

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

This guidance concerns the implementation of Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors* (Sept. 9, 2021). That Executive Order directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act¹ (“agencies”) to insert into covered contracts and contract-like instruments (hereinafter “contracts”) a clause requiring contractors and subcontractors to comply with workplace safety guidance issued by the Safer Federal Workforce Task Force (“Task Force”) provided that the OMB Director approves the guidance and determines that the guidance will promote economy and efficiency in Federal contracting.

On December 9, 2021, OMB issued guidance to agencies to assist them in complying with a Federal district court order that barred enforcement of Executive Order 14042 nationwide. More recently, on August 26, 2022, the U.S. Court of Appeals for the Eleventh Circuit held that the district court erred in issuing a nationwide injunction, and that the court’s order prohibiting enforcement should apply only with respect to the parties in the case. The appellate court’s ruling took effect when that court issued its mandate on October 18, 2022. With the Eleventh Circuit’s ruling taking effect, active court orders will prohibit enforcement of the Executive Order in some locations and as to some entities.

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 Executive Order 14042.

As set forth in the [October 14, 2022 Update Regarding Executive Order 14042 from OMB and the Task Force](#), the Task Force intends to update its guidance regarding COVID-19 safety protocols for covered contractor and subcontractor workplace locations. That Task Force guidance will include a timeline for implementation by contractors and subcontractors. The Director of OMB will also review the updated Task Force guidance and make a determination regarding whether the new guidance promotes economy and efficiency in Federal contracting. Such a determination would be published in the Federal Register pursuant to Executive Order 14042. Thereafter, OMB would issue further guidance to agencies on their timing and considerations for agencies’ provision of written notice to contractors regarding enforcement of contract clauses implementing requirements of Executive Order 14042 and agencies’ addition of such clauses to contracts and solicitations, except as barred by any applicable injunctions. Such guidance from OMB will not be issued prior to the updated Task Force guidance.

In the meantime, to allow time to develop advice and processes for meeting agencies’ obligations under Executive Order 14042 and applicable court orders, agencies should follow the instructions provided [here](#).

¹ 40 U.S.C. 102(4)(A)

Interim Guidance for Agencies on Enforcement and Clause Compliance

I. For existing contracts that contain a clause implementing requirements of Executive Order 14042

Agencies should continue **NOT** to enforce any contract clauses implementing requirements of Executive Order 14042—regardless of party or location—until future OMB guidance discussed above indicates that contracting agencies should provide written notice to contractors reinstating enforcement of those clauses and then resume enforcement.

II. For existing contracts that do not include a clause implementing requirements of Executive Order 14042

For any existing contract that does not include a clause implementing requirements of Executive Order 14042, agencies should **NOT** at this time modify the contract to insert a clause implementing requirements of Executive Order 14042, even when renewing, extending the term of, placing a new order against, or exercising an option under the contract.

III. For solicitations, including solicitations for new orders to be issued under existing indefinite delivery/indefinite quantity contracts

For solicitations, agencies should **NOT** at this time include a clause implementing requirements of Executive Order 14042. If the agency is conducting a solicitation for new orders under an existing indefinite delivery/indefinite quantity contract that contains a clause implementing requirements of Executive Order 14042, the agency should continue **NOT** to enforce that existing clause.

Note: The court orders discussed in this guidance apply only to the application of requirements pursuant to Executive Order 14042. There is no change to the Safer Federal Workforce Task Force’s guidance for COVID-19 workplace safety protocols for Federal agencies pursuant to Executive Order 13991. Federal agency workplace safety protocols for Federal buildings and Federally controlled facilities still apply in all locations. Contractor employees working onsite in those facilities must still follow those Federal agency workplace safety protocols.

If agency Chief Acquisition Officers or Senior Procurement Executives have questions or need further information about this guidance, they should send a message to vaccines@omb.eop.gov.