

## CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION

### Determination and Findings

In accordance with Civilian Agency Acquisition Council (CAAC) Letter 2022-01, "Class Deviation From the Federal Acquisition Regulation (FAR) Regarding Requirements for Nonavailability Determinations Under the Buy American Statute," the Department of Commerce is authorizing a class deviation that implements the requirements of Executive Order (EO) 14005, [Ensuring the Future Is Made in All of America by All of America's Workers](#).

### Findings

- A memorandum titled "[Improving the Transparency of Made in America Waivers](#)" was issued on October 26, 2021, by the Made in America Office (MIAO) within the Office of Management and Budget (OMB) and the Office of Federal Procurement Policy (OFPP). The memorandum issued jointly by the MIAO and OFPP (MIAO memo) provides specific guidance to agencies on the use of a new dedicated portal ([MadeinAmerica.gov](http://MadeinAmerica.gov)) regarding waivers under the Buy American statute. The MIAO memo builds on the guidance in OMB Memorandum M-21-26, [Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws](#), dated June 11, 2021. OMB Memo M-21-26 outlined initial management steps to help agencies prepare for and support a centralized strategic waiver review process as required by EO 14005.
- The MIAO memo prescribes certain requirements pertaining to posting of individual nonavailability waiver determinations under the Buy American statute for agencies. Those requirements became effective on November 16, 2021.
- The posting requirements in the MIAO memo are not reflected in the FAR's coverage at 25.103(b)(2) of individual nonavailability waiver determinations under the Buy American statute. Further, FAR coverage at 25.103(b)(3) requires conformance with the requirements prescribed in the MIAO memo.
- Contracting officers are provided deviated language for FAR Part 25 including posting instructions.

### Determination

In accordance with FAR 1.404, I hereby authorize this class deviation. The areas of the FAR that are affected by this class deviation are FAR 25.103(b) and conforming changes throughout FAR Part 25.

This class deviation will remain in effect until rescinded or incorporated into the FAR.

for:

\_\_\_\_\_  
Approved:  
Barry E. Berkowitz  
Senior Procurement Executive and  
Director for Acquisition Management

\_\_\_\_\_  
Date: