

MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES (NFFE) LOCAL 858 (“UNION”) AND THE RISK MANAGEMENT AGENCY (RMA) KANSAS CITY (“AGENCY”)

This Memorandum of Understanding (“MOU”) addresses the Agency’s implementation of the President’s Executive Order (EO 14043) Requiring Coronavirus Disease 2019 Vaccination for Federal Employees to protect the health and safety of our employees, contractor employees, and visitors. This Government-wide policy covers all bargaining unit employees and specific implementation steps that agencies must take due to the COVID-19 emergency. To protect the health and safety of the Federal workforce and to promote the efficiency of the civil service, the Parties acknowledge the need for the Agency to act quickly to meet the established deadline for implementation of the EO 14043 requirements and accordingly, understand bargaining over this Government-wide policy will be limited to impact and implementation issues not otherwise addressed in guidance issued by the Safer Federal Workforce Task Force, its member Agencies and/or the U.S. Department of Agriculture (USDA). Any bargaining obligation that has not been completed by the time implementation must begin will be finished post-implementation.

1. Employee Rights

A. The Agency will implement the COVID-19 vaccination requirement in accordance with the terms of this MOU, applicable articles of the Parties’ Collective Bargaining Agreement (CBA), and all applicable implementation guidance on EO 14043 released by the Safer Federal Workforce Task Force. Additionally, the Agency will implement the COVID-19 vaccination requirement in accordance with the terms of all current and forthcoming implementation guidance, as applicable, from the Safer Federal Workforce Task Force, its member Agencies, and/or the U.S. Department of Agriculture (USDA). All forthcoming implementation guidance may be subject to further impact and implementation bargaining.

B. Employees are entitled to have a union representative present for any formal discussion related to the Agency’s implementation of the vaccination requirement.

C. Executive Order (EO) 14043 now makes the COVID-19 vaccination a requirement of most Federal employment. As such, employees impacted by this requirement who receive required COVID-19 vaccinations on or after the date of EO 14043 may be afforded coverage under the Federal Employees’ Compensation Act (FECA) for any adverse reactions to the vaccine itself, and for any injuries sustained while obtaining the vaccination.

D. Regarding the vaccine requirement, the Agency agrees to treat employees (to include those that are unvaccinated/have applied for/received an Agency approved legally required exception) with dignity and respect at all times. Employees will not demand, coerce, shame or intimidate any other employees who are unvaccinated and/or granted exemption, nor will the Agency tolerate such behavior in the workplace.

2. Exceptions Based on a Medical Condition or Religion

A. The Agency will provide the current vaccination requirement-based policy and procedures for requesting an exception to employees.

B. Employees seeking an exception concerning the vaccination requirement will strive to submit their request(s) for an exception to the vaccination requirement with required documentation no later than November 8, 2021. However, employees may submit new or revised vaccination requirement-based requests for exception(s) at any time.

C. The Agency will process employee requests for vaccination exception as expeditiously as possible. If a request has been submitted by November 8, 2021 and is still under Agency review as of the November 22, 2021 deadline for employees to be fully vaccinated the Agency will not initiate the enforcement process until the employee's request is denied.

D. The Agency will consider all lawful and relevant factors in determining whether an exception is legally required, as established by the Safer Federal Workforce Task Force and/or by USDA. Determining whether an exception is legally required shall include consideration of factors such as the basis for the claim; the nature of the employee's job responsibilities; and the reasonably foreseeable effects on the agency's operations, including protecting other agency employees and the public from COVID-19.

E. An employee's medical need will be considered on a case-by-case basis, including any medical evaluation that addresses the individual's particular circumstance. If an employee provides documented medical reasons that may not qualify as a disability but that necessitate a delay in vaccination, an extension will be granted. However, will specify, consistent with the nature of the medical necessity, the date by which the employee must be fully vaccinated.

F. If an employee requests an exception and it is denied, the employee must receive their first (or, if a one-dose series, only) dose within two (2) weeks (14 calendar days) of the final determination and if receiving a two-dose series, the employee must receive the second dose within 6 weeks of receiving the first dose. If the employee received a first dose of a two-dose series prior to seeking an accommodation, the employee must receive their second dose within two (2) weeks (14 calendar days) of the final determination to deny their request for an exception or within a week (7 calendar days) of the earliest day by which they can receive their second dose, whichever is later.

G. Additional guidance will be forthcoming regarding testing protocols for individuals who are excepted from the vaccination requirement. There may be circumstances in which an agency determines that the nature of an employee's job responsibilities requires heightened safety protocols if they are provided with a legally required exception. In some cases, the nature of the employee's job may be such that an agency determines that no safety protocol other than vaccination is adequate. In such circumstances, the agency may deny the requested accommodation.

H. An employee who has had a prior COVID-19 infection is required to be fully vaccinated. In accordance with the CDC recommendation that vaccination of people with a known current SARS-CoV-2 infection the vaccination will be delayed until the person has recovered from the acute illness (if the person had symptoms) and has satisfied the criteria to discontinue isolation.

I. Employees who are pregnant are not exempted from the vaccination requirement. The CDC recommends COVID-19 vaccination for people who are pregnant, breastfeeding, or trying to become pregnant. Additionally, the American College of Obstetricians and Gynecologists and the Society for

Maternal-Fetal Medicine recommend that all pregnant individuals be vaccinated against COVID-19. However, the Agency may allow such an employee to delay vaccination based on the employee's particular medical circumstances, until the employee is cleared to get the vaccination, consistent with the Agency's process for reviewing delay requests.

3. Vaccination Documentation and Information

A. Employees must provide vaccination documentation to prove their vaccination status, even if an employee has previously attested to their vaccination status. The Agency will use the Proof of Vaccination by USDA Employees System to collect the vaccination documentation. Employees may provide a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card, a copy of medical records documenting the vaccination, a copy of immunization records from a public health or state immunization information system, or a copy of any other official documentation containing the required data points. The data that must be on any official documentation and include the employee's name, the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s). Employees must certify under penalty of perjury that the documentation they are submitting is true and correct.

B. The Agency will collect, use, and maintain documentation in accordance with the Privacy Act. The Privacy Act, 5 U.S.C. 552a(b)(1), permits disclosure within the agency to employees "who have a need for the record in the performance of their duties." The Agency will only disseminate vaccine documentation information to the appropriate agency officials who have a need to know to ensure effective implementation of the safety protocols, which, in many cases, will include the supervisor level. Agency officials having access to vaccination documentation will comply with the requirements of the Privacy Act at all times. Vaccination documentation and reasonable accommodation documentation will not be maintained in the Official Personnel Folder.

C. Outside of any required data disclosure that is part of the reasonable accommodation and/or religious accommodation process, an employee is not required to state their medical condition or deep held religious belief to his/her supervisor.

D. The supervisor may not keep copies of vaccine, medical or religious documentation or collect them.

4. Enforcement and Adverse Actions

A. The Parties understand that the primary objective of the enforcement process is to encourage employees to comply and become fully vaccinated. To this end, the Parties agree that the process outlined in this MOU, which provides for a progressive approach, will be utilized.

B. Employees who fail to comply with a requirement to be fully vaccinated or provide proof of vaccination and have neither received an exception nor have an exception request under consideration, are in violation of a lawful order. Employees who violate lawful orders are subject to discipline, up to and including termination or removal.

C. If the employee has not provided proof of vaccination by November 8, 2021 and has not received an exception and the Agency is not considering an exception request from the employee, the Agency will

initiate the enforcement process with brief counseling and education. The Agency will use the counseling period to remind the employee again of the vaccination requirement, emphasize that failure to comply will lead to discipline up to and including removal or termination, address any questions, and inform the employee that they will have one (1) week (7 calendar days) to submit documentation establishing either the initiation or completion of vaccination, as applicable, or request an exception.

D. If, after the recommended counseling and education period ends, the employee continues to refuse to comply, the Agency shall pursue disciplinary measures, up to and including removal or termination from Federal service.

E. In pursuing any termination or adverse action, the Agency will provide the required procedural rights to the employee and follow normal processes, including any agency policies or CBA requirements concerning conduct matters (to the extent that it does not conflict with Safer Federal Workforce Task Force, member Agency, and/or USDA guidance, see Article 19 of the collective Bargaining Agreement).

F. Normally, employees will not be placed on administrative leave while the Agency pursues an adverse action for refusal to be vaccinated. But employees will be required to follow safety protocols for employees who are not fully vaccinated when reporting to agency worksites.

G. If the employee has not responded after the one (1) week (seven (7) calendar days) period to allow for education and counseling and being informed to submit documentation establishing either the initiation or completion of the vaccination requirement or to request an exception, as is applicable to the employee's status, the Agency will initiate termination procedures or adverse action procedures to suspend the employee for up to fourteen (14) calendar days.

H. If the employee is suspended for up to fourteen (14) calendar days and this suspension proves inadequate in encouraging the employee to become vaccinated or to request an exception, the Agency may initiate the required process (as appropriate) to terminate or remove the employee from the Federal service.

I. If an employee responds at any phase of the adverse action process, by submitting proof of progress toward full vaccination (i.e., completion of a required vaccination dose/requesting an exception), the Agency shall hold the action in abeyance to afford the employee a five (5) week (thirty-five (35) calendar days) period to become fully vaccinated or a one (1) week (seven (7) calendar days) period to request an exception. The Agency will include this as standard language in proposal letters that are issued to employees.

J. The Agency will monitor and track adverse actions taken across the agency to ensure consistency. Over the next six (6) months, the Agency will provide copies of all vaccination requirement based, adverse actions taken regarding bargaining unit employees represented by NFFE Local 858 to the Union (data available as of December 31, 2021 and March 31, 2022). The Union may request additional information on a quarterly basis for an additional six (6) months (data available as of June 30, 2022 and September 30, 2022). The Agency will redact the employee's name and all personally identifiable information (PII) from the documents before providing it to the Union.

5. Employee Safety

A. The Union will actively encourage all bargaining unit employees to comply with the requirements of EO 14043 and become fully vaccinated for COVID-19 unless the employee attests to having an approved or pending request for a medical or religious exemption.

B. Employees, who are not fully vaccinated, will comply with all established requirements related to masking, physical distancing, and testing protocols, as well as applicable travel guidance.

C. Over the next six (6) month period following the execution of this MOU, the Agency will provide the Union with a quarterly status report (data available as of December 31, 2021 and March 31, 2022), regarding the vaccination status of RMA employees. The statistical information will include the raw numbers and percentages of employees that are fully vaccinated, partially vaccinated, unvaccinated, and if possible, religious exemptions and/or medical accommodations approved. The Union may request additional quarterly status reports for an additional six (6) months (data available as of June 30, 2022 and September 30, 2022).

This MOU will remain in effect through the duration of the implementation of EO 14043 and then expire unless it is extended, in writing, by mutual agreement.

For the Agency

_____ Date: _____
John W. Underwood
Assoc. Deputy Administrator for Product Management
Risk Management Agency
United States Department of Agriculture

For the Union

_____ Date: _____
Darryl Hinden
NFFE Local 858, President