

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 23 – SUSTAINABLE
ACQUISITION, MATERIAL SAFETY, AND POLLUTION PREVENTION**

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 23 – Sustainable Acquisition, Material Safety, and Pollution Prevention, 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”), 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:
 - Eliminate non-statutory language
 - Remove redundant or obsolete language
 - Enhance clarity through plain language
 - Align with the new FAR framework
 - Preserve essential 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 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 RFO FAR Part 23 – Sustainable Acquisition, Material Safety, and Pollution Prevention, and the corresponding clauses at FAR Part 52 – Solicitation Provisions and Contract Clauses. RFO FAR Part 23 has been revised to enhance clarity and efficiency, and to ensure compliance with current statutory requirements. The updated FAR part maintains existing statutory mandates for energy efficiency, biobased products, energy savings performance contracts, hazardous material identification, and pollution prevention. Requirements related to clean energy and waste reduction, previously driven by the now-revoked E.O. 14057, have been removed. Statutory requirements retained in the RFO FAR Part 23 model deviation include, but are not limited to, the following:

- 7 U.S.C. § 8102, Biobased Markets Program
- 42 U.S.C. § 6361, Federal Energy Conservation Programs
- 42 U.S.C. § 6962, Resource Conservation and Recovery Act of 1976
- 42 U.S.C. § 8259b, Federal Procurement of Energy Efficient Products
- 42 U.S.C. §§ 7671 et seq, Stratospheric Ozone Protection
- 42 U.S.C. §§ 13101 et seq, Pollution Prevention Act of 1990

Other key changes include, but are not limited to the following:

Retained:

- The following provision and clauses are retained (or remain reserved) with no changes:
 - 52.223-4 (Provision), Recovered Material Certification
 - 52.223-5 (Clause), Pollution Prevention and Right-to-Know Information
 - 52.223-6 remains reserved
 - 52.223-8 remains reserved
 - 52.223-9 (Clause), Estimate of Percentage of Recovered Material Content for EPA-Designated Items
 - 52.223-13 through 52.223-18 remain reserved

Moved/Updated:

- Section 23.000, “Scope of Part”, is updated to align with the new part title. It removes references to “environment”, replaces “sustainable products and services” with “sustainable acquisition” and adds the phrase “preventing pollution”.
- Subpart 23.1, “Sustainable Products”, is updated to remove “and Services” from the subpart title. The “Scope of Part” at 23.100 is streamlined and removes redundant references to content covered in FAR part 12.
- Section 23.101, “Definitions” is updated to include:
 - New definitions:
 - Energy-efficient product
 - Low standby power device
 - Sustainable product
 - Definitions updated for clarity:

- EPA-designated item
 - USDA-designated product category
- Sections 23.102, “Policy”, 23.103, “Procedures”, and 23.104, “Priorities”, streamline and consolidate former sections in this subpart.
 - 23.102 presents a clear mandate that agencies must procure sustainable products to the maximum extent practicable.
 - 23.103 outlines three direct steps for the contracting officer when procuring sustainable products.
 - 23.104 provides clear priorities for acquisition teams when procuring sustainable products.
- Section 23.106, “Restrictions”, provides improved clarity on products the contracting officer is prohibited from purchasing.
- Subpart 23.2, “Energy Savings Performance Contracts”, is updated for clarity and efficiency.
- Section 23.201, “Definition” is added to provide a formal definition for “Energy savings performance contract”.
- Subpart 23.3, “Material Safety”, updates its title from “Hazardous Material Identification, Material Safety Data, and Notice of Radioactive Materials”. The content is updated for clarity, streamlining and/or to remove outdated content.
- Subpart 23.4, “Pollution Prevention”, updates its title from “Pollution Prevention, Environmental Management Systems, and Waste Reduction”. The content is updated for clarity, streamlining, and/or to remove outdated content.
 - 23.401, “Definitions”, is updated to remove definition of “Federal agency” and add definitions for:
 - “Pollution prevention”
 - “Toxic chemical” (from 23.001)
- The following provision and clauses are updated for clarity, to mirror updates made throughout the part, and/or to update crossreferences or remove outdated content:
 - 52.223-1 (Provision), Biobased Product Certification
 - 52.223-2 (Clause), Reporting of Biobased Products Under Service and Construction Contracts
 - 52.223-3 (Clause), Hazardous Material Identification and Safety Data
 - 52.223-7 (Clause), Notice of Radioactive Materials
 - 52.223-11 (Clause), Ozone-Depleting Substances
 - 52.223-12 (Clause), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners
 - 52-223-23 (Clause), Sustainable Products
- The FAR Companion is expected to include best practice and guidance on the following:
 - Energy Savings Performance Contracts (ESPCs)
 - Resources for Statutory Environmental Purchasing Programs

Removed:

- The definitions of “Environmental” and “Greenhouse gas”, previously at 23.001, are deleted, as they were primarily relevant to the now-deleted subpart 23.5.
- “Environmental management systems”, formerly section 23.404 is deleted. This deletion is based on the revocation of E.O. 14057.
- “Waste reduction program”, formerly section 23.405 is deleted. This deletion is based on the revocation of E.O. 14057.
- “Greenhouse Gas Emissions”, formerly subpart 23.5 is deleted. This deletion is based on the revocation of E.O. 14057.
- The following provision and clauses are removed and marked reserved based on the revocation of E.O. 14057 or because they are not required by statute or otherwise essential to sound procurement:
 - 52.223-10 (Clause), Waste Reduction Program
 - 52.223-19 (Clause), Compliance with Environmental Management Systems
 - 52.223-20 (Clause), Aerosols
 - 52.223-21 (Clause), Foams
 - 52.223-22 (Provision), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation.

Determination

In accordance with FAR 1.304 *Class deviations* (as implemented by DOE/NNSA class deviation) 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 Part 23 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 23 and the applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will follow the RFO model deviation text for Part 23 in lieu of 48 Code of Federal Regulations (CFR) Part 23, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections of 48 CFR Part 52.223-1 through 52.223-23. 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 23 and 52 Model Deviation Text