



## Information Bulletin

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### **Executive Order 14042 – Ensuring Adequate COVID Safety Protocols for Federal Contractors**

On September 9, 2021, President Biden announced his COVID-19 Action Plan. As part of that plan, the President signed [Executive Order 14042 \(EO\)](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/) (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/>). On 24 September 2021, the Safer Federal Workforce Task Force (Task Force) issued COVID-19 [workplace safety guidance](https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf) ([https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc\\_20210922.pdf](https://www.saferfederalworkforce.gov/downloads/Draft%20contractor%20guidance%20doc_20210922.pdf)) implementing the EO (the Guidance) which has since been updated with facts sheets and a Q&A site found at <https://www.saferfederalworkforce.gov/faq/contractors/>. The purpose of this communication is to ensure contractors working with the Navy Exchange Enterprise (NEXCOM) are aware of the potential applicability of the Guidance and of reliable sources of information. **This communication highlights key requirements of the EO and the Guidance, but it is not comprehensive. Contractors are encouraged to carefully review the EO and the Guidance (including the FAQs, which are very informative), conduct their own research into requirements applicable to them, and seek professional advice as appropriate.**

The EO directs federal executive departments and agencies, including NEXCOM, to include a clause (the Clause) requiring covered contractors and their subcontractors, for the duration of the contract, to comply with all guidance for workplace locations published by the Task Force and approved by the Office of Management and Budget (OMB). The issued EO and Guidance has been approved by OMB and any future guidance from the Task Force will have been approved by OMB prior to issuance. **Among other things, the Guidance includes a requirement that all covered contractor employees be fully vaccinated by January 18, 2022.**

The Guidance also requires covered contractors and subcontractors to conform to the following workplace safety protocols:

- COVID-19 vaccination of employees, except in limited circumstances where an employee is legally entitled to an accommodation;
- Compliance by individuals, including employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and

- Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

### **What Contracts are Covered?**

The EO and the Guidance apply to covered contracts solicited on or after 15 October 2021 or entered into on or after 14 November 2021. Covered contracts solicited prior to 15 October 2021 or entered into prior to 14 November 2021 are not covered unless there is a modification to the contract (see below for more detailed explanation). The following categories of contracts are considered covered contracts:

- Procurement contracts for services, construction, or a leasehold interest in real property;
- Contracts for services covered by the Service Contract Act;
- Contracts for concessions; and
- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public.

### **What Contracts Are NOT Covered?**

- Contracts solely for the provision of goods/products;
- Contracts with a value less than \$250,000;
- Employees working on a covered contract outside the United States or its outlying areas as defined in FAR Section 2.101:
  - Outlying areas means-
    - 1) Commonwealths
      - (i) Puerto Rico.
      - (ii) The Northern Mariana Islands;
    - 2) Territories.
      - (i) American Samoa.
      - (ii) Guam.
      - (iii) U.S. Virgin Islands; and
    - 3) Minor outlying islands.
      - (i) Baker Island.
      - (ii) Howland Island.
      - (iii) Jarvis Island.
      - (iv) Johnston Atoll.
      - (v) Kingman Reef.
      - (vi) Midway Islands.
      - (vii) Navassa Island.
      - (viii) Palmyra Atoll.
      - (ix) Wake Atoll.

## Who

These workplace safety protocols apply to all “covered contractor employees.” Covered contractor employees include any full-time and part-time employee of a covered contractor (1) working on or “in connection with” a covered contract or (2) working at a covered contractor workplace. (Employees perform work “in connection with” a covered contract when they perform duties necessary to the performance of the covered contract, such as human resources, billing, and legal review. They need not be directly engaged in performing the specific work called for by the covered contract.)

The Guidance also specifies that remote employees who work on a covered contract from their homes must comply with the vaccination requirement, even if the employees never work at a covered contractor workplace or federal workplace during the performance of the contract. This includes contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract.

Finally, the EO applies only to contractor employees who perform work in the United States and its outlying areas as defined in 2.101 of the Federal Acquisition Regulation.

## When

NEXCOM Contracting Officers will incorporate the Clause into all covered contracts solicited on or after 15 October 2021, or entered into on or after 14 November 2021. Contracts solicited prior to 15 October 2021 and entered into prior to 14 November 2021 are not subject to the requirements of the EO. However, any extension, renewal, exercised option or other bilateral modification of a contract following 14 November 2021 will incorporate the Clause, and covered contractor employees must be fully vaccinated by the first day of the period of performance of the newly modified contract. For existing covered contracts, NEXCOM Contracting Officers will advise contractors if and when the Clause is incorporated into the contract via Modification.

As stated, this bulletin is intended to make contractors aware of potentially applicable requirements related to workplace safety requirements in connection with the President’s COVID-19 Action Plan. **As an existing contractor, we strongly recommend you read the entire EO, fact sheet(s) and the Guidance and seek professional advice specific to your individual circumstances.**

**POC:** Contractors’ point of contact for any matters relating to your contract is your NEXCOM Contracting Officer.

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