

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

THE STATE OF MISSOURI,
et al.

Plaintiffs,

v.

JOSEPH R. BIDEN, JR.;
et al.

Defendants.

No. 4:21-cv-01300-DDN

JOINT STATEMENT OF MATERIAL FACTS

I. COVID-19 and vaccinations

1. On January 31, 2020, the Secretary of Health and Human Services (“HHS”) declared a public health emergency because of COVID-19, a respiratory disease caused by the novel coronavirus, SARS-CoV-2. HHS, *Determination that a Public Health Emergency Exists* (Jan. 31, 2020), <https://perma.cc/VZ5X-CT5R>.
2. Specifically, COVID-19 is caused by the SARS-CoV-2 coronavirus, which is mainly spread through droplets and very small aerosolized particles. COVID-19 was first reported in the U.S. on January 17, 2020. *See* CDC, CDC Museum COVID-19 Timeline (last visited Nov. 30, 2021), <https://www.cdc.gov/museum/timeline/covid19.html>.
3. On March 13, 2020, the President declared the COVID-19 outbreak a national emergency. 85 Fed. Reg. 15,337 (Mar. 13, 2020).
4. In July 2021, the United States began to experience “a rapid and alarming rise in ... COVID-19 cases and hospitalization rates” driven by the Delta Variant. *See* Centers for Disease Control and Prevention (“CDC”), *Delta Variant* (updated Aug. 26, 2021),

<https://perma.cc/4RW6-7SGB>. “Delta was first identified in the United States in March [2021].” Emily Athens, *The Delta Variant: What Scientists Know*, N.Y. TIMES (last updated Oct. 14, 2021), <https://www.nytimes.com/2021/06/22/health/delta-variant-covid.html>.

5. Data pertaining to COVID-19 infections and health outcomes can be found at the CDC’s Data Tracker (<https://covid.cdc.gov/covid-data-tracker/#datatracker-home>) and further context regarding the total number of infections can be found at CDC, *Estimated COVID-19 Burden* (<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/burden.html#how-est-illness>).¹
6. While COVID-19 is present in every state, transmission rates vary. *See* CDC, COVID DATA Tracker–Cases, Deaths, and Testing (updated Nov. 15, 2021), <https://perma.cc/2LZK-7WGX>.
7. In December 2020, the FDA issued an emergency use authorization (EUA) for two COVID-19 vaccines: Pfizer-BioNTech and Moderna. In February 2021, the FDA issued an EUA for the Janssen vaccine. *See* Oct. 29, 2021 Letter of Authorization from FDA to Pfizer Inc., <https://perma.cc/YY3Q-JGW4> (Pfizer EUA Letter) (revising and reissuing the December 2020 EUA); Oct. 20, 2021 Letter of Authorization from FDA to ModernaTX, Inc., <https://perma.cc/LN7L-AE6D> (Moderna EUA Letter) (same); Oct. 20, 2021 Letter of Authorization from FDA to Janssen Biotech, Inc., <https://perma.cc/R7HA-Z6BD> (Janssen EUA Letter) (revising and reissuing the February 2021 EUA).

¹ The parties preserve any challenge to the interpretation or limitations of the data or inclusion of further COVID-19 data.

8. On August 23, 2021, the FDA approved the Pfizer-BioNTech vaccine under the name Comirnaty, meaning the vaccine completed “the agency’s standard process for reviewing the quality, safety and effectiveness of medical products.” FDA, News Release – FDA Approves First COVID-19 Vaccine (Aug. 23, 2021), <https://perma.cc/J9NV-92VH>.
9. While the vaccines have proven effective at reducing severe, negative health outcomes, they “are not 100% effective at preventing infection.” *See, e.g.*, CDC, Possibility of COVID-19 Illness After Vaccination (updated Nov. 9, 2021), <https://bit.ly/3HWm7Bw>; ECF 9-5 ¶ 7 (Ex. E to Plaintiff States’ Memorandum in Support of Motion for Preliminary Injunction). “[T]he duration of vaccine effectiveness in preventing COVID-19, reducing disease severity, reducing the risk of death, and the effectiveness of the vaccine to prevent disease transmission by those vaccinated are not currently known.” Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555, 61,615 (Nov. 5, 2021)).

II. The federal contractor mandate

10. On January 20, 2021, President Biden signed Executive Order 13,991, 86 Fed. Reg. 7045, which established the Safer Federal Workforce Task Force (Task Force) to provide “ongoing guidance to heads of agencies on the operation of the Federal Government, the safety of its employees, and the continuity of Government functions during the COVID–19 pandemic.” 86 Fed. Reg. at 7046 (§ 4(a)). A true and accurate copy of EO 13,991 is incorporated by reference and attached as Exhibit A to the Declaration of Michael E. Talent (hereinafter the “Talent Declaration”), and the Parties refer to the Court to that document for its contents.
11. On September 9, 2021, President Biden made a speech on fighting the COVID-19 pandemic. Joseph Biden, Remarks at the White House (Sept. 9, 2021),

<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/>. A true and accurate copy of President Biden’s speech is incorporated by reference and attached as Exhibit B to the Talent Declaration, and the Parties refer the Court to that document for its contents.

12. During that speech, President Biden announced that he had “signed,” among other mandates, an “executive order that will require federal contractors” to be vaccinated. Ex. B. “If you want to work with the federal government and do business with us, get vaccinated. If you want to do business with the federal government, vaccinate your workforce.” *Id.* That mandate, along with others, “will affect about 100 million Americans—two-thirds of all workers.” *Id.*
13. The Executive Order to which President Biden referred was Executive Order 14,042 (EO 14,042 or the EO). A true and accurate copy of EO 14,042 is incorporated by reference and attached as Exhibit C to the Talent Declaration, and the Parties refer the Court to that document for its contents.
14. On or about September 24, 2021, the Task Force issued Guidance implementing EO 14,042. A true and accurate copy of the Guidance is incorporated by reference and attached as Exhibit D to the Talent Declaration, and the Parties refer the Court to that document for its content.
15. On or about September 24, 2021, the Acting OMB Director caused to be published in the Federal Register her determination that the Guidance will improve economy and efficiency. A true and accurate copy of the OMB Director’s September 24, 2021, Determination is incorporated by reference and attached as Exhibit E to the Talent

Declaration, and the Parties refer the Court to that document for its contents. *See also* 86 Fed. Reg. 53,691, 53,692 (Sept. 28, 2021).

16. Prior to September 24, 2021, there was not a government-wide policy to require employees of federal contractors and subcontractors to be vaccinated against COVID-19.
17. Prior to September 24, 2021, as far as the counsel for the parties are aware, the Procurement Act had never been used to require that contractors ensure that their employees, and the employees of subcontractors, were vaccinated against COVID-19.
18. Prior to September 24, 2021, as far as counsel for the parties are aware, the President had not used his authority under the Procurement Act to require contractors to ensure that their employees, and the employees of subcontractors, were vaccinated against any disease.
19. Congress created the FAR Council “to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.” 41 U.S.C. § 1302(a). The Council is in charge of “issu[ing] and maintain[ing] ... a single Government-wide procurement regulation, to be known as the Federal Acquisition Regulation.” § 1303(a)(1). “To the extent that the Administrator [of the Office of Federal Procurement Policy] considers appropriate in carrying out the policies and functions set forth in [Title 41, Subtitle I, Subdivision B], and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies” that are to be “implemented in” the Federal Acquisition Regulation. 41 U.S.C. § 1121(b). “Other regulations relating to procurement issued by an executive agency shall be limited to (A) regulations essential to implement Government-wide policies and procedures within the agency; and (B) additional policies and procedures required to satisfy the specific and

unique needs of the agency.” § 1303(a)(2). The Administrator for Federal Procurement Policy, in consultation with the FAR Council, “shall ensure that procurement regulations prescribed by executive agencies are consistent with the Federal Acquisition Regulation and in accordance with the policies prescribed pursuant to” 41 U.S.C. § 1121(b). § 1303(a)(3).

20. As of this date, the Federal Acquisition Regulation does not require contractors to include a clause in their contracts to ensure their employees and subcontractors are vaccinated against COVID-19.
21. As of this date, the Federal Acquisition Regulation does not require contractors to include a clause in their contracts to ensure their employees and subcontractors are vaccinated against other diseases.
22. To implement EO 14,042 and the Task Force’s Guidance, as approved by OMB, the FAR Council on or about September 30, 2021, issued a memorandum to “agencies that award contracts under the Federal Acquisition Regulation (FAR) with initial direction for the incorporation of a clause into their solicitations and contracts to implement” the Guidance. This included allowing a sample clause that may be included in contracts via a deviation. A true and accurate copy of the FAR Council Memo is incorporated by reference and attached as Exhibit F to the Talent Declaration, and the Parties refer the Court to that document for its contents.
23. The FAR Council is now in the process of promulgating a regulation through notice-and-comment rulemaking. FAR Case No. 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, <https://perma.cc/ZQ4Y-8Y9W>.

24. On November 10, 2021, the Task Force updated the Guidance. A true and accurate copy of the updated Guidance is incorporated by reference and attached as Exhibit G to the Talent Declaration, and the Parties refer the Court to that document for its contents.
25. The updated Guidance changed the date contractors' employees had to be fully vaccinated from December 8, 2021, to January 18, 2022. *See* Ex. G, at 5. The updated Guidance has a section entitled "Frequently Asked Questions," which does not include any questions or answers; it instead includes links to the Frequently Asked Questions and a link to "[a]ll Task Force Guidance, FAQs, and additional information for Federal contractors and subcontractors." *Id.* at 9.
26. A true and accurate copy of the FAQs reached via that link (<https://www.saferfederalworkforce.gov/faq/contractors/>) on December 6, 2021, are incorporated by reference and attached as Exhibit H to the Talent Declaration, and the Parties refer the Court to that document for its contents.
27. On November 10, 2021, the Acting Director of OMB filed with the Office of the Federal Register for publication in the Federal Register her determination that the updated Guidance "will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors." A true and accurate copy of the November 20, 2021, OMB Director's Determination is incorporated by reference and attached as Exhibit I to the Talent Declaration, and the Parties refer the Court to that document for its contents. *See also* 86 Fed. Reg. 63,418, 63,418 (Nov. 16, 2021).
28. Federal agencies have issued agency-specific class deviations directing procurement officers to include the COVID-19 safety clause into contracts until the FAR Council issues its final government-wide regulation. *See, e.g.,* Memo. for All GSA Contracting Activities,

<https://perma.cc/M9J6-7L4D>; DoD Memo re Class Deviation, <https://perma.cc/XZ7J-5U9Y>.

III. The Plaintiff States and federal contracting

29. According to the Federal Government's System for Award Management (SAM), in calendar 2020, over \$16 billion worth of federal contracts featured Missouri as the place of performance, nearly \$1.4 billion featured Nebraska, nearly \$2 billion featured Alaska, nearly \$1.6 billion featured Arkansas, over \$2.7 billion featured Iowa, nearly \$689 million featured Montana, over \$2 billion featured New Hampshire, nearly \$604 million featured North Dakota, over \$1 billion featured South Dakota, and over \$386 million featured Wyoming. *See* Exhibit J to the Talent Declaration.
30. The Plaintiff States filed declarations in support of their claims and incorporate them by reference. True and accurate copies of those declarations can be found at ECF Nos. 9-5 through 9-15 (Exhibits E, F, G, H, I, J, K, L, M, N, and O to Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction) and ECF Nos. 23-4 through 23-5 (Exhibits D and E to Plaintiffs' Reply in Support of Motion for Preliminary Injunction), and the Parties refer the Court to those documents for their contents.
31. The Kaiser Family Foundation surveyed workers and found that "[i]f their employer did not offer an option for weekly testing, the share of unvaccinated workers who say they would get the vaccine increases to 17% (2% of all adults) and the share saying they would leave their job increases to 72% (9% of all adults)."² *See* Press Release, Kaiser Family

² Defendants dispute the relevance and reliability of this study. Plaintiffs make no attempt to demonstrate the reliability of that conclusion, the research project itself, or KFF. Plaintiffs also oversimplify what is stated in the project. Rather, KFF concluded that vaccine "requirements do have the potential to further increase vaccine uptake somewhat." Press Release, Kaiser Family

Found., 1 in 4 Workers Say Their Employer Required Them to get a COVID-19 Vaccine, Up Since June 5% of Unvaccinated Adults Say They Left a Job Due to a Vaccine Requirement (Oct. 28, 2021), <https://bit.ly/3ro2XP6> (attached as Exhibit K to Talent Declaration).

32. The OMB Director's updated Determination cites to news reports that discuss the results of the Kaiser Family Foundation survey. *See* 86 Fed. Reg. at 63,422, n.14. The Determination states: "While anecdotal reports suggest that vaccine mandates may lead some workers to quit their jobs rather than comply, which could create some cost associated with replacing them, we know of no systematic evidence that this has been a widespread phenomenon, or that it would be likely to occur among employees of Federal contractors. In fact, the experience of private companies is to the contrary. For example, United Airlines reported in October 2021 that 99.7 percent of the airline's workforce complied with the vaccination requirements, Tyson Foods reported more than 96 percent of its workforce is now vaccinated, and healthcare providers such as California's Kaiser Permanente reported placing only two percent of employees on administrative leave for failing to comply with vaccine requirements. And finally, even if some non-negligible number of workers were to quit rather than comply with a vaccine mandate, the cost of

Found., 1 in 4 Workers Say Their Employer Required Them to get a COVID-19 Vaccine, Up Since June 5% of Unvaccinated Adults Say They Left a Job Due to a Vaccine Requirement (Oct. 28, 2021), <https://bit.ly/3ro2XP6>. Further, instead of estimating mass exodus from employment, KFF summarized the results of a recent poll of unvaccinated workers, advising that "about a third of unvaccinated workers say they would be likely to get vaccinated while two-thirds say they would be unlikely to do so." *Id.* Moreover, this temperature gauge by the KFF (in a project where the control parameters of the poll are not offered) differs from the evidence from real-world examples of almost uniform vaccine acceptance in private companies relied upon in OMB's November OMB Determination. 86 Fed. Reg. at 63,422.

replacing those workers would be a one-time cost, while the benefits of increased vaccination (including among replacement workers, who would be vaccinated) would be long-lasting.”³

³ Plaintiff States dispute the reliability and relevance of this OMB statement. This OMB statement bears on whether the vaccine mandate is arbitrary and capricious under the APA, and this Joint Statement does not address that claim; therefore, the OMB statement is irrelevant. Moreover, Plaintiff States object that this OMB statement relies on cherry-picked anecdotal experiences of a few private companies and not on systematic evidence, data, or surveys. Also, the OMB statement fails to explain—much less support with evidence—how the alleged benefits of vaccination will outweigh the costs of lost employees. To the extent this OMB statement becomes relevant in subsequent proceedings involving the arbitrary and capricious claim, Plaintiff States will raise additional substantive objections to the reliability and relevance of OMB’s statement at that time.

Dated: December 6, 2021

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CERTIFICATE OF SERVICE

I hereby certify that, on December 6, 2021, a true and correct copy of the foregoing and any attachments were filed electronically through the Court's CM/ECF system, to be served on counsel for all parties by operation of the Court's electronic filing system and to be served on those parties that have not appeared who will be served in accordance with the Federal Rules of Civil Procedure by mail or other means agreed to by the party.

/s/ Justin D. Smith

**IN THE UNITED STATES DISTRICT COURT
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No. 4:21-cv-01300-DDN

DECLARATION OF MICHAEL E. TALENT

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I, Michael E. Talent, declare and state as follows:

1. I am an attorney licensed to practice law before this Court and a Deputy Solicitor General for the State of Missouri in the Office of the Attorney General for the State of Missouri, a plaintiff in this case. I have personal knowledge of the facts stated herein and if called upon to do so, I will testify thereto.

2. Attached as **Exhibit A** is a true and correct copy of Executive Order 13,991, as printed in the Federal Register, 86 Fed. Reg. 7,045.

3. Attached as **Exhibit B** is a true and correct copy of Remarks by President Biden on Fighting the COVID-19 Pandemic (Sept. 9, 2021) from <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/>.

4. Attached as **Exhibit C** is a true and correct copy of Executive Order 14,042, as printed in the Federal Register, 86 Fed. Reg. 50,985.

5. Attached as **Exhibit D** is a true and correct copy of the Safer Federal Workforce Task Force's *Covid-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* (Sept. 24, 2021).

6. Attached as **Exhibit E** is a true and correct copy of OMB's Determination of the Promotion of Economy and Efficiency in Federal Contracting Pursuant to Executive Order No. 14042, as printed in the Federal Register at 86 Fed. Reg. 53,691 (Sept. 28, 2021).

7. Attached as **Exhibit F** is a true and correct copy of the FAR's September 30, 2021, Memorandum.

8. Attached as **Exhibit G** is a true and correct copy of the Safer Federal Workforce Task Force's *Covid-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* (Nov. 10, 2021).

9. Attached as **Exhibit H** is a true and correct copy of the Safer Federal Workforce Task Force's FAQs for Federal Contractors, <https://www.saferfederalworkforce.gov/faq/contractors/> (last visited Dec. 6, 2021).

10. Attached as **Exhibit I** is a true and correct copy of OMB's Determination of the Acting OMB Director Regarding the Revised Safer Federal Workforce Task Force Guidance for Federal Contractors and the Revised Economy & Efficiency Analysis, as printed in the Federal Register at 86 Fed. Reg. 63,418 (Nov. 16, 2021).

11. Attached as **Exhibit J** is a true and correct copy of pages 1, 2, and 39 of the results from a query on the federal government's System for Award Management website (sam.gov). The query was for "Geographical Report by Place of Performance," designated the entire U.S. as the relevant geographic area, and set the time range as 1/1/2020 and 12/31/2020. Page 1 also contains a report filter.

12. Attached as **Exhibit K** is a true and correct copy of Press Release, Kaiser Family Found., 1 in 4 Workers Say Their Employer Required Them to get a COVID-19 Vaccine, Up Since June 5% of Unvaccinated Adults Say They Left a Job Due to a Vaccine Requirement (Oct. 28, 2021), <https://bit.ly/3ro2XP6>.

Dated: December 6, 2021

Respectfully submitted,

/s/ Michael E. Talent

EXHIBIT

A

Presidential Documents

Executive Order 13991 of January 20, 2021

Protecting the Federal Workforce and Requiring Mask-Wearing

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7902(c) of title 5, United States Code, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration to halt the spread of coronavirus disease 2019 (COVID-19) by relying on the best available data and science-based public health measures. Such measures include wearing masks when around others, physical distancing, and other related precautions recommended by the Centers for Disease Control and Prevention (CDC). Put simply, masks and other public health measures reduce the spread of the disease, particularly when communities make widespread use of such measures, and thus save lives.

Accordingly, to protect the Federal workforce and individuals interacting with the Federal workforce, and to ensure the continuity of Government services and activities, on-duty or on-site Federal employees, on-site Federal contractors, and other individuals in Federal buildings and on Federal lands should all wear masks, maintain physical distance, and adhere to other public health measures, as provided in CDC guidelines.

Sec. 2. Immediate Action Regarding Federal Employees, Contractors, Buildings, and Lands. (a) The heads of executive departments and agencies (agencies) shall immediately take action, as appropriate and consistent with applicable law, to require compliance with CDC guidelines with respect to wearing masks, maintaining physical distance, and other public health measures by: on-duty or on-site Federal employees; on-site Federal contractors; and all persons in Federal buildings or on Federal lands.

(b) The Director of the Office of Management and Budget (OMB), the Director of the Office of Personnel Management (OPM), and the Administrator of General Services, in coordination with the President's Management Council and the Coordinator of the COVID-19 Response and Counselor to the President (COVID-19 Response Coordinator), shall promptly issue guidance to assist heads of agencies with implementation of this section.

(c) Heads of agencies shall promptly consult, as appropriate, with State, local, Tribal, and territorial government officials, Federal employees, Federal employee unions, Federal contractors, and any other interested parties concerning the implementation of this section.

(d) Heads of agencies may make categorical or case-by-case exceptions in implementing subsection (a) of this section to the extent that doing so is necessary or required by law, and consistent with applicable law. If heads of agencies make such exceptions, they shall require appropriate alternative safeguards, such as additional physical distancing measures, additional testing, or reconfiguration of workspace, consistent with applicable law. Heads of agencies shall document all exceptions in writing.

(e) Heads of agencies shall review their existing authorities and, to the extent permitted by law and subject to the availability of appropriations and resources, seek to provide masks to individuals in Federal buildings when needed.

(f) The COVID-19 Response Coordinator shall coordinate the implementation of this section. Heads of the agencies listed in 31 U.S.C. 901(b) shall

update the COVID–19 Response Coordinator on their progress in implementing this section, including any categorical exceptions established under subsection (d) of this section, within 7 days of the date of this order and regularly thereafter. Heads of agencies are encouraged to bring to the attention of the COVID–19 Response Coordinator any questions regarding the scope or implementation of this section.

Sec. 3. *Encouraging Masking Across America.* (a) The Secretary of Health and Human Services (HHS), including through the Director of CDC, shall engage, as appropriate, with State, local, Tribal, and territorial officials, as well as business, union, academic, and other community leaders, regarding mask-wearing and other public health measures, with the goal of maximizing public compliance with, and addressing any obstacles to, mask-wearing and other public health best practices identified by CDC.

(b) The COVID–19 Response Coordinator, in coordination with the Secretary of HHS, the Secretary of Homeland Security, and the heads of other relevant agencies, shall promptly identify and inform agencies of options to incentivize, support, and encourage widespread mask-wearing consistent with CDC guidelines and applicable law.

Sec. 4. *Safer Federal Workforce Task Force.*

(a) *Establishment.* There is hereby established the Safer Federal Workforce Task Force (Task Force).

(b) *Membership.* The Task Force shall consist of the following members:

- (i) the Director of OPM, who shall serve as Co-Chair;
- (ii) the Administrator of General Services, who shall serve as Co-Chair;
- (iii) the COVID–19 Response Coordinator, who shall serve as Co-Chair;
- (iv) the Director of OMB;
- (v) the Director of the Federal Protective Service;
- (vi) the Director of the United States Secret Service;
- (vii) the Administrator of the Federal Emergency Management Agency;
- (viii) the Director of CDC; and
- (ix) the heads of such other agencies as the Co-Chairs may individually or jointly invite to participate.

(c) *Organization.* A member of the Task Force may designate, to perform the Task Force functions of the member, a senior-level official who is a full-time officer or employee of the member's agency. At the direction of the Co-Chairs, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees, as appropriate.

(d) *Administration.* The General Services Administration shall provide funding and administrative support for the Task Force to the extent permitted by law and within existing appropriations. The Co-Chairs shall convene regular meetings of the Task Force, determine its agenda, and direct its work.

(e) *Mission.* The Task Force shall provide ongoing guidance to heads of agencies on the operation of the Federal Government, the safety of its employees, and the continuity of Government functions during the COVID–19 pandemic. Such guidance shall be based on public health best practices as determined by CDC and other public health experts, and shall address, at a minimum, the following subjects as they relate to the Federal workforce:

- (i) testing methodologies and protocols;
- (ii) case investigation and contact tracing;
- (iii) requirements of and limitations on physical distancing, including recommended occupancy and density standards;
- (iv) equipment needs and requirements, including personal protective equipment;
- (v) air filtration;

- (vi) enhanced environmental disinfection and cleaning;
- (vii) safe commuting and telework options;
- (viii) enhanced technological infrastructure to support telework;
- (ix) vaccine prioritization, distribution, and administration;
- (x) approaches for coordinating with State, local, Tribal, and territorial health officials, as well as business, union, academic, and other community leaders;
- (xi) any management infrastructure needed by agencies to implement public health guidance; and
- (xii) circumstances under which exemptions might appropriately be made to agency policies in accordance with CDC guidelines, such as for mission-critical purposes.

(f) *Agency Cooperation.* The head of each agency listed in 31 U.S.C. 901(b) shall, consistent with applicable law, promptly provide the Task Force a report on COVID-19 safety protocols, safety plans, or guidance regarding the operation of the agency and the safety of its employees, and any other information that the head of the agency deems relevant to the Task Force's work.

Sec. 5. *Federal Employee Testing.* The Secretary of HHS, through the Director of CDC, shall promptly develop and submit to the COVID-19 Response Coordinator a testing plan for the Federal workforce. This plan shall be based on community transmission metrics and address the populations to be tested, testing types, frequency of testing, positive case protocols, and coordination with local public health authorities for contact tracing.

Sec. 6. *Research and Development.* The Director of the Office of Science and Technology Policy, in consultation with the Secretary of HHS (through the National Science and Technology Council), the Director of OMB, the Director of CDC, the Director of the National Institutes of Health, the Director of the National Science Foundation, and the heads of any other appropriate agencies, shall assess the availability of Federal research grants to study best practices for implementing, and innovations to better implement, effective mask-wearing and physical distancing policies, with respect to both the Federal workforce and the general public.

Sec. 7. *Scope.* (a) For purposes of this order:

- (i) "Federal employees" and "Federal contractors" mean employees (including members of the Armed Forces and members of the National Guard in Federal service) and contractors (including such contractors' employees) working for the executive branch;
- (ii) "Federal buildings" means buildings, or office space within buildings, owned, rented, or leased by the executive branch of which a substantial portion of occupants are Federal employees or Federal contractors; and
- (iii) "Federal lands" means lands under executive branch control.

(b) The Director of OPM and the Administrator of General Services shall seek to consult, in coordination with the heads of any other relevant agencies and the COVID-19 Response Coordinator, with the Sergeants at Arms of the Senate and the House of Representatives and the Director of the Administrative Office of the United States Courts (or such other persons designated by the Majority and Minority Leaders of the Senate, the Speaker and Minority Leader of the House, or the Chief Justice of the United States, respectively), to promote mask-wearing, physical distancing, and adherence to other public health measures within the legislative and judicial branches, and shall provide requested technical assistance as needed to facilitate compliance with CDC guidelines.

Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

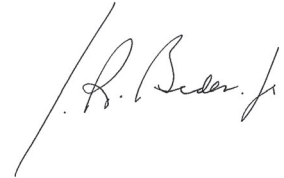
- (i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Independent agencies are strongly encouraged to comply with the requirements of this order.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2021.

EXHIBIT

B

BRIEFING ROOM

Remarks by President Biden on Fighting the COVID-19 Pandemic

SEPTEMBER 09, 2021 • SPEECHES AND REMARKS

5:02 P.M. EDT

THE PRESIDENT: Good evening, my fellow Americans. I want to talk to you about where we are in the battle against COVID-19, the progress we've made, and the work we have left to do.

And it starts with understanding this: Even as the Delta variant 19 [sic] has — COVID-19 — has been hitting this country hard, we have the tools to combat the virus, if we can come together as a country and use those tools.

If we raise our vaccination rate, protect ourselves and others with masking and expanded testing, and identify people who are infected, we can and we will turn the tide on COVID-19.

It will take a lot of hard work, and it's going to take some time. Many of us are frustrated with the nearly 80 million Americans who are still not vaccinated, even though the vaccine is safe, effective, and free.

You might be confused about what is true and what is false about COVID-19. So before I outline the new steps to fight COVID-19 that I'm going to be announcing tonight, let me give you some clear information about where we stand.

First, we have cons- — we have made considerable progress in battling COVID-19. When I became President, about 2 million Americans were fully vaccinated. Today, over 175 million Americans have that protection.

Before I took office, we hadn't ordered enough vaccine for every American. Just weeks in office, we did. The week before I took office, on January 20th of this year, over 25,000 Americans died that week from COVID-19. Last week, that grim weekly toll was down 70 percent.

And in the three months before I took office, our economy was faltering, creating just 50,000 jobs a month. We're now averaging 700,000 new jobs a month in the past three months.

This progress is real. But while America is in much better shape than it was seven months ago when I took office, I need to tell you a second fact.

We're in a tough stretch, and it could last for a while. The highly contagious Delta variant that I began to warn America about back in July spread in late summer like it did in other countries before us.

While the vaccines provide strong protections for the vaccinated, we read about, we hear about, and we see the stories of hospitalized people, people on their death beds, among the unvaccinated over these past few weeks.

This is a pandemic of the unvaccinated. And it's caused by the fact that despite America having an unprecedented and successful vaccination program, despite the fact that for almost five months free vaccines have been available in 80,000 different locations, we still have nearly 80 million Americans who have failed to get the shot.

And to make matters worse, there are elected officials actively working to undermine the fight against COVID-19. Instead of encouraging people to get vaccinated and mask up, they're ordering mobile morgues for the unvaccinated dying from COVID in their communities. This is totally unacceptable.

Third, if you wonder how all this adds up, here's the math: The vast majority of Americans are doing the right thing. Nearly three quarters of the eligible have gotten at least one shot, but one quarter has not gotten any. That's

nearly 80 million Americans not vaccinated. And in a country as large as ours, that's 25 percent minority. That 25 percent can cause a lot of damage — and they are.

The unvaccinated overcrowd our hospitals, are overrunning the emergency rooms and intensive care units, leaving no room for someone with a heart attack, or ~~panereitis~~ [pancreatitis], or cancer.

And fourth, I want to emphasize that the vaccines provide very strong protection from severe illness from COVID-19. I know there's a lot of confusion and misinformation. But the world's leading scientists confirm that if you are fully vaccinated, your risk of severe illness from COVID-19 is very low.

In fact, based on available data from the summer, only one of out of every 160,000 fully vaccinated Americans was hospitalized for COVID per day.

These are the facts.

So here's where we stand: The path ahead, even with the Delta variant, is not nearly as bad as last winter. But what makes it incredibly more frustrating is that we have the tools to combat COVID-19, and a distinct minority of Americans — supported by a distinct minority of elected officials — are keeping us from turning the corner. These pandemic politics, as I refer to, are making people sick, causing unvaccinated people to die.

We cannot allow these actions to stand in the way of protecting the large majority of Americans who have done their part and want to get back to life as normal.

As your President, I'm announcing tonight a new plan to require more Americans to be vaccinated, to combat those blocking public health.

My plan also increases testing, protects our economy, and will make our kids safer in schools. It consists of six broad areas of action and many specific measures in each that — and each of those actions that you can read more about at [WhiteHouse.gov](https://www.whitehouse.gov). [WhiteHouse.gov](https://www.whitehouse.gov).

The measures — these are going to take time to have full impact. But if we implement them, I believe and the scientists indicate, that in the months ahead we can reduce the number of unvaccinated Americans, decrease hospitalizations and deaths, and allow our children to go to school safely and keep our economy strong by keeping businesses open.

First, we must increase vaccinations among the unvaccinated with new vaccination requirements. Of the nearly 80 million eligible Americans who have not gotten vaccinated, many said they were waiting for approval from the Food and Drug Administration — the FDA. Well, last month, the FDA granted that approval.

So, the time for waiting is over. This summer, we made progress through the combination of vaccine requirements and incentives, as well as the FDA approval. Four million more people got their first shot in August than they did in July.

But we need to do more. This is not about freedom or personal choice. It's about protecting yourself and those around you — the people you work with, the people you care about, the people you love.

My job as President is to protect all Americans.

So, tonight, I'm announcing that the Department of Labor is developing an emergency rule to require all employers with 100 or more employees, that together employ over 80 million workers, to ensure their workforces are fully vaccinated or show a negative test at least once a week.

Some of the biggest companies are already requiring this: United Airlines, Disney, Tysons Food, and even Fox News.

The bottom line: We're going to protect vaccinated workers from unvaccinated co-workers. We're going to reduce the spread of COVID-19 by increasing the share of the workforce that is vaccinated in businesses all across America.

My plan will extend the vaccination requirements that I previously issued in the healthcare field. Already, I've announced, we'll be requiring vaccinations that all nursing home workers who treat patients on Medicare and Medicaid, because I have that federal authority.

Tonight, I'm using that same authority to expand that to cover those who work in hospitals, home healthcare facilities, or other medical facilities -- a total of 17 million healthcare workers.

If you're seeking care at a health facility, you should be able to know that the people treating you are vaccinated. Simple. Straightforward. Period.

Next, I will sign an executive order that will now require all executive branch federal employees to be vaccinated -- all. And I've signed another executive order that will require federal contractors to do the same.

If you want to work with the federal government and do business with us, get vaccinated. If you want to do business with the federal government, vaccinate your workforce.

And tonight, I'm removing one of the last remaining obstacles that make it difficult for you to get vaccinated.

The Department of Labor will require employers with 100 or more workers to give those workers paid time off to get vaccinated. No one should lose pay in order to get vaccinated or take a loved one to get vaccinated.

Today, in total, the vaccine requirements in my plan will affect about 100 million Americans -- two thirds of all workers.

And for other sectors, I issue this appeal: To those of you running large entertainment venues -- from sports arenas to concert venues to movie theaters -- please require folks to get vaccinated or show a negative test as a condition of entry.

And to the nation's family physicians, pediatricians, GPs -- general practitioners -- you're the most trusted medical voice to your patients. You

may be the one person who can get someone to change their mind about being vaccinated.

Tonight, I'm asking each of you to reach out to your unvaccinated patients over the next two weeks and make a personal appeal to them to get the shot. America needs your personal involvement in this critical effort.

And my message to unvaccinated Americans is this: What more is there to wait for? What more do you need to see? We've made vaccinations free, safe, and convenient.

The vaccine has FDA approval. Over 200 million Americans have gotten at least one shot.

We've been patient, but our patience is wearing thin. And your refusal has cost all of us. So, please, do the right thing. But just don't take it from me; listen to the voices of unvaccinated Americans who are lying in hospital beds, taking their final breaths, saying, "If only I had gotten vaccinated." "If only."

It's a tragedy. Please don't let it become yours.

The second piece of my plan is continuing to protect the vaccinated.

For the vast majority of you who have gotten vaccinated, I understand your anger at those who haven't gotten vaccinated. I understand the anxiety about getting a "breakthrough" case.

But as the science makes clear, if you're fully vaccinated, you're highly protected from severe illness, even if you get COVID-19.

In fact, recent data indicates there is only one confirmed positive case per 5,000 fully vaccinated Americans per day.

You're as safe as possible, and we're doing everything we can to keep it that way — keep it that way, keep you safe.

That's where boosters come in — the shots that give you even more

protection than after your second shot.

Now, I know there's been some confusion about boosters. So, let me be clear: Last month, our top government doctors announced an initial plan for booster shots for vaccinated Americans. They believe that a booster is likely to provide the highest level of protection yet.

Of course, the decision of which booster shots to give, when to start them, and who will give them, will be left completely to the scientists at the FDA and the Centers for Disease Control.

But while we wait, we've done our part. We've bought enough boosters — enough booster shots — and the distribution system is ready to administer them.

As soon as they are authorized, those eligible will be able to get a booster right away in tens of thousands of site across the — sites across the country for most Americans, at your nearby drug store, and for free.

The third piece of my plan is keeping — and maybe the most important — is keeping our children safe and our schools open. For any parent, it doesn't matter how low the risk of any illness or accident is when it comes to your child or grandchild. Trust me, I know.

So, let me speak to you directly. Let me speak to you directly to help ease some of your worries.

It comes down to two separate categories: children ages 12 and older who are eligible for a vaccine now, and children ages 11 and under who are not yet eligible.

The safest thing for your child 12 and older is to get them vaccinated. They get vaccinated for a lot of things. That's it. Get them vaccinated.

As with adults, almost all the serious COVID-19 cases we're seeing among adolescents are in unvaccinated 12- to 17-year-olds — an age group that lags behind in vaccination rates.

So, parents, please get your teenager vaccinated.

What about children under the age of 12 who can't get vaccinated yet? Well, the best way for a parent to protect their child under the age of 12 starts at home. Every parent, every teen sibling, every caregiver around them should be vaccinated.

Children have four times higher chance of getting hospitalized if they live in a state with low vaccination rates rather than the states with high vaccination rates.

Now, if you're a parent of a young child, you're wondering when will it be — when will it be — the vaccine available for them. I strongly support an independent scientific review for vaccine uses for children under 12. We can't take shortcuts with that scientific work.

But I've made it clear I will do everything within my power to support the FDA with any resource it needs to continue to do this as safely and as quickly as possible, and our nation's top doctors are committed to keeping the public at large updated on the process so parents can plan.

Now to the schools. We know that if schools follow the science and implement the safety measures — like testing, masking, adequate ventilation systems that we provided the money for, social distancing, and vaccinations — then children can be safe from COVID-19 in schools.

Today, about 90 percent of school staff and teachers are vaccinated. We should get that to 100 percent. My administration has already acquired teachers at the schools run by the Defense Department — because I have the authority as President in the federal system — the Defense Department and the Interior Department — to get vaccinated. That's authority I possess.

Tonight, I'm announcing that we'll require all of nearly 300,000 educators in the federal paid program, Head Start program, must be vaccinated as well to protect your youngest — our youngest — most precious Americans and give parents the comfort.

And tonight, I'm calling on all governors to require vaccination for all teachers and staff. Some already have done so, but we need more to step up.

Vaccination requirements in schools are nothing new. They work. They're overwhelmingly supported by educators and their unions. And to all school officials trying to do the right thing by our children: I'll always be on your side.

Let me be blunt. My plan also takes on elected officials and states that are undermining you and these lifesaving actions. Right now, local school officials are trying to keep children safe in a pandemic while their governor picks a fight with them and even threatens their salaries or their jobs. Talk about bullying in schools. If they'll not help — if these governors won't help us beat the pandemic, I'll use my power as President to get them out of the way.

The Department of Education has already begun to take legal action against states undermining protection that local school officials have ordered. Any teacher or school official whose pay is withheld for doing the right thing, we will have that pay restored by the federal government 100 percent. I promise you I will have your back.

The fourth piece of my plan is increasing testing and masking. From the start, America has failed to do enough COVID-19 testing. In order to better detect and control the Delta variant, I'm taking steps tonight to make testing more available, more affordable, and more convenient. I'll use the Defense Production Act to increase production of rapid tests, including those that you can use at home.

While that production is ramping up, my administration has worked with top retailers, like Walmart, Amazon, and Kroger's, and tonight we're announcing that, no later than next week, each of these outlets will start to sell at-home rapid test kits at cost for the next three months. This is an immediate price reduction for at-home test kits for up to 35 percent reduction.

We'll also expand — expand free testing at 10,000 pharmacies around the

country. And we'll commit — we're committing \$2 billion to purchase nearly 300 million rapid tests for distribution to community health centers, food banks, schools, so that every American, no matter their income, can access free and convenient tests. This is important to everyone, particularly for a parent or a child — with a child not old enough to be vaccinated. You'll be able to test them at home and test those around them.

In addition to testing, we know masking helps stop the spread of COVID-19. That's why when I came into office, I required masks for all federal buildings and on federal lands, on airlines, and other modes of transportation.

Today — tonight, I'm announcing that the Transportation Safety Administration — the TSA — will double the fines on travelers that refuse to mask. If you break the rules, be prepared to pay.

And, by the way, show some respect. The anger you see on television toward flight attendants and others doing their job is wrong; it's ugly.

The fifth piece of my plan is protecting our economic recovery. Because of our vaccination program and the American Rescue Plan, which we passed early in my administration, we've had record job creation for a new administration, economic growth unmatched in 40 years. We cannot let unvaccinated do this progress — undo it, turn it back.

So tonight, I'm announcing additional steps to strengthen our economic recovery. We'll be expanding COVID-19 Economic Injury Disaster Loan programs. That's a program that's going to allow small businesses to borrow up to \$2 million from the current \$500,000 to keep going if COVID-19 impacts on their sales.

These low-interest, long-term loans require no repayment for two years and be can used to hire and retain workers, purchase inventory, or even pay down higher cost debt racked up since the pandemic began. I'll also be taking additional steps to help small businesses stay afloat during the pandemic.

Sixth, we're going to continue to improve the care of those who do get COVID-19. In early July, I announced the deployment of surge response

teams. These are teams comprised of experts from the Department of Health and Human Services, the CDC, the Defense Department, and the Federal Emergency Management Agency — FEMA — to areas in the country that need help to stem the spread of COVID-19.

Since then, the federal government has deployed nearly 1,000 staff, including doctors, nurses, paramedics, into 18 states. Today, I'm announcing that the Defense Department will double the number of military health teams that they'll deploy to help their fellow Americans in hospitals around the country.

Additionally, we're increasing the availability of new medicines recommended by real doctors, not conspir- — conspiracy theorists. The monoclonal antibody treatments have been shown to reduce the risk of hospitalization by up to 70 percent for unvaccinated people at risk of developing sefe- — severe disease.

We've already distributed 1.4 million courses of these treatments to save lives and reduce the strain on hospitals. Tonight, I'm announcing we will increase the average pace of shipment across the country of free monoclonal antibody treatments by another 50 percent.

Before I close, let me say this: Communities of color are disproportionately impacted by this virus. And as we continue to battle COVID-19, we will ensure that equity continues to be at the center of our response. We'll ensure that everyone is reached. My first responsibility as President is to protect the American people and make sure we have enough vaccine for every American, including enough boosters for every American who's approved to get one.

We also know this virus transcends borders. That's why, even as we execute this plan at home, we need to continue fighting the virus overseas, continue to be the arsenal of vaccines.

We're proud to have donated nearly 140 million vaccines over 90 countries, more than all other countries combined, including Europe, China, and Russia combined. That's American leadership on a global stage, and that's just the beginning.

We've also now started to ship another 500 million COVID vaccines — Pfizer vaccines — purchased to donate to 100 lower-income countries in need of vaccines. And I'll be announcing additional steps to help the rest of the world later this month.

As I recently released the key parts of my pandemic preparedness plan so that America isn't caught flat-footed when a new pandemic comes again — as it will — next month, I'm also going to release the plan in greater detail.

So let me close with this: We have so- — we've made so much progress during the past seven months of this pandemic. The recent increases in vaccinations in August already are having an impact in some states where case counts are dropping in recent days. Even so, we remain at a critical moment, a critical time. We have the tools. Now we just have to finish the job with truth, with science, with confidence, and together as one nation.

Look, we're the United States of America. There's nothing — not a single thing — we're unable to do if we do it together. So let's stay together.

God bless you all and all those who continue to serve on the frontlines of this pandemic. And may God protect our troops.

Get vaccinated.

5:28 P.M. EDT

EXHIBIT C

Presidential Documents

Executive Order 14042 of September 9, 2021

Ensuring Adequate COVID Safety Protocols for Federal Contractors

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and section 301 of title 3, United States Code, and in order to promote economy and efficiency in procurement by contracting with sources that provide adequate COVID-19 safeguards for their workforce, it is hereby ordered as follows:

Section 1. Policy. This order promotes economy and efficiency in Federal procurement by ensuring that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with a Federal Government contract or contract-like instrument as described in section 5(a) of this order. These safeguards will decrease the spread of COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work for the Federal Government. Accordingly, ensuring that Federal contractors and subcontractors are adequately protected from COVID-19 will bolster economy and efficiency in Federal procurement.

Sec. 2. Providing for Adequate COVID-19 Safety Protocols for Federal Contractors and Subcontractors. (a) Executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A) (agencies), shall, to the extent permitted by law, ensure that contracts and contract-like instruments (as described in section 5(a) of this order) include a clause that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance or Guidance), provided that the Director of the Office of Management and Budget (Director) approves the Task Force Guidance and determines that the Guidance, if adhered to by contractors or subcontractors, will promote economy and efficiency in Federal contracting. This clause shall apply to any workplace locations (as specified by the Task Force Guidance) in which an individual is working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order).

(b) By September 24, 2021, the Safer Federal Workforce Task Force (Task Force) shall, as part of its issuance of Task Force Guidance, provide definitions of relevant terms for contractors and subcontractors, explanations of protocols required of contractors and subcontractors to comply with workplace safety guidance, and any exceptions to Task Force Guidance that apply to contractor and subcontractor workplace locations and individuals in those locations working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order).

(c) Prior to the Task Force publishing new Guidance related to COVID-19 for contractor or subcontractor workplace locations, including the Guidance developed pursuant to subsection (b) of this section, the Director shall, as an exercise of the delegation of my authority under the Federal Property

and Administrative Services Act, *see* 3 U.S.C. 301, determine whether such Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. Upon an affirmative determination by the Director, the Director's approval of the Guidance, and subsequent issuance of such Guidance by the Task Force, contractors and subcontractors working on or in connection with a Federal Government contract or contract-like instrument (as described in section 5(a) of this order), shall adhere to the requirements of the newly published Guidance, in accordance with the clause described in subsection (a) of this section. The Director shall publish such determination in the *Federal Register*.

(d) Nothing in this order shall excuse noncompliance with any applicable State law or municipal ordinance establishing more protective safety protocols than those established under this order or with any more protective Federal law, regulation, or agency instructions for contractor or subcontractor employees working at a Federal building or a federally controlled workplace.

(e) For purposes of this order, the term "contract or contract-like instrument" shall have the meaning set forth in the Department of Labor's proposed rule, "Increasing the Minimum Wage for Federal Contractors," 86 FR 38816, 38887 (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, that term shall have the meaning set forth in that final rule.

Sec. 3. Regulations and Implementation. (a) The Federal Acquisition Regulatory Council, to the extent permitted by law, shall amend the Federal Acquisition Regulation to provide for inclusion in Federal procurement solicitations and contracts subject to this order the clause described in section 2(a) of this order, and shall, by October 8, 2021, take initial steps to implement appropriate policy direction to acquisition offices for use of the clause by recommending that agencies exercise their authority under subpart 1.4 of the Federal Acquisition Regulation.

(b) By October 8, 2021, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts and contract-like instruments as described in section 5(a) of this order that are not subject to the Federal Acquisition Regulation and that are entered into on or after October 15, 2021, consistent with the effective date of such agency action, include the clause described in section 2(a) of this order.

Sec. 4. Severability. If any provision of this order, or the application of any provision of this order to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

Sec. 5. Applicability. (a) This order shall apply to any new contract; new contract-like instrument; new solicitation for a contract or contract-like instrument; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument, if:

- (i) it is a procurement contract or contract-like instrument for services, construction, or a leasehold interest in real property;
 - (ii) it is a contract or contract-like instrument for services covered by the Service Contract Act, 41 U.S.C. 6701 *et seq.*;
 - (iii) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b); or
 - (iv) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public;
- (b) This order shall not apply to:
- (i) grants;

(ii) contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93–638), as amended;

(iii) contracts or subcontracts whose value is equal to or less than the simplified acquisition threshold, as that term is defined in section 2.101 of the Federal Acquisition Regulation;

(iv) employees who perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the Federal Acquisition Regulation; or

(v) subcontracts solely for the provision of products.

Sec. 6. *Effective Date.* (a) Except as provided in subsection (b) of this section, this order is effective immediately and shall apply to new contracts; new contract-like instruments; new solicitations for contracts or contract-like instruments; extensions or renewals of existing contracts or contract-like instruments; and exercises of options on existing contracts or contract-like instruments, as described in section 5(a) of this order, where the relevant contract or contract-like instrument will be entered into, the relevant contract or contract-like instrument will be extended or renewed, or the relevant option will be exercised, on or after:

(i) October 15, 2021, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 3(a) of this order; or

(ii) for contracts and contract-like instruments that are not subject to the Federal Acquisition Regulation and where an agency action is taken pursuant to section 3(b) of this order, October 15, 2021, consistent with the effective date for such action.

(b) As an exception to subsection (a) of this section, where agencies have issued a solicitation before the effective date for the relevant action taken pursuant to section 3 of this order and entered into a new contract or contract-like instrument resulting from such solicitation within 30 days of such effective date, such agencies are strongly encouraged to ensure that the safety protocols specified in section 2 of this order are applied in the new contract or contract-like instrument. But if that contract or contract-like instrument term is subsequently extended or renewed, or an option is subsequently exercised under that contract or contract-like instrument, the safety protocols specified in section 2 of this order shall apply to that extension, renewal, or option.

(c) For all existing contracts and contract-like instruments, solicitations issued between the date of this order and the effective dates set forth in this section, and contracts and contract-like instruments entered into between the date of this order and the effective dates set forth in this section, agencies are strongly encouraged, to the extent permitted by law, to ensure that the safety protocols required under those contracts and contract-like instruments are consistent with the requirements specified in section 2 of this order.

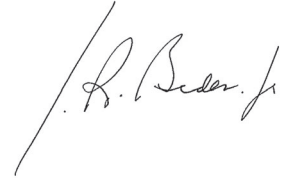
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "J. R. Biden Jr.", is positioned in the upper right quadrant of the page.

THE WHITE HOUSE,
September 9, 2021.

EXHIBIT D

Safer Federal Workforce Task Force
COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
Issued September 24, 2021

Introduction

On September 9, President Biden announced his [Path Out of the Pandemic: COVID-19 Action Plan](#). One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), (“the order”) which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause (“the clause”) that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Task Force”), provided that the Director of the Office of Management and Budget (“OMB”) approves the Task Force Guidance (the or this “Guidance”) and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance. The Director of OMB has, as authorized by Executive Order 14042, approved this Guidance and has, an exercise of the delegation of authority (see 3 U.S.C. § 301) under the Federal Property and Administrative Services Act determined that this Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. The Director has published such determination in the Federal Register.

Definitions

Community transmission – means the level of community transmission as set forth in the [CDC COVID-19 Data Tracker County View](#).

Contract and contract-like instrument – has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” [86 Fed. Reg. 38,816, 38,887](#) (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location – means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract – means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor – means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee – means 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.

Covered contractor workplace – means a location controlled by a covered contractor at which 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 for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace – means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated – 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. There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will be considered by the Task Force and OMB for possible updating of this Guidance.

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., AstraZeneca/Oxford). More information is available at [Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC](#).

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website [here](#).

Mask – means any mask that is consistent with CDC recommendations as set forth in [Types of Masks and Respirators | CDC](#). This may include the following: disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

Guidance

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products. Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

1. Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than December 8, 2021. After that 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 the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that 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. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have 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 agency head may approve an exception for the covered contractor—in the case of such limited exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their

employer with one of the following documents: a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), 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 verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements related to masking and physical distancing while in covered contractor workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC's guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).
- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a [workplace risk assessment](#). Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the [CDC COVID-19 Data Tracker County View website](#) for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

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

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.

The designated individual (or individuals) 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 in this guidance related to the showing or provision of proper vaccination documentation.

Frequently Asked Questions

Vaccination and Safety Protocols

Q1: How do covered contractors determine vaccination status of visitors to covered contractor workplaces?

A: Covered contractors should post signage at entrances to covered contractor workplaces providing information on safety protocols for fully vaccinated and not fully vaccinated individuals, including the protocols defined in the masking and physical distancing section above, and instruct individuals to follow the appropriate workplace safety protocols while at the covered contractor workplace. Covered contractors may take other reasonable steps, such as by communicating workplace safety protocols to visitors prior to their arrival at a covered contractor workplace or requiring all visitors to follow masking and physical distancing protocols for not fully vaccinated individuals.

Q2: Do covered contractors need to provide onsite vaccinations to their employees?

A: Covered contractors should ensure their employees are aware of [convenient opportunities to be vaccinated](#). Although covered contractors may choose to provide vaccinations at their facilities or workplaces, given the widespread availability of vaccinations, covered contractors are not required to do so.

Q3: What should a contractor employee do if a covered contractor employee has lost or does not have a copy of required vaccination documentation?

A: If covered contractor employees need new vaccination cards or copies of other documentation proof of vaccination, they should contact the vaccination provider site where they received their vaccine. Their provider should be able to provide them with new cards or documentation with up-to-date information about the vaccinations they have received. If the location where the covered contractor employees received their COVID-19 vaccine is no longer operating, the covered contractor employees should contact their State or local health department's [immunization information system \(IIS\)](#) for assistance. Covered contractor employees should [contact their State or local health department](#) if they have additional questions about vaccination cards or vaccination records.

An attestation of vaccination by the covered contractor employee is not an acceptable substitute for documentation of proof of vaccination.

Q4: Who is responsible for determining if a covered contractor employee must be provided an accommodation because of a disability or because of a sincerely held religious belief, practice, or observance?

A: A covered contractor may be required to provide an accommodation to contractor employees who communicate to the covered contractor that they are not vaccinated for COVID-19, or that they cannot wear a mask, because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. The contractor is responsible for considering, and dispositioning, such requests for accommodations regardless of the covered contractor employee's place of performance. If the agency that is the party to the covered contract is a "joint employer" for purposes of compliance with the Rehabilitation Act and Title VII of the Civil Rights Act, both the agency and the covered contractor should review and consider what, if any, accommodation they must offer.

Q5: Are covered contractor employees who have a prior COVID-19 infection required to be vaccinated?

A: Yes, covered contractor employees who have had a prior COVID-19 infection are required to be vaccinated. More information from CDC can be found [here](#).

Q6: Can a covered contractor accept a recent antibody test from a covered contractor employee to prove vaccination status?

A: No. A covered contractor cannot accept a recent antibody test from a covered contractor employee to prove vaccination status.

Workplaces

Q7: Does this Guidance apply to outdoor contractor or subcontractor workplace locations?

A: Yes, this Guidance applies to contractor or subcontractor workplace locations that are outdoors.

Q8: If a covered contractor employee is likely to be present during the period of performance for a covered contract on only one floor or a separate area of a building, site, or facility controlled by a covered contractor, do other areas of the building, site, or facility controlled by a covered contractor constitute a covered contractor workplace?

A: Yes, unless a covered contractor can affirmatively determine that none of its employees on another floor or in separate areas of the building will come into contact with a covered contractor employee during the period of performance of a covered contract. This would include affirmatively determining that there will 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.

Q9: If a covered contractor employee performs their duties in or at only one building, site, or facility on a campus controlled by a covered contractor with multiple buildings, sites, or facilities, are the other buildings, sites, or facility controlled by a covered contractor considered a covered contractor workplace?

A: 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. This would include affirmatively determining that there will 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.

Q10: Are the workplace safety protocols enumerated above the same irrespective of whether the work is performed at a covered contractor workplace or at a Federal workplace?

A: Yes. The Guidance applies to all covered contractor employees and to all contractor or subcontractor workplace locations. While at a Federal workplace, covered contractor employees must also comply with any additional agency workplace safety requirements for that workplace. Because covered contractor employees working on a covered contract need to be fully vaccinated after December 8, 2021, covered contractor employees who work only at a Federal workplace need to be fully vaccinated by that date as well, unless legally entitled to an accommodation.

Q11: How does this Guidance apply to covered contractor employees who are authorized under the covered contract to perform work remotely from their residence?

A: An individual working on a covered contract from their residence is a covered contractor employee, and must comply with the vaccination requirement for covered contractor employees, even if the employee never works at either a covered contractor workplace or Federal workplace during the performance of the contract. A covered contractor employee's residence is not a covered contractor workplace, so while in the residence the individual need not comply with requirements for covered contractor workplaces, including those related to masking and physical distancing, even while working on a covered contract.

Scope and Applicability

Q12: By when must the requirements of the order be reflected in contracts?

A: Section 6 of the order lays out a phase-in of the requirements for covered contracts as follows:

- *Contracts awarded prior to October 15 where performance is ongoing* – the requirements must be incorporated at the point at which an option is exercised or an extension is made.
- *New contracts* – the requirements must be incorporated into contracts awarded on or after November 14. Between October 15 and November 14, agencies must include the clause in the solicitation and are encouraged to include the clause in contracts awarded during this time period but are not required to do so unless the solicitation for such contract was issued on or after October 15.

Q13: Must the order’s requirements be flowed down to all lower-tier subcontractors and, if so, who is responsible for flowing the clause down?

A: Yes. The requirements in the order apply to subcontractors at all tiers, 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 subcontractor, to the point at which subcontract requirements are solely for the provision of products.

Q14: Does the Guidance apply to small businesses?

A: Yes, the requirement to comply with this Guidance applies equally to covered contractors regardless of whether they are a small business. This broad application of COVID-19 guidance will more effectively decrease the spread of COVID-19, which, in turn, will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at workplaces where they are performing work for the Federal Government.

Q15: What steps are being taken to promote consistent application of the order’s requirements across agencies?

A: The FAR Council will conduct a rulemaking to amend the FAR to include a clause that requires covered contractors performing under FAR-based contracts to comply with this Guidance for contractor and subcontractor workplace locations. Prior to rulemaking, by October 8, 2021, the FAR Council will develop a clause and recommend that agencies exercise their authority to deviate from the FAR using the procedures set forth in subpart 1.4. Agencies responsible for contracts and contract-like instruments that are not subject to the FAR, such as concession contracts, will be responsible for developing appropriate guidance by October 8, 2021 to incorporate requirements into their covered instruments entered into on or after October 15, 2021.

Q16: If the Safer Federal Workforce Task Force updates this Guidance to add new requirements, do those requirements apply to existing contracts?

A: Yes. Covered contractors are required to, for the duration of the contract, comply with all Task Force Guidance for contractor or subcontractor workplace locations, including any new

Guidance where the OMB Director approves the Guidance and determines that adherence to the Guidance will promote economy and efficiency in Federal contracting. The Task Force and OMB plan to ensure any workplace safety protocols reflect what is necessary to decrease the spread of COVID-19.

Q17: What constitutes work performed “in connection with” a covered contract?

A: Employees who perform duties necessary to the performance of the covered contract, but who are not directly engaged in performing the specific work called for by the covered contract, such as human resources, billing, and legal review, perform work in connection with a Federal Government contract.

Q18: Do the workplace safety protocols in the Guidance apply to covered contractor employees who perform work outside the United States?

A: No. The workplace safety protocols in the Guidance do not apply to covered contractor employees who only perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the FAR.

Compliance

Q19: Does this clause apply in States or localities that seek to prohibit compliance with any of the workplace safety protocols set forth in this Guidance?

A: Yes. These requirements are promulgated pursuant to Federal law and supersede any contrary State or local law or ordinance. Additionally, nothing in this Guidance shall excuse noncompliance with any applicable State law or municipal ordinance establishing more protective workplace safety protocols than those established under this Guidance.

Q20: Can a covered contractor comply with workplace safety requirements from the Occupational Safety and Health Administration, including pursuant to any current or forthcoming Emergency Temporary Standard related to COVID-19, instead of the requirements of this Guidance?

A: No. Covered contractors must comply with the requirements set forth in this Guidance regardless of whether they are subject to other workplace safety standards.

Q21: What is the prime contractor’s responsibility for verifying that subcontractors are adhering to the mandate?

A: The prime contractor is responsible for ensuring that the required clause is incorporated into its first-tier subcontracts in accordance with the implementation schedule set forth in section 6 of the order. When the clause is incorporated into a subcontract, a subcontractor is required to

comply with this Guidance and the workplace safety protocols detailed herein. Additionally, first-tier subcontractors are expected to flow the clause down to their lower-tier subcontractors in similar fashion so that accountability for compliance is fully established throughout the Federal contract supply chain for covered subcontractor employees and workplaces at all tiers through application of the clause.

EXHIBIT

E

proposed information request may be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 29, 2021.

ADDRESSES: You may submit comments identified by Control Number 1235–0024, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Wage and Hour Division (WHD) of the Department of Labor administers the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* Section 3(l) of the Act establishes a minimum age of 16 years for most non-agricultural employment, but allows the employment of 14- and 15-year olds in occupations other than manufacturing and mining if the Secretary of Labor determines such employment is confined to: (1) Periods

that will not interfere with the minor's schooling; and (2) conditions that will not interfere with the minor's health and well-being. FLSA section 11(c) requires all covered employers to make, keep, and preserve records of their employees' wages, hours, and other conditions of employment. Section 11(c) authorizes the Secretary of Labor to prescribe the recordkeeping and reporting requirements for these records. The regulations set forth reporting requirements that include a Work Study Program application and written participation agreement. In order to use the child labor work study provisions, § 570.37(b) requires a local public or private school system to file with the Wage and Hour Division Administrator an application for approval of a Work Study Program as one that does not interfere with the schooling or health and well-being of the minors involved. The regulations also require preparation of a written participation agreement for each student participating in a Work Study Program and that the teacher-coordinator, employer, and student each sign the agreement.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval for an extension of this information collection in order to ensure effective administration of Work Study programs.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Work Study Program of the Child Labor Regulations.

OMB Control Number: 1235–0024.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms,

Federal, State, Local, or Tribal Government.

Total Respondents: WSP

Applications: 10; Written Participation Agreements: 500.

Total Annual Responses: WSP

Applications: 10.

Written Participation Agreements:

1,000.

Estimated Total Burden Hours: 1,529.

Estimated Time per Response: WSP

Application: 121 minutes; Written Participation Agreements: 31 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0.

Dated: September 20, 2021.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2021–20956 Filed 9–27–21; 8:45 am]

BILLING CODE 4510–27–P

OFFICE OF MANAGEMENT AND BUDGET

Determination of the Promotion of Economy and Efficiency in Federal Contracting Pursuant to Executive Order No. 14042

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of determination.

SUMMARY: The Director of the Office of Management and Budget determines that compliance by Federal contractors and subcontractors with the COVID–19 workplace safety protocols detailed in the Safer Federal Workforce Task Force guidance issued on September 24, 2021 will improve economy and efficiency by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract.

DATES: September 24, 2021.

ADDRESSES: The Safer Federal Workforce Task Force Guidance for Federal Contractors and Subcontractors on COVID–19 Workplace Safety is available at: <https://www.saferfederalworkforce.gov/new/>.

FOR FURTHER INFORMATION CONTACT: Cristin Dorgelo, 725 17th Street N, Email address: Cristin.a.dorgelo@omb.eop.gov, telephone number: (202) 456–4066. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: As explained in Executive Order No. 14042

on *Ensuring Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors*, compliance with COVID-19-related safety protocols improves economy and efficiency by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract. Section 2(c) of E.O. 14042 requires that, before Federal contractors and subcontractors must adhere to any guidance from the Safer Federal Workforce Task Force pursuant to Executive Order No. 14042, the Director of the Office of Management and Budget must determine that such guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. Based on my review of the Safer Federal Workforce Task Force's COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors, scheduled for issuance on September 24, 2021, and exercising the President's authority under the Federal Property and Administrative Services Act (see 3 U.S.C. 3011) delegated to me through Executive Order No. 14042, I have determined that compliance by Federal contractors and subcontractors with the COVID-19-workplace safety protocols detailed in that guidance will improve economy and efficiency by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract.

Shalanda Young,

Acting Director, Office of Management and Budget.

[FR Doc. 2021-21184 Filed 9-24-21; 4:15 pm]

BILLING CODE 3110-01-P

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of senior executive service performance review board.

SUMMARY: This notice announces the membership of the National Capital Planning Commission Senior Executive Service Performance Review Board in accordance with section 4314(c) of Title 5, U.S.C. and 5 CFR 430.311.

FOR FURTHER INFORMATION CONTACT:

Debra L. Dickson, Director of Administration, National Capital

Planning Commission, 401 Ninth Street NW, Suite 500, Washington, DC 20004, (202) 482-7229.

SUPPLEMENTARY INFORMATION: The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission from October 1, 2021, to September 30, 2023: Paige Cottingham-Streater, Executive Director, Japan U.S. Friendship Commission; John Farrell, Executive Director, U.S. Arctic Research Commission; and Christopher J. Roscetti, Technical Director, Defense Nuclear Facilities Safety Board.

Dated: September 22, 2021.

Debra L. Dickson,

Director of Administration, National Capital Planning Commission.

[FR Doc. 2021-20961 Filed 9-27-21; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA 2021-0102]

RIN 3133-AF39

Request for Information and Comment on Digital Assets and Related Technologies

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for information and comment; extension of comment period.

SUMMARY: On July 27, 2021, the NCUA Board (Board) published in the **Federal Register** a document entitled "Request for Information and Comment on Digital Assets and Related Technologies" (RFI) and invited comments from interested parties regarding the current and potential impact of activities connected to digital assets and related technologies on federally insured credit unions (FICUs), related entities, and the NCUA. The Board noted that it was broadly interested in receiving input on commenters' views in this area, including current and potential uses in the credit union system, and the risks associated with them. To allow interested persons more time to consider and submit their comments, the Board has decided to extend the comment period for an additional 30 days.

DATES: The comment period for the RFI published July 27, 2021, at 86 FR 40213, is extended. Responses to the RFI must now be received on or before October 27, 2021.

ADDRESSES: You may submit comments by any one of the following methods

(Please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments for NCUA Docket 2021-0102.

- **Fax:** (703) 518-6319. Include "[Your name] Comments on 'Request for Information and Comment on Digital Assets and Related Technologies.'"

- **Mail:** Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- **Hand Delivery/Courier:** Same as mailing address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Policy and Analysis: Scott Borger, Senior Financial Modeler and Todd Sims, National Payment Systems Officer, Office of National Examinations and Supervision, (703) 518-6640; **Legal:** Thomas Zells, Senior Staff Attorney, Office of General Counsel, (703) 518-6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: On July 27, 2021, the Board published in the **Federal Register** an RFI inviting comments from interested parties regarding the current and potential impact of activities connected to digital assets and related technologies on FICUs, related entities, and the NCUA.¹ The Board published the RFI with the aim of engaging the broad credit union industry and other stakeholders and learning how emerging DLT and DeFi applications are viewed and used. The RFI emphasized that the NCUA hopes to learn how the credit union community is using these emerging technologies and gain additional feedback as to the role the NCUA can play in safeguarding the financial system and consumers in the context of these emerging technologies. In order to continue to

¹ 86 FR 40213 (July 27, 2021).

EXHIBIT

F

September 30, 2021

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES
DEFENSE ACQUISITION REGULATIONS COUNCIL
CIVILIAN AGENCY ACQUISITION COUNCIL

FROM:

Lesley A. Field LESLEY FIELD Digitally signed by LESLEY FIELD
Date: 2021.09.30 16:48:42 -04'00'
Acting Administrator
for Federal Procurement Policy
Office of Management and Budget

John M. Tenaglia TENAGLIA.JOHN.M.115494592
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Digitally signed by
TENAGLIA.JOHN.M.1154945926
Date: 2021.09.30 17:04:52 -04'00'
Principal Director, Defense Pricing and Contracting
Department of Defense

Jeffrey A. Koses DocuSigned by:
Jeffrey A. Koses
21BD80B9E8AC4A0...
Senior Procurement Executive &
Deputy Chief Acquisition Officer
Office of Acquisition Policy
General Services Administration

Karla Smith Jackson Karla Jackson Digitally signed by Karla Jackson
Date: 2021.09.30 16:53:01 -04'00'
Senior Procurement Executive
Assistant Administrator for Procurement
National Aeronautics and Space Administration

SUBJECT: Issuance of Agency Deviations to Implement Executive Order 14042

The purpose of this memorandum is to provide agencies that award contracts under the Federal Acquisition Regulation (FAR) with initial direction for the incorporation of a clause into their solicitations and contracts to implement guidance issued by the Safer Federal Workforce Task Force (Task Force) pursuant to [Executive Order 14042](#) ("the order").

Background

The order directs agencies to ensure that the parties that contract with the Federal Government provide adequate COVID-19 safeguards to their workers performing on or in connection with the contract to decrease the spread of COVID-19, reduce worker absence, lower labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work.

On September 24, 2021, the Task Force issued guidance to implement the order, [COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors](#). The Task Force guidance requires:

- All covered contractor employees to be fully vaccinated for COVID-19 by December 8, 2021, except in limited circumstances where an employee is legally entitled to an accommodation;
- All individuals, including covered contractor employees and visitors, to comply with published Centers for Disease Control and Prevention guidance for masking and physical distancing at a covered contractor workplace, as discussed in the Task Force guidance; and
- Covered contractors to designate a person or persons to coordinate implementation of and compliance with the Task Force guidance and the required workplace safety protocols at covered contractor workplaces.

Section 3(a) of the order directs the Federal Acquisition Regulatory Council (FAR Council) to develop a contract clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations published by the Task Force and to provide initial policy direction to acquisition offices for use of the clause by recommending that agencies exercise their authority under FAR subpart 1.4., Deviations from the FAR.

Guidance

The FAR Council has developed the attached clause pursuant to section 3(a) of the order to support agencies in meeting the applicability requirements and deadlines set forth in the order. Contracting officers should follow the direction for use of the clause set forth in the deviations issued by their respective agencies.

Agencies are reminded of the following points as they develop and issue their deviations:

1. Applicability and effective dates. In accordance with section 5 of the order, agencies are required to include an implementing clause in solicitations and contracts for services, including construction, in accordance with the following dates specified in section 6 of the order:

- new contracts awarded on or after November 14 from solicitations issued before October 15 (this includes new orders awarded on or after November 14 from solicitations issued before October 15 under existing indefinite-delivery contracts);
- new solicitations issued on or after October 15 and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or after October 15 for orders awarded pursuant to those solicitations under existing indefinite-delivery contracts);
- extensions or renewals of existing contracts and orders awarded on or after October 15, 2021; and
- options on existing contracts and orders exercised on or after October 15, 2021.

To maximize the goal of getting more people vaccinated and decrease the spread of COVID-19, the Task Force strongly encourages agencies to apply the requirements of its guidance broadly, consistent with applicable law, by including the clause in:

- contracts that have been or will be awarded prior to November 14 on solicitations issued before October 15; and
- contracts that are not covered or directly addressed by the order because the contract or subcontract is under the simplified acquisition threshold or is a contract or subcontract for the manufacturing of products.

2. Exclusions. The clause shall not be applied to:

- contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act (the exclusion would not apply to a procurement contract or subcontract under the FAR to an Indian-owned or tribally-owned business entity); or
- solicitations and contracts if performance is outside the United States or its outlying areas (the exclusion is limited to employees who are performing work only outside the U.S. or its outlying areas).

3. Timing of deviations. Agencies should act expeditiously to issue their deviations so that their contracting officers may begin to apply the clause on or before October 15, as explained above. Agencies should review, and update as necessary, any relevant guidance previously provided to contractors to ensure consistency with the deviated FAR text.

4. Civilian agency coordination of deviations. Civilian agencies that adopt the attached clause language without change in their deviations will be presumed to have consulted with the Chair of the Civilian Agency Acquisition Council (CAAC) required by FAR 1.404(a)(1). However, if a civilian agency intends to use clause text different than the deviated clause text provided, the agency must consult with the CAAC Chair, William Clark, who will consult with OMB and the Task Force to ensure consistency with Administration policy. Any such request must be emailed to william.clark@gsa.gov.

Once processed, agencies are requested to share the deviation widely among their workforces to ensure full awareness of, and compliance with, the order.

Civilian agencies should furnish a copy of their approved class deviations (including direction to the workforce, prescription for use of clause, and clause text) to the FAR Secretariat, General Services Administration, by emailing the deviation to GSARegSec@gsa.gov. Agencies must submit their class deviations no later than October 15, 2021.

5. Length of deviation. The FAR Council has opened a case (FAR Case 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors) to make appropriate amendments in the FAR to reflect the requirements of the order. Agencies are encouraged to make their deviations effective until the FAR is amended or the deviation is otherwise rescinded by the agency.

Attachment

FAR Deviation Clause

Executive Order 14042

Ensuring Adequate COVID Safety Protocols for Federal Contractors

Baseline is FAC 2021-07, published in the Federal Register on August 11, 2021.

September 24, 2021

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

[52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

(a) *Definition.* As used in this clause -

***United States or its outlying areas* means—**

- (1) The fifty States;**
- (2) The District of Columbia;**
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;**
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands;**
and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.**

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at

<https://www.saferfederalworkforce.gov/contractors/>

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)]

EXHIBIT G

Safer Federal Workforce Task Force
COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors
Updated November 10, 2021

Introduction

On September 9, President Biden announced his [Path Out of the Pandemic: COVID-19 Action Plan](#). One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, [Ensuring Adequate COVID Safety Protocols for Federal Contractors](#), (“the order”) which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause (“the clause”) that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Task Force”), provided that the Director of the Office of Management and Budget (“OMB”) approves the Task Force Guidance (the or this “Guidance”) and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance. The Director of OMB has, as authorized by Executive Order 14042, approved this Guidance and has, an exercise of the delegation of authority (see 3 U.S.C. § 301) under the Federal Property and Administrative Services Act determined that this Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. The Director has published such determination in the Federal Register.

Definitions

Community transmission – means the level of community transmission as set forth in the [CDC COVID-19 Data Tracker County View](#).

Contract and contract-like instrument – has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” [86 Fed. Reg. 38,816, 38,887](#) (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location – means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract – means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor – means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee – means 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.

Covered contractor workplace – means a location controlled by a covered contractor at which 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 for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace – means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated – 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. There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will be considered by the Task Force and OMB for possible updating of this Guidance.

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., AstraZeneca/Oxford). More information is available at [Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC](#).

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website [here](#).

Mask – means any mask that is consistent with CDC recommendations as set forth in [Types of Masks and Respirators | CDC](#). This may include the following: disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

Guidance

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products. Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

1. Vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than January 18, 2022. After that 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 the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that 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. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have 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 agency head may approve an exception for the covered contractor—in the case of such limited exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their employer with one of the following documents: a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), 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 verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements related to masking and physical distancing while in covered contractor workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC's guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).

- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a [workplace risk assessment](#). Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the [CDC COVID-19 Data Tracker County View website](#) for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols. When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

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

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may comprise some or all of their regular duties.

The designated individual (or individuals) 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 in this guidance related to the showing or provision of proper vaccination documentation.

Frequently Asked Questions

Frequently Asked Questions regarding this Guidance can be found here:

<https://www.saferfederalworkforce.gov/faq/contractors/>

All Task Force Guidance, FAQs, and additional information for Federal contractors and subcontractors can be found here:

<https://www.saferfederalworkforce.gov/contractors/>

EXHIBIT

H

Federal Contractors

Vaccination and Safety Protocols

Q: How do covered contractors determine vaccination status of visitors to covered contractor workplaces?

A: Covered contractors should post signage at entrances to covered contractor workplaces providing information on safety protocols for fully vaccinated and not fully vaccinated individuals, including the protocols defined in the masking and physical distancing section in the Task Force's [Guidance for Federal Contractors and Subcontractors](#), and instruct individuals to follow the appropriate workplace safety protocols while at the covered contractor workplace. Covered contractors may take other reasonable steps, such as by communicating workplace safety protocols to visitors prior to their arrival at a covered contractor workplace or requiring all visitors to follow masking and physical distancing protocols for not fully vaccinated individuals.

Q: Is there sample signage that a covered contractor can post at entrances to covered contractor workplaces providing information on safety protocols?

A: Yes. Covered contractors should post signage at entrances to covered contractor workplaces providing information on safety protocols for fully vaccinated and not fully vaccinated individuals and instruct individuals to follow the appropriate workplace safety protocols while at the covered contractor workplace. Sample signage for areas of high or substantial levels of community transmission can be found [here](#). Sample signage for areas of low or moderate levels of community transmission can be found [here](#).

Q: Do covered contractors need to provide onsite vaccinations to their employees?

A: Covered contractors should ensure their employees are aware of [convenient opportunities to be vaccinated](#). Although covered contractors may choose to provide vaccinations at their facilities or workplaces, given the widespread availability of vaccinations, covered contractors

are not required to do so.

Q: If a covered contractor can access a covered contractor employee's vaccination documentation, consistent with relevant privacy laws, does the covered contractor need to require the employee to show or provide documentation?

A: No. If, consistent with all relevant privacy laws, a covered contractor can access its employee's vaccination documentation directly, such as when the contractor previously requested the employee to provide vaccination documentation, has existing documentation from an employee vaccination program, or can access information through a State's immunization database, the covered contractor does not need to require its employee to show or provide documentation.

Q: What should a contractor employee do if a covered contractor employee has lost or does not have a copy of required vaccination documentation?

A: If covered contractor employees need new vaccination cards or copies of other documentation proof of vaccination, they should contact the vaccination provider site where they received their vaccine. Their provider should be able to provide them with new cards or documentation with up-to-date information about the vaccinations they have received. If the location where the covered contractor employees received their COVID-19 vaccine is no longer operating, the covered contractor employees should contact their State or local health department's [immunization information system \(IIS\)](#) for assistance. Covered contractor employees should [contact their State or local health department](#) if they have additional questions about vaccination cards or vaccination records.

An attestation of vaccination by the covered contractor employee is not an acceptable substitute for documentation of proof of vaccination.

Q: Who is responsible for determining if a covered contractor employee must be provided an accommodation because of a disability or because of a sincerely held religious belief, practice, or observance?

A: A covered contractor may be required to provide an accommodation to contractor employees who communicate to the covered contractor that they are not vaccinated for COVID-19, or that they cannot wear a mask, because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer. The contractor is responsible for considering, and dispositioning, such requests for accommodations regardless of the covered contractor employee's place of performance. If

the agency that is the party to the covered contract is a “joint employer” for purposes of compliance with the Rehabilitation Act and Title VII of the Civil Rights Act, both the agency and the covered contractor should review and consider what, if any, accommodation they must offer.

Q: Do all requests for accommodation need to be resolved by the covered contractor by the time that covered contractor employees begin work on a covered contract or at a covered workplace?

A: No. The covered contractor may still be reviewing requests for accommodation as of the time that covered contractor employees begin work on a covered contract or at a covered workplace. While accommodation requests are pending, the covered contractor must require a covered contractor employee with a pending accommodation request to follow workplace safety protocols for individuals who are not fully vaccinated as specified in the Task Force [Guidance for Federal Contractors and Subcontractors](#).

Q: When a covered contractor employee is not vaccinated because a covered contractor has provided the employee with an accommodation, what workplace safety protocols must the employee follow while in a Federal workplace?

A: The Federal agency will determine the workplace safety protocols that individuals who are not fully vaccinated must follow while in a Federal workplace. As noted in Task Force [guidance](#), in most circumstances individuals who are not fully vaccinated need to follow applicable masking, physical distancing, and testing protocols. However, there may be circumstances in which an agency determines that the nature of a covered contractor employee’s job responsibilities at a Federal workplace, or the location of their work at a Federal workplace, requires heightened safety protocols. Further, in some cases, an agency may determine that the nature of a covered contractor employee’s responsibilities at a Federal workplace are such that no safety protocol other than vaccination is adequate—in that case, covered contractor employees who are not fully vaccinated would be unable to perform the requisite work at the Federal workplace. Such circumstances do not relieve the contractor from meeting all contractual requirements.

In order for agencies to assess appropriate safety measures for contractor employees in Federal workplaces, contractors subject to a contractual requirement for maintaining COVID-19 workplace safety protocols pursuant to Executive Order 14042 should generally notify their contracting officers when one of their employees who works onsite at a Federal workplace has received an exception to the requirement to be fully vaccinated.

Q: If a covered contractor employee requests an accommodation, and that

accommodation is denied by the covered contractor, how long should the contractor employee be afforded to be fully vaccinated?

A: Covered contractors should establish a timeline for a covered contractor employee whose request for an accommodation is denied to promptly become fully vaccinated.

Q: Can a covered contractor grant a covered contractor employee an extension to the deadline for vaccination due to a documented medical necessity even if the contractor employee does not meet the legal definition of “disability” to be entitled to an accommodation?

A: Even in cases where the covered contractor employee does not meet the legal definition of “disability” to be entitled to an accommodation under the Rehabilitation Act, in some limited circumstances a covered contractor may grant the contractor employee an extension to a vaccination deadline based upon other medical considerations. For example, as explained in a separate FAQ, the CDC [recommends](#) delaying COVID-19 vaccination for at least 90 days after receiving monoclonal antibodies or convalescent plasma for COVID-19 treatment. Covered contractors that receive documented medical reasons that may not qualify as a disability but that necessitate a delay in vaccination can grant a covered contractor employee an extension, but covered contractors should specify, consistent with the nature of the medical necessity, by what date the contractor employee must be fully vaccinated.

Covered contractors should take note that an individual’s medical need should be considered on a case-by-case basis, including any medical evaluation that addresses the individual’s particular circumstance.

Q: What medical conditions does the CDC consider a contraindication to vaccination with COVID-19 vaccines?

A: The CDC considers a history of the following medical conditions to be [contraindications](#) to vaccination with COVID-19 vaccines:

- Severe allergic reaction (e.g., anaphylaxis) after a previous dose or to a component of the COVID-19 vaccine; and
- Immediate allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of the COVID-19 vaccine.

If an individual is allergic to a component of one or more COVID-19 vaccines, that individual may not be allergic to components in all COVID-19 vaccines.

Q: Are there circumstances that the CDC recommends delaying vaccination for

COVID-19?

A: Yes. In the following circumstances, the CDC [recommends](#) delaying vaccination for COVID-19 for adults:

- Vaccination of people with known current SARS-CoV-2 infection should be delayed until the person has recovered from the acute illness (if the person had symptoms), and they have met [criteria](#) to discontinue isolation.
- People with a history of multisystem inflammatory syndrome in adults (MIS-A) should consider delaying vaccination until they have recovered from their illness and for 90 days after the date of diagnosis of MIS-A.
- Vaccination should be delayed for 90 days after receiving monoclonal antibodies or convalescent plasma for COVID-19 treatment.
- Whenever possible, mRNA COVID-19 vaccination doses (including the primary series and an additional dose) or the single dose Johnson and Johnson (J&J)/Janssen vaccine should be completed at least two weeks before initiation or resumption of immunosuppressive therapies, but timing of COVID-19 vaccination should take into consideration current or planned immunosuppressive therapies and optimization of both the patient's medical condition and response to vaccine. A patient's clinical team is best positioned to determine the degree of immune compromise and appropriate timing of vaccination.
- People who develop myocarditis or pericarditis after a dose of an mRNA COVID-19 vaccine should delay receiving a subsequent dose. People who choose to receive a subsequent dose should wait until myocarditis has completely resolved.
- People who have a history of myocarditis or pericarditis unrelated to mRNA COVID-19 vaccination may receive any currently FDA-approved or FDA-authorized COVID-19 vaccine after the episode of myocarditis or pericarditis has completely resolved. This includes resolution of symptoms attributed to myocarditis or pericarditis, as well as no evidence of ongoing heart inflammation or sequelae as determined by the person's clinical team, which may include a cardiologist, and special testing to assess cardiac recovery.

This is not an exhaustive list of the circumstances in which clinical considerations may recommend in favor of delaying vaccination.

In circumstances in which delay pursuant to these clinical considerations means that a covered contractor employee is not fully vaccinated as of the vaccination requirement implementation date of January 18, 2022 or at the time that covered contractor employees begin work on a covered contract or at a covered workplace, the covered contractor should

require that individual to become fully vaccinated promptly after clinical considerations no longer recommend delay.

During the period in which vaccination is delayed, a covered contractor employee must follow applicable masking and physical distancing protocols for not fully vaccinated individuals. There may be circumstances in which an agency determines that the nature of a covered contractor employee's job responsibilities at a Federal workplace, or the location of their work at a Federal workplace, requires heightened safety protocols. In some cases, an agency may determine that the nature of a covered contractor employee's responsibilities at a Federal workplace are such that no safety protocol other than vaccination is adequate—in that case, covered contractor employees who are not fully vaccinated would be unable to perform the requisite work at the Federal workplace. Such circumstances do not relieve the contractor from meeting all contractual requirements.

Q: Is vaccination for COVID-19 recommended for people who are trying to get pregnant or might become pregnant in the future?

A: Yes. The CDC has [stated](#) that COVID-19 vaccination is recommended for people who are trying to get pregnant now or might become pregnant in the future, as well as their partners.

Q: Does the CDC recommend that an individual delay vaccination due to pregnancy?

A: The CDC recommends COVID-19 vaccination for [people who are pregnant, breastfeeding, trying to become pregnant now, or trying to become pregnant in the future](#). The American College of Obstetricians and Gynecologists and Society for Maternal-Fetal Medicine [recommend](#) that all pregnant individuals be vaccinated against COVID-19. However, a covered contractor may allow a covered contractor employee to delay vaccination based on the contractor employee's particular medical circumstances, consistent with the covered contractor's process for reviewing delay requests.

Q: Can a covered contractor employee delay a COVID-19 vaccine because they have recently received another vaccine, such as the seasonal influenza vaccine?

A: COVID-19 vaccines may be administered without regard to timing of other vaccines. This includes simultaneous administration of COVID-19 vaccine and other vaccines on the same day.

Q: Can a covered contractor employee who participates in a clinical trial for a COVID-19 vaccine be considered fully vaccinated?

A: Clinical trial participants from a U.S. site who are documented to have received the full

series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated 2 weeks after they have completed the vaccine series. Currently, the U.S.-based AstraZeneca and Novavax COVID-19 vaccines meet these criteria. More information is available [here](#).

Q: Can a covered contractor employee who has received a heterologous primary vaccine series be considered fully vaccinated?

A: Individuals can be considered fully vaccinated ≥ 2 weeks after receipt of the last dose if they have received any combination of two doses of an FDA approved or authorized or WHO emergency use listed COVID-19 two-dose series. For these purposes, the second dose in a two dose heterologous series must have been received no earlier than 17 days (21 days with a 4-day grace period) after the first dose.

Q: Are covered contractor employees who have a prior COVID-19 infection required to be vaccinated?

A: Yes, covered contractor employees who have had a prior COVID-19 infection are required to be vaccinated. More information from CDC can be found [here](#).

Q: Can a covered contractor accept a recent antibody test from a covered contractor employee to prove vaccination status?

A: No. A covered contractor cannot accept a recent antibody test from a covered contractor employee to prove vaccination status.

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Q: Does the Task Force [Guidance for Federal Contractors and Subcontractors](#) apply to outdoor contractor or subcontractor workplace locations?

A: Yes, the Task Force Guidance applies to contractor or subcontractor workplace locations that are outdoors.

Q: If a covered contractor employee is likely to be present during the period of performance for a covered contract on only one floor or a separate area of a building, site, or facility controlled by a covered contractor, do other areas of the building, site, or facility controlled by a covered contractor constitute a covered contractor workplace?

A: Yes, unless a covered contractor can affirmatively determine that none of its employees on another floor or in separate areas of the building will come into contact with a covered contractor employee during the period of performance of a covered contract. This would include affirmatively determining that there will 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.

Q: If a covered contractor employee performs their duties in or at only one building, site, or facility on a campus controlled by a covered contractor with multiple buildings, sites, or facilities, are the other buildings, sites, or facility controlled by a covered contractor considered a covered contractor workplace?

A: 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. This would include affirmatively determining that there will 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.

UPDATED **Q: Are the workplace safety protocols enumerated in the Task Force [Guidance for Federal Contractors and Subcontractors](#) the same irrespective of whether the work is performed at a covered contractor workplace or at a Federal workplace?**

A: Yes. The Task Force Guidance applies to all covered contractor employees and to all contractor or subcontractor workplace locations. While at a Federal workplace, covered contractor employees must also comply with any additional agency workplace safety requirements for that workplace. Because covered contractor employees working on a covered contract need to be fully vaccinated after January 18, 2022, covered contractor employees who work only at a Federal workplace need to be fully vaccinated by that date as well, unless legally entitled to an accommodation.

Q: How does the Task Force [Guidance for Federal Contractors and Subcontractors](#) apply to covered contractor employees who are authorized under the covered contract to perform work remotely from their residence?

A: An individual working on a covered contract from their residence is a covered contractor employee, and must comply with the vaccination requirement for covered contractor employees, even if the employee never works at either a covered contractor workplace or Federal workplace during the performance of the contract. A covered contractor employee's residence is not a covered contractor workplace, so while in the residence the individual need not comply with requirements for covered contractor workplaces, including those related to masking and physical distancing, even while working on a covered contract.

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Q: By when must the requirements of [Executive Order 14042](#) be reflected in contracts?

A: Section 6 of the order lays out a phase-in of the requirements for covered contracts as follows:

- Contracts awarded prior to October 15 where performance is ongoing – the requirements must be incorporated at the point at which an option is exercised or an extension is made.
- New contracts – the requirements must be incorporated into contracts awarded on or after November 14. Between October 15 and November 14, agencies must include the clause in the solicitation and are encouraged to include the clause in contracts awarded during this time period but are not required to do so unless the solicitation for such contract was issued on or after October 15.

Q: Must the requirements of [Executive Order 14042](#) be flowed down to all lower-tier subcontractors and, if so, who is responsible for flowing the clause down?

A: Yes. The requirements in the order apply to subcontractors at all tiers, 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 subcontractor, to the point at which subcontract requirements are solely for the provision of products.

Q: Does the Task Force [Guidance for Federal Contractors and Subcontractors](#) apply to small businesses?

A: Yes, the requirement to comply with the Task Force Guidance applies equally to covered contractors regardless of whether they are a small business. This broad application of COVID-19 guidance will more effectively decrease the spread of COVID-19, which, in turn, will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at workplaces where they are performing work for the Federal Government.

Q: What steps are being taken to promote consistent application of the requirements of [Executive Order 14042](#) across agencies?

A: The FAR Council will conduct a rulemaking to amend the FAR to include a clause that requires covered contractors performing under FAR-based contracts to comply with the Task Force [guidance](#) for contractor and subcontractor workplace locations. Prior to rulemaking, the FAR Council has developed a clause and recommended that agencies exercise their authority to deviate from the FAR using the procedures set forth in subpart 1.4. Agencies responsible for contracts and contract-like instruments that are not subject to the FAR, such as concession contracts, will be responsible for developing appropriate guidance by October 8, 2021 to incorporate requirements into their covered instruments entered into on or after October 15, 2021.

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

A: Yes. Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with the Task Force [Guidance for Federal Contractors and Subcontractors](#) into contracts that are not covered or directly addressed by [Executive Order 14042](#) because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products. Agencies are also strongly encouraged to incorporate a clause requiring compliance with the Task Force Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

Q: If the Safer Federal Workforce Task Force updates its [Guidance for Federal Contractors and Subcontractors](#) to add new requirements, do those requirements apply to existing contracts?

A: Yes. Covered contractors are required to, for the duration of the contract, comply with all Task Force Guidance for contractor or subcontractor workplace locations, including any new Guidance where the OMB Director approves the Guidance and determines that adherence to the Guidance will promote economy and efficiency in Federal contracting. The Task Force and OMB plan to ensure any workplace safety protocols reflect what is necessary to decrease the spread of COVID-19.

Q: What constitutes work performed “in connection with” a covered contract?

A: Employees who perform duties necessary to the performance of the covered contract, but who are not directly engaged in performing the specific work called for by the covered contract, such as human resources, billing, and legal review, perform work in connection with a Federal Government contract.

Q: Do the workplace safety protocols in the Task Force [Guidance for Federal Contractors and Subcontractors](#) apply to covered contractor employees who perform work outside the United States?

A: No. The workplace safety protocols in the Task Force Guidance do not apply to covered contractor employees who only perform work outside the United States or its outlying areas, as those terms are defined in section 2.101 of the FAR.

Q: If a corporate affiliate of a covered contractor does not otherwise qualify as a covered contractor, are the employees of that affiliate considered covered contractor employees subject to COVID-19 workplace safety protocols for Federal contractors established through Task Force Guidance?

A: For purposes of Task Force Guidance, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (i) either one controls or has the power to control the other; or (ii) a third party controls or has the power to control both.

Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, or common use of employees.

An employee of a corporate affiliate of a covered contractor is considered a covered contractor employee if the employee performs work at a covered contractor workplace.

Q: If the workplace where a covered contractor’s employees perform work on or in connection with a covered contract is a location owned, leased, or otherwise

controlled by a corporate affiliate of a covered contractor that does not otherwise qualify as a covered contractor under Task Force guidance, is the workplace considered a covered contractor workplace?

A: For purposes of Task Force Guidance, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (i) either one controls or has the power to control the other; or (ii) a third party controls or has the power to control both.

Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, or common use of employees.

If 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 for a covered contract at a workplace controlled by a corporate affiliate of that covered contractor, that workplace is considered a covered contractor workplace.

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Q: What steps should a covered contractor take if a covered contractor employee refuses to be vaccinated?

A: A covered contractor should determine the appropriate means of enforcement with respect to its employee at a covered contractor workplace who refuses to be vaccinated and has not been provided, or does not have a pending request for, an accommodation. This may include the covered contractor using its usual processes for enforcement of workplace policies, such as those addressed in the contractor's employee handbook or collective bargaining agreements.

One model for enforcement among employees with respect to non-compliance with a vaccination requirement is that being followed by Federal agencies. Guidance for Federal agencies is to utilize an enforcement policy that encourages compliance, including through a limited period of counseling and education, followed by additional disciplinary measures if necessary. Removal occurs only after continued noncompliance. Guidance for Federal agencies is that employees should not be placed on administrative leave while the agency is pursuing an adverse action for refusal to be vaccinated but will be required to follow safety protocols for employees who are not fully vaccinated when reporting to agency worksites.

During the time period of enforcement, the covered contractor must ensure the covered

contractor employee at a covered contractor workplace is following all workplace safety protocols for individuals who are not fully vaccinated.

An agency may determine that a covered contractor employee who refuses to be vaccinated in accordance with a contractual requirement pursuant to EO 14042 will be denied entry to a Federal workplace, consistent with the agency's workplace safety protocols.

Q: What steps should an agency take if a covered contractor does not comply with the requirements in the Task Force's [Guidance for Federal Contractors and Subcontractors](#)?

A: Covered contractors are expected to comply with all requirements set forth in their contract. Where covered contractors are working in good faith and encounter challenges with compliance with COVID-19 workplace safety protocols, the agency contracting officer should work with them to address these challenges. If a covered contractor is not taking steps to comply, significant actions, such as termination of the contract, should be taken.

Q: Does this clause apply in States or localities that seek to prohibit compliance with any of the workplace safety protocols set forth in the Task Force [Guidance for Federal Contractors and Subcontractors](#)?

A: Yes. These requirements are promulgated pursuant to Federal law and supersede any contrary State or local law or ordinance. Additionally, nothing in the Task Force Guidance shall excuse noncompliance with any applicable State law or municipal ordinance establishing more protective workplace safety protocols than those established under the Task Force Guidance.

Q: Can a covered contractor comply with workplace safety requirements from the Occupational Safety and Health Administration, including pursuant to any current or forthcoming Emergency Temporary Standard related to COVID-19, instead of the requirements of the Task Force [Guidance for Federal Contractors and Subcontractors](#)?

A: No. Covered contractors must comply with the requirements set forth in the Task Force Guidance regardless of whether they are subject to other workplace safety standards.

Q: What is the prime contractor's responsibility for verifying that subcontractors are adhering to the mandate?

A: The prime contractor is responsible for ensuring that the required clause is incorporated into its first-tier subcontracts in accordance with the implementation schedule set forth in section 6 of [Executive Order 14042](#). When the clause is incorporated into a subcontract, a

subcontractor is required to comply with the Task Force [Guidance for Federal Contractors and Subcontractors](#) and the workplace safety protocols detailed herein. Additionally, first-tier subcontractors are expected to flow the clause down to their lower-tier subcontractors in similar fashion so that accountability for compliance is fully established throughout the Federal contract supply chain for covered subcontractor employees and workplaces at all tiers through application of the clause.

Q: May the prime contractor assume the subcontractor is complying with the clause?

A: Yes, unless the prime contractor has credible evidence otherwise.

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Q: Do fully vaccinated federal employees, onsite contractor employees, or visitors need to wear a mask or physically distance in federal buildings or on federal lands?

A: In areas of high or substantial transmission, fully vaccinated people need to wear a mask in public indoor settings, except for limited exceptions discussed in the [model safety principles issued by the Safer Federal Workforce Task Force on September 13, 2021](#).

In areas of low or moderate transmission, in most settings fully vaccinated people generally do not need to wear a mask or physically distance in federal buildings or on federal lands, except where called for by Federal, State, local, Tribal, or territorial laws, rules, and regulations.

Fully vaccinated individuals might choose to wear a mask regardless of the level of transmission for a variety of reasons.

CDC's guidance for mask-wearing and physical distancing in specific settings, including [healthcare](#), [transportation](#), [correctional and detention facilities](#), and [schools](#), should be followed as applicable. Agencies should communicate with employee representatives and

satisfy any applicable collective bargaining obligations prior to implementing changes to policies regarding mask wearing and physical distancing.

Q: Do federal employees, onsite contractor employees, and visitors who are not fully vaccinated need to wear a mask or physically distance in federal buildings or on federal lands?

A: Yes, people who are not fully vaccinated need to continue to wear a mask and physically distance consistent with CDC guidance and the requirements set forth in Executive Order 13991 and OMB Memorandum M-21-15 and the [model safety principles issued by the Safer Federal Workforce Task Force on September 13, 2021](#).

Q: Is symptom screening required before agency onsite employees, onsite contractor employees, and visitors come to the workplace?

A: If federal employees, onsite contractor employees, or visitors have symptoms consistent with COVID-19, they should not enter a federal workplace.

Federal employees and contractors working on site should regularly complete virtual or in-person health checks (ask about symptoms, close contact with someone with SARS-CoV-2 infection, and SARS-CoV-2 testing and diagnosis status). The agency will use this information to assess the individual's risk level and to determine whether the individual should be allowed entry to the workplace. Visitors may be asked to complete symptom screening before entering a federal facility. In developing these tools, agencies may adapt the one developed by [CDC](#).

Q: Are onsite contractor employees participating in an agency testing program limited in their ability to work onsite in between tests?

A: No, provided that they have met any applicable testing requirement and have not tested positive for COVID-19, onsite contractor employees participating in an agency testing program are not limited in their ability to work onsite between tests, although they must comply with all relevant safety protocols. However, if the onsite contractor employee has come into close contact with a person with COVID-19 during this time, they should follow CDC guidelines for testing and quarantine and not enter a worksite. Similarly, if they have symptoms consistent with COVID-19, they should not enter a worksite.

Agencies should develop a procedure for addressing circumstances in which onsite contractor employees miss their required test, which may include restricting the individual's access to worksites if they have not obtained a test within a period of time specified by the

agency.

A contractor employee's failure to comply with testing requirements may result in that individual being denied entry to a federal building. Such circumstances do not relieve the contractor from meeting all contractual requirements.

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

A: 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. In requesting this information, agencies should comply with any applicable federal laws, including requirements under the Privacy Act and the Paperwork Reduction Act.

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

A: 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 be able to provide proof of a negative COVID-19 test from no later than the previous 3 days prior when in a federal building or federally controlled worksite. If a contractor employee is regularly tested pursuant to an agency testing program, then they do not need to provide proof of a negative COVID-19 test from no later than the previous 3 days when in a federal building unless required to by the agency testing program.

Q: How should an agency ask onsite contractor employees about their vaccination status?

A: Prior to being subject to a contractual requirement to be vaccinated, onsite contractor employees should be provided with the [Certification of Vaccination form](#) when they enter a federal building or federally controlled worksite.

Unless an agency has an existing system of records notice that permits it to collect and maintain this information on its contractor employees, agencies will direct onsite contractor employees to complete the Certification of Vaccination form and keep it with them during their time on federal premises—they may be asked to show the form when in a federal building or federally controlled worksite and to a federal employee who oversees their work.

Prior to being subject to a contractual requirement to be vaccinated, onsite contractor employees who are not fully vaccinated (or who decline to disclose vaccination status) are required to be able to show proof of a negative COVID-19 test result from within the previous 3 days when in a federal building or federally controlled worksite. If a contractor employee is regularly tested pursuant to an agency testing program, then they do not need to provide proof of a negative COVID-19 test from no later than the previous 3 days when in a federal building or federally controlled worksite unless required to by the agency testing program.

Agencies may email the Certification of Vaccination form to contractor employees in advance of their time on-site or utilize a unique tool or application to share the form with contractor employees and enable them to easily complete it, but the agency will not maintain Certification of Vaccination forms from contractor employees at this time unless an agency has a system of records notice that covers its collection of this information from onsite contractor employees. Any such collection, storage, or maintenance of the attestation disclosure forms may implicate the Privacy Act and Paperwork Reduction Act.

Prior to having a contractual requirement for its employees to be vaccinated and if authorized and consistent with the terms of the contract, an agency may work with a contractor to facilitate compliance by its onsite employees with the agency's safety protocols, such as by having the company attest that all onsite contractor employees are fully vaccinated.

Q: On or after January 18, 2022, when covered contractor employees are required to be fully vaccinated, will onsite verification of vaccination status be required for contractor employees as a condition of entry to GSA-controlled facilities?

A: No, onsite verification of contractor employee vaccination status will not be required as a condition to enter GSA-controlled facilities on or after January 18, 2022, regardless of whether the contractor has a contractual requirement to be vaccinated as of that date.

On or after January 18, 2022, security officers at GSA-controlled facilities will admit any contractor employee with a valid PIV card to the facility without requiring onsite proof of vaccination. Onsite contractor employees without a valid PIV card will be considered visitors seeking to enter the facility for reasons other than to obtain a public service or benefit, and must follow the protocols for such individuals.

Onsite contractor employees must follow required workplace safety protocols while accessing the facility, such as mask wearing, physical distancing, and testing. The

sponsoring Executive Branch agency will be responsible for ensuring contractor employee compliance with relevant workplace safety protocols.

Q: What type of negative COVID-19 test result must an onsite contractor employee who is not fully vaccinated show documentation of in order to enter a federal building?

A: Agencies may determine what types of tests an onsite contractor employee who is not subject to a contractual requirement to be vaccinated can show documentation of 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.

Q: If an agency has a system of records notice that covers its collection of information on vaccination status from onsite contractor employees, can the agency collect that information?

A: Yes, if an agency has a system of records notice that covers its collection of the requisite information—as reflected in the [Certification of Vaccination form](#)—from onsite contractor employees consistent with the Privacy Act, it may do so. The agency should ensure such a collection is also consistent with the Paperwork Reduction Act. The agency should provide a means for individuals to update their vaccination status over time.

Q: Are agencies required to establish different safety protocols for fully vaccinated and not fully vaccinated individuals?

A: Yes. [Fully vaccinated individuals](#) do not need to physically distance or have restrictions on their official travel (although they still must comply with any local requirements and relevant CDC guidance for fully vaccinated individuals while traveling). Fully vaccinated individuals in areas of substantial or high transmission (see the [CDC COVID-19 Data Tracker County View](#)) need to wear a mask in public indoor settings. Fully vaccinated individuals in areas of low or moderate transmission do not need to wear a mask, unless required by state or local regulations or laws.

Fully vaccinated individuals might choose to wear a mask regardless of the level of transmission for a variety of reasons.

Some employees will not be vaccinated because they are legally entitled to a reasonable accommodation. Some onsite contractor employees may not yet be subject to a contractual requirement to be vaccinated. Individuals who are not fully vaccinated or who decline to provide information about their vaccination status must wear masks regardless of community transmission level, physically distance, and comply with travel requirements for

not fully vaccinated individuals

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 be able to provide proof of a negative COVID-19 test from no later than the previous 3 days when in a federal building or federally controlled worksite. If a contractor employee is regularly tested pursuant to an agency testing program, then they do not need to provide proof of a negative COVID-19 test from no later than the previous 3 days when in a federal building or federally controlled worksite unless required to by the agency testing program.

Find COVID-19 Vaccines Near You

Visit [Vaccines.gov](https://www.vaccines.gov)

Or Call [1-800-232-0233](tel:1-800-232-0233)

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For questions or comments, email the Safer Federal Workforce Task Force at SaferFederalWorkforce@gsa.gov



EXHIBIT

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Dated: November 11, 2021.

Jessica L. Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2021-25037 Filed 11-12-21; 11:15 am]

BILLING CODE 7050-01-P

OFFICE OF MANAGEMENT AND BUDGET

Determination of the Acting OMB Director Regarding the Revised Safer Federal Workforce Task Force Guidance for Federal Contractors and the Revised Economy & Efficiency Analysis

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of determination; request for comments.

SUMMARY: The Director of the Office of Management and Budget (“OMB”) determines that compliance by Federal contractors and subcontractors with the COVID-19 workplace safety protocols detailed in the Safer Federal Workforce Task Force (“Safer Federal Workforce Task Force” or the “Task Force”) guidance (the “Guidance”) to be issued on November 10, 2021, will promote economy and efficiency in Federal contracting by reducing absenteeism and decreasing labor costs for contractors and subcontractors working on or in connection with a Federal Government contract, and the Director approves the guidance. This notice accordingly rescinds and supersedes the Director’s prior notice issued on September 24, 2021.

DATES: To be ensured consideration, comments must be received on or before December 16, 2021.

ADDRESSES: You should submit comments via the Federal eRulemaking Portal at <https://www.regulations.gov/>. Follow the instructions for submitting comments.

Please be advised OMB will post all comments received that relate to this notice of determination on <https://www.regulations.gov> without making any change to the comments or redacting any information.

All comments posted are available and accessible to the public. So, do not include any information you would not like to be made publicly available, such as Social Security numbers, personal addresses, telephone numbers, and email addresses. It is the responsibility of the commenter to safeguard personal information.

FOR FURTHER INFORMATION CONTACT: Cristin Dorgelo, 725 17th Street NW,

Email address: cristin.a.dorgelo@omb.eop.gov, telephone number: (202) 456-4066. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Section 2 of Executive Order 14042 (“Executive Order 14042” or the “order”) requires that, before Federal contractors and subcontractors must adhere to any guidance from the Task Force, the Director of OMB must approve such guidance and determine that such guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. Based on my review of the Task Force’s COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors, scheduled for issuance on November 10, 2021 (reproduced in relevant part in Part I below), as well as the economy-and-efficiency analysis presented in Part II below, and exercising the President’s authority under the Federal Property and Administrative Services Act (see 3 U.S.C. 301) delegated to me through Executive Order 14042, I approve the Guidance and have determined that the COVID-19-workplace safety protocols detailed in that Guidance will promote economy and efficiency in Federal contracting if adhered to by Government contractors and subcontractors. This notice accordingly rescinds and supersedes my prior notice issued on September 24, 2021. 86 FR 53691.

This notice consists of the following sections. Part I consists of revised Guidance from the Task Force. Part II consists of an economic analysis of the COVID-19-workplace safety protocols detailed in such Guidance and the effect on economy and efficiency in Federal procurement. Part III addresses procedural requirements.

Part I. Safer Federal Workforce Task Force Guidance

On September 9, President Biden announced his Path Out of the Pandemic: COVID-19 Action Plan. One of the main goals of this science-based plan is to get more people vaccinated. As part of that plan, the President signed Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause (“the clause”) that the

contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Task Force, provided that the Director of OMB approves the Task Force Guidance and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

The actions directed by the order will ensure that parties who contract with the Federal Government provide COVID-19 safeguards in workplaces with individuals working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of SARS-CoV-2, the virus that causes COVID-19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;

2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and

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

The order also sets out a process for OMB and the Safer Federal Workforce Task Force to update the Guidance for covered contractors, which the Task Force will consider doing based on future changes to Centers for Disease Control and Prevention (“CDC”) COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions. It also sets out a process for the Federal Acquisition

Regulatory Council (“FAR Council”) to implement such protocols and guidance for covered Federal procurement solicitations and contracts subject to the Federal Acquisition Regulation (“FAR”) and for agencies that are responsible for covered contracts and contract-like instruments not subject to the FAR to take prompt action to ensure that those covered contracts and contract-like instruments include the clause, consistent with the order.

Covered contractors shall adhere to the requirements of this Guidance.

A. Definitions

Community transmission—means the level of community transmission as set forth in the CDC COVID-19 Data Tracker County View.¹

Contract and contract-like instrument—has the meaning set forth in the Department of Labor’s proposed rule, “Increasing the Minimum Wage for Federal Contractors,” 86 FR 38816, 38887 (July 22, 2021). If the Department of Labor issues a final rule relating to that proposed rule, this term shall have the meaning set forth in that final rule.

That proposed rule defines a contract or contract-like instrument as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term contract includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term contract shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued

under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term contract includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contractor or subcontractor workplace location—means a location where covered contract employees work, including a covered contractor workplace or Federal workplace.

Covered contract—means any contract or contract-like instrument that includes the clause described in Section 2(a) of the order.

Covered contractor—means a prime contractor or subcontractor at any tier who is party to a covered contract.

Covered contractor employee—means 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.

Covered contractor workplace—means a location controlled by a covered contractor at which 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 for a covered contract. A covered contractor workplace does not include a covered contractor employee’s residence.

Federal workplace—means any place, site, installation, building, room, or facility in which any Federal executive department or agency conducts official business, or is within an executive department or agency’s jurisdiction, custody, or control.

Fully vaccinated—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.² There is currently no post-vaccination time limit on fully vaccinated status; should such a limit be determined by the Centers for Disease Control and Prevention, that limit will

be considered by the Task Force and OMB for possible updating of this Guidance.

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., AstraZeneca/Oxford). More information is available at Interim Clinical Considerations for Use of COVID-19 Vaccines | CDC.³

Clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID-19 vaccine candidate, for which vaccine efficacy has been independently confirmed (e.g., by a data and safety monitoring board), can be considered fully vaccinated two weeks after they have completed the vaccine series. Currently, the Novavax COVID-19 vaccine meets these criteria. More information is available at the CDC website.⁴

Mask—means any mask that is consistent with CDC recommendations.⁵ This may include the following: Disposable masks, masks that fit properly (snugly around the nose and chin with no large gaps around the sides of the face), masks made with breathable fabric (such as cotton), masks made with tightly woven fabric (i.e., fabrics that do not let light pass through when held up to a light source), masks with two or three layers, masks with inner filter pockets, and filtering facepiece respirators that are approved by the National Institute for Occupational Safety and Health or consistent with international standards. The following do not constitute masks for purposes of this Guidance: Masks with exhalation valves, vents, or other openings; face shields only (without mask); or masks with single-layer fabric or thin fabric that does not block light.

B. Requirements

Covered contractors are responsible for ensuring that covered contractor employees comply with the workplace

³ CDC, Interim Clinical Considerations for Use of COVID-19 Vaccines, <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html>.

⁴ CDC, People who received COVID-19 vaccine as part of a clinical trial in the United States, <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#vaccinated-part-clinical-trial>.

⁵ CDC, Types of Masks and Respirators (Sept. 23, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>.

¹ CDC, COVID-19 Integrated County View, <https://covid.cdc.gov/covid-data-tracker/#county-view>.

² CDC, When You’ve Been Fully Vaccinated (last updated Oct. 15, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

safety protocols detailed below. Covered contractor employees must also comply with agency COVID-19 workplace safety requirements while in Federal workplaces.

Consistent with applicable law, agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order because the contract is under the Simplified Acquisition Threshold as defined in section 2.101 of the FAR or is a contract or subcontract for the manufacturing of products.

Agencies are also strongly encouraged to incorporate a clause requiring compliance with this Guidance into existing contracts and contract-like instruments prior to the date upon which the order requires inclusion of the clause.

1. Vaccination of Covered Contractor Employees, Except in Limited Circumstances Where an Employee Is Legally Entitled to an Accommodation

Covered contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19, unless the employee is legally entitled to an accommodation. Covered contractor employees must be fully vaccinated no later than January 18, 2022. After that 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 the covered contract.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that 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. A covered contractor should review and consider what, if any, accommodation it must offer. Requests for “medical accommodation” or “medical exceptions” should be treated as requests for a disability accommodation.

Should a Federal agency have 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 agency head may approve an exception for the covered contractor—in the case of such limited

exceptions, the covered contractor must ensure these covered contractor employees are fully vaccinated within 60 days of beginning work on a covered contract or at a covered workplace. The covered contractor must further ensure that such employees comply with masking and physical distancing requirements for not fully vaccinated individuals in covered workplaces prior to being fully vaccinated.

The covered contractor must review its covered employees’ documentation to prove vaccination status. Covered contractors must require covered contractor employees to show or provide their employer with one of the following documents: A copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card (CDC Form MLS-319813_r, published on September 3, 2020), 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 verifying vaccination with information on the vaccine name, date(s) of administration, and the name of health care professional or clinic site administering vaccine. Covered contractors may allow covered contractor employees to show or provide to their employer a digital copy of such records, including, for example, a digital photograph, scanned image, or PDF of such a record.

The covered contractor shall ensure compliance with the requirements in this Guidance related to the showing or provision of proper vaccination documentation.

Covered contractors are strongly encouraged to incorporate similar vaccination requirements into their non-covered contracts and agreements with non-covered contractors whose employees perform work at covered contractor workplaces but who do not work on or in connection with a Federal contract, such as those contracts and agreements related to the provision of food services, onsite security, or groundskeeping services at covered contractor workplaces.

2. Requirements Related To Masking and Physical Distancing While in Covered Contractor Workplaces

Covered contractors must ensure that all individuals, including covered contractor employees and visitors, comply with published CDC guidance for masking and physical distancing at a covered contractor workplace, as discussed further in this Guidance.

In addition to the guidance set forth below, CDC’s guidance for mask wearing and physical distancing in specific settings, including healthcare, transportation, correctional and detention facilities, and schools, must be followed, as applicable.

In areas of high or substantial community transmission, fully vaccinated people must wear a mask in indoor settings, except for limited exceptions discussed in this Guidance. In areas of low or moderate community transmission, fully vaccinated people do not need to wear a mask. Fully vaccinated individuals do not need to physically distance regardless of the level of transmission in the area.

Individuals who are not fully vaccinated must wear a mask indoors and in certain outdoor settings (see below) regardless of the level of community transmission in the area. To the extent practicable, individuals who are not fully vaccinated should maintain a distance of at least six feet from others at all times, including in offices, conference rooms, and all other communal and work spaces.

Covered contractors must require individuals in covered contractor workplaces who are required to wear a mask to:

- Wear appropriate masks consistently and correctly (over mouth and nose).
- Wear appropriate masks in any common areas or shared workspaces (including open floorplan office space, cubicle embankments, and conference rooms).
- For individuals who are not fully vaccinated, wear a mask in crowded outdoor settings or during outdoor activities that involve sustained close contact with other people who are not fully vaccinated, consistent with CDC guidance.

A covered contractor may be required to provide an accommodation to covered contractor employees who communicate to the covered contractor that they cannot wear a mask because of a disability (which would include medical conditions) or because of a sincerely held religious belief, practice, or observance. A covered contractor should review and consider what, if any, accommodation it must offer.

Covered contractors may provide for exceptions to mask wearing and/or physical distancing requirements consistent with CDC guidelines, for example, when an individual is alone in an office with floor to ceiling walls and a closed door, or for a limited time when eating or drinking and maintaining appropriate distancing. Covered contractors may also provide

exceptions for covered contractor employees engaging in activities in which a mask may get wet; high intensity activities where covered contractor employees are unable to wear a mask because of difficulty breathing; or activities for which wearing a mask would create a risk to workplace health, safety, or job duty as determined by a workplace risk assessment.⁶ Any such exceptions must be approved in writing by a duly authorized representative of the covered contractor to ensure compliance with this Guidance at covered contractor workplaces, as discussed further below.

Masked individuals may be asked to lower their masks briefly for identification purposes in compliance with safety and security requirements.

Covered contractors must check the CDC COVID-19 Data Tracker County View website for community transmission information in all areas where they have a covered contractor workplace at least weekly to determine proper workplace safety protocols.⁷ When the level of community transmission in the area of a covered contractor workplace increases from low or moderate to substantial or high, contractors and subcontractors should put in place more protective workplace safety protocols consistent with published guidelines. However, when the level of community transmission in the area of a covered contractor workplace is reduced from high or substantial to moderate or low, the level of community transmission must remain at that lower level for at least two consecutive weeks before the covered contractor utilizes those protocols recommended for areas of moderate or low community transmission.

3. Designation by Covered Contractors of a Person or Persons To Coordinate COVID-19 Workplace Safety Efforts at Covered Contractor Workplaces

Covered contractors shall designate a person or persons to coordinate implementation of and compliance with this Guidance and the workplace safety protocols detailed herein at covered contractor workplaces. The designated person or persons may be the same individual(s) responsible for implementing any additional COVID-19 workplace safety protocols required by local, State, or Federal law, and their responsibilities to coordinate COVID-19 workplace safety protocols may

comprise some or all of their regular duties.

The designated individual (or individuals) 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 in this Guidance related to the showing or provision of proper vaccination documentation.

Frequently Asked Questions

Frequently Asked Questions regarding this Guidance can be found here: <https://www.saferfederalworkforce.gov/faq/contractors/>.

All Task Force Guidance, FAQs, and additional information for Federal contractors and subcontractors can be found here: <https://www.saferfederalworkforce.gov/contractors/>.

Part II. Economy-and-Efficiency Analysis

The following analysis outlines the ways in which the Guidance set forth in Part I will promote economy and efficiency in Federal procurement.

The Guidance requires vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation. It imposes requirements related to masking and physical distancing in covered contractor workplaces. And it requires covered contractors to designate a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The Guidance is issued pursuant to Executive Order 14042, which the President promulgated, in part, under the Federal Property and Administrative Services Act (FPASA). The FPASA, 40 U.S.C. 101 *et seq.* provides that the President “may prescribe policies and directives that the President considers necessary to carry out” the Act, which

includes a purpose of “provid[ing] the Federal Government with an economical and efficient system for . . . [p]rocur[ing] and supplying property and nonpersonal services.” 40 U.S.C. 101(1), 121(a).

This analysis of the economic impact of the Guidance is based on OMB’s subject matter expertise and OMB’s review and analysis of the academic literature on interventions to prevent the spread of COVID-19.

As explained below, the overall effect of enacting these protocols for Federal contractors and subcontractors will be to decrease the spread of COVID-19, which will in turn decrease worker absence, save labor costs on net, and thereby improve efficiency in Federal contracting. Indeed, numerous private companies have undertaken vaccine mandates that were announced or take effect before the Federal Government’s mandate on Federal contractors takes effect and private companies have also imposed masking and physical distancing requirements at their workplaces. Just as these private businesses have concluded that vaccination, masking, and physical distancing requirements will make their operations more efficient and competitive in the market, we have concluded that the Guidance will realize economy and efficiency in Federal contracting.

A. COVID-19 Infection Imposes Significant Costs on Contractors and the Federal Government

The primary goal of the safety protocols is to reduce the spread of COVID-19 among contractor employees. COVID-19 is a highly communicable disease that tends to spread between people who are indoors, sharing space, and in close quarters—conditions common in typical workplaces.⁸ There is also evidence that COVID-19 can be spread by asymptomatic individuals. One study estimated that more than half of transmissions come from individuals who do not have symptoms (Johansson et al., 2021). Individuals who do not have symptoms are likely to continue to report to work and therefore may spread the disease to their coworkers. As such, safety protocols applied even in the absence of observable illness among employees can meaningfully reduce the spread of COVID-19. Moreover, because employees working at a single workplace will regularly come into contact, safety protocols applied to all

⁶ OSHA, Recommended Practices for Safety and Health Programs, <https://www.osha.gov/safety-management>.

⁷ CDC, COVID-19 Integrated County View, <https://covid.cdc.gov/covid-data-tracker/#county-view>.

⁸ See U.S. Environmental Protection Agency, Indoor Air and Coronavirus (COVID-19), <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19>.

employees in a workplace can meaningfully reduce the spread of COVID-19.

The CDC recommends that individuals remain isolated for ten days after symptom onset, which would mean workers who catch the virus can miss up to eight days of work.⁹ Furthermore, those individuals could infect other workers, who would also miss eight days of work. Additional exposed workers would likely need to quarantine and would also miss work.

Workers unable to work generate substantial costs on employers. An imperfect proxy for the cost to an employer of a foregone hour of work is the worker's hourly pay. We calculate the average hourly wage for a Federal contractor to be approximately \$31.51, making the average pay for eight days \$2,016.¹⁰ Wages are higher in Washington, DC, Maryland and Virginia, where many contractors are located, ranging from \$33.36 in Virginia to \$42.83 in Washington, DC, making the average pay for eight days in those areas \$2,135 and \$2,741, respectively. Such costs are substantial and, if borne by contractors, such costs would be expected to be passed on to the Federal Government, either in direct cost or lower quality, including delays.

Fortunately, vaccines, masks, and physical distancing have all been proven to reduce the prevalence of COVID-19 infection, and vaccines have been shown to greatly reduce the severity of breakthrough infections. And vaccines, masking, and physical distancing are all low-cost interventions.

B. COVID-19 Vaccination Reduces Net Costs

Requiring any workers who have not yet done so to receive a COVID-19 vaccine would generate meaningful efficiency gains for Federal contractors. COVID-19 vaccines provide strong and persistent protection against infection, illness, and hospitalization (see Tenforde, et al., 2021 and references). Reducing the number of infected people mechanically reduces transmission, and some preliminary evidence also indicates that vaccines also reduce transmission by people who contract "breakthrough" infections (Ke, et al.,

2021). The vaccine requirement in the Guidance buttresses other workplace-specific safety protocols and provides protection against infection outside of the workplace, increasing the likelihood that the full set of protocols will prevent infection and illness and preserve the productivity of people working on or in connection with Federal contracts.¹¹

Because vaccines are widely available for free, the cost of implementing a vaccine mandate is largely limited to administrative costs associated with distributing information about the mandate and tracking employees' vaccination status. Such costs are likely to be small.¹² Other costs of vaccination include employees quitting and using sick time when experiencing side effects from vaccination. However, based on experiences shared by private companies detailed below, we expect few employees to quit because of the vaccine mandate, and side effects lead to significantly less sick leave than COVID-19 infection. And unlike COVID-19 infection, side effects are not contagious to other employees.

Consistent with the view that COVID-19 vaccines promote economy and efficiency, numerous private companies have undertaken vaccine mandates that were announced or take effect before the Federal Government's mandate on Federal contractors takes effect. Led originally by companies like United Airlines and Tyson Foods, a wide and growing swath of private companies have determined that vaccine mandates are net beneficial to their companies.¹³

While anecdotal reports suggest that vaccine mandates may lead some workers to quit their jobs rather than comply, which could create some cost associated with replacing them, we know of no systematic evidence that this has been a widespread phenomenon, or that it would be likely

to occur among employees of Federal contractors. In fact, the experience of private companies is to the contrary. For example, United Airlines reported in October 2021 that 99.7 percent of the airline's workforce complied with the vaccination requirements, Tyson Foods reported more than 96 percent of its workforce is now vaccinated, and healthcare providers such as California's Kaiser Permanente reported placing only two percent of employees on administrative leave for failing to comply with vaccine requirements.¹⁴ And finally, even if some non-negligible number of workers were to quit rather than comply with a vaccine mandate, the cost of replacing those workers would be a one-time cost, while the benefits of increased vaccination (including among replacement workers, who would be vaccinated) would be long-lasting.

C. Masking and Physical Distancing Reduces Net Costs

COVID-19 is generally thought to be spread by respiratory particles and aerosols.¹⁵ Masking and physical distancing have proven effective in reducing the spread of COVID-19. One study found that communities with the greatest physical distancing had a 31 percent lower risk of COVID-19 than communities with poor physical distancing, and that communities where individuals reported always using face masks outside of the home, even with poor physical distancing, had 62 percent reduced risk of COVID-19 compared to communities where face masks were never worn (Kwon et al., 2020). Another study found that full population masking reduces transmission of the virus by 25.8 percent (Leech et al., 2021). Similarly, a study of masking and ventilation improvements in Georgia schools found that COVID-19 incidence was 37 percent lower in schools where masks were required and 39 percent lower in schools with improved ventilation

¹¹ Note that the other safety protocols discussed above will still be appropriate even after the vaccine requirement is implemented, e.g., to protect against breakthrough infections and emerging variants of the virus, or for the benefit of workers who may be unable to receive a vaccine for medical or religious reasons, until such time as public health conditions improve and CDC guidance related to masking and physical distancing changes.

¹² For example, the Occupational Safety and Health Administration estimated that providing information would take ten minutes per firm (84 FR 61476 cl. 3) and that tracking employees' vaccination status would take five minutes per employee (id. 84 FR 61488 cl. 2).

¹³ The Major Companies Requiring Workers to Get COVID Vaccines, *Fortune* (Aug. 23, 2021), <https://fortune.com/2021/08/23/companies-requiring-vaccines-workers-vaccination-mandatory/>. See greater discussion on page 12 of the White House Vaccination Requirements Report (Oct. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/Vaccination-Requirements-Report.pdf>.

¹⁴ COVID Vaccine Some 5 Percent of Unvaccinated Adults Have Quit Their Jobs Over a Mandate Survey Shows CNBC (Oct. 28, 2021), <https://www.cnbc.com/2021/10/28/covid-vaccine-some-5percent-of-unvaccinated-adults-have-quit-their-jobs-over-a-mandate-survey-shows.html>; How Tyson Foods Got 60,500 Workers to Get the Coronavirus Vaccine Quickly, *N.Y. Times* (Nov. 4, 2021), <https://www.nytimes.com/2021/11/04/business/tyson-vaccine-mandate.html>. Vaccine mandates stoked fears of labor shortages. But hospitals say they're working, *Washington Post* (Oct. 16, 2021), <https://www.washingtonpost.com/health/2021/10/16/hospital-covid-vaccine-mandate/>.

¹⁵ CDC, Prevent Getting Sick: How COVID Spreads (last updated July 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

⁹ See Centers for Disease Control and Prevention, Recommendations for Ending Isolation (last updated Sept. 14, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html#anchor_1631308518116.

¹⁰ This calculation uses the distribution of NAICS codes in the contractor population and average salary of those NAICS codes from the Occupational Employment and Wage Statistics program at the Bureau of Labor Statistics, <https://www.bls.gov/oes/>.

(Gettings et al., 2021). This research shows that masking, physical distancing, and improved ventilation will all reduce the likelihood that COVID-19 spreads among the contractor workforce. These preventative measures will decrease worker absence and allow contract workers to continue their work without the need to take time off to recover from COVID-19. Thus, mask wearing and physical distancing are likely to reduce the spread of COVID-19 within contractor workplaces, reducing worker absence and maintaining productivity.

The costs of masking and physical distancing are minimal. For example, contractors may have to pay for masks for their employees. Masks can cost as little as \$0.13 per mask and would need to be provided only to employees who do not already have their own masks.¹⁶ Physical distancing can often be done without additional costs. Numerous private companies like Walmart require all employees to wear masks and physically distance, embodying a judgment that these mitigation measures promote economy and efficiency in the workplace.¹⁷

D. Conclusion

For these reasons, it is OMB's expert opinion that the Guidance will promote economy and efficiency in Federal Government procurement. All plans for economic recovery and growth are predicated on the need to prevent additional spread of the COVID-19 virus and facilitate vaccinations, and no employer, whether public or private, can expect to see increased productivity or economic efficiency without a healthy workforce. The safety protocols that are set forth by the Safer Federal Workforce Task Force are meant to ensure that COVID-19 does not easily spread within the workplace, so that Federal contractor employees can continue to be productive.

E. References

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- Leech, Gavin, Charlie Rogers-Smith, Jonas B. Sandbrink et al. 2021. "Mass mask-wearing notably reduces COVID-19 transmission." *medRxiv*.
- Tenforde, Mark W., Wesley H. Self, Eric A. Naioti, et al. 2021. "Sustained Effectiveness of Pfizer-BioNTech and Moderna Vaccines Against COVID-19 Associated Hospitalizations Among Adults—United States, March–July 2021." *Morbidity and Mortality Weekly Report* 70(34): 1156–1162.

Part III. Procedural Requirements

A. Public Contract Requirements Under Public Law 111-350

I am making my determination pursuant to a Presidential delegation under 3 U.S.C. 301. That determination is therefore not subject to the procedural requirements of Public Law 111-350, codified at 41 U.S.C. 1707. See *NRDC, Inc. v. U.S. Dep't of State*, 658 F. Supp. 2d 105, 109 & n.5, 111 (D.D.C. 2009) (when an agency acts pursuant to 3 U.S.C. 301, the agency "stands in the President's shoes" and that action is "not reviewable under the APA"); *Detroit Int'l Bridge Co. v. Canada*, 189 F. Supp. 3d 85, 100 (D.D.C. 2016) ("Several cases have concluded that an agency's action on behalf of the President, involving discretionary authority committed to the President, is 'presidential' and unreviewable under the APA."). To the extent that 41 U.S.C. 1707 is applicable to my determination set forth in this document, there are urgent and compelling circumstances that justify departing from the notice-and-comment and delayed-effective-date requirements in 41 U.S.C. 1707.

The notice-and-comment and delayed-effective-date requirements of subsections (a) and (b) of 41 U.S.C. 1707 "may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with the requirements impracticable." 41 U.S.C. 1707(d). This statutory exception is implemented in FAR section 1.501-3, which provides that "[a]dvance comments need not be solicited when urgent and compelling

circumstances make solicitation impracticable prior to the effective date of the coverage, such as when a new statute must be implemented in a relative short period of time."

Urgent and compelling circumstances justify waiving the notice-and-comment requirement for this notice. This is a once in a generation pandemic, which has already resulted in more than 46,405,253 cases of COVID-19, hospitalized more than 3,283,045 Americans, and taken more than 752,196 American lives. The pandemic continues to present an imminent threat to the health and safety of the American people, including due to the emergence of the B.1.617.2 (Delta) variant, which is a variant of concern that spreads more easily than previously discovered variants of SARS-CoV-2. This threat reaches all Americans, including those working for Federal contractors and subcontractors. The Guidance directly addresses this imminent threat by requiring vaccination. The CDC has determined that the best way to slow the spread of COVID-19, including preventing infection by the Delta variant, is for individuals to get vaccinated. According to the CDC, vaccinated individuals are 5 times less likely to be infected and 10 times less likely to experience hospitalization or death due to COVID-19 than unvaccinated individuals. The Guidance thus promotes the most important, urgent public health measure to slow the spread of COVID-19 among Federal contractors and subcontractors—which is critical to avoiding worker absence and unnecessary labor costs that could hinder the efficiency of federal contracting.

The minimum delay required by subsections (a) and (b) of 41 U.S.C. 1707 is also incompatible with a fundamental purpose of issuing this determination. The Guidance set forth in Part I changes the vaccination deadline for Federal contractors from December 8, 2021, to January 18, 2022. If the determination implementing this change were required to comply with subsections (a) and (b) of 41 U.S.C. 1707 (requiring 30 days for comment, and another 30 days to become effective), the earliest possible effective date for this determination would be January 9, 2022. But waiting until January for this determination to become effective would prevent the change in deadlines from having practical effect, as Federal contractors and subcontractors would still be legally obligated to meet the December 8, 2021, vaccination deadline until this determination became effective. That alone establishes urgent and compelling

¹⁶ Mask costs were taken from a search of Amazon and would likely be lower for a contractor who would be able to order in bulk.

¹⁷ The Major Companies Requiring Workers to Get COVID Vaccines, *Fortune* (Aug. 23, 2021), <https://fortune.com/2021/08/23/companies-requiring-vaccines-workers-vaccination-mandatory/>.

circumstances to warrant making this determination immediately effective.

Additionally, even if there were no prior deadline that contractors and subcontractors were obligated to meet, urgent and compelling circumstances would still exist because the broader economy-and-efficiency purpose of this determination would be severely undermined by the minimum delay required under subsections (a) and (b) of 41 U.S.C. 1707. As an initial matter, such a delay would interfere with an important purpose of the Task Force Guidance—aligning the vaccination deadline for Federal contractors with the vaccination deadline for private companies under recent regulatory actions. In particular, the Occupational Safety and Health Administration (OSHA) issued an Emergency Temporary Standard (ETS) requiring employers with 100 or more employees to ensure their workers are fully vaccinated or tested for COVID-19 on at least a weekly basis, and the Centers for Medicare & Medicaid Services (CMS) issued a rule requiring health care workers at facilities participating in Medicare and Medicaid to be fully vaccinated. 86 FR 61402; 86 FR 61555. Those rules set a deadline of January 4, 2022, for employees to receive their final COVID-19 vaccination dose—*i.e.*, January 18, 2022, for a fully vaccinated covered workforce. The Task Force’s decision to set the same deadline for Federal contractors and subcontractors will make it easier for private employers to administer successful vaccination policies across their workforce and will allow Federal contractors and subcontractors to implement their requirements on the same timeline as other employers in their industries.¹⁸ For example, a large employer covered by the ETS may have some but not all of their workplaces covered by the vaccination requirement for Federal contractors and subcontractors. For such an employer, that would mean some workplaces are governed by the ETS and some by the Task Force Guidance. Or, an employer may have some workers covered by the CMS rule, and other workers covered by the vaccination requirement for Federal contractors and subcontractors. For employers in these circumstances, having the same

deadline across all requirements will promote consistency and administrability of public health standards, and eliminate potential confusion and frustration that disparate deadlines could produce. It could also avoid needless costs in having multiple systems of records and internal accountability established for different deadlines. Ensuring that private employers do not need to meet different compliance dates across different Federal vaccination policies is thus important to the success of their vaccination programs and to promoting economy and efficiency in Federal procurement.

Moreover, in order for such alignment to be effective, employers require regulatory certainty in the near-term. An immediately effective notice gives contractors and subcontractors a clear understanding not only of their responsibilities under Federal law but also the deadline for complying with those responsibilities. By contrast, absent an immediately effective determination of that deadline, such employers would have to wait until comments are received and a determination is finalized to know with certainty the deadline for ensuring that their covered employees are fully vaccinated. That would cause much of the administrability problems and frustration that alignment is intended to avoid, undermining the critical efforts to curb the spread of COVID-19 among Federal contractors and subcontractors and preventing alignment of the relevant deadlines.

Compliance with the procedural requirements of 41 U.S.C. 1707(a) and 1707(b) would fundamentally undermine the effort to provide private companies with aligned deadlines and regulatory certainty, as outlined above. As noted above, under those requirements the earliest effective date for this determination would be January 9, 2022. Simply put, that is far too late to provide regulatory certainty for Federal contractors, as that is *past* the date that covered employees of covered Federal contractors must receive their final COVID-19 vaccination dose (January 4, 2022), and it is less than ten days before the deadline for covered contractor employees to be fully vaccinated (January 18, 2022). Thus, compliance with the procedural requirements of 41 U.S.C. 1707(a) and 1707(b) would undermine the success of the Federal Government’s vaccination efforts and economy and efficiency in Federal procurement.

Thus, to the extent that it is found that my determination is subject to the procedural requirements in 41 U.S.C.

1707, I have concluded that urgent and compelling circumstances exist under section 1707(d). The requirements of this notice are accordingly effective immediately upon filing with the **Federal Register**. Additionally, to the extent that it is found that my determination is subject to the procedural requirements in 41 U.S.C. 1707, this determination is temporary, consistent with section 1707(e). And regardless of whether this determination is subject to the procedural requirements in 41 U.S.C. 1707, I am soliciting comment on all subjects of this determination, which would also be consistent with sections 1707(c) and (e), if those provisions applied.

B. Administrative Procedure Act

My determination is not subject to the procedural rulemaking requirements of the Administrative Procedure Act (APA).

As noted above, this determination is pursuant to a delegation from the President under 3 U.S.C. 301. When any agency acts pursuant to such a delegation, the agency “stands in the President’s shoes” and its actions “cannot be subject to judicial review under the APA.” *NRDC v. State*, 658 F. Supp. 2d at 109 & n.5, 111.

Even if the APA were applicable, the notice-and-comment requirements of 5 U.S.C. 553 exempt “a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” 5 U.S.C. 553(a)(2). This determination relates to procurement and contractors—*i.e.*, “contracts” under section 553(a)(2)—and is thus exempt from the APA’s notice-and-comment requirements.

Moreover, even if the notice-and-comment requirements of 5 U.S.C. 553 were applicable, the good-cause exception is satisfied here. 5 U.S.C. 553(b)(3)(B) waives notice-and-comment requirements if “the agency for good cause finds” that compliance would be “impracticable, unnecessary, or contrary to the public interest.” Notice and comment is impracticable in situations where delay would result in harm. *See, e.g., Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012). Applicable procedures are “[i]mpracticable” if “the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings” or negotiated rulemaking. *N.J., Dep’t of Envtl. Prot. v. EPA*, 626 F.2d 1038, 1046 (D.C. Cir. 1980) (quoting S. Doc. No. 248, at 200 (1946)); *see also United States v. Cotton*, 760 F. Supp. 2d 116, 129 (D.D.C. 2011). Such “good cause” would also exempt an agency from the delayed effective

¹⁸ Unlike the vaccination deadline for covered employees of Federal contractors, the vaccination deadline for Federal employees under Executive Order 14043 does not require alignment with private companies, because there is no subset of private companies also subject to Executive Order 14043. Thus, the exigencies of combatting the global pandemic require maintaining the current vaccination deadline for Federal employees of November 22, 2021.

date under 5 U.S.C. 553(d). For the reasons explained above, notice-and-comment rulemaking and a delayed effective date would be impracticable, because the resulting delay in the effective date would not provide Federal contractors and subcontractors sufficient time to ensure compliance in time for the January 18, 2022, vaccination deadline.

* * * * *

Shalanda Young,

Acting Director.

[FR Doc. 2021-24949 Filed 11-10-21; 4:15 pm]

BILLING CODE 3110-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, November 18, 2021.

PLACE: Due to the COVID-19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (www.ncua.gov) and access the provided webcast link.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Share Insurance Quarterly Report.
2. NCUA's 2022-2026 Strategic Plan.
3. NCUA Rules and Regulations, Service Facilities.
4. Board Briefing, NCUA's Modernized Examination Tools.
5. Board Briefing, Update to NCUA's Response to the COVID-19 Pandemic.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703-518-6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2021-25032 Filed 11-12-21; 11:15 am]

BILLING CODE 7535-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 17 meetings of the Arts Advisory Panel to the National Council on the Arts will be

held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Further information with reference to these meetings can be obtained from Ms. Sherry P. Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; haless@arts.gov, or call 202/682-5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:
Our Town (review of applications): This meeting will be closed.

Date and time: December 2, 2021; 11:00 a.m. to 1:00 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 2, 2021; 2:30 p.m. to 4:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 3, 2021; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 3, 2021; 2:30 p.m. to 4:30 p.m.

Our Town (review of applications): This meeting will be closed.

Date and time: December 3, 2021; 11:00 a.m. to 1:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 6, 2021; 2:00 p.m. to 4:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2021; 11:30 a.m. to 1:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2021; 2:30 p.m. to 4:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 7, 2021; 2:00 p.m. to 4:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 8, 2021; 11:30 a.m. to 1:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 8, 2021; 2:00 p.m. to 4:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 1:30 p.m. to 3:30 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 1:00 p.m. to 3:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 3:30 p.m. to 5:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 9, 2021; 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: December 14, 2021; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: December 16, 2021; 1:00 p.m. to 3:00 p.m.

Dated: November 10, 2021.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021-24928 Filed 11-15-21; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-201; NRC-2021-0175]

New York State Energy Research and Development Authority; Irradiated Nuclear Fuel Processing Plant; Western New York Nuclear Service Center

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an

EXHIBIT

J

Geographical Report by Place of Performance

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Report Filter:

{Date Signed} (ID) Between 1/1/2020 and 12/31/2020 And {AI Type} <> F, G, I, S, T, R, O And {Pop Country Code} (ID) = "USA" And {Award Type (Award or IDV)}=AWARD

Geographical Report by Place of Performance

Place of Performance State	Total Actions	% Total Actions	Total Dollars	% Total Dollars
VIRGINIA (UNITED STATES)	613,741	0.9638%	\$68,847,331,104.00	11.3900%
TEXAS (UNITED STATES)	339,196	0.5327%	\$63,864,651,577.55	10.5656%
CALIFORNIA (UNITED STATES)	411,795	0.6467%	\$57,705,100,733.73	9.5466%
MARYLAND (UNITED STATES)	197,916	0.3108%	\$39,842,304,096.15	6.5914%
DISTRICT OF COLUMBIA (UNITED STATES)	92,177	0.1448%	\$29,471,642,492.96	4.8757%
FLORIDA (UNITED STATES)	1,004,229	1.5771%	\$25,330,450,887.37	4.1906%
ARIZONA (UNITED STATES)	2,024,389	3.1791%	\$23,446,117,252.20	3.8789%
MASSACHUSETTS (UNITED STATES)	222,442	0.3493%	\$23,214,719,633.15	3.8406%
CONNECTICUT (UNITED STATES)	92,500	0.1453%	\$19,176,174,371.84	3.1725%
PENNSYLVANIA (UNITED STATES)	580,084	0.9110%	\$17,710,856,070.64	2.9300%
NEW YORK (UNITED STATES)	321,336	0.5046%	\$16,457,059,332.36	2.7226%
MISSOURI (UNITED STATES)	151,273	0.2376%	\$16,260,086,133.02	2.6900%
GEORGIA (UNITED STATES)	246,457	0.3870%	\$13,702,368,407.12	2.2669%
ALABAMA (UNITED STATES)	96,298	0.1512%	\$13,080,107,091.58	2.1639%
WASHINGTON (UNITED STATES)	113,163	0.1777%	\$12,807,816,970.80	2.1189%
ILLINOIS (UNITED STATES)	1,154,931	1.8137%	\$12,348,403,489.21	2.0429%
COLORADO (UNITED STATES)	109,355	0.1717%	\$12,022,933,563.16	1.9891%
NEW MEXICO (UNITED STATES)	19,182	0.0301%	\$10,600,327,061.91	1.7537%
TENNESSEE (UNITED STATES)	23,532,334	36.9557%	\$10,258,367,908.55	1.6971%
KENTUCKY (UNITED STATES)	30,008,303	47.1257%	\$10,221,706,227.01	1.6911%
NORTH CAROLINA (UNITED STATES)	249,858	0.3924%	\$9,059,564,842.04	1.4988%
OHIO (UNITED STATES)	130,418	0.2048%	\$8,937,585,421.79	1.4786%
NEW JERSEY (UNITED STATES)	665,304	1.0448%	\$7,810,739,036.78	1.2922%
MICHIGAN (UNITED STATES)	175,758	0.2760%	\$7,371,714,371.76	1.2196%
SOUTH CAROLINA (UNITED STATES)	50,526	0.0793%	\$6,721,463,105.36	1.1120%
MISSISSIPPI (UNITED STATES)	63,472	0.0997%	\$6,701,969,262.70	1.1088%
INDIANA (UNITED STATES)	35,103	0.0551%	\$5,861,657,298.65	0.9697%
WISCONSIN (UNITED STATES)	140,166	0.2201%	\$5,724,138,446.39	0.9470%
LOUISIANA (UNITED STATES)	35,759	0.0562%	\$4,213,799,140.44	0.6971%
OKLAHOMA (UNITED STATES)	45,884	0.0721%	\$4,076,020,475.53	0.6743%
KANSAS (UNITED STATES)	39,508	0.0620%	\$3,115,376,743.70	0.5154%
IDAHO (UNITED STATES)	18,188	0.0286%	\$3,066,911,498.73	0.5074%
NEVADA (UNITED STATES)	12,970	0.0204%	\$3,047,314,334.62	0.5041%
UTAH (UNITED STATES)	24,579	0.0386%	\$2,992,181,388.98	0.4950%
MINNESOTA (UNITED STATES)	367,309	0.5768%	\$2,922,460,023.71	0.4835%
HAWAII (UNITED STATES)	54,340	0.0853%	\$2,883,480,588.41	0.4770%

Geographical Report by Place of Performance

Place of Performance State	Total Actions	% Total Actions	Total Dollars	% Total Dollars
IOWA (UNITED STATES)	20,968	0.0329%	\$2,719,073,067.52	0.4498%
MAINE (UNITED STATES)	10,595	0.0166%	\$2,615,429,322.35	0.4327%
NEW HAMPSHIRE (UNITED STATES)	7,339	0.0115%	\$2,030,307,310.90	0.3359%
OREGON (UNITED STATES)	58,640	0.0921%	\$1,983,181,752.91	0.3281%
ALASKA (UNITED STATES)	13,378	0.0210%	\$1,959,300,483.66	0.3241%
WEST VIRGINIA (UNITED STATES)	11,290	0.0177%	\$1,769,342,745.23	0.2927%
ARKANSAS (UNITED STATES)	23,221	0.0365%	\$1,551,348,528.05	0.2567%
NEBRASKA (UNITED STATES)	15,734	0.0247%	\$1,397,427,092.74	0.2312%
GUAM (UNITED STATES)	7,521	0.0118%	\$1,268,742,301.52	0.2099%
RHODE ISLAND (UNITED STATES)	7,643	0.0120%	\$1,085,582,664.50	0.1796%
SOUTH DAKOTA (UNITED STATES)	7,950	0.0125%	\$1,011,551,592.67	0.1673%
PUERTO RICO (UNITED STATES)	9,699	0.0152%	\$954,309,257.92	0.1579%
DELAWARE (UNITED STATES)	6,393	0.0100%	\$812,364,957.50	0.1344%
MONTANA (UNITED STATES)	15,494	0.0243%	\$688,820,337.88	0.1140%
NORTH DAKOTA (UNITED STATES)	9,607	0.0151%	\$603,720,668.08	0.0999%
VERMONT (UNITED STATES)	6,405	0.0101%	\$585,107,441.66	0.0968%
WYOMING (UNITED STATES)	3,916	0.0061%	\$386,443,363.51	0.0639%
VIRGIN ISLANDS OF THE U.S. (UNITED STATES)	744	0.0012%	\$87,130,295.09	0.0144%
NORTHERN MARIANA ISLANDS (UNITED STATES)	232	0.0004%	\$63,321,188.16	0.0105%
AMERICAN SAMOA (UNITED STATES)	143	0.0002%	\$8,382,345.42	0.0014%
UNITED STATES (USA)	2	0.0000%	\$0.00	0.0000%
Total	63,677,157	100.0000%	\$604,455,787,101.17	100.0000%

EXHIBIT

K

1 in 4 Workers Say Their Employer Required Them to Get a COVID-19 Vaccine, Up Since June; 5% of Unvaccinated Adults Say They Left a Job Due to a Vaccine Requirement

As Regulators Weigh Making the Vaccine Available to Children Ages 5-11, Parents' Concerns Include Perceived Long-Term and Serious Side Effects; Nearly 3 in 10 Say Their Child Will Get a Vaccine Right Away Once Able

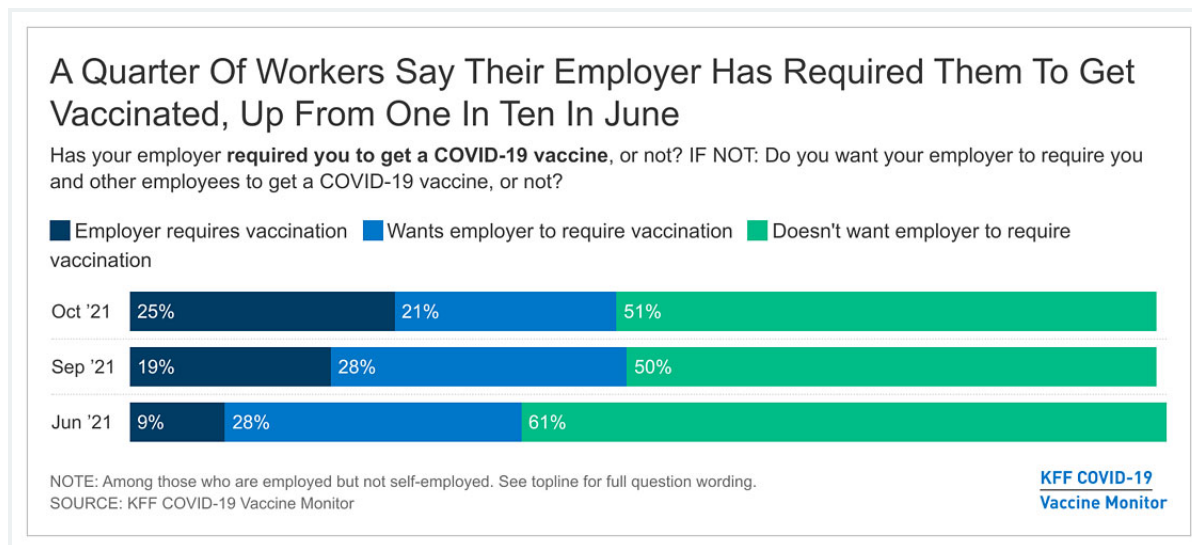
Published: Oct 28, 2021



Most Parents Say Their Kids Will Go Trick-or-Treating for Halloween; 1 in 8 Won't Due to COVID-19

With the Biden administration moving to require large employers to require COVID-19 vaccinations and require weekly testing for unvaccinated workers, the latest KFF COVID-19 Vaccine Monitor (https://connect.kff.org/e3t/Btc/RB+113/c1ThL04/VW23vV3YmNFIW32ZS_H8j5zW7sWSjQ4z9b15N2K0T3Z3q3phV1-WjV7CgM4JW3mkB7L37ZQJFW94fJxt8wQ_TZN23shkFJwPhqN9177vkRfc4zW4vMG8Q6Tr59jW1T4DB95vnLD_W6R5Cd37LHQ9jW22rXy-7HLN_zW2Vnh195D5DfmW7xDRDN2HHDTJW5nLQ9k6_FFCrVRX7Fj9dJ4c4LwNQRxJkvJW7-WjhX26zfDSW4nCdhX3GPzyMW4rGcQ58dGCNSW93mt5n66lCz3W2J1VFK7fSDRLW3s2QjF18txKnW3wsStm2rrfJfW5_h6DS7x3btdW6mvCk72Xn-jzW70vTLP72wT2xW414Y1594-kDRN4KggWJ4NB1FW6VLBIT8zNjrPW493Pg_7kK0fZW85St7D2n-jzw3nGz1) report finds a quarter (25%) of workers say their employer has a vaccine requirement, up from 9% in June.

About a fifth (21%) of workers say that they want their employer to require vaccinations even though they don't, while about half (51%) say they don't want their employer to require it.



(<https://www.kff.org/wp-content/uploads/2021/10/quarterof.png>)

Despite widespread news reports of employees leaving their jobs due to workplace vaccine mandates, 5% of unvaccinated adults (1% of all adults) say they left a job because an employer required them to get vaccinated. A larger share (24%) of adults say they know someone who has left a job due to a vaccine mandate, with Republicans about twice as likely as Democrats to say this (32% vs. 14%).

When unvaccinated workers are asked what they would do if their employer required them to either get the COVID-19 vaccine or undergo weekly COVID-19 testing, 11% say they would be most likely to get the vaccine, nearly half (46%) would opt for weekly testing, and over a third (37%) say they would be likely to leave their job. This represents 1% of all adults who would get the vaccine if faced with an employer mandate and 5% who say they would leave their job.

If their employer did not offer an option for weekly testing, the share of unvaccinated workers who say they would get the vaccine increases to 17% (2% of all adults) and the share saying they would leave their job increases to 72% (9% of all adults).

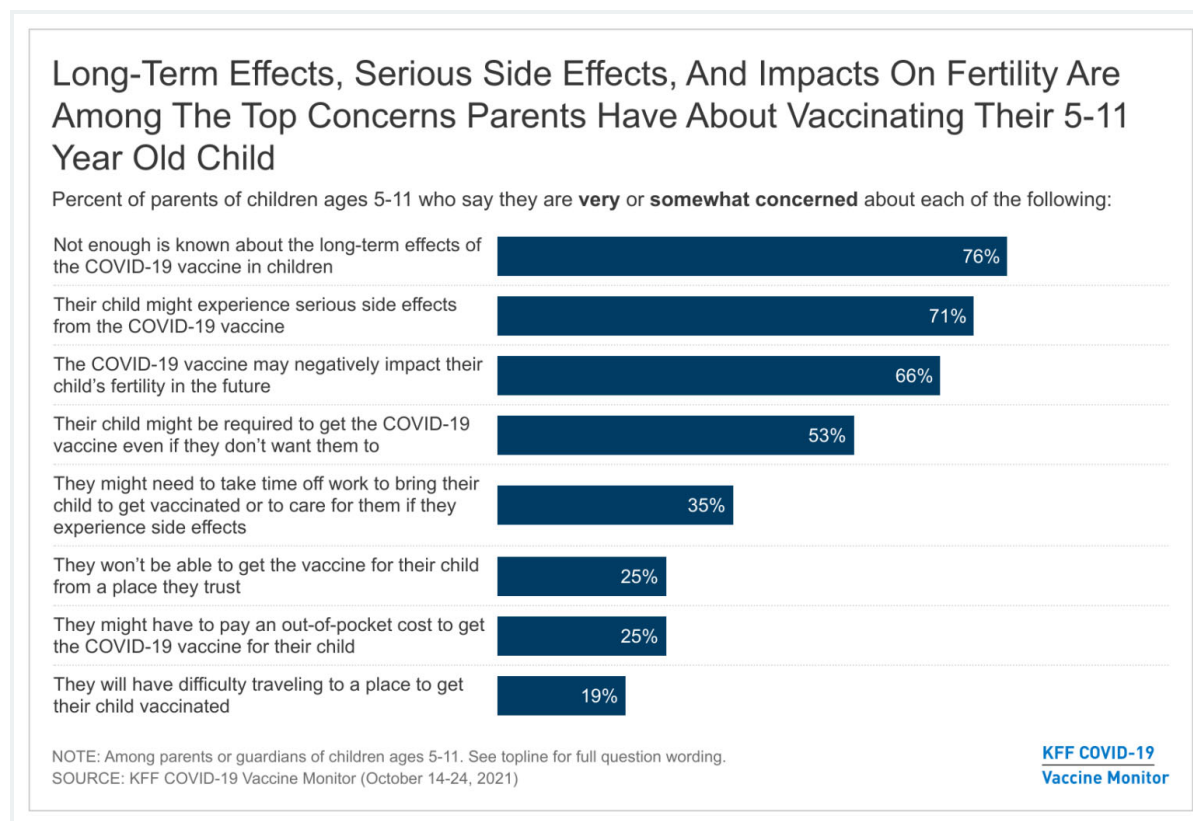
About 6 in 10 unvaccinated workers (59%) say they would be likely to apply for an exemption if their employer implemented a vaccine requirement, including 27% who would apply for a religious exemption and 16% who would apply for a medical one.

Parents Remain Cautious about Vaccinating Their 5-11 Year Old Ahead of Federal Authorization

As federal regulators move toward making children ages 5-11 eligible for a COVID-19 vaccine, parents of kids in that age group cite a range of perceived concerns about the COVID-19 vaccines, including large majorities who are "very" or "somewhat" concerned that not enough is known about the long-term effects in children (76%) and that their child might experience serious side effects (71%).

Two thirds (66%) say they are concerned that a vaccine could negatively affect their child's fertility in the future, although the U.S. Centers for Disease Control and Prevention says there is no evidence that the COVID-19 vaccines cause fertility problems. About half (53%) worry their child might be required to get a vaccine even if they don't want them to.

Smaller but meaningful shares cite economic and access concerns, such as having to take time off work to get their child vaccinated and care for them if they experience side effects (35%), not being able to get the vaccine from a place they trust (25%), and having to pay out-of-pocket costs to get their child vaccinated (25%) even though the vaccine itself is free. Roughly half of lower-income parents (with household incomes less than \$50,000 annually) say they worry about each of these issues.



(<https://www.kff.org/wp-content/uploads/2021/10/Alert-chart-2-long-term-effects-serious-side-effects-and-impacts-on-fertility-are-among-the-top-concerns-parents-have-about-vaccinating-their-5-11-year-old-child.png>)

While the vaccine is not yet available for children ages 5-11, the report finds that nearly 3 in 10 (27%) parents of children in that age range say they would get them vaccinated "right away" once eligible, and another third (33%) say they would want to "wait and see" how it works in other children first. These shares are little changed since July.

The new report also suggests a slowdown in vaccine uptake among those already eligible.

Among parents of adolescent children ages 12-17, about half (46%) say their child has already received at least one dose of a COVID-19 vaccine, and another 4% say they plan to do so right away – little changed since September. About 3 in 10 (31%) say they will “definitely not” get their adolescent child vaccinated.

Among adults, 72% say they’ve gotten at least one dose of a vaccine, and another 2% say they will do so “as soon as possible,” unchanged since September. An additional 5% say they want to “wait and see” before getting vaccinated, while 16% say they will “definitely not” get a vaccine and 4% say they will do so “only if required” for work or other activities.

There continues to be wide variation in vaccination rates across demographic groups, with the highest rates among Democrats (90%), those ages 65 and older (86%), and college graduates (83%). The lowest vaccination rates are among rural residents (58%), those who are uninsured (59%), and Republicans (61%).

Half of Americans, Including Two Thirds of Unvaccinated Adults, Say They’ve Resumed Normal Life

As the second holiday season since the pandemic approaches, the new report finds that half of the public say they have basically returned to normal life (43%) or never really changed their activity level to begin with (6%). This includes about two thirds of unvaccinated adults (65%) and three quarters (74%) of Republicans.

Most parents (56%) say their children will go trick-or-treating this Halloween, while about 1 in 8 (13%) say their children won’t due to the pandemic. Those most likely to say their kids won’t go trick-or-treating this year due to the pandemic include Hispanic parents (34%) and those who are Democrats or lean Democratic (29%).

About half of the public (48%) also plans to attend holiday gatherings with more than 10 people this year, and more than a quarter (28%) plan to travel for the holidays. Smaller shares say they won’t attend large gatherings (22%) or travel (15%) this year specifically because of pandemic concerns.

Other findings include:

- Majorities of the public say both that the spread of COVID-19 (57%) and the government restrictions on businesses to slow it (55%) are holding back economic growth in their area. Republicans are more than twice as likely as Democrats to say that government restrictions are hurting their local economy (76% vs. 33%).
- Most fully vaccinated adults say they have gotten (10%), or will definitely (43%) or probably (24%) get a booster dose of the vaccine if federal health authorities recommend it. Fewer say they probably (12%) or definitely (9%) would not get a booster dose, including nearly 4 in 10 (38%) of fully vaccinated Republicans.
- Many (40%) fully vaccinated adults say they are unsure whether they are currently eligible for a booster dose. This includes two thirds (67%) of those under age 30 and half (49%) of those who got their last dose less than six months ago.

Designed and analyzed by public opinion researchers at KFF, the KFF Vaccine Monitor survey was conducted from October 14-24 among a nationally representative random digit dial telephone sample of 1,519 adults. Interviews were conducted in English and Spanish by landline (168) and cell phone (1,351). The margin of sampling error is plus or minus 3 percentage points for the full sample. For results based on subgroups, the margin of sampling error may be higher.

The KFF COVID-19 Vaccine Monitor (https://connect.kff.org/e3t/Btc/RB+113/c1ThL04/VW23vV3YmNFIW32ZS_H8jKp5zW7swsJQ4z9b15N2K0T3G9kJWyV7Wycr7CgQptW5Nb4bc6l8rJcW2_Pj953-3sXjW7wGGsV1ZD4f0VG_KrM25gB-TW432ZG21VYW2cW1kT-1C7JRB-BW7bPGGf1TLHH6W9fMM467xJLmBW7MHPwP3rS9tsW2MXgZx410qVnW60Wx3q8hfwL5W90ZnDK8ZLbjCW5sLhH83msJlhW7bsfQj7pZMgtW7p3qwp84nHb_W5dYXB65SxGTFW8LcQRV7kJQ9-W1H_5RR6K_s1NW1FMGty7QIX2cW94dnhj5H_KPnW8DTzC64dXrhCw2BRQ-86KHD5BW8JGhp91GTmTcW7DvVyg8JvsYIW1BPkS6431N3hN7pHSS_x_XjrW1jRm2G2tgC0VW6Yv5jX6jTn7yW7yD6XL8MWL-MW87PVtb5bTnTW7hs2nx3xwB2CW2wCQ026qrWLYW84YxRV4k95-YW3wb3YZ8LXmv5W83mkDZ88DkcMV3Wm1d8lKvtN9gvz5tfl01LW72fnHW82BcmGVc_MzP2Qd0cHW4H54Mx5IS87XW4JFWdP2Rj2R9W3yTjqN5jQY2TW2rfzv45nb08gW5I-NqQ8rg7mmW7Nv7f945ZmjvW8FQjmM5YwDF3N22dW5hyBv5FW6-yqcQ6tTC42N27RL7gsvvzmW60fx8-2DzqG3W1s4Sf27tPDdYN6xb3Zj66zdCN3z69GXvWtlcW8RHb758_3ymkW5bV_bb11kbsVN2NY9FBPhy6NW28wbC93rQw-JN4yPLZhHfL3dW37Ygfz1vPDF8Vkh0XJ3Ff5PdW96tWSM8RFdv3W6WF4bq6Tlm7nW6BfHqK6pZ6_gW7ZK7zf607GbTW5FjDWk5K15w9VNL8s65129f5W3lyVR04xsjtXW8HlqSZ4NZB-W4v9_z_8XpZ5_W8FDz7x15LHy9W8ssPJL8NSXPGW1q23Ww3TcjjNVj_9YN2_lzdbMtK252c5Xkn3ckP1) is an ongoing research project tracking the public's attitudes and experiences with COVID-19 vaccinations. Using a combination of surveys and qualitative research, this project tracks the dynamic nature of public opinion as vaccine development and distribution unfold, including vaccine confidence and acceptance, information needs, trusted messengers and messages, as well as the public's experiences with vaccination.

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