



Memorandum

TO: Robert Adler
Acting Chairman

FROM: Mary Boyle
Executive Director

SUBJECT: Class Deviation from the Federal Acquisition
Regulation (FAR)

DATE: October 7, 2021

I. Background

Executive Order (E.O.) 14042 was signed by the President on September 9, 2021, and published in the Federal Register at 86 FR 50985 on September 14, 2021. The E.O. requires agencies to include a clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force.

The Civilian Agency Acquisition Council (CAAC) issued CAAC letter 2021-03 on September 30, 2021 authorizing Agencies to issue a Class Deviation to implement the Order. This CAAC letter provided the authorized text of clause 52.223-99 *Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors*. FAR Case 2021-021 has been opened to implement the appropriate statutory changes in the FAR that are compelled by Executive Order 14042. However, agencies have been directed to implement Class Deviations to implement the requirements of the Order by October 15th, 2021.

II. Scope

This Class Deviation applies to contract actions covered by Executive Order 14042 and CAAC Letter 2021-03. Agencies are **required** to include the clause in-

- new contracts awarded on or after November 14, 2021, from solicitations issued before October 15, 2021 (this includes new orders awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, under existing indefinite-delivery contracts);
- new solicitations issued on or after October 15, 2021, and contracts awarded pursuant to those solicitations (this includes new solicitations issued on or after October 15, 2021, 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 the Task Force Guidance broadly, consistent with applicable law. Accordingly, agencies are **encouraged, but are not required** to include the clause in-

- contracts that have been or will be awarded prior to November 14, 2021, on solicitations issued before October 15, 2021; and
- contracts that are not covered or directly addressed by the E.O. because the contract or subcontract is under the simplified acquisition threshold or is a contract or subcontract for the manufacturing of products.

The clause shall not be applied to:

- contracts and subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) (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).

III. Effective Date

This Class Deviation is effective upon signature and shall remain in effect until the clause required by Executive Order 14042 is incorporated into the Federal Acquisition Regulations or is otherwise rescinded.

IV. Action

The Consumer Product Safety Commission must use the guidance and the prescribed clause in Attachment 1 as the FAR text.

V. Attachments

Attachment 1 –52.233-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

CLASS DETERMINATIONS AND FINDINGS
Class Deviation From the Federal Acquisition Regulation Regarding
Implementation of Executive Order 14042, Ensuring Adequate COVID
Safety Protocols for Federal Contractors

FINDINGS

1. Executive Order (E.O.) 14042 was signed by the President on September 9, 2021, and published in the Federal Register at 86 FR 50985 on September 14, 2021. The E.O. requires agencies to include a clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force
2. The clause will promote 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. 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.
3. FAR Case 2021-021 has been opened to implement the appropriate changes in the Federal Acquisition Regulations that are compelled by Executive Order 14042 and the guidance published by the Safer Federal Workforce Task Force. However, agencies have been directed to implement Class Deviations to implement section 2 of the Executive Order by October 15th. CAAC Letter 2021-03, "Class Deviation From the Federal Acquisition Regulation Regarding Implementation of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors", constitutes consultation in accordance with FAR 1.404 with the Chair of the Civilian Agency Acquisition Council (CAAC) allowing agencies to authorize this class deviation.

DETERMINATION

1. Pursuant to the authority delegated to me under Federal Acquisition Regulation Subpart 1.404(a), I hereby authorize the issuance of this class deviation in accordance with Executive Order 14042 and CAAC Letter 2021-03.
2. This deviation is effective immediately and shall remain in effect until the requirements of Executive Order 14042 are incorporated into the FAR or are otherwise rescinded.

Robert Adler
Acting Chairman
U.S. Consumer Product Safety Commission

Date

Attachment 1

52.223-99 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)