

Approved: 10-12-2021

SUBJECT: COVID SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS

1. PURPOSE. To ensure the continued operation of DOE sites and facilities under health and safety emergencies as designated by the President and implement Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*.

2. CANCELS/SUPERSEDES. None.

3. APPLICABILITY.

a. Departmental Applicability. This Order applies to all DOE Departmental Elements.

The Administrator of the National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

b. DOE Contractors. Except for the equivalencies/exemptions in paragraph 3.c., the Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that will apply to contracts that include the CRD or its requirements.

Specifically, the CRD or FAR class deviation 52.223-99, "Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors" must be included in the following:

- (1) Contracts that include DEAR 970.5204-2, *Laws, regulations, and DOE directives* or DOE clause H-DOE-2071, *DOE Directives*;
- (2) Management and Operating (M&O) contracts;
- (3) Non-M&O Major Site/Facility contracts; and
- (4) Other contracts (e.g., support services contracts), as determined by Heads of Departmental Elements that include DOE clause DOE-H-2071, *DOE Directives*.

c. Equivalencies/Exemptions for DOE O 350.5. There will be no exemptions or equivalencies to this Order after approval.

Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the

Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

4. REQUIREMENTS.

- a. Ensure contracts covered by the Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors* (the E.O.). include a clause requiring the contractor—and its subcontractors at any tier—to, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force).
- b. Ensure workplace safety protocols developed by the Task Force apply to “all covered contractor employees, including contractor or subcontractor employees in covered contractor workplaces who are not working on a Federal Government contract. Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:
 - (1) COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
 - (2) Compliance by individuals, including covered contractor employees and visitors, with the guidance related to masking and physical distancing while in covered contractor workplaces; and
 - (3) Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

See Attachment 1, CRD, for requirements for covered contracts.

c. Contract Incorporation:

- (1) For new contracts, renewals, option exercises, and contract extensions Contracting Officers (CO) must incorporate a clause into solicitations and contracts that implements guidance issued by the Task Force pursuant to Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors* following the guidance in [<https://www.energy.gov/management/pf-2022-01-class-deviation-federal-acquisition-regulation-regarding-implementation>].
- (2) For existing M&O contracts that include DEAR 970.5204-2, *Laws, regulations, and DOE directives* and for which the Contracting Officer has not already incorporated the FAR class deviation 52.223-99, “Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors,” the Contracting Officer shall attempt to reach mutual agreement with the contractor to expeditiously incorporate the CRD via bi-lateral modification. If that is not successful, the CO shall unilaterally modify those contracts consistent with the DEAR Laws, Regulations, and

Directives Clause. As soon as possible after the CRD is incorporated, the CO must request that the contractor assess the effect of incorporating the CRD on contract cost, funding, schedule, and technical performance and take any appropriate actions to ensure effective contract management. The Contracting Officer will incorporate the CRD without alteration. Any requests for alteration to the CRD must be submitted to the DOE/NNSA Senior Procurement Executive who will obtain approval from the Office of Management and Budget.

- (3) For non-M&O Major Site and Facility contracts that include DEAR 970.5204-2, *Laws, regulations, and DOE directives*, or DOE clause DOE-H-2071, *DOE Directives*, for which the Contracting Officer has not already incorporated the FAR class deviation 52.223-99, “Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors,” the Contracting Officer shall attempt to reach mutual agreement with the contractor to expeditiously incorporate the CRD via bi-lateral modification. If that is not successful, the CO shall unilaterally modify those contracts consistent with the DEAR Laws, Regulations and Directives Clause or DOE clause DOE-H-2071, *DOE Directives*. As soon as possible after the CRD is incorporated, the CO must request that the contractor assess the effect of incorporating the CRD on contract cost, funding, schedule, and technical performance and take any appropriate actions to ensure effective contract management. The Contracting Officer will incorporate the CRD without alteration. Any requests for alteration to the CRD must be submitted to the DOE/NNSA Senior Procurement Executive who will obtain approval from the Office of Management and Budget.
- (4) For other contracts (e.g., support services contracts), as determined by Heads of Departmental Elements that include DOE clause DOE-H-2071, *DOE Directives*, for which the Contracting Officer has not already incorporated the FAR class deviation 52.223-99, “Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors,” the Contracting Officer shall attempt to reach mutual agreement with the contractor to expeditiously incorporate the CRD via bi-lateral modification. If that is not successful, the CO shall unilaterally modify those contracts consistent with the DOE clause DOE-H-2071, *DOE Directives*. The Contracting Officer will incorporate the CRD without alteration. Any requests for alteration to the CRD must be submitted to the DOE/NNSA Senior Procurement Executive who will obtain approval from the Office of Management and Budget.

5. RESPONSIBILITIES.

a. Heads of Departmental Elements or Designees.

- (1) Ensure the implementation of this directive in a timely manner.

- (2) Determine which non-M&O contracts should include the CRD.
 - (3) Ensure that Contracting Officers, in conjunction with Heads of Field Elements as appropriate, work with contractors to incorporate the CRD into contracts, as appropriate.
- b. Heads of Field Elements. In conjunction with COs, work with contractors to incorporate the CRD into contracts, as appropriate.
- c. Heads of Contracting Activities (HCAs).
- (1) Ensure that contracting officers, in conjunction with Heads of Field Elements, work with contractors to incorporate CRDs into contracts, as appropriate.
 - (2) Regarding existing contracts, give priority to modifying management and operating contracts, major site/facility contracts, and onsite support service contracts.
 - (3) Ensure Contracting Officers make every effort to execute contract modifications within one week of the date of this directive.
- d. Contracting Officers (COs).
- (1) For M&O contracts, if efforts to incorporate the FAR class deviation 52.223-99, "Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors" bi-laterally are unsuccessful, and after being notified by the Head of the Departmental Element or his or her designee, the CO must incorporate the CRD into the contract unilaterally by the due date established by the Head of the Departmental Element consistent with the terms and conditions in the contract. The Contracting Officer must incorporate the CRD without alteration.

For non-M&O contracts that include DEAR 970.5204-2, *Laws, regulations, and DOE directives*, if efforts to incorporate the FAR class deviation 52.223-99, "Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors" bi-laterally are unsuccessful, and after being notified by the Head of the Departmental Element or his or her designee, the CO must attempt to incorporate the CRD into the contract unilaterally by the due date established by the Head of the Departmental Element, consistent with the terms and conditions in the contract. If a Major Site and Facility or on-site support service contract does not include DEAR 970.5204-2, *Laws, regulations, and DOE directives* or DOE clause DOE-H-2071 *DOE directives*, the CO must attempt to incorporate the CRD bi-laterally. If unsuccessful, the CO must consult with the Head of the Departmental Element or appropriate program official to determine if the clause should be incorporated unilaterally or if other actions are appropriate. The CO must incorporate the CRD without alteration.

- (2) Make every effort to execute contract modifications within one week of the date of this directive or no later than a timeframe consistent with the DEAR Laws, Regulations, and Directives Clause or DOE clause DOE-H-2071, *DOE Directives*.
- (3) Contracting Officers must remain current with updates to applicable Task Force guidance and Frequently Asked Questions by regularly checking the OMB website and must apprise contractors of their responsibility to regularly check the website for changes to the guidance at:
<https://www.saferfederalworkforce.gov/contractors/>.

6. REFERENCES.

- a. Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, issued September 9, 2021
- b. Office of Management and Budget Safer Federal Workforce Task Force Guidance, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, issued September 24, 2021
- c. [Policy Flash 2022-02, Planning for Implementing Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, issued October 6, 2021](#)

7. DEFINITIONS. See Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, issued September 9, 2021.

8. CONTACT. Office of Acquisition Management at DOE_OAPMPolicy@hq.doe.gov.

BY ORDER OF THE SECRETARY OF ENERGY:



DAVID M. TURK
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 350.5, COVID SAFETY PROTOCOLS FOR FEDERAL
CONTRACTORS

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

1. REQUIREMENTS.

- a. Contractors 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>.
- b. Contractors must implement Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*:
 - (1) Contractors must include the CRD 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.
 - (2) Contractors must keep apprised of updates to the Task Force Guidance and Frequently Asked Questions (FAQs) by regularly checking the website at:
<https://www.saferfederalworkforce.gov/contractors>.
 - (3) Contractor requirements provision to implement Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*:

**ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS
FOR FEDERAL CONTRACTORS (OCT 2021)**

- (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 commonwealth 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 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)

2. REFERENCES.

- a. Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, issued September 9, 2021
- b. Office of Management and Budget Safer Federal Workforce Task Force Guidance, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*, issued September 24, 2021

3. DEFINITIONS. See Executive Order 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, issued September 9, 2021.