Congressional Research Service
Informing the legislative debate since 1914

INSIGHT

Executive Order 14042 Requirements for COVID-19 Vaccination of Federal Contractors

November 19, 2021

On September 9, 2021, President Joseph R. Biden, Jr., issued Executive Order (E.O.) 14042 requiring parties contracting with the federal government to provide adequate COVID–19 safeguards for their workers. Federal contracts and contract-like instruments (jointly *contracts*) must now include a clause compelling most contractors and subcontractors (at any level) to comply with prescribed COVID-19 workplace safety requirements for the duration of contracted work. Such requirements include a mandate for certain federal contractor employees to be vaccinated against COVID-19 by January 18, 2022, allowing for exceptions only as required by law. This requirement is distinguishable from similar efforts, such as the proposed Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) COVID-19 vaccination rule that would apply to employers with 100 or more employees.

Scope and Effect of E.O. 14042

E.O. 14042 uses a July 22, 2021, proposed DOL rule to define a *contract* as "an agreement between two or more parties creating obligations that are enforceable or … recognizable at law." The requirements of E.O. 14042 apply to any "workplace locations … in which an individual is working on or in connection with a Federal Government contract."

E.O 14042 applies to new contracts and solicitations; extensions or renewals of existing contracts; and exercises of option periods for existing contracts, where the contract is entered into, extended, or renewed on or after October 15, 2021—or a contract option period is exercised on or after October 15, 2021.

The terms of the order apply only if a contract is:

- for services, construction, or a leasehold interest in real property;
- covered by the McNamara-O'Hara Service Contract Act (SCA);
- for concessions, including any concessions contract excluded by DOL regulations implementing the SCA; or
- entered into in connection with federal property or lands, and relating to offering services for federal employees, their dependents, or the general public.

Congressional Research Service
https://crsreports.congress.gov
IN11803

Pocket Constitution

The Declaration of Independence
The Constitution of the United States
The Bill of Rights
Amendments XI–XXVII
Gettysburg Address

TheCapitolNet
TCNFPC.com

E.O. 14042 does not apply to:

- grants;
- contracts and agreements with Indian tribes under the Indian Self-Determination and Education Assistance Act;
- contracts or subcontracts valued equal to or less than the simplified acquisition threshold;
- employees who perform work outside the United States or its outlying areas; or
- subcontracts solely for the provision of products.

Vaccination Terms

Per the Safer Federal Workforce Task Force (the *Task Force*) guidance, contractors must ensure that covered employees are fully vaccinated no later than January 18, 2022. A *covered employee* is "any full-time or part-time employee … working on or in connection with a covered contract or working at a covered … workplace," including "employees … who are not themselves working on or in connection with a covered contract." A *covered workplace* is "a location controlled by a … contractor at which any employee … working on or in connection with a covered contract is likely to be present" during a contract's period of performance, with employees' places of residence excluded from this definition.

Fully vaccinated status starts two weeks after the second COVID-19 vaccine dose in a two-dose vaccine regimen, or two weeks after a single-dose vaccine. Individuals are fully vaccinated if they received vaccines currently approved or authorized for emergency use by the FDA, or if they received vaccines that have been listed for emergency use by the WHO. Unvaccinated individuals previously infected with COVID-19 are not considered fully vaccinated. Employees must provide proof of vaccination status to their employer, who must review the documentation.

The Task Force guidance does not include an option for regular testing for individuals not vaccinated against COVID-19. Individuals may obtain an accommodation through their employer if they are "not vaccinated against COVID-19 because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance." Requests for medical accommodations or exceptions are to be treated as requests for disability accommodations; a Task Force FAQ for contractors provides general guidelines for handling accommodations for sincerely held religious beliefs, practices, or observances.

Implementation

The Biden Administration indicated that the OSHA rule requiring vaccinations will not be applied to workplaces subject to the federal contractor requirements.

The Federal Acquisition Regulatory Council (FARC) issued a memorandum providing guidance to agencies, including the required contract clause, on September 30, 2021. In effect, this memorandum directs each agency subject to E.O. 14042 to issue its own related interim guidance. This resulted in varying interpretations of applicability thresholds and effective dates by agencies. The FARC may conduct a standard rulemaking process later to provide formal regulations and additional direction for agencies.

Congressional Considerations

In contemplating the impact of E.O. 14042 on federal procurement, Congress may consider the following selected oversight issues:

- While major federal contractors intend to comply with the vaccination requirement, reports indicate that some employees may not comply. It is unclear if noncompliant employees would represent a breach of contract; however, White House officials indicated in an October 27, 2021 press briefing that "flexibilit[ies]" would potentially be allowable to offer "multiple opportunities to get vaccinated." Congress may seek to weigh the appropriate balance between the executive branch working to promote the health and safety of a skilled contractor workforce via the enforcement of additional workforce safety protocols and the possibility of some degree of attrition due to noncompliance.
- While industry is generally supportive of the requirement, some entities also raised questions. Common themes include requests for definitional clarifications; accommodation of cost increases or schedule slips; compliance obligations and enforcement; and the potential for associated economic hardship, exacerbation of workforce shortages, and a decrease in the number of contractors—particularly small businesses and non-traditional contractors—competing for federal contracts.
- Some question how the Task Force guidance may interact with state-level bans on employers levying vaccine mandates. While the Task Force asserts that the "requirements are promulgated pursuant to Federal law and supersede any contrary State or local law or ordinance," others point to legal challenges that may delay or impede the enforcement of the vaccination requirement.

Author Information

Heidi M. Peters, Coordinator
Analyst in U.S. Defense Acquisition Policy

L. Elaine Halchin
Specialist in American National Government

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Learn how Capitol Hill really works

All of our programs and any combination of their topics can be tailored for custom training for your organization.

For more than 40 years, TheCapitol.Net and its predecessor, Congressional Quarterly Executive Conferences, have been teaching professionals from government, military, business, and NGOs about the dynamics and operations of the legislative and executive branches and how to work with them.

Our training, on-site and online, and publications include congressional operations, legislative and budget process, communication and advocacy, media and public relations, research, testifying before Congress, legislative drafting, critical thinking and writing, and more.

- **Diverse Client Base**—We have tailored hundreds of custom on-site and online training programs for Congress, numerous agencies in all federal departments, the military, law firms, lobbying firms, unions, think tanks and NGOs, foreign delegations, associations and corporations, delivering exceptional insight into how Washington works.™
- **Experienced Program Design and Delivery**—We have designed and delivered hundreds of custom programs covering congressional/legislative operations, budget process, media training, writing skills, legislative drafting, advocacy, research, testifying before Congress, grassroots, and more.
- **Professional Materials**—We provide training materials and publications that show how Washington works. Our publications are designed both as course materials and as invaluable reference tools.
- **Large Team of Experienced Faculty**—More than 150 faculty members provide independent subject matter expertise. Each program is designed using the best faculty member for each session.
- **Non-Partisan**—TheCapitol.Net is non-partisan.
- **GSA Schedule**—TheCapitol.Net is on the GSA Schedule for custom training: GSA Contract GS02F0192X.

Please see our Capability Statement on our web site at **TCNCS.com**.

Custom training programs are designed to meet your educational and training goals, each led by independent subject-matter experts best qualified to help you reach your educational objectives and align with your audience.

As part of your custom program, we can also provide online venue, classroom space, breaks and meals, receptions, tours, and online registration and individual attendee billing services.

For more information about custom on-site training for your organization, please see our web site: **TCNCustom.com** or call us: 202-678-1600, ext 115.

TheCapitol.Net

Non-partisan training and publications that show how Washington works.™

PO Box 25706, Alexandria, VA 22313-5706
202-678-1600 • www.thecapitol.net

GSA Contract GS02F0192X Advantage!®

TheCapitol.Net is on the GSA Schedule for custom training. GSA Contract GS02F0192X