longer maintain the public land records and that those records will no longer be available for public access in BLM field offices.

In reality, BLM is required by law and administrative practice to maintain the official public land records. This regulation will neither change our recordkeeping responsibility nor change public access to those records in BLM field offices. This regulation will merely remove procedural material from the CFR and place it in more appropriate alternative sources—public information releases and the BLM manual system. For these reasons, the final rule is being published unchanged from the proposed rule.

IV. Procedural Matters

National Environmental Policy Act of 1969

BLM has prepared an environmental assessment (EA), and has found that the final rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the address listed above (see **ADDRESSES**).

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion in the preamble above, that the regulation will remove unnecessary material from the CFR, BLM anticipates that this final rule will have no impact on the public at large. Therefore, BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Removal of 43 CFR 1813 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a Government action capable of interfering with constitutionally protected property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department has determined that this rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Author: The principal author of this rule is Frances Watson, Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240; Telephone: 202–452–5006 (Commercial or FTS).

List of Subjects in 43 CFR Part 1810

Administrative practice and procedure, Archives and records.

Dated: September 4, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 1810 of Title 43 of the Code of Federal Regulations is amended as set forth below:

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

1. The authority for Part 1810 is revised to read:

Authority: 43 U.S.C. 1740.

Subpart 1813—[Removed]

2. Subpart 1813 is removed.

[FR Doc. 97–23935 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–84–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1603, 1604, 1615, 1616, 1629, 1631, 1643, 1644, 1645, 1649, 1652, and 1653

RIN 3206–AH45

Federal Employees Health Benefits Program Acquisition Regulation; Truth in Negotiations Act and Related Changes

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation amending the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) to implement those portions of the Federal Acquisition Streamlining Act of 1994 (FASA) that impact on the FEHB Program.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On June 24, 1996, OPM issued a proposed regulation in the **Federal Register** [61 FR 32401] to inform Federal Employees Health Benefits (FEHB) Program carriers, Federal agencies, and the public how it intends to implement those portions of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, effective October 13, 1994, affecting the FEHB Program. The changes proposed also reflect how OPM intends to implement sections 4201 through 4204 of the Federal Acquisition Reform Act of 1996 (FARA), Public Law 104–106, enacted on February 10, 1996.

OPM received comments from one private citizen and five organizations: Two FEHBP carriers, a trade association representing health maintenance organizations (HMOs), preferred provider organizations (PPOs), and other network plans, an association that represents FEHB Program fee-for-service carriers, and a contract law group. We appreciate the observations and suggestions offered and have taken them into consideration in these regulations.

The majority of the comments were favorable toward OPM's efforts to

implement the provisions of the Truth in Negotiations Act (TINA) as amended by FASA to the extent that the regulation brings the FEHBAR into conformance with the Federal Acquisition Regulation (FAR). Nevertheless, there were a number of concerns regarding provisions on the submission of cost or pricing data, as well as those concerning Similarly Sized Subscriber Groups (SSSGs). These, as well as other comments, are addressed as follows.

Effective Date of the Regulation

One of the comments concerned a perceived inconsistency in the proposed effective date and the application of the regulation with regard to SSSGs. The regulation will be applicable to the rate instructions issued for the 1998 FEHB contract year. In the opinion of the commenter, however, it appeared that OPM had already implemented many of the changes administratively through the rate instructions for the 1997 contract year. We would like to clarify any misconception that OPM issues policy material in the FEHBP rate instructions. The rate instructions contain guidance, clarifying information and examples that elaborate on and describe how the policy in existing regulations is to be implemented. The regulations introduce no changes in OPM's policy with respect to SSSGs. The treatment of multi-year contracts and the requirement that groups with point of service (POS) plans and separate lines of business be included for consideration as SSSGs have been the long standing practice under the SSSG concept.

Intent of FASA/TINA

Two commenters believe OPM has overlooked the intent of FASA to minimize burdensome requirements, such as the requirement to submit cost or pricing data, placed on Federal contractors. OPM understands the commenters' concerns; however, we believe they overlook the fact that Congress continues to recognize the need for cost or pricing data where necessary to determine reasonableness of a price. Accordingly, when the Government purchases a product or service that is not a commercial item offered to the Government without modification and in the same form in which it is sold in the commercial marketplace, it is appropriate under the FAR and TINA to require cost or pricing data to establish price reasonableness. As we stated in the preamble to the proposed rule, with the complexities of the FEHB Program carriers' rating systems, it is inaccurate to say that OPM is buying a commercial off-the-shelf item or that the product that OPM purchases is purchased at a market or catalog price. Thus, the FEHB Program community rated contracts are neither contracts for commercial items, nor are they catalog or market price contracts as those terms are intended by FASA, FARA, and the FAR.

One commenter noted that the purchase of insurance and HMO services is typically governed by State insurance regulators and that OPM, in obtaining cost or pricing data, is not only acting as a purchasing agent, but is also performing a regulatory function akin to that of a State insurance regulator. The commenter believes that the application of the principles embodied in the proposed regulation to the FEHB Program contracts is the minimum that OPM should require of contractors given the substantial responsibilities placed upon OPM to obtain the best possible terms, conditions, price and value for the Government and enrollees in the FEHB Program.

Cost or Pricing Data

Prior to the enactment of Public Law 100–517, the Health Maintenance Organization Amendments of 1988, community rated contracts resembled market price contracts. Consequently, for lack of a more precise fit with any other contract type, OPM identified the community rated contracts as market price contracts when it initially published regulations to implement the Act. These regulations were effective January 1, 1990, before OPM had been able to assess the impact of the 1988 amendments.

Historically, a community rate was more analogous to a market price and services under FEHB Program contracts were more commonly thought of as commercial items, because the community rate was often a single rate that an HMO charged all of its groups. This is no longer true today. The 1988 HMO amendments introduced a new level of complexity into the community rating process. The 1988 HMO amendments authorized community rated plans to use a new rating method called Adjusted Community Rating (ACR). In spite of its name, ACR is actually a form of experience rating, that is, prospective experience rating.

Determining the reasonableness of the rates under ACR requires cost or pricing data. Moreover, cost or pricing data is fundamental to the development of the FEHB Program premiums. OPM has a responsibility under the FEHB law to ensure that the FEHB Program premiums ''reasonably and equitably reflect the cost of benefits provided'' [5 U.S.C. 8902(i)]. In carrying out this statutory mandate, OPM needs cost or pricing data to achieve a fair and reasonable premium rate for Federal enrollees. There are almost 400 plans in the Program, and the premium is divided, with an average of 28% being paid by enrollees and 72% being paid from Government funds. Thus, both parties have a major financial interest in the reasonableness of the rates.

Furthermore, we would like to point out that the FEHB Program premiums, once transmitted to OPM, are placed in a trust and are trust fund monies which OPM has a statutory mandate to protect. OPM places the premium monies collected in the U.S. Treasury for payment to the FEHB Program carriers. The FEHB law authorizes the Secretary of the Treasury to invest and reinvest the monies, as well as the interest earned on their investments. Because of the nature of these monies, OPM has a fiduciary responsibility to ensure a reasonable and equitable rate for Federal enrollees as well as for the Government. One of the ways OPM accomplishes this is to require the same discounts for the FEHB Program that are enjoyed by the SSSGs; and analyzing cost or pricing data is the only way OPM can achieve accountability. The practice of requesting the data is widely accepted in the insurance industry and, although we have requested this data for over 20 years, no FEHB Program carrier has advised us that it was burdensome.

By these regulations, we are implementing FASA, FARA, and the FAR in the manner which best enables us to comply with the responsibility that the FEHB law places on OPM. One has only to trace the FEHBAR amendments over the years to understand that OPM has been trying, to the maximum extent it could, to reconcile the Congressional intent behind the HMO amendments with the FEHB law. OPM has attempted to fit FEHB Program contracts into existing contract types under the FAR, which lists contract types that were never entirely appropriate to our situation. Accordingly, because of the unique nature of the FEHB Program contracts, we are categorizing them as negotiated benefits contracts to reflect more accurately their actual nature.

One commenter suggested that OPM require pricing data only, and that cost analysis is not an aspect of establishing the price of health benefits coverage with large group purchasers. We disagree. Cost data, the most fundamental of which is claims data, prescription drug, hospital, and office visit benefits utilization data, and trend

data, are essential in evaluating the rate under ACR (experience rating). The same commenter believes that, traditionally, when OPM has asked for cost information it has generally been to examine the derivation of the price for a specific benefit or loading. Prior to the 1988 HMO amendments, this was true. To a certain extent, OPM's rate review was fairly straightforward before the 1988 HMO amendments authorized alternative methods of community rating. Before 1981, community rating was relatively simple, in that a group's rates were normally based on the same underlying capitation rate (i.e., per member per month rate). But, even under this early version of community rating, a group's rates could not properly be thought of as a market price. This is because, from the enactment of the HMO Act of 1973 onward, the community rating theory has always allowed for various demographic adjustments that caused each group's rates to be uniquely related to the characteristics of the group.

In 1981, when the HMO Act of 1973 was amended to allow Federally qualified plans to use Community Rating by Class (CRC), the situation became much more complex. Under CRC, the plan could adjust the community rates by a CRC factor which was derived by partitioning the group into classes and applying so-called utilization factors, which predicted differences in the use of HMO services by individuals or families in each class.

But, in 1988, the 1988 HMO amendments radically altered the nature of community rating by allowing Federally qualified plans to use Adjusted Community Rating (ACR). In retrospect, we have come to realize that no rate based on ACR can possibly be construed to be a market price. After the legislation was enacted and OPM's 1990 regulations were published, OPM began to experience difficulties in verifying the carriers' community rate. We continue to ask for cost and pricing data for computing the rates under Traditional Community Rating (TCR) and CRC. And, for ACR, we ask for all of the data developed for both the FEHB Program and the SSSGs, which includes cost data.

Contrary to the commenter's beliefs, these carriers using ACR do not derive their rates from a single rate. Rather, these carriers base their rate directly on the past experience of the Federal group. In no sense can such a rate be considered a market price. The Act stated that, under ACR, the rate for a particular group could be based on the organization's revenue requirements for providing service to the group. This means that ACR is a form of experience rating and, as such, requires cost data. Thirty-five percent of the FEHB plans use ACR to rate the Federal group, and the number of these plans is increasing each year. Approximately thirty percent of the plans currently in the FEHB Program use CRC to rate the Federal group.

Two commenters were concerned that proposed FEHBAR 1602.170–5 does not define cost or pricing data, but simply refers to the rate instruction package. One of these commenters believes that the list of cost or pricing data should be identified in regulation because the FAR does not give agencies authority to set price guidelines outside the scope of the regulation.

In placing clarifying details in the rate instructions, OPM was simply conforming to the principles of the Administration's National Performance Review (NPR). A key element of the NPR is the replacing of agency rules with policy directives and instructions, where appropriate. Nevertheless, to assist the carriers in understanding what OPM considers cost or pricing data, we have decided to cite in the regulation some examples of the types of data that OPM considers to be cost or pricing data. Like the examples listed in the FAR, the list is illustrative and is not exhaustive. Additional data may be requested in the rate instructions as deemed necessary by OPM for a particular contract year. Again, this type of detail is merely clarifying information and does not represent policy change. It conforms to the definition of cost or pricing data in TINA and is information that OPM has frequently requested in the past.

One commenter noted that in the Supplementary Information to the proposed rule OPM included actuarial estimates in its description of cost or pricing data. The commenter stated that actuarial estimates are judgmental and not factual and suggested that OPM remove these from consideration as cost or pricing data. We are aware that FAR 15.801 defines ''cost or pricing data'' as factual and not judgmental, and we believe that we are in compliance with the definition. OPM uses actuarial estimates not to question what judgment the carrier used in its actuarial estimates, but to verify, for example, that if an actuarial estimate of 10% increase in claims was used for the FEHBP group, the methodology used to establish that estimate was also used in setting the SSSGs rates. In other words, OPM is not questioning what judgment the carrier has applied in its projections, but the facts upon which its projections are based.

One commenter is concerned that the regulation will authorize OPM to collect data that are difficult to collect and submit and that are not directly related to OPM's responsibility to evaluate the reasonableness of the prices given to the SSSGs. The respondent noted that the FAR authorizes agencies to obtain ''other than cost or pricing data,'' which the commenter believes is sufficient to verify prices. We would like to reiterate that OPM will not ask for different data than it currently requests in the rate setting process. However, the kind of data that we ask for will be determined by the plan with regard to how it chooses to rate its SSSGs. We look only at data directly related to our responsibility under the FEHB law to evaluate a proposed rate in order to ensure that the FEHBP rates accurately reflect the cost of benefits provided. OPM neither requests nor desires information that is irrelevant to this objective. Further, OPM disagrees with the commenter that data other than cost or pricing data are sufficient to verify prices.

SSSGs

One commenter is concerned that the legitimacy of a loading can be based on non-SSSG rating practices. The commenter believes that this is inconsistent with the SSSG concept. As stated in the OPM Reconciliation Guidelines, the OPM audit staff may examine the rates and benefit loadings of non-SSSG groups. The purpose of such analysis is to make certain that the Federal group rates are fair in relation to the SSSG rates. As one example (given in the guidelines), if an SSSG had a special benefit not included in the Federal group benefit package, OPM would compare what the plan charged the SSSG with what it charged non-SSSG groups for the benefit. Only by examining the non-SSSG groups would we be able to determine if the SSSG had been given a discount to its overall rates via a discount to the special loading. We do, however, agree with the commenter that another example given in the guidelines pertaining to late payment loadings is not a good example to justify the principle of examining non-SSSG groups. We will remove this example from future guideline documents.

Another commenter believes that OPM fails to consider the contract requirement that the FEHB rate be reconciled to the SSSG rates after the contract period has begun. As part of the reconciliation process, the contractor must provide information related to the rates offered to the five groups closest in size to the Federal group. The commenter believes that requiring cost

or pricing data for these contracts is entirely inconsistent with the purpose of the reconciliation process.

For non-SSSGs, OPM simply asks the carriers to list the plans they did not select as SSSGs. However, OPM may ask the carrier to explain why it did not select one or more as an SSSG. OPM has stated over the years that it reserves the right to examine the rate development of non-SSSG groups. OPM looks at a carrier's other groups only if all the necessary information is not in the SSSG. For example, verifying that there is no group closer in size to the Federal group than the plan's chosen SSSGs could require analysis of non-SSSG groups. OPM will verify such things as differences in loading and whether the carrier has hidden a discount in a loading. We want to emphasize that the sole purpose of such analysis is to make certain that the Federal group's rates are equivalent to the SSSGs' rates. However, if we find that the SSSG is not closest in size or if an SSSG had a special benefit (e.g., dental benefit) not included in the Federal group benefit package, we would compare what the carrier charged the SSSG with what it charged other groups for this benefit. The purpose would be to verify that the SSSG received no discount. Carriers need not be concerned that an OPM review of a non-SSSG commercial group makes it a potential SSSG. We would like to point out, though, that such comparisons with non-SSSGs could work to the carrier's advantage as well as to its disadvantage if a non-SSSG was not given a discount.

SSSGs/Regional Rating Areas

One of the commenters noted that a carrier may have to select an SSSG from an entirely different area within a State even if that group has no Federal employees in the rating area. This concerned the commenter since the group rates in one regional rating area may be significantly different than the rates in another area. The commenter stated that it is unclear how OPM would adjust the rates of an SSSG in one area to measure the Federal group in another area and suggests that OPM limit its SSSG analysis to groups within a single FEHBP rating area. This type of situation is not new to us. In such cases, we focus on whether the carrier gave the groups a discount and whether it is applying the rating method consistently. The rating method or benefit structure may be entirely different and is, in fact, irrelevant.

SSSGs/Purchasing Alliances

One commenter suggested that OPM either remove the limitation on the maximum number of employees allowable in a purchasing alliance, or increase the number to 200, because some States offer voluntary alliances in which the State may also dictate the rates. In addition, two commenters believe that no State mandated purchasing alliance should be treated as an SSSG because the alliances are not voluntary and are usually a condition of doing business in the State, which distinguishes them from the carriers' normal lines of business. After considering the comments, we have adopted the suggestion that all alliances be excluded from consideration as SSSGs where the State mandates how the rate is set.

We are also confirming that POS plans whose rate-setting is mandated by the State may be excluded from consideration as SSSGs. However, a POS plan whose rate-setting is not State-mandated must be considered as an SSSG, even though it is primarily experience rated. Usually the plan uses ACR and should not be excluded, regardless of the portion of its services provided out of plan. We have had comparable experience with ACR plans since 1988, and the rate setting for POS plans with a large percentage of out-of-plan services is no more difficult to accomplish than ACR. As we have said before, experience shows that we have to be inclusive in considering plans as SSSGs. OPM has always recognized that the rating method for the Federal group is not necessarily the same as its SSSGs.

OPM received a few plan-specific questions about SSSGs, which we are reluctant to answer without more information. We will answer these types of questions on an individual basis at the time of the rate reconciliation.

One commenter believes that the regulations should establish audit standards that restrict OPM's Inspector General (IG) auditors to comparing the prices charged to the SSSGs and to reviewing the information necessary to verify that the SSSGs are appropriate. By statute, OPM's Inspector General operates independently of OPM, and OPM is not authorized to regulate to restrict its authority. We would like to point out, however, that the IG looks only at data directly related to OPM's responsibility under the FEHB law to evaluate a proposed rate in order to ensure that the rates accurately reflect the cost of benefits provided. The kind of data that the auditors would look at will be determined by the plan with respect to how it chooses to rate its SSSGs.

SSSGs/Multi-year contracts

One commenter believes OPM should not be allowed to isolate a specific year in a multi-year contract to determine that a discount occurred. Our intent is that if a plan's rates are affected by the length of time the group signs up with the plan, then we simply want to be able to capture that data. If the rates are affected, then we have to make our analysis based on all the years that affect the rate.

A commenter asked that OPM confirm its understanding that if the aggregate revenues on a per member per month (PMPM) basis for the Federal group are equivalent to or less than the corresponding aggregate revenues for the SSSG, the carrier will be in compliance with its community rating requirements with respect to that SSSG. OPM confirms that under this scenario the carrier would be in compliance with its community rating requirements.

The same commenter would also like clarification of OPM's policy with regard to multi-year contracts in which the group has the option of renewing the agreement in any given year and does not renew. OPM considers the contracts to be single-year agreements if the group terminates the contract.

Miscellaneous

We converted FAR clauses 52.229–6, Taxes—Foreign Fixed-Price Contracts, 52.243–1, Changes—Fixed Price, 52.245–2, Government Property (Fixed-Price Contracts), 52.249–2, Termination for Convenience of the Government (Fixed-Price), and 52.249–8, Default (Fixed-Price Supply and Service) to FEHBAR clauses and have deleted language that does not apply to negotiated benefits contracts.

We have clarified the cost principle at 1631.205–75(b) pertaining to selling costs to provide that personnel and related travel costs are allowable for attendance at Open Season Health Fairs and other similar activities where carriers give enrollees information about their choices among health plans. Such events are not limited to those sponsored by Government agencies, but may be sponsored by other groups as well.

One comment concerned 1652.215–70(b)(1)(iii), which states that if the contracting officer determines that a price or cost reduction should be made, the carrier may not raise as a defense the argument that the contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract. The commenter states that community rated contracts

are based on price, not cost, analysis and cites FAR 15.803(c), which provides that price negotiation does not require that agreement be reached on every element of cost. The commenter believes, therefore, that individual components of cost should not be subject to revision on audit. OPM classified its review as price analysis pursuant to the HMO amendments because it had been working with a simplified form of price analysis up to that point, although technically even these community rated contracts included an element of cost. But, after we gained some experience with ACR (experience rating), we began to look not only at special benefits loadings, but also at elements of the basic community rate, such as demographic factors. Our approach has been consistent with the FAR definition of ''price,'' which states that price is cost plus any fee or profit applicable to the contract type. For the reasons stated earlier, OPM is no longer classifying FEHB contracts as market price, and OPM will collect both cost and pricing data. The new regulations reflect this fact by clarifying that community rated contracts are based on a combination of cost and price analysis. FEHBAR 1652.216–70(b)(1)(iii) is taken verbatim from FAR 52.215–22(c)(1)(iii) and is appropriate when both cost and pricing data are required.

The same commenter took exception to the requirement in 1652.215–70(b)(2)(ii)(A), which restricts a carrier's right to claim an offset to an audit finding when the understated data was known by the carrier to be understated at the time the certificate of current cost or pricing data was signed. The commenter believes this provision is inconsistent with FEHBAR 1652.215–70(b)(2)(i)(B) which allows a carrier to revise a price following an audit finding if it proves that the cost or pricing data were available before the date of agreement on the price of the contract and that the data were not submitted before such date. We would like to point out that these provisions are not inconsistent with the FAR. In fact, they are repeated verbatim from the FAR. Section 1652.215–70(b)(2)(ii)(A) prohibits an offset if the carrier deliberately understated the data at the time the certificate of current cost or pricing data was signed. OPM would not allow an offset under these circumstances. In FEHBAR 1652.215–70(b)(2)(i)(B), however, the carrier is allowed to prove that the data were not submitted before the date of agreement on the price because of a mistake on its part. OPM would allow the offset if the proof offered by the carrier was clear and convincing.

One commenter suggested that OPM increase the threshold for preapproval of subcontracts to $200,000 to account for inflation since the FEHBAR was first published in 1987. OPM has decided not to increase the threshold at this time, but will consider doing so in a future amendment to the FEHBAR.

We are withdrawing our proposal to insert FAR 52.222–25, Affirmative Action Compliance, in the Matrix because the clause is a preaward clause that is intended to be inserted in solicitations. FEHB Program contracts, by law, are exempted from competitive bidding requirements, and OPM uses alternative methods of inviting health benefits carriers to apply for participation in the FEHB Program.

We are withdrawing our proposal to add a requirement in 1652.222–70, Notice of Significant Events, that carriers should inform OPM at the time of a novation or change of name, rather than after the novation or change of name occurs. OPM has determined that FEHBAR 1642.1204 and 1642.1205 sufficiently address OPM's concerns that carriers are required to notify OPM of a novation and/or a change of name in a timely manner.

We have made a technical correction to 1652.232–71(c) that was inadvertently omitted from OPM's interim regulation of April 20, 1992, and published as a final rule on November 16, 1992 [57 FR 53981]. That is, we have removed from the regulation the reference to the ability of underwriters to make drawdowns from carriers' letter of credit (LOC) accounts. OPM guidelines allow a carrier to delegate its authority to make drawdowns from its LOC account to the underwriter of its plan.

We have also included in the final regulations minor technical and editorial changes and minor changes to the definitions of ''Carrier'' and ''Health benefits plan'' to more closely align them with the definitions contained in the National Association of Insurance Commissioners (NAIC) guidelines.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because all of the small plan FEHB Program contracts fall below the threshold for submitting cost or pricing data.

List of Subjects in 48 CFR Parts 1602, 1603, 1604, 1615, 1616, 1629, 1631, 1643, 1644, 1645, 1649, 1652, and 1653

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending Chapter 16 of Title 48, Code of Federal Regulations, as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

1. The authority citation for 48 CFR Parts 1602, 1603, 1604, 1615, 1616, 1631, 1644, 1649, 1652, and 1653 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1602—DEFINITIONS OF WORDS AND TERMS

2. Section 1602.170–1 is revised to read as follows:

1602.170–1 Carrier.

Carrier means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, delivering, paying for, or reimbursing the cost of health care services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, including a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services, in consideration of premiums or other periodic charges payable to the carrier.

3. In § 1602.170–2, paragraph (a) is revised to read as follows:

1602.170–2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan carrier. References in this subchapter to ''a combination of cost and price analysis'' relating to the applicability of policy and contract clauses refer to comprehensive medical plan carriers using community rates.

* * * * *

4. Sections 1602.170–10 through 1602.170–12 are redesignated as §§ 1602.170–12 through 1602.170–14 respectively, §§ 1602.170–5 through 1602.170–9 are redesignated as §§ 1602.170–6 through 1602.170–10, new §§ 1602.170–5 and 1602.170–11 are added, and newly redesignated §§ 1602.170–9 and 1602.170–13 are revised to read as follows:

1602.170–5 Cost or pricing data.

(a) *Experience rated carriers.* Cost or pricing data for experience rated carriers includes information such as claims data; actual or negotiated benefits payments made to providers of medical services for the provision of health care such as capitation not adjusted for specific groups, per diems, and Diagnostic Related Group (DRG) payments; cost data; utilization data; and administrative expenses and retentions.

(b) *Community rated carriers.* Cost or pricing data for community rated carriers is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs). Such data include, but are not limited to, capitation rates; prescription drug, hospital, and office visit benefits utilization data; trend data; actuarial data; rating methodologies for other groups; standardized presentation of the carrier's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; ''step-up'' factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation.

* * * * *

1602.170–9 Health benefits plan.

Health benefits plan means a group insurance policy, contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, arranging for, delivering, paying for, or reimbursing any of the costs of health care services.

* * * * *

1602.170–11 Negotiated benefits contracts.

Negotiated benefits contracts are FEHBP contracts in which benefits provided and subscription income are based on either community rating or experience rating.

* * * * *

1602.170–13 Similarly sized subscriber groups.

(a) *Similarly sized subscriber groups* (SSSGs) are a comprehensive medical plan carrier's two employer groups that:

(1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(2) Use any rating method other than retrospective experience rating; and,

(3) Meet the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an FEHB carrier enters into an agreement to provide health care services is a potential SSSG (including separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products).

(c) Exceptions to the general rule stated in paragraph (b) of this section are (and the following groups must be excluded from SSSG consideration):

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare groups, and groups that have only a stand alone benefit (such as dental only);

(4) A purchasing alliance whose rate-setting is mandated by the State or local government.

(d) OPM shall determine the FEHBP rate by selecting the lower of the two rates derived by using rating methods consistent with those used to derive the SSSG rates.

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1603.70 [Amended]

5. In subpart 1603.70, sections 1603.701, 1603.702, and 1603.703 are redesignated as sections 1603.7001, 1603.7002, and 1603.7003 respectively.

PART 1604—ADMINISTRATIVE MATTERS

1604.705 [Amended]

6. In subpart 1604.7, section 1604.705 is amended by removing the words ''Audit—Negotiation,'' and adding in its place ''Audit & Records—Negotiation.''

PART 1615—CONTRACTING BY NEGOTIATION

7. Section 1615.802 is revised to read as follows:

1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a) For both experience rated and community rated contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis shall be used for contracts where premiums and subscription income are based on community rates. For contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data. The carrier must submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHBP premiums for the contract term will be $500,000 or more, OPM shall require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.804–70. In addition, OPM shall require the carrier to complete the proposed rates form containing cost and pricing data, and the Community Rate Questionnaire, but shall not require the carrier to send these documents to OPM. The carrier shall keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204–70. OPM shall perform a basic reasonableness test on the data submitted. Rates that do not pass this test shall be subject to further OPM review.

(3) For contracts with 1,500 or more enrollee contracts for which the FEHBP premiums for the contract term will be at least $500,000, OPM shall require the carrier to provide the data and methodology used to determine the FEHBP rates. OPM shall also require the data and methodology used to determine the rates for the carrier's similarly sized subscriber groups. The carrier shall provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM shall evaluate the data to ensure that the

rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(4) Contracts shall be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments shall be based on the lower of the two rates determined by using the methodology (including discounts) the Carrier used for the two SSSGs.

(5) FEHBP community rated carriers shall comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

8. Section 1615.804–70 is revised to read as follows:

1615.804–70 Certificate of cost or pricing data for community rated carriers.

The contracting officer shall require a carrier with a contract meeting the requirements in 1615.802(c)(2) or 1615.802(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in 1615.802(c)(2) shall complete the Certificate and keep it on file at the carrier's place of business in accordance with 1652.204–70. A carrier with a contract meeting the requirements in 1615.802(c)(3) shall submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

Certificate of Accurate Cost or Pricing Data for Community Rated Carriers

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee, in support of the _____* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHBP rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

* Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

(End of Certificate)

1615.804–7 [Removed and reserved]

9. Section 1615.804–71 is removed and reserved.

10. Section 1615.804–72 is revised to read as follows:

1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in section 1652.215–70 shall be inserted in FEHBP contracts for $500,000 or more that are based on a combination of cost and price analysis (community rated).

11. Paragraph (a) of section 1615.805–70 is revised to read as follows:

1615.805–70 Carrier investment of FEHB funds.

(a) This paragraph does not apply to contracts based on a combination of cost and price analysis (community rated).

* * * * *

PART 1616—TYPES OF CONTRACTS

12. Section 1616.102, is revised to read as follows:

1616.102 Policies.

All FEHBP contracts shall be negotiated benefits contracts.

Subpart 1616.2 [Removed]

13. Subpart 1616.2 is removed and subpart 1616.70 is added to read as follows:

Subpart 1616.70—Negotiated Benefits Contracts

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).

The clause at section 1652.216–70 shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

1616.7002 Clause—contracts based on cost analysis (experience rated).

The clause at section 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

14. In Subchapter E, part 1629 is added to read as follows:

PART 1629—TAXES

Subpart 1629.4—Contract Clauses

Sec.

1629.402 Foreign contracts.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1629.4—Contract Clauses

1629.402 Foreign contracts.

The clause set forth in section 1652.229–70 shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico.

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

15. In subpart 1631.2, section 1631.205–75, paragraph (b), is revised to read as follows:

1631.205–75 Selling costs.

* * * * *

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season Health fairs and other similar activities at which carriers give enrollees information about their choices among health plans (but see FAR 31.205–1 ''Public relations and advertising costs'', and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices, Subchapter S2–3(f) ''Controlling contacts between employees and carriers'').

SUBCHAPTER G—CONTRACT MANAGEMENT

16. In Subchapter G, part 1643 is added to read as follows:

PART 1643—CONTRACT MODIFICATIONS

Subpart 1643.2—Changes

Sec.

1643.205–70 Contract clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1643.2—Changes

1643.205–70 Contract clause.

The clause set forth in section 1652.243–70 shall be inserted in all FEHB Program contracts.

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

17. In Subpart 1644.1, section 1644.170 is revised to read as follows:

1644.170 Policy for FEHBP subcontracting consent.

For all experience rated FEHBP contracts, advance approval shall be

required on subcontracts or modifications to subcontracts when the amount charged against the FEHBP contract exceeds $100,000 and is at least 25 percent of the total cost of the subcontract.

18. In Subpart 1644.2, section 1644.270 is revised to read as follows:

1644.270 FEHBP contract clause.

The clause set forth at section 1652.244–70 shall be inserted in all experience rated FEHBP contracts.

19. Part 1645 is added to read as follows:

PART 1645—GOVERNMENT PROPERTY

Subpart 1645.3—Providing Equipment

Sec.
1645.303–70 Contract clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1645.3—Providing Equipment

1645.303–70 Contract clause.

The clause set forth in section 1652.245–70 shall be inserted in all FEHB Program contracts.

PART 1649—TERMINATION OF CONTRACTS

20. In subpart 1649.1, sections 1649.101–71 and 1649.101–72 are added to read as follows:

1649.101–71 FEHBP termination for convenience clause.

The clause set forth in 1652.249–71 shall be inserted in all FEHBP contracts.

1649.101–72 FEHBP termination for default clause.

The clause set forth in 1652.249–72 shall be inserted in all FEHBP contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

21. In part 1652, section 1652.000 is revised to read as follows:

1652.000 Applicable clauses.

The clauses of FAR subpart 52.2 shall be applicable to FEHBP contracts as specified in the FEHBAR Clause Matrix in subpart 1652.3.

Section and Clause Title

52.202–1 Definitions.
52.203–3 Gratuities.
52.203–5 Covenant Against Contingent Fees.
52.203–7 Anti-Kickback Procedures.
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
52.215–2 Audit and Records—Negotiation.
52.215–22 Price Reduction for Defective Cost or Pricing Data.
52.215–24 Subcontractor Cost or Pricing Data.
52.215–27 Termination of Defined Benefit Pension Plans.
52.215–30 Facilities Capital Cost of Money.
52.215–31 Waiver of Facilities Capital Cost of Money.
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
52.222–1 Notice to the Government of Labor Disputes.
52.222–3 Convict Labor.
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.
52.222–21 Certification of Nonsegregated Facilities.
52.222–26 Equal Opportunity.
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts.
52.222–29 Notification of Visa Denial.
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222–36 Affirmative Action for Handicapped Workers.
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
52.223–2 Clean Air and Water.
52.223–6 Drug-Free Workplace.
52.227–1 Authorization and Consent.
52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.229–3 Federal, State,and Local Taxes.
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract).
52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
52.230–2 Cost Accounting Standards.
52.230–3 Disclosure and Consistency of Cost Accounting Practices.
52.230–5 Administration of Cost Accounting Standards.
52.232–8 Discounts for Prompt Payment.
52.232–17 Interest.
52.232–23 Assignment of Claims.
52.232–33 Mandatory Information For Electronic Funds Transfer Payment.
52.233–1 Disputes.
52.242–1 Notice of Intent to Disallow Costs.
52.242–3 Penalties for Unallowable Costs.
52.242–13 Bankruptcy.
52.244–5 Competition in Subcontracting.
52.244–6 Subcontracts for Commercial Items and Commercial Components.
52.246–25 Limitation of Liability—Services.
52.247–63 Preference for U.S.-Flag Air Carriers.
52.251–1 Government Supply Sources.
52.232–2 Clauses Incorporated by Reference.
52.252–4 Alterations in Contract.
52.252–6 Authorized Deviations in Clauses.

22. In subpart 1652.2, section 1652.203–70 is amended by removing the reference ''1603.703'' and adding in its place ''1603.7003,'' sections 1652.204–70 and 1652.215–70 are revised, section 1652.204–72 is amended by adding a date in the clause title.

1652.204–70 Contractor records retention.

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

Contractor Records Retention (Jan 1998)

Notwithstanding the provisions of section 5.7 (FAR 52.215–2(f)) ''Audit and Records-Negotiation,'' the Carrier shall retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that exceed the threshold at FAR 15.804–2(a)(1), the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.
(End of Clause)

* * * * *

§ 1652.204–72 Filing Health Benefit Claims/Court of Disputed Claims

* * * * *

Filing Health Benefit Claims/Court Review of Disputed Claims (Mar 1995)

* * * * *

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.804–72, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.804–2(a)(1) that are based on a combination of cost and price analysis (community rated):

Rate Reduction for Defective Pricing or Defective Cost or Pricing Data (Jan 1998)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.804–70); (2) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price

or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

(i) The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Carrier did not submit or keep in its files a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (b)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used; and,

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent.

(End of Clause)

23. Section 1652.215–71 is amended by removing ''(Jan 1991)'' from the title Investment Income and adding in its place ''(Jan 1998)'' and by revising paragraph (f) to read as follows:

1652.215–71 Investment Income.

* * * * *

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All lost investment income payable shall bear simple interest at the quarterly rate determined by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

* * * * *

24. Section 1652.216–70 is revised to read as follows:

1652.216–70 Accounting and price adjustment.

As prescribed in section 1616.7001, the following clause shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

Accounting and Price Adjustment (JAN 1998)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR 1602.170–2.

(2) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBAR 1602.170–13.

(3) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period.

(4) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the Carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the subscription rates prior to rate reconciliation and the actual subscription rates.

(End of Clause)

25. In section 1652.216–71, the introductory sentence is revised to read as follows:

1652.216–71 Accounting and Allowable Cost.

As prescribed in section 1616.7002, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

* * * * *

26. Section 1652.229–70 is added to read as follows:

1652.229–70 Taxes—Foreign Negotiated benefits contracts.

As prescribed in section 1629.402, the following clause shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico:

Taxes—Foreign Negotiated Benefits Contracts (Jan 1998)

(a) To the extent that this contract provides for performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) ''Contract date,'' as used in this clause, means the effective date of this contract or modification.

''Country concerned,'' as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

''Tax'' and ''taxes,'' as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

''All applicable taxes and duties,'' as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

''After-imposed tax,'' as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions covered by this contract that the Carrier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

''After-relieved tax,'' as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions covered by this contract, but which the Carrier is not required to pay or bear, or for which the Carrier obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

''Excepted tax,'' as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. ''Excepted tax'' does not include gross income taxes levied on or measured by sales or receipts from sales covered by this contract, or any tax assessed on the Carrier's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Carrier is required to pay or bear, including any interest or penalty, if the Carrier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Carrier incident to a refund of taxes to the extent that such interest was earned after the Carrier was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Carrier to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Carrier is required to pay or bear, or does not obtain a refund of, through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(h) If the Carrier obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Carrier shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Carrier, any subcontractor, or the transactions covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Carrier shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Carrier at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

27. Section 1652.232–70 is amended by adding a date in the clause title to read as follows:

1652.232–70 Payments—community rated contracts.

* * * * *

Payments (Jan 1989)

* * * * *

28. In section 1652.232–71, paragraph (c) is amended by removing ''and/or underwriter'' and the clause title is amended by adding a date to read as follows:

1652.232–71 Payments—experience rated contracts.

* * * * *

Payments (May 1992)

* * * * *

29. Section 1652.243–70 is added to read as follows:

1652.243–70 Changes—Negotiated benefits contracts.

As prescribed in section 1643.205–70, the following clause shall be inserted in all FEHBP contracts.

Changes—Negotiated Benefits Contracts (Jan 1998)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Carrier must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Carrier from proceeding with the contract as changed.

(End of clause)

30. Section 1652.244–70 is amended by revising the introductory paragraph, clause date, and paragraph (a) of the clause to read as follows:

1652.244–70 Subcontracts.

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated):

Subcontracts (Jan 1998)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract, or any subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program exceeds $100,000 and is at least 25 percent of the total cost of the subcontract.

* * * * *

31. Section 1652.245–70 is added to read as follows:

1652.245–70 Government property (negotiated benefits contracts).

As prescribed in section 1645.303–70, the following clause shall be inserted in all FEHBP contracts.

Government Property (Negotiated Benefits Contracts) (Jan 1998)

(a) Government-furnished property. (1) The Government shall deliver to the Carrier, for use in connection with and under the terms of this contract, the Government-furnished property described in this contract together with any related data and information that the Carrier may request and is reasonably required for the intended use of the property (hereinafter referred to as ''Government-furnished property'').

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished ''as-is'') will be delivered to the Carrier at the times stated in this contract or, if not so stated, in sufficient time to enable the Carrier to meet the contract's performance dates.

(3) If Government-furnished property is received by the Carrier in a condition not suitable for the intended use, the Carrier shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Carrier, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Carrier for the Government, under this contract. The Carrier shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Carrier's written request, the Contracting Officer shall make an equitable

adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in this contract to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property. (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Carrier, title to which vests in the Government under this paragraph (collectively referred to as ''Government property''), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration. (1) The Carrier shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) subpart 45.5, as in effect on the date of this contract.

(2) The Carrier shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Carrier shall make such repairs as the Government directs. However, if the Carrier cannot effect such repairs within the time required, the Carrier shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Carrier represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Carrier is responsible shall be accomplished by the Carrier at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this contract, the Carrier assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Carrier. However, the Carrier is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Carrier's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Carrier shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Carrier shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Carrier's premises. Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Carrier's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words ''Government'' and ''Government-furnished'' (wherever they appear in this clause) shall be construed as ''United States Government'' and ''United States Government-furnished'', respectively.

(End of clause)

32. In Subpart 1652.2, new sections 1652.249–71 and 1652.249–72 are added to read as follows:

1652.249–71 FEHBP termination for convenience of the government—negotiated benefits contracts.

As prescribed in section 1649.101–71, the following clause shall be inserted in all FEHBP contracts.

FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts (Jan 1998)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Carrier a Notice of Termination specifying the extent of terminating and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Carrier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Carrier under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, deliver to the Government any data, reports, or studies that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(c) After termination, the Carrier shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Carrier shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Carrier within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Carrier fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Carrier because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) of this clause, the Carrier and the Contracting Officer may agree upon the whole or any part of the

amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) of this clause, exclusive of costs shown in subparagraph (e)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Carrier paid the agreed amount. Paragraph (e) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(e) If the Carrier and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Carrier the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (d) above:

(1) The contract price for completed services accepted by the Government not previously paid for.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under paragraph (e)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (e)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (e)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(f) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(g) The Carrier shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (c), (e), or (i) of this clause, except that if the Carrier failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (c) or (i), respectively, and failed to request a time extension, there is no right of appeal.

(h) In arriving at the amount due the Carrier under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Carrier under the terminated portion of this contract;

(2) Any claim which the Government has against the Carrier under this contract; and

(i) If the termination is partial, the Carrier may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Carrier for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(j)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Carrier for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Carrier will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Carrier shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Carrier to the date the excess is repaid.

(k) Unless otherwise provided in this contract or by statute, the Carrier shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Carrier's costs and expenses under this contract. The Carrier shall make these records and documents available to the Government, at the Carrier's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

1652.249–72 FEHBP termination for default—negotiated benefits contracts.

As prescribed in § 1649.101–72, the following clause shall be inserted in all FEHBP contracts.

FEHBP Termination for Default—Negotiated Benefits Contracts (Jan 1998)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Carrier, terminate this contract in whole or in part if the Carrier fails to—

(i) Perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Carrier does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or service similar to those terminated, and the Carrier will be liable to the Government for any excess costs for those supplies or services. However, the Carrier shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Carrier shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Carrier. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Carrier.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Carrier and subcontractor, and without the fault or negligence of either, the Carrier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Carrier to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Carrier to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed or partially completed information and contract rights that the Carrier has specifically produced or acquired for the terminated portion of this contract.

(f) If, after termination, it is determined that the Carrier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(g) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

Subpart 1652.3—FEHBP Clause Matrix

33. In subpart 1652.3, § 1652.370 paragraph (a) is amended by removing the words ''established catalog or market price'' in the first sentence and adding in its place the words ''a combination of cost and price analysis;'' and by revising the FEHBP Clause Matrix to read as follows:

1652.370 Use of the matrix.

* * * * *

FEHBP CLAUSE MATRIX

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.202–1	FAR 2.2	Definitions	M	T	T
FAR 52.203–3	FAR 3.202	Gratuities	M	T	T
FAR 52.203–5	FAR 3.404(c)	Covenant Against Contingent Fees.	M	T	T
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M	T	T
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203–70	1603.703	Misleading, Deceptive, or Unfair Advertising.	M	T	T
1652.204–70	1604.705	Contractor Records Retention.	M	T	T
1652.204–71	1604.7001	Coordination of Benefits	M	T	T
1652.204–72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims.	M	T	T
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215–2	FAR 15.105–2(b)	Audit & Records—Negotiations.	M	T	T
FAR 52.215–22	FAR 15.804–8(a)	Price Reduction for Defective Cost or Pricing Data.	M	T	
FAR 52.215–24	FAR 15.804–8(c)	Subcontractor Cost or Pricing Data.	M	T	
FAR 52.215–27	FAR 15.804–8(e)	Termination of Defined Benefit Pension Plans.	M	T	
FAR 52.215–30	FAR 15.904(a)	Facilities Capital Cost of Money.	M	T	
FAR 52.215–31	FAR 15.904(b)	Waiver of Facilities Capital Cost of Money.	A	T	
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Post Retirement Benefits Other Than Pensions (PRB).	M	T	
FAR 52.215–70	1615.804–72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215–71	1615.805–71	Investment Income	M	T	
1652.216–70	1616.7001	Accounting and Price Adjustment.	M		T
1652.216–71	1616.7002	Accounting and Allowable Cost.	M	T	
FAR 52.219–8	FAR 19.708(a)	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.	M	T	T
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes.	M	T	T
FAR 52.222–3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222–4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M	T	T
FAR 52.222–21	FAR 22.810(a)(1)	Certification of Nonsegregated Facilities.	M	T	T
FAR 52.222–26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222–28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts.	M	T	T
FAR 52.222–29	FAR 22.810(h)	Notification of Visa Denial	A	T	T
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers.	M	T	T
FAR 52.222–37	FAR 22.1308(b)	Employment Reports on Special Disability Veterans of the Vietnam Era.	M	T	T
1652.222–70	1622.103–70	Notice of Significant Events.	M	T	T
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223–6	FAR 23.505(b)	Drug-Free Workplace	A	T	T
1652.224–70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent.	M	T	T
FAR 52.227–2	FAR 27.202–2	Notice and Assistance Regarding Patent and Copyright Infringement.	M	T	T
FAR 52.229–3	FAR 29.401–3	Federal, State and Local Taxes.	M		T
FAR 52.229–4	FAR 29.401–4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229–5	FAR 29.401–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
1652.229-70	FEHBAR 1629.402	Taxes—Foreign Negotiated Benefits Contracts.	A	T	T
FAR 52.230–2	FAR 30.201–4(a)(1)	Cost Accounting Standards.	A	T	T
FAR 52.230–3–	FAR 30.201–4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230–6	FAR 30.201–4(d)(1)	Administration of Cost Accounting Standards.	A	T	T
FAR 52.232–8	FAR 32.111(c)(1)	Discounts for Prompt Payment.	M	T	T
FAR 52.232–17	FAR 32.617(a) Modification: 1632.617	Interest	M	T	T
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232–33	FAR 32.1103(a)&(c)	Mandatory Information for Electronic Funds Transfer Payment.	M	T	T
1652.232–70	1632.171	Payments—Contracts Without Letter of Credit Payment Arrangements.	A		T
1652.323–71	1632.172	Payments—Contracts With Letter of Credit Payment Arrangements.	A	T	
1652.232–72	1632.772	Non-Commingling of FEHBP Funds.	M	T	
1652.232–73	1632.806–70	Approval for Assignment of Claims.	M	T	T
FAR 52.233–1	FAR 33.215	Disputes	M	T	T
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs.	M	T	T
FAR 52.242–3	FAR 42.709–6	Penalties for Unallowable Costs.	M	T	
FAR 52.242–13	FAR 42.903	Bankruptcy	M	T	T
1652.243–70	1643.205–70	Changes—Negotiated Benefits Contracts.	M	T	T
FAR 52.244–5	FAR 44.204(e)	Competition in Subcontracting.	M	T	
FAR 52.244–6	FAR 44.403	Subcontracts for Commercial Items and Commercial Components.	M	T	
1652.244–70	1644.270	Subcontracts	M	T	
1652.245–70	FAR 1645.303–70	Government Property (Negotiated Benefits Contracts).	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.246–25	FAR 46.805(a)(4)	Limitation of Liability—Services.	M	T	
1652.246–70	1646.301	FEHB Inspection	M	T	T
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Carriers.	M	T	T
1652.249–70	1649.101–70	Renewal and Withdrawal of Approval.	M	T	T
1652.249–71	1649.101–71	FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts.	M	T	T
1652.249–72	1649.101–72	FEHBP Termination for Default—Negotiated Benefits Contracts.	M	T	T
FAR 52.251–1	FAR 51.107	Government Supply Sources.	M	T	
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	M	T	T
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses.	M	T	T

PART 1653—FORMS [AMENDED]

34. Part 1653 is amended by removing all references to § 53.215–2(b), § 53.301–1412, and SF–1412 in the chart.

[FR Doc. 97–23883 Filed 9–9–97; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1121 and 1150

[STB Ex Parte No. 562]

Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902; Advance Notice of Proposed Transaction

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board), after reviewing public comments filed pursuant to the notice of proposed rulemaking, adopts a 60-day notice requirement for certain transactions in which rail lines are transferred to a new owner or operator under 49 U.S.C. 10901 and 10902. Final regulations implementing the notice requirement are set forth below.

EFFECTIVE DATE: October 10, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking served and published in the **Federal Register** on May 1, 1997 (62 FR 23742–44), we sought public comments on our proposal to amend our exemption procedures to establish a 60-day notice to rail employees who work on rail lines undergoing transfer to a new owner or operator. We proposed that the notice requirement would apply to transactions processed pursuant to the Board's exemption authority from: (1) 49 U.S.C. 10902 for Class II rail carriers to acquire or operate additional lines; (2) 49 U.S.C. 10902 for Class III rail carriers to acquire or operate additional rail lines where the lines to be acquired or operated, together with the acquiring carrier's existing lines, would produce annual revenue exceeding $5 million; or (3) 49 U.S.C. 10901 for noncarriers to acquire or operate rail lines where the lines to be acquired or operated would produce annual revenue exceeding $5 million. A number of comments were filed by interested parties, including comments from railroads, railroad associations, rail employee unions, and members of both Houses of Congress. Upon reviewing the comments, the Board is adopting the proposal with some modifications and clarifications based on the public comments received. Additional information is contained in the Board's decision served on [date of service]. To purchase a copy of the decision, write to, call, or pick up in person from: DC News & Data, Inc. (202) 289–4357, 1925 K Street, N.W., Room 210, Washington, D.C. 20006. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

List of Subjects

49 CFR Part 1121

Administrative practice and procedure, Railroads.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

Decided: September 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board amends title 49, Chapter X, parts 1121 and 1150 of the Code of Federal Regulations, to read as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

2. Section 1121.4 is amended by adding a new paragraph (h) to read as follows:

§ 1121.4 Procedures.

* * * * *

(h) In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of