

**ANNOUNCEMENT FROM  
DEFENSE PRICING AND CONTRACTING,  
OFFICE OF THE UNDER SECRETARY OF DEFENSE (ACQUISITION & SUSTAINMENT)**

## **Updates on Implementation of EO 14042**

Listed below are announcements issued by Defense Pricing and Contracting (DPC) providing updates and guidance to the Contracting Community on implementing Executive Order (E.O.) 14042. These updates are listed in reverse chronological order. Note, recent updates MAY supersede prior updates announced. Refer to the most recent updates when resolving any conflicting information.

**October 20, 2022**

On October 20, 2022 the Principal Director, Defense Pricing and Contracting, issued the following announcement distributing time-sensitive communication regarding implementation of Executive Order 14042.

### **OMB Update regarding COVID Safety Protocols for Federal Contractors**

The purpose of this announcement is to ensure that DoD Components take no action to require covered contractors and subcontractors to come into compliance with previously issued Task Force guidance; or to enforce any contract clauses implementing Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, until further notice is provided by DPC. Despite the lifting of the nationwide bar to enforcement on October 18, 2022, at this time agencies should **NOT**: (1) take any steps to require covered contractors and subcontractors to come into compliance with previously issued Task Force guidance; or (2) enforce any contract clauses implementing E.O. 14042.

- E.O. 14042 directs agencies to include a clause in certain contracts to ensure that contractors comply with all guidance for contractor and subcontractor workplace locations published by the Safer Federal Workforce Task Force.
  - DoD Class Deviation 2021-O0009, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors dated October 10, 2021, implemented these requirements.
- The United States District Court for the Eastern District of Kentucky, on November 30, 2021, issued a preliminary injunction enjoining implementation of the provisions of E.O. 14042 in the states of Kentucky, Ohio, and Tennessee.
  - DoD Class Deviation 2021-O0009, Revision 1, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors dated December 02, 2021, implemented this requirement, and revised and superseded the initial Class Deviation.
- The United States District Court for the Southern District of Georgia, on December 7, 2021, issued an injunction, enjoining the implementation of the provisions of E.O. 14042 in the United States and its territories.
  - DoD Class Deviation 2021-O0009, Revision 2, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, dated December 9, 2021, was issued to implement the injunctions issued by the United States District Court for the

**ANNOUNCEMENT FROM  
DEFENSE PRICING AND CONTRACTING,  
OFFICE OF THE UNDER SECRETARY OF DEFENSE (ACQUISITION & SUSTAINMENT)**

Southern District of Georgia and the United States District Court for the Eastern District of Kentucky, and revised and superseded the Class Deviation Revision 1.

- The United States Court of Appeals for the Eleventh Circuit, on August 26, 2022, held that the United States District Court for the Southern District of Georgia erred in issuing a nationwide injunction. The Court's ruling became effective on October 18, 2022.
- On October 14, 2022, OMB and the Task Force published an Update Regarding Executive Order 14042 at <https://www.saferfederalworkforce.gov/contractors/>.
- Despite the lifting of the nationwide scope, at this time OMB guidance is that agencies shall take no action to require covered contractors and subcontractors to come into compliance with previously issued Task Force guidance; or to enforce any contract clauses implementing E.O. 14042, until further notice. Thus, DoD Class Deviation 2021-O0009, Revision 2, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, dated December 9, 2021 remains the controlling guidance on this point.

POC: Defense Pricing and Contracting, Defense Acquisition Regulations System, at [osd.pentagon.ousd-a-s.mbx.dfars@mail.mil](mailto:osd.pentagon.ousd-a-s.mbx.dfars@mail.mil)

**December 10, 2021**

On December 9, 2021, DoD Class Deviation 2021-O0009, Revision 2, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, was issued. This revision to the class deviation implements the requirements of both the December 7, 2021, and November 30, 2021, Federal Court preliminary injunctions.

In compliance with the December 7, 2021 and November 30, 2021 court orders, the Department of Defense (DoD) will not enforce a clause implementing the provisions of E.O. 14042 or requiring compliance with the Safer Federal Workforce Task Force's, "COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors," in contracts, orders, or contract like-instruments, including Other Transaction Agreements, pending further court orders or direction from the Office of Management and Budget.

As a result, all reporting requirements outlined in DPC's memoranda entitled, "Coronavirus Disease 2019 Vaccination: Limited Exception Up to 60 Days," and "DFARS Clause 252.223-7999 Reporting Requirements," both issued November 30, 2021, are suspended until further notice.

**December 8, 2021**

On December 7, 2021, the United States District Court for the Southern District of Georgia issued a court order, enjoining implementation of the provisions of Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, in the United States and its territories.

**ANNOUNCEMENT FROM  
DEFENSE PRICING AND CONTRACTING,  
OFFICE OF THE UNDER SECRETARY OF DEFENSE (ACQUISITION & SUSTAINMENT)**

A new revision to DoD Class Deviation 2021-O0009, Revision 1, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, reflecting this court order is imminent, and is anticipated to be released no later than December 10, 2021.

In the meantime, to ensure compliance with the court order, contracting officers shall not enforce the vaccine mandate in clause 252.223-7999, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O0009).

**December 1, 2021**

On November 30, 2021, the United States District Court for the Eastern District of Kentucky issued a court order, enjoining the implementation of E.O. 14042's provisions in Kentucky, Ohio, and Tennessee. The OMB communication below informs agencies of the actions that must be taken to ensure compliance with that court order.

A revision to DoD Class Deviation 2021-O0009, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, reflecting the court order is imminent, with anticipated release no later than December 2, 2021. In the meantime, contracting officers must follow the OMB preliminary guidance below to ensure compliance with the court order.

**From:** Chief Acquisition Officers Council

**Sent:** Wednesday, December 1, 2021 3:06 PM

**To:** CAO-COUNCIL

**Subject:** [Time-sensitive] Update on implementation of EO 14042

*Please see below for a time-sensitive communication regarding implementation of Executive Order 14042 from the Office of Management and Budget (OMB):*

On November 30, 2021, a Federal district court temporarily enjoined implementation of provisions of Executive Order 14042 in three states. The court order covers the States of Kentucky, Ohio, and Tennessee. This memorandum informs agencies of the actions that must be taken to ensure compliance with that court order.

The Department of Justice is currently reviewing the court order to determine its scope and to decide on next steps in the ongoing litigation. In time, as the litigation continues and agencies implement the court order, additional or amended guidance may be issued to address new legal developments, resolve logistical difficulties, or mitigate disruption to the procurement process. In the meantime, pending further direction, agencies must follow this preliminary guidance to ensure compliance with the court order.

**For existing contracts and contract-like instruments (hereinafter "contracts"), including extensions and renewals, that are performed at least in part in Kentucky, Ohio, and/or Tennessee:**

If the contract includes a clause requiring compliance with guidance issued by the Safer Federal Workforce Task Force ("Task Force guidance"), the administering agency must take no action to enforce

**ANNOUNCEMENT FROM  
DEFENSE PRICING AND CONTRACTING,  
OFFICE OF THE UNDER SECRETARY OF DEFENSE (ACQUISITION & SUSTAINMENT)**

that clause and should inform the contractor that the clause will not be enforced absent further notice from the agency.

If the contract or order does not include a clause requiring compliance with Task Force guidance, the administering agency must refrain from attempting to insert such a clause into the document. The agency should not ask that the contractor voluntarily agree to the insertion of such a clause.

**For existing solicitations for services that may be performed at least in part in Kentucky, Ohio, and/or Tennessee:**

If the solicitation includes a provision that would require compliance with Task Force guidance, the issuing agency shall issue a solicitation amendment either removing that provision or providing that the provision would not be enforced in contracts subject to the court order. The agency should comply with all applicable legal requirements for full and open competition.

If the solicitation contains no clause requiring compliance with Task Force guidance, the agency shall not seek to add one, unless it provides that the provision would not be enforced in contracts subject to the court order.

**For future solicitations, contracts, and orders that may be performed at least in part in Kentucky, Ohio, and/or Tennessee:**

Absent further direction from OMB, agencies shall not include a clause requiring compliance with Task Force guidance in new solicitations, contracts, or orders, including extensions or renewals, that may be performed at least in part in Kentucky, Ohio, and/or Tennessee, unless the clause provides that it would not be enforced in contracts or orders subject to the court order. In some cases, agencies may be unable to determine in advance whether work under a given solicitation will be performed in any of those states. In those cases, the solicitation must not include a clause requiring compliance with Task Force guidance, unless the clause provides that it would not be enforced in contracts or orders subject to the court order.

**For existing and future contracts and orders, including extensions and renewals, that are known to be performed entirely outside of Kentucky, Ohio, and/or Tennessee:**

No change in approach is required. The court order applies only to contracts that are performed at least in part in Kentucky, Ohio, or Tennessee. If contracting officers or other cognizant agency personnel are unsure whether performance on a given contract takes place at least in part in one of those three states, they should immediately request that information from the contractor. If still in doubt, they should treat the contract as if it is being performed at least in part in Kentucky, Ohio, and/or Tennessee, and follow the guidance above.

Agencies must adhere to this guidance to ensure that the Government meets its legal obligations.