I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. Therefore, the EPA conducted searches through the Enhanced NSSN Database managed by the American National Standards Institute (ANSI) to determine if there are voluntary consensus standards (VCS) that are relevant to this action. The Agency also contacted VCS organizations and accessed and searched their databases. Searches were conducted for the EPA Methods 9, 12, and 29 of 40 CFR part 60, appendix A. No applicable VCS were identified for EPA Methods 12 and 29 for lead.

During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA considered it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for this rule. This review requires significant method validation data which meets the requirements of the EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in the EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

One voluntary consensus standard was identified as acceptable alternative to EPA test methods for the purposes of this rule. The voluntary consensus standard ASTM D7520–16, ''Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere'' is an acceptable alternative to EPA Method 9 with the following conditions:

1. During the digital camera opacity technique (DCOT) certification procedure outlined in section 9.2 of ASTM D7520–16, you or the DCOT vendor must present the plumes in front of various backgrounds of color and contrast representing conditions anticipated during field use such as blue sky, trees, and mixed backgrounds (clouds and/or a sparse tree stand).

2. You must also have standard operating procedures in place including daily or other frequency quality checks to ensure the equipment is within manufacturing specifications as outlined in section 8.1 of ASTM D7520–16.

3. You must follow the record keeping procedures outlined in § 63.10(b)(1) for the DCOT certification, compliance report, data sheets, and all raw unaltered JPEGs used for opacity and certification determination.

4. You or the DCOT vendor must have a minimum of four (4) independent technology users apply the software to determine the visible opacity of the 300 certification plumes. For each set of 25 plumes, the user may not exceed 15 percent opacity of anyone reading and the average error must not exceed 7.5 percent opacity.

5. This approval does not provide or imply a certification or validation of any vendor's hardware or software. The onus to maintain and verify the certification and/or training of the DCOT camera, software and operator in accordance with ASTM D7520–16 and this letter is on the facility, DCOT operator, and DCOT vendor.

The search identified one VCS that was potentially applicable for this rule in lieu of EPA reference methods. After reviewing the available standards, EPA determined that one candidate VCS (ASTM D4358–94 (1999)) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Additional information for the VCS search and determinations can be found in the memorandum, *Voluntary Consensus Standard Results for Review of Standards of Performance for Lead Acid Battery Manufacturing Plants and National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery,* which is available in the docket for this action.

Under 40 CFR 63.7(f) and 40 CFR 68.3(f) of subpart A of the General Provisions, a source may apply to the EPA to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the final rule or any amendments. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section V.C and V.E of this preamble. As discussed in section V.E of this preamble, we performed a demographic analysis for the lead acid battery manufacturing source category, which is an assessment of the proximity of individual demographic groups living close to the facilities (within 50 km and within 5 km). Results of the demographic analysis indicate that the following groups above the national average: Hispanics, Ages 18–64, People living below the Poverty Level, 25 years old or greater without a High School Diploma, and People living in Linguistic Isolation. However, based on analyses of emissions and available ambient monitoring data (described in section IV.A of this preamble), we conclude ambient Pb concentrations near the facilities are all below the National Ambient Air Quality Standard (NAAQS) for Pb and therefore the sources are not likely to pose significant risks to human health.

Janet G. McCabe,

Deputy Administrator.

[FR Doc. 2022–03396 Filed 2–22–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 802, 808, 816, 835, and 852

RIN 2900–AQ23

VA Acquisition Regulation: Department of Veterans Affairs Acquisition Regulation System and Research and Development

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, will publish them in the **Federal Register**.

VA will combine related topics, as appropriate. This rulemaking revises VAAR coverage concerning Department of Veterans Affairs Acquisition Regulation System and Research and Development. It also revises affected parts concerning Definitions of Words and Terms, Required Sources of Supplies and Services, Types of Contracts and Solicitation Provisions and Contract Clauses.

DATES: Comments must be received on or before April 25, 2022 to be considered in the formulation of the final rule.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 810 Vermont Avenue NW, Washington, DC 20420, (202) 714–8560. (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 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 consistent with FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts 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 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 VAAM as internal agency guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. The VAAM will not be finalized until corresponding VAAR parts are finalized.

VAAR Part 801—Department of Veterans Affairs Acquisition Regulation System

We propose to revise the authorities cited for this part. The authorities cited for this part are 38 U.S.C. 8123; 38 U.S.C. 8153; 38 U.S.C. 8303; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; 41 U.S.C. 1707; and 48 CFR 1.301–1.304. The Title 38 authorities are cited as they provide the statutory basis for the exclusions as outlined in 801.104–70. We have retained the authority from 48 CFR 1.301–1.304 as this is the FAR subpart outlining the guidance for agency acquisition regulations.

Under subpart 801.1, Purpose, Authority, Issuance, we propose to revise 801.103, Authority, to add 41 U.S.C. 1707 (the OFFP Act) as an authority to the publishing of this regulation. Under 801.104, Applicability, we propose to revise the text for clarity and to remove an unnecessary reference to the VA Canteen Service.

In 801.104–70, Exclusions, we propose to retain the first paragraph and redesignate it as paragraph (a) which explains that the FAR and VAAR do not apply to those purchases made using the General Post Fund when a donor specifies the exact item to be purchased. Under 801.104–70, we also propose to add paragraph (b) to address the statutory exception at 38 U.S.C. 8123, Procurement of prosthetic appliances, which states: ''The VA may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the VA may determine to be proper, without regard to any other provision of law.'' Finally, under this section, we propose to add paragraph (c) to address the statutory exception at 38 U.S.C. 8153, Sharing of health-care resources, which allows the VA to secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, by using simplified procedures which were codified in VAAR part 873, Simplified Acquisition Procedures For Health-Care Resources.

We propose to remove 801.105 (no text) and 801.105–2, Arrangement of regulations, as the location of this guidance has been revised to comport with the placement of the corresponding FAR guidance. The information that was covered here has been moved to 801.301, Policy.

In 801.106, OMB approval under the Paperwork Reduction Act, we propose to delete the chart that contains the OMB approval numbers. We propose to revise this section to add language directing the reader to the VAAM for the list of information collection and recordkeeping requirements associated with the control numbers. Given the constant updating of VA's information collection requirements and the OMB control numbers, it is more prudent to place this information in the VAAM which doesn't require rulemaking for updating.

VA proposes to remove subpart 801.2, Administration, as it explains the role of the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council, which is redundant to the FAR.

We propose to revise the name of subpart 801.3 from ''Department Acquisition Regulations'' to ''Agency Acquisition Regulations'' so that the title comports with the FAR heading. We propose to add 801.301, Policy, which states that the VA implementation and supplementation of the FAR is issued in the VAAR under authorization and subject to the authority, direction, and control of the Secretary of Veterans Affairs. This section also explains what the VAAR contains and introduces and explains the VAAM.

For 801.304, we propose to revise this section to change the title from ''Department control and compliance procedures'' to ''Agency control and compliance procedures'' to comport with the FAR title of this section. We also propose to revise the text to reflect

the roles and titles currently in use in VA.

We propose to revise the title of subpart 801.4 from ''Deviations from the FAR and VAAR'' to ''Deviations from the FAR.'' This change was made to conform to the FAR title.

We propose to revise 801.403, Individual deviations, by adding language specifying that the Senior Procurement Executive (SPE) may authorize individual deviations from the FAR and VAAR when an individual deviation is in the best interest of the Government.

Under 801.404, Class deviations, we propose to revise the language to clarify that the SPE is the VA authority designated to comply with FAR 1.404.

Under subpart 801.6, Career Development, Contracting Authority and Responsibilities, we propose to revise 801.601, General, to reflect that that the SPE has authority to appoint contracting officers under FAR 1.603 and this authority is further delegated to the heads of the contracting activities (HCAs). This revision also removes the reference to VA's Contracting Officer Certification Program (COCP) which no longer exists. We also propose to revise the section to remove the material pertaining to purchase card holders and to add coverage that HCAs may authorize ordering officers to place orders against a contract or agreement under certain circumstances.

Under 801.602, Contracting officers, we propose to remove this section as the policy regarding bills of lading and the authorization to sell personal property is outdated and the coverage including the responsibilities delegated to contracting officers is not required in the regulation.

We propose to remove 801.602–2, Responsibilities, and move this internal guidance to the VA Acquisition Manual (VAAM).

We propose to revise 801.602–3, Ratification of unauthorized commitments, to update the authorities within the VA designated to ratify unauthorized commitments. This section incorporates the language from Class Deviation—VAAR 801.602–3, Ratification of Unauthorized Commitments, dated May 3, 2013. We propose to delete the procedural guidance from this section and move it to the VAAM.

We propose to remove 801.602–70, General review requirements, and add it to the VAAM as it contains VA's internal procedures.

We propose to remove 801.602–71, Basic review requirements, and add it to the VAAM as it contains VA's internal procedures.

We propose to remove the following three sections: 801.602–72, Exceptions and additional review requirements; 801.602–73, Review requirements for scarce medical specialist contracts and contracts for health care resources; and 801.602–74, Review requirements for an interagency agreement. The three sections contain policy requiring reviews at the Departmental level, inconsistent with current VA policy in this area.

We propose to remove 801.602–75, Review requirements—OGC, and the corresponding table and add it to the VAAM as it contains VA's internal procedures and review thresholds. A class deviation to update this policy was signed April 12, 2017.

We propose to delete the sections listed below as they contain policy requiring reviews at the Departmental level, inconsistent with current VA policy in this area. Various sections are also specific to only one administration/organization which is inconsistent with the objective to establish policies and procedures at the departmental level. The sections slated for removal as described above are as follows:

801.602–76 Business clearance review.
801.602–77 Processing solicitations and contract documents for legal or technical review—general.
801.602–78 Processing solicitations and contract documents for legal or technical review—Veterans Health Administration field facilities, Central Office (except Office of Construction and Facilities Management), the National Acquisition Center, and the Denver Acquisition and Logistics Center.
801.602–79 Processing solicitations and contract documents for legal or technical review—Veterans Benefits Administration.
801.602–80 Legal and technical review—Office of Construction and Facilities Management and National Cemetery Administration.
801.602–81 Documents required for business clearance reviews.
801.602–82 Documents to submit for legal or technical review—general.
801.602–83 Documents to submit for legal or technical review—contract modifications.
801.602–84 Documents to submit for business clearance reviews.
801.602–85 Results of review.

We also propose to remove section 801.603, Selection, appointment, and termination of appointment, as this information includes internal VA procedures and this information is more suitable for inclusion in the VAAM. The sections slated for removal under this section are as follows:

801.603–1 General.
801.603–70 Representatives of contracting officers.
801.603–71 Representatives of contracting officers; receipt of equipment, supplies, and nonpersonal services.

We propose to renumber and retitle the proposed for removal 801.603–70, to 801.604, and from ''Representatives of contracting officers'' to ''Contracting Officer's Representatives (COR),'' to comport with the FAR heading and location. We propose to revise the section to remove the text stating that contracting officers can name a Government employee as a representative as it is redundant to guidance at FAR 1.602–2(d). We have also removed obsolete guidance allowing contracting officers to delegate their authority to other Government contracting officers under centralized indefinite delivery type contracts. We also removed outdated guidance pertaining to centralized contracts for blood and other contract practices that are managed at the contracting office level. We propose to revise the text prescribing the clause to match the revised section heading. The clause has been renumbered from 852.270–1 to 852.201–70 to be consistent with the numbering convention for VA's clauses.

We propose to remove 801.670, Special and limited delegation, for not adding value to the regulation. It restates guidance that is provided elsewhere regarding the delegation of authority to award contracts.

We propose to remove 801.670–1, Issuing bills of lading, which rescinds the authority to issue bills of lading. This is redundant as the authority to issue bills of lading was removed from the VAAR at 801.602. We propose to remove section 801.670–3, as this policy is now obsolete.

We propose to remove 801.670–4, National Cemetery Administration, as it does not fit the criteria of being departmental level policy and it also includes information that is no longer current.

We propose to remove 801.670–5, Letters of agreement, as it states that the authority to utilize letters of agreement has been rescinded. This guidance is no longer relevant at this time.

We propose to remove 801.680, Contracting authority of the Inspector General, as this information is more appropriate for the VAAM.

We propose to remove 801.690, VA's COCP and the following sections: 801.690–1, Definitions; 801.690–2, General; 801.690–3, Responsibilities under the COCP; 801.690–4, Selection; 801.690–5, Requirements for contracting authority; 801.690–6, Appointment; 801.690–7, Termination; 801.690–8, Interim appointment provisions; and 801.690–9, Distribution of Certificates of

Appointment. We propose to delete the sections listed above as they all describe a program, the Contracting Officer's Certification Program (COCP) that no longer exists. The guidance previously located in 801.690–9, Distribution of Certificates of Appointment, has been moved to 801.603–3.

We propose to remove 801.695, VA's Appointment of HCA's Program, and the supporting sections: 801.695–1, Policy; 801.695–2, Procedures for appointment of HCAs; and 801.695–3, Authority of the HCA. We propose to remove the sections listed above and move them to the VAAM as they include information that is internal to the VA.

VAAR Part 802—Definitions of Words and Terms

VA proposes adding the definition of *Ordering Officer* to reflect the introduction and usage of the term in multiple parts of the VAAR. The authorities cited for this part are: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

VAAR Part 808—Required Sources of Supplies and Services

We propose adding a new section, 808.470, Ordering officers, under subpart 808.4, Federal Supply Schedules, to convey that ordering officers may be authorized to place orders under established orders and Blanket Purchase Agreements under a Federal Supply Schedule award with a single awardee. The authorities cited for this part are: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

VAAR Part 816—Types of Contracts

VA proposes to add a new section, 816.570, Ordering officers, under subpart 816.5, Indefinite-Delivery Contracts, to convey that ordering officers may be authorized to place orders under established Indefinite-Delivery Contracts with a single awardee. The authorities cited for this part are: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

VAAR Part 835—Research and Development

We propose to add a new part 835, Research and Development. The authorities cited for this part are 38 U.S.C. 7303, 40 U.S.C. 121(c), 41 U.S.C. 1702 and 48 CFR 1.301–1.304. We propose to add 835.001–70, VA definitions, to provide four R&D definitions crafted for the VA. We propose to add 835.003–70, Policy, in which paragraph (a) cites the U.S. Code that authorizes VA to execute a medical research program to improve the medical treatment of our Veterans and paragraph (b) states that the Office of Research Oversight (ORO) serves as the primary VHA office that advises the Under Secretary for Health on all compliance matters related to: Human subject protections; laboratory animal welfare, research safety, research laboratory security, research information security, research misconduct, and other research improprieties. Also under part 835, we propose to add 835.003–71, Research misconduct, which requires the contracting officer to insert the research misconduct clause into all R&D solicitations and contracts and 835.003–72, Protection of human subjects, which requires the contracting officer to insert the ''Protection of Human Subject'' clause in all R&D solicitations and contracts.

In 835.003–73, Animal welfare, we propose to add a prescription requiring the contracting officer to insert the Animal Welfare clause, 852.235–72, in all R&D solicitations and contracts. Under 835.003–74, Facilities, we propose to add a prescription requiring contracting officers to insert clause 852.235–73, Facilities, into R&D solicitations and contracts when the facilities to be assigned to perform effort on an R&D contract are critical to the success of the R&D effort or are a critical factor in the award of the contract. Under 835.003–75, Acknowledgement of support and disclaimer, we propose to add a prescription requiring contracting officers to insert clause 852.235–74, Acknowledgement of Support and Disclaimer, into R&D solicitations and contracts. We propose to add 835.010, Scientific and technical reports, which includes a prescription requiring contracting officers to insert clause 852.235–75, Scientific and Technical Reports, into R&D solicitations and contracts.

VAAR Part 852—Solicitation Provisions and Contract Clauses

In subpart 852.2, Text of Provisions and Clauses, we propose to add clause 852.201–70, Contracting Officer's Representative (COR). This clause replaces a clause previously numbered as 852.270–1 and entitled ''Representatives of contracting officers.''

We propose to add clause 852.235–70, Research Misconduct. This clause requires contractors to notify the contracting officer if there are any allegations of research misconduct. The clause also provides procedures for contractors to follow if their initial inquiry into the allegations requires a full investigation. We propose to add clause 852.235–71, Protection of Human Subjects, which makes clear that research involving human subjects is not permitted under the award unless expressly authorized in writing by the contracting officer.

We propose to add clause 852.235–72, Animal Welfare, which should be used in all R&D solicitation and contracts and directs VA's contractors to comply with the United States Department of Agriculture (USDA) Animal Welfare Act and Animal Welfare Regulations at *https://www.aphis.usda.gov/animal_welfare,* and the Animal Welfare Information Center's (AWIC) information for improved animal care and use in research, testing, and teaching. This clause also directs the contractor to provide to the contracting officer a written plan of providing adequate veterinary care to laboratory animals, including the frequency of visits and provisions for after hours, weekend and holiday veterinary coverage. We propose to add clause 852.235–73, Facilities, which stipulates that the facilities specified in the contract proposal are considered essential to the work being performed under the contract and that prior to changing the facilities, the contractor must notify the contracting officer in writing of the intent to remove, replace, or divert any of the specified facilities and the contractor cannot make a change in facilities without the contracting officer's written consent.

Under subpart 852.2, we propose to add 852.235–74, Acknowledgement of Support and Disclaimer. This clause requires the contractor to acknowledge the Government's support in the publication of any material based on research developed under the contract and it also requires contractors to add a disclaimer (for all material published outside of scientific journals and papers), that ''any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the VA.'' We also propose to add clause 852.235–75, Scientific and Technical Reports, which requires contractors to submit an electronic copy of the approved scientific technical reports delivered under the contract to the National Technical Information Service (NTIS).

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

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

The Secretary hereby certifies that 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). Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

This rulemaking does not change VA's policy regarding small businesses and does not have a significant economic impact to individual businesses. 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 provide needed guidance to ensure VA's contractors properly protect and safeguard VA sensitive information, which includes Veteran's sensitive personal information. This rulemaking adds a new VAAR part concerning Acquisition of Information Technology that codifies information collection burdens. VA's requirement to collect the information is the result of existing requirements to ensure compliance across the Federal government and specifically when VA contractors, subcontractors, business associates and their employees require access to VA information (including VA sensitive information) or information systems. VA is merely adding existing and current regulatory requirements to the VAAR and placing guidance that is applicable only to VA's internal operation processes or procedures into a VA Acquisition Manual. VA estimates no substantial cost impact to individual businesses will result from these rule updates already required to be considered by both large and small businesses to receive an award from VA or another Federal agency. There are costs associated with this rulemaking pertaining to the codification of an information collection request in order to comply with VA's responsibilities under the Federal Information Security Modernization Act of 2014. Each agency of the Federal Government must provide security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. By statute, VA is required to ensure that its contractors, subcontractors, business associates, and their employees operating under contracts at VA shall be subject to the same Federal laws, regulations, policies or procedures as VA and VA personnel. While this requirement adds some burden in annual costs and hours to firms already awarded and performing contracts at VA, the overall cost is considered *de minimis,* for either large or small contractors, in relation to the potential impact and harm to Veterans and VA information and information systems should a contractor not comply. Properly setting forth the requirements will provide clarity to the public and ensure appropriate safeguards are in place to ensure protection of VA's information (in particular VA sensitive personal information) and information systems. In total, this rulemaking does not change VA's policy regarding small businesses, does not have a substantial economic impact to individual businesses, and does not significantly increase or decrease costs small business were already required to bear when performing contracts which required the access, maintenance, process, or utilization of VA sensitive information or information systems.

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 would have no such effect on State, local, and tribal Governments or on the private sector.

List of Subjects

48 CFR Part 801

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements.

48 CFR Parts 802, 808, and 816

Government procurement.

48 CFR Part 835

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 3, 2022, 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.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA is proposing to amend 48 CFR parts 801, 802, 808, 816, 835, and 852 as follows:

■ 1. Part 801 is revised to read as follows:

PART 801—DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION SYSTEM

Authority: 38 U.S.C. 8123; 38 U.S.C. 8153; 38 U.S.C. 8303; 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

801.000 Scope of part.

This part includes general Department of Veterans Affairs (VA) Acquisition Regulation (VAAR) policies, including information regarding the maintenance and administration of the VAAR, acquisition policies and practices, and procedures for deviation from the VAAR and the Federal Acquisition Regulation (FAR).

Subpart 801.1—Purpose, Authority, Issuance

801.101 Purpose.

(a) VA established the VAAR to codify and publish uniform policies and procedures for VA's acquisition of supplies and services, including construction.

(b) The VAAR implements and supplements the FAR.

801.103 Authority.

The VA issues the VAAR under the authority of 41 U.S.C. 1707 and 48 CFR 1.301 through 1.304, and other authorities as cited.

801.104 Applicability.

The FAR and the VAAR apply to all FAR-based VA actions using appropriated funds unless otherwise specified in this regulation. Supply Fund monies (38 U.S.C. 8121) and General Post Funds (38 U.S.C. 8302) are appropriated funds.

801.104–70 Exclusions.

(a) *Restricted gifts.* The FAR and VAAR do not apply to purchases and contracts that use General Post Funds if using the FAR and the VAAR would infringe upon a donor's right to specify the exact item to be purchased and/or the source of supply (38 U.S.C. 8303).

(b) *Procurement of prosthetic appliances.* The VA may procure prosthetic appliances and necessary services required in the fitting, supplying, and training and use of prosthetic appliances by purchase, manufacture, contract, or in such other manner as the VA may determine to be proper, without regard to any other provision of law (38 U.S.C. 8123).

(c) *Sharing of health-care resources.* (1) To secure health-care resources which otherwise might not be feasibly available, or to effectively utilize certain other health-care resources, the VA may, when the VA determines it to be in the best interest of the prevailing standards of the Department medical care program, make arrangements, by contract or other form of agreement for the mutual use, or exchange of use, of health-care resources between Department health-care facilities and any health-care provider, or other entity or individual.

(2) The VA may enter into a contract or other agreement under paragraph (c)(1) of this section if such resources are not, or would not be, used to their maximum effective capacity.

(3)(i) If the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with 38 U.S.C. 7302, including medical practice groups and other entities associated with affiliated institutions, blood banks, organ banks, or research centers, the VA may make arrangements for acquisition of the resource without regard to any law or regulation (including any Executive order, circular, or other administrative policy) that would otherwise require the use of competitive procedures for acquiring the resource.

(ii) If the health-care resource required is a commercial service or the use of medical equipment or space, and is not to be acquired from an entity described in paragraph (c)(3)(i) of this section, any procurement of the resource may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring the resource, but only if the procurement is conducted in accordance with the simplified procedures prescribed in part 873. (38 U.S.C. 8153).

801.106 OMB approval under the Paperwork Reduction Act.

See VA Acquisition Manual (VAAM) M801.106 for a list of the information collection and recordkeeping requirements contained in this part that have been approved by the Office of Management and Budget.

Subpart 801.3—Agency Acquisition Regulations

801.301 Policy.

(a)(1) VA implementation and supplementation of the FAR is issued in the Veterans Affairs Acquisition Regulation (VAAR) under authorization and subject to the authority, direction, and control of the Secretary of Veterans Affairs. The VAAR contains—

(i) Requirements of law;

(ii) Agency policies;

(iii) Delegations of FAR authorities;

(iv) Deviations from FAR requirements; and

(v) Policies/procedures that have a significant effect beyond the internal operating procedures of VA or a significant cost or administrative impact on contractors or offerors.

(2) Relevant internal procedures, guidance, and information (PGI) that do not meet the criteria in paragraph (a)(1) of this section are issued in the Veterans Affairs Acquisition Manual (VAAM).

801.304 Agency control and compliance procedures.

The Principal Executive Director of VA's Office of Acquisition, Logistics and Construction is designated as the Department's Chief Acquisition Officer. The Executive Director for the Office of Acquisition and Logistics (OAL) is designated as the Department's Senior Procurement Executive (SPE). The SPE is responsible for amending the VAAR for compliance with FAR 1.304.

Subpart 801.4—Deviations From the FAR

801.403 Individual deviations.

The SPE may authorize individual deviations from the FAR and VAAR in accordance with FAR 1.403 when an individual deviation is in the best interest of the Government.

801.404 Class deviations.

The SPE may authorize class deviations from the FAR and VAAR when a class deviation is in the best interest of the Government.

Subpart 801.6—Career Development, Contracting Authority, and Responsibilities

801.601 General.

(a) The Senior Procurement Executive is granted the authority to appoint and terminate contracting officers. This authority is further delegated to the heads of the contracting activities (HCA) and others as appropriate. The SPE may also delegate authority to execute, award, and administer contracts, purchase orders, and other agreements to other VA officials, such as HCAs and contracting officers. All delegations of authority will be made in writing.

(b) HCAs may authorize the use of ordering officers to order supplies and services in accordance with the ordering limits identified in the contract or agreement or the specific ordering guide. Ordering officers shall be delegated in writing. The written delegation must be specific to the contract or agreement and articulate the limitations of the delegated authority. Ordering officers shall only place orders against the contract or agreement if it is awarded to a single awardee. Ordering

officers may not negotiate contract terms and conditions, determine price reasonableness, or determine best value. If the contracting officer determines prior to award that ordering officers will be authorized to place orders against a contract or agreement, the contracting officer will furnish the contractor with the names of individuals delegated ordering officer authority by separate letter upon issuance of the contract.

801.602–3 Ratification of unauthorized commitments.

(a) This section applies to unauthorized commitments, including any commitment made by a contracting officer that exceeds that contracting officer's contracting authority and unauthorized commitments made by a Government representative who lacked the authority to enter into that agreement on behalf of the Government.

(b) The approving authority and ratification official for any unauthorized commitments is the HCA. The approval authority may not be re-delegated.

801.604 Contracting Officer's Representative (COR).

When the contracting officer intends to designate a Contracting Officer's Representative for a solicitation or contract, the contracting officer must include the clause in 852. 201–70, Contracting Officer's Representative, in the solicitation and contract.

PART 802—DEFINITIONS OF WORDS AND TERMS

■ 2. The authority citation for part 802 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 802.1—Definitions

■ 3. Section 802.101 is amended by adding the definition ''Ordering officer'' in alphabetical order to read as follows:

802.101 Definitions.

* * * * *

Ordering officer means the VA official authorized to order supplies and services against a FAR-based contract or agreement in accordance with the ordering limits identified in the contract or agreement or the specific ordering guide in accordance with 801.601(b).

* * * * *

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 4. The authority citation for part 808 is revised to read as follows:

Authority: 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 808.4—Federal Supply Schedules

■ 5. Add section 808.470 to read as follows:

808.470 Ordering Officers

In accordance with 801.601, when authorized, ordering officers may place orders for supplies and services against agreements or task or delivery orders established by a contracting officer against Federal Supply Schedules within the ordering limits identified in the contract or agreement or the specific ordering guide when funding is available. Ordering officers shall only place orders against the order or agreement if it is awarded to a single awardee. The contracting officer that awarded the Blanket Purchase Agreements (BPA) or order will provide the contractor a list of authorized ordering officers. Any modifications to the agreement or order must be performed by a contracting officer.

PART 816—TYPES OF CONTRACTS

■ 6. The authority citation for part 816 continues to read as follows:

Authority: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 816.5—Indefinite-Delivery Contracts

■ 7. Add section 816.570 to read as follows:

816.570 Ordering officers.

In accordance with 801.601, when authorized, ordering officers may place orders for supplies and services against established Indefinite-Delivery Contracts within the ordering limits identified in the contract or the specific ordering guide when funding is available. Ordering officers shall only place orders against the contract if it is awarded to a single awardee. When a contracting officer appoints an ordering officer in writing after award, the contracting officer will furnish the contractor with an updated list of individual ordering officers authorized to place orders against the contract. Ordering officers may not negotiate contract terms and conditions, determine price reasonableness, or determine best value.

■ 8. Part 835 is added to subchapter F to read as follows:

PART 835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

Authority: 38 U.S.C. 7303; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301 through 1.304.

835.001–70 Veterans Affairs (VA) definitions.

Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

Research impropriety refers to noncompliance with the laws, regulations, and policies regarding human subject protections, laboratory animal welfare, research safety, research laboratory security, research information security, and research misconduct. It does not encompass improper procedures or conduct in areas outside of the mandate of the Office of Research Oversight (ORO) (*e.g.,* waste, fraud, abuse, or fiscal mismanagement).

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

VA facility means a component of the VA national health care system, such as a VA Medical Center, VA Health Care System, or VA Medical and Regional Office Center.

835.003–70 VA policy.

(a) Pursuant to 38 U.S.C. 7303, VA is authorized to carry out a program of medical research in connection with the provisions of medical care and treatment to Veterans.

(b) The Office of Research Oversight (ORO) serves as the primary Veterans Health Administration (VHA) office that advises the Under Secretary for Health on all compliance matters related to—

(1) Human subject protections;
(2) Laboratory animal welfare;
(3) Research safety;
(4) Research laboratory security;
(5) Research information security;
(6) Research misconduct; and
(7) Other research improprieties.

835.003–71 Research misconduct.

The contracting officer shall insert the clause at 852.235–70, Research

Misconduct, in all research and development (R&D) solicitations and contracts.

835.003–72 Protection of human subjects.

The contracting officer shall insert the clause at 852.235–71, Protection of Human Subjects, in all research and development (R&D) solicitations and contracts.

835.003–73 Animal welfare.

The contracting officer shall insert the clause at 852.235–72, Animal Welfare, in all research and development (R&D) solicitations and contracts.

835.003–74 Facilities.

If the contracting officer determines that the facilities to be assigned to perform effort on a research and development (R&D) contract are critical to the success of the R&D effort, the contracting officer shall insert the clause at 852.235–73, Facilities, in the solicitation and contract.

835.003–75 Acknowledgement of support and disclaimer.

The contracting officer shall insert the clause at 852.235–74, Acknowledgement of Support and Disclaimer, in all research and development (R&D) solicitations and contracts.

835.010 Scientific and technical reports.

The contracting officer shall insert the clause at 852.235–75, Scientific and Technical Reports, in all research and development (R&D) solicitations and contracts.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. 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 through 1.304.

■ 10. Section 852.235–70 is added to read as follows:

852.235–70 Research Misconduct.

As prescribed at 835.003–71, insert the following clause:

Research Misconduct (Date)

(a) The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection and remediation of research misconduct as defined in 835.001–70.

(b) The Contractor shall notify the Contracting Officer within 7 business days of any research misconduct allegations received by the facility concerning this contract award.

(c) The Contractor shall conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, the Contractor shall notify the Contracting Officer and, unless otherwise instructed shall—

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies, or a recommendation that no further action is warranted;

(2) When the investigation results in a research misconduct finding, ensure the matter is adjudicated by a responsible official who was not involved in the inquiry or investigation and is organizationally separated from the element which conducted the investigation. The adjudication shall include a review of the investigation record and a recommendation of appropriate corrective actions and sanctions; and

(3) When an investigation is complete, the Contractor shall forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's recommendation and notification of any proposed corrective action, and the subject's written response, if any. The Contracting Officer will review the documentation to determine whether the proposed corrective action can proceed.

(d) The VA may elect to act in lieu of the Contractor in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that—

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause and it is believed it cannot reasonably conduct the inquiry;

(2) VA involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(3) The allegation involves possible criminal misconduct.

(e) The Contractor shall provide safeguards for information received and protect informants, witnesses and respondents of allegations as follows:

(1) The Contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations.

(2) The Contractor shall also assure the respondent that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegations and reasonable access to any evidence submitted to support each allegation. Respondents must be given the opportunity to prepare a response to an allegation and notice of any findings of research misconduct.

(f) *Objectivity and expertise.* The Contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts the adjudication must not be the same individual(s) who conducted the inquiry or investigation and must be separate organizationally from the element that conducted the inquiry or investigation.

(End of clause)

■ 11. Section 852.235–71 is added to read as follows:

852.235–71 Protection of Human Subjects.

As prescribed at 835.003–72, insert the following clause:

Protection of Human Subjects (Date)

(a) Research involving human subjects is not permitted under this award unless expressly authorized in writing by the Contracting Officer. Such authorization will specify the details of the approved research involving human subjects and will be incorporated by reference into this contract.

(b) The Federal Policy for the Protection of Human Subjects (the ''Common Rule''), adopted by VA (see 38 CFR part 16), requires Contractors to maintain appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a ''human subject'' as a living individual about whom an investigator conducting research obtains data through intervention or interaction with the individual, or identifiable private information. The term ''research'' means a systematic investigation, including research development and/or testing and evaluation, designed to develop or contribute to generalized knowledge. The Common Rule also sets forth categories of research that may be considered exempt from 15 CFR part 27. These categories may be found at 15 CFR 27.101.

(c) Should research involving human subjects be included in the proposal, prior to issuance of an award, the Contractor shall submit the following documentation to the Contracting Officer:

(1) Documentation to verify that the Contractor has established a relationship with an appropriate Institutional Review Board (''cognizant IRB''). An appropriate IRB is one that is located within the United States and within the community in which the research will be conducted;

(2) Documentation to verify that the cognizant IRB possesses a valid registration with the United States Department of Health and Human Services' Office for Human Research Protections (''OHRP'');

(3) Documentation to verify that the Contractor has a valid Federal-wide Assurance (FWA) issued by OHRP.

(d) Prior to starting any research involving human subjects, the Contractor shall submit appropriate documentation to the Contracting Officer for institutional review and approval. This documentation may include:

(1) Copies of the research protocol, all questionnaires, surveys, advertisements, and informed consent forms approved by the cognizant IRB;

(2) Documentation of approval for the research protocol, questionnaires, surveys, advertisements, and informed consent forms by the cognizant IRB;

(3) Documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually; and/or

(4) Documentation to support an exemption for the project from the Common Rule (Note: this option is not available for activities that fall under 45 CFR part 46, subpart C).

(e) Additionally, if the Contractor modifies a research protocol, questionnaire, survey, advertisement, or informed consent form approved by the cognizant IRB, the Contractor shall submit a copy of all modified material along with documentation of approval for said modification by the cognizant IRB to the Contracting Officer for institutional review and approval. The Contractor shall not implement any IRB approved modification without written approval by the Contracting Officer.

(f) No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the Contracting Officer approves the required appropriate documentation in writing.

(g) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. Nothing in this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agency or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgement or otherwise, as an independent Contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

(h) If at any time during performance of this contract, the Contracting Officer determines, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), that the Contractor is not in compliance with any of the requirements, the Contracting Officer may immediately suspend the research and further payments under this contract until the Contractor corrects such noncompliance. Notice of the suspension may be communicated by telephone and confirmed in writing. If the Contractor fails to complete the corrective action within the period of time designated in the Contracting Officer's written notice of suspension, the Contracting Officer may, in consultation with OPRR, NIH, terminate this contract and the Contractor's name may be removed from the list of those Contractors with approved Department of Health and Human Services Human Subject Assurances.

(End of clause)

■ 12. Section 852.235–72 is added to read as follows:

852.235–72 Animal Welfare.

As prescribed in 835.003–73, insert the following clause:

Animal Welfare (Date)

(a) The Contractor shall—

(1) Use the Veterans Affairs (VA), Office of Research Oversight (ORO) Laboratory Animal Welfare Checklist;

(2) Comply with the United States Department of Agriculture (USDA) Animal Welfare Act and Animal Welfare Regulations at *https://www.aphis.usda.gov/animal_welfare,* and the Animal Welfare Information Center's (AWIC) information for improved animal care and use in research, testing, and teaching provided at *https://www.nal.usda.gov/awic;*

(3) Develop and provide to the Contracting Officer a written plan of providing adequate veterinary care to laboratory animals, including—

(i) The frequency of visits; and

(ii) Provisions for after-hours, weekend and holiday veterinary coverage.

(b) The Contracting Officer may immediately suspend the work by issuance of a stop work order and suspend further payments under this contract for failure to comply with the requirements of this clause.

(c) The suspension will stay in effect until the Contractor complies with the requirements. Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract.

(d) The Contractor shall include the substance of this clause, in all subcontracts involving research and development, testing, evaluation or training that use live vertebrate animals.

(End of clause)

■ 13. Section 852.235–73 is added to read as follows:

852.235–73 Facilities.

As prescribed at 835.003–74, insert the following clause:

Facilities (Date)

(a) The facilities specified in the contract are considered essential to the work being performed under this contract. Therefore, prior to removing, replacing, or diverting any of the listed or specified facilities, the Contractor shall—

(1) Notify the Contracting Officer in writing; and

(2) Submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the potential impact on this contract.

(b) The Contractor shall make no removal, replacement or diversion of facilities without the Contracting Officer's written consent.

(End of clause)

■ 14. Section 852.235–74 is added to read as follows:

852.235–74 Acknowledgement of Support and Disclaimer.

As prescribed at 835.003–75, insert the following clause:

Acknowledgement of Support and Disclaimer (Date)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency) under this VA contract.

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer:

Any opinions, findings, conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the VA.

(End of clause)

■ 15. Section 852.235–75 is added to read as follows:

852.235–75 Scientific and Technical Reports.

As prescribed at 835.010, insert the following clause:

Scientific and Technical Reports (Date)

The Contractor shall submit an electronic copy of the approved scientific technical reports, not a summary, delivered under this contract to the National Technical Information Service (NTIS) as delineated at FAR 35.010.

(End of clause)

852.270–1 [Redesignated as Section 852.201–70]

■ 16. Section 852.270–1 is redesignated as section 852.201–70 and revised to read as follows:

852.201–70 Contracting Officer's Representative.

As prescribed in 801.604, insert the following provision:

Contracting Officer's Representative (Date)

The Contracting Officer reserves the right to designate representatives to act for him/her in furnishing technical guidance and advice or generally monitor the work to be performed under this contract. Such designation will be in writing and will define the scope and limitation of the designee's authority. A copy of the designation letter shall be furnished to the Contractor.

(End of provision)

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