

Update on implementation of EO 14042

Chief Acquisition Officers and Senior Procurement Executives:

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

On December 1, 2021, OMB issued initial guidance on implementing requirements of Executive Order 14042 while ensuring compliance with a court order covering the States of Kentucky, Ohio, and Tennessee. That guidance is hereby rescinded. Since the issuance of that initial guidance, another court has issued a nationwide injunction—an order that bars enforcement of the Executive Order in any state or outlying area of the United States. Both court orders are preliminary and may be supplemented, modified, or vacated, depending on the course of ongoing litigation. Given the uncertainty surrounding the court orders, OMB has formulated this updated guidance to be applicable even if the existing court orders change or new orders are issued.

Agencies should follow the instructions provided in this updated guidance to ensure compliance with currently applicable court orders.

I. For existing contracts or contract-like instruments (hereinafter “contracts”) that contain a clause implementing requirements of Executive Order 14042

Agencies shall notify the contractor of the following:

The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”). In all other circumstances, the Government will enforce the clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.

Agencies may provide that notification, as well as any other contractor notification required by this guidance, by posting the necessary information in a centralized location monitored by contractors, such as sam.gov. **[DOE Office of Acquisition Management will be posting a notice in SAM.GOV which will satisfy this requirement.]**

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

- A. If the work under such a contract is performed entirely in an Excluded State or Outlying Area, the agency must not attempt to add a clause implementing requirements of the Executive Order into the contract.
- B. For all other contracts to which the Executive Order applies, when exercising an option, issuing a new order under the contract, or extending the term of the contract, the agency must pursue bilateral modification of the contract to include the clause. If the agency is not exercising an option, issuing a new order, or extending the contract's term, the agency *may* pursue bilateral modification to include the clause. In either case, when requesting that a contractor agree to the addition of the clause, the agency must inform the contractor of the following:

The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, "Excluded State or Outlying Area"). In all other circumstances, the Government will enforce the clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.

III. For solicitations (existing or future), including solicitations for new orders to be issued under existing indefinite delivery/indefinite quantity contracts not containing a clause that implements requirements of Executive Order 14042

- A. If the solicitation indicates that work under the contract to be awarded will be performed entirely in an Excluded State or Outlying Area, the solicitation should not include a clause implementing requirements of Executive Order 14042. If the solicitation does include such a clause, the agency must remove it through an amendment to the solicitation.
- B. For all other solicitations to which Executive Order 14042 applies, the agency must include a clause implementing requirements of the Executive Order and a provision stating as follows:

The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application

of requirements pursuant to the Executive Order (hereinafter, “Excluded State or Outlying Area”). In all other circumstances, the Government will enforce the clause, except for contractor employees who perform substantial work on or in connection with a covered contract in an Excluded State or Outlying Area, or in a covered contractor workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.

If an existing solicitation to which Executive Order 14042 applies does not contain both the implementing clause and the provision described above, the agency must amend the solicitation to add those terms.

Note: The court orders only apply 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. 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.

Agencies must adhere to this guidance to ensure that the Government meets its legal obligations. If agency Chief Acquisition Officers or senior procurement executives have questions or need further information about this guidance, they should contact Barbara Thomas in the OMB Office of General Counsel at barbara.e.thomas@omb.eop.gov.