

# Memorandum of Understanding

## Implementation of USDA COVID-19 Workplace Safety Plan

This MEMORANDUM OF UNDERSTANDING (MOU) is between the United States Department of Agriculture, Forest Service (Management), and the National Federation of Federal Employees, Forest Service Council (Union), hereafter referred to collectively as “the Parties.” This MOU is a Supplemental Agreement under Article 11 of the 2019 Master Agreement between the Parties, and it documents the Parties’ full and final agreement on the Agency’s implementation of the USDA COVID-19 Workplace Safety Plan in the return of bargaining unit employees to regular facility operations and services.

This MOU supersedes the Parties’ COVID-19 Phased Return to Facilities MOU, dated July 30, 2020. The Parties May 13, 2020, COVID-19 MOU remains in place.

### **The Parties agree:**

- 1.** The Agency will implement and follow the most current USDA COVID-19 Workplace Safety Plan and pandemic-related Federal government-wide direction from the President and guidance from the Safer Federal Workforce Task Force, Centers for Disease Control (CDC), Office of Personnel Management (OPM), Office of Management and Budget (OMB), Department of Labor (DOL), etc., in accordance with the procedures and arrangements set out in this MOU.
- 2. Modifications and updates to USDA COVID-19 Workplace Safety Plan.** Management will engage in pre-decisional information sharing and dialogue with the Union prior to implementing updates made to the USDA Workplace Safety Plan and prior to implementing updated government-wide direction and guidance from the President or other Executive Branch agencies. If the parties are unable to reach agreement pre-decisionally, the Parties recognize that formal negotiations under Article 11 provisions may be necessary.
- 3. Community Levels.** The term “Community Levels” in this MOU refers to the levels as reported on the [CDC Community Levels](#) page.
- 4. Safeguarding Protected Health Information**
  - a. Screening Information.
    - i. Outside of incident camps, if Management has employees monitor their health, answer spoken screening questions, or perform temperature checks in relation to COVID-19, the Agency will not keep records of employee’s temperatures or spoken answers to screening questions other than to note that an employee’s temperature was above/below the threshold and whether the employee answered yes to any of the screening questions.
    - ii. At incident camps where records may be kept, Personal Identifiable Information (PII) or Personal Health Information (PHI) will be properly protected and secured as required by applicable law.
  - b. Employee test results, illness and recovery status, and reasonable accommodation information.
    - i. Only those with a need to know will have access to information about an employee’s health related to COVID.
    - ii. This information is considered Personal Health Information and will be properly protected and secured as required by applicable law.
- 5. Return to Work After a COVID-19 Illness or Positive Test Result.** Management will follow the [most](#)

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[current criteria](#) set out by CDC or other authorities in Section 1, state-specific criteria where it exceeds the requirements established by the authorities in Section 1, and, where applicable, the criteria recommended by an employee's medical provider when planning for and directing an employee's return to work after COVID-19 illness or a positive test result. Management will not impose additional criteria beyond what is required by this provision to allow an employee to return to work.

6. **Employee Notification of Potential Exposure.** The following procedures and arrangements apply to employee notifications of potential exposures:
  - a. Employees who test positive for COVID-19 or who have been exposed to someone who tested positive and have been onsite or interacted with Forest Service employees within 7 days of symptom onset or a positive test are required to notify their supervisor as soon as possible.
  - b. Normally within two calendar days after Management has received the notification in 6.a. above, the Agency will notify the employees who were directly impacted by the movements of the infected individual.
  - c. If management does not track or control individuals who have access to the building where the exposure occurred, all employees who have access will be notified.
  - d. Method of employee notification may be negotiated at the appropriate level.
  - e. While the confidentiality of the infected/potentially infected individual must be kept as prescribed by applicable law, Management will inform directly impacted employees to the extent that confidentiality allows:
    - i. That they may have been potentially exposed to COVID-19;
    - ii. If known, whether the individual causing the potential exposure in question had an exposure or was confirmed or presumed to have COVID-19;
    - iii. The date(s) and approximate time(s) of the exposure; and
    - iv. The general location(s) where the individual was in FS facilities or in contact with FS employees.
7. **Office Cleaning Due to Presence of Individual with COVID.** [CDC procedures](#) will be followed for cleaning and disinfecting work areas after an individual with COVID has been present in the area.
8. **Union Notification of Potential Employee Exposure.** The appropriate NFFE Forest Service Council Vice President will be notified with information in 6.e. ii. – iv. above at the same time as represented employees. However, due to privacy laws and the need for confidentiality, the Union will not be provided any identifying information including, but not limited to, the name of the infected/potentially infected individual(s), or the impacted employees who were notified of potential exposure.
9. **Employee Access to Job Hazard Analyses and Risk Assessments.** Job Hazard Analyses (JHAs) and Risk Assessments (RAs) will be made available to employees as required by Article 27.10 of the 2019 Master Agreement. JHAs and RAs will be reviewed and updated as necessary to account for the risks posed by COVID.

### 10. Face Coverings

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- a. Management will follow government-wide direction and the USDA COVID-19 Workplace Safety Plan as it relates to masking requirements on-site, including facilities and government vehicles, and will notify employees when those masking requirements change.
- b. When and where masks are required by Management, Management will provide masks in accordance with CDC guidance and the following arrangements:
  - i. Upon employee request, N95 masks will be provided to employees to wear on a voluntary basis subject to availability.
  - ii. Guidance on proper use, removal, and disposal of masks will be provided to employees.

### **11. Reasonable or Religious Accommodations**

- a. Employees who have a qualifying medical condition or disability or sincerely held religious belief that prevents or prohibits them from complying with COVID-related requirements should seek an accommodation by utilizing and entering the reasonable accommodation (medical or religious exemption) process as outlined on the HRM [Reasonable Accommodations](#) intranet site.
- b. Effective accommodations could include a change in work location, change in type of face covering, change in work schedule, increased testing, or other options, as long as the employee is able to perform the essential functions of their position and there is no direct threat or undue hardship on the agency. Employees and supervisors must participate in an interactive dialog to identify effective accommodations.
- c. Telework can be authorized as an interim accommodation until a final decision is issued on the RA request if telework allows the employee to perform some or all of their essential job functions. Time limits to respond and provide documentation are described in [DR 4300-008](#), Section 8.b, Reasonable Accommodation and Personal Assistance Services Processing Timeframes and Deadlines.

**12. Office of Workers' Compensation (OWCP) Claim Assistance.** As prescribed by Article 27.16, when an employee tests positive for COVID-19 and believes they contracted COVID-19 in the performance of their official duties, Management will assist the employee, if requested, with processing and forwarding their OWCP claim. Additionally, Management will assist public-facing employees with OWCP claims as provided in [FECA Bulletin 21-01](#), [FECA Bulletin 21-09](#) and [FECA Bulletin 21-10](#) or any other applicable DOL-FECA guidance. Further, if DOL contacts an employee requesting additional information relative to their claim and the employee requests assistance, Management will assist them in understanding their responsibilities in responding to DOL.

**13. eSafety and Precautionary Claim.** When an employee has a potential exposure in the workplace, Management will assist the affected employee(s), if requested, with reporting the incident in eSafety, and in filing a precautionary claim so that it is on record for reference if they later test positive for COVID-19. Management agrees to send out an informative message reminding all employees about the option to file a precautionary claim when potentially exposed to COVID-19 in the performance of their duties at their worksite.

**14. Breakroom and Common Area Use.** Enhanced cleaning and disinfection in common use/high touch/high density spaces, such as lobbies, restrooms, elevators, and stairwells will be implemented in accordance with the USDA Workplace Safety Plan and CDC guidelines. The parties at the

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appropriate level may negotiate over the availability of breakroom and common areas, as well as procedures for employee access and use of them.

### 15. Air Quality Improvements

- a. Management will review Forest Service owned or leased facilities and, where necessary, make adjustments to facility air handling system(s) to improve air quality. In leased facilities, where the Forest Service cannot make changes, Management will request appropriate changes from the building owner or manager or from GSA. Potential improvements will be in alignment with current [CDC Ventilation In Buildings](#) guidance. Tools referenced currently include, but are not limited to:
  - i. Increasing ventilation rates, where feasible.
  - ii. Confirming ventilation systems operate properly and continue to provide acceptable indoor air quality for each space's current occupancy level.
  - iii. Increasing outdoor air, where feasible.
  - iv. Improving central air filtration to the highest level compatible with the existing filter rack and sealing edges of the filter to limit bypass.
  - v. Increasing air exchanges. Considering HEPA filters or other room-based air filtration for placement in the facility when other measures are not feasible or practical to improve air quality.
- b. Upon request, Management will inform the Local union what modifications are being made to the air quality system for the facility or will explain why no changes are being made.
- c. Further procedures and arrangements related to the actions taken by Management in improving air quality, related to COVID-19 response, are negotiable at the local level.
- d. Where local building safety and engineering requirements allow, employees will be permitted to provide their own portable air filter (for example, HEPA filter) near their office or worksite.
- e. In situations where there have been 3 or more cases in a building within a 30-day period, Management will notify the Union at the local level of steps, if any, being taken to prevent future transmission in the worksite.

**16. Union Access to COVID-19 Information.** The Union at the National Level will be provided with the following sanitized information bi-weekly so long as the Agency is tracking and maintaining such information relative to the COVID-19 pandemic:

- a. Total number of Forest Service employees who teleworked more than 20 hours per week;
- b. Number of reported COVID-19 cases separated by Region, Station, Job Corps, WO Yates, and combined WO Staff Areas; and
- c. Number of recovered COVID-19 cases separated by Region, Station, Job Corps, WO Yates, and combined WO Staff Areas.

**17. Isolated/Quarantined Employees.** Employees who have been directed to isolation/quarantine but who feel well enough to work and want to work, will normally be allowed to telework or work at an alternate location during their isolation/quarantine period. To facilitate this, the Parties agree:

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- a. Management will make every effort to provide the necessary equipment, materials, and work assignments for employees to perform assigned work from a telework or alternate work location during their isolation/quarantine period.
- b. Employees must contact their supervisor before they run out of work with enough time to allow their supervisor to find additional work, tasks, trainings, etc. that the employee can perform from their telework or alternate site. It is the expectation that employees and their supervisor regularly communicate about what work activities are planned.
- c. In the rare instances where Management has exhausted all efforts and has determined that an isolated/quarantined employee cannot telework, symptomatic employees may then choose from utilizing sick leave, annual leave, credit hours or compensatory time, or request LWOP.
- d. Employees who have been directed to isolate/quarantine but are asymptomatic due to workplace exposure, and where Management has determined the employee to be ineligible or unable to telework, will be granted Weather and Safety leave for the purpose of quarantine in accordance with applicable law and government-wide rules and regulations, unless the employee elects to take leave or other paid time off.

#### **18. Alternative Housing for Employees Exposed in the Course of Their Official Duties**

- a. If an employee is directly exposed to COVID-19 (as defined by CDC Guidelines) as a result of working for the Agency, and is required to self-isolate/quarantine, the employee should make every effort to first isolate/quarantine at home.
- b. However, if an employee is unable to self-isolate/quarantine at their residence (as described by CDC Guidance) or due to exposure to a high risk family member, the Forest Service will offer and pay for alternative housing for the isolation/quarantine period, as appropriate and if available, in accordance with federal, state, and local health official guidance. The type of alternative housing provided will be at the sole discretion of Management, and M&IE will not be authorized unless the employee is in a travel status. The following are some examples of when alternative housing or work locations will be provided (subject to subsection "c" below):
  - i. An employee is directly exposed to COVID-19 as a direct result of working for the Agency and the employee is awaiting Agency directed test results; or
  - ii. An employee becomes ill with COVID-19 or tests positive as a direct result of working for the Agency and must remain in quarantine/isolation until well again; or
  - iii. An employee is in travel status and is either waiting Agency directed test results or becomes ill with COVID-19 as a direct result of working for the Agency.
- c. The Parties recognize that the CDC and other official guidance around isolation, testing, masking, and social distancing in relation to COVID-19 is constantly changing and evolving. Accordingly, if appropriated funding for such housing is exhausted or if Management determines at some point in the future to change when and in what instance it will pay for or provide alternative housing, it may do so. However, if such a change has a more than *de minimis* impact on represented employees, Management will notify the Union at the appropriate level, in accordance with Article 11.

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### 19. Return to Facilities

- a. **General.** In accordance with the [USDA COVID-19 Workplace Safety Plan](#) and the [Frequently Asked Questions \(FAQs\) on USDA's Response to COVID-19 Workplace Safety](#), the following describes the general stance towards returning to facilities:
  - i. USDA's senior leadership cadre (Appointees, SES, SL, ST, SSTS, and Senior Foreign Service Officers) will be first to return to the physical workplace
  - ii. Return to the workplace for Forest Service employees who have not been working on-site during the pandemic, will be a phased process following USDA guidance and this MOU.
  - iii. Management will provide a notice to each employee at least 45 calendar days prior to returning to a physical government workplace.
- b. The Parties recognize that some employees are already required to perform mission-critical work onsite (in agency facilities or other locations other than a telework location). These employees will continue to follow the USDA Workplace Safety Plan, applicable risk assessments/JHAs, and OSHA guidance.
- c. **Content of Return-to-Work Notifications.** Notices to employees informing them of their expected date to return to onsite work will include:
  - i. The date that they will begin reporting to the agency worksite;
  - ii. The process to use to request an exception in the reporting date or place, if needed.
- d. If employees are unable to meet the return-to-work date due to extenuating circumstances (e.g., unavailability of dependent care, household members at high risk for COVID-19, or other circumstances), they may request flexibilities through Article 42 of the Parties' Master Agreement.

**20. Reducing Exposure.** Management is encouraged to provide opportunities for remote training and meetings to reduce exposure to COVID-19 through travel and large group gatherings.

**21. Special Provisions for High Risk Employees.** For employees who the CDC has identified as being at high risk for severe illness ([COVID-19 Information for Specific Groups of People | CDC](#)) and who have been teleworking during the COVID-19 Pandemic the following procedures will apply to reduce their workplace exposure to COVID-19:

- a. When CDC Community Levels for the employee's duty location are at medium or high, the employee will self-certify, in writing, to their supervisor that the employee meets one of the CDC high-risk criteria and may request extended telework. The employee's request for extended telework will be granted as permitted by 5 CFR 531.605(d)(2) and the NFFE-Forest Service Telework and Remote Work MOU unless the supervisor identifies mission-critical work that cannot be performed from the telework/alternate work location.
- b. When CDC Community Levels are low at the employee's duty location, employees who provide a medical certificate indicating that they are at high risk for severe COVID will be considered for a hardship accommodation under Article 42. Examples of accommodations that may be considered include:
  - i. Work-schedule modifications;

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- ii. Improved methods for social distancing in the office;
  - iii. Increased ventilation or air filtration near the employee's desk/cubicle;
  - iv. Continued Telework as permitted under 5 CFR 531.605(d)(2) and the NFFE-Forest Service Telework and Remote Work MOU;
  - v. If a GOV is not available, voluntary use of a POV as allowed in the FS-NFFE MOU dated May 13, 2020.
- c. If the employee is denied telework, the employee will be provided alternate adequate protection from workplace exposure for COVID during the grievance process.
- d. This section does not replace or limit the Reasonable Accommodation process for those employees with qualifying disabilities.

### 22. Flexibilities to Address Family and Transportation Factors

- a. **Hardship Requests:** If, because of COVID-19, employees are faced with the unavailability of dependent care, the lack of public transportation, or have household members at high risk for COVID-19, these issues will be considered hardships under Article 42 of the Parties' Master Agreement, and they may make a hardship accommodation request to their supervisor under Article 42. Appropriate hardship accommodations that may be granted include:
- i. Unscheduled telework
  - ii. Other workplace flexibilities such as deviations from core hours, varying the number of hours worked in a given day or week, or adjusting the time of day when employees work by utilizing the flexibility found in available flexible work schedules.
  - iii. Granting leave without pay.
- b. **Care for a quarantined family member:** In accordance with 5 CFR 630.401, employees may use sick leave to care for a family member who is not ill but is required to quarantine.

### 23. Employees Who Are Not Fully Vaccinated

- a. Unvaccinated employees will follow all safety protocols outlined for unvaccinated employees in the USDA COVID-19 Workplace Safety Plan.
- b. **Mission-critical travel.** Management will not restrict unvaccinated individuals from performing mission-critical work involving overnight travel, unless:
- i. the destination locale requires vaccination or
  - ii. the quarantine requirements for unvaccinated individuals in the destination locale would negatively impact the unvaccinated employee's ability to perform the assignment.

**24. Testing Procedures (For Mandatory and Voluntary Testing).** The procedures for how and by whom testing is to be performed, how to respond to and report a positive test, and the protection of confidential information will be in accordance with the USDA Covid-19 Workplace Safety Plan. Employees who are tested will be provided information about the meaning of a positive or negative test.

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**25. Mandatory Screening Testing.** Screening testing will be implemented in the circumstances identified in the USDA Covid-19 Workplace Safety Plan and in circumstances identified by the Interagency Wildland Fire community. For mandatory screening tests, the supervisor or other designated official will observe the test. The employee being tested is responsible for conducting the test and will be trained in the test procedures as well as the reading and reporting of the test result.

### **26. Mandatory Diagnostic Testing**

- a. Management may order employees to be tested in situations where there has been a confirmed exposure in the workplace.
- b. When an employee is directed to be tested, employees will not bear the cost(s) associated with a Management-directed COVID-19 test, and the employee will be on duty time for travel to and obtaining the test.
- c. An employee who does not want to be tested may make a request to Management to quarantine or self-isolate instead. Granting such a request is at the sole and exclusive discretion of Management, and generally will only be approved in instances where quarantining would not adversely impact the mission of the Agency or if required by law, rule, government-wide regulations, or Agency policy. Furthermore, if such a request is approved:
  - i. Generally, the employee would be responsible for any additional costs incurred from such a decision except were prohibited by law, rule, or government-wide regulation.
  - ii. If the employee is telework ineligible, Management is not obligated to find the employee portable work. Accordingly, the employee may be required to use appropriate earned leave, credit hours, comp time off, or request LWOP during the quarantine period.

### **27. Voluntary Screening Tests**

Upon employee request and subject to supplies and budget, the Agency will provide voluntary COVID screening tests to those employees who face increased risk of exposure due to the nature of their work. Such work may include, but is not limited to:

- a. Employees scheduled for official travel, prior to departure and/or upon return home;
- b. Public-facing employees, outside of fire/incidents, as they return to onsite work (these employees provide key services to the public and are in a unique situation for risk of workplace exposure to COVID-19); or
- c. Employees living in shared quarters.

These screening tests are distinct from situations when employees believe they have been exposed to COVID-19 at work. Employees who believe they have had a workplace exposure must contact their supervisor and follow the requirements for a diagnostic test.

**28. Locally Negotiable Procedures and Arrangements.** Additional procedures and arrangements relative to COVID-19 resumption of operations not addressed in or covered by this Agreement may be negotiated by the parties at the appropriate level. Negotiable topics may include, but are not limited to, vehicle use and cleaning, office rearrangements, signage, etc. Any resulting subordinate



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agreement, pertaining to specific local conditions, must be consistent with applicable law, government-wide rule or regulation, the USDA COVID-19 Safety Plan, the 2019 Master Agreement, and all NFFE supplemental MOUs.

**29. Communication of this MOU.** This MOU will be distributed via email to all National Leadership Council members and to the National COVID Coordinators. In addition to posting on the Labor Relations FS intranet site, a copy will be posted on the public-facing FS world-wide web site and linked from the Agency COVID information website.

**30. Effective Date, Termination, or Modification**

The Parties recognize that the CDC and other official guidance pertaining to pandemics is constantly changing and evolving. Accordingly, if such a change has a more than *de minimis* impact on represented employees, Management will notify the Union at the appropriate level, in accordance with Article 11.

This MOU becomes effective on the date of final approval by the Agency Head, or that date on which the thirty (30) day time limit for Agency Head review expires, whichever is earlier. This MOU will terminate upon the Agency returning to normal nationwide operations, or upon a declaration by the Executive Branch that the COVID-19 health emergency is over, unless the Parties mutually agree to keep the MOU in force. Either Party may request, consistent with Article 11 of the Master Agreement, to reopen or renegotiate this Agreement.

For the Agency:

For the Union:

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