

Frequently Asked Questions
**Executive Order 14042: Ensuring Adequate COVID Safety Protocols for
Federal Contractors & Safer Federal Workforce Taskforce Guidance**
Current as of October 4, 2021

The following are Frequently Asked Questions (FAQs) intended to assist HHS Contracting Officers, Contract Specialists, Project/Program Managers, and Contracting Officer Representatives in navigating recently published information regarding Executive Order 14042: Ensuring Adequate COVID Safety Protocols for Federal Contractors. This guidance will continue to be updated as new information and clarification on specific guidance becomes available.

Q1: Can agencies incorporate vaccination requirements into contracts that are not covered by Executive Order 14042 (Ensuring Adequate COVID Safety Protocols for Contractors)?

A1: Yes. Agencies are strongly encouraged to incorporate vaccination requirements into contracts that are not covered by Executive Order 14042, consistent with applicable law. HHS Operating Divisions and Staff Divisions have determined that they will incorporate this clause into contracts at or below the Simplified Acquisition Threshold.

Q2: What is meant by the term “covered”?

A2: The term covered refers to whether the EO applies to the contract, contractor employee or contractor workplace.

A “covered contract” is any contract or contract-like instrument that includes the clause described in EO 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors.

A “covered contractor” is any prime contractor or subcontractor at any tier who is party to a covered contract.

A “covered contractor employee” is any full-time or part-time employee of a covered contractor working on, or in connection with, a covered contract or working at a covered contractor workplace. This includes employees of covered contractors who are not themselves working on, or in connection with, a covered contract.

A “covered contractor workplace” is any location controlled by a covered contractor where any employee of a covered contractor working on or in connection with a covered contract is likely to be present during the period of performance of a covered contract. A covered contractor workplace does not include a covered contractor employee's residence. Note: Although a covered employee's residence is not considered a covered contractor workplace these employees are required to be vaccinated but are exempt from the masking and social distancing protocols while in their residence.

Q3: Will incorporation of the clause be done as a unilateral or bilateral mod?

A3: The requirements in the Executive Order are being implemented via a FAR deviation. The clause in the FAR deviation will be incorporated into HHS contracts via a bilateral modification.

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Q4: What is the timeline for incorporating the clause into contracts?

A4: The timeline for incorporation is dependent on the phase of the award.

New Solicitations: Contracting officers shall include the clause at FAR 52.223-99, Ensuring Adequate COVID Safety Protocols for Federal Contractors (*still yet to be issued in the HHS FAR Deviation*) in new applicable solicitations issued on or after October 15, 2021.

Existing Solicitations: Contracting officers shall either amend the solicitation to include the clause or incorporate it into the award of the apparent successful offeror for applicable solicitations that were issued prior to October 15, 2021, that have not closed, or awards that have not been made by October 15, 2021.

New Contracts: Contracting officers shall include the clause in new applicable contracts, lease acquisitions, and “contract-like instruments” awarded on or after October 15, 2021.

Existing Contracts: For on-going contracts awarded prior to October 15, 2021, the applicable clause must be incorporated into contracts when exercising a contract option or executing a modification for extension to the period of performance.

Q5: What is the timeline for incorporating the clause into existing contracts?

A5: While incorporation of the clause must be done when exercising a contract option or executing a modification for extension to the period of performance – see Q4, HHS intends to incorporate the clause into all contracts as expediently as time and resources permit.

Q6: Are contractor employees not performing duties on federal contracts, co-located with contractor employees that are performing duties on covered federal contracts, at contractor facilities, held to the same vaccinations and safe workforce task force requirements?

A6: Yes, unless a covered contractor can affirmatively determine that none of its employees in or at one building, site, or facility will come into contact with a covered contractor employee during the period of performance of a covered contract all employees at that site would be required to be vaccinated. The contractor affirmation must ensure there would be no interactions between covered contractor employees and non-covered contractor employees in those locations during the period of performance on a covered contract, including interactions through use of common areas such as lobbies, security clearance areas, elevators, stairwells, meeting rooms, kitchens, dining areas, and parking garages.

Q7: Does the mandate for vaccination apply to subcontractors?

A7: Yes, EO 14042, mandates that the Safety Protocols for Federal Contractors and Subcontractors clause will apply to covered contractors and subcontractors, at any tier except for subcontracts solely for the provision of products. The prime contractor must flow the clause down to first-tier subcontractors; higher-tier subcontractors must flow the clause down to the next lower-tier

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subcontractor, to the point at which subcontract requirements are solely for the provision of products.

Q8: What is the timeline for vaccination requirements for contractors?

A8: Covered contractor employees must be fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation, no later than December 8, 2021.

Preceding the December 8, 2021 implementation date, all covered contractor employees must be fully vaccinated by the first day of the period of performance on a newly awarded covered contract, and by the first day of the period of performance on an exercised option or extended or renewed contract when the clause has been incorporated into a covered contract.

As a part of the determinations required prior to exercising contract options outlined in FAR 17.207, Contracting Officers should ensure that contractors are notified that they must have all covered employees vaccinated by day one of the period of performance.

Q9: What constitutes being fully vaccinated?

A9: People are considered fully vaccinated for COVID-19 two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine. For purposes of this Guidance, people are considered fully vaccinated if they have received COVID-19 vaccines currently approved or authorized for emergency use by the U.S. Food and Drug Administration (Pfizer-BioNTech, Moderna, and Johnson & Johnson [J&J]/Janssen COVID-19 vaccines) or COVID-19 vaccines that have been listed for emergency use by the World Health Organization (e.g., AstraZenca/Oxford).

Q10: Are covered contractors required to take any special actions?

A10: Per the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors, issued September 24, 2021, covered contractors shall designate a person or persons to coordinate implementation of, and compliance with, workplace safety protocols designated in the Safer Federal Workforce Task Force guidance at covered contractor workplaces.

Q11: What is the Role of the Covered Contractor COVID-19 Response Coordinator?

A11: The COVID-19 Response Coordinator must ensure that information on required COVID-19 workplace safety protocols is provided to covered contractor employees and all other individuals likely to be present at covered contractor workplaces, including by communicating the required workplace safety protocols and related policies by email, websites, memoranda, flyers, or other means and posting signage at covered contractor workplaces that sets forth the requirements and workplace safety protocols in this Guidance in a readily understandable manner. This includes communicating the COVID-19 workplace safety protocols and requirements related to masking and physical distancing to visitors and all other individuals present at covered contractor workplaces. The designated individual (or individuals) must also ensure that covered contractor employees comply with the requirements related to providing evidence of proper vaccination documentation.

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Q12: To be clear, the covered contractor's COVID 19 Response Coordinator will be responsible for the collection and verification of covered contract employee vaccination documentation?

A12: Yes.

Q13: Should agencies inquire regarding the vaccination status of onsite contractor employees?

A13: Prior to contractor employees being subject to a contractual requirement to be vaccinated, agencies need to ask about the vaccination status of those onsite contractor employees. Onsite contractor employees must attest to the truthfulness of the response they provide. If an onsite contractor employee chooses not to provide a response, they will be treated as not fully vaccinated for the purpose of agency safety protocols.

Q14: Do onsite contractor employees need to provide proof of a negative COVID-19 test?

A14: Prior to being subject to a contractual requirement to be vaccinated, onsite contractor employees who are not fully vaccinated or who decline to provide information about their vaccination status must provide proof of a negative COVID-19 test from no later than the previous 3 days prior to entry to a federal building.

Q15: What is HHS' process for requesting vaccination status of onsite contractor employees?

A15: HHS is currently developing Departmental screening procedures. Procedures may vary at each HHS facility. Upon issuance of HHS Facilities Guidance, this section will be updated.

Q16: Should agencies inquire regarding the vaccination status of visitors to federal buildings?

A16: HHS is currently developing Departmental screening procedures. Procedures may vary at each HHS facility. Upon issuance of HHS Facilities Guidance, this section will be updated.

Q17: If an agency adopts a testing requirement as part of its protocol for non-vaccinated visitors and/or contractor employees, what type of negative COVID-19 test result must be presented as documentation in order to enter a federal building?

A17: Agencies may determine what types of tests a visitor or onsite contractor employee who is not subject to a contractual requirement to be vaccinated must provide in order to enter a federal building, provided that the tests are authorized by the U.S. Food and Drug Administration to detect current infection and produce a dated result.

Q18: Who will be responsible for granting a contractor employee an exemption?

A18: Contractors are responsible for ensuring that covered employees comply with the workplace safety protocols provided in the Safer Federal Workforce Task Force guidance. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in the federal workplaces as well. Agency heads may approve exemptions for covered contracts when the

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agency has an urgent, mission-critical need for a covered contractor to have covered contractor employees begin work on a covered contract or at a covered workplace before becoming fully vaccinated. The contractor must ensure that these contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace.

Q19: What are the remedies for contractor non-compliance or performance issues due to non-compliance with the EO?

A19: The HHS Office of Acquisitions will provide options for Contracting Officers in a forthcoming update to this guidance.

For questions regarding this document, contact Mary Young at Mary.Young@hhs.gov.