations.

This policy does not modify any telework practice or agreement between the agency and its unions, or constrain future telework agreements between the agency and its unions.

### II. AUTHORITY

The *Telework Enhancement Act of 2010* (the Act) was signed into law on December 9, 2010 (Public Law (Pub. L.) 111-292). The Act specifies roles, responsibilities, and expectations for all Federal executive agencies with regard to telework policies; employee eligibility and participation; program implementation; and reporting.

The 2001 Department of Transportation appropriations measure, which became law in October 2000 (Pub. L. 106-346), requires agencies to establish policies allowing eligible employees to telework “to the maximum extent possible without diminishing employee performance.”

Memorandum for Energy and Fuel Conservation by Federal Agencies, September 26, 2005

Pub. L. 105-277, Omnibus Appropriation Act, Title IV, 630 of October 21, 1998

Memorandum: Implementing Federal Family Friendly Work Arrangements, 32 Weekly Comp., 1119 (June 21, 1996)

National Telecommuting Initiative Action Plan, (President’s Management Council, January 1996)

Pub. L. 104-52, 620 (31 USC 1348) of November 19, 1995

Memorandum: Expanding Family Friendly Work Arrangements in the Executive Branch, 30 Weekly Comp. Pres. Doc. 1468 (July 11, 1994)

Federal Employees Clean Air Incentives Act, (Pub. L. 103-172, November 11, 1993).

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### III. BACKGROUND

Most commonly, telework refers to a work flexibility arrangement under which employees perform the duties and responsibilities of their positions (and other authorized activities) from an approved worksite other than their official duty station of record. In some cases, telework may be performed from an approved duty station of record other than a USPTO facility, as with individuals approved to participate in the Telework Enhancement Act Pilot Program (TEAPP) or a 50-mile hoteling program. Both definitions of telework include what is generally referred to as remote work but neither includes any part of work done while on official travel or mobile work.

The USPTO has fully embraced the concept of telework as a business concept that provides significant benefits to both the agency and its employees. Telework provides cost savings to the agency through space savings, increased recruitment and retention, and fosters greater efficiency in production and management. It also provides opportunities for expanded work flexibility and better work life balance for participating employees.

### IV. SCOPE

The USPTO Telework Program is a work arrangement that allows eligible employees to work at an alternate worksite during paid work hours to conduct their officially assigned duties.

While participating in the telework program, a participating employee will continue to provide internal and external customer service and maintain the normal functions and performance of the USPTO. Employees will be allowed to participate to the maximum extent possible without diminished performance so long as they meet the requirements of this policy and obtain supervisory approval. The USPTO Telework Program allows participants to work from the alternate worksite one or more days per bi-week.

The provisions of this document apply to all employees participating in a USPTO telework program. Additionally, the provisions of applicable collective bargaining agreements will be honored in regard to business unit employee telework agreements. The policy provides telework guidelines for employees and managers not occupying a bargaining unit position and provides a foundation for business units that have employees in bargaining unit positions from which to modify or create a telework program by practice or agreement with a union.

### V. ACCOUNTABILITY

The USPTO Senior Advisor, Telework in the Office of the Chief Administrative Officer will serve as the Agency's coordinator for all telework related business.

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**Participants in a USPTO telework program are required to:**

- **Sign a USPTO Telework Agreement**
- **Participate in USPTO Telework Training**
- **Adhere to the applicable underlying telework policy or risk loss of ability to participate**

## **VI. AGENCY TELEWORK PROCEDURES**

### **A. Jobs and Duties Suited for Telework**

1. Although many positions are suitable for telework, the law recognizes that not all aspects of all jobs can be performed at alternate worksites. Each Business Unit (BU) must identify the positions that are suitable for telework as well as those positions, when considered in their entirety, which are not.
2. Work suitable for telework depends on job content rather than job series or title, type of appointment, or work schedule. Even jobs not entirely suited for telework may contain duties that can be performed at an alternate worksite either on a regularly scheduled or situational basis. Any parameters for what constitutes a 'situational' arrangement should be based on each BU's unique operational requirements.
3. Tasks and functions generally suited for telework include:
  - Thinking and writing
  - Policy development
  - Research
  - Analysis (investigation, program analysis, financial analysis)
  - Report writing
  - Telephone intensive tasks
  - Computer-oriented tasks
  - Data processing, provided the security of data can be adequately assured

### **B. Employee Eligibility**

1. Positions generally eligible for telework are those positions, as determined by each BU, involving tasks that are suitable to be performed away from the traditional worksite (see Section VI, Section A).
2. Employees serving probationary or trial periods and student interns are not considered telework eligible unless an exception is authorized by the BU Head based on an operational need.
3. Employee eligibility may be further limited by negotiated telework arrangements within business units.

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#### C. Authorization to Telework

With few exceptions as may be defined by the unique operational needs of a BU, an employee may be authorized to telework if the following criteria are met:

1. The employee is in a position deemed eligible by the USPTO BU and approved by the BU Head and/or their designee.
2. The employee has met, at minimum, a Fully Successful rating of record unless specifically approved by the BU.
3. The employee is not currently on a Performance Improvement Plan (PIP).
4. The employee reads, understands, and signs the USPTO Telework Program Work Agreement, including the safety certification.
5. The employee participates in USPTO telework training prior to teleworking.
6. The employee, if renting their place of residence, ensures their lease allows for the installation of all necessary equipment and lines for the program.
7. The employee complies with all local laws or rules governing an office in their residence.

#### D. The Alternate Worksite

1. ***Worksite Environment.*** If the alternate worksite is the participant's residence, the participant must designate a room or location in their residence for placement and use of the equipment/material for the USPTO Telework Program by:
  - a. Participants complete and sign a self-certification of the safety at their alternate worksite;
  - b. In most cases<sup>1</sup>, the USPTO provides participants with computer equipment (based on their BU) and standard office supplies for use at the alternate worksite. However, participants are responsible for any utility cost, heating, and lighting at the residence and for any rewiring, updating, and improvements necessary to ensure the electrical connections meet the required standards;
  - c. In accordance with the OCIO standards, employees interested in participating in any telework program must have a high speed internet access connection which meets the Office needs and technical and security requirements. The Agency may periodically revise these standards and any changes in required connection will be communicated to employees;
  - d. Participants maintain reasonable care of all USPTO-owned equipment/material. The USPTO acts as the insurer for damage, theft, or other loss (e.g., fire, flood, etc.) of the USPTO equipment/materials only;

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<sup>1</sup> The TEAPP operating plan stipulates very specifically what the office will supply to employees.

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- e. Participants are covered under the Federal Employee's Compensation Act (FECA). If injured in the course of performing official duties at the approved alternate worksite, the participant will notify their supervisor or another designated USPTO official as soon as possible and in accordance with FECA.
2. **Worksite Injury.** Upon notification, the USPTO may investigate all accident and injury reports that occur at the alternate worksites. The USPTO is not liable for damages to an employee's personal or real property during the course of performing official duties or while using USPTO material in the employee's residence or elsewhere, except to the extent the USPTO is held liable by the Federal Tort Claims Act or claims arising under the Military Personnel and Civilian Employees Claims Act.
3. **Performance Obligations.** Any employee participating in telework is expected to perform his/her duties and responsibilities at the telework location at the BU minimum acceptable performance level or greater. Consequently, it is critical that the alternate worksite be free from distractions and the employee free from obligations which would impair his/her ability to provide the same time and level of attention to the work product as when onsite.
4. **Worksite Inspection.** With reasonable advance notice, the supervisor or designee has the right to inspect the home or alternate worksite before the arrangement begins and at periodic intervals during the telework arrangement to ensure the workspace is safe and that all equipment is adequately installed and performing properly.
5. **Dependent Care.** No telework arrangement is authorized which allows the employee to provide care to any individual during telework hours. However, a dependent<sup>2</sup> may be at home while the employee teleworks if those dependents are independently pursuing their own activities or otherwise provided for by a caretaker.

#### E. Establishing the Work Schedule

1. **Work Schedules.** The supervisor works with the employee to identify the days and times he/she will work in each work setting. Normally, work schedules at the telework location will parallel those at the regular worksite but can be structured to meet the needs of participating employees, their supervisors, and their organizational mission. The process of establishing work schedules permits periodic adjustments to achieve an optimal schedule, which meet organizational requirements and suit

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<sup>2</sup>OPM/FSAFEDs defines dependent care as follows:

- Dependent children under age 13
- A person of any age you claim as a dependent on your Federal Income Tax return, and who is mentally or physically incapable of self-care. This would include an elder or other adult dependent.

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employee needs. Work schedules may also include fixed times during the day for supervisor/employee telephone conversations. Establishing such times may be helpful to supervisor/employee communication options.

2. ***Overtime/Compensatory Time.*** BU heads and/or managers determine whether or not participants can work paid overtime or compensatory time the day(s) they work at the alternate worksite. In accordance with pay policy, overtime must be approved in advance to preclude any unintended liability for premium pay. Employees who telework must receive supervisory approval prior to working beyond their normal hours of duty. Failure to obtain supervisory approval will result in not being paid for overtime and may result in the termination of the telework agreement.
3. ***Meetings, Lectures, and Training.*** Generally, employees in the USPTO Telework Program will be given advance notice of at least two business days for all meetings, lectures, training, or other events that require their physical presence at the USPTO.
4. ***Timesheets.*** All participants in the USPTO Telework Program should indicate accurately on their timesheets which days were worked at the alternate worksite. Telework is indicated on the timesheet by the Transaction Code. The Program Project Activity (PPA) Code reflects the type of work, activity or project the employee performed. The two codes (Transaction and PPA) used together properly reflect the work performed while teleworking. This means that any PPA performed on campus as well as at the alternate worksite, will require duplication on the time sheet where one includes the Transaction Code for Telework, and the other does not.<sup>3</sup> Use of approved leave and compensatory time would be no different for an employee who was expected in the office that day versus one that is on telework.
5. ***Telework Days or Hours.*** The respective supervisor in a given BU will be responsible for approving (or not) a participant's telework day(s) and/or specific hours teleworking (when they are substantially different than hours worked on campus). Supervisory approval will be granted based on BU needs for on-site coverage as well as the need for on-site employee interactions and training. If the participant teleworks on the same schedule each week, a single notification of the agreed upon schedule to the supervisor is sufficient.
6. ***Office Space.*** Employees who participate in a program allowing four or more telework days per week will relinquish their office space and utilize a hoteling station when they are on campus. An employee teleworking three days per week or less may be required to share office space with another employee.

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<sup>3</sup> There are three options within the webTA Transaction Code selection box to identify telework. An employee/timekeeper may select the following options: (1) Telework, (2) Telework  $\leq 2d$  (greater than or equal 2 days) or (3) Telework  $< 2d$  (less than 2 days). Options 2 and 3 are used by those that have a set telework schedule; others may telework intermittently using option 1 or as approved under special circumstances.

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7. **Leave.** Procedures for requesting leave remain unchanged. Employees are responsible for obtaining leave approval in advance and keeping timekeepers informed of leave usage.
8. **Holidays.** Participants working at the alternate worksite will be granted the same holidays as employees at the USPTO, including Inauguration Day and National Days of Mourning.

#### F. The Telework Agreement

1. The telework participant and supervisor must sign a telework agreement before the employee may begin teleworking. A copy of the signed telework agreement will be maintained by the BU, entered into the telework database, and be available for review by the Office of the Chief Administrative Officer and the Telework Senior Advisor.
2. An employee, who has received eligibility notification for one or more telework days and desires to do so, will schedule a time to meet and/or otherwise communicate with their supervisor to discuss aspects of the telework assignment. Items for discussion may include but are not limited to:
  - The work and/or type of work that will be done at the alternate worksite;
  - The work schedule if and/or when it is or will be different from the on campus work day schedule;
  - Frequency and method(s)<sup>4</sup> of communicating with the supervisor and colleagues; and
  - How the work performed will be reported.
3. As defined by the OCIO VPN Connections Guide, a Cable or Fiber Optic broadband Internet Service is required for all USPTO Hoteling and Telework programs. No other type of service (DSL, WiMax, satellite, etc.) will provide adequate performance. The service must be capable of greater than 2Mbps downloads, 2Mbps upload and capable of at least 15Mbps download in the future. Most cable and Fiber Optic Internet Service Providers meet these standards.
4. Procedures for securing a telework arrangement include (but may be modified as necessary by the BU to meet their particular procedural requirements) the following steps:
  - The eligible employee has met and/or communicated with their immediate supervisor as outlined in Section F.2 of this policy;
  - The eligible employee submits a completed application following their designated BU procedures;

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<sup>4</sup> It is highly recommended that supervisors establish and mandate the regular use of collaboration tools with employees to the extent that they are available on the employees given telework program. Regular use of these tools ensures proficiency and efficiency in remote collaboration with the office and with USPTO customers.

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- The employee completes the telework agreement and safety checklist;
- The telework agreement is signed by the employee and immediate supervisor;
- The supervisor submits the signed agreement to the BU Telework Coordinator;
- The BU Telework Coordinator works with the OCIO to obtain access and technical training for the requesting employee;
- The OCIO will provide instructions for the employee to have remote access once they ensure that security requirements for participation can be met;
- The employee will participate in telework training prior to beginning telework.

#### G. Modification and Termination of the Telework Agreement

1. **The operational needs of the business unit are paramount.** Employees who telework do not have an automatic right to continue to telework and telework arrangements may be modified, adjusted, suspended, or terminated at any time by management (or when requested by the employee).
2. Participation in telework will be terminated when the employee no longer meets the eligibility criteria and/or suspended when not meeting authorization criteria.
3. Management shall provide sufficient notice, when feasible, before modifying, suspending, or terminating a telework agreement to allow the affected employee to make necessary arrangements. Consent or acknowledgement via signature by the terminating employee is not required for the modification or termination to take effect.
4. To withdraw from the telework program, including for the purpose of promotion or retirement, the employee emails his/her intent to the supervisor and the BU Telework Coordinator, and coordinates the return of all issued equipment and materials with the USPTO BU Telework Coordinator.
5. The employee, or the supervisor, can terminate the telework agreement by either providing reasonable advance notification (to be determined by the respective BU) or as soon as the teleworking arrangement fails to meet organizational needs.
6. Specific to employees participating in one of USPTO's telework hoteling programs:
  - Employees who wish to withdraw from the program and need office space allocated must notify the BU supervisor of home/duty station changes eight weeks in advance of the address change.
  - The supervisor initiates an SF52 to change the Duty Station to Alexandria, VA if it is not already Alexandria.
  - The change in Duty Station to Alexandria, VA is considered to be at the convenience of the employee, who is therefore not eligible for moving costs.
7. All USPTO owned equipment/materials associated with this program must be returned to the USPTO (or arrangements for their return must be scheduled with the

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designated USPTO official) within three to five business days of an individual's withdrawal or termination from the program.

#### H. Equipment, Records, Files, and Documents

1. BUs may prescribe limitations or restrictions on the removal of documents or data from the USPTO worksite.
2. Unsecured Personally Identifiable Information should not leave the USPTO campus (see Section VI.I of this policy – Security).
3. The USPTO may provide equipment, software, and other materials for participants' use at the alternate worksite. What equipment, if any, is provided, will be determined by the BU based on their specific operational requirements. The USPTO may require return or exchange of equipment provided.
4. The USPTO is not responsible for non-USPTO provided equipment.
5. Participants are expected to demonstrate the same levels of email monitoring activity while teleworking, as they do when they are on campus. Likewise, participants should report equipment failures or disruptions of equipment (regardless of whether it is USPTO provided or not) promptly to their supervisor. Unanticipated equipment disruptions could affect telework schedules.
6. The USPTO maintains ownership and control of any and all government furnished equipment, software, other materials, and data provided to the participant.
7. Participants must apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and comply with the Privacy Act requirements.
8. BUs and the OCIO maintain inventory of all USPTO provided telework equipment used by employees at the alternate worksite.

#### I. Security

Federal agencies and staff are responsible for the security of Federal government property, information, and information systems. Telework does not change this responsibility. If not properly implemented, telework may introduce vulnerabilities into agency systems and networks. To prevent security incidents, the Federal Information Security Management Act of 2002 requires agencies to protect information and information systems commensurate with risk. In addition, OMB memorandum M-06-16 recommends actions to protect remote information that all agencies should continue to implement. The telework applicant certifies each year with their immediate Supervisor that they have complied with the USPTO mandatory IT Security Awareness Training. Not doing so in a timely manner, may result in an employee's removal from the telework program as well as limiting access to the Agency's IT systems.

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1. Care must be taken to ensure records subject to the Privacy Act [5 U.S.C. Sec. 552a Records Maintained on Individuals] and sensitive but non-classified data are not disclosed to anyone except those who have authorized access to perform their duties. Managers and employees should refer to the USPTO IT Security Handbook Section 4.5.2.2 Sensitive Information Handling on page 61 when detailed guidance is required.
2. Patent applications deemed to be of National Security interest by external reviewing agencies shall be processed manually and their sensitive content will be removed from any USPTO electronic systems, unless they are classified for that level of processing as stated in the USPTO IT Security Handbook.
3. Government furnished computer equipment, software, and communications, with appropriate security measures, are required for any regular and recurring telework arrangement that involves sensitive but unclassified data, including Privacy Act data or For Official Use Only (FOUO) data.
4. As part of the ERA Portal telework program (where employees use their own personal equipment at an alternate worksite) the OCIO pushes remote access software to enable the employee to access USPTO systems and networks; and in so doing, scans these systems for approved and utilized anti-virus packages to ensure that they meet minimum security standards.
5. The employee must return all government furnished equipment and materials to the agency at the conclusion of teleworking arrangements or at the supervisor's request.
6. Teleworkers are responsible and liable for the security of all official information, protection of any government furnished equipment and property, and carrying out the mission of the USPTO at the alternate worksite in accordance with existing USPTO and U.S. Department of Commerce (DOC) policies.
7. Any USPTO owned equipment, including the telephone calling card, is for official use only. Use of the equipment for private purposes is prohibited except as permitted by the USPTO Rules of the Road. Family members and friends of teleworkers are not authorized to use any government furnished equipment.
8. Teleworkers are to comply with all security related USPTO policies including the USPTO Rules of the Road. These policies may be found on the USPTO intranet Web site.

### J. Medical Exception

1. The USPTO will consider requests from employees to work at home based on short-term medical needs. These employees must be in a telework eligible position and have met the requirements stated in Sections V and VI of this policy document. Supervisors may require that applicants submit documentation from a licensed physician or equivalent medical professional describing the medical condition and

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- providing reasons requiring the employee to work at home. Such documentation must be kept in a confidential file under lock and key.
2. Approval is for the duration of the short-term medical need, and should not exceed four months. Each BU and/or supervisor will determine how long, within the suggested maximum time period, the employee may telework. The decision will be based on the operational needs of the organization and the employee ability to fulfill their work obligations from an alternative worksite. Approval of short-term medical requests is not considered as evidence of the Agency perceiving or regarding an employee disabled under the Rehabilitation Act.
  3. A medical exception under this telework policy is not to be confused with a reasonable accommodation granted under the USPTO's Reasonable Accommodation Program administered by the Office of Equal Employment Opportunity and Diversity (OEEOD). If the employee has questions about and/or wants to apply for a reasonable accommodation, they should contact the OEEOD.
  4. Participants are covered under the Federal Employee's Compensation Act (FECA), if injured in the course of performing official duties at the approved alternate worksite. If so injured, the participant notifies their supervisor or another designated USPTO official as soon as possible in accordance with FECA.
  5. Employees with work related injuries and illnesses that are medically able to perform light duty work may participate in the Telework Program. To participate, the employee's prognosis must indicate that the employee will be able to resume full, normal duties when fully recovered. Participation is subject to supervisory approval and written authorization from the Office of Workers' Compensation Programs (OWCP).

### VII. RESPONSIBILITIES

- A. ***Office of the Chief Administrative Officer.*** The OCAO designates a Telework Senior Advisor who is the agency representative for all telework related matters including establishing a USPTO enterprise-wide policy on telework. The Telework Senior Advisor oversees the enterprise-wide telework program; assists each BU with the design, development, and modification of their telework program; and gathers and maintains data necessary to prepare Telework Program reports for the OCAO and the DOC on a quarterly or as required basis.
- B. ***Office of the Chief Information Officer.*** The OCIO is the Agency coordinator for telework technology related matters including:
  1. Understanding specific remote access requirements from the various BUs;
  2. Developing enterprise remote access solutions to include IT capability at remote locations; internet connections; back-end platforms for delivering automated information systems (AIS) and data; collaboration capability; office reservation systems; and telecommunication and collaboration services;

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3. Ensuring proper support and service for remote access solutions to include deployment, maintenance, and retrieval of equipment, and Service Desk problem resolution from minor to advanced;
  4. Promoting compliance with all applicable Federal laws, rules, and regulations pertaining to information technology and remote access; and
  5. Leading and coordinating OCIO efforts in the expanded use of remote access.
- C. ***Business Unit Heads.*** Each BU Head is responsible for administering telework programs within their BU and ensuring their telework program is operating within the parameters of the USPTO Telework Policy.
1. BUs should develop a telework agreement to clearly establish the expectations and parameters of the employee's responsibilities for meeting work requirements including the frequency of work from the alternate site, property accountability, etc.
  2. The BU Head ensures that elements such as internet service provider, government or user furnished equipment, access to USPTO systems, etc. and employee eligibility are managed and maintained, and that the employee eligibility listings are updated annually.
  3. Telework programs may authorize the employee to work one or more days per bi-week from an alternate worksite consistent with the BU assessment of their positions. BU Heads or their designees periodically assess the positions within their organizations for compatibility of the work with teleworking and the extent to which the work required in these positions, and all similar positions within the organization, can be accomplished effectively from an alternate work site. The BUs may develop telework programs in coordination with the Telework Senior Advisor tailored to meet the operational needs of the employees and the BU.
  4. Participation in any telework program at the USPTO is voluntary and employees may terminate their participation at any time. BUs may not direct or coerce employees to participate. Written agreements documenting the terms and conditions of regularly scheduled telework arrangements are maintained by the individual BU and are available for review by the OCAO and the USPTO Telework Senior Advisor.
  5. The telework agreement will include the type of work schedule and the day(s) the employee will work in each work setting. The OCIO will preapprove the remote equipment, information technology capability, and phone capability information. These technical needs for remote work will be included in the employee telework agreement.
- D. ***Supervisors.*** Prior to the commencement of any type of telework arrangement, a supervisor must:

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1. Ensure that a telework agreement and safety checklist are completed and signed and that the telework agreement outlines the terms and conditions of the telework arrangement;
2. Evaluate employee requests for telework participation in a reasonable and timely manner, ensuring that restrictions or denials are based on sound business and mission-related criteria;
3. Ensure that an eligible employee, prior to teleworking, is provided IT and non-IT telework training;
4. Participate in supervisory telework training;
5. Approve/disapprove employee requests to telework, including approval on a trial or pilot basis when there are concerns about the suitability of the proposed telework arrangement;
6. Ensure the employee understands, agrees, and adheres to the terms and conditions of the telework agreement between the supervisor and employee;
7. Ensure the teleworking employee and supervisor sign the telework agreement prior to initiating work from the alternate site;
8. Review employee's telework agreement annually or as needed;
9. Establish communication requirements and methods to ensure the employee is informed of:
  - performance expectations and progress;
  - requirements regarding availability for contact by the supervisor, co-workers, customers, etc. to include scheduling staff or all-hands meetings, conference calls, etc.;
10. Ensure that telework does not diminish employee performance or agency operations;
11. During emergencies, communicate with employees and ensure they are kept informed of dismissal or closure procedures;
12. Establish procedures to maintain the safeguarding of records according to the requirements of the USPTO, and ensure return of materials used or created at the alternate worksite in accordance with current USPTO policy;
13. Monitor and evaluate the employee's performance based on the employee's performance appraisal plan and the telework agreement. The performance of the teleworker will be evaluated according to the USPTO performance management system;
14. Ensure that applicable policies and procedures are followed under the telework agreement regarding the removal of and accountability for government property, records, and documents; approval of overtime, leave, alternate work schedules, etc.;
15. Inform employees of expectations, to include work tasks they are expected to perform while in a telework status;
16. Investigate employee reports of work-related injury or illness at the alternate worksite in much the same manner as the traditional work site;

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17. Terminate, modify, or temporarily suspend telework agreements for mission-related reasons such as decline in employee's overall performance; failure to adhere to the terms and conditions of the agreement; changes in office priorities; vacancies or long-term leave of office employees resulting in office coverage issues;
  18. Arrange for the employee to begin working at the USPTO work site as quickly as possible following an employee's request to terminate a telework agreement, or when the supervisor determines the telework agreement must be temporarily suspended or terminated;
  19. Respond to requests for information or reporting requirements from the BU Telework Coordinator and/or the Telework Senior Advisor; and
  20. Ensure that employees properly and timely acknowledge the telework equipment assigned to them in accordance with USPTO processes, by responding to annual renewal and monthly certification requests from the property custodian or property accountability officer.
- E. ***Business Unit Telework Coordinators.*** The Telework Coordinator in each BU works with the Telework Senior Advisor on telework policy matters and is responsible for collecting, preparing and submitting necessary information for reporting purposes to the Telework Senior Advisor.
- F. ***Employees.*** Prior to the commencement of any type of telework arrangement, an employee must:
1. Read, understand and sign the telework agreement prior to initiating work from the alternate work site;
  2. Participate in telework training;
  3. Complete a safety checklist of the telework arrangement;
  4. Adhere at all times to the:
    - USPTO standards governing conduct and ethical behavior;
    - OCIO Rules of the Road;
    - ERA IT Policies and Guidelines;
    - USPTO performance standards; confidentiality requirements; and the applicable underlying telework policy;
  5. Ensure that telework does not diminish employee performance or agency operations;
  6. Comply with the terms of the written agreement between the supervisor and employee;
  7. Have access to sufficient work to be performed during the allotted amount of time at the alternate work site;
  8. Be available and accessible for communication with the office and perform work tasks expected to be performed while in telework status;

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9. Maintain reasonable care of all USPTO owned equipment/material. The USPTO acts as the insurer for damage, theft, or other loss (e.g., fire, flood, etc.) of the USPTO equipment/material;
10. Identify and obtain supervisory approval prior to their telework day(s). Supervisory approval will be granted based on USPTO office needs for coverage of work and needed employee interactions and training. If the participant teleworks on the same schedule each week, a single notification of the agreed-upon schedule to the supervisor is sufficient; and
11. Discuss work schedule with supervisor.

### VIII. EMERGENCY CONDITIONS

The USPTO has a main priority to ensure continuity of operations during inclement weather or other emergency conditions. See Appendix C for additional information on both delayed arrival and early dismissal. In addition, OPM's Dismissal and Closure Procedures for the Washington DC Area provides helpful information for individuals whose alternative work site is in the Washington, D.C. region.

### IX. CONTINUITY OF OPERATIONS (COOP)

Individuals who have been identified as key contact personnel in the case of a COOP event or a pandemic health crisis should have a separate COOP telework agreement in place that provides for such an occurrence. COOP telework personnel must be "telework ready" and have:

- A. Adequate technological capacity in terms of equipment, software (i.e., remote access, anti-virus, etc.), and connectivity;
- B. Access to technological assistance to include Help Desk support when possible;
- C. Training, testing, and periodic exercises to include briefings and training in COOP and telework, IT training including security training, and periodic testing and exercise of telework ability (i.e., with telework scenarios incorporated into the COOP exercises).

### X. NON-EMERGENCY CONDITIONS

- A. When USPTO announces an early dismissal of employees for non-emergency conditions such as the day prior to a Federal holiday, employees who are teleworking on that day will be excused as well.
- B. When an employee knows in advance of a situation that would preclude working at the alternate worksite, the employee must come to the regular office, request leave, or flex their work schedule as appropriate.

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**XI. REPORTING REQUIREMENTS**

The USPTO is responsible for responding to the OPM *Call for Telework Data* sent to all Federal agencies that results in the *Status of Telework in the Federal Government Report to the Congress*. The first report is due June 2012 and every year thereafter.

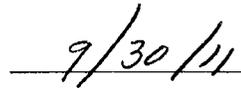
The USPTO has a number of internal and external telework reporting requirements including annual and quarterly agencywide telework statistics, eligibility telework data, BU telework representation by union representation, etc. The BU Telework Coordinators are responsible for preparing and submitting necessary information to the Telework Senior Advisor to prepare reports for senior management, DOC, and OPM.

For further information about the USPTO Telework Program, contact the USPTO Telework Senior Advisor's Office, Office of the Chief Administrative Officer.

**XII. APPROVAL**



Chief Administrative Officer



Date

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### Appendix A

#### **DEFINITIONS**

**Alternate Worksite** - The USPTO approved worksite (as confirmed by the telework agreement), that is other than the employee's conventional USPTO worksite. For purposes of telework, the alternate worksite is considered to be an official Government worksite. The work location may be the employee's residence, a telework center, an office closer to the employee's residence, or another approved location.

**Business Unit Telework Coordinator** - An individual who is designated by their BU Head to represent the business unit on telework matters. The Telework Coordinator within the BU is responsible for reporting quarterly telework participant data, and attending USPTO telework meetings.

**Eligible Positions** - Positions comprised of work activities that the BU Head or management considers portable and can be performed effectively outside the office without diminishing individual or organizational performance. Performance can be judged either through quality and timeliness of assignments, quantity of tasks completed, or a combination of these factors.

**50-Mile Hoteling Program** - A hoteling program in which employees whose alternate worksite is located 50 miles or less from the Alexandria campus, are permitted to work full time from that location, and are NOT required to visit the Alexandria campus twice every pay period. The duty station for a participant in this program must be their residential address. Employees approved for this program will change their duty station to the city or county in which their alternate worksite exists and are not assigned permanent space in the Alexandria campus (see Appendix).

**Hoteling** - A telework arrangement in which employees are not assigned permanent space in a central office, but rather share offices and conference space as necessary when on-site. Such space is assigned by reservation, much like a hotel. Employees who telework under this program are required to visit the Alexandria campus twice every pay period for the purpose of maintaining their duty station as Alexandria, Va.

**Hoteling Office Space** - The agency maintains sufficient generic office space for hoteling employees who need a temporary work space when visiting the Alexandria campus. This office space has an adequate suite of equipment to support the employee's work requirements. The quantity of space reserved for this purpose is generally agreed upon between management and union representatives.

**Official Duty Station** - An employee's duty station determines eligibility for locality pay. Most employees' official duty station is Alexandria, Virginia, whether working on-site or participating in telecommuting/telework. For those participating in the 50-Mile Hoteling Program and future TEAPP participants, their duty station will be the city or county in which their alternate worksite exists.

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**Privacy** - Except for a participant's chain of command, those administering this program, and appropriate USPTO employees who are specifically designated to use employee information as part of their duties, the USPTO will ensure that a participant's home address is not divulged to USPTO personnel or members of the public without the participant's consent. (See Privacy Act of 1974: <http://www.archives.gov/about/laws/privacy-act-1974.html>)

**Routine Telework** – Approved telework which occurs as part of an ongoing, regular schedule.

**Situational Telework** - Approved telework performed on an occasional, one-time, or irregular basis. Employees participating in a situational telework arrangement must have a signed telework agreement in place.

**Telework** - Telework refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. This definition of telework includes what is generally referred to as remote work but does not include any part of work done while on official travel or mobile work.

**Telework Agreement** - A formal agreement signed by both the employee and the manager specifying the telework schedule of the employee, including the days, hours, frequency of checking voice and email, and their property accountability responsibilities.

**Telework Senior Advisor** – The Senior Advisor represents the USPTO on all telework related matters and oversees the enterprise-wide telework program to include preparing, maintaining, and reporting telework data for the CAO and the Department of Commerce as required. The Advisor assists BUs with the design, development, and modification of BU-specific telework programs.

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### Appendix B

#### **50-MILE HOTELING PROGRAM**

**General.** The agency recognizes that for many Hoteling participants, the twice per pay period visits present a genuine hardship, result in decreased productivity, and are contrary to the intent of telework: to reduce unnecessary commuting. It is for this reason that the USPTO 50-Mile Hoteling Program has been developed. Participants who meet the eligibility requirements below are no longer required to visit the USPTO campus on a routine basis, and their duty station is the city or county of their home address.

#### **Eligibility Requirements for Program Participation**

- All bargaining unit and non-bargaining work-at-home hoteling guidelines remain in effect except as otherwise noted.
- The employee's residence is the duty station telework location and must be within a 50-mile radius of the USPTO campus.
- The city or county in which the employee resides will be designated as the employee's Duty Station.
- The 50-Mile radius is determined as a point-to-point straight line distance as indicated by [www.gpsvisualizer.com/calculators#distance\\_address](http://www.gpsvisualizer.com/calculators#distance_address)
- Participants are required to meet all USPTO program and performance plan requirements.
- Participants may be required to return to the USPTO campus for a variety of official reasons, some of which are enumerated below:
  - Attending training and meetings when technology is not available for attending from the home office,
  - Picking up supplies
  - Replacing or repairing equipment
  - Attending Technical/Non-Technical Training
  - Participating in performance reviews where conduct or performance issues may be a factor
  - Attending all-hands meetings (if technology is not available to connect to remote workers)
  - Prolonged loss of power/ISP at the remote worksite
  - Participating in a Detail where telework is not an option
- Program participants required to travel to the USPTO for official business are considered to be making a Local Trip and are not entitled to mileage reimbursement or official time.

#### **Implementation Process**

- Currently, the process for applying for this program allows the employee to enter an application process whereby they enter their home address. The system then calculates if the address is within a 50 miles radius. Then, a 50 miles radius option

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appears for the employee to select to participate. If the address is calculated as outside 50 miles radius, there is no option to participate.

- The business unit supervisor confirms the employee's eligibility (including confirming the employee's residence lies within the 50-mile radius) and initiates a form SF52 to change the employee's duty station to their residence.
- Business unit supervisor submits the completed SF52 to the USPTO Office of Human Resources for processing. (Current Alexandria residents do not need to change their Duty Station.)
- The supervisor and employee sign a new 50-Mile Work-at-Home/Hoteling Agreement.
- The Office of Human Resources sends notification to employee indicating duty station change.

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### Appendix C

#### **EMERGENCY CONDITIONS**

Agency closures, delayed arrivals, or early dismissals due to weather, road conditions, or conditions at or around the office do not normally affect the employee's ability to work at home. **The employee who is working at home continues to work during USPTO closures for weather and other similar circumstances and is not normally granted administrative leave.** However, if conditions at the Agency impact the ability to work at the alternate worksite (e.g., the office servers are shut down), employees at the alternate worksite will be treated in the same manner as those at the Alexandria Headquarters. If these conditions limit the employee's ability to perform their duties, supervisors grant requests for unscheduled annual leave and consider requests for administrative leave. **Teleworkers on previously approved leave are not granted administrative leave for agency closure, delayed arrival, or early dismissal.**

A. When an emergency affects only the alternate worksite and can reasonably be expected to last for a major portion of the workday, the employee is expected to:

- Report to the regular office or
- Request supervisory approval of annual leave, compensatory time, or credit hours if on a flexible work schedule;

B. If the agency announces an early dismissal due to inclement weather to allow employees to return home safely and the employee is working at a telework center, within 50 miles of the Alexandria campus, the employee follows the dismissal procedures of the telework center.

#### **Emergency Dismissal/Closures Due to Hazardous Weather**

#### **OPEN WITH OPTION FOR UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK**

Hoteling employees or employees scheduled to telework are expected to begin teleworking or hoteling on time, or request unscheduled leave. Employees with child care or elder care responsibilities may use annual leave, sick leave as appropriate, credit hours, compensatory time off, or the employee may request leave without pay, if they cannot make alternate arrangements to provide care. Employees who are experiencing power outages at their telework site may elect to come into the office, or request leave as described below.

- Use annual leave, earned compensatory time off, earned credit hours; employees may request leave without pay (LWOP) if they do not have accrued leave available; or
- Telework on a non-telework day, if the employee has a telework agreement in place, the employee has work to do, and the work can be performed at the alternate work site. This time will not count against any limits on telework days provided by agreement or policy. This option is also available to participants of the Patent Examiner Laptop Program (PELP).

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#### OPEN WITH XX HOUR DELAYED ARRIVAL WITH OPTION FOR UNSCHEDULED LEAVE OR UNSCHEDULED TELEWORK

Hoteling employees or employees scheduled to telework today are expected to work their regular hours and will not be granted administrative leave. Employees who are experiencing power outages at their telework site may elect to come into the office, or request leave as described below.

Non-emergency employees must notify their supervisor of their intent to use unscheduled leave or unscheduled telework. Employees may:

- Use annual leave, earned compensatory time off, earned credit hours; or
- Use annual leave, earned compensatory time off, earned credit hours; employees may request leave without pay (LWOP) if they do not have accrued leave available; or
- Telework from home on a non-telework day, if the employee has a telework agreement in place, the employee has work to do, and the work can be performed at the alternate work site. This time will not count against any limits on telework days provided by agreement or policy. This option is also available to participants of PELP.

#### OPEN WITH XX HOUR EARLY DEPARTURE

Hoteling employees, teleworking employees, or employees scheduled to telework are expected to work their regular hours and will not be granted administrative leave. Non-emergency employees who are on flexible work schedules and who are eligible to telework, including PELP participants, may depart prior to the scheduled early departure time without charge to annual leave, provided the employee makes up the work time later in the day by teleworking. For example, if the early departure is for two hours and an employee normally leaves at 4:00 p.m., and they leave at 1:00 p.m., they can avoid using annual leave by teleworking one hour when they get home. The employee may still claim the two hours administrative leave. This provision applies even if the policy or agreement covering the employee's telework arrangement precludes or limits the number of days on which the employee may work at both the office and the alternate work site.

#### CLOSED TO THE PUBLIC

Employees *scheduled to telework or hotel on the day of the announcement* are expected to work their regular hours and will not be granted administrative leave. Supervisors may waive this requirement (and the employee claim administrative leave) when power outages or lack of internet service prevents the employee from working. As with instances when the office is open and unscheduled leave is allowed, employees with child care or elder care responsibilities may use annual leave, sick leave as appropriate, credit hours, compensatory time off, or the employee may request leave without pay, if they cannot make alternate arrangements to provide care.