

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 40 – INFORMATION
SECURITY AND SUPPLY CHAIN SECURITY**

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 40 – Information Security and Supply Chain Security, 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 - Remove duplicative or outdated language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 August 14, 2025, the FAR Council issued model deviation text for FAR Part 40 and corresponding clauses at FAR Part 52. With the publication of RFO Part 40, instead of navigating a patchwork of multiple subparts throughout the FAR and over a dozen different provisions and clauses to understand security requirements, readers can now refer to a single, logically organized part of the FAR, part 40, Information Security and Supply Chain Security.

FAR part 40 is reorganized into three key subparts:

- Subpart 40.1 - Processing Supply Chain Risk Information (previously reserved)
- Subpart 40.2 - Security Prohibitions and Exclusions
- Subpart 40.3 - Safeguarding Information (previously reserved)

Regulatory requirements previously found at FAR subparts 4.4, 4.19 through 4.23, and 25.7 have been moved into part 40 with more than a dozen separate provisions (5) and clauses (9) have been merged into 4 (1 provision and 3 clauses). Statutory requirements retained in the RFO FAR part 40 model deviation include, but may not be limited to, the following:

- 41 U.S.C. §§ 1321 et seq, Federal Acquisition Supply Chain Security Act (FASCSA)
- 41 U.S.C. § 4713, Authorities Related to Mitigating Supply Chain Risks in the Procurement of Covered Articles
- 44 U.S.C. §§ 3501 et seq, Federal Information Policy
- Pub. L. 115-91 Section 1634, Prohibition on Use of Products and Services Developed or Provided by Kaspersky Lab
- Pub. L. 115-232 Section 889, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
- Pub. L. 115-232 Section 1758, Requirements to Identify and Control the Export of Emerging and Foundational Technologies
- Pub. L. 115-390, Strengthening and Enhancing Cyber-capabilities by Utilizing Risk Exposure Technology Act (SECURE Technology Act)
- Pub. L. 117-328 Div R Section 102, Prohibition on the Use of TikTok
- Pub. L. 118-31 Section 1823, Prohibition on Procurement of Covered Unmanned Aircraft Systems from Covered Foreign Entities.

New subpart 40.1 incorporates:

- Sharing Supply Chain Risk Information (from FAR 4.2302): The requirement to share relevant supply chain risk information with the Federal Acquisition Security Council when applicable is moved to FAR 40.102.

Subpart 40.2 incorporates:

- Kaspersky Lab (from FAR 4.20): The prohibition on hardware, software, and services from Kaspersky Lab and its affiliates is now at FAR 40.202(b). Its

definitions (Kaspersky Lab covered article, Kaspersky Lab covered entity) have been moved to the new definitions section at FAR 40.201.

- Section 889 (from FAR 4.21): The prohibition on contracting for certain Chinese telecommunications and video surveillance equipment and services is now located at FAR 40.202(d). The definitions are centralized at FAR 40.201.
- ByteDance/TikTok (from FAR 4.22): The prohibition on the presence or use of TikTok applications or services on government and contractor information technology is now located at FAR 40.202(a). The definitions are centralized at FAR 40.201.
- Federal Acquisition Supply Chain Security Act (FASCSA) (from FAR 4.23): The prohibition on violating an applicable FASCSA order is now located at FAR 40.202(e). Key definitions are centralized at FAR
- 40.201. The requirements for implementing FASCSA exclusion and removal orders have been streamlined and moved to FAR 40.204-1.
- Prohibited Foreign Sources (from FAR 25.7): The prohibitions related to Office of Foreign Assets Control (OFAC) restrictions, as well as specific prohibitions against contracting with entities doing business in Sudan and Iran now reside at 40.202(f), (g), and (h)

New subpart 40.3 incorporates:

- Safeguarding Classified Information within Industry (from FAR 4.4): The policies and procedures for safeguarding classified information within industry, rooted in Executive Order 12829 and the National Industrial Security Program (NISP), have been moved to the new section 40.302.
- Basic Safeguarding of Covered Contractor Information Systems (from FAR 4.19): The requirements for the basic safeguarding of covered contractor information systems that contain Federal Contract Information (FCI) are retained and moved to the new section 40.303

New clause 52.240-91, Security Prohibitions and Exclusions, replaces the following clauses:

- 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities
- 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
- 52.204-27, Prohibition on a ByteDance Covered Application.
- 52.204-28, Federal Acquisition Supply Chain Security Act Orders-Federal Supply Schedules, Governmentwide Acquisition Contracts, and Multi-Agency Contracts.
- 52.204-30, Federal Acquisition Supply Chain Security Act Orders-Prohibition.
- 52.225-13, Restrictions on Certain Foreign Purchases.

New clause 52.240-92, Security Requirements, replaces the following clause:

- 52.204-2 Security Requirements.

New clause 52.240-93, Basic Safeguarding of Covered Contractor Information Systems, replaces the following clause:

- 52.204-21 Basic Safeguarding of Covered Contractor Information Systems.

In summary, Part 40 has been streamlined by merging and consolidating content from parts 4 and 25, removing redundancies, and improving clarity.

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 40 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 40 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 40 in lieu of 48 Code of Federal Regulations (CFR) Part 40, and the RFO model deviation text for the applicable sections of Part 52 in lieu of 48 CFR 52.204-2, 52.204-21, 52.204-23, 52.204-25, 52.204-27, 52.204.28, 52.204-30, 52.225-13, and 52.240-1.

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.

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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 40 and 52 Model Deviation Text