

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 27 – PATENTS, DATA, AND
COPYRIGHTS**

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 27 – Patents, Data, and Copyrights, 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 11, 2025, the FAR Council issued model deviation text for RFO FAR Part 27 – Patents, Data, and Copyrights and the corresponding clauses at FAR Part 52 – Solicitation Provisions and Contract Clauses. RFO FAR Part 27 governs intellectual property rights in government contracts, explaining how parties acquire rights, how rights are licensed or shared, and how to protect both government and contractor interests. It has been updated with important plain language updates, enhanced clarity, and improved readability. Statutory requirements retained in the RFO FAR Part 27 model deviation include, but are not limited to, the following:

- 10 U.S.C. § 3793, Copyrights, Patents, Designs
- 15 U.S.C. § 638, Research and Development
- 17 U.S.C. §§ 101-122, Copyrights
- 18 U.S.C. § 798, Patent and Copyright Cases
- 35 U.S.C. §§ 200-212, Patent Rights in Inventions Made with Federal Assistance
- 41 U.S.C. § 2302, Rights in Technical Data

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

Retained:

- Section 27.000, “Scope of Part” is retained with a minor plain language update
- Section 27.001, “Definition” is unchanged
- Subpart 27.1, “General” is retained and streamlined
- Subpart 27.2, “Patents and Copyrights” is streamlined and continues to provide guidance regarding:
 - Patent and copyright infringement liability
 - Royalties
 - Security requirements for patent applications containing classified subject matter
- Section 27.202, “Royalties” has been significantly streamlined by reserving all procedural subsections (27.202-1 through 27.202-4) and retaining only subsection 27.202-5, “Solicitation Provisions and contract clause”. Note, this section no longer references provision 52.227-7, Patents—Notice of Government Licensee, as the provision has been deleted
- Subpart 27.3, “Patent Rights under Government Contracts” is retained and streamlined
 - Section 27.304, “Procedures” is retained with minimal edits. This section provides critical guidance on application of the patent clauses
- Subpart 27.4, “Rights in Data and Copyrights” is streamlined and retained. This subpart includes intellectual property rights anchored in law and provides important guidance to contracting officers on addressing these issues within a federal contract
 - Section 27.405, “Other Data Rights Provisions” has been revised and the approach for special works (27.405-1) and existing works (27.405-2) has been fundamentally altered. The previous version prescribed the use of specific contract clauses (52.227-17 and 52.227-18). The revised section instead provides descriptive guidance, instructing that contracts "must

specifically address the Government's rights" and that agencies are "authorized to specially negotiate" terms

- Section 27.407, "Rights to Technical Data in Successful Proposals" has been retained and completely updated. The former text prescribed the use of the clause at 52.227-23, "Rights to Proposal Data (Technical)". This clause is removed and the updated section consists of a single, broader sentence that highlights the Government's discretion
- The following provisions and clauses were retained with no changes in text:
 - 52.227-1 (Clause), Authorization and Consent
 - 52.227-2 (Clause), Notice and Assistance Regarding Patent and Copyright Infringement
 - 52.227-3 (Clause), Patent Indemnity
 - 52.227-4 (Clause), Patent Indemnity—Construction Contracts
 - 52.227-5 (Clause), Waiver of Indemnity
 - 52.227-6 (Provision), Royalty Information
 - 52.227-8, remains "Reserved"
 - 52.227-9 (Clause), Refund of Royalties
 - 52.227-10 (Clause), Filing of Patent Applications—Classified Subject Matter
 - 52.227-11 (Clause), Patent Rights—Ownership by the Contractor
 - 52.227-12, remains "Reserved"
 - 52.227-13 (Clause), Patent Rights—Ownership by the Government
 - 52.227-14 (Clause), Rights in Data—General
 - 52.227-15 (Provision), Representation of Limited Rights Data and Restricted Computer Software
 - 52.227-16 (Clause), Additional Data Requirements
 - 52.227-17 (Clause), Rights in Data—Special Works
 - 52.227-20 (Clause), Rights in Data—SBIR Program
 - 52.227-21 (Clause), Technical Data Declaration, Revision, and Withholding of Payment—Major Systems
 - 52.227-22 (Clause), Major System—Minimum Rights

Moved:

- The FAR Companion is expected to include best practice information on the following moved content that is not statutorily required:
 - Section 27.102, "General Guidance"
 - Subsection 27.202-1, "Reporting of Royalties"
 - Section 27.204, "Patented Technology Under Trade Agreements"
 - Section 27.305, "Administration of Patent Rights Clauses", including:
 - 27.305-3, "Securing invention rights acquired by the Government"
 - 27.305-4, "Protection of invention disclosures"
 - Section 27.406, "Acquisition of Data"
 - Section 27.408, "Cosponsored Research and Development Activities"
 - Subpart 27.5, "Foreign License and Technical Assistance Agreements"

- The FAR Companion is expected to include best practice information on the following retained content:
 - Subpart 27.4, treatment of “Rights in Data and Copyrights”

Removed:

- Section 27.302, “Policy”, which included unnecessary lengthy detail of the Government's comprehensive policy and objectives for patent rights and title under contracts, has been removed as it is not statutorily required
- Subsection 27.304-1(a), “Status as small business concern or nonprofit organization”, has been removed. This content is duplicative of FAR part 19.
- Section 27.402, “Policy”, which explained the Government’s need for data and the importance of balancing its needs with contractors’ proprietary interests, has been removed as it is not statutorily required
- Paragraphs (a) and (c) of Section 27.406-1, “General”, are removed, as it is not statutorily required
- The following provision and clauses were removed:
 - 52.227-7 (Provision), Patents—Notice of Government Licensee
 - 52.227-18 (Clause), Rights in Data—Existing Works
 - 52.227-19 (Clause), Commercial Computer Software License
 - 52.227-23 (Clause), Rights to Proposal Data (Technical)

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 27 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 27 and the applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will follow the RFO model deviation text for Part 27 in lieu of 48 Code of Federal Regulations (CFR) Part 27, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections of 48 CFR Part 52.227-1 through 52.227-23. 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.

Derek Passarelli,
Senior Procurement Executive
Department of Energy

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 27 and 52 Model Deviation Text