

Service Member's Guide To Understand COVID-19 Vaccine Mandates

This is a practical guide for service members to demonstrate willingness to comply with the SECDEF memo dated 24 Aug 2021, Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense and subsequent service/base policy.

Key points/themes of this guide that must be maintained:

- always be professional
- always be courteous
- do not get bogged down with discussing personal feelings about the mandate or vaccines
- focus on the key points of the legal distinction between EUA and FDA-Approved products and their availability
- demonstrate a willingness to comply with all of the orders and mandates
- understand the timelines of the orders might not currently allow for lawful compliance, but remember commander set timelines/deadlines can always be extended as needed (time will tell what is available when deadlines near)
- ensure 1st Sergeant/Chief are updated with all of your communication and attempts to comply
- demonstrate the interpretation of the SECDEF's intent was to afford service members the protections of an FDA-Approved, licensed and labeled product (that is why the policy was delayed and the SECDEF policy says what it does, EUA = voluntary; FDA-Approved, licensed and labeled = mandatory)

Goal (A):

Commanders adjust and enforce policies that provide a practical timeline for service members to comply with the SECDEF mandate by affording military members the opportunity to receive an FDA-Approved, licensed and labeled product (COMIRNATY).

First Short-term plan (1):

- (1.a) - arrive at vaccination site and ask to see what specific vaccines are available
- (1.b) - document what vaccines are available, consider taking a picture of labeling, document batch/lot numbers
- (1.c) - document each time you go to the vaccination site to receive an FDA-Approved, licensed and labeled vaccine (request the 1st Sergeant/Chief to go with you if possible)
- (1.d) - discuss with your leadership about the concern of a lack of any vaccine available that is FDA-Approved, licensed and labeled (document these conversations: date/time, 5 Ws)
- (1.e) - discuss and document speaking with leadership, stating that you will comply with the mandate once an FDA-Approved, licensed and labeled vaccine is available
- (1.f) - if leadership and/or doctors state what the medical team has available is sufficient and can be used interchangeably, recommend agreeing that just because they can be used interchangeably does not mean they should, due to the Pfizer-BioNTech and COMIRNATY vaccines are legally distinct--only one of which is required to be taken under the mandate, COMIRNATY, ref TAB1

Best outcome of plan (1)

(1.g) - leadership understand and agree to provide service members time to await an FDA-Approved, licensed and labeled vaccine without pursuing punishment under military law

Worst outcome of plan (1)

(1.h) - leadership states they will continue to pursue punishment if the service member does not receive a COVID-19 vaccine before the deadline, even if an FDA-Approved, licensed and labeled product is not available

(1.i) Note: in the event you've arrived at no resolution and the worst outcome of plan 1 has occurred, recommend striving toward goal B with short-term plan 2 below.

Goal (B):

Increase commander's understanding/awareness of the service member's attempts and willingness to comply with the mandates, whereby an extended timeline for the mandate is granted. Achieve this by formally documenting attempts to comply with the mandate and local policy.

Second Short-term plan (2)

(2.a) - draft a memo for record addressed to commanders/leadership stating your willingness to comply with the SECDEF memo, local policy, and clearly state the issue with the FDA-Approved vaccines not being available (state all attempts to comply from plan 1)

(2.b) - in the memo clearly state when the FDA-Approved, licensed and labeled product is available, I will comply as intended by the SECDEF memo and local policy

(2.c) - ask your leadership if they understand your position in this matter and state you'd like to send them additional information

(2.d) - send leadership information from TAB1

(2.e) - once leadership review TAB1 information, discuss and request an extension of the deadline, allowing for the receipt of an FDA-Approved, licensed and labeled product

Best outcome of plan (2)

(2.f) - leadership understand and agree to provide service members time to await an FDA-Approved, licensed and labeled vaccine without pursuing punishment under military law

Worst outcome of plan (1)

(2.g) - leadership states they will continue to pursue punishment if the service member does not receive a COVID-19 vaccine before the deadline, even if an FDA-Approved, licensed and labeled product is not available

(2.h) Note: in the event you've arrived at no resolution and the worst outcome of plan 2 has occurred, recommend striving toward goal C with short-term plan 3 below.

Goal (C):

Formally request the commander to acknowledge the legal distinction between the EUA and FDA-Approved, licensed and labeled products, and request commander signature for confirmation of intent of granting an extension or pursuit of punishment under military law.

Third Short-term plan (3):

(3.a) - create a second memo, the same as the first memo except with the addition of (1) an endorsement section that requests the commander to sign stating they have reviewed and understand differences between EUA and FDA-Approved products, and (2) include attachment of TAB1 and TAB2 documents for ease of reference.

(3.b) - request an indication on the endorsed portion of the memo if the commander is going to allow an extended timeline to receive an FDA-Approved, licensed/labeled product or if they will ignore the concerns, laws and regulations addressed in TAB1 and TAB2 and pursue punishment under military law.

(3.c) - request the commander to sign the document and return it

Best outcome of plan (3)

(3.d) - leadership understand and agree to provide service members time to await an FDA-Approved, licensed and labeled vaccine without pursuing punishment under military law

Worst outcome of plan (3)

(3.e) - leadership states they will continue to pursue punishment if the service member does not receive a COVID-19 vaccine before the deadline, even if an FDA-Approved, licensed and labeled product is not available

(3.f) Note: in the event you've arrived at no resolution and the worst outcome of plan 3 has occurred, recommend striving toward goals below

Goal (D):

Confirm the leadership above your current chain of command is aware of the issue. Achieve an extended deadline through chain of command advocacy.

Goal (E):

Send all emails and memos to local base defense counsel, prep legal defense for service members on the base

Likely Short-term Outcomes:

- bases understand the legal distinction of EUA and FDA-Approved but will maintain plausible deniability and continue to threaten service members with punishment to attempt to coerce them into waiving their rights... whereby service members are [technically] volunteering to take the vaccine (ethics aside, the goal is to get as many people to get the vaccine as possible)
- when deadlines are getting close, bases will gather legal information and acknowledge the supply shortage/availability of COMIRNATY and extend deadlines, thus not pursuing punishment under military law for those who've not received the vaccine
- this does not prevent bases or leadership from administering letters of counseling or local negative documentation/continued threats; however, punishment under the UCMJ is what should be avoided.
- commanders will likely come to realize they cannot legally punish service members for not getting a vaccine approved only under EUA
- commanders will likely come to realize that only the U.S. President can mandate service members to take a vaccine labeled for use under EUA

Note About Base Helping Agencies Related to This Issue:

- base patient advocates will state they cannot force service members to take the vaccine and the fact of EUA and FDA-Approval, legal distinctions are legal matters...contact base legal
- base legal will state they cannot provide counsel or advice and refer service members to the area defense counsel or equivalent
- base inspector general will state this is a commander issue and won't be able to assist further
- base area defense counsel will state they cannot advise a service member until they have been punished
- this is why educating commanders on the legal distinction between the EUA and FDA-Approved vaccines is critical to service members being able to extend the deadlines and avoid punishment

TAB1

(A) SECDEF MEMO -

<https://media.defense.gov/2021/Aug/25/2002838826/-1/-1/0/MEMORANDUM-FOR-MANDATORY-CORONAVIRUS-DISEASE-2019-VACCINATION-OF-DEPARTMENT-OF-DEFENSE-SERVICES-VICE-MEMBERS.PDF>

(B) VACCINE INFORMATION FACT SHEET FOR RECIPIENTS AND CAREGIVERS ABOUT COMIRNATY (COVID-19 VACCINE, mRNA) AND PFIZER-BIONTECH COVID-19 VACCINE TO PREVENT CORONAVIRUS DISEASE 2019 (COVID-19) -

<https://www.fda.gov/media/144414/download>

(C) FDA Extension of EUA for Pfizer-BioNTech COVID-19 Vaccine and Issuance of COMIRNATY License -

<https://www.fda.gov/media/150386/download>

(D) COMIRNATY Package Insert -

<https://www.fda.gov/media/151707/download>

(E) BLA License Agreement -

<https://www.fda.gov/media/151710/download>

TAB2

(A) 2 Things Mainstream Media Didn't Tell You About FDA's Approval of Pfizer Vaccine

- *Buried in the fine print of Monday's approval by the U.S. Food and Drug Administration of the Pfizer Comirnaty COVID vaccine are two critical facts that affect whether the vaccine can be mandated, and whether Pfizer can be held liable for injuries.*

<https://childrenshealthdefense.org/defender/mainstream-media-fda-approval-pfizer-vaccine/>

(B) Association of American Physicians and Surgeons (AAPS) Asks Employers to Rescind COVID-19 Vaccine Mandates -

<https://finance.yahoo.com/news/association-american-physicians-surgeons-aaps-214800845.html>

(C) The shadow of anthrax: The voluntary COVID-19 vaccination effort owes much to past failures -

<https://www.armytimes.com/news/your-army/2021/06/17/the-shadow-of-anthrax-the-voluntary-covid-19-vaccination-effort-owes-much-to-past-failures/>

Long-term Goal (F):

Identify service members that were coerced to receive a vaccine only approved under EUA

First Long-term plan (4):

(4.a) - If the base pursues punishment to service members and/or service members receive the EUA vaccine under threat of base policy timelines and the service member has a rare adverse reaction, the service member should pursue legal representation and bring a legal case against the base for damages.

Long-term Goal (G):

Hold the media responsible for misleading the public and service members for supporting a false narrative with an attempt to coerce citizens to take an experimental drug

Second Long-term plan (5):

(5.a) - Encourage class action lawsuit against all media companies that intended to mislead the public by stating the FDA-Approval and encouraged shots/mandates immediately... without available supply or acknowledging the legal distinctions between EUA and FDA-Approved products

(5.b) - All applicable news articles should be retracted and/or updated to state legal distinction, liability protections, differences between EUA and FDA-Approved products, and acknowledge product availability