

**CLASS DEVIATION**  
**FINDINGS AND DETERMINATION**  
**FEDERAL ACQUISITION REGULATION (FAR) PART 42 – CONTRACT**  
**ADMINISTRATION AND AUDIT SERVICES**

**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 42 – Contract Administration and Audit Services, and applicable section 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  - Remove duplicative or outdated language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 September 30, 2025, the FAR Council issued model deviation text for FAR Part 42 and corresponding clauses at FAR Part 52. FAR part 42, Contract Administration and Audit Services, has been streamlined from 17 subparts to 13, and places more emphasis on contractor performance evaluations and using performance information throughout the acquisition lifecycle, not just for source selection information.

The update removes language limiting past performance information to future “source selection” purposes, and places an end date (April 1, 2026) on when evaluations should be marked as source selection. This revision signals to acquisition teams that past performance information may be used throughout the acquisition lifecycle.

In addition, the deviated text makes certain permissive considerations during performance evaluations mandatory. For example, section 42.1503(b) previously suggested considerations to document on an evaluation report, but the deviated text (42.1103(b)) now states that these areas **must** be documented. This emphasizes the importance of documenting key information consistently.

Finally, the deviated text removes the limitation on evaluating performance on AbilityOne contracts (previously at 42.1502(h)). With removal of this limitation, contracting activities can now document performance evaluations for AbilityOne contractors, providing a useful tool to motivate good contract performance by AbilityOne contractors, and enabling high-performing AbilityOne contractors to use positive performance evaluations to compete for new opportunities.

Statutory requirements retained in the RFO FAR part 42 model deviation include, but are not limited to, the following:

- 10 U.S.C. §§ 3741-3750 and 41 U.S.C. §§ 4301-4310, Allowable Costs
- 10 U.S.C. § 3841, Examination of Records of Contractor, and 41 U.S.C. § 4706, Examination of Facilities and Records of Contractor
- 11 U.S.C. §§ 501-511, Creditors and Claims
- 31 U.S.C. § 1535, Agency Agreements (also known as The Economy Act)
- 41 U.S.C. § 1126, Policy Regarding Consideration of Contractor Past Performance
- 41 U.S.C. § 1326, Requirements for Executive Agencies
- 41 U.S.C. § 2313, Database for Federal Agency Contract and Grant Officers and Suspension and Debarment Officials
- 41 U.S.C. § 3102, Delegation and Assignment of Powers, Functions, and Responsibilities
- 41 U.S.C. § 4504, Conditions for Progress Payments
- 41 U.S.C. § 6305, Prohibition on Transfer of Contract and Certain Allowable Assignments

Change	Description
<b>Retained</b>	<ul style="list-style-type: none"> <li>Subpart 42.1, “<b>Contract Audit Services</b>”, is streamlined with plain language updates.</li> <li>Subpart 42.2, “<b>Contract Administration Services</b>”, is streamlined with plain language updates.</li> <li>Subpart 42.3, “<b>Contract Administration Office Functions</b>”, is retained. The list of 71 functions has been updated with plain language and revised cross-references to align with the new part structure.</li> <li><b>Most provisions and clauses</b> have been retained (or remain reserved) with no changes. The only exception is noted in the “Moved/Updated” section below.</li> </ul>
<b>Moved and Updated</b>	<ul style="list-style-type: none"> <li>Subpart 42.4, “<b>Corporate Administrative Contracting Officer</b>”, is renumbered from subpart 42.6 and streamlined.</li> <li>Subpart 42.5, “<b>Indirect Cost Rates</b>”, is renumbered from subpart 42.7 and streamlined.</li> <li>Subpart 42.6, “<b>Disallowance of Costs</b>”, is renumbered from subpart 42.8 and streamlined.</li> <li>Subpart 42.7, “<b>Bankruptcy</b>”, is renumbered from subpart 42.9 and streamlined.</li> <li>Subpart 42.8, “<b>Production Surveillance and Reporting</b>”, is renumbered from subpart 42.11 and streamlined.</li> <li>Subpart 42.9, “<b>Novation and Change-of-Name Agreements</b>”, is renumbered from subpart 42.12 and streamlined.</li> <li>Subpart 42.10, “<b>Suspension of Work, Stop-Work Orders, and Government Delay of Work</b>”, is renumbered from subpart 42.13 and streamlined.</li> <li>Subpart 42.11, “<b>Contractor Performance Information</b>”, is renumbered from subpart 42.15. The structure of the “policy” and “procedures” sections (formerly 42.1502 and 42.1503, now 42.1102 and 42.1103) has been substantially improved. The subpart uses more headings, numbered lists, and subparagraphs to break down complex requirements into more digestible components. <ul style="list-style-type: none"> <li>Subsection 42.1101 removes language limiting past performance information to future “source selection” purposes <ul style="list-style-type: none"> <li><b>From:</b> “Past performance information (including the ratings and supporting narratives) is relevant information, <b>for future source selection purposes</b>, regarding a contractor’s actions under previously awarded contracts or orders.”</li> <li><b>To:</b> “Past performance information (including the ratings and supporting narratives) is relevant information, <b>for future purposes</b>, regarding a contractor’s actions under previously awarded</li> </ul> </li> </ul> </li> </ul>

Change	Description
	<p>contracts or orders.”</p> <ul style="list-style-type: none"> <li>○ Subsection 42.1103(d)(4) provides an end date for marking performance evaluations as source selection. It now states, <b>“Evaluations of contractor performance developed on contracts awarded prior to April 1, 2026, should be marked ‘Source Selection Information’”</b>. This update emphasizes that past performance information is no longer limited only to future source selection purposes.</li> <li>○ Subsection 42.1103(f) <b>replaces the reference to FAPIIS</b> (formally at 42.1503(g)) with the “responsibility/qualification reports in the System for Award Management (SAM), at SAM.gov”.</li> <li>● Subpart 42.12, <b>“Small Business Contract Administration”</b>, is renumbered from subpart 42.16 and streamlined.</li> <li>● Subpart 42.13, <b>“Forward Pricing Rate Agreements”</b>, is renumbered from subpart 42.17 and streamlined.</li> <li>● The following <b>clause has been updated</b> to align cross-references: <ul style="list-style-type: none"> <li>○ 52.242-3 (Clause), Penalties for Unallowable Costs</li> </ul> </li> <li>● The <b>FAR Companion</b> is expected to include best practice information not required in the FAR, on the following content: <ul style="list-style-type: none"> <li>○ Uses of performance information</li> <li>○ Interagency agreements</li> <li>○ Cognizant federal agency</li> <li>○ Contract administration functions</li> <li>○ Contract correspondence</li> <li>○ Visits to contractors’ facilities</li> <li>○ Evaluation of contract administration functions</li> <li>○ Postaward orientation</li> <li>○ Selecting contracts for postaward orientation</li> <li>○ Postward subcontractor conferences</li> <li>○ Procedures, related to distribution of documentation of indirect contract rates</li> <li>○ Production surveillance and reporting requirements</li> <li>○ Evaluation of Federal Prison Industries (FPI) performance</li> </ul> </li> </ul>
<b>Removed</b>	<ul style="list-style-type: none"> <li>● Former subparts 42.4, <b>“Correspondence and Visits”</b>, and 42.5, <b>“Postaward Orientation”</b>, are removed. Best practice content is expected to be moved to the <b>FAR Companion</b>.</li> <li>● 42.1502 paragraph (h) is removed to allow for past performance evaluations of AbilityOne.</li> </ul>

This table is not an exhaustive list.

## **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 42 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 42 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 42 in lieu of 48 Code of Federal Regulations (CFR) Part 42, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the applicable sections of 48 CFR 52.242-1 through 52.242-17. 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 on the date of issuance and will remain effective until cancelled or incorporated into the FAR.

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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 42 and 52 Model Deviation Text