

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 832 and 852

RIN 2900-AN97

VA Acquisition Regulation: Electronic Submission of Payment Requests

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing a final rule to require contractors to submit payment requests in electronic form in order to enhance customer service, departmental productivity, and adoption of innovative information technology, including the appropriate use of commercial best practices. This document adopts the proposed rule published on April 18, 2012, as a final rule with a non-substantive technical change.

DATES: *Effective Date:* This rule is effective December 27, 2012.

FOR FURTHER INFORMATION CONTACT: James Trudeau, Procurement Policy Service (003A2A), Office of Acquisition and Logistics, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461-5661. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On July 7, 2009, VA published a notice, in the **Federal Register** at 74 FR 32223, of a class deviation to Federal Acquisition Regulation (FAR) 32.905 (48 CFR 32.905), which added an interim electronic invoicing clause in the VA Acquisition Regulation (VAAR). The interim clause encouraged contractors to voluntarily submit invoices electronically, which VA determined would improve the accuracy and efficiency of payment processing. Under this interim clause, contractors who chose to use electronic invoicing had three options to submit payment requests in electronic form: (1) Electronic Invoice Presentment and Payment System; (2) American National Standards Institute (ANSI) X12 electronic data interchange (EDI) formats; or (3) another electronic form as prescribed by the contract administration office and the designated agency office. VA's notice regarding interim, optional electronic invoicing noted VA intended to initiate notice-and-comment rulemaking to amend the VAAR to make electronic invoicing mandatory.

On April 18, 2012, VA published a proposed rule, in the **Federal Register** at 77 FR 23204, which announced the intent to require contractors to submit

payment requests in electronic form in order to enhance customer service, departmental productivity, and adoption of innovative information technology, including the appropriate use of commercial best practices.

We provided a 60-day comment period for interested parties to submit comments to VA on or before June 18, 2012. We received no comments.

Based on the rationale set forth in the proposed rule and this document, we are adopting the proposed rule as a final rule without any substantive changes. We are renumbering proposed subpart "832.10" and VAAR "832.1001," "832.1002," "832.1003," "832.1003-1," and "832.1003-2" to read subpart "832.70" and VAAR "832.7000," "832.7001," "832.7002," "832.7002-1," and "832.7002-2," respectively, to ensure the VAAR subpart numbering does not conflict with the FAR subpart numbering. We are renumbering proposed VAAR "852.273-76" to read "852.232-72" to align it with part 832-Contract Financing. We are also making non-substantive conforming changes to the cross references in proposed VAAR 832.1002(c) (now VAAR 832.7001(c)), VAAR 832.1003-2 (now VAAR 832.7002-2), and VAAR 852.273-76 (now VAAR 852.232-72).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action" requiring review by the Office of Management and Budget (OMB) as "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."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. The Secretary acknowledges that this final rule could affect some small entities; however, the economic impact was determined not significant and is expected to be outweighed by the positive economic impact of the final rule. Small entities should realize a positive economic impact as a result of electronic invoice submission due to the avoidance of traditional invoicing costs such as postage and mailing supplies. VA's data transmission methods for electronic invoice submission accommodate all existing accounts receivable/billing systems that contractors are currently using to submit electronic invoices to VA. As a result, no additional hardware or software purchases by contractors are necessary to submit electronic invoices. Additionally, the VA electronic invoice payment and presentment system is provided to all contractors free of charge. No negative economic impact has been reported by small entities voluntarily using electronic invoice submission in accordance with the existing interim electronic invoicing clause in the VAAR. In 2006, the U.S. Government Accountability Office issued a report to Congressional Committees titled "DoD Payments to Small Businesses: Implementation and Effective Utilization of Electronic Invoicing Could Further Reduce Late Payments" (GAO-06-358). The report confirmed the effectiveness of electronic invoicing in eliminating paper and redundant data entry; improving data accuracy; reducing the number of lost or misplaced documents; and ultimately, improving timely payments to small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

This final rule does not impose any additional information collection requirements requiring approval of OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq. Collections of information referenced in VAAR Parts 832 and 852 have previously been approved in accordance with OMB prompt payment regulations at 5 CFR part 1315. See 64 FR 52580–01. Collections relating to the submission and payment of invoices are approved under OMB Control Numbers 9000–0070 and 0102, which govern the submission of adequate documentation to support contractor requests for payment.

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 an 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 final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance program number and title for the program in this final rule.

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. John R. Gingrich, Chief of Staff, approved this document on November 20, 2012, for publication.

List of Subjects

48 CFR Part 832

Government procurement.

48 CFR Part 852

Government procurement; Reporting and recordkeeping requirements.

Dated: November 20, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 48 CFR chapter 8 as follows:

PART 832—CONTRACT FINANCING

■ 1. The authority citation for part 832 continues to read as follows:

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

■ 2. Add subpart 832.70 to read as follows:

Subpart 832.70—Electronic Invoicing Requirements

- 832.7000 General.
- 832.7001 Definitions.
- 832.7002 Electronic payment requests.
- 832.7002–1 Data transmission.
- 832.7002–2 Contract clause.

Subpart 832.70—Electronic Invoicing Requirements

832.7000 General.

This subpart prescribes requirements and procedures for submitting and processing payment requests in electronic form.

832.7001 Definitions.

As used in this subpart:

(a) *Contract financing payment* has the meaning given in FAR 32.001.

(b) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(c) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in VAAR 832.7002–1. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(d) *Invoice payment* has the meaning given in FAR 32.001.

(e) *Payment request* means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

832.7002 Electronic payment requests.

(a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by mail, through the United States Postal Service, to the designated agency office for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and

processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.7002–1 Data transmission.

The contractor shall submit electronic payment requests through:

(a) VA's Electronic Invoice Presentment and Payment System (See Web site at <http://www.fsc.va.gov/einvoice.asp>); or,

(b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

832.7002–2 Contract clause.

The contracting officer shall insert the clause at 852.232–72, Electronic submission of payment requests, in all solicitations and contracts.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

Authority: 38 U.S.C. 501, 8127, 8128, and 8151–8153; 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

Subpart 852.2—Texts of Provisions and Clauses

■ 4. Add 852.232–72 to subpart 852.2 to read as follows:

852.232–72 Electronic submission of payment requests.

As prescribed in 832.7002–2, insert the following clause:

Electronic Submission of Payment Requests (NOV 2012)

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* has the meaning given in FAR 32.001.

(2) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted

electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) *Invoice payment* has the meaning given in FAR 32.001.

(5) *Payment request* means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) *Electronic payment requests.* Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Data transmission.* A contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentment and Payment System. (See Web site at <http://www.fsc.va.gov/einvoice.asp>.)

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

(d) *Invoice requirements.* Invoices shall comply with FAR 32.905.

(e) *Exceptions.* If, based on one of the circumstances below, the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of clause)

[FR Doc. 2012-28612 Filed 11-26-12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA-2012-0131; Notice 2]

RIN 2127-AL16

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document increases the maximum civil penalty amounts for violations of motor vehicle safety requirements for the National Traffic and Motor Vehicle Safety Act, as amended, and violations of bumper standards and consumer information provisions. Specifically, this increases the maximum civil penalty amounts for single violations of motor vehicle safety requirements, a series of related violations of school bus and equipment safety requirements, a series of related violations of bumper standards, and a series of related violations of consumer information regarding crashworthiness and damage susceptibility requirements. This action is taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: This rule is effective December 27, 2012.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Fourth Floor, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matthew Weisman, Office of Chief Counsel, NHTSA, telephone (202) 366-5834, facsimile (202) 366-3820, 1200 New Jersey Ave, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (referred to collectively as the "Adjustment Act" or,

in context, the "Act"), requires us and other Federal agencies to adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the penalties under statutes administered by NHTSA, as adjusted, in 49 CFR part 578, Civil Penalties. Thereafter, we adjusted certain penalties based on the Adjustment Act and codified others based on other laws including the Transportation Recall Enhancement, Accountability, and Documentation Act.

On May 16, 2006, NHTSA last adjusted the maximum civil penalty for a single violation of the Motor Vehicle Safety Act, sections 30112, 30115, 30117 through 30122, 30123, 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation thereunder, as specified in 49 CFR 578.6(a)(1) from \$5,000 to \$6,000. 71 FR 28279. At the same time, the agency adjusted the maximum civil penalty for a single violation of the Motor Vehicle Safety Act, section 30166 of Title 49 of the United States Code or a regulation thereunder, to \$6,000.

On February 10, 2010, NHTSA last adjusted the maximum civil penalty for a related series of violations of the Motor Vehicle Safety Act as amended involving school buses and school bus equipment, section 30112(a)(1) as it involves school buses and school bus equipment and section 30112(a)(2) of Title 49 of the United States Code, as specified in 49 CFR 578.6(a)(2) from \$15,000,000 to \$16,650,000. 75 FR 5246.

Also on February 10, 2010, NHTSA last adjusted the maximum civil penalty for a related series of violations of bumper standards, section 32506 of Title 49 of the United States Code, as specified in 49 CFR 578.6(c)(2) from \$1,025,000 to \$1,175,000. 75 FR 5246. In addition, on February 10, 2010, NHTSA last adjusted the maximum civil penalty for a related series of violations of consumer information requirements regarding crashworthiness and damage susceptibility, section 32308 of Title 49 of the United States Code, as specified in 49 CFR 578.6(d)(1) from \$500,000 to \$575,000. 75 FR 5246.

We have reviewed the civil penalty amounts in 49 CFR part 578 and on September 7, 2012, published a NPRM initiating this rulemaking to adjust