

Department of the Interior Acquisition, Arts, and Asset Policy (DOI-AAAP)

Title	Class Deviation Increasing the Minimum Wage for Federal Contractors
Reference Number	0194
Version Number	01
Function(s)	Acquisition
Point of Contact	Giammo, Antonia S,
Source of this Requirement	CAAC Letter 2024-001
Regulatory Reference	52.222-55

Version Detail

The table below describes the version history of this policy.

Version Number	Date	Author	Description of update
01	Date Signed	Antonia Giammo	Implements the CAAC authorized class deviation to amend FAR clause 52.222-55 following an injunction.

Purpose:

To issue a Class Deviation to the FAR that provides statutorily required clause language.

Scope:

The policy applies to DOI solicitations and contracts subject to the FAR.

Effective date:

This policy is effective upon signature and will remain in effect until the FAR is amended, the injunction is terminated, or the policy is otherwise rescinded.

Background:

Executive Order (EO) 14026, Increasing Minimum Wage for Federal Contractors, states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The Executive Order raises the minimum wage paid by those contractors to workers performing work on or in connection with covered federal contracts to \$15.00 per hour, beginning January 30, 2022; and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. The Department of Labor (DOL) issued a final rule to implement the EO and the Federal Acquisition Regulation was amended accordingly (see FAR §§ 22.1900–1906, 52.222-55; 87 Fed. Reg. 4117).

The EO and its implementation was challenged and, on September 26, 2023, a federal district court enjoined the Federal Government from enforcing the EO and DOL rule against the states

of Texas, Louisiana, and Mississippi and their agencies (Judgment, Texas v. Biden, No. 6:22-cv-00004, ECF No. 68 (S.D. Tex. Sept. 26, 2023)). **The injunction does not apply geographically to all contractors or contracts within those three States; rather, it applies only to these three States and their agencies as parties to federal contracts, regardless of the place of performance.** The injunction is effective October 4, 2023.

On September 29, 2023 DOL posted a notice on its website and on the System for Award Management stating:

Based on an order issued by the U.S. District Court for the Southern District of Texas on September 26, 2023, the minimum wage requirements of the final rule implementing Executive Order 14026 are not currently being enforced as to contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi (including their agencies) are a party.

[CAAC Letter 2024-01, CAAC Consultation to Issue a Class Deviation from the Federal Acquisition Regulation \(FAR\) Regarding Legal Challenges to Executive Order 14026, Increasing the Minimum Wage for Federal Contractors](#) (Attachment 1), was issued on October 10, 2023, and provides deviated language to FAR clause 52.222-55 to use while the injunction is in effect.

Action:

In accordance with Department of Justice direction, the contracting workforce must take no action to implement or enforce EO 14026 or the DOL Final Rule against the states of Texas, Louisiana, or Mississippi, or against agencies of those states.

Contracting officers shall use [deviated clause 52.222-55](#) (Attachment 2) instead of the current FAR clause equivalent while the injunction is in effect.

For new contracts:

- For solicitations not yet issued, while the injunction is in effect, insert the deviated clause 52.222-55 (Oct 2023) in solicitations and contracts that include the clause at 52.222-6, Construction Wage Rate Requirements, or 52.222-41, Service Contract Labor Standards, where work is to be performed, in whole or in part, in the United States.
- For solicitations that have been issued but where an award has not been made, while the injunction is in effect, the solicitation must be amended to replace FAR clause 52.222-55 (Jan 2022) with the deviated FAR clause 52.222-55 (Oct 2023).

For existing contracts:

- When extending, renewing, or exercising an option while the injunction is in effect, replace FAR clause 52.222-55 (Jan 2022) with the deviated clause FAR 52.222-55 (Oct 2023) through bilateral modifications. In such a circumstance, if the contracting officer is

unable to incorporate the deviated clause in an existing contract through bilateral modification, then the contracting officer shall not enforce the requirements of FAR clause 52.222-55 (Jan 2022) for federal contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party.

- For all other existing contracts, the contracting officer shall not enforce the requirements of FAR clause 52.222-55 (Jan 2022) while the injunction is in effect for federal contracts or subcontracts to which the States of Texas, Louisiana, or Mississippi, including their agencies, are a party.

When the EO 14026 minimum wage does not apply to contracts, the requirements of FAR 52.222-6, Construction Wage Rate Requirements, and FAR 52.222-41, Service Contract Labor Standards, must be adhered to, as applicable.

Attachments:

Attachment 1 - [CAAC Letter 2024-01, CAAC Consultation to Issue a Class Deviation from the Federal Acquisition Regulation \(FAR\) Regarding Legal Challenges to Executive Order 14026, Increasing the Minimum Wage for Federal Contractors](#)

Attachment 2 - [52.222-55 DEVIATION \(OCT 2023\)](#)

Approval Signature



Recoverable Signature

X Megan Olsen

Megan Olsen

Director, Office of Acquisition and Property M...

Signed by: MEGAN OLSEN