

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 26 - OTHER
SOCIOECONOMIC PROGRAMS**

Findings

1. The objective of this class deviation is to implement the Federal Acquisition Regulatory Council's model deviation text to the Federal Acquisition Regulation (FAR) Part 26 - *Other Socioeconomic Programs*, and applicable sections of FAR Part 52 - *Solicitation Provisions and Contract Clauses*.
2. On April 15, 2025, President Donald J. Trump issued Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*. Section 2 of the E.O. established the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed."
3. On May 2, 2025, the Office of Management and Budget (OMB) issued memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*, initiating a major overhaul of the FAR (Revolutionary FAR Overhaul, or "RFO"). The memorandum tasked the Office of Federal Procurement Policy (OFPP) with leading the RFO, in coordination with the other members of the Federal Acquisition Regulatory Council – i.e., the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA) and federal buying agencies. The goal is refocusing the FAR on its statutory roots. To that end, the FAR is being updated to:
 - Remove language that is not required by statute
 - Remove duplicative or outdated language
 - Clarify or provide more plain language
 - Revise language for the new FAR framework
 - Retain language necessary for governmentwide acquisition standards

The OMB memorandum M-25-26 established a two phased approach to implementing enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. Phase one involves the FAR Council issuing guidance on a rolling basis with clear, plain language model deviation text organized by FAR part. The goal is streamlining the regulation by aligning it more closely to its statutory base. According to the memorandum, agencies should adopt this model deviation text within 30 days by issuing either individual or class deviations.

4. On May 2, 2025, the FAR Council issued further implementing guidance in a memorandum titled *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*. Pursuant to the FAR Council's memorandum, "agencies that adopt the Council's RFO class deviation text without change, or require different text

only to address statutory direction unique to the agency, do not need to coordinate with the Council.”

5. On August 8, 2025, the FAR Council issued model deviation text for FAR Part 26 and corresponding clauses and provisions at FAR Part 52. The RFO FAR Part 26 model deviation text has been reorganized within each subpart to follow the acquisition process (i.e., steps to take before solicitation vs. after award). This new structure makes it easier and faster to find needed information at each stage of a procurement. Statutory requirements retained in the RFO FAR Part 26 model deviation include, but are not limited to, the following:

- 6 U.S.C. § 796, Registry of Disaster Response Contractors
- 25 U.S.C. § 1544, Additional Compensation to Contractors of Federal Agency
- 41 U.S.C. §§ 8101 et seq., Drug Free Workplace
- 42 U.S.C. § 1792, Promoting Federal Food Donation
- 42 U.S.C. § 5150, Use of Local Firms and Individuals
- Pub. L. 100-707 (42 U.S.C. §§ 5121 et seq.), Robert T. Stafford Disaster Relief and Emergency Assistance Act
- Pub. L. 114-328 Section 816, Amendments to Special Emergency Procurement Authority
- Pub. L. 114-328 Section 1641, Special Emergency Procurement Authority to Facilitate the Defense Against or Recovery from a Cyber Attack

In addition, the following table provides a non-exhaustive list of non-statutory requirements that have been revised and retained, or removed from Part 26:

Change	Description
Retained	• All subparts remain. The subparts are restructured from numerous scattered sections to sections that now reflect the acquisition lifecycle. • The core tenets of the programs governed by part 26 are preserved. ○ The 5% incentive payment for utilizing Indian organizations and Indian-owned economic enterprises as subcontractors remains allowable and is renumbered as 26.102-1. ○ The statutory preference for awarding contracts to local firms in the aftermath of a major disaster or emergency remains and is renumbered as 26.202-1. ○ The policy to encourage the participation of Historically Black Colleges and Universities and Minority Institutions in federal procurement continues and is renumbered as 26.301-1.

	○ The policy encouraging contractors to donate excess wholesome food remains the same and is renumbered as 26.402-1. ○ The fundamental requirements to maintain a drug-free workplace continues and is renumbered as 26.504-1.
Removed	● Former sections 26.601 <i>Purpose</i>, 26.602 <i>Applicability</i>, and 26.603 <i>Definitions</i> are removed. The clause at 52.226-8 retains the definitions. ● Former section 26.303, <i>Data collection and reporting</i> requirements is removed. Detailed data on contract awards is already captured and tracked through other methods (e.g., the Federal Procurement Data System (FPDS)). ● The procedures for challenges to representations under the Indian Incentive Program were removed from FAR part 26.103 and may be incorporated into non-regulatory guidance. ● Information pertaining to the Disaster Response Registry was removed from FAR part 26.205 and may be covered in non-regulatory guidance. ● Procedures related to the Food Donation Program were removed from FAR 26.403 and may be retained in non-regulatory guidance.

The RFO Part 52 model deviation text also makes the following changes:

All existing provisions and clauses are retained; however, clauses 52.226-1 *Utilization of Indian Organizations and Indian-Owned Economic Enterprises* and 52.226-6 *Promoting Excess Food Donation to Nonprofit Organizations* have been updated. Note that clause 52.226-6 no longer flows down to subcontractors.

Determination

In accordance with RFO 1.304 *Class deviations* and Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Parts 26 and 52, it is hereby determined that a class deviation is appropriate pursuant to OMB memorandum M-25-26 (Attachment 1) and the FAR Council memorandum (Attachment 2) issued on May 2, 2025, using the RFO model deviation text for Part 26 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 26 in lieu of 48 Code of Federal Regulations (CFR) Part 26, and the RFO model deviation text for the applicable sections of Part 52 in lieu of 48 CFR 52.226-1 through 52.226-8. Once approved, the Department will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to the affected regulations. This class deviation is effective upon issuance, and will remain effective until cancelled or incorporated into the FAR.

Janella Davis

Digitally signed by Janella
Davis
Date: 2025.08.28 17:13:46
-04'00'

Janella Davis,
Acting Director
Office of Acquisition Management
Senior Procurement Executive
Department of Energy

**WILLIAM
QUIGLEY**

Digitally signed by WILLIAM
QUIGLEY
Date: 2025.08.25 14:27:18
-04'00'

William J. Quigley,
Deputy Associate Administrator
Office of Partnership and Acquisition
Services
Senior Procurement Executive
National Nuclear Security Administration

Attachments:

OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*
FAR Council Memorandum, *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*
RFO Parts 26 and 52 Model Deviation Text