



DEPARTMENT OF VETERANS AFFAIRS

8320-01

48 CFR Parts 829, 846, 847, 852, and 870

RIN 2900-AQ04

Revise and Streamline VA Acquisition Regulation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, we will publish them in the Federal Register. VA will combine related topics, as appropriate. In particular, this rulemaking revises VAAR Parts 829 – Taxes, 846 – Quality Assurance, and 847 – Transportation, as well as affected Parts 852 – Solicitation Provisions and Contract Clauses and 870 – Special Procurement Controls.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER] to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026 (this is not a toll-free number). Comments should indicate that they are submitted in response to “RIN 2900-AQ04 – Revise and Streamline VA Acquisition Regulation – Parts 829, 846, 847.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street, NW, Washington, DC 20001, (202) 382-2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority-of the Office of Federal Procurement Policy (OFPP) Act, which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA’s internal operating processes or procedures. Codified acquisition regulations may be

amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are broken up consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance.

VAAR Part 829—Taxes

We propose to revise the part 829 authorities to include the applicable U.S. code citations where the Secretary of the Treasury has exempted spirits and alcohol purchases by the Federal government, pursuant to 26 U.S.C. 5214(a)(2), 26 U.S.C. 5271, and 26 U.S.C. 7510. We also propose to include an updated positive law codification of Title 41 authority—41 U.S.C.1303(a)(2), to reflect additional authority of VA as an executive agency to issue regulations that are essential to implement Government-wide policies and procedures, as well as to issue additional policies and procedures required to satisfy VA's specific needs.

In subpart 829.2, Federal Excise Taxes, we propose to redesignate 829.202-70, Tax exemptions for alcohol products, as 829.203-70, Tax exemptions for alcohol products. We propose to revise paragraphs (a), (b) and (c) to reflect updated legislative and regulatory citations, to include 26 U.S.C. 5214(a)(2), 26 U.S.C. 5271, and 27 CFR parts 1-39. We also propose to remove paragraph (d) since there is no free of tax provision for beer in the Department of the Treasury regulation. This revised structure would conform more closely to the FAR structure of part 29, and moves to the VAAM the internal procedural instructions to the contracting officer regarding obtaining new permits. We also propose to remove the number and title of 829.202, General exemptions, since its sole section is proposed for removal.

We propose to remove 829.302, Application of State and local taxes to the Government, and move it to the VAAM as internal procedural guidance to the contracting officer.

We propose to remove 829.302-70, Purchases made from patients' funds, which prescribes 852.229-70, Sales or Use Taxes, as obsolete and redundant of FAR 52.212-4, Contract Terms and Conditions— Commercial Items clause, paragraph (k), which requires contractors to include “all applicable Federal, State, and local taxes and duties.” While VA uses the personal funds of patients to maintain fiscal controls and accountability, such controls are administrative in nature and unrelated to contracting. We propose to add 829.303, Application of State and local taxes to Government contractors and subcontractors, to delegate to the Head of the Contracting Activity (HCA), without power of redelegation, the authority to make the determination prescribed in FAR 29.303(a).

VAAR Part 846—Quality Assurance

In new subpart 846.1, General, we propose to add 846.101, Definition, to explain the term “rejected goods” since that term is the subject of a revised clause at 852.246-71, Rejected goods.

We propose to revise subpart 846.3, Contract Clauses, to remove 846.302-70, Guarantee clause, which prescribes 852.246-70, Guarantee, because there are sufficient FAR warranty clauses that could be used, such as FAR clause 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

We propose to remove 846.302, Fixed-price supply contracts, and add 846.370, Clauses for supplies, equipment or perishable goods, as the current VAAR numbering convention for subpart 846.3, Contract Clauses, does not align with the FAR subpart 46.3, Contract Clauses.

We propose to revise 846.312, Construction contracts, to remove a duplicate contract clause number.

We propose to add 846.370, Clauses for supplies, equipment or perishable goods. The analysis of the current VAAR revealed that the present VAAR numbering convention for subpart 846.3, Contract Clauses, does not align with FAR subpart 46.3, Contract clauses. For example, FAR 46.302 deals solely with fixed-price supply contracts and the current sections which prescribe these clauses (e.g., 846.302-70, Guarantee clause; 846.302-71, Inspection; 846.302-72, Frozen processed foods; and 846.302-73. Noncompliance with packaging, packing and/or marking requirements) could include both cost and fixed price types of contracts. Therefore, it became necessary to remove these sections and move them to the proposed new section, 846.370, which supplements the FAR coverage at subpart 46.3. Accordingly, we propose to add the following sections prescribing clauses for cost and fixed-price type contracts:

846.370-1, Rejected goods, (formerly 846.302-71, Inspection), which would prescribe the clause 852.246-71, Rejected Goods, and clarify a contractor's obligations to remove goods rejected by the Government.

846.370-2, Frozen processed foods (formerly 846.302-72), which would prescribe clause 852.246-72, Frozen Processed Foods, and describe the requirements for safe handling of frozen foods.

846.370-3, Noncompliance with packaging, packing and/or marking requirements (formerly 846.302-73), which would prescribe clause 852.246-73, Noncompliance with

Packaging, Packing and/or Marking Requirements, describing corrective steps for compensating the Government in the case of non-compliance.

We propose to add 846.370-4, Purchase of Shellfish, formerly 870.111-3, to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts, and would prescribe clause 852.246-76, Purchase of Shellfish, and describe the requirements for safe handling of shellfish.

We propose to revise subpart 846.4, Government Contract Quality Assurance.

In section 846.408, Single-agency assignments of Government contract quality assurance (no text), we propose to remove the single title as it is unnecessary.

We propose to amend 846.408-70, Inspection of subsistence, to remove paragraph (a) since FAR 46.408 identifies the Food and Drug Administration, the Department of Agriculture and the National Maritime Fisheries Service of the Department of Commerce as the entities to perform inspection. We also propose to remove paragraph (c) since it contains procedural guidance that is internal to VA and will be updated and moved to the VAAM, and to simplify the requirements in paragraph (d) that are the contractor's responsibilities, eliminating parts of paragraph (3) and all of (4). Paragraphs throughout the section will be appropriately renumbered.

We propose to remove 846.408-71, Waiver of USDA inspection and specifications, since no other agencies, including the Department of Agriculture, still require this type of inspection for subsistence.

We propose to remove the existing text of 846.471, Determination authority, since the authority it grants is provided to the contracting officer in 846.470. We propose to revise the title of 846.471, to now read, "Food service equipment," formerly at

870.115. This conforms to the FAR requirement to place clauses and their prescriptions in the appropriate parts, and to require all dietetic food service equipment to meet National Sanitation Foundation (NSF) standards.

We propose to remove 846.472, Inspection of repairs for properties under the Loan Guaranty Program and Direct Loan Programs, and its two sections, 846.472-1, Repairs of \$1,000 or less, and 846.472-2, Repairs in excess of \$1,000. Such sections are unnecessary given that a private contractor performs such inspection and repair functions on VA's behalf. The contractor's authority to perform these functions is established by other provisions of law.

In subpart 846.7, Warranties, we propose to remove 846.710, Contract clauses, since it redundantly prescribes a clause in FAR. We also propose to delete the two sections: 846.710-70, Special warranties, as repetitive of FAR clause coverage, and 846.710-71, Warranty for construction—guarantee period services, which has been replaced by 846.702-70, Guarantee period services and specifications.

We propose to add 846.702-70, Guarantee period services and specifications, to state VA's policy regarding guarantee period services, and to prescribe a clause, 852.246-75, Warranty of Construction—Guarantee Period Services, in all solicitations and contracts for construction that include the FAR clause 52.246-21, Warranty of Construction.

VAAR Part 847—Transportation

We propose to amend the authority citation for part 847 to add 41 CFR part 102-117. This CFR reference pertains to "Transportation Management" and it has relevance to part 847.

We propose to add subpart 847.2, Contracts for Transportation or for Transportation-Related Services. This new subpart would be comprised of new section 847.207, Solicitation provisions, contract clauses, and special requirements, and the following sections:

847.207-8, Government responsibilities, which would provide guidance to contracting officers for VA transportation contracts and subsequent payments on those contracts, and 847.207-70, VA solicitation provisions, contract clauses, and special requirements, which would provide guidance on contractual requirements for insurance provisions and contractor personnel performing on VA transportation contracts.

We propose to revise subpart 847.3, Transportation in Supply Contracts, by adding 847.302, Place of delivery - F.o.b. point. This section would specify delivery locations, in addition to referencing a new corresponding clause, to be inserted in supply contracts when it is necessary to specify delivery locations. This new section would help eliminate confusion by specifying exact delivery locations, so there would be a better representation of delivery scheduling and pricing.

Under subpart 847.3, we propose to remove the following sections as they include internal guidance and will be considered for revision and placement in the VAAM:

847.303, Standard delivery terms and contract clauses.

847.303-1, F.o.b. origin.

847.303-70, F.o.b. origin, freight prepaid, transportation charges to be included on the invoice.

Under 847.305, Solicitation provisions, contract clauses, and transportation factors, we propose to add 847.305-10, Packing, marking, and consignment instructions. This new section would specify consignment instructions, and would prescribe new clauses to be included in VAAR Part 852. It would cover those areas of shipping and marking that may not otherwise be covered, and are not covered in the FAR. We propose to add new section 847.305-70, Potential destinations known but quantities unknown, which prescribes clause 852.247-70, Determining Transportation Costs for Evaluation of Offers, when the contracting officer contracts with multiple bidders to provide items directly to VA field installations, on an F.o.b. origin basis.

We propose to add new section 847.305-71, VA contract clauses. This section references new clauses to the VAAR that are used for both free on board (F.o.b.) origin and F.o.b. destination, ensuring proper receipt and documentation of shipments.

We propose to remove 847.306-70, Transportation payment and audit, and replace it with 847.306-70, Records of claims. This new section recommends that the contracting officer use an offeror's record of claims involving loss or damage as an evaluation factor or subfactor for VA transportation contracts.

VAAR Part 852—Solicitation Provisions and Contract Clauses

In subpart 852.2, Texts of Provisions and Clauses, we propose to remove clause 852.229-70, Sales or Use Taxes, as obsolete and redundant of FAR clause 52.212-4, Contract Terms and Conditions—Commercial Items, paragraph (k), which would require contractors to include all applicable Federal, State, and local taxes and duties.

We propose to remove 852.246-70, Guarantee, as redundant of the coverage of warranties by several clauses in FAR sections 52.246-17 through 52.246-21, and to reserve the section number.

We propose to revise 852.246-71, Inspection, to retitle it as “Rejected Goods” to more accurately reflect the content; to revise the citation where it is prescribed; and to make other minor edits for clarity.

We propose to revise 852.246-72, Frozen Processed Foods, to revise the prescription citation.

We propose to revise 852.246-73, Noncompliance with Packaging, Packing, and/or Marking Requirements, to revise the prescription citation, and to make one minor edit.

We propose to remove 852.246-74, Special Warranties, as redundant of the coverage of warranties by several clauses in FAR sections 52.246-17 through 52.246-21, and to reserve the section number.

We propose to amend 852.246-75, Warranty of Construction—Guarantee Period Services, to revise the prescription citation, and to make one minor edit for clarity.

We propose to add 852.246-76, Purchase of Shellfish, formerly 852.270-3, to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts, and to make one minor edit for clarity.

We propose to amend 852.247-70 to revise its title to “Determining Transportation Costs for Evaluation of Offers” which would make it applicable to negotiated as well as sealed bid contracts.

We propose to add 852.247-71, Delivery Location. This new clause would ensure that the proper delivery locations are included in the contract, for accountability, tracking, and delivery.

We propose to add 852.247-72, Marking Deliverables. This new clause would ensure that packages are properly marked for tracking, delivery, and acceptance purposes.

We propose to add 852.247-73, Packing for Domestic Shipment. This new clause would ensure acceptance by common carriers and safe delivery at destination.

We propose to add 852.247-74, Advance Notice of Shipment. This new clause would be used when the F.o.b. point is destination, and special Government assistance is required in the delivery or receipt of the items.

We propose to add 852.247-75, Bills of Lading, which would define when a commercial or Government bill of lading is to be used when shipments of deliverable items under this contract are F.o.b. origin.

We propose to delete 852.270-2, Bread and Bakery Products—Quantities, as unnecessary since variations in quantities is adequately covered in FAR subpart 11.7, Variation in Quantity, and in its related clauses.

We propose to delete 852.270-3, Purchase of Shellfish, and move it to 852.246-76 to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts.

VAAR Part 870—Special Procurement Controls

We propose to delete 870.111-3, Contract clauses, since paragraph (a) prescribes the clause 852.270-2, Bread and Bakery Products—Quantities, which is

unnecessary since variations in quantities is adequately covered in FAR subpart 11.7 and in its related clauses, and paragraph (b), which prescribes the clause 852.270-3, Purchase of Shellfish, and which is proposed to be moved to new section 852.246-76 to conform to the FAR requirement to place clauses and their prescriptions in the appropriate parts.

We propose to remove 870.111-5, Frozen processed food products, which is proposed to be moved to 846.370-2.

We propose to remove 870.115, Food service equipment, which is proposed to be moved to 846.471.

We propose to reserve part 870 since all sections and sections have either been proposed for deletion or removal to other parts of the VAAR.

Effect of Rulemaking

Title 48, Federal Acquisition Regulations System, Chapter 8, Department of Veterans Affairs, of the Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent VA's implementation of its legal authority and publication of the VAAR for the cited applicable parts. Other than future amendments to this rule or governing statutes for the cited applicable parts, or as otherwise authorized by approved deviations or waivers in accordance with FAR subpart 1.4, Deviations from the FAR, and as implemented by VAAR subpart 801.4, Deviations from the FAR or VAAR, no contrary guidance or procedures would be authorized. All existing or subsequent VA guidance would be read to conform with the rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking as pertains to the cited applicable VAAR parts.

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 12866, Regulatory Planning and Review, defines "significant regulatory action" to mean any regulatory action that is likely to result in a rule that may: "(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined to be a significant regulatory action under E.O. 12866, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is

published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date. This proposed rule is not expected to be subject to the requirements of EO13771 because this proposed rule is expected to result in no more than *de minimis* costs.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act.

This proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA's internal operating procedures. VA is merely adding existing and current regulatory requirements to the VAAR and removing any guidance that is applicable only to VA's internal operation processes or procedures. VA estimates no cost impact to individual business would result from these rule updates. This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C.

601–612. Therefore, under 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 829

Government procurement

Taxes

48 CFR Part 846

Government procurement

48 CFR Part 847

Government procurement

Transportation

48 CFR Part 852

Government procurement

Reporting and recordkeeping requirements

48 CFR Part 870

Asbestos

Frozen foods

Government procurement

Telecommunications

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on September 1, 2017, for publication.

Dated: April 3, 2018

Consuela Benjamin
Regulations Development Coordinator
Office of Regulation Policy & Management
Office of the Secretary
Department of Veterans Affairs

For the reasons set out in the preamble, VA proposes to amend 48 CFR, chapter 8, parts 829, 846, 847, 852, and 870 as follows:

PART 829—TAXES

1. The authority citation for part 829 is revised to read as follows:

Authority: 26 U.S.C. 5214(a), 5271, 7510; 40 U.S.C. 121(c); 41 U.S.C. 1303(a)(2) and 48 CFR 1.301-1.304.

2. Subpart 829.2 is revised to read as follows:

Subpart 829.2—Federal Excise Taxes

829.203 Other Federal tax exemptions.

829.203-70 Tax exemptions for alcohol products.

- (a) General. (1) Pursuant to 26 U.S.C. 5214(a)(2) and 26 U.S.C. 5271, VA may purchase spirits using a tax exemption as provided by Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR parts 1-39). As stated in 27 CFR 19.426, agencies of the United States Government that wish to obtain either specially denatured spirits or spirits free of tax for nonbeverage purposes must apply for and receive a permit on form TTB F 5150.33 or must have a previously issued permit on ATF Form 1444.
- (2) When purchasing spirits under a tax exemption, the contracting officer shall indicate in the contract document the basis for the exemption and make a copy of the permit available to the contractor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated or as directed by the contracting officer.

(3) Department of Veterans Affairs activities that require spirits free of tax for beverage purposes under 26 U.S.C. 7510 must provide a proper purchase order signed by the head of the agency or an authorized designee.

(b) Specially denatured spirits or spirits free of tax for nonbeverage purposes.

Contracting officers may make purchases of excise tax-free spirits, including denatured alcohol and specially denatured alcohol only from qualified distillery plants or bonded dealers.

(1) Permits previously issued on Alcohol, Tobacco, and Firearms (ATF) Form 1444, Tax-Free Spirits for Use of United States, remain valid until surrendered or cancelled.

(2) A copy of the current ATF Form 1444 or TTB Form 5150.33 shall be made available to the supplier with the initial order. The permit number only needs to be referenced on any future orders with the same supplier.

(c) Wine. No tax exemption form or ATF/TTB permit is required for the tax-free procurement of wine from bonded wine premises. The purchase order must show the kind, quantity, and alcohol content of the wine and must state the purpose for which wine is to be used (see 27 CFR 24.293). An extra copy of a properly executed purchase order may be furnished to the bonded wine premises from which wine is purchased to facilitate record keeping. The order must be signed by the Head of Contracting Activity or designee.

3. Subpart 829.3 is revised to read as follows:

Subpart 829.3—State and Local Taxes

829.303 Application of State and local taxes to Government contractors and subcontractors.

(a) The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the Head of the Contracting Activity (HCA).

PART 846—QUALITY ASSURANCE

4. The authority citation for part 846 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

5. Subpart 846.1 is added to read as follows:

Subpart 846.1—General

846.101 Definition.

As used in this part—

Rejected goods means supplies and/or equipment failing to meet contractual terms and conditions and/or generally accepted quality standards that may be returned by the Government at the contractor's risk and expense.

6. Subpart 846.3 is revised to read as follows:

Subpart 846.3—Contract Clauses

Sec.

846.312 Construction contracts.

846.370 Clauses for supplies, equipment or perishable goods.

846.370-1 Rejected goods.

846.370-2 Frozen processed foods.

846.370-3 Noncompliance with packaging, packing and/or marking requirements.

846.370-4 Purchase of shellfish.

Subpart 846.3—Contract Clauses

846.312 Construction contracts.

The contracting officer shall insert the clause at 852.236-74, Inspection of Construction, in solicitations and contracts for construction that include the FAR clause at 52.246-12, Inspection of Construction.

846.370 Clauses for supplies, equipment or perishable goods.

846.370-1 Rejected goods.

The contracting officer shall insert the clause at 852.246-71, Rejected Goods, in solicitations and contracts for the acquisition of supplies, equipment or perishable goods. Perishable goods include such items as packing house and dairy products, bread and bakery products, fresh and frozen fruits, and vegetables.

846.370-2 Frozen processed foods.

(a) The contracting officer shall insert the clause at 852.246-72, Frozen Processed Foods, in solicitations and contracts for frozen processed foods.

(b) The following frozen processed food products must contain a label that complies with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301), which requires all ingredients be listed in accordance with their predominance order:

(1) Frozen processed food products that contain meat, poultry, or a significant proportion of eggs.

(2) Frozen processed food products that contain fish or fish products.

(3) Frozen bakery products.

(c) All procured frozen processed food products that contain meat, poultry or a significant proportion of eggs must meet the following requirements:

(1) The products must be processed or prepared in plants operating under the

supervision of the Department of Agriculture (USDA).

(2) The product must be inspected and approved in accordance with USDA regulations governing meat, poultry, or egg inspection. A label or seal that indicates compliance with USDA regulations, affixed to the container, will be accepted as evidence of compliance.

(d) All procured frozen processed food products that contain fish or fish products must meet the following requirements:

(1) The product must be processed or prepared in plants operated under the supervision of the Department of Commerce (DOC). The products listed in DOC's publication "Approved List of Sanitarily Inspected Fish Establishments" are processed in plants under Federal inspection of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, DOC. The inspected products packed under various labels bearing the brand names are produced in accordance with current U.S. Grade Standards or official product specifications, packed under optimum hygienic conditions, and must meet Federal, State, and city sanitation and health regulations. Such brand label or DOC seal indicating compliance with DOC regulations, affixed to a container, will be accepted as evidence of compliance.

(2) If the condition in paragraph (d)(1) of this section was not met (e.g., no seal), the shipment may be lot-inspected by the DOC and containers stamped to indicate acceptance or a Certification of Inspection issued to accompany the shipment.

(e) Producers of frozen bakery products that ship products in interstate commerce are required to comply with the Federal Food, Drug and Cosmetic Act. Therefore, the

product must be verified as shipped interstate or that the producer ships products to other purchasers interstate.

846.370-3 Noncompliance with packaging, packing and/or marking requirements.

The contracting officer shall insert the clause at 852.246-73, Noncompliance with Packaging, Packing, and/or Marking Requirements, in non-commercial item solicitations and contracts for supplies or equipment where there are special packaging, packing and/or marking requirements. The clause may be used in commercial item acquisitions if a waiver is approved in accordance with FAR 12.302(c).

846.370-4 Purchase of shellfish.

(a) The U.S. Food and Drug Administration (FDA) at <http://www.fda.gov> provides quality assurance seafood safety guidelines.

(b) The contracting officer shall insert the clause at 852.246-76, Purchase of Shellfish, in solicitations and contracts for shellfish.

7. Subpart 846.4 is revised to read as follows:

Subpart 846.4—Government Contract Quality Assurance

Sec.

846.408-70 Inspection of subsistence.

846.470 Use of commercial organizations for inspections and grading services.

846.471 Food service equipment.

Subpart 846.4—Government Contract Quality Assurance

846.408-70 Inspection of subsistence.

(a) The contracting officer shall indicate the time and place of inspection in the solicitation.

(b) The contracting office shall also provide in the solicitation that the contractor is responsible for all of the following:

(1) Arranging and paying for inspection services.

(2) Obtaining from the inspectors a certificate indicating that the product complies with specifications.

(3) Assuring that the certificate, or copy, accompanies the shipment.

(4) Furnishing samples for inspection at the contractor's expense.

(5) Indicating the address where inspection will occur.

(c) The contracting officer must furnish a copy of the purchase document to the inspecting activity.

846.470 Use of commercial organizations for inspections and grading services.

The contracting officer may use a commercial organization for inspection and grading services when the contracting officer determines that all of the following exist:

(a) The results of a technical inspection or grading are dependent upon the application of scientific principles or specialized techniques.

(b) VA is unable to employ the personnel qualified to properly perform the services and is unable to locate another Federal agency capable of providing the service.

(c) The inspection or grading results issued by a private organization are essential to

verify the acceptance or rejection of a special commodity.

(d) The services may be performed without direct Government supervision.

846.471 Food service equipment.

(a) All new food service equipment purchased for Dietetic Service through other than the Defense General Supply Center sources must meet requirements set forth by National Sanitation Foundation (NSF) at <http://www.nsf.org>.

(b) The contracting officer will ensure that the following language is placed in the solicitation to assert that the equipment meets NSF standards:

The Government will accept an affixed NSF label and/or documentation of the NSF Certification from the contractor as evidence that the subject equipment meets NSF Sanitation standards.

8. Subpart 846.7 is revised to read as follows:

Subpart 846.7—Warranties

846.702-70 Guarantee period services and specifications.

(a) Guarantee period of services are associated with preserving and protecting a specified piece of contractor-installed equipment that is guaranteed under a construction contract. Specifications for certain high-dollar or traditionally troublesome equipment are designed to allow for the original installer of the equipment to service the equipment throughout the guaranty period.

(b) Guarantee period services are not the same as the 1-year general construction guaranty clause found at FAR clause 52.246-21, Warranty of Construction.

(c) The contracting officer may determine, when in the best interest of VA that

guarantee period services, not to exceed a period of 5 years, are appropriate to protect the integrity of the installed equipment and ensure that the equipment performs as guaranteed.

(d) When the determination is made under paragraph (c), the contracting officer shall include the guarantee period of services as a separately priced contract line item number (CLIN) in solicitations and contracts.

(e) The contracting officer shall insert the clause at 852.246-75, Warranty of Construction—Guarantee Period Services, in solicitations and contracts for construction that include the FAR clause 52.246-21, Warranty of Construction, and that also include guarantee period services.

(f) In accordance with the approved VA specifications, the following types of equipment contain the guarantee period services specifications. The following represents a sampling of these specifications.

(1) Division 14—Conveying Equipment:

(i) Electric Dumbwaiters Geared Traction and Winding Drum (VA 14 12 11)

(ii) Electric Traction Elevators (VA 14 21 00)

(iii) Traction Cartlift (VA 14 21 11)

(iv) Hydraulic Elevators (VA 14 24 00)

(v) Hydraulic Cartlift (VA 14 24 11)

(vi) Public Address and Mass Notification Systems (VA 27 51 16)

(2) Division 27—Communications:

Intercommunication and Program Systems (VA 27 51 23)

(g) The construction contractor shall require the original installer of the equipment, which is normally a subcontractor to provide the guarantee period services.

.PART 847—TRANSPORTATION

9. The authority citation for part 847 is amended to read as follows:

Authority: 38 U.S.C. 513; 40 U.S.C. 121(c); 31 U.S.C. 1303; 41 U.S.C. 1702; 41 CFR part 102-117; and 48 CFR 1.301-1.304.

10. Subpart 847.2 is added to read as follows:

Subpart 847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

847.207 Solicitation provisions, contract clauses, and special requirements.

847.207-8 Government responsibilities.

847.207-70 VA solicitation provisions, contract clauses, and special requirements.

Subpart 847.2—Contracts for Transportation or for Transportation-Related Services

847.207 Solicitation provisions, contract clauses, and special requirements.

847.207-8 Government responsibilities.

Transportation payments are audited by the Traffic Manager, to ensure that payment and payment mechanisms for agency transportation are uniform and appropriate in accordance with 41 CFR Part 102-117.

847.207-70 VA solicitation provisions, contract clauses, and special requirements.

(a) Insurance under patient transportation contracts. The contracting officer shall ensure that all the proper certificates of insurance are submitted to perform on the contract, as outlined in the solicitation, and subsequently included in the contract file. In accordance with 828.306, the contracting officer shall insert the provision at 852.228-71, Indemnification and Insurance, in solicitations when utilizing term contracts or contracts of a continuing nature for ambulance, automobile and aircraft service. When contracting for these services, consider using requirements language such as the following:

(1) Written proof of Insurance coverage as required and outlined in the solicitation is required prior to award of any contract. Coverage must be maintained continually through the life of the contract.

(2) Within 10 days of notification of acceptance and pending award of contract, the contractor shall furnish to the contracting officer a certificate of insurance which shall contain an endorsement to the effect that cancellation of, or any material change in, the policies which adversely affect the interests of the Government in such insurance shall not be effective unless a 30-day advance written notice of cancellation or change is furnished to the contracting officer.

(3) Within 10 days of notification of acceptance and pending award of contract, and prior to award of a contract, the contractor shall furnish to the contracting officer a copy of the contractor's current and valid Worker's Compensation certificate.

(b) Contractor personnel. The contracting officer shall ensure that the contractor personnel have the appropriate level of training, experience, licensure, and pertinent qualifications to ensure patient safety. When contracting for these services, consider using requirements language such as the following:

(1) All contractor personnel performing contract services shall meet the qualifications as specified in the contract, as well as any qualifications required by Federal, State, county, and local government entities from the place in which they operate. Contractor personnel shall meet these qualifications at all times while performing contract services.

(2) During the contract period of performance, if the contractor proposes to add-on, or replace personnel to perform contract services, the contractor shall submit required evidence of training, certifications, licensing, background, and security clearances, and

any other applicable qualifications to the designated COR. At no time shall the contractor utilize add-on or replacement personnel to perform contract services who do not meet the qualifications under the terms and conditions of the contract.

(3) Records of contractor personnel qualifications and eligibility to perform on the contract must be maintained current throughout the life of the contract, and be made available for inspection upon request. The contractor shall forward to the contracting officer, on an annual basis, a list of contractor employees listing the employees name, position(s), and licenses and/or certifications and their current certification number. This annual statement of driver competency must include any advanced certifications, such as Advanced Cardiac Life Support or specialized training to assist and secure patients by stretcher or wheelchair, as applicable.

(4) Within seven (7) days after receipt of award notification, the contractor shall provide evidence of required training, certifications, licensing and any other qualifications of any personnel who will be performing services under the contract. The initial documentation shall be provided to the contracting officer and COR.

(c) Contracts must include requirements to report vehicle accidents and incidents to the Contracting Officer with a formal accident report.

(d) Contracts for ambulance services must require that the contractor meet the current specifications of Federal Specification KKK-A-1822E, "Star of Life Ambulance" standard.

(e) Contracts must include requirements to ensure patient safety is maintained through the consistent practice of securing patient care equipment, other cargo, and vehicles, and ensure that security of patients in vehicles is established and observed when

transportation needs are either primary or secondary in the actual performance of the contract. When contracting for these services, consider using requirements language to ensure that patient transportation meets industry standards for transporting patients based on the patient's condition/needs (e.g., wheelchair, ambulatory, on stretcher, etc.).

11. Subpart 847.3 is revised to read as follows:

Subpart 847.3—Transportation in Supply Contracts

847.302 Place of delivery – F.o.b. point.

847.305 Solicitation provisions, contract clauses, and transportation factors.

847.305-10 Packing, marking, and consignment instructions.

847.305-70 Potential destinations known but quantities unknown.

847.305-71 VA contract clauses.

847.306 Transportation factors in the evaluation of offers.

847.306-70 Records of claims.

Subpart 847.3—Transportation in Supply Contracts

847.302 Place of delivery - F.o.b. point.

The contracting officer shall insert clause 852.247-71, Delivery Location, or a clause substantially the same as the clause at 852.247-71, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (e.g., quantities to be delivered to each location, etc.).

847.305-10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert clause 852.247-72, Marking Deliverables, or a clause substantially the same as 852.247-72 in solicitations and contracts if special marking on deliverables are required.

(b) The contracting officer shall insert the clause at 852.247-73, Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

847.305-70 Potential destinations known but quantities unknown.

When the contracting officer contracts with multiple bidders to provide items directly to VA field installations, on an f.o.b. origin basis, the evaluation of bids must follow specific procedures. In these instances, the contracting officer shall insert clause 852.247-70, Determining Transportation Costs for Evaluation of Offers, or a clause substantially the same as clause 852.247-70. By inserting this clause, each bid is placed on an equal basis, even though specific quantities required by each facility cannot be predetermined. The contracting officer must use an anticipated demand factor in proportion to the number of hospital beds or patient workload.

847.305-71 VA contract clauses.

(a) The contracting officer shall insert clause 852.247-74, Advance Notice of Shipment, or a clause substantially as 852.247-74, in solicitations and contracts when the F.o.b. point is destination, and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer shall insert clause 852.247-75, Bills of Lading, or a clause substantially the same as clause at 852.247-75, in F.o.b. origin solicitations and contracts.

847.306-70 Records of claims.

When contracting for transportation, and consistent with FAR 15.304, contracting officers should consider using the following as an evaluation factor or subfactor:

Record of claims involving loss or damage.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127-8128, and 8151-8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1303; 41 U.S.C. 1702;.and 48 CFR 1.301-1.304.

852.229-70 [Removed and reserved].

13. Section 852.229-70 is removed and reserved.

852.246-70 [Removed and reserved].

14. Section 852.246-70 is removed and reserved.

15. Section 852.246-71 is revised to read as follows:

852.246-71 Rejected Goods.

As prescribed in 846.370-1, insert the following clause:

REJECTED GOODS (DATE)

(a) Supplies and equipment. Rejected goods will be held subject to Contractor's order for not more than 15 days, after which the rejected merchandise will be returned to the Contractor's address at the Contractor's risk and expense. Expenses incident to the examination and testing of materials or supplies that have been rejected will be charged to the Contractor.

(b) Perishable supplies. The contractor shall remove rejected perishable supplies within 48 hours after notice of rejection. Supplies determined to be unfit for human consumption will not be removed without permission of the local health authorities. Supplies not removed within the allowed time may be destroyed. The Department of Veterans Affairs will not be responsible for, nor pay for, products rejected. The contractor will be liable for costs incident to examination of rejected products.

(End of clause)

16. Section 852.246-72 is revised to read as follows:

852.246-72 Frozen Processed Foods.

As prescribed in 846.370-2, insert the following clause:

FROZEN PROCESSED FOODS (DATE)

The products delivered under this contract shall be in excellent condition, shall not show evidence of defrosting, refreezing, or freezer burn and shall be transported and delivered to the consignee at a temperature of 0 degrees Fahrenheit or lower.

(End of clause)

17. Section 852.246-73 is revised to read as follows:

852.246-73 Noncompliance with Packaging, Packing, and/or Marking Requirements.

As prescribed in 846.370-3, insert the following clause:

NONCOMPLIANCE WITH PACKAGING, PACKING AND/OR MARKING
REQUIREMENTS (DATE)

Failure to comply with the packaging, packing and/or marking requirements indicated herein, or incorporated herein by reference, may result in rejection of the merchandise and request for replacement or repackaging, repacking, and/or marking. The Government reserves the right, without obtaining authority from the Contractor, to

perform the required repackaging, repacking, and/or marking services and charge the Contractor at the actual cost to the Government for the same or have the required repackaging, repacking, and/or marking services performed commercially under Government order and charge the Contractor at the invoice rate. In connection with any discount offered, time will be computed from the date of completion of such repackaging, repacking and/or marking services.

(End of clause)

852.246-74 [Removed and reserved].

18. Section 852.246-74 is removed and reserved.

19. Section 852.246-75 is revised to read as follows:

852.246-75 Warranty of Construction—Guarantee Period Services.

As prescribed in 846.702-70(e), insert the following clause:

WARRANTY OF CONSTRUCTION—GUARANTEE PERIOD SERVICES (DATE)

The clause 52.246-21, Warranty of Construction, is supplemented as follows:

Should the Contractor fail to complete the work or fail to proceed promptly to provide guarantee period services after notification by the Contracting Officer, the Government may, subject to the default clause contained at FAR 52.249-10, Default (Fixed-Price Construction), and after allowing the Contractor 10 days to correct and comply with the contract, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or unsatisfactorily performed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damages to

the Government resulting from the Contractor's refusal or failure to complete the work within this specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(End of clause)

20. Section 852.246-76 is added to read as follows:

852.246-76 Purchase of Shellfish.

As prescribed in 846.370-4 insert the following clause:

PURCHASE OF SHELLFISH (DATE)

The supplier certifies that oysters, clams, and mussels will be furnished only from plants approved by and operated under the supervision of shellfish authorities of States whose certifications are endorsed currently by the U.S. Public Health Service, and the names and certificate numbers of those shellfish dealers must appear on current lists published by the U.S. Public Health Service. These items shall be packed and delivered in approved containers, sealed in such manner that tampering is easily discernible, and marked with packer's certificate number impressed or embossed on the side of such containers and preceded by the State abbreviation. Containers shall be tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper.

(End of clause)

21. Section 852.247-70 is revised to read as follows:

852.247-70 Determining Transportation Costs for Evaluation of Offers.

As prescribed in 847.305-70, insert the following provision:

DETERMINING TRANSPORTATION COSTS FOR EVALUATION OF OFFERS (DATE)

For the purpose of evaluating bids and for no other purpose, the delivered price per unit will be determined by adding the nationwide average transportation charge to the F.o.b. origin bid prices. The nationwide average transportation charge will be determined by applying the following formula: Multiply the guaranteed shipping weight by the freight, parcel post, or express rate, whichever is proper, to each destination shown below and then multiply the resulting transportation charges by the anticipated demand factor shown for each destination. Total the resulting weighted transportation charges for all destinations and divide the total by 20 to give the nationwide average transportation charge.

Anticipated Demand

Area destination	Factor
Oakland, California	3
Dallas, Texas	2
Omaha, Nebraska	3
Fort Wayne, Indiana	4
Atlanta, Georgia	3
New York, New York	<u>5</u>
Total of factors	20

(End of provision)

22. Section 852.247-71 is added to read as follows:

852.247-71 Delivery Location.

As prescribed in 847.302, insert a clause substantially as follows:

DELIVERY LOCATION (DATE)

Shipment of deliverable items, other than reports, shall be to: _____*_____.

*Contracting Officer shall insert appropriate identifying data.

(End of clause)

23. Section 852.247-72 is added to read as follows:

852.247-72 Marking Deliverables.

As prescribed in 847.305-10(a) insert a clause substantially the same as:

MARKING DELIVERABLES (DATE)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: _____*_____.

*Contracting Officer shall insert appropriate identifying data.

(End of clause)

24. Section 852.247-73 is added to read as follows:

852.247-73 Packing for Domestic Shipment.

As prescribed in 847.305-10(b), insert the following clause:

PACKING FOR DOMESTIC SHIPMENT (DATE)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with regulations of carriers as applicable to the mode of transportation.

(End of clause)

25. Section 852.247-74 is added to read as follows:

852.247-74 Advance Notice of Shipment.

As prescribed in 847.305-71(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (DATE)

[Insert number of work days] work days prior to shipping item(s)

[Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to [Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

26. Section 852.247-75 is added to read as follows:

852.247-75 Bills of Lading.

As prescribed in 847.305-71(b), insert the following clause:

BILLS OF LADING (DATE)

The purpose of this clause is to define when a commercial bill of lading or a government bill of lading is to be used when shipments of deliverable items under this contract are F.o.b. origin.

(a) Commercial Bills of Lading. All domestic shipments shall be made via commercial bills of lading (CBLs). The Contractor shall prepay domestic transportation charges.

The Government shall reimburse the Contractor for these charges if they are added to the invoice as a separate line item supported by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a statement as described below must be

completed, signed by an authorized company representative, and attached to the invoice.

"I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____."

(b) Government Bills of Lading.

(1) International (export) and domestic overseas shipments of items deliverable under this contract shall be made by Government bills of lading (GBLs). As used in this clause, "domestic overseas" means non-continental United States, i.e., Hawaii, Commonwealth of Puerto Rico, and possessions of the United States.

(2) At least 15 days before shipment, the Contractor shall request in writing GBLs from: _____ [Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone: _____ [Insert appropriate telephone number]. Requests for GBLs shall include the following information.

- (i) Item identification/ description.
- (ii) Origin and destination.
- (iii) Individual and total weights.
- (iv) Dimensional weight.

- (v) Dimensions and total cubic footage.
- (vi) Total number of pieces.
- (vii) Total dollar value.
- (viii) Other pertinent data.

(End of clause)

852.270-2 [Removed].

27. Section 852.270-2 is removed.

852.270-3 [Removed].

28. Section 852.270-3 is removed.

PART 870—SPECIAL PROCUREMENT CONTROLS

870 [Removed and reserved].

29. Part 870 is removed and reserved.

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