

United States Senate

WASHINGTON, DC 20510

October 12, 2021

The Honorable Joseph R. Biden
President
The White House
Washington, D.C. 20500

The Honorable Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

The Honorable Mark A. Milley
Chairman of the Joint Chiefs of Staff
9999 Joint Staff Pentagon
Washington, D.C. 20318

Dear President Biden, Secretary Austin and General Milley:

Multiple sources have alleged that the Department of Defense's (DoD) mandatory COVID-19 vaccinations may not be in accordance with Secretary of Defense Austin's August 24, 2021 memorandum (vaccine mandate) stating "[m]andatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance."¹

On August 23, 2021, the FDA stated, "[a]lthough COMIRNATY (COVID-19 Vaccine, mRNA) is approved to prevent COVID-19 in individuals 16 years of age and older, there is not sufficient approved vaccine available for distribution to this population in its entirety at the time of reissuance of this [Emergency Use Authorization] EUA."² On September 13, 2021, the National Library of Medicine within the National Institutes of Health (NIH), reported, "[a]t present, Pfizer does not plan to produce any product with these new [Comirnaty National Drug Codes] and labels over the next few months while EUA authorized product is still available and being made available for U.S. distribution."³ Again on September 22, 2021, the FDA stated, "there is not sufficient approved vaccine [Comirnaty] available for distribution to this population

¹ Memorandum from Secretary of Defense Lloyd Austin to Senior Pentagon Leadership, et al. (Aug. 24, 2021) (available at <https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICE-MEMBERS.PDF>).

² Letter to Elisa Harkins, Pfizer Inc., from Denise Hinton, Chief Scientist, U.S. Food and Drug Administration at 5, Aug. 23, 2021, archived copy available at <https://web.archive.org/web/20210823142034/https://www.fda.gov/media/150386/download> (See footnote 9).

³ Announcement, U.S. National Library of Medicine, Pfizer received FDA BLA license for its COVID-19 vaccine (Sept. 13, 2021), available at <https://dailymed.nlm.nih.gov/dailymed/dailymed-announcements-details.cfm?date=2021-09-13>.



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[individuals 16 years of age and older] in its entirety at the time of reissuance of this EUA.”⁴ Absent a sufficient supply of the only approved COVID-19 vaccine, Comirnaty, it is not clear how DoD is complying with Secretary Austin’s assertion that mandatory vaccination will only occur with the fully-licensed vaccine.⁵

In order to understand the extent to which DoD service members subject to mandatory COVID-19 vaccination may have not received fully-approved vaccines as prescribed by Secretary Austin’s vaccine mandate, I request the following information:

1. How many vaccinations have been administered since Secretary Austin’s vaccine mandate?
2. Please provide the number of voluntary and mandated vaccinations administered to DoD service members using each vaccine by month:
 - a. Moderna – EUA;
 - b. Johnson and Johnson (Janssen) – EUA;
 - c. Pfizer-BioNTech – EUA; and
 - d. Comirnaty – FDA approved.
3. Please provide all orders issued to DoD personnel regarding DoD’s vaccine mandate.
4. Please provide all guidelines issued to DoD personnel regarding DoD’s vaccine mandate.
5. Please provide all documents and communications regarding DoD’s vaccine mandate, including but not limited to the development and implementation of the vaccine mandate.

Thank you for your attention to this urgent matter. Please respond no later than October 26, 2021.

Sincerely,



Ron Johnson
U.S. Senator

⁴ Letter to Amit Patel, BioNTech Manufacturing GmbH, from Denise Hinton, Chief Scientist, U.S. Food and Drug Administration at 6, Sept. 22, 2021, available at <https://www.fda.gov/media/150386/download> (See footnote 12).

⁵ Memorandum from Secretary of Defense Lloyd Austin to Senior Pentagon Leadership, et al. (Aug. 24, 2021) (available at <https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICE-MEMBERS.PDF>).



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

OCT 27 2021

The Honorable Ron Johnson
United States Senate
Washington, D.C. 20510

Dear Senator Johnson:

This is an interim response to your October 12, 2021 letter that included questions regarding whether and to what extent Department of Defense Service members subject to mandatory coronavirus disease 2019 (COVID-19) vaccination may not have received Food and Drug Administration fully-approved COVID-19 vaccines. My staff is working to gather the answers to your questions, and we will provide a comprehensive response by November 29, 2021.

Thank you for your continued strong support for health and well-being of our Service members, veterans, and families.

Sincerely,

A handwritten signature in black ink, appearing to read "Gilbert R. Cisneros, Jr.", written in a cursive style.

Gilbert R. Cisneros, Jr.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

DEC 21 2021

The Honorable Ron Johnson
United States Senate
Washington, DC 20515

Dear Senator Johnson:

Thank you for your October 12, 2021 letter to the President, Secretary of Defense, and Chairman of Joint Chiefs of Staff regarding concerns about the Department of Defense's (DoD) coronavirus disease 2019 (COVID-19) vaccination requirement.

On August 23, 2021, the Food and Drug Administration (FDA) approved the Biologics License Application for the Pfizer-BioNTech COVID-19 Vaccine, to be offered under the brand name Comirnaty. On August 24, 2021, the Secretary of Defense directed that the Secretaries of the Military Departments begin full vaccination of all members of the Armed Forces under DoD authority on Active Duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19, in accordance with FDA-approved labeling and guidance and subject to exemptions required by law.

In accordance with guidance from the FDA, the Pfizer-BioNTech vaccine emergency use authorized (EUA) and Pfizer-BioNTech Comirnaty licensed vaccine have the same formulation and are "interchangeable." The FDA stated that health care providers should "use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine." In accordance with the Secretary of Defense's direction, DoD health care providers are complying with the applicable FDA-approved labeling and guidance when administering COVID-19 vaccines. Additional information is included in the enclosures accompanying this letter.

Thank you for your continued strong support for the health and well-being of our Service members, DoD civilian workforce, and contractor personnel.

Sincerely,

Gilbert R. Cisneros, Jr.

Enclosures:
As stated

Month	Pfizer-BioNTech/Comirnaty	Moderna	Janssen	Total
August 24, 2021 - August 31, 2021	49,523	11,609	4,337	65,469
Sep-21	284,874	37,390	14,631	336,895
Oct-21	163,412	21,359	6,041	190,812
Nov-21	49,259	8,776	3,598	61,633
Dec-21	12,114	3,378	1,255	16,747
Total	559,182	82,512	29,862	671,556

Notes:

1. Pfizer-BioNTech/Comirnaty column numbers reflect BLA and EUA vaccines, indistinguishable except by detailed review of specific lot numbers administered.

Currently, DoD has no vaccine available labeled as "Comirnaty".

2. Moderna and Janssen columns reflect EUA totals (No BLA available to date).



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

AUG 24 2021

**MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS**

**SUBJECT: Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense
Service Members**

To defend this Nation, we need a healthy and ready force. After careful consultation with medical experts and military leadership, and with the support of the President, I have determined that mandatory vaccination against coronavirus disease 2019 (COVID-19) is necessary to protect the Force and defend the American people.

Mandatory vaccinations are familiar to all of our Service members, and mission-critical inoculation is almost as old as the U.S. military itself. Our administration of safe, effective COVID-19 vaccines has produced admirable results to date, and I know the Department of Defense will come together to finish the job, with urgency, professionalism, and compassion.

I therefore direct the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.

Service members are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Those with previous COVID-19 infection are not considered fully vaccinated.

Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance. Service members voluntarily immunized with a COVID-19 vaccine under FDA Emergency Use Authorization or World Health Organization Emergency Use Listing in accordance with applicable dose requirements prior to, or after, the establishment of this policy are considered fully vaccinated. Service members who are actively participating in COVID-19 clinical trials are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

Mandatory vaccination requirements will be implemented consistent with DoD Instruction 6205.02, "DoD Immunization Program," July 23, 2019. The Military Departments should use existing policies and procedures to manage mandatory vaccination of Service members to the extent practicable. Mandatory vaccination of Service members will be subject to any identified contraindications and any administrative or other exemptions established in Military Department policy. The Military Departments may promulgate appropriate guidance to carry out the requirements set out above. The Under Secretary of Defense for Personnel and

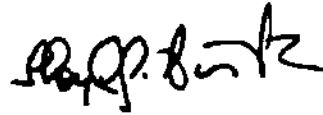


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Readiness may provide additional guidance to implement and comply with FDA requirements or Centers for Disease Control and Prevention recommendations.

The Secretaries of the Military Departments should impose ambitious timelines for implementation. Military Departments will report regularly on vaccination completion using established systems for other mandatory vaccine reporting.

Our vaccination of the Force will save lives. Thank you for your focus on this critical mission.

A handwritten signature in black ink, appearing to read "R. P. Burt". The signature is written in a cursive, somewhat stylized font.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

OCT 29 2021

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Force Health Protection Guidance (Supplement 23) Revision 2 – Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification

This memorandum rescinds and replaces reference (a),¹ and provides updated guidance for implementing additional force health protection and workplace safety measures directed by the White House Safer Federal Workforce Task Force (reference (b)) to reduce the transmission of the virus that causes coronavirus disease 2019 (COVID-19).

In accordance with references (b), (c), and (d), DoD civilian employees are now required to be fully vaccinated by November 22, 2021, subject to exemptions as required by law. For purposes of this guidance, "DoD civilian employee," includes foreign nationals employed by DoD outside the United States, to the maximum extent possible while respecting host nation agreements and laws. It also includes DoD civilian employees who are engaged in full-time telework or remote work. Additional information about the requirements for DoD civilian employees can be found in Attachment 1.

DoD contractor personnel and official visitors must attest to being fully vaccinated and, if not fully vaccinated, present the results of a recent negative COVID-19 test as a condition of physical access to DoD buildings and DoD-leased spaces in non-DoD buildings in which official DoD business takes place (referred to jointly in this memorandum as "DoD facilities"). For purposes of this physical access requirement, "contractor personnel" are those individuals issued a credential by DoD that affords the individual recurring access to DoD facilities, classified herein as "credentialed recurring access" (CRA) (e.g., Common Access Cardholders). "Official visitors" are non-DoD individuals seeking access, one time or recurring, in association with the performance of official DoD business (e.g., to attend a meeting), but who do not have CRA. The COVID-19 vaccination status for all individuals with CRA and official onsite visitors will be determined in accordance with Attachment 2.

These vaccination and physical access requirements do not apply to personnel receiving ad hoc access to DoD facilities (e.g., delivery personnel, taxi services); to individuals who have access to the grounds of, but not the buildings on, DoD installations (e.g., contract groundskeepers, fuel delivery personnel, household goods transportation personnel); to personnel accessing DoD buildings unrelated to the performance of DoD business (e.g., residential housing); or to personnel accessing DoD facilities to receive a public benefit (e.g., commissary;

¹ References are listed in Attachment 10.

exchange; public museum; air show; military medical treatment facility; Morale, Welfare, and Recreation resources).

In accordance with reference (e), Service members (members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including members of the National Guard) are required to be fully vaccinated against COVID-19. Service members' vaccination status will be validated utilizing their Military Service-specific Individual Medical Readiness (IMR) system. If a Service member has been vaccinated against COVID-19 outside the Military Health System, that Service member must show official proof of his or her COVID-19 vaccination status to update the IMR system. Once the applicable mandatory vaccination date has passed, COVID-19 screening testing as described in Attachment 7 is required at least weekly for Service members who are not fully vaccinated, including those who have an exemption request under review, or who are exempted from COVID-19 vaccination and are entering a DoD facility. Service members who are not on active duty and who also are DoD civilian employees or DoD contractor personnel must follow the applicable requirements in this memorandum for DoD civilian employees or DoD contractor personnel, as the case may be. Service members not on active duty must comply with any other applicable DoD or DoD Component guidance.

Individuals are considered fully vaccinated 2 weeks after completing the second dose of a two-dose COVID-19 vaccine or 2 weeks after receiving a single dose of a one-dose COVID-19 vaccine. Individuals must be vaccinated with vaccines that are either fully licensed or authorized for emergency use by the Food and Drug Administration (FDA) (e.g., Pfizer-BioNTech/COMIRNATY, Moderna, Johnson & Johnson/Janssen vaccines); listed for emergency use on the World Health Organization Emergency Use Listing (e.g., AstraZeneca/Oxford); or approved for use in a clinical vaccine trial for which vaccine efficacy has been independently confirmed (e.g., Novavax). Those with previous COVID-19 infection(s) or antibody test results are not considered fully vaccinated on that basis for the purposes of this memorandum.

All medical and other information collected from individuals will be maintained in a manner meeting the privacy requirements in Attachment 9.

The Secretaries of Military Departments and the Director of Administration and Management for all other DoD Components will publish any necessary supplemental instructions and ensure that all contract and associated funding implications are considered.

DoD Components should engage with DoD civilian employee unions as they develop supplemental guidance and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest convenience, including on a post-implementation basis.

This memorandum and other COVID-19 guidance memoranda are centrally located at: <https://www.defense.gov/Spotlights/Coronavirus-DOD-Response/Latest-DOD-Guidance/>.

Please direct any questions or comments to the following email address: dha.ncr.ha-support.list.policy-hrpo-kmc-owners@mail.mil.




Gilbert R. Cisneros, Jr.

Attachments:

1. ATTACHMENT 1: Vaccination Requirements for DoD Civilian Employees
2. ATTACHMENT 2: Requirements for DoD Contractor Personnel, Official Onsite Visitors, and Others Seeking Access to Facilities
3. ATTACHMENT 3: DD Form 3175 – “DoD Civilian Employee Certification of Vaccination”
4. ATTACHMENT 4: DD Form 3150 – “Contractor and Visitor Certification of Vaccination”
5. ATTACHMENT 5: DD Form 3176 – “Request for a Medical Exemption or Delay to the COVID-19 Vaccination Requirement”
6. ATTACHMENT 6: DD Form 3177 – “Request for a Religious Exemption to the COVID-19 Vaccination Requirement”
7. ATTACHMENT 7: COVID-19 Screening Testing Requirements
8. ATTACHMENT 8: Requirements for Obtaining Self-Collection Kits and Self-Tests
9. ATTACHMENT 9: Privacy Requirements
10. ATTACHMENT 10: References

LIBERTY COUNSEL



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REPLY TO FLORIDA

VIRGINIA OFFICE:

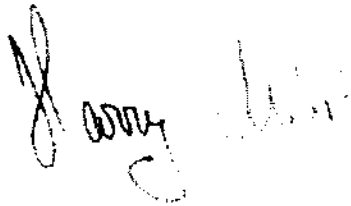
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Tel 407-875-1776
Fax 407-875-0770
liberty@LC.org

October 19, 2021

Pursuant to rule 4(i)(2) of the Federal Rules of Procedure, please find enclosed your service copy of a Complaint, and TRO/PI Motion filed on October 15, 2021 in the United States District Court Middle District of Florida.

Have a blessed day,

Horatio Mihet



Horatio G. Mihett

Vice President of Legal Affairs & Chief Litigation Counsel LIBERTY COUNSEL

Enclosures



OSD009742-21/CMD012506-21

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NAVY SEAL 1, et al.,

Plaintiffs,

v.

CASE NO. 8:21-cv-2429-SDM-TGW

JOSEPH R. BIDEN, et al.,

Defendants.

ORDER

On August 24, 2021, the Department of Defense (DOD) directed “the Secretaries of the Military Departments to immediately begin full vaccination of all members of the Armed Forces under [DOD] authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19.” (Doc. 1-4 at 1) The directive explained, “Mandatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance.” (Doc. 1-4 at 1)

On September 9, 2021, the President of the United States issued two executive orders, one order directing each federal agency to “implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law” (Doc. 1-1) and the other order directing every federal contractor to “comply with all guidance for

contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force” (Doc. 1-2), which on September 24, 2021, issued guidance requiring the vaccination of covered employees of federal contractors (Doc. 1-3).

On behalf of themselves and a proposed class of similarly situated persons, the plaintiffs, including one or more members of the Army, Navy, Marines, Air Force, and Coast Guard; a member of the National Guard; several defense contractors; and others, sue the President, DOD, and DHS for injunctive, declaratory, and other relief. The verified complaint alleges, among other things, that no available vaccine has received “full licensure” from the FDA and that implementation of the executive orders and military directives offers members of the armed forces no accommodation for a sincerely held religious belief opposing injection of the available vaccines. The verified complaint claims a violation of (1) the emergency use authorization under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3; (2) the Free Exercise Clause of the First Amendment; and (3) the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.

According to the verified complaint, the plaintiffs must accept before a stated day — November 22 for the Coast Guard and civilian contractors; November 28 for the Navy and Marines; and December 15 for the Army and Air Force — full vaccination by injection of one of the three available vaccines.* The plaintiffs move

* The August 24, 2021 memorandum by the Department of Defense states that “[s]ervice members are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Those with previous COVID-19 infection are not considered fully vaccinated.”

(Doc. 2) for a temporary restraining order and a preliminary injunction to prevent the defendants' forcing the plaintiffs either to promptly accept the injection or to promptly incur discipline or penalty, including dishonorable discharge, court martial, termination, and "other life-altering disciplinary measures." (Doc. 1 ¶ 1)

The parties must conform to the following schedule:

1. **Immediately but not later than OCTOBER 19, 2021, at 12:00 P.M.**, the plaintiffs must e-mail to the lawfully authorized representative, including Karin Hoppmann, Acting United States Attorney for the Middle District of Florida, of each defendant a copy of the complaint, the motion, and this order and must file immediately a notice both confirming transmission of the e-mail to each defendant and identifying the recipient of each e-mail.
2. **Immediately but preferably not later than OCTOBER 20, 2021**, the plaintiffs must — in the most expeditious manner feasible — serve each defendant with the summons, the complaint, the motion, and this order and must file immediately a proof of service.
3. **Immediately after e-mail notice of this order or service of this order, whichever occurs first**, counsel for the defendants must file a notice of appearance (of course, without prejudice to the assertion of a Rule 12(b) or any other defense or response to the plaintiffs' claims).
4. **Not later than NOVEMBER 3, 2021**, and by a memorandum not exceeding thirty pages, the defendants must respond to the motion for a preliminary injunction in accord with the Local Rules, including Local Rule 1.08.

5. **Not later than NOVEMBER 10, 2021**, the plaintiffs may reply by a memorandum not exceeding twenty-five pages.

6. **A hearing will begin NOVEMBER 15, 2021, at 9:00 A.M.** in Courtroom 15A, United States Courthouse, 801 North Florida Avenue, Tampa, Florida, on the motion for a preliminary injunction and will continue day-to-day as required and until completion. Any party who will offer evidence at the hearing must file **not later than NOVEMBER 10, 2021**, a witness list and an exhibit list (any witness or exhibit not appearing on a list is inadmissible at the hearing).

The motion (Doc. 2) for a temporary restraining order **REMAINS UNDER ADVISEMENT**. Although a temporary restraining order directed to the conditional class, as alleged in the complaint, will likely not issue, the plaintiffs may move on behalf of any individual member of the alleged class who satisfies the requirements for temporary injunctive relief (that is, someone who has, among other things, not already suffered injury but who imminently will suffer serious and irreparable injury before a preliminary injunction, if any, issues); whose interests are otherwise not adequately protected by the hearing on November 15, 2021; and whose circumstances are for some singular reason markedly more acute than other members of the putative class. Any motion under this paragraph must include a

certificate that the parties have conferred in good faith and are unable to agree on an interim resolution to the issue presented in the motion.

ORDERED in Tampa, Florida, on October 18, 2021.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

United States Senate

WASHINGTON, DC 20510

December 15, 2021

The Honorable Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Austin:

On October 12, 2021, I sent you a letter requesting information about your August 24, 2021 memorandum, which instituted a COVID-19 vaccine mandate for all service members.¹ Your memorandum stated that “[m]andatory vaccination against COVID-19 will only use COVID-19 vaccines that receive full licensure from the Food and Drug Administration (FDA), in accordance with FDA-approved labeling and guidance.”² In light of FDA’s statement that “there is not sufficient approved [supply]” of Comirnaty, the only fully-licensed vaccine, I asked you to explain how the Department of Defense (DoD) will comply with the vaccine mandate.³ To date, you have failed to provide that explanation and respond to my letter.

Despite this lack of clarity, DoD has reportedly begun discharging service members “for not obeying orders to get vaccinated.”⁴ Reports indicate that on December 13, 2021, the Air Force discharged 27 service members for noncompliance with the DoD’s COVID-19 vaccine mandate.⁵ An Air Force spokeswoman stated that these 27 individuals were “the first active-duty Air Force Members to be discharged over the Pentagon’s vaccination requirements for military members.”⁶ The discharge classification of these 27 veterans is uncertain, as is their eligibility for veteran benefits.⁷

¹ Letter to Lloyd Austin, Secretary of Defense et al., from Ron Johnson, U.S. Senator, Oct. 12, 2021, <https://www.ronjohnson.senate.gov/services/files/1BC1491B-CFAB-4784-9DBB-8DCAC9E30BD9>.

² Memorandum from Secretary of Defense Lloyd Austin to Senior Pentagon Leadership, et al. (Aug. 24, 2021) (available at <https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORYCORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICEMEMBERS.PDF>).

³ Letter to Amit Patel, BioNTech Manufacturing GmbH, from Denise Hinton, Chief Scientist, U.S. Food and Drug Administration at 6, Sept. 22, 2021, available at <https://www.fda.gov/media/150386/download> (See footnote 12).

⁴ Alex Horton and Timothy Bella, *Air Force discharges 27 service members in first apparent dismissals over vaccine refusal*, *Wash Post*, Dec. 14, 2021, available at <https://www.washingtonpost.com/national-security/2021/12/14/air-force-vaccines-discharges/>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Allegedly, as many as 40,000 active-duty military personnel have elected not to receive a COVID-19 vaccine. Alex Horton, *Vaccine holdouts in U.S. military approach 40,000 even as omicron variant fuels calls for boosters*.



OSD011206-21/CMD014286-21

Despite my and other concerned individuals' attempts to get clarity about your COVID-19 vaccine mandate, you have ignored our requests for information, and instead have allowed DoD to discharge service members for not obeying your ambiguous mandate. I ask that you immediately respond to my October 12, 2021, letter and provide the following information by no later than January 4, 2022:

1. Please provide the number of doses of the fully-licensed Comirnaty vaccine that have been given and are available to active-duty military personnel.
2. Will DoD provide a vaccination waiver acknowledging natural immunity to active-duty military personnel who have been previously infected with COVID-19? If not, why not?
3. Please provide the total number of active-duty military personnel who have not yet received a COVID-19 vaccine and, of those, how many have received a medical or religious exemption.
4. Please provide the total number of active-duty military personnel, broken down by branch, who have been subject to a discharge procedure for noncompliance with the COVID-19 vaccine mandate. Please identify the types of discharge procedures.

Thank you for your attention to this urgent matter.

Sincerely,



Ron Johnson
United States Senator



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JAN 10 2022

The Honorable Ron Johnson
United States Senate
Washington, DC 20510

Dear Senator Johnson:

This is an interim response to your December 15, 2021 letter regarding concerns of discharge of Service members who failed to comply with Secretary of Defense Memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members," August 24, 2021. My staff is diligently working to research the matter and provide a comprehensive response to your questions by March 31, 2022.

Thank you for your continued strong support for our Service members, veterans, and families.

Sincerely,

Gilbert R. Cisneros, Jr.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL - 5 2022

The Honorable Ron Johnson
United States Senate
Washington, DC 20510

Dear Senator Johnson:

Thank you for your letters of October 12, 2021; December 8, 2021; December 15, 2021; February 1, 2022; and February 17, 2022 to the Secretary of Defense regarding the Department of Defense's (DoD) vaccination policies, the Defense Medical Epidemiology Database (DMED), and DoD's telework policies. DoD has worked diligently to gather information to answer your questions. On behalf of the Secretary of Defense, I am providing a consolidated response.

I want to begin by addressing your concern regarding the Secretary of Defense's direction that mandatory vaccination occur only with a fully licensed vaccine.

On August 23, 2021, the Food and Drug Administration (FDA) approved the Biologics License Application (BLA) for the Pfizer-BioNTech coronavirus disease 2019 (COVID-19) vaccine, to be offered under the brand name Comirnaty. On August 24, 2021, the Secretary of Defense directed that the Secretaries of the Military Departments begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19, in accordance with FDA-approved labeling and guidance and subject to exemptions required by law.

In accordance with guidance from the FDA, the Pfizer-BioNTech vaccine Emergency Use Authorization (EUA) and Pfizer-BioNTech Comirnaty licensed vaccine are "interchangeable."¹ The FDA stated that health care providers "can use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine."² In accordance with the Secretary of Defense's direction, DoD health care providers are complying with the applicable FDA-approved labeling and guidance when administering COVID-19 vaccines.

The FDA has stated that FDA-approved Comirnaty, and the EUA-authorized Pfizer-BioNTech COVID-19 Vaccine for ages 12 years and older, when prepared according to their respective instructions for use, can be used interchangeably to provide the COVID-19 vaccination series without presenting any safety or effectiveness concerns.³ The FDA stated that health care providers "can use doses distributed under EUA to administer the vaccination series

¹ FDA, Q&A for Comirnaty (COVID-19 Vaccine mRNA), current as of Feb. 8, 2022, available at <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>.

² *Id.*

³ FDA, Q&A for Comirnaty (COVID-19 Vaccine mRNA), current as of Feb. 8, 2022, available at <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>.

as if the doses were the licensed vaccine.”⁴ In accordance with the Secretary of Defense’s direction, DoD health care providers are complying with the applicable FDA-approved labeling and guidance when administering COVID-19 vaccines.

With that as background, I now turn to your specific questions.

- *How many vaccinations have been administered since Secretary Austin’s vaccine mandate?*

Between August 23, 2021 (the Secretary of Defense’s vaccine mandate) and June 7, 2022, DoD has administered a total of 809,898 doses of COVID-19 vaccine to 551,232 DoD Service members (active duty, National Guard, and Reserve).

- *Please provide the number of voluntary and mandated vaccinations administered to DoD Service members using each vaccine by month.*

Please reference Enclosure 1.

- *Requested orders, guidelines, documents and communications regarding DoD’s vaccine mandate.*

These materials are provided in Enclosure 2.

- *The number of individuals currently employed by your agency.*

As reported in DoD’s interim response, as of December 22, 2021, the DoD employed 785,753 appropriated fund employees. Additionally, the DoD employed 98,185 nonappropriated fund employees as of November 30, 2021.

- *The number of individuals who are: working full time in person at one of your agency’s physical locations; teleworking full time; and working a hybrid schedule that combines both telework and in office schedule.*

A detailed report identifying these statuses for DoD employees, broken out by subcomponent, during the pay period ending December 4, 2021, is at Enclosure 3.

- *The total number of agency employees who are fully vaccinated against COVID-19.*

As of January 19, 2022, 777,201 employees reported as being fully vaccinated against COVID-19.

- *The total number of agency employees who have received a booster.*

⁴ *Id.*

The DoD does not currently require booster shots for eligible employees, nor does it require employees to report such information.

- *For the employees that are teleworking, how are you tracking employee productivity? Please provide a breakdown of your agency's workforce productivity for Fiscal Years 2019, 2020, and 2021.*

Due to the Department's wide range of missions, there is no standardized methodology for tracking productivity. Each DoD Component head identifies the goals and objectives for the Component's workforce and relies on its managers and supervisors to track productivity and to ensure that the work is executed. Supervisors are required to manage equally the productivity for both teleworking and non-teleworking employees to ensure that all mission goals and objectives are met.

- *Has your agency closed physical office space locations since March 2020 in light of increased telework among your agency's workforce? If so, please provide the estimated cost savings associated with office closures.*

DoD regularly assesses its needs for physical office space. In addition, during the pandemic, DoD has regularly evaluated office space capacity limits consistent with local rules and Federal guidelines. In March 2022, DoD transitioned from Health Protection Condition (HPCON) Charlie to HPCON Bravo, which authorized increased office capacity based on local public health conditions. At this time, no DoD Component has reported closing space due to increased telework during the COVID-19 pandemic.

- *Please provide the number of doses of the fully-licensed Comirnaty vaccine that have been given and are available to Active-Duty personnel.*

As of March 8, 2022, the Department has administered 809,898 doses of Pfizer-BioNTech/Comirnaty to 551,232 active duty Service members since August 23, 2021, when the Comirnaty BLA was approved by the FDA. As noted above, DoD uses doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine, in accordance with FDA guidance.

- *Will DoD provide a vaccination waiver acknowledging natural immunity to Active Duty military personnel who have been previously infected with COVID-19? If not, why not?*

DoD does not provide a vaccination waiver acknowledging natural immunity to active duty military personnel who have been previously infected with COVID-19 at this time based upon Centers for Disease Control and Prevention (CDC) recommendations. The DoD approach to immunizations is outlined in DoD Instruction 6205.02, "DoD Immunization Program," June 19, 2019, which states that all DoD personnel and other beneficiaries required or eligible to receive immunizations will be offered immunizations in accordance with recommendations from the CDC and the Advisory Committee on Immunization Practices (ACIP). The Joint Regulation on "Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases,"

October 7, 2013,⁵ further states the Military Service policy concerning immunizations follows the recommendations of the CDC, ACIP, and the prescribing information on the manufacturer's package inserts, unless there is a military-relevant reason to do otherwise. This regulation also describes general examples of medical exemptions, which include "evidence of immunity based on serologic tests, documented infection, or similar circumstances." However, there is no CDC or ACIP recommended "evidence of immunity" for COVID-19. DoD will continue to update our immunization approach in accordance with FDA and CDC guidelines.

- *Please provide the total number of Active-Duty military personnel who have not yet received a COVID-19 vaccine and, of those, how many have received a medical or religious exemption.*

As of May 11, 2022, there are 20,873 (1.6 percent) active duty individuals who have not yet received a COVID-19 vaccine dose.

As of April 30, 2022, 472 medical (med) and 88 religious (rel) exemptions to the COVID-19 vaccine mandate have been granted to Service members (Army - 22 med and 6 rel; Navy - 14 med and 26 rel; U.S. Marine Corps (USMC) 25 med and 7 rel; U.S. Air Force (USAF) 458 med and 49 rel).

- *Please provide the total number of Active-Duty military personnel, broken down by branch, who have been subject to a discharge procedure for noncompliance with the COVID-19 mandate. Please identify the types of discharge procedures.*

The total number of active duty military personnel subject to a discharge procedure for noncompliance with the COVID-19 vaccine mandate as of April 30, 2022, is as follows:

	Army	Navy	USMC	USAF	Total
Honorable	19	818	605	0	551
General	491	0	1,512	351	2,354
Uncharacterized ⁶	0	0	0	1	1
Other than Honorable	0	0	0	0	0
Total	510	818	2,117	352	3,797

- *Is DoD aware of increases in registered diagnoses of miscarriages, cancer, or other medical conditions in DMED in 2021 compared to a five-year averaged from 2016-2020? If so, please explain what actions DoD has taken to investigate the root cause for the increases in these diagnoses.*

⁵ Army Regulation 40-562, Navy Bureau of Medicine and Surgery Instruction 6230.15B, Air Force Instruction 48-110 IP, Coast Guard Commandant Instruction M6230.4G.

⁶ Uncharacterized discharge service is associated with entry level separations where the term of military service has been of insufficient length to warrant characterization.

The Defense Health Agency is not aware of any significant increases in diagnoses in 2021 compared to the years 2016-2020. Reports to the contrary are incorrect as they were based on faulty data.

In January 2022, Department officials found that data in DMED covering the years 2016-2020 had been corrupted during an August 2021 database maintenance process, showing only 10 percent of the true number of medical encounters for that period and creating an inaccurate appearance that diagnoses for medical conditions increased when compared to previous years. The corrupted data made it impossible to accurately compare medical encounter rates across the Military Health System from 2021 to the 2016-2020 period because researchers could not correctly baseline their observations. Any analysis that was conducted using the corrupted data would need to be re-calculated. For additional information, please see the information paper at Enclosure 4.

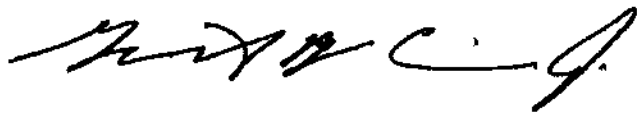
To determine an accurate trend in any of the listed disease categories, the Defense Medical Surveillance System must be used to refine the query and define criteria for the diagnoses (pre-existing versus new), as well the accuracy of the diagnoses with the inclusion of additional data such as procedures, medication, or related laboratory results.

- *Have registered diagnoses of myocarditis in DMED been removed from the database from January 2021 to December 2021? If so, please explain why and when this information was removed and identify who removed it.*

Defense Health Agency officials found no evidence that any health care encounters (including registered diagnoses of myocarditis) were removed from DMED database from January 2021 to December 2021. As noted above, in January 2022, Department officials identified that DMED data had been corrupted during a routine database maintenance process in August 2021, which created inaccurate appearances about diagnoses totals in the data.

Thank you for your continued strong support for the health and well-being of our Service members and civilian workforce.

Sincerely,



Gilbert R. Cisneros, Jr.

Enclosures:
As stated

Enclosure 1

COVID-19 Vaccine Doses Received by Active Duty, National Guard, and Reserve

By Month and Manufacturer from Aug 2021 to May 2022

Total Doses	Janssen	Moderna	Pfizer	Grand Total
2021				
Aug	12,775	42,070	108,925	163,770
Active Duty	9,738	32,166	89,407	131,311
National Guard & Reserve	3,037	9,904	19,518	32,459
Sep	15,331	44,519	279,922	339,772
Active Duty	10,767	34,013	243,397	288,177
National Guard & Reserve	4,564	10,506	36,525	51,595
Oct	7,745	31,905	181,527	221,177
Active Duty	3,557	22,786	141,798	168,141
National Guard & Reserve	4,188	9,119	39,729	53,036
Nov	5,319	32,054	78,887	116,260
Active Duty	2,006	21,587	49,941	73,534
National Guard & Reserve	3,313	10,467	28,946	42,726
Dec	4,043	71,434	83,377	158,854
Active Duty	1,568	56,256	61,975	119,799
National Guard & Reserve	2,475	15,178	21,402	39,055
2022				
Jan	1,900	60,320	84,027	146,247
Active Duty	996	49,368	69,133	119,497
National Guard & Reserve	904	10,952	14,894	26,750
Feb	1,076	20,375	39,624	61,075
Active Duty	584	16,283	31,438	48,305
National Guard & Reserve	492	4,092	8,186	12,770
Mar	906	12,627	27,475	41,008
Active Duty	495	10,360	21,806	32,661
National Guard & Reserve	411	2,267	5,669	8,347
Apr	673	8,684	19,058	28,415
Active Duty	367	6,724	15,131	22,222
National Guard & Reserve	306	1,960	3,927	6,193
May	507	6,064	13,892	20,463
Active Duty	257	4,434	10,677	15,368
National Guard & Reserve	250	1,630	3,215	5,095
Grand Total	50,275	330,052	916,714	1,297,041

Enclosure

2



ASSISTANT SECRETARY OF DEFENSE

**1200 DEFENSE PENTAGON
WASHINGTON, DC 20301-1200**

HEALTH AFFAIRS

**MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND
RESERVE AFFAIRS
ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND
RESERVE AFFAIRS
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER
AND RESERVE AFFAIRS
DIRECTOR, DEFENSE HEALTH AGENCY**

**SUBJECT: Mandatory Vaccination of Service Members using the Pfizer-BioNTech COVID-19
and Comirnaty COVID-19 Vaccines**

On August 23, 2021, the U.S. Food and Drug Administration (FDA) approved the biologics license application for the Comirnaty vaccine, made by Pfizer-BioNTech, as a two-dose series for prevention of coronavirus disease 2019 (COVID-19) in persons aged 16 years or older. Previously, on December 11, 2020, the FDA issued an Emergency Use Authorization (EUA) for the Pfizer-BioNTech COVID-19 vaccine, which has the same formulation as the Comirnaty vaccine. Per FDA guidance, these two vaccines are “interchangeable” and DoD health care providers should “use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine.”¹

Consistent with FDA guidance, DoD health care providers will use both the Pfizer-BioNTech COVID-19 vaccine and the Comirnaty COVID-19 vaccine interchangeably for the purpose of vaccinating Service members in accordance with Secretary of Defense Memorandum, “Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members,” August 24, 2021.

My point of contact for this guidance is (b)(6), who may be reached at (b)(6) or (b)(6)

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Y.A. (b)(6) ADIRIM.TERRY.A. (b)(6)
Date: 2021.09.14 11:02:05
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**Terry Adirim, M.D., M.P.H., M.B.A.
Acting**

**cc:
Surgeon General of the Army
Surgeon General of the Navy
Surgeon General of the Air Force
Joint Staff Surgeon**

¹ FDA, “Q&A for Comirnaty (COVID-19 Vaccine mRNA),” <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>, accessed September 10, 2021.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

DEC 20 2021

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Force Health Protection Guidance (Supplement 23) Revision 3 – Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification

This memorandum rescinds and replaces reference (a),¹ and provides updated guidance for implementing additional force health protection and workplace safety measures directed by the White House Safer Federal Workforce Task Force (reference (b)) to reduce the transmission of the virus that causes coronavirus disease 2019 (COVID-19).

In accordance with references (b), (c), and (d), DoD civilian employees were required to be fully vaccinated by November 22, 2021, subject to exemptions as required by law. For purposes of this guidance, “DoD civilian employee” includes foreign nationals employed by DoD outside the United States to the maximum extent possible while respecting host nation agreements and laws. It also includes DoD civilian employees who are engaged in full-time telework or remote work. Additional information about the requirements for DoD civilian employees can be found in Attachment 1.

DoD contractor personnel and official visitors must attest to being fully vaccinated and, if not fully vaccinated, present the results of a recent negative COVID-19 test as a condition of physical access to DoD buildings and DoD-leased spaces in non-DoD buildings in which official DoD business takes place (referred to jointly in this memorandum as “DoD facilities”). For purposes of this physical access requirement, “contractor personnel” are those individuals issued a credential by DoD that affords the individual recurring access to DoD facilities, classified herein as “credentialed recurring access” (CRA) (e.g., Common Access Cardholders). “Official visitors” are non-DoD individuals seeking access, one time or recurring, in association with the performance of official DoD business (e.g., to attend a meeting), but who do not have CRA. The COVID-19 vaccination status for all individuals with CRA and official visitors will be determined in accordance with Attachment 2.

These vaccination and physical access requirements do not apply to personnel receiving ad hoc access to DoD facilities (e.g., delivery personnel, taxi services); to individuals who have access to the grounds of, but not the buildings on, DoD installations (e.g., contract groundskeepers, fuel delivery personnel, household goods transportation personnel); to personnel accessing DoD buildings unrelated to the performance of DoD business (e.g., residential housing); or to personnel accessing DoD facilities to receive a public benefit (e.g., commissary;

¹ References are listed in Attachment 10.

exchange; public museum; air show; military medical treatment facility; Morale, Welfare, and Recreation resources).

In accordance with reference (e), Service members (members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including members of the National Guard) are required to be fully vaccinated against COVID-19. Service members' vaccination status will be validated utilizing their Military Service-specific Individual Medical Readiness (IMR) system. If a Service member has been vaccinated against COVID-19 outside the Military Health System, that Service member must show official proof of his or her COVID-19 vaccination status to update the IMR system. Once the applicable mandatory vaccination date has passed, COVID-19 screening testing as described in Attachment 7 is required at least weekly for Service members entering a DoD facility who are not fully vaccinated, including those who have an exemption request under review, or who are exempted from COVID-19 vaccination. Service members who are not on active duty and who also are DoD civilian employees or DoD contractor personnel must follow the applicable requirements in this memorandum for DoD civilian employees or DoD contractor personnel, as the case may be. Service members not on active duty must comply with any other applicable DoD or DoD Component guidance. Service members who are actively participating in COVID-19 vaccine clinical trials begun prior to November 22, 2021 are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.

Individuals are considered fully vaccinated 2 weeks after completing the second dose of a two-dose COVID-19 vaccine or 2 weeks after receiving a single dose of a one-dose COVID-19 vaccine. Individuals must be vaccinated with vaccines that are either fully licensed or authorized for emergency use by the Food and Drug Administration (FDA) (e.g., Pfizer-BioNTech/COMIRNATY, Moderna, Johnson & Johnson/Janssen vaccines); listed for emergency use on the World Health Organization Emergency Use Listing (e.g., AstraZeneca/Oxford); or approved for use in a clinical vaccine trial for which vaccine efficacy has been independently confirmed (e.g., Novavax). Those with previous COVID-19 infection(s) or antibody test results are not considered fully vaccinated on that basis for the purposes of this memorandum.

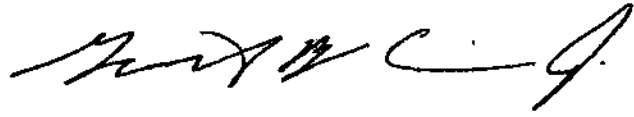
All medical and other information collected from individuals will be maintained in a manner meeting the privacy requirements in Attachment 9.

The Secretaries of Military Departments and the Director of Administration and Management for all other DoD Components will publish any necessary supplemental instructions and ensure that all contract and associated funding implications are considered.

DoD Components should engage with DoD civilian employee unions as they develop supplemental guidance and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest convenience, including on a post-implementation basis.

This memorandum and other COVID-19 guidance memoranda are centrally located at: <https://www.defense.gov/Spotlights/Coronavirus-DOD-Response/Latest-DOD-Guidance/>.

Please direct any questions or comments to the following email address: dha.ncr.ha-support.list.policy-hrpo-kmc-owners@mail.mil.



Gilbert R. Cisneros, Jr.

Attachments:

1. ATTACHMENT 1: Vaccination Requirements for DoD Civilian Employees
2. ATTACHMENT 2: Requirements for DoD Contractor Personnel, Official Visitors, and Others Seeking Access to Facilities
3. ATTACHMENT 3: DD Form 3175 – “DoD Civilian Employee Certification of Vaccination”
4. ATTACHMENT 4: DD Form 3150 – “Contractor and Visitor Certification of Vaccination”
5. ATTACHMENT 5: DD Form 3176 – “Request for a Medical Exemption or Delay to the COVID-19 Vaccination Requirement”
6. ATTACHMENT 6: DD Form 3177 – “Request for a Religious Exemption to the COVID-19 Vaccination Requirement”
7. ATTACHMENT 7: COVID-19 Screening Testing Requirements
8. ATTACHMENT 8: Requirements for Obtaining Self-Collection Kits and Self-Tests
9. ATTACHMENT 9: Privacy Requirements
10. ATTACHMENT 10: References

ATTACHMENT 1
Vaccination Requirements for DoD Civilian Employees

1. Vaccination Requirement

- a. DoD civilian employees are required to be fully vaccinated, unless they have received a temporary or permanent exemption. DoD civilian employees who are actively participating in COVID-19 vaccine clinical trials begun prior to November 22, 2021, are exempted from mandatory vaccination against COVID-19 until the trial is complete in order to avoid invalidating such clinical trial results.
- b. DoD civilian employees who are not fully vaccinated must comply with all DoD requirements for individuals who are not fully vaccinated, including those requirements related to masking, physical distancing, and travel. Weekly COVID-19 testing is required for those DoD civilian employees who are not fully vaccinated, including those who have medical or religious exemptions. DoD civilian employees who telework or work remotely on a full-time basis are not subject to weekly testing, but must provide a negative result from a test performed within the prior 72 hours for entry into a DoD facility.
- c. DoD civilian employees are eligible to receive the COVID-19 vaccine at any DoD vaccination site, including military medical treatment facilities. They may also opt to receive the COVID-19 vaccine at locations other than DoD vaccination sites, such as retail stores, private medical practices, and/or local and State public health department sites.
- d. New DoD civilian employees must be fully vaccinated by their entry on duty (start) date.
 - i. The DoD or Office of the Secretary of Defense (OSD) Component head concerned may approve temporary exemptions in writing for up to 60 days after a DoD civilian employee's start date for urgent, mission-critical hiring needs in circumstances in which a DoD civilian employee could not have been fully vaccinated between the time the job opportunity announcement closes and the DoD civilian employee's start date. This authority may be delegated in writing to the DoD or OSD Component head's Principal Deputy (or equivalent) but no lower.
 - ii. DoD Components must address the COVID-19 vaccination requirement in job opportunity announcements and tentative and final offer letters. For hiring actions currently underway, DoD Components must issue revised tentative and final offer letters. Sample language can be found in reference (f).
- e. DoD civilian employees are authorized official duty time to receive vaccination doses. For DoD civilian employees who are unable to receive a COVID-19 vaccination within their duty hours, regular overtime rules are applicable.

- f. DoD civilian employees are authorized administrative leave for purposes of taking a family member to get a vaccination and for themselves to recover from vaccination. DoD civilian employees who experience an adverse reaction to a COVID-19 vaccination should be granted no more than two workdays of administrative leave for recovery associated with a single COVID-19 vaccination dose. DoD civilian employees should use the time and attendance code for "physical fitness" to record administrative leave for COVID-19 vaccination recovery time that prevents the employee from working or for taking a family member to be vaccinated for COVID-19. The type hour code is "LN" and the environmental/hazard/other code is "PF". Non-appropriated fund employers should code administrative leave related to COVID-19 in a way that can be easily reported.

2. Verification of Vaccination

- a. DoD civilian employees who have received a dose of a one-dose vaccine, or both doses of a two-dose vaccine, must provide proof of vaccination to their direct supervisor. For purposes of the vaccination data submission and verification requirements, "direct supervisor" includes an authorized human resources official.
- b. Proof of vaccination may be submitted either in hard copy or in an electronic format. The proof may be a photocopy or photograph of the vaccination record, if it legibly displays the data points to be verified by the supervisor. DoD civilian employees who are not fully vaccinated must provide proof of vaccination to their supervisor upon receipt of each required dose. Acceptable proof includes:
 - i. A copy of the record of immunization from a health care provider or pharmacy;
 - ii. A copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020);
 - iii. A copy of medical records documenting the vaccination;
 - iv. A copy of immunization records from a public health or State immunization information system; or
 - v. A copy of any other official documentation containing the data points required to be verified by the supervisor.
- c. In addition to providing proof of vaccination to their supervisors, DoD civilian employees also will complete Section A of DD Form 3175 (Attachment 3). DoD civilian employees with access to milConnect (<https://milconnect.dmdc.osd.mil/>) will complete the DD Form 3175 via milConnect; otherwise use of a hard copy² is acceptable. DoD civilian employees who complete the DD Form 3175 via milConnect do not need to email or otherwise transmit a copy of the form to their supervisors. DoD civilian employees using a hard copy will provide the hard copy to their supervisor. DoD civilian employees are required to complete the DD Form 3175 even if they already completed the DD Form 3150 (Attachment 4).

² <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd3175.pdf>

- d. Upon receiving proof of vaccination, a DoD civilian employee's supervisor will verify that the proof of vaccination provided contains the following data points:
 - i. Type of vaccine administered;
 - ii. Number of doses received;
 - iii. Date(s) of administration; and
 - iv. Name of the health care professional(s) or clinic site(s) administering the vaccine(s).
- e. In addition to verifying that a DoD civilian employee's proof of vaccination includes the required data points, supervisors also will complete Section B of DD Form 3175. Supervisors with access to milConnect (<https://milconnect.dmdc.osd.mil/>) will complete the DD Form 3175 via milConnect using the DoD civilian employee's Employee Identification Number; otherwise use of a hard copy is acceptable.
- f. Supervisors will retain DoD civilian employees' proof of vaccination and DD Form 3175 (for those DoD civilian employees not using milConnect) in accordance with their DoD Component's recordkeeping requirements for DoD civilian employee medical records and the privacy requirements contained in Attachment 9. Supervisors should not ask for copies of the DD Form 3175 from those employees who used milConnect to complete the form. Supervisors who receive completed copies of the DD Form 3175 from DoD civilian employees who completed the DD Form 3175 using milConnect shall destroy the copy or return it to the employee.
- g. DoD civilian employees may not be required to use their own personal equipment for the purpose of submitting proof of vaccination or DD Form 3175. DoD civilian employees who submit proof of vaccination or the DD Form 3175 in an electronic format are encouraged to use encrypted email or password protected files with DoD SAFE file transfer (<https://safe.apps.mil/>).

3. Enforcement of DoD Civilian Employee COVID-19 Vaccination Requirement:

- a. DoD civilian employees who refuse to be vaccinated, or to provide proof of vaccination, are subject to disciplinary measures, up to and including removal from Federal service, unless the DoD civilian employee has received an exemption or the DoD civilian employee's request for an exemption is pending a decision. DoD Components should generally follow the recommended guidelines in reference (g), subject to any applicable Component policy and collective bargaining agreements.
- b. Progressive enforcement actions include, but are not limited, to:
 - i. A 5 calendar-day period of counseling and education;
 - ii. A short suspension without pay, generally 14 calendar days or less, with an appropriate notice period. Senior Executive Service members may only be suspended for more than 14 calendar days;
 - iii. Removal from Federal service for failing to follow a direct order.

- c. During the notice periods preceding adverse employment actions, DoD civilian employees generally should not be placed on administrative leave. DoD Components should require DoD civilian employees to continue to telework or report to the worksite and follow all mitigation measures applicable to not fully vaccinated DoD civilian employees when reporting to the worksite.
- d. DoD Components will designate officials, at the appropriate organizational level, to handle the disciplinary process to promote consistent application of disciplinary measures. Such officials will decide each case with due regard to the facts and circumstances of that case.
- e. Supervisors should contact their servicing human resources and legal offices to discuss options available to address individual situations regarding enforcement of this requirement.
- f. For employees who have not yet attested to vaccination status; are not vaccinated and did not submit an exemption request, or have not begun vaccination following denial of an exemption request, Components are generally encouraged to continue with robust education and counseling efforts as the first step in an enforcement process, with no subsequent enforcement actions beyond that education and counseling and, if warranted, a letter of reprimand, until the new calendar year begins in January 2022.
- g. DoD Components are encouraged to identify an occupational health office, medical office, or other resource with which a DoD civilian employee may consult during the period of counseling and education.

4. Exemptions to DoD Civilian Employee COVID-19 Vaccination Requirement:

- a. **Exemption Requests and Decision-Making Procedures.** DoD civilian employees may request an exemption on the basis of a medical condition or circumstance or a sincerely held religious belief, practice or observance. Because all DoD civilian employees must now be vaccinated against COVID-19 as a condition of employment, exemptions will be granted in limited circumstances and only where legally required. The Secretaries of the Military Departments and the Director of Administration and Management for all other DoD Components will oversee Component implementation of the following decision-making procedures.
- b. **Personnel.**
 - i. **Decision Authorities.** Management official(s) will be designated to serve as Decision Authorities to make decisions concerning requests for exemption from the COVID-19 vaccination requirement, in consultation with the organization's servicing legal office. Decision Authorities will be at an appropriate level within the organization to consider the impact, if any, that granting a request will have on the DoD Component operations and to promote similar cases being handled in a consistent manner, with due regard

- for the facts and circumstances of each case. Each employee's request must be considered on its own merits.
- ii. **Subject Matter Experts.** DoD Components may identify subject matter experts in areas such as human resources (HR), equal employment opportunity (EEO), medicine, and religious matters to serve as advisors to assist Decision Authorities. Such advisors may provide individual advice, as needed by the Decision Authority, but may not be used to develop a group or consensus recommendation or decision.
 - iii. **Administrative Support.** DoD Components will provide appropriate personnel and other resources to administratively support the Decision Authorities, including support necessary to assist the Decision Authorities with preparing written products.
- c. **Employee Notice.** DoD Components will inform DoD civilian employees how to make a request for an exemption and notify them that requests must have been submitted no later than November 8, 2021, absent extenuating circumstances, to be considered timely. A DoD civilian employee's failure to submit a timely request for exemption is not a basis to deny a request but may be relevant in evaluating the request.
- d. **Employee Responsibilities.** To make a request for exemption from the COVID-19 vaccination requirement, DoD civilian employees must submit a request to their direct supervisor. For purposes of submitting this exemption request, "direct supervisor" includes an authorized human resources official. The employee must provide an official statement which describes the medical or religious reason the employee objects to vaccination against COVID-19. Generally, such requests must be in writing. DoD civilian employees may use DD Form 3176 (Attachment 5) or DD Form 3177 (Attachment 6) to submit their requests. DoD civilian employees who make oral requests may be provided a sample written request format and/or be interviewed to develop the basis for the request. While the use of the DD Form 3176 and DD Form 3177 is optional for DoD civilian employees, when DoD civilian employees make a request, they must provide the following information:
- i. **Medical Exemption Requests.**
 - A description of the medical condition or circumstance that is the basis for the request for a medical exemption from the COVID-19 vaccination requirement;
 - An explanation of why the medical condition or circumstance prevents the employee from being safely vaccinated against COVID-19;
 - If it is a temporary medical condition or circumstance, a statement concerning when it will no longer be a medical necessity to delay vaccination against COVID-19; and
 - Any additional information, to include medical documentation that addresses the employee's particular medical condition or circumstance, which may be helpful in resolving the employee's request for a medical exemption from the COVID-19 vaccination requirement.

- ii. Religious Exemption Requests.
 - A description of the religious belief, practice, or observance that is the basis for the request for a religious exemption from the COVID-19 vaccination requirement;
 - A description of when and how the DoD civilian employee came to hold the religious belief or observe the religious practice;
 - A description of how the DoD civilian employee has demonstrated the religious belief or observed the religious practice in the past;
 - An explanation of how the COVID-19 vaccine conflicts with the religious belief, practice, or observance;
 - A statement concerning whether the DoD civilian employee has previously raised an objection to a vaccination, medical treatment, or medicine based on a religious belief or practice. If so, a description of the circumstances, timing, and resolution of the matter; and
 - Any additional information that may be helpful in resolving the DoD civilian employee's request for a religious exemption from the COVID-19 vaccination requirement.

e. Supervisor Responsibilities.

- i. Following receipt of an employee's request for exemption, supervisors must update Section B of the employee's DD Form 3175 to indicate that a request for exemption determination is pending.
- ii. As necessary, supervisors will engage with the employee to ensure completeness of the employee's exemption request.
- iii. In coordination with human resources officials, supervisors will prepare an exemption request package that contains factual information about the circumstances of the employee's request. A complete exemption request package will include the basis for the employee's request and any supporting documentation submitted by the employee, a description of the nature of the employee's job responsibilities and work environment, and any circumstances relevant to a management-level assessment of the reasonably foreseeable effects on the agency's operations, including protecting the agency's workforce and members of the public with whom the employee interacts in the workplace from COVID-19, if the employee remains unvaccinated.
- iv. Supervisors will forward the exemption request package to the Decision Authority Support Office.

f. Decision Authority Support Office.

- i. DoD Components will establish Decision Authority Support Offices to support exemption request Decision Authorities.
- ii. The Decision Authority Support Office will intake exemption request packages and, under the supervision of the Decision Authority, provide administrative support to the Decision Authority.
- iii. At the request of the Decision Authority, the Decision Authority Support

Office may coordinate with subject matter experts to obtain written documentation which includes relevant factual information and, as necessary, a professional opinion related to the factual information, for inclusion in the exemption request package.

- iv. The Decision Authority Support Office may not provide a consensus opinion or recommendation to the Decision Authority.

g. Decision Authority Determination.

- i. The Decision Authority first analyzes the exemption request package. As necessary, the Decision Authority may request additional information and consult with subject matter experts.
- ii. After conducting a review of the exemption request, the Decision Authority makes a determination, prepares a written statement that includes the reasons for the determination (which may involve drafting assistance based on the Decision Authority's instructions regarding its contents), and obtains a legal review of the determination.
- iii. In cases where the exemption is temporary or denied, the Decision Authority's determination must specify a date by which the DoD civilian employee must be fully vaccinated against COVID-19. In specifying that date, DoD civilian employees must be given a minimum period of 14 days to receive their first (or only) dose of a COVID-19 vaccine.

- h. Employee Notification of Determination. The Decision Authority Support Office will transmit the Decision Authority's written determination to the DoD civilian employee's supervisor, who, in turn, provides the DoD civilian employee with a copy of the written determination, updates the DD Form 3175, and informs the DoD civilian employee of next steps.

- i. A chart illustrating the exemption request process is below.

Position	Role/Responsibility	Output	Submit to
Requesting employee	Attest to vaccination status via DD Form 3175 to indicate exemption pending.	Completed DD Form 3175.	Supervisor
Requesting employee	Request exemption.	Completed DD Form 3176 (medical) or DD Form 3177 (religious), as appropriate, or other request that contains the information required by FHP 23, Revision 3.	Supervisor

<p>Supervisor, in consultation with HR officials</p>	<p>Provide relevant information concerning employee's occupation and work environment, to include: availability of measures to physically distance requestor from co-workers and members of the public, the volume of exemption requests in the organization, and any other relevant information concerning the circumstances of the employee's request.</p>	<p>Exemption request package that includes employee's request and supervisory information concerning employee's occupation, work environment, and other circumstances of the request.</p>	<p>Decision Authority Support Office</p>
<p>Decision Authority Support Office</p>	<p>Receive and track processing of exemption request package. Supplement package with individual advice from subject matter experts and relevant factual information, as directed by the Decision Authority.</p>	<p>Exemption request package that includes employee's request; supervisor information concerning employee's occupation, work environment, and other circumstances of the request; and any supporting documentation relevant to the Decision Authority's analysis.</p>	<p>Decision Authority</p>

Decision Authority	Review submitted documentation, request any reasonably necessary additional information, and prepare written decision in consultation with legal advisors and with the advice of subject matter experts as appropriate.	Written decision that addresses employee's individual circumstances and has been reviewed by appropriate legal advisors.	Supervisor
Supervisor	Receive decision, discuss with employee. If exemption approved, implement mitigation measures and, if necessary, address any follow-on requests for accommodation in accordance with Component EEO procedures. If disapproved, provide opportunity for counseling by medical professional or other appropriate expert/ initiate requirement for vaccination. Work with the legal advisor(s) and, as appropriate, HR LMER and EEO offices.	If approved, employee continues to comply with generally-applicable mitigation measures (e.g., screening testing, masking, and physical distancing) and any other mitigation measures directed by the Decision Authority or management officials. If disapproved, vaccination tracking and/or progressive discipline.	Employee

j. Exemption Criteria.

- i. Religious Exemption Requests. Requests for religious exemption will be analyzed pursuant to the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb et seq. RFRA prohibits the Government from substantially burdening a person's exercise of religion, unless it demonstrates

that application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. In the first instance, Decision Authorities are to determine whether the requestor has met his or her burden to establish that the vaccination requirement imposes a substantial burden on exercise of a sincerely held religious belief. If so, Decision Authorities analyze the request to determine whether the burden on religious exercise is the least restrictive means of furthering the Government's compelling interest in health and safety of the DoD workforce, and the health and safety of members of the public with whom they interact. If vaccination is not the least restrictive means, the exemption will be granted and supervisors will implement the less restrictive means.

- ii. **Medical Exemption Requests.** Pursuant to the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq. Decision Authorities will analyze requests for medical exemption to determine whether the medical condition or circumstance prevents the employee from safely being vaccinated. If so, the employee will be exempt from vaccination (temporarily or permanently, as appropriate). Supervisors will direct compliance with applicable force health protection guidance and direct any mitigation measures that are necessary to prevent the spread of the virus that causes COVID-19 in the workplace and to the members of the public with whom the employee interacts. If such measures result in the employee being unable to perform the essential functions of the position, such matters will be referred to the equal employment opportunity reasonable accommodation process.

k. **Additional Guidance.**

- i. Information collected concerning medical and religious exemption requests must be maintained in accordance with the privacy requirements in Attachment 9. Requests for medical exemption will be treated as medical records to be maintained separately from other personnel files.
- ii. Discipline for failure to meet the COVID-19 vaccination requirement will not be initiated against a DoD civilian employee while a request for a medical or religious exemption from the COVID-19 vaccination requirement is pending determination. If a DoD civilian employee submits a request after discipline is initiated, disciplinary measures may be held in abeyance where appropriate.
- iii. DoD civilian employees who are not fully vaccinated but who have a pending request for exemption from vaccination are required to comply with all force health protection and mitigation measures that are applicable to DoD civilian employees in the worksite who are not fully vaccinated (for example, screening testing (Attachment 7), masking, and physical distancing). Requests for reasonable accommodation related to those measures will be combined with any pending medical or religious exemption to vaccination request, for purposes of making a final determination concerning those measures. Without making a finding concerning whether a sufficient basis for a reasonable accommodation concerning those measures exists, the supervisor

- may use the normal interactive process to pursue a temporary accommodation that protects the health and safety of the workplace while a decision concerning those measures is pending. Otherwise, requests for reasonable accommodation related to force health protection and mitigation measures may be analyzed separately from requests for exemption from vaccination.
- iv. A DoD civilian employee who receives an exemption from the vaccination requirement may, because of the exemption, be unable to perform the duties and responsibilities of the position without a change in working conditions. Supervisors will immediately implement any mitigation measures required by the Decision Authority and applicable force health protection guidance. Supervisors may engage in the normal interactive process concerning any other measures necessary to protect the health and safety of the workplace.
 - v. Requests for exemption from candidates for employment will be handled consistent with the provisions in this attachment.
 - vi. Unless responsibility is otherwise established in a written support agreement, the Combatant Command Support Agent identified in reference (h) is responsible for administration of exemption processes applicable to DoD civilian employees assigned, detailed, or otherwise deployed to a Combatant Command area of responsibility.

ATTACHMENT 2

Requirements for DoD Contractor Personnel, Official Visitors, and Others Seeking Access to Facilities

1. DoD Contractor Personnel

- a. For DoD contractor personnel, the DoD civilian vaccination deadline of November 22, 2021, does not apply. Vaccination requirements for DoD contractor personnel will be in accordance with reference (i), as implemented by reference (j), as directed under Executive Order 14042 (reference (k)).
- b. DoD contractor personnel will complete the DD Form 3150, "Contractor and Visitor Certification of Vaccination" (Attachment 4), maintain a current completed DD Form 3150, and show it to authorized DoD personnel upon request. Failure to complete the DD Form 3150 may result in denying DoD contractor personnel access to the DoD facility to which access is sought.
- c. DoD contractor personnel who are not fully vaccinated against COVID-19 because they are not performing under a covered contract that requires COVID-19 vaccination, due to a legally required accommodation, or who decline to attest to their COVID-19 vaccination status will be subject to COVID-19 screening testing at least weekly as set forth in this guidance (Attachment 7). DoD contractor personnel who refuse required screening testing will be denied access to DoD facilities.
- d. In accordance with applicable contracts, DoD contractor personnel may be offered, but are not required to receive, COVID-19 vaccines at their DoD worksites.

2. Official Visitors

- a. Official visitors will complete DD Form 3150, "Contractor and Visitor Certification of Vaccination"³ (Attachment 4); and maintain a current completed DD Form 3150 and show it to authorized DoD personnel, upon request. Failure to complete the DD Form 3150 may result in denial of an official visitor's access to the DoD facility to which access is sought.
- b. Official visitors who are not fully vaccinated against COVID-19, or who decline to volunteer their COVID-19 vaccination status, must show an electronic or paper copy of negative results from an FDA-authorized or approved COVID-19 test administered no earlier than 72 hours prior to their visit. If an official visitor is unable to show a negative COVID-19 test result, the visitor may be provided onsite self-testing, if available, or will be denied access to the DoD facilities to which access is sought. Service members who are not on active duty at the time of their official visit are subject to the requirements in this paragraph.

³ <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd3150.pdf>

- c. Official visitors will follow applicable policies and procedures of both DoD and the Department or Agency they are visiting, if different from DoD.

3. Others Seeking Access to Facilities

Individuals other than official visitors seeking access to facilities located on DoD installations, but operated by other Federal departments and agencies, will follow the policies and procedures of that other department or agency.

ATTACHMENT 3
DD Form 3175 – “DoD Civilian Employee Certification of Vaccination”

CUI (when filled in)

DoD CIVILIAN EMPLOYEE CERTIFICATION OF VACCINATION

PRIVACY ACT STATEMENT

Authority: Pursuant to 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021), DoD is authorized to collect this information. Additional authorities for the systems of records associated with this collection of information also include: E.O. 13961, Protecting the Federal Workforce and Requiring Mask-Wearing; E.O. 12196, Occupational Safety and Health Program for Federal Employees; 10 U.S.C. 113, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672; DoD Directive 5525.21; and DoD Instruction 8200.03. Providing this information is mandatory, and DoD is authorized to impose penalties for failure to provide the information pursuant to applicable Federal personnel laws and regulations.

Principal Purpose: This information is being collected and maintained to implement Coronavirus Disease 2019 (COVID-19) workplace safety plans, and ensure the safety and protection of the DoD workforce, workplace, and other DoD facilities and environments, consistent with the above-referenced authorities, the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a person, organization or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency, or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative bodies (e.g., the Merit System Protection Board), arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; or agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf.

A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information as follows: For most Federal civilian employees: OPM/GOVT-10, Employee Medical File System Records, 75 Fed. Reg. 36099 (Jun. 21 2010), amended 80 Fed. Reg. 74815 (Nov. 30, 2015). For Federal civilian employees not covered by OPM/GOVT-10: DPR 39 DoD, DoD Personnel Accountability and Assessment System of Records, 85 Fed. Reg. 17047 (Mar. 28, 2020) (also available at <https://dpcid.defense.gov/Portals/48/Documents/Privacy/SORNs/OSDJS/DPR-39-DoD.pdf>).

Consequences of Failure to Provide Information: Providing this information is mandatory. Unless granted an exemption, all covered Federal civilian employees are required to be vaccinated against COVID-19. Employees are required to provide documentation concerning their vaccination status to their employing DoD Component. Failure to provide this information may subject you to disciplinary action, including and up to removal from Federal service.

INSTRUCTIONS: Section A of this form should be completed by DoD civilian employees only. Section B of this form should be completed by the DoD civilian employee's supervisor (or authorized human resources official). This form should be completed by DoD civilian employees only. Service members and employees of DoD contractors should not complete this form.

SECTION A. To be completed by DoD civilian employees.

1. CIVILIAN EMPLOYEE NAME (Last, First, MI):	2. CIVILIAN EMPLOYEE DoD ID NUMBER:
--	-------------------------------------

3. PLEASE CHECK ALL THAT COINCIDES WITH YOUR COVID-19 VACCINATION STATUS:

3.a. I am fully vaccinated.
 Individuals are considered "fully vaccinated" two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Accepted COVID-19 vaccines are those which have received a license or emergency use authorization from the U.S. Food and Drug Administration and those COVID-19 vaccines on the World Health Organization Emergency Use Listing. "Fully vaccinated" also includes circumstances in which the individual was a participant in a U.S. site clinical trial and has received all recommended doses.

3.b. I have received one or more doses, but I am not yet considered fully vaccinated (in accordance with the definition of fully vaccinated above).

3.c. I have submitted proof of vaccination to my supervisor.
 Proof of vaccination includes 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. Employees may provide a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record that is clear and legible.

3.d. I have not received any vaccination doses.

3.e. I have submitted a request for an exemption from vaccination and a decision is still pending.

3.f. I have an approved exemption from vaccination.

CUI (when filled in)

4. EMPLOYEE VACCINE INFORMATION (Employees checking block 3.a. should skip block 4 and go to block 5):	
4.a. VACCINE MANUFACTURER(S) OR VACCINE PRODUCT NAME(S): <input type="checkbox"/> Pfizer-BioNTech/Comirnaty <input type="checkbox"/> Moderna <input type="checkbox"/> AstraZeneca/Oxford <input type="checkbox"/> Johnson and Johnson (J&J)/Janssen <input type="checkbox"/> Novavax <input type="checkbox"/> Other U.S. Food and Drug Administration licensed or authorized, World Health Organization Emergency Use listed vaccine or U.S. site clinical trial vaccine (provide name):	4.b. DATE OF FIRST DOSE:
	4.c. DATE OF SECOND DOSE (if two-dose vaccine):
	4.d. DATE FULLY VACCINATED:
5. CERTIFICATION/KNOWLEDGE OF POSSIBLE ACTIONS FOR FALSE STATEMENTS <input type="checkbox"/> I certify that the information I have provided on this form and the proof of vaccination documentation I have submitted is true and correct. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001). I understand that making a false statement on this form could result in additional administrative action including an adverse personnel action up to and including removal from my position.	
6. CIVILIAN EMPLOYEE SIGNATURE:	7. DATE:
SECTION B. To be completed by the supervisor of the DoD civilian employee completing section A (or an authorized human resources official)	
8. SUPERVISOR PROOF OF VACCINATION REVIEW <input type="checkbox"/> 8.a. Proof of vaccination not received. <input type="checkbox"/> 8.b. Proof of vaccination received and under review. <input type="checkbox"/> 8.c. Proof of vaccination received and reviewed.	9. STATUS OF VACCINATION - EXEMPTION REVIEW <input type="checkbox"/> 9.a. Exemption request received and pending disposition. <input type="checkbox"/> 9.b. Exemption request received and approved. <input type="checkbox"/> 9.c. Exemption request received and denied. <input type="checkbox"/> 9.d. Exemption request not received.
10. SUPERVISOR / AUTHORIZED HR OFFICIAL NAME (Last, First, MI):	11. SUPERVISOR / AUTHORIZED HR OFFICIAL DoD ID NUMBER:
12. SUPERVISOR / AUTHORIZED HR OFFICIAL SIGNATURE:	13. DATE:

DD FORM 3175, OCT 2021

PREVIOUS EDITION IS OBSOLETE.

CUI (when filled in)

Page 2 of 2

ATTACHMENT 4

DD Form 3150 – “Contractor Personnel and Visitor Certification of Vaccination”

CUI (when filled in)

CONTRACTOR PERSONNEL AND VISITOR CERTIFICATION OF VACCINATION		<small>OMB No. 0704-0613 Expiration: 20220228</small>
AGENCY DISCLOSURE NOTICE		
<p>The public reporting burden for this collection of information is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx-dd-dod-informationcollections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p>		
PRIVACY ACT STATEMENT		
<p>Authority: DoD is authorized to collect the information on this form pursuant to Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors; E.O. 13961, Protecting the Federal Workforce and Requiring Mask-Wearing; and E.O. 12196, Occupational Safety and Health Program for Federal Employees; as well as 10 U.S.C. 113, 10 U.S.C. 138, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2672, 5 U.S.C. chapter 79, and DoD Instruction 6200 03</p> <p>Principal Purpose: This information is being collected to implement Coronavirus Disease 2019 (COVID-19) workplace safety plans, including DoD's COVID-19 testing programs, and to ensure the safety and protection of the DoD workforce, workplace and other DoD facilities and environments, consistent with the above-referenced authorities, the COVID-19 Workplace Safety Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.</p> <p>Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to a person, organization, or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative or administrative bodies or officials when the records are relevant and necessary to an adjudicative or administrative proceeding; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; agencies, courts, and persons as necessary and relevant in the course of litigation and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information from contractor personnel and DoD visitors: DPR 39 DoD, DoD Personnel Accountability and Assessment System of Records, 65 Fed. Reg. 17047 (Mar. 28, 2020) (also available at https://dodid.defense.gov/Portals/49/Documents/Privacy/SORNsOSDJS/DPR-39-DoD.pdf).</p> <p>Consequences of Failure to Provide Information: Providing this information is voluntary. However, if you fail to provide this information, you will be treated as not fully vaccinated for purposes of implementing safety measures, including subject to COVID-19 screening testing and/or denied access to DoD facilities. Failure to provide such information may also hinder DoD's ability to implement COVID-19 workplace safety plans, thereby increasing the health or safety risk to DoD-affiliated personnel and DoD facilities.</p>		
<p>INSTRUCTIONS: This form should be completed by DoD contractor personnel and official visitors in accordance with current DoD Force Health Protection Guidance. DoD civilian employees should not complete this form.</p>		
<p>1. NAME (Last, First, MI):</p>	<p>2. DoD ID NUMBER:</p>	
<p>3. PLEASE CHECK THE BOX BELOW THAT COINCIDES WITH YOUR COVID-19 VACCINATION STATUS :</p> <p><input type="checkbox"/> I am fully vaccinated. Individuals are considered "fully vaccinated" two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose vaccine. Accepted COVID-19 vaccines are those which have received a license or emergency use authorization from the U.S. Food and Drug Administration and those COVID-19 vaccines on the World Health Organization Emergency Use Listing. "Fully vaccinated" also includes circumstances in which the individual was a participant in a U.S. site clinical trial and has received all recommended doses.</p> <p><input type="checkbox"/> I am not yet fully vaccinated. I received only one dose of an accepted two-dose COVID-19 vaccine, or I received my final dose of an accepted COVID-19 vaccine less than two weeks ago.</p> <p><input type="checkbox"/> I have not been vaccinated.</p> <p><input type="checkbox"/> I decline to respond.</p> <p>Individuals who choose not to complete the form will be assumed to be not fully vaccinated for purposes of application of the safety protocols. If you are not vaccinated due to medical or religious reasons, please check either "I have not been vaccinated" or "I decline to respond." Note that if you have already received one dose of a vaccine, but are not yet fully vaccinated, or if you received your final dose less than two weeks ago, then you will be treated as not fully vaccinated until you are at least two weeks past your final dose and resubmit your vaccination information.</p> <p><input type="checkbox"/> I certify that the information provided in this form is accurate and true to the best of my knowledge.</p> <p>I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C. 1001). Checking "I decline to respond" does not constitute a false statement.</p>		
<p>4. DATE (YYYYMMDD)</p>	<p>5. SIGNATURE (Full Name)</p>	

DD FORM 3150, OCT 2021

CUI (when filled in)

Controlled by: OJSD(P&R)
Controlled by: ASD(HA)
CUI Category: HLTH-PRVDCY-OPSEC
LDC: DL(DoD Only)
POC: dd3150@hqs.mil

Page 1 of 1

ATTACHMENT 5

DD Form 3176 – “Request for a Medical Exemption or Delay to the COVID-19 Vaccination Requirement”

CUI (when filled in)

REQUEST FOR A MEDICAL EXEMPTION OR DELAY TO THE COVID-19 VACCINATION REQUIREMENT		OMB No. 0704-0615 Exp 20220430
The public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, at wha.mc-alex.esd.mbx.dd-dod-informationcollection@mail.mil . Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.		
PRIVACY ACT STATEMENT		
Authority: DoD is authorized to collect the information on this form pursuant to 29 U.S.C. 794, 42 U.S.C. Chapter 21, Subch. VI, Executive Order (E.O.) 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; E.O. 13183, Increasing the Opportunities for Individuals with Disabilities to be Employed in the Federal Government; E.O. 13184, Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation; 29 CFR 1614.203, Rehabilitation Act; DoD Directive 1020.1, Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense; as well as 10 U.S.C. 113, 10 U.S.C. 138, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 9013, 10 U.S.C. 2872, 5 U.S.C. chapter 73, and DoD Instruction 6200.03		
Principal Purpose: The information on this form is being collected so that DoD may determine whether to grant your request for a medical exemption from the COVID-19 vaccination requirement for federal employees, pursuant to Executive Order 14043 and in furtherance of COVID-19 workplace safety plans.		
Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally. For example, disclosure of medical condition or history information to authorized government officials for the purpose of conducting an investigation into DoD's compliance with the Rehabilitation Act of 1973; disclosure of medical condition or history information to first aid and safety personnel in the event an employee's medical condition might require emergency treatment or special procedures; to Federal agencies/entities participating in the DoD Computer/Electronic Accommodations Program (CEAP) to permit the agency to carry out its responsibilities under the program; A complete list of routine uses may be found in the applicable System of Records Notice (SORN) associated with the collection of this information: DoD 0007, Defense Reasonable Accommodations and Assistive Technology Records, 66 Fed. Reg. 38662 (July 22, 2001) (available at http://www.gpo.gov/compdocs/01-2001-12-32/0102021-16697.pdf)		
Consequences of Failure to Provide Information: Providing this information is voluntary and use of this form is optional. Failure to provide the information requested on this form may impact DoD's ability to evaluate or act upon a request for a medical exemption from the COVID-19 vaccination requirement. Any intentional misrepresentation to the Federal Government may result in legal consequences, including termination or removal from Federal Service.		
Instructions: Part 1 is to be completed by DoD civilian employees. Part 2 is to be completed by a licensed health care provider. Provide narrative responses where applicable (Blocks 8-10, 15-17). If additional space is needed, proceed on the appropriate continuation block (Block 11 or 20) by annotating the Section and Line number and continue your narrative response. Signing this form constitutes a declaration that the information you provide is, to the best of your knowledge and ability, true and correct. Any intentional misrepresentation to the Federal Government may result in legal consequences, including removal from Federal Service.		
PART 1. TO BE COMPLETED BY THE DOD CIVILIAN EMPLOYEE		
1. Employee Name (Last, First, Middle Initial)	2. DoD ID Number	
3. Office Symbol	4. Date of Request (YYYYMMDD)	
5. Position/Title	6. Supervisor Name	7. Supervisor Phone Number
8. Please provide a description of the medical condition or circumstance that is the basis for the request for a medical exemption from the COVID-19 vaccination requirement.		
9. Please provide an explanation of why the medical condition or circumstance prevents you from being vaccinated.		
10. Please provide any additional information, that addresses your particular medical condition or circumstance, which may be helpful in resolving your request for a medical exemption or delay from the COVID-19 vaccination requirement. If you have medical documentation (in addition to Part 2 of this Form) that addresses your particular medical condition or circumstance you may submit the documentation to your supervisor along with this form.		

DD FORM 3176, OCT 2021
PREVIOUS EDITION IS OBSOLETE.

CUI (when filled in)

Controlled by: OUSD(P&R) Page 1 of 2
 CUI Category: HEALTH, PRIVACY, OPSEC
 LDC: DL (DoD Only)
 POC: dod@ra.mc-alex.esd.mbx.dodmcs@mail.mil

CUI (when filled in)

11. Continuation	
I declare to the best of my knowledge and ability that the foregoing is true and correct.	
12. Date (YYYYMMDD)	13. Signature
PART 2. COMPLETED BY EMPLOYEE'S HEALTH CARE PROVIDER	
14. Employee Name	
MEDICAL CERTIFICATION FOR COVID-19 VACCINE EXEMPTION OR DELAY	
Dear Health Care Provider: The Department of Defense requires its employees to be fully vaccinated against COVID-19, pursuant to Executive Order of the President of the United States. As indicated in Part 1, the individual named above is seeking a medical exemption to the requirement for COVID-19 vaccination or a delay because of a temporary condition or medical circumstance. Please complete this form to assist the Department in its review process. Please provide at least the following information, where applicable, and use the continuation block as needed:	
15. Please identify any contraindication(s) or precaution(s) for COVID-19 vaccination that are applicable to the individual, and for each contraindication or precaution, indicate: (a) whether it is recognized by the U.S. Centers for Disease Control and Prevention pursuant to its guidance; and (b) whether it is listed in the package insert or Emergency Use Authorization fact sheet for each of the COVID-19 vaccines authorized or approved for use in the United States.	
16. Please provide a statement detailing how the individual's condition and medical circumstances are such that COVID-19 vaccination is not considered safe. Please explain the specific nature of the medical condition or circumstance that contraindicates immunization with a COVID-19 vaccine or might increase the risk for a serious adverse reaction.	
17. Please provide any other medical information that would limit the employee from receiving any COVID-19 vaccine.	
18. The condition described above is: <input type="checkbox"/> Temporary <input type="checkbox"/> Long-Term/Permanent	19. If the employee is seeking a delay due to a temporary medical condition or circumstance, please indicate when the employee would be able to safely receive a COVID-19 vaccination - provide details if limited to specific COVID-19 vaccine(s) or type(s) of COVID-19 vaccine.
20. Continuation	
21. Health Care Provider Name/Title	
22. Date (YYYYMMDD)	23. Medical Provider Signature

ATTACHMENT 6

DD Form 3177 – “Request for a Religious Exemption to the COVID-19 Vaccination Requirement”

CUI (when filed in)

REQUEST FOR A RELIGIOUS EXEMPTION TO THE COVID-19 VACCINATION REQUIREMENT		
PRIVACY ACT STATEMENT		
<p>Authority: DoD is authorized to collect the information on this form pursuant to Executive Order (E.O.) 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; 42 U.S.C. Chapter 21, Subchapter VI; 42 U.S.C. Chapter 21B; as well as 10 U.S.C. 115, 10 U.S.C. 136, 10 U.S.C. 7013, 10 U.S.C. 8013, 10 U.S.C. 2672, 5 U.S.C. Chapter 78, and DoD Instruction 6200.03.</p> <p>Principal Purpose: The information on this form is being collected so that DoD may determine whether to grant your request for a religious exemption from the COVID-19 vaccination requirement for federal employees, pursuant to Executive Order 14043 and in furtherance of COVID-19 workplace safety plans. Consistent with the Religious Freedom Restoration Act of 1993, 42 U.S.C. Chapter 21B, and Title VII of the Civil Rights Act, 42 U.S.C. Chapter 21, Subchapter VI, individuals seeking a religious exemption from the vaccination requirement will submit to DoD supporting information about their religious beliefs or practices in order for DoD to evaluate the exemption request.</p> <p>Routine Use(s): While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally. For example to disclose information to a person, organization, or governmental entity as necessary and relevant to notify them of, respond to, or guard against a public health emergency or other similar crisis, including to comply with laws governing the reporting of communicable disease or other laws concerning health and safety in the work environment; adjudicative or administrative bodies or officials when the records are relevant and necessary to an adjudicative or administrative proceeding; contractors, grantees, experts, consultants, students, and others as necessary to perform their duties for the Federal government; agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of routine uses may be found in the applicable System of Records Notices (SORN) associated with the collection of this information: OPR 36 DoD, DoD Personnel Accountability and Assessment System of Records, 66 Fed. Reg. 17047 (Mar. 28, 2002) (also available at https://dod.defense.gov/Portals/45/Documents/Privacy/SORN%20DJS/OPR-36-DoD.pdf).</p> <p>Consequences of Failure to Provide Information: Providing this information is voluntary and use of this form is optional. Failure to provide the information requested on this form may impact DoD's ability to evaluate or act upon a request for a religious exemption from the COVID-19 vaccination requirement. Any intentional misrepresentation to the Federal Government may result in legal consequences, including removal from Federal Service.</p>		
<p>Instructions: To be completed by DoD civilian employees. Provide narrative responses where applicable (Blocks 8-11, 12.b, 12.c, 13). If additional space is needed, proceed on the continuation block (Block 14) by annotating the Section and Line number and continue your narrative response. Signing this form constitutes a declaration that the information you provide is, to the best of your knowledge and ability, true and correct. Any intentional misrepresentation to the Federal Government may result in legal consequences, including removal from Federal Service.</p>		
1. Employee Name (Last, First, Middle Initial)	2. DoD ID Number	
3. Office Symbol	4. Date of Request (YYYYMMDD)	
5. Position/Title	6. Supervisor Name	7. Supervisor Phone Number
8. Please describe the religious belief, practice, or observance that is the basis for your request for a religious exemption from the COVID-19 vaccination requirement.		
9. Please describe when and how you came to hold the religious belief or observe the religious practice.		
10. Please describe how you have demonstrated the religious belief or observed the religious practice in the past.		
11. Please explain how the COVID-19 vaccines conflict with your religious belief, practice, or observance.		

CUJ (when filled in)

12.a Have you previously raised an objection to a vaccination, medical treatment, or medicine based on a religious belief or practice. <input type="checkbox"/> Yes <input type="checkbox"/> No	
12.b If Yes, please provide a description of the circumstances, timing, and resolution of the matter.	
12.c If No, please provide an explanation as to why your objection is limited to the particular COVID-19 vaccines.	
13. Please provide any additional information that may be helpful in resolving your request for a religious exemption from the COVID-19 vaccination requirement. You may submit additional documentation in support of this request to your supervisor along with this form.	
14. Continuation	
I declare to the best of my knowledge and ability that the foregoing is true and correct.	
15. Date (YYYYMMDD)	16. Signature

DD FORM 3177, OCT 2021
PREVIOUS EDITION IS OBSOLETE

CUJ (when filled in)

Page 2 of 2

ATTACHMENT 7
COVID-19 Screening Testing Requirements

1. To establish COVID-19 screening testing for individuals for whom screening testing is required, DoD Components will:
 - a. Execute the screening testing requirement with COVID-19 self-collection kits or self-tests at least weekly (depending on the type of test kit used) that should be performed primarily onsite at the installation or facility with proper supervision and documentation of testing results. If onsite COVID-19 screening testing is not feasible, as an alternative self-testing may be performed at home or in other locations (Note: these COVID-19 self-tests do not require a health care provider's clinical care order and are, therefore, considered an over-the-counter test and do not require medical support to complete). Screening testing will use those tests authorized by Attachment 8; and
 - b. Procure and provide these COVID-19 self-tests and establish guidance for where and how these tests will be distributed and conducted and how results are to be reported.
 - i. DoD civilian employees are responsible for providing documentation of negative COVID-19 test results, upon receipt, to the appropriate supervisor. For purposes of screening testing requirements, "supervisor" includes authorized human resources officials. DoD civilian employees may not be required to use their own personal equipment for the purpose of documenting test results; offsite tests may not be used if there is not a means to document results using government equipment. The supervisor is responsible for maintaining any COVID-19 test results provided by DoD civilian employees in accordance with the privacy protection measures in Attachment 9.
 - ii. DoD contractor personnel with CRA will maintain their most recent COVID-19 test result and show such results to authorized DoD personnel upon request.
2. After COVID-19 screening testing procedures are established, the personnel identified in this memorandum as subject to screening testing are required to have a COVID-19 screening test using a test authorized by Attachment 8, and receive a negative COVID-19 screening test result for entry into a DoD facility. If the COVID-19 screening test is administered offsite, the negative result must be from a test performed within the prior 72 hours. If a COVID-19 screening test is administered onsite, the test will be administered before DoD civilian employees and contractor personnel go to their work areas. In accordance with reference (1) and CDC guidance, personnel who have recovered from a recent COVID infection and who remain asymptomatic are exempted from regular screening testing for 90 days following their documented date of recovery. Documented proof of this recovery shall be provided upon request.
3. DoD civilian employees and DoD contractor personnel with CRA who have positive COVID-19 screening tests will be required to remain away from the workplace in accordance

with references (l) and (m). DoD civilian employees and DoD contractor personnel with CRA with positive COVID-19 screening tests will be offered, but not required to take, confirmatory laboratory-based molecular (i.e., polymerase chain reaction) testing paid for by the relevant DoD Component. Contact tracing and mitigation measures will be conducted in accordance with references (l) and (m). If the confirmatory test is negative, the individual is not considered to be COVID-19 positive and will be allowed into the workplace.

4. For DoD civilian employees, COVID-19 screening testing is expected to take no more than one hour of regular duty time, per test, to complete required testing as directed by the DoD Component. Laboratory-based confirmatory COVID-19 testing for initial positive screening test results is expected to take no more than two hours of duty time. This includes time for travel to the testing site, time to complete testing, and time to return to work. Commanders and supervisors will monitor duty time usage and keep duty time used for testing within these parameters to the extent possible.
5. DoD Components may bar DoD civilian employees who refuse required screening testing from their worksites on the installation or facility to protect the safety of others, including while any progressive disciplinary actions are pending. While barred from their worksites on the installation or facility, such DoD civilian employees may be required to telework, as appropriate.

ATTACHMENT 8
Requirements for Obtaining Self-Collection Kits and Self-Tests

COVID-19 self-tests must have Instructions for Use and FDA approval, 510(K) premarket clearance or have an FDA Emergency Use Authorization, and will be made available through the Defense Logistics Agency. DoD Components are responsible for funding required COVID-19 screening tests.

Funding for COVID-19 testing, if self-collection kits or self-tests are not available:

- a. Each DoD Component will reimburse Service members and DoD civilian employees for COVID-19 screening tests that require payment for purposes of meeting the screening testing requirement (e.g., if the screening test is not available through the DoD Component and must be administered by a facility who charges for the test).
- b. For COVID-19 testing of DoD contractor personnel with CRA, DoD Components will offer, if available, COVID-19 testing similar to that offered to DoD civilian employees at the DoD Component's expense and at no cost to the contractor personnel or the contractor.

ATTACHMENT 9 Privacy Requirements

Under this guidance memorandum, the DoD may collect and maintain sensitive and private information about individuals, including medical information. Consistent with the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb et seq., and Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., individuals seeking a religious exemption from the vaccination requirement will submit to DoD supporting information about their religious beliefs and practices in order for DoD to evaluate the exemption request. Information collected from individuals under this guidance, including vaccination information, test results, and medical or religious information supporting vaccine exemption requests, will be treated in accordance with applicable laws and policies on privacy, including the Privacy Act of 1974, 5 U.S.C. § 552a, and Department of Defense Instruction (DoDI) 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019 (reference (n)), the Rehabilitation Act of 1973, as amended ("Rehabilitation Act"), 29 U.S.C. § 791 et seq., and 5 CFR part 293, subpart E. While such information may be sensitive and is to be safeguarded, it is not covered by the Health Insurance Portability and Accountability Act (HIPAA) regulations found at 45 CFR parts 160, 162, and 164, and as implemented in DoDI 6025.18, "Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Compliance in DoD Health Care Programs," and DoD Manual 6025.18, "Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DOD Health Care Programs."

Information gathered under this guidance may be shared with immediate supervisors, authorized human resources officials, designated decision makers, and, in appropriate cases, subject matter experts, who must access the information to implement the guidance. DoD Components are advised to consult their Component Privacy Officer and servicing legal office if there is a need to share medical or religious information collected under this guidance with DoD personnel beyond what this guidance permits or with individuals outside of DoD. Religious information will be accessible only to those persons who have a role in carrying out the procedures outlined in this memorandum. Medical information obtained from DoD civilian employees, including vaccination status, will be accessible only to immediate supervisors, authorized human resources officials, and, for exemption requests, designated decision makers and subject matter experts, who must access the information to implement the guidance in this memorandum. The Rehabilitation Act's requirements on confidentiality of medical information apply whether or not a DoD civilian employee has a disability.

DoD personnel will use appropriate safeguards in handling and storing DoD civilian employee medical information, including a DoD civilian employee's proof of vaccination, the DD Form 3175, COVID-19 test results, and exemption requests. Appropriate safeguards may include encrypting emails and electronic files, and role-based access to electronic storage environments where this information is maintained. In the event the information is maintained in paper form, supervisors and other authorized DoD personnel must ensure DoD civilian employee medical information remains confidential and is maintained separately from other personnel files (e.g., stored in a separate, sealed envelope marked as confidential DoD civilian employee medical information and maintained in locked file cabinets or a secured room). DoD Components are advised to refer to applicable internal guidance on the handling, storage, and disposition of DoD civilian employee medical records, and to consult their Component Privacy Officer as needed for further guidance.

ATTACHMENT 10

References

- (a) Under Secretary of Defense for Personnel and Readiness Memorandum, "Force Health Protection Guidance (Supplement 23) Revision 2 – Department of Defense Guidance for Coronavirus Disease 2019 Vaccination Attestation, Screening Testing, and Vaccination Verification," October 29, 2021 (hereby rescinded)
- (b) Safer Federal Workforce Task Force, "COVID-19 Workplace Safety: Agency Model Safety Principles," September 13, 2021
- (c) Executive Order 14043, "Requiring Coronavirus Disease 2019 Vaccination for Federal Employees," September 9, 2021
- (d) Deputy Secretary of Defense Memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of DoD Civilian Employees," October 1, 2021
- (e) Secretary of Defense Memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members," August 24, 2021
- (f) United States Office of Personnel Management Memorandum, "Guidance on Applying Coronavirus Disease 2019 Vaccination Requirements to New Hires – Executive Order 14043," October 1, 2021
- (g) United States Office of Personnel Management Memorandum, "Guidance on Enforcing Coronavirus Disease 2019 Vaccination Requirement for Federal Employees – Executive Order 14043," October 1, 2021
- (h) Department of Defense Directive 5100.03, "Support of the Headquarters of Combatant and Subordinate Unified Command" February 9, 2011, Incorporating Change 1, September 7, 2017
- (i) Safer Federal Workforce Task Force, "COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors," September 24, 2021
- (j) Principal Director for Defense Pricing and Contracting Memorandum, "Class Deviation 2021-O0009—Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, October 1, 2021
- (k) Executive Order 14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors," September 9, 2021
- (l) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, "Force Health Protection Guidance (Supplement 18) – Department of Defense Guidance for Protecting All Personnel in Department of Defense Workplaces During the Coronavirus Disease 2019 Pandemic," March 17, 2021
- (m) Acting Under Secretary of Defense for Personnel and Readiness Memorandum, "Force Health Protection Guidance (Supplement 15) Revision 2 – Department of Defense Guidance for Coronavirus Disease 2019 Laboratory Testing Services," July 2, 2021
- (n) Department of Defense Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019

Enclosure

3

Civilian Telework Status			
Data Source: Defense Civilian Payroll System (DCPS) Time and Attendance Data			
PPF Dec. 4, 2021*			
Air Force	In Office		2,674
	In Office with Leave Taken		109,367
	Subtotal In Office		112,041
			60%
	Full Telework		37
	Telework with leave Taken		21,417
	Subtotal Telework		21,454
			12%
	Hybrid (In Office & Telework)		0
	In Office, Telework & Leave Taken		35,851
Subtotal Hybrid (In Office & Telework)		35,851	
		19%	
Leave - Cannot Categorize		16,441	
		9%	
		185,787	
Army	In Office		6,193
	In Office with Leave Taken		151,741
	Subtotal In Office		157,934
			62%
	Full Telework		61
	Telework with leave Taken		27,180
	Subtotal Telework		27,241
			11%
	Hybrid (In Office & Telework)		75
	In Office, Telework & Leave Taken		55,819
Subtotal Hybrid (In Office & Telework)		55,894	
		22%	
Leave - Cannot Categorize		15,384	
		6%	
		258,453	
Navy	In Office		2,229
	In Office with Leave Taken		123,794
	Subtotal In Office		126,023
			56%
	Full Telework		75
	Telework with leave Taken		29,027
	Subtotal Telework		29,102
			13%
	Hybrid (In Office & Telework)		32
	In Office, Telework & Leave Taken		62,498
Subtotal Hybrid (In Office & Telework)		62,530	
		28%	
Leave - Cannot Categorize		6,907	
		3%	
		224,562	
Defense Agencies	In Office		1,320
	In Office with Leave Taken		35,526
	Subtotal In Office		36,846
			31%
	Full Telework		62
	Telework with leave Taken		80,981
	Subtotal Telework		81,043
			67%
	Hybrid (In Office & Telework)		79
	In Office, Telework & Leave Taken		0
Subtotal Hybrid (In Office & Telework)		79	
		0%	
Leave - Cannot Categorize		2,575	
		2%	
		120,543	

NOTE: This data is from the Defense Civilian Payroll System (DCPS). DCPS includes timekeeping data from each MILDEP and Defense Agency. The timekeeping codes were used to determine if the employee was in the office, teleworking or a hybrid of in office and telework. If an employee had one hour of time coded in both in office and telework they were placed into the hybrid category. There was high leave use during this pay period due to the Thanksgiving holiday. DCPS cannot categorize leave data into these buckets. Each category includes employees that had leave hours included on their time sheet. Those employees were categorized only by the time spent in a work status.

Enclosure

4

February 15, 2022

TEMPORARY DATA INACCURACIES IN THE DEFENSE MEDICAL EPIDEMIOLOGY DATABASE

BLUF:

- Department of Defense (DoD) officials detected and resolved a programming error in the Defense Medical Epidemiology Database (DMED) that had caused the database to inaccurately suggest that outpatient medical encounters for some conditions had significantly increased in 2021. In January 2022, Department officials found that data in DMED covering the years 2016 – 2020 had been corrupted during an August 2021 server migration, showing only 10% of the true number of medical encounters for that period. The corrupted data made it impossible to accurately compare medical encounter rates across the Military Health System (MHS) from 2021 to the 2016 - 2020 period because researchers could not correctly baseline their observations. In January 2022, Department officials resolved the programming error and adopted new auditing procedures for future server migrations. The accurate changes in medical encounters for the reported diagnoses are provided below.

ISSUE:

- On January 26, 2022, an opinion article was published suggesting that there was a large increase in outpatient medical encounters for various conditions among active component Service members when comparing the 2016-2020 annual average to 2021.
- Percent increases cited in the article included neurological issues (1,000%), myocardial infarction (269%), Bell's palsy (291%), congenital malformations (156%), female infertility (471%), and pulmonary embolisms (467%).
- The article suggested that these increases were due to adverse effects of COVID-19 vaccination.
- The authors used the DMED as their data source. The DMED is maintained by the Armed Forces Health Surveillance Division (AFHSD) in the Defense Health Agency.

BACKGROUND:

- DMED, developed in 1997, is a web-based tool to query de-identified active component personnel and medical event data contained within the Defense Medical Surveillance System (DMSS). It contains no personally identifiable information and no protected health information.
- DMSS is AFHSD's relational database that is used to conduct epidemiologic surveillance on Service members and is the underlying data source for DMED.
- DMED is available via remote access to authorized users, including U.S. military medical providers, epidemiologists, medical researchers, safety officers or medical operations/clinical support.
- The purpose of DMED is to provide quick access to summarized epidemiologic data for surveying health conditions in Service members. The ability to make inferences from the data using the available preset queries is very limited.
- DMED is more useful as a tool to generate questions rather than a tool to answer them. To address specific questions on Service members' health, a more thorough analysis is required.

DISCUSSION:

- On January 26th, the AFHSD of the Defense Health Agency created and preserved a full backup of the DMED.
- As part of a January 27, 2022 review and analysis, AFHSD found that the data in DMED was corrupt for the years 2016-2020 when accessed after September 2021. The DMED database is “refreshed” or re-created each month to stay in sync with DMSS. This refresh process was investigated and found to be the cause of the error.
- The review and analysis revealed that DMSS data contained approximately 22 million outpatient encounters for active component Service members for 2020. The same query found only 2 million outpatient encounters for active component Service members in DMED.
- The data for years 2016 through 2020 contained only approximately 10% of the true number of outpatient medical encounters for that period, which created an inaccurate appearance that diagnoses for medical conditions increased when compared to previous years.
- On January 28, 2022, AFHSD replicated the user queries of DMED that were referenced in recent media coverage, using accurate DMSS data, and found the following percent changes in outpatient medical encounters counts among Active Duty Service members when comparing the 2016-2020 annual average to 2021: Neurological issues (3.0%), myocardial infarction (1.4%), Bell’s palsy (0.8%), congenital malformations (1.0%), female infertility (-6.5%), and pulmonary embolisms (37.5%). These are changes in the number of health care encounters for that particular condition, not changes in the prevalence of the condition.
- Counts of health care encounters are not representative of new cases of these diagnoses; they are a measure of the workload for the health system regarding provision of care associated with these diagnoses. Counts of health care encounters cannot be used as a proxy for the prevalence of disease.
- On February 2, 2022, AFHSD replicated the queries to validate data post-DMED corrective actions. Updated results include the percent change in health encounters comparing available 2021 data to 2016-2020.

Medical Encounter Conditions	Reported change to number of health care encounters (2021 compared to last 5 years) using erroneous data	DMED query results for change to number of health care encounters (2021 compared to last 5 years) following data correction
Diseases of the nervous system	1,048% increase	5.7% decrease
Hypertension	2,181% increase	1.9% increase
Tachycardia	302% increase	8.3% decrease
Testicular cancer	369% increase	3% increase
Ovarian dysfunction	437% increase	23.9% increase
Migraines	452% increase	1.6% increase
Pulmonary embolism	468% increase	25.4% increase

Female infertility	472% increase	13.2% decrease
Malignant neoplasms of thyroid and other endocrine glands	474% increase	16.1% decrease
Breast cancer	487% increase	1.1% increase
Demyelinating	487% increase	17.7% decrease
Guillain-Barre syndrome	551% increase	17.2% decrease
Malignant neoplasms of digestive organs	624% increase	0.2% increase
Multiple sclerosis	680% increase	16.7% decrease
Malignant neoplasms of esophagus	894% increase	27.8% increase

- The DMED data queries presented in the tables above reflect health care utilization and include all health encounters with the related diagnostic codes. These queries capture disease screening, follow-up and even miscoded appointments for hospital stays and outpatient appointments. To determine the trend in any of the listed disease categories, DMSS must be used to refine the query and define criteria for the diagnoses (pre-existing versus new), as well the accuracy of the diagnoses with the inclusion of additional data such as procedures, medication, or related laboratory results.
- DMED is recreated every month using DMSS data, which relies on continuously refreshed medial administrative and personnel data. Fluctuations occur in the total number of personnel and health encounters. Because the denominator changes and does not remain static, rates should be used for comparison across time periods, not the number of encounters.

ROOT CAUSE ANALYSIS:

- On January 29, 2022, a programming logic error was discovered in the code used to create some of the DMED summary data tables.
- The DMED monthly refresh procedure was updated in August 2021 following a planned server migration. The programming error was introduced at that time and has affected DMED data since September 2021.
- Not all of the DMED tables were affected by the logic error and not all DMED queries were affected by the corrupt data. Quality control measures were focused on larger, more detailed DMED tables and failed to detect this error in the smaller aggregate data tables. Additional quality control measures are being implemented to mitigate the risk of this logic error occurring again.

SUMMARY:

- AFHSD will continue to support data requests using DMSS, including support to the Immunization Healthcare Division in its efforts to identify Active Duty military personnel who have encountered adverse health events after receiving COVID-19 vaccination.
- As of January 29, 2022, the programming logic error has been corrected and tested in a development environment. DMED data was re-generated and access to DMED data via the online application was restored on January 30, 2022.

- The data displayed in DMED has undergone extensive quality assurance testing by multiple analysts and has been found to be consistent with the source data in the DMSS.
- Quality control measures will be expanded to include all of the DMED tables and columns to prevent future occurrences of inaccurate data appearing in DMED. A second functional quality control check will be implemented following each monthly release of DMED data.



PJI

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December 29, 2021

Via FedEx overnight

Lloyd J. Austin, III
Secretary of Defense
1000 Defense Pentagon
Washington D.C. 20301-1000

RE: August 24, 2021 Department of Defense (DoD) directive requiring full vaccination of all members of the Armed Forces

Dear Secretary Austin:

The Pacific Justice Institute (PJI) is writing on behalf of hundreds of military members across the country who have contacted us regarding the above referenced directive that all members of the United States military must receive a COVID vaccine or face administrative separation from the military.

Please be advised that any continued effort to enforce this directive and any attempt to force military members to accept a vaccine from vials labeled "Pfizer BioNtech" which are not identified as BIA-compliant violates their statutory right to refuse an EUA vaccine. We respectfully assert, as more fully explained below, and with support from the Hon. Allen Winsor in the matter of John Doe #1#14 and Jane Doe #1-#2 v. Lloyd Austin III, et als., Case No. 3:21-cv-1211, that the DoD can only mandate vaccines from vials labeled "Comirnaty" or from vials proved to be BIA-compliant.

Additionally, we have reviewed a significant number of the individual members' religious exemption requests as well as the initial level denials provided to the members, and have concluded that it appears that the entire religious exemption process is nothing more than a sham with a pre-determined outcome. We assert, as more fully explained below, and with support from the Hon. Steven D. Merryday in Navy Seal I, et. als., v. Joseph R. Biden, et. als., Case No. 8:21-cv-2429, that such procedures, especially once they have played out to the final appeals' denials and members begin being separated, have a very high, if not complete, likelihood of violating the Religious Freedom Restoration Act (RFRA).

We are respectfully requesting that the DoD grant every military member who submitted an objection to the presently available vaccines based upon sincerely held religious beliefs, a temporary exemption to receiving the vaccine for a period of one year. At that time,

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the military can re-evaluate and make a determination if other “clean” vaccines or treatments will be available to prevent the spread of COVID-19.

Alternatively, if the DoD is steadfast in its refusal to follow the law and continues to violate the religious freedoms of its members, the PJI will have no other option but to seek judicial intervention.

I. The Members’ Religious Beliefs.

In their religious exemption requests, the service men and women provided various religious grounds which prohibit them from accepting COVID-19 vaccination. Some of the service men and women explained how Scripture calls on them to put their faith in God and that their body is a temple of the Holy Spirit which must remain free from various substances and pollution.

The most prevalent religious objection raised by the service men and women was the vaccines’ connection to aborted fetal cells. It is the service men and women’s understanding of the Holy Bible that life begins at conception and that the taking of innocent life, at any stage, is a grievous sin in which they cannot partake. These beliefs were further supported by various letters from pastors and churches attesting to the sincerity of those beliefs. Moreover, it is indisputable that each of the three available vaccines were developed from, or tested on, aborted fetal cells.¹

II. Only Vaccines from Vials Marked “Comirnaty” or identified as “BLA-compliant” are Permissible Under the Law.

As the Court wrote in John Doe #1#14 and Jane Doe #1-#2 v. Lloyd Austin III, et als., Case No. 3:21-cv-1211, the DoD has admitted that it is requiring injections from vials *not* labeled “Comirnaty.”² Counsel for the DoD further admitted that they could not even say whether vaccines labeled “Comirnaty” exist at all.³ Instead the DoD asserted that this was not a problem because the contents of EUA-labeled vials are chemically identical to the contents of vials labeled “Comirnaty” (if there are any such vials). According to the DoD’s argument in the John Doe case, this means servicemembers are not required to accept “a product authorized for emergency use.” 10 U.S.C. § 1107a(a)(1). Rather, the DoD argued that once the FDA licensed Comirnaty, all EUA-labeled vials essentially became Comirnaty, even if not so labeled.⁴ Thus, the DOD argued, the “product” injected is a chemical formulation that has received full FDA licensure—not merely an EUA—so § 1107a does not apply.⁵

¹https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf

²https://dh.la.gov/assets/oph/Center-PHCU/Center-PH/immunizations/You_Have_Os_COVID-19_Vaccine_FAQ.pdf

³<https://science.sciencemag.org/content/368/6496/1170.full>

⁴ See, John Doe #1#14 and Jane Doe #1-#2 v. Lloyd Austin III, et als., Case No. 3:21-cv-1211, page 13.

⁵ *Id.*, ECF No. 45 at 48:5-7.

⁶ *Id.*, ECF No. 45 at 60:1-3.

⁷ *Id.* at 65:1-6:8

The problem is that the Hon. Allen Winsor **completely and wholly disagreed** with the DoD lawyers' arguments. Judge Winsor wrote:

The DOD's interpretation of § 1107a is unconvincing. For starters, FDA licensure does not retroactively apply to vials shipped before BLA approval. See 21 U.S.C. § 355(a) ("No person shall introduce . . . into interstate commerce any new drug, unless an approval of an application [for FDA licensure] *is effective* with respect to such drug." (Emphasis added)). Thus, as a legal matter, vaccines sent before August 23—and vaccines produced after August 23 in unapproved facilities—remain "product[s] authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act." § 1107a(a)(1).⁹ Section 1107a's explicit cross-reference to the EUA provisions suggests a concern that drugs mandated for military personnel be actually BLA-approved, not merely chemically similar to a BLA-approved drug. And the distinction is more than mere labeling: to be BLA compliant, the drug must be produced at approved facilities, see ECF No. 1-4 at 2; 21 C.F.R. §§ 600.11, 600.20-21, and there is **no indication that all EUA-labeled vials are from BLA-approved facilities**. Moreover, the DOD concedes that some of its current vials are not BLA-compliant, and that there is no policy to ensure that servicemembers get only BLA-compliant vaccines. See ECF No. 45 at 61:10-12. It is difficult to see how vials that the DOD admits are not BLA-compliant—and thus could only be EUA products—could fall outside § 1107a's prohibition on mandatory administration.

{Emphasis added and internal footnotes omitted}.⁶

Judge Winsor was clear: The military must show that it is administering only EUA-labeled vials that are "BLA-compliant." Any inability by the military to ensure that each military member is receiving a "BLA-compliant" vial prevents the military from mandating the same. Thus, the PJI is respectfully asserting that before a member receives a vaccine, that member must, pursuant to law, be provided notice and proof that the vial being used is in fact "BLA-compliant." Should the DoD refuse to provide this information to every member **before** he/she receives the vaccine, the PJI stands ready to defend those members in any legal action necessary.

Important to recognize as well, as stated in footnote 10 in the John Doe opinion, the FDA's Comirnaty approval letter redacted the approved manufacturing locations⁷ and the EUA extension letter does not identify which facilities were "identified and agreed upon" in Pfizer's EUA application.⁸ Moreover, the Summary Basis for Regulatory Action suggested that not all Pfizer facilities are BLA compliant, because it contemplates that not all EUA-labeled lots will contain BLA-compliant vials.⁹ This further underscores the urgent need for the DoD to provide evidence that it has established a policy or procedure for ensuring that it is only mandating the use of "BLA-compliant" vials.

⁶ *Id.*

⁷ *Id.*, see ECF No. 1-4 at 2

⁸ *Id.*, ECF No. 1-6 at 8.

⁹ *Id.*, ECF No. 1-5 at 28.

By mandating service members submit to one of the COVID-19 vaccines, yet failing to provide proof of the vial's BLA compliance, simply and unequivocally violates the law.

III. The DoD's denial of the Service Members' Requests for Religious Exemptions from the COVID Vaccine Violates the Religious Freedom Restoration Act (RFRA).

RFRA, found at 42 U.S.C. § 2000bb-1, imposes a heightened standard of review for government actions—including rules of general applicability—that “substantially burden” a person’s religious exercise. Clearly, the United States military is a government actor; therefore, it is subject to the standards and requirements of RFRA.

Under RFRA, once a party has established a substantial burden, the action is valid only if the government shows that the burden is (1) in furtherance of a compelling governmental interest and (2) the least restrictive means of furthering that interest. Here, even assuming that the DoD has established a compelling interest in the safety of its members within the meaning of the RFRA, the mandate for vaccination is simply *not the least restrictive means* in furthering that interest. The DoD has not shown, nor can it show, that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion. There are other ways in which the DoD could equally protect its members from and prevent the spread of COVID-19.

As the Supreme Court wrote in Burwell v. Hobby Lobby Stores, Inc. 573 U.S. 682, 693 (2014), “Congress enacted RFRA in 1993 in order to provide *very broad protection* for religious liberty” . . . and “[t]he least-restrictive-means standard is *exceptionally demanding*.” *Id.* (internal citation omitted.) {Emphasis added.} Here, similar to the Court’s finding in Burwell, the DoD has not and cannot show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases.”¹⁰

Allowing service members to exercise religious freedom by making decisions in accordance with their sincerely held religious beliefs is a public interest of the highest order. “Religion is the first of our rights under the First Amendment and the Bill of Rights. The right to the free exercise of religion is a precious American invention . . . to be jealously guarded. It is the right of a human being to respond to what that person’s conscience says is the dictate of God.”¹¹ The value of religious freedom has been “zealously protected, sometimes even at the expense of other interests of admittedly high social importance.”¹² To be sure, there is also an important public interest in fighting the spread of COVID-19. “But there is an equally strong public interest in a citizen’s free exercise of religion” in being able to maintain his employment without compromising his religious beliefs.¹³

¹⁰ Burwell v. Hobby Lobby Stores, Inc. 573 U.S. 682, 693 (2014). See also, §§2000bb-1(a), (b) (requiring the Government to “demonstrat[e] that application of [a substantial] burden to the person . . . is the least restrictive means of furthering [a] compelling governmental interest” (emphasis added)).

¹¹ Ward v. Walsh, 1 F.3d 873, 876 (9th Cir. 1993).

¹² Wisconsin v. Yoder, 406 U.S. 205, 214 (1972).

¹³ O Centro Espirita Beneficente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973, 1010 (10th Cir. 2004) (en banc) (Seymour, J., concurring in part and dissenting in part), *aff’d and remanded sub nom.*; Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006).

Recognizing the centrality of religious freedom to the public interest, other courts—including the Supreme Court—have protected religious exercise even in the face of competing public health considerations.¹⁴ The Supreme Court has admonished lower courts that “[e]ven in a pandemic,” religious freedom “cannot be put away and forgotten.”¹⁵

More recently, in Navy Seal 1, et. als., v. Joseph R. Biden, et. als., Case No. 8:21-cv-2429, the Hon. Steven D. Merryday wrote: “Congress by RFRA purposefully creates and narrowly targets a claim, available in the district court, for everyone in every branch of government, including the military, to enforce the fundamental right to free exercise of religion.”¹⁶ Judge Merryday noted that under 42 U.S.C. § 2000bb-1(b), if the service members demonstrate that an action substantially burdens religious exercise, the DoD bears the burden to demonstrate that the action furthers a compelling governmental interest and is the least restrictive means to further that interest. This requires **strict scrutiny** of “the asserted harm of granting specific exemption to particular religious claimants” and of “the marginal interest in enforcing the challenged government action in that particular context.”¹⁷ That is, the DoD must demonstrate a compelling interest supporting the specific denial of a specific service member’s exemption and *the absence of an alternative* for that service member.

Important to note as well is Tandon v. Newsom, 141 S. Ct. 1294 (2021) wherein the Supreme Court found that government regulations are not neutral and are generally applicable and therefore trigger strict scrutiny under the Free Exercise Clause whenever they treat any comparable secular activity more favorably than religious exercise.¹⁸ It is our understanding that the DoD *has granted* medical exemptions to service members for the COVID vaccine. If this is accurate, we respectfully submit that any denial of a religious exemption by the DoD will undoubtedly trigger strict scrutiny of said action and will be found by the courts to be unlawful.

IV. The Vaccine is NOT the Least Restrictive Means to Achieving the DoD’s Interest in Preventing the Spread of COVID.

We respectfully assert based upon the denials that have been provided to service members at the initial level, each of which utilize the exact same language, format and responses to every request received indicates that the “exemption guidelines” provided by the military are a ruse disguised as a several step process that the DoD is employing to exclude all religious exemptions. Each branch of the military has provided indiscriminate and undifferentiated denials to every request for a religious exemption. The denials fail to address each members’ request individually.

¹⁴ See, e.g., Tandon v. Newsom, 141 S. Ct. 1294 (2021); S. Bay United Pentecostal Church v. Newsom, 141 S. Ct. 716 (2021); Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63 (2020); Harvest Rock Church, Inc. v. Newsom, 141 S. Ct. 889 (2020); Roberts v. Neace, 958 F.3d 409 (6th Cir. 2020); and Order, Dr. A., No. 21-cv-10009 (N.D.N.Y. Sept. 13, 2021).

¹⁵ Roman Cath. Diocese of Brooklyn, 141 S. Ct. at 68.

¹⁶ Navy Seal 1, et. als., v. Joseph R. Biden, et. als., Case No. 8:21-cv-2429 at page 27.

¹⁷ *Id.* at page 21 wherein the Court wrote: “To trigger RFRA’s strict scrutiny, a plaintiff must demonstrate that a federal action substantially burdens the plaintiff’s free exercise of religion. Davila v. Gladden, 777 F.3d 1198, 1204 (11th Cir. 2015).”

¹⁸ Tandon v. Newsom, 141 S. Ct. 1294 (2021);

Most importantly, the denials wholeheartedly fail to acknowledge that the vaccine is NOT the least restrictive means to achieving the safety goal.

- The denials failed to address the option of testing. As per the FDA, the PCR testing is very accurate.¹⁹ Moreover, the President Joseph Biden announced on December 21, 2021, the purchase of a half-billion at home-test starting in January 2022. In addition, the President is adding more testing sites to the already 20,000. Many service members noted in their requests that there are multiple testing sites within a short distance of their residence.
- The denials failed to state with any specificity why a particular service member's assignment required his/her daily physical presence; rather, in very generalized terms the denials indicated that teleworking was unacceptable because of an alleged loss of "mission effectiveness."
- The denials inaccurately stated that unvaccinated service members place not only themselves at risk, but also risk every other member in the unit and public. Such a statement failed to consider "vaccine breakthrough infections." Even the CDC recognized that because vaccinated people can contract COVID, a community is much better protected by wearing masks when indoors at public places.²⁰
- The denials failed to state with any specificity how military readiness will be negatively affected by the unvaccinated. More importantly, on February 17, 2021, during a House Armed Services Hearing, when Major General Jeffrey Taliaferro, Vice Director, Operations, Joints Chiefs of Staff was asked if members who do not receive the vaccine will still be deployable, the Major General answered, "Yes sir."²¹
- The denials do not address the fact that service members have been serving for well over twenty (20) months and have been following all other COVID safety guidelines, including daily symptom surveys, social distancing, regular testing, wearing masks and teleworking when possible.

Therefore, we respectfully assert that if the process utilized by the military over the last few months was reviewed by a court of law, it would easily conclude that any service members' submission of a request for a religious exemption was futile and the denial of each and every one was inevitable and such procedures clearly violate the law.

Important as well, we believe there would be substantial evidence of pervasive pressure placed on the service members who sought a religious exemption to simply violate their sincerely held religious beliefs and get the vaccine. Across the country and across the various branches, service

18 See generally, FDA - Policy for Coronavirus Disease-2019 Tests During the Public Health Emergency (Revised), November 15, 2021.

20 See, CDC- Interim Public Health Recommendations for Fully Vaccinated People, November 19, 2021.

21 See, Full Committee Hearing: "Update on the Department of Defense's Evolving Roles and Mission in Response to the COVID-19 Pandemic," February 17, 2021 at <http://armedservices.house.gov>.

members were routinely and repeatedly told not to bother to submit a request for a religious exemption because each and every request was going to be denied.

V. There is a strong likelihood that additional vaccines and/or medications will be available that do not violate a service members' religious convictions and will help stop the spread of COVID. The DoD should grant a temporary exemption to all service members who requested an exemption based upon sincerely held religious beliefs.

On October 22, 2020 the FDA approved the antiviral drug remdesivir for use in adults which is affective against COVID-19.²² Merck's Molnupiravir antiviral pill was approved by the FDA on December 23, 2021.²³ Pfizer's pill Paxlovid was approved by the FDA on December 22, 2021.²⁴ These drugs are available with a prescription and have not been tested on human aborted fetal tissue.

The drugs are just some examples of the continually advancing medical developments in scientific communities attempting to stop the spread of COVID. By allowing service members a limited amount of additional time to wait to receive a drug or vaccine that is developed in a manner which does not violate sincerely held religious beliefs is not only logical, reasonable and consistent with our laws' protections of religious liberties, but it also provides the support so desperately deserved by every man and woman who has dedicated their life in service of our country.

As demonstrated by our courts in recent decisions involving the federal government's attempts at imposing national vaccine mandates, accommodating religious beliefs and ensuring the safety of others do not have to be mutually exclusive goals. Both are important and can co-exist. Unfortunately, one of the most common responses we hear from our respected service men and women is the harassment they feel because of their religious beliefs, one person relating to us, for example, that having dedicated almost twenty years of service, with multiple overseas deployments, he never thought that his country would so harshly penalize him for following his religious conviction in the sanctity of life. The military culture that so many of these members valued for so many years has, in short time, been damaged beyond recognition.

That damage can be changed with one decision: allow members a temporary religious exemption to the presently available COVID vaccines.

It stands as a tragic irony that today the most profound threat to the Republic that military personnel face is not a hostile foreign force, but the enemy within. The attack on the religious liberties of members of the armed forces is an assault on the Constitution itself by a domestic enemy, for which our clients have a duty not to ignore. It is a fight for which they will not retreat.

²² See, FDA news release October 22, 2020 at www.fda.gov: "FDA approves first treatment for COVID-19."

²³ See, Merck news release December 23, 2021 at www.merck.com – "Merck and Ridgeback's Molnupiravir Receives U.S. FDA Emergency Use Authorization for the Treatment of High-Risk Adults With Mild to Moderate COVID-19." 7

²⁴ See, FDA news release December 22, 2021 at www.fda.gov: "Coronavirus (COVID-19) Update: FDA Authorizes First Oral Antiviral for Treatment of COVID-19."

We respectfully request that the DoD inform us by January 6, 2022 as to its response to our request that service members be granted a temporary exemption from the vaccine. We look forward to hearing from you.

Very truly yours,



Kevin Snider, Chief Counsel
PACIFIC JUSTICE INSTITUTE
P.O. Box 276600
Sacramento, CA 95827

(b)(6)

(b)(6)

and

s/ Karyn L. White

Karyn L. White, Esq.

(b)(6)

cc: (sent Via FedEx overnight):

Kathleen H. Hicks, Deputy Secretary of Defense, 1000 Defense Pentagon, Washington D.C. 20301-1000

General Mark A. Milley, Chairman of the Joint Chief of Staff, 9999 Joint Staff Pentagon, Washington D.C. 20318-999

Christine E. Wormuth, Secretary of the Army, 101 Army Pentagon, Washington DC 20310-0101

Carlos Del Toro, Secretary of the Navy, 1000 Navy Pentagon, Washington DC 20350-1000

Frank Kendall, Secretary of the Air Force, 1670 Air Force Pentagon, Washington DC 20330-1670

General David H. Berger, Commandant of the Marine Corps., Headquarters, U.S. Marine Corps, 3000 Marine Corps Pentagon, Washington DC 20350-3000

Admiral Karl L. Schultz, Commandant of the Coast Guard, US Coast Guard Stop 7318, 2703 Martin Luther King Jr. Ave., SE, Washington DC 20593-7318



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1500

MANPOWER AND
RESERVE AFFAIRS

Mr. Kevin Snider
Ms. Karyn L. White
Pacific Justice Institute
P.O. Box 276600
Sacramento, CA 95826

Dear Mr. Snider and Ms. White:

This responds to your December 29, 2021, letter to Secretary of Defense Lloyd J. Austin, III, concerning the coronavirus disease 2019 (COVID-19) vaccines. I am responding on behalf of Secretary Austin as this matter falls under my purview. We appreciate your input on this important matter.

The Department of Defense (DoD) is committed to protecting the religious liberty of Service members. DoD policy expressly provides that "Service members have the right to observe the tenets of their religion or to observe no religion at all." Religion-based vaccine exemption requests and appeals are respectfully considered in accordance with existing policies and procedures.

Each Military Service has a structured process involving, as appropriate, commanders, chaplains, legal counsel, and medical professionals with appropriate oversight and review through the chain of command. These teams are integral to advising leaders and Service members within the process and assessing individual requests for an exemption.

Thank you for your continued strong support of the Department, Service members, and their families.

Sincerely,

HEBERT.LERNES.J.1 Digitally signed by
(b)(6) HEBERT.LERNES.J.1
Date: 2022.03.07 15:11:55 -05'00'

Lernes J. Hebert
Deputy Assistant Secretary of Defense
(Military Personnel Policy)

United States Senate

WASHINGTON, DC 20510

February 17, 2022

The Honorable Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Austin:

For months, the Department of Defense (DoD) has failed to provide information about your ambiguous August 24, 2021 COVID-19 vaccine mandate.¹ Perhaps as a result of your unwillingness to be transparent with service members, whistleblowers have come forward to share some of the information that I asked you to provide last year.

Over four months ago on October 12, 2021, I requested that DoD provide information about the number COVID-19 vaccinations administered to service members.² On October 27, 2021, I received a letter from Under Secretary of Defense for Personnel and Readiness Gilbert Cisneros stating that he would “provide a comprehensive response by November 29, 2021.”³ After DoD failed to meet this deadline, I reiterated my requests in a December 15, 2021 letter.⁴ On January 10, 2022, Mr. Cisneros wrote to me again stating that he will provide a “comprehensive response to [my] questions by March 31, 2022.”⁵ DoD’s consistent failure to respond to my requests in a timely manner is unacceptable particularly when my questions relate to the health and well-being of service members.

Recently, Thomas Renz, an attorney who is representing multiple DoD whistleblowers, released a 35-page unclassified DoD document titled, “Senior Leaders Brief COVID-19.”⁶ This brief, dated January 12, 2022, appeared to contain data that I had requested from you including information on the vaccination status of service members. Specifically, the document showed

¹ Memorandum from Secretary of Defense Lloyd Austin to Senior Pentagon Leadership, et al. (Aug. 24, 2021) (available at <https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORYCORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICEMEMBERS.PDF>).

² Letter to Lloyd Austin, Secretary of Defense et al., from Ron Johnson, U.S. Senator, Oct. 12, 2021, <https://www.ronjohnson.senate.gov/services/files/1BC1491B-CFAB-4784-9DBB-8DCAC9E30BD9>.

³ Letter to Ron Johnson, U.S. Senator, from Gilbert Cisneros, Under Secretary of Defense for Personnel and Readiness, Oct. 27, 2021.

⁴ Letter to Lloyd Austin, Secretary of Defense, from Ron Johnson, U.S. Senator, Dec. 15, 2021, <https://www.ronjohnson.senate.gov/2021/12/sen-johnson-demands-defense-department-provide-clarity-on-vaccine-mandate>.

⁵ Letter to Ron Johnson, U.S. Senator, from Gilbert Cisneros, Under Secretary of Defense for Personnel and Readiness, Jan. 10, 2022.

⁶ Thomas Renz, Renz New DOD Doc Proves Purging Unvaccinated Military Puts America At Great Risk, <https://renz-law.com/renz-new-dod-doc-proves-purging-unvaccinated-military-put-america-at-great-risk/>.



OSD001263-22/CMD001517-22

The Honorable Lloyd Austin
February 17, 2022
Page 2

that for all services members, approximately 76% are fully vaccinated; 16% are partially vaccinated; and 8% are not vaccinated or unknown.⁷ I request that you immediately provide an official copy of this apparent packet of information (enclosed) and all similar briefings compiled since August 24, 2021. If this brief is authentic, then why did DoD not immediately send me this information on vaccination status as soon as it was compiled?

Given that DoD is still discharging service members who “refuse to be vaccinated for COVID-19,” I am concerned that your actions may threaten our defense capabilities.⁸ I am sure you realize that you cannot discharge thousands of service members who are not fully vaccinated and hope to maintain any semblance of military readiness.

The men and women of the armed forces who put their lives on the line to defend this country deserve your full transparency and cooperation with congressional oversight. I demand your immediate response to my previous letters.

Sincerely,



Ron Johnson
United States Senator

cc: The Honorable Sean O'Donnell
Acting Inspector General

Enclosure

⁷ *Id.* According to the document, service members include active duty, reserves, and National Guard.

⁸ Avie Schneider, U.S. Army begins to discharge soldiers who refuse COVID-19 vaccination, NPR, Feb. 2, 2022, <https://www.npr.org/2022/02/02/1077625142/u-s-army-covid-vaccination>.



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUL - 5 2022

The Honorable Ron Johnson
United States Senate
Washington, DC 20510

Dear Senator Johnson:

Thank you for your letters of October 12, 2021; December 8, 2021; December 15, 2021; February 1, 2022; and February 17, 2022 to the Secretary of Defense regarding the Department of Defense's (DoD) vaccination policies, the Defense Medical Epidemiology Database (DMED), and DoD's telework policies. DoD has worked diligently to gather information to answer your questions. On behalf of the Secretary of Defense, I am providing a consolidated response.

I want to begin by addressing your concern regarding the Secretary of Defense's direction that mandatory vaccination occur only with a fully licensed vaccine.

On August 23, 2021, the Food and Drug Administration (FDA) approved the Biologics License Application (BLA) for the Pfizer-BioNTech coronavirus disease 2019 (COVID-19) vaccine, to be offered under the brand name Comirnaty. On August 24, 2021, the Secretary of Defense directed that the Secretaries of the Military Departments begin full vaccination of all members of the Armed Forces under DoD authority on active duty or in the Ready Reserve, including the National Guard, who are not fully vaccinated against COVID-19, in accordance with FDA-approved labeling and guidance and subject to exemptions required by law.

In accordance with guidance from the FDA, the Pfizer-BioNTech vaccine Emergency Use Authorization (EUA) and Pfizer-BioNTech Comirnaty licensed vaccine are "interchangeable."¹ The FDA stated that health care providers "can use doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine."² In accordance with the Secretary of Defense's direction, DoD health care providers are complying with the applicable FDA-approved labeling and guidance when administering COVID-19 vaccines.

The FDA has stated that FDA-approved Comirnaty, and the EUA-authorized Pfizer-BioNTech COVID-19 Vaccine for ages 12 years and older, when prepared according to their respective instructions for use, can be used interchangeably to provide the COVID-19 vaccination series without presenting any safety or effectiveness concerns.³ The FDA stated that health care providers "can use doses distributed under EUA to administer the vaccination series

¹ FDA, Q&A for Comirnaty (COVID-19 Vaccine mRNA), current as of Feb. 8, 2022, available at <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>.

² *Id.*

³ FDA, Q&A for Comirnaty (COVID-19 Vaccine mRNA), current as of Feb. 8, 2022, available at <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>.

as if the doses were the licensed vaccine.”⁴ In accordance with the Secretary of Defense’s direction, DoD health care providers are complying with the applicable FDA-approved labeling and guidance when administering COVID-19 vaccines.

With that as background, I now turn to your specific questions.

- *How many vaccinations have been administered since Secretary Austin's vaccine mandate?*

Between August 23, 2021 (the Secretary of Defense’s vaccine mandate) and June 7, 2022, DoD has administered a total of 809,898 doses of COVID-19 vaccine to 551,232 DoD Service members (active duty, National Guard, and Reserve).

- *Please provide the number of voluntary and mandated vaccinations administered to DoD Service members using each vaccine by month.*

Please reference Enclosure 1.

- *Requested orders, guidelines, documents and communications regarding DoD's vaccine mandate.*

These materials are provided in Enclosure 2.

- *The number of individuals currently employed by your agency.*

As reported in DoD’s interim response, as of December 22, 2021, the DoD employed 785,753 appropriated fund employees. Additionally, the DoD employed 98,185 nonappropriated fund employees as of November 30, 2021.

- *The number of individuals who are: working full time in person at one of your agency's physical locations; teleworking full time; and working a hybrid schedule that combines both telework and in office schedule.*

A detailed report identifying these statuses for DoD employees, broken out by subcomponent, during the pay period ending December 4, 2021, is at Enclosure 3.

- *The total number of agency employees who are fully vaccinated against COVID-19.*

As of January 19, 2022, 777,201 employees reported as being fully vaccinated against COVID-19.

- *The total number of agency employees who have received a booster.*

⁴ *Id.*

The DoD does not currently require booster shots for eligible employees, nor does it require employees to report such information.

- *For the employees that are teleworking, how are you tracking employee productivity? Please provide a breakdown of your agency's workforce productivity for Fiscal Years 2019, 2020, and 2021.*

Due to the Department's wide range of missions, there is no standardized methodology for tracking productivity. Each DoD Component head identifies the goals and objectives for the Component's workforce and relies on its managers and supervisors to track productivity and to ensure that the work is executed. Supervisors are required to manage equally the productivity for both teleworking and non-teleworking employees to ensure that all mission goals and objectives are met.

- *Has your agency closed physical office space locations since March 2020 in light of increased telework among your agency's workforce? If so, please provide the estimated cost savings associated with office closures.*

DoD regularly assesses its needs for physical office space. In addition, during the pandemic, DoD has regularly evaluated office space capacity limits consistent with local rules and Federal guidelines. In March 2022, DoD transitioned from Health Protection Condition (HPCON) Charlie to HPCON Bravo, which authorized increased office capacity based on local public health conditions. At this time, no DoD Component has reported closing space due to increased telework during the COVID-19 pandemic.

- *Please provide the number of doses of the fully-licensed Comirnaty vaccine that have been given and are available to Active-Duty personnel.*

As of March 8, 2022, the Department has administered 809,898 doses of Pfizer-BioNTech/Comirnaty to 551,232 active duty Service members since August 23, 2021, when the Comirnaty BLA was approved by the FDA. As noted above, DoD uses doses distributed under the EUA to administer the vaccination series as if the doses were the licensed vaccine, in accordance with FDA guidance.

- *Will DoD provide a vaccination waiver acknowledging natural immunity to Active Duty military personnel who have been previously infected with COVID-19? If not, why not?*

DoD does not provide a vaccination waiver acknowledging natural immunity to active duty military personnel who have been previously infected with COVID-19 at this time based upon Centers for Disease Control and Prevention (CDC) recommendations. The DoD approach to immunizations is outlined in DoD Instruction 6205.02, "DoD Immunization Program," June 19, 2019, which states that all DoD personnel and other beneficiaries required or eligible to receive immunizations will be offered immunizations in accordance with recommendations from the CDC and the Advisory Committee on Immunization Practices (ACIP). The Joint Regulation on "Immunizations and Chemoprophylaxis for the Prevention of Infectious Diseases,"

October 7, 2013,⁵ further states the Military Service policy concerning immunizations follows the recommendations of the CDC, ACIP, and the prescribing information on the manufacturer's package inserts, unless there is a military-relevant reason to do otherwise. This regulation also describes general examples of medical exemptions, which include "evidence of immunity based on serologic tests, documented infection, or similar circumstances." However, there is no CDC or ACIP recommended "evidence of immunity" for COVID-19. DoD will continue to update our immunization approach in accordance with FDA and CDC guidelines.

- *Please provide the total number of Active-Duty military personnel who have not yet received a COVID-19 vaccine and, of those, how many have received a medical or religious exemption.*

As of May 11, 2022, there are 20,873 (1.6 percent) active duty individuals who have not yet received a COVID-19 vaccine dose.

As of April 30, 2022, 472 medical (med) and 88 religious (rel) exemptions to the COVID-19 vaccine mandate have been granted to Service members (Army - 22 med and 6 rel; Navy - 14 med and 26 rel; U.S. Marine Corps (USMC) 25 med and 7 rel; U.S. Air Force (USAF) 458 med and 49 rel).

- *Please provide the total number of Active-Duty military personnel, broken down by branch, who have been subject to a discharge procedure for noncompliance with the COVID-19 mandate. Please identify the types of discharge procedures.*

The total number of active duty military personnel subject to a discharge procedure for noncompliance with the COVID-19 vaccine mandate as of April 30, 2022, is as follows:

	Army	Navy	USMC	USAF	Total
Honorable	19	818	605	0	551
General	491	0	1,512	351	2,354
Uncharacterized ⁶	0	0	0	1	1
Other than Honorable	0	0	0	0	0
Total	510	818	2,117	352	3,797

- *Is DoD aware of increases in registered diagnoses of miscarriages, cancer, or other medical conditions in DMED in 2021 compared to a five-year averaged from 2016-2020? If so, please explain what actions DoD has taken to investigate the root cause for the increases in these diagnoses.*

⁵ Army Regulation 40-562, Navy Bureau of Medicine and Surgery Instruction 6230.15B, Air Force Instruction 48-110 IP, Coast Guard Commandant Instruction M6230.4G.

⁶ Uncharacterized discharge service is associated with entry level separations where the term of military service has been of insufficient length to warrant characterization.

The Defense Health Agency is not aware of any significant increases in diagnoses in 2021 compared to the years 2016-2020. Reports to the contrary are incorrect as they were based on faulty data.

In January 2022, Department officials found that data in DMED covering the years 2016-2020 had been corrupted during an August 2021 database maintenance process, showing only 10 percent of the true number of medical encounters for that period and creating an inaccurate appearance that diagnoses for medical conditions increased when compared to previous years. The corrupted data made it impossible to accurately compare medical encounter rates across the Military Health System from 2021 to the 2016-2020 period because researchers could not correctly baseline their observations. Any analysis that was conducted using the corrupted data would need to be re-calculated. For additional information, please see the information paper at Enclosure 4.

To determine an accurate trend in any of the listed disease categories, the Defense Medical Surveillance System must be used to refine the query and define criteria for the diagnoses (pre-existing versus new), as well the accuracy of the diagnoses with the inclusion of additional data such as procedures, medication, or related laboratory results.

- *Have registered diagnoses of myocarditis in DMED been removed from the database from January 2021 to December 2021? If so, please explain why and when this information was removed and identify who removed it.*

Defense Health Agency officials found no evidence that any health care encounters (including registered diagnoses of myocarditis) were removed from DMED database from January 2021 to December 2021. As noted above, in January 2022, Department officials identified that DMED data had been corrupted during a routine database maintenance process in August 2021, which created inaccurate appearances about diagnoses totals in the data.

Thank you for your continued strong support for the health and well-being of our Service members and civilian workforce.

Sincerely,



Gilbert R. Cisneros, Jr.

Enclosures:
As stated

COVID-19 Vaccine Doses Received by Active Duty, National Guard, and Reserve

By Month and Manufacturer from Aug 2021 to May 2022

Total Doses	Janssen	Moderna	Pfizer	Grand Total
2021				
Aug	12,775	42,070	108,925	163,770
Active Duty	9,738	32,166	89,407	131,311
National Guard & Reserve	3,037	9,904	19,518	32,459
Sep	15,331	44,519	279,922	339,772
Active Duty	10,767	34,013	243,397	288,177
National Guard & Reserve	4,564	10,506	36,525	51,595
Oct	7,745	31,905	181,527	221,177
Active Duty	3,557	22,786	141,798	168,141
National Guard & Reserve	4,188	9,119	39,729	53,036
Nov	5,319	32,054	78,887	116,260
Active Duty	2,006	21,587	49,941	73,534
National Guard & Reserve	3,313	10,467	28,946	42,726
Dec	4,043	71,434	83,377	158,854
Active Duty	1,568	56,256	61,975	119,799
National Guard & Reserve	2,475	15,178	21,402	39,055
2022				
Jan	1,900	60,320	84,027	146,247
Active Duty	996	49,368	69,133	119,497
National Guard & Reserve	904	10,952	14,894	26,750
Feb	1,076	20,375	39,624	61,075
Active Duty	584	16,283	31,438	48,305
National Guard & Reserve	492	4,092	8,186	12,770
Mar	906	12,627	27,475	41,008
Active Duty	495	10,360	21,806	32,661
National Guard & Reserve	411	2,267	5,669	8,347
Apr	673	8,684	19,058	28,415
Active Duty	367	6,724	15,131	22,222
National Guard & Reserve	306	1,960	3,927	6,193
May	507	6,064	13,892	20,463
Active Duty	257	4,434	10,677	15,368
National Guard & Reserve	250	1,630	3,215	5,095
Grand Total	50,275	330,052	916,714	1,297,041

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From: Wikoff, George M RADM USN JS ODJS (USA)
Sent: Friday, October 8, 2021 12:36 PM
Subject: Reminder: Vaccine Mandate for Federal Civilian Employees

Importance: High

Joint Staff team –

With detailed implementing guidance for enforcing COVID-19 vaccination requirements for **Department of Defense (DoD) civilian employees** still pending, I would like to remind you that the **22 November** deadline for all **DoD civilian employees** to become fully vaccinated is fast approaching and will not change.

I am providing you information below from Defense Logistics Agency (our civilian personnel services provider), with additional detail at [Coronavirus Info \(dla.mil\)](https://dla.mil/CoronavirusInfo). Please note: **If you have already received your vaccination, please hold on to your documentation (typically the CDC vaccine record) for further DoD guidance on collecting and maintaining the required proof.**

Finally, please note that the DiLorenzo Tricare Health Clinic (DTHC) COVID-19 vaccination site is back in operation in the Pentagon Library and Conference Center (PLCC), with appointments readily available at <https://apps.sp.pentagon.mil/sites/Vaccination/Pages/Home.aspx>. Protect our workforce and mission, protect your family and friends, and protect yourself, get vaccinated!

Very Respectfully, VDJS

RADM George Wikoff
Vice Director, Joint Staff

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The DLA COVID-19 Coordination Team (CCT) is providing regular email updates with all the information you need to meet the COVID-19 vaccination mandate. The weekly messages will focus information in three areas: the basics of the situation, any new info since the last update, and a summary of issues we're still working on. We'll be updating the guidance summaries and FAQ on the [DLA Coronavirus information site](#) as the situation evolves.

• **WHAT'S NEW:**

- New guidance from the Office of Personnel Management – [Guidance on Enforcing COVID-19 Vaccination Requirement for Federal Employees- Executive Order 14043](#), and [Guidance on Applying COVID-19 Vaccination Requirements to New Hires- Executive Order 14043](#) on Friday, October 1, 2021 – reiterates the November 22, 2021, date for employees to be fully vaccinated. Because fully vaccinated means two weeks past the last dose of

vaccine, **all employees must have received the last dose of a two-dose vaccine or required single dose by November 8, 2021.** Employees who refuse to be vaccinated or provide proof of vaccination are subject to disciplinary measures, up to and including removal or termination from federal service. The only exception is for individuals who receive a legally required exception pursuant to established agency processes. **Given this timeline, agencies may initiate the enforcement process as soon as November 9, 2021, for employees who have not completed their vaccination dose(s) by November 8.**

- The Safer Federal Workforce Task Force issued templates for requesting [medical exemptions](#) or [religious exemptions](#) to the vaccine mandate as part of [new and updated frequently asked questions \(FAQs\) for vaccinations](#) on October 1 and 4, 2021. Please note, DLA is awaiting implementing guidance on requesting exemptions from DoD and will issue DLA-specific instructions on requesting exemptions as soon as possible. However, these templates should assist employees in preparing exemption requests while we await further guidance.

****Joint Staff Civilian Personnel must provide written notice to their supervisors of their intent to request an exemption and type of exemption by October 15, 2021.

- **DoD contractor personnel must attest to being fully vaccinated by December 8, 2021.** Contractors who are not fully vaccinated will be required to present a recent negative COVID-19 test as a condition of physical access to a DoD facility. Expect further guidance on this requirement as it becomes available. Specific details can be found in the Safer Federal Workforce Task Force document [Guidance for Federal Contractors and Subcontractors](#). The FAQs contain information on vaccination and safety protocols, workplaces, scope and applicability, and compliance.
- **New DoD civilian employees must be fully vaccinated by their entry on duty date or November 22, 2021, whichever is later,** per the Deputy Secretary of Defense memorandum, "[Mandatory Coronavirus Disease 2019 Vaccination of DoD Civilian Employees](#)," dated October 1, 2021. The memorandum also states additional guidance, included procedures for processing vaccination exemption request will be published by the Under Secretary of Defense for Personnel and Readiness.

- **WHAT HASN'T CHANGED:**

- The vaccination deadline and vaccine schedule considerations remain unchanged. All federal employees **must be fully vaccinated by November 22, 2021.** Employees are considered fully vaccinated two weeks after completing the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single dose of a one-dose COVID-19 vaccine. Those who are not currently fully vaccinated must meet the following deadlines to be fully vaccinated by November 22, 2021. The attached flier is provided as a handy reference.
 - October 11: first dose deadline (if receiving the Moderna vaccine)
 - October 18: first dose deadline (if receiving the Comirnaty/Pfizer-BioNTech vaccine)
 - November 8: second dose deadline (if receiving the Moderna and Comirnaty/Pfizer-BioNTech vaccines)
 - November 8: first (only) dose deadline (if receiving the Johnson & Johnson/Janssen vaccine).

- To facilitate expeditious vaccination, all employees are authorized up to four hours of duty hours to travel to the vaccination site, complete a vaccination dose, and return to work. You will be authorized up to eight hours of duty time to receive two doses.
- COVID-19 vaccinations are widely available, safe, effective, and reduce the risk of severe illness. To find a vaccination site near you within the United States, search [vaccines.gov](https://www.vaccines.gov), text your ZIP code to 438829, or call 1-800-232-0233. DoD civilian employees are also eligible to receive the COVID-19 vaccine at any DoD vaccination site, including military medical treatment facilities. Overseas employees and family members should contact their nearest military treatment facility. Be sure to maintain a copy of the vaccination record provided at the vaccination site to meet forthcoming DoD proof of vaccination requirements.

- **WHAT WE'RE WORKING ON:**

- How to provide proof of vaccination – We know from the [Safer Federal Workforce Task Force](#) that employees will be required to provide proof of vaccination. While awaiting further DoD guidance, DLA is considering options to collect and maintain the required proof (typically the CDC vaccine record).
- How to request an exemption – As required by law, DLA will consider requests for exemptions due to medical conditions or sincerely held religious belief, practice, or observance. The most recent DoD memo indicated additional guidance on legally required exceptions will be forthcoming. As noted above, this will be clearly communicated to the entire workforce as soon as possible.
- Consequences for non-compliance – Employees who fail to comply with this vaccination mandate may be subject to disciplinary action, up to and including removal. The Safer Federal Workforce Task Force issued guidance on the [steps an agency may take if a federal employee refuses to be vaccinated or provide proof of vaccination](#). However, DLA continues to wait on DoD guidance for further direction.

We understand and acknowledge you may have questions regarding the vaccination mandate. You are encouraged to view information regarding [the benefits of vaccination](#) and [ways to obtain the vaccine](#). Once we receive additional guidance, we will be able to better respond to some of your questions. Vaccinating DLA employees against COVID-19 will save lives and allow us to continue to support the *Warfighter Always*.

SHARYN J. SAUNDERS
Director
DLA Human Resources