

through individual Federal agency retail network pharmacies. The grand metric quantity for each product will then be rounded down to the nearest package size based on the product code identifier to yield the total number of units procured by the Federal agency.

(i) The National Drug Code (NDC) number will be used to populate the product code identifier. The NDC should correlate to the actual product dispensed by the pharmacy, based on commercial best practice and data integrity requirements demanded by health plans and other insurers.

(ii) The Federal agency's Office of Program Integrity will be notified of any pharmacies identified (by Government, industry, or other means) as submitting fraudulent NDCs.

(iii) NDCs assigned by product repackagers will only be included in the reports when the repackager NDC can be correlated to the NDC of the originating product.

**(3) Contractor Refund and Reporting Schedule.**

(i) The Contractor shall complete refund calculations not later than 60 days following the date of the quarterly UD Report.

(ii) The Contractor shall make refund payments so that such payments are received by DoD not later than 70 days following the date of the quarterly UD Report. At the time of refund payment, the Contractor shall also send to the Federal Agency's Pharmacy Benefits Office (PBO) a Reconciliation Report corresponding to the quarterly UD Report and resulting refund payment.

**(h) Resolution of Refund Data Disagreements.**

(1) If the Contractor disagrees with the Federal agency data in the quarterly refund request under paragraph (g) of this clause, the Contractor shall provide prompt written notice to the PBO. Such notice shall be received by the PBO no later than 10 business days after the Contractor's discovery of the alleged error, but in no event no later than one year after the date of the quarterly report containing the alleged erroneous data. The notice shall include specific identification of the alleged error(s) and the specific reason(s) the Contractor believes the data to be in error, along with all available documentation that supports the Contractor's allegation(s).

(2) The Federal agency's PBO will initiate a prompt review of the data following receipt of the notice and documentation provided by the Contractor. The parties agree to use their best good faith efforts to resolve any disagreement within 60 days of the PBO's receipt of the Contractor's written notice. During this period, the Contractor shall proceed diligently with performance of this contract and will exhaust administrative remedies under this clause prior to filing a dispute under the Disputes clause incorporated into this contract. Performance includes remittance of any refund due the Federal agency based upon the data provided by the PBO with which the Contractor disagrees. If the written notice of disagreement is resolved in favor of the Contractor, the Federal agency shall reimburse the Contractor the amount of remitted refund attributed to the error and simple interest on the reimbursed amount at the rate determined in accordance with the

Contract Disputes Act of 1978, as amended (41 U.S.C. 601-603), from the date of receipt of the Contractor's remittance of the refund in disagreement.

(3) If the Federal agency and the Contractor cannot resolve the disagreement within 60 days following receipt of the Contractor's written notice (and any time extensions mutually agreed to by the parties), the Contractor shall have exhausted administrative remedies under this clause and may proceed with disputes remedies available under the Disputes clause and the Contract Disputes Act of 1978, as amended.

(i) **Industrial Funding Fee and Sales Reporting.** The Contractor shall report all contract sales covered by this clause and pay the Industrial Funding Fee (IFF) included therein, as required by VA's variation of clause 552.238-74 of the contract, "Industrial Funding Fee and Sales Reporting (JUL 2003) (Variation)". All sales of covered drugs made through retail pharmacies under this clause are deemed to be reportable when the Contractor receives the quarterly Utilization Flat File Layout Report(s) (or its functional substitute), applies the appropriate FSS contract price (including IFF) to the rounded total number of units of each covered product purchased by the submitting agency (as shown on the Flat File Report), and computes the total dollar sales of each product. These sales are counted as FSS sales on the date the computations are finished (for example, the results of computations finished on March 10 are reported 60 days after the end of the first calendar quarter, on May 30). The grand total of all retail pharmacy sales (at the appropriate FSS contract prices) under this clause computed during a calendar quarter shall be included in the Contractor's quarterly sales report to VA. That information and the resultant IFF shall be provided to VA according to the timelines and procedures established in 552.238-74.

(End of clause)

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**GENERAL SERVICES ADMINISTRATION**

**48 CFR Parts 546 and 552**

[GSAR ANPR 2005-N01]

**General Services Administration Acquisition Regulation; Waiver of Consequential Damages and "Post Award" Audit Provisions (Correction)**

**AGENCY:** Office of the Chief Acquisition Officer, General Services Administration (GSA)

**ACTION:** Correction to advance notice of proposed rulemaking and notice of public meeting.

**SUMMARY:** The General Services Administration (GSA) is requesting comments from both Government and industry on whether the General Services Administration Acquisition Regulation (GSAR) should be revised to

include a waiver of consequential damages for contracts awarded for commercial items under the FAR. GSA is also requesting comments on whether "post award" audit provisions should be included in its Multiple Award Schedules (MAS) contracts and Governmentwide acquisition contracts (GWACs). GSA is further amending the correction notice published in the **Federal Register** at 70 FR 13005, March 17, 2005, to add the following: In addition, GSA is interested in receiving comments on whether the Examination of Records clause at GSAR 552.215-71 should be modified to reinstate post-award access to and the right to examine records to verify that preaward/ modification pricing, sales, or other data related to the supplies or services offered under a contract which formed the basis for an award/modification was accurate, current, and complete. The notice published in the **Federal Register** at 70 FR 12167, March 11, 2005, is amended to extend the public comment date to May 10, 2005, and to allow interested parties to submit presentations by April 7, 2005.

**DATES: Comment Date:** Interested parties should submit comments on or before May 10, 2005, to be considered in the formulation of a proposed rulemaking.

**Public Meeting Presentation Date:** Interested parties may register and submit presentations by April 7, 2005.

**ADDRESSES:** Submit written comments to:

General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: [gsaranpr.2005-N01@gsa.gov](mailto:gsaranpr.2005-N01@gsa.gov)

Submit electronic presentations via the Internet to: [meeting.2005-N01@gsa.gov](mailto:meeting.2005-N01@gsa.gov).

Please submit comments or presentations only and cite GSAR ANPR 2005-N01 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

**Public Meeting:** The public meeting will be conducted at the General Services Administration, National Capital Region, 301 7th and D Street, SW, Washington, DC 20407, Auditorium, starting at 9 a.m. to 4:00 p.m. EST., on April 14, 2005, to ensure open dialogue between the Government and interested parties on this important topic.

**Special Instructions.** The submitted presentations will be the only record of the public meeting. If you intend to