

**CLASS DEVIATION  
FINDINGS AND DETERMINATION  
DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) PART 936 -  
CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**Findings**

1. The objective of this class deviation is to update the Department of Energy Acquisition Regulation (DEAR) Part 936 - *Construction and Architect-Engineer Contracts* to implement the changes to the Federal Acquisition Regulation (FAR) Part 36 - *Construction and Architect-Engineer Contracts* by the Federal Acquisition Regulatory Council (FAR Council) through the Revolutionary FAR Overhaul (RFO) initiative and make other deregulatory revisions to DEAR Part 936 pursuant to Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*.
2. On April 15, 2025, President Donald J. Trump issued 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 FAR Council. The goal is to refocus 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  - Remove duplicative or outdated language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 implement enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. During phase one, the FAR Council issued plain language model deviation text for all applicable FAR parts.

4. On July 24, 2025, the FAR Council issued model deviation text for FAR Part 36 and the corresponding sections of FAR Part 52, which the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) adopted through a class deviation (Attachment 3), issued via Policy Flash 2025-49 on August 25, 2025.
5. DOE, including NNSA, is implementing E.O. 14275 and the related FAR revisions from the RFO through updates to its FAR supplement (the DEAR) via class deviations. These

class deviations update FAR references in the DEAR, and make additional substantive changes, when necessary, driven by the RFO revisions to the relevant FAR parts, and the requirements of E.O. 14275 and OMB Memorandum M-25-26.

During phase one of the RFO – when the FAR is updated via class deviations incorporating the RFO model text – the DEAR will not be updated to align with the new FAR numbering structure. Once the RFO revisions to the FAR are finalized through formal rulemaking, the DEAR will be updated through formal rulemaking to align with the revised FAR numbering structure.

6. Accordingly, DEAR Part 936 is revised to update internal references following the RFO, as implemented by DOE/NNSA class deviation, and make plain language edits to improve readability, including changes to the active voice. The plain language edits are not intended to change existing DEAR requirements, but rather to improve clarity pursuant to the federal plain language guidelines as directed by the Plain Writing Act of 2010 (Pub. L. 111-274). Additionally, the DEAR is revised to replace the term “shall” with “must” or “will,” to impose requirements.

Specifically, DEAR Part 936 updates include the following:

- a. Reserve subpart 936.2 —*Special Aspects of Contracting for Construction*, since there is currently no content in this subpart, except section 936.202-70, which is reserved.
- b. Delete section 936.202-70, which was previously marked as reserved.
- c. Reserve subpart 936.6—*Architect-Engineer Services*, because the content under this subpart is being deleted and marked as reserved.
- d. Delete the content and mark as reserved section 936.602-70 *DOE selection criteria*. The corresponding FAR sections, previously at 36.602-1 and 36.603, were deleted by the RFO in order to provide contracting activities maximum flexibility in evaluating offeror qualifications. The corresponding DEAR section is being deleted to implement the RFO revisions to the FAR.
- e. Delete the content and mark sections as reserved under section 936.609-3 *Work oversight in architect-engineer contracts* and clause 952.236-71 *Inspection in architect-engineer contracts*. Clause 952.236-71 is not statutorily based, and its requirements are redundant of other laws and regulations and not deemed necessary for sound procurement. Therefore, pursuant to the requirements of E.O. 14275, clause 952.236-71 and its prescription at 936.609-3, are removed and marked as reserved.
- f. Delete subpart 936.7, which was previously marked as reserved.
- g. Delete section 952.236-72, which was previously marked as reserved.

## **Determination**

In accordance with DEAR 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Part 36 (Attachment 4), it is hereby determined that a class deviation is appropriate pursuant to OMB memorandum M-25-26 (Attachment 5), using the

attached deviation text for DEAR Part 936 (Attachment 2). Specifically, DOE/NNSA will use the deviation text for Part 936 in lieu of 48 Code of Federal Regulations (CFR) Part 936. 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 in effect until cancelled or incorporated into the DEAR.

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Attachments:

1. DEAR Part 936 Deviation Text – Track Changes
2. DEAR Part 936 Deviation Text – Final
3. Class Deviation to Adopt Revolutionary FAR Overhaul (RFO) Part 36 - Construction and Architect-Engineer Contracts
4. RFO FAR Part 36 Model Deviation Text
5. OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*