



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

SUBJECT: Class Deviation No. 2026-28 from the Transportation Acquisition Regulation for TAR Part 1228 in Support of Executive Order 14275, Restoring Common Sense to Federal Procurement

FROM: Chrishaun Jones
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TO: Department of Transportation Chiefs of the Contracting Offices

- I. Purpose:** This memorandum approves a class deviation to the Transportation Acquisition Regulation (TAR) part 1228 for the purpose of implementing, in the TAR, Federal Acquisition Regulation (FAR) Class Deviation (CD) (No. 2025-28) for FAR part 28 in support of Executive Order (E.O.) 14275, “Restoring Common Sense to Federal Procurement.”
- II. Effective Date:** Immediately.
- III. Background:** On April 15, 2025, [Executive Order \(E.O.\) 14275, Restoring Common Sense to Federal Procurement](#) was signed. Section 2 of the E.O. establishes 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.” The Revolutionary FAR Overhaul (RFO) initiative will make the FAR more concise, understandable, and focused on core procurement requirements. This also applies to agency supplements to the FAR.

Under this initiative, 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- Remove duplicative or outdated language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 RFO FAR part 28 model deviation text upon which this RFO TAR part 1228 deviation is also based, establishes bedrock principles. The Department of Transportation (DOT) issued [FAR CD 2025-28](#) for FAR part 28 on September 26, 2025.

To ensure alignment with issued E.O.s and the RFO FAR part CD, it is necessary to issue this RFO TAR CD in advance of a proposed rule to implement these requirements to ensure DOT policies and procedures align with these requirements. DOT intends on conducting further analysis and developing a rule for publication in the Federal Register for public comment after the release of this CD, and after FAR proposed and final rules are published.

IV. Summary of Changes: The following table is not an exhaustive list but includes notable updates to TAR part 1228:

Change	Description
New/Retained/Updated	General – Updated TAR content and headings to align with RFO FAR Part 28. Subpart 1228.1—Bonds and Other Financial Protections – retained and updated with plain language. • 1228.106, Administration. Retained header/title with no text. • 1228.106-6, Furnishing information. ○ Paragraph (c). Removed contracting officer procedures on furnishing copies as internal guidance and unnecessary in the TAR to align with RFO drafting principles. ○ Included revised agency policy on requestor payment of preparation costs. • 1228.106-70, Execution and administration of bonds. ○ Updated to plain language for clarity, replaced “shall” with either “will” in paragraph (b), with “must” in paragraph (c), and “may” in paragraph (c), as appropriate. ○ Removed paragraph (d) as internal agency procedures. • 1228.106-71 Waiver of performance and payment bonds for certain contracts. ○ Updated title to add “Waiver of...”. ○ Added clarifying information on the types of contracts where the Bond statute is waived as permitted by 40 U.S.C. 3134(b) - for the construction, alteration, or repair of vessels, when the contract is issued via agency agreements (see 31 U.S.C. 1535-1536), or under 46 U.S.C. subtitle V, Merchant Marine. Subpart 1228.3—Insurance - retained and updated with plain language; removed internal agency procedures. • 1228.307, Insurance under cost-reimbursement contracts. Added the aligned RFO header title, with no text. • 1228.307-1, Group insurance plans. ○ Updated the text to remove “shall” and replace with “must” per RFO FAR drafting guidelines. • 1228.311-1, Contract clause. ○ Updated the prescription to align with RFO FAR drafting standards, removing “The contracting officer shall...” as unnecessary.

Removed	General – Text has been deleted in the subparts or sections below to remove non-statutory guidance. Subpart 1228.1—Bonds and Other Financial Protections. • 1228.106-470, Contract clause—notification of payment bond protection. ○ Removed as unnecessary and more appropriate to internal agency guidance. FAR coverage adequate. • 1228.106-6, Furnishing information. ○ Removed the last two sentences from paragraph (c) as more appropriate to internal agency guidance. • 1228.106-70, Execution and administration of bonds. ○ Removed paragraph (d) as internal agency procedures. • 1228.106-7100, Waiver. ○ Removed now extraneous header/title as “Waiver” was incorporated into the section title at 1228.106-71. • 1228.106-7100, Exception. ○ Removed as more appropriate to internal agency guidance, when revised and as appropriate. Subpart 1228.3—Insurance. • 1228.306, Insurance under fixed-price contracts. Removed the header/title with no text. Unnecessary as the underlying sections removed as described below. • 1228.306-70, Contracts for lease of aircraft. ○ Removed the prescriptions for clauses 1252.228-70, -71, 72, and -73, all involving leased aircraft operating for or on behalf of the U.S. Coast Guard, a service department and mission now under the U.S. Department of Homeland Security. ○ It is now prescribed in their regulation under chapter 30 of Title 48, Code of Federal Regulations. Part 1252—Solicitation Provisions and Contract Clauses • All the following clauses were removed as the mission requirement no longer falls under DOT for clauses 1252.228-70, -71, -72, and -73. ○ 1252.228-70, Loss of or Damage to Leased Aircraft. ○ 1252.228-71, Fair Market Value of Aircraft. ○ 1252.228-72, Risk and Indemnities. ○ 1252.228-73, Command of Aircraft. • 1252.228-74, Notification of Payment Bond Protection. ○ Removed as the need for the clause no longer exists and is redundant to the RFO FAR. Any guidance to the contracting officer is also more appropriate as internal agency guidance, as appropriate.
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- V. **Required Actions:** Contracting Officers shall follow the RFO TAR part 1228 deviation text, in lieu of TAR part 1228 as codified at 48 CFR, chapter 12. The RFO TAR deviation text is shown in the Attachment.

Chiefs of the Contracting Offices (COCOs) must ensure this deviation is disseminated to the acquisition workforce and ensure compliance with the requirements in the CD.

- VI. **Applicability:** This CD applies to all DOT Operating Administrations (OAs), the Office of the Secretary of Transportation (OST), and the Office of the Inspector General (OIG), excluding the Federal Aviation Administration (FAA) in accordance with RFO TAR 1201.103-70(b).
- VII. **Authority:** This CD is issued under the authority of RFO FAR 1.304, Class deviations; TAR 1201.404, Class deviations; and the revised citation at RFO TAR 1201.304, for the purpose of implementing policy in the TAR to comply with requirements of certain E.O.s, statutes, and other directives in DOT FAR CD No. 2025-28 and as described below.
- VIII. **Expiration Date:** This CD will remain in effect until it is incorporated into the TAR, superseded, or is otherwise rescinded, whichever occurs first.
- IX. **Point of Contact:** Questions or comments regarding this deviation may be directed to DOTAcquisitionPolicy@dot.gov.

Attachment:

- A. RFO TAR Part 1228 Deviation Text – Bold/Bracketed/Line-in Line-Out (BB-LILO)

Transportation Acquisition Regulation (TAR) Class Deviation (CD) No. 2026-28

Attachment A

RFO TAR Part 1228 Deviation Text

TAR Text Baseline is 48 CFR chapter 12 as of March 26, 2026.

Additions are shown as **[bolded and bracketed]** and deletions are shown in strikethrough deletions. TAR Text unchanged shown as asterisks.

Part 1238—Bonds and Insurance

Subpart 1228.1—Bonds and Other Financial Protections

1228.106 Administration.

~~1228.106-470 Contract clause—notification of payment bond protection.~~

1228.106-6 Furnishing information.

1228.106-70 Execution and administration of bonds.

1228.106-71 **[Waiver of P[p]erformance and payment bonds for certain contracts.**

~~1228.106-7100 Waiver.~~

~~1228.106-7101 Exception.~~

Subpart 1228.3—Insurance

~~1228.306 Insurance under fixed price contracts.~~

~~1228.306-70 Contracts for lease of aircraft.~~

[1228.307 Insurance under cost-reimbursement contracts.]

1228.307-1 Group insurance plans.

1228.311-1 Contract clause.

Authority: [5 U.S.C. 301](#); [41 U.S.C. 1121\(c\)\(3\)](#); **[and]** [41 U.S.C. 1702](#); and ~~[48 CFR 1.301 through 1.304](#)~~.

PART 1227—PATENTS, DATA, AND COPYRIGHTS

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds and Other Financial Protections

1228.106 Administration.

~~1228.106-470 Contract clause notification of payment bond protection.~~

~~The contracting officer must insert the clause at 1252.228-74, Notification of Payment Bond Protection, in solicitations and contracts when payment bonds are required.~~

1228.106-6 Furnishing information.

(c) When furnishing a copy of a payment bond and contract ~~in accordance with FAR 28.106-6(b),~~ the requirement for a copy of the contract may be satisfied by furnishing a pdf of the contract's first pages which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. **[The requestor, after furnishing an affidavit in accordance with FAR 28.106-6(c), must pay preparation costs per DOT procedures.]**~~The contracting officer furnishing the copies shall place the statement “Certified to be a true and correct copy” followed by his/her signature, title and name of the Operating Administration using an authenticated electronic signature. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, [49 CFR part 7](#), and [1224.203](#).~~

1228.106-70 Execution and administration of bonds.

(a) ~~The e[C]ontracting officer[s] shall [will]~~ notify the surety within 30 days of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm ~~shall~~**[must]** be listed in the bond following the name of the firm, and the phrase “a partnership composed of.” If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond(s), other than an annual bond, ~~shall~~**[may]** not predate the contract to which it pertains.

~~(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross reference the applicable bonds.~~

1228.106-71 [Waiver of] P[p]erformance and payment bonds for certain contracts.

~~1228.106-7100 Waiver.~~

Pursuant to the authority vested in the Secretary of Transportation by the Bond statute at [40 U.S.C. chapter 31](#), subchapter III, Bonds (historically known as the Miller Act), the requirements of [40 U.S.C. 3131](#) *et seq.* are waived, to the extent authorized in accordance with [40 U.S.C. 3134\(b\)](#) [for the construction, alteration, or repair of vessels, when the contract is issued via agency agreements (see 31 U.S.C. 1535-1536), or under 46 U.S.C. subtitle V, Merchant Marine].

~~1228.106-7101 Exception.~~

~~A performance and payment bond for the contracts described under 1228.106-7100 may be advantageous in view of unusual circumstances arising in connection with such contracts. Requests for the authority to include the requirement for either a performance or payment bond, or both in the contracts described under 1228.106-7100 shall be submitted by the contracting officer to the HCA, before a solicitation is issued.~~

Subpart 1228.3—Insurance

~~1228.306 Insurance under fixed-price contracts.~~

~~1228.306-70 Contracts for lease of aircraft.~~

~~(a) The contracting officer shall insert the clauses at 1252.228-70, Loss of or Damage to Leased Aircraft; 1252.228-71, Fair Market Value of Aircraft; and 1252.228-72, Risk and Indemnities, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training), except in the following circumstances—~~

- ~~(1) When the hourly rental rate does not exceed \$250 and the total rental cost for any single transaction is not in excess of \$2,500;~~
- ~~(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or~~
- ~~(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.~~

~~(b) As codified, [49 U.S.C. 44112](#), as amended, provides that an aircraft lessor under a lease of 30 days or more is not liable for injury or death of persons, or damage or loss of property, unless the aircraft is in the actual possession or control of the lessor and the damage occurs because of—~~

- ~~(1) The aircraft, engine, or propeller; or~~
- ~~(2) The flight of, or an object falling from, the aircraft, engine, or propeller.~~

~~(c) On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. To take advantage of this coverage, the Risks and Indemnities clause at 1252.228-72, prescribed in [paragraph \(d\)](#) of this section, shall be used.~~

~~(d) The contracting officer shall insert the clause at 1252.228-72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.~~

~~(e) During the performance of a contract for out-service flight training for DOT, whether the instruction to DOT personnel is in leased, contractor provided, or Government provided aircraft, contractor personnel shall always, during the entirety of the course of training and operation of the aircraft, remain in command of the aircraft. At no time shall Government personnel or other personnel be permitted to take command of the aircraft. The contracting officer shall insert the clause at 1252.228-73, Command of Aircraft, in any solicitation and contract for out-service flight training, whether performed utilizing DOT leased aircraft, contractor provided aircraft, or Government provided aircraft.~~

[1228.307 Insurance under cost-reimbursement contracts.]

1228.307-1 Group insurance plans.

(a) ***Prior approval requirement.*** Contractors ~~shall~~**[must]** provide plans required by FAR 28.307-1(a) to the contracting officer for approval.

1228.311-1 Contract clause.

~~The contracting officer shall i~~**[I]**~~nsert the clause at FAR 52.228-7, Insurance Liability to Third Persons, as prescribed in FAR 28.311-1 unless it is waived by an official one level above the contracting officer.~~

Part 1252 – Solicitation Provisions and Contract Clauses

Subpart 1252.2—Text of Provisions and Clauses

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1252.235-70 Research Misconduct. [(RFO Deviation)]
1252.237-71 Technology Transfer. [(RFO Deviation)]
1252.228-70 Loss of or Damage to Leased Aircraft. [(RFO Deviation)]
1252.228-71 Fair Market Value of Aircraft. [(RFO Deviation)]
1252.228-72 Risk and Indemnities. [(RFO Deviation)]
1252.228-73 Command of Aircraft. [(RFO Deviation)]
1252.228-74 Notification of Payment Bond Protection. [(RFO Deviation)]

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~~1252.228-70 Loss of or Damage to Leased Aircraft.~~

As prescribed in ~~1228.306-70(a)~~, insert the following clause:

~~Loss of or Damage to Leased Aircraft (NOV 2022)~~ [(SEP 2026)] [(RFO DEVIATION)]

~~(a) Except normal wear and tear, the Government assumes all risk of loss of, or damage to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.~~

~~(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.~~

~~(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228-71, Fair Market Value of Aircraft, less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it in its discretion. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.~~

~~(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss~~

~~or damage in any form from any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability.~~

~~(c) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.~~

~~(End of clause)~~

~~1252.228-71 Fair Market Value of Aircraft.~~

As prescribed in ~~1228.306-70(a)~~, insert the following clause:

~~Fair Market Value of Aircraft (NOV 2022) [(SEP 2026)] [(RFO DEVIATION)]~~

~~For purposes of clause 1252.228-70, Loss of or Damage to Leased Aircraft, the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below—~~

~~(a) \$___; [*Contracting Officer insert value*] or~~

~~(b) If the Contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.~~

~~(End of clause)~~

~~1252.228-72 Risk and Indemnities.~~

As prescribed in ~~1228.306-70(a)~~ and (d), insert the following clause:

~~Risk and Indemnities (NOV 2022) [(SEP 2026)] [(RFO DEVIATION)]~~

~~The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.~~

~~(End of clause)~~

~~1252.228-73 Command of Aircraft.~~

As prescribed in ~~1228.306-70(d)~~, insert the following clause:

~~Command of Aircraft (NOV 2022)~~ [(SEP 2026)] [(RFO DEVIATION)]

~~During the performance of a contract for out-service flight training for DOT, whether the instruction to DOT personnel is in leased, contractor provided, or Government provided aircraft, contractor personnel shall always, during the entirety of the course of training and during operation of the aircraft, remain in command of the aircraft. At no time shall other personnel be permitted to take command of the aircraft.~~

~~(End of clause)~~

~~1252.228-74 Notification of Payment Bond Protection.~~ [(SEP 2026)] [(RFO DEVIATION)]

As prescribed in guidance at ~~1228.106-470~~, insert the following clause:

~~Notification of Payment Bond Protection (NOV 2022)~~

~~(a) The prime contract is subject to the Bonds statute (historically referred to as the Miller Act) ([40 U.S.C. chapter 31](#), subchapter III), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Bonds statute for amounts owed for work performed and materials delivery under the prime contract.~~

~~(b) Persons believing that they have legal remedies under the Bonds statute should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.~~

~~(c) The surety which has provided the payment bond under the prime contract is: [*Contracting Officer fill in prime contractor's surety information*]~~

~~(Name)~~

~~(Street Address)~~

~~(City, State, Zip Code)~~

~~(Contact & Tel. No.)~~

~~(d) Subcontract flowdown requirements. This clause shall be flowed down to all subcontractors. Prime contractors shall insert this notice clause in all first tier subcontracts and shall require the~~

~~clause to be subsequently flowed down by all first-tier subcontractors to all their subcontractors, at any tier. This notice contains information pertaining to the surety that provided the payment bond under the prime contract and is required to be inserted in its entirety to include the information set forth in paragraph (c).~~

~~(End of clause)~~

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