

have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 6, 2003.

Deborah Jordan,

Acting Regional Administrator, Region IX.
[FR Doc. 03-20894 Filed 8-14-03; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1601, 1602, 1604, 1615, 1631, 1632, 1644, and 1652

RIN 3206-AJ20

Federal Employees Health Benefits; Acquisition Regulation: Large Provider Agreements, Subcontracts, and Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation to amend the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). We are proposing a new policy that establishes notification and information requirements, including audit, for Federal Employees Health Benefits (FEHB) Program experience rated carriers' large provider agreements. The proposed regulation also modifies the threshold for review of carrier subcontracts; revises the definitions of Cost or Pricing Data and Experience Rate to reflect mental health parity requirements effective with the 2001 contract year; updates the records retention period, updates the FEHB Program Clause Matrix, and conforms various subpart and paragraph references in the Federal Acquisition Regulation (FAR) revisions made since we last updated the FEHBAR.

DATES: Comments must be received on or before October 14, 2003.

ADDRESSES: Send written comments to Abby L. Block, Deputy Associate Director, Employee and Family Services, Strategic Human Resources Policy Division, Office of Personnel Management, Washington, DC 20415-3601; or deliver to OPM, Room 3425, 1900 E Street NW., Washington, DC; or FAX to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, (202) 606-0004; or send email to mwkaszyn@opm.gov.

SUPPLEMENTARY INFORMATION: The primary purpose of this rulemaking is to provide for additional OPM oversight of the FEHB Program carriers' contract costs that are charged to the Government. Since the beginning of the Program, we have maintained oversight of FEHB carriers' costs, including their subcontractor costs. We have specified standard contracting requirements for review and audit of those costs and have routinely updated our requirements as necessary. Historically, we did not consider providers of medical services

or supplies to be subcontractors as the term is defined in the Federal Acquisition Regulation (FAR) because hundreds of thousands of such agreements between carriers and providers are in place, and until recently, the dollar value of each individual agreement was relatively small. However, the healthcare delivery system has changed over the years and new large healthcare delivery entities now play a significant role in the healthcare industry. FEHB carriers contract with those types of entities for the delivery of services that represent a significant portion of individual carriers total costs charged to the FEHB Program, and in the aggregate represent a sizeable portion of overall Program costs. Because of the impact of these costs on the FEHB Program, we are expanding our oversight in this area. Even though large providers of medical services or supplies are not defined as subcontractors under the FEHB Program, the proposed regulatory changes would bring them under the umbrella of the FEHBAR and subject them to audit requirements currently applicable to carriers and their subcontractors. Some but not all FEHB carriers' large provider agreements already provide for a limited right to audit. We believe the provision should be in regulation rather than in individual contracts to make the context clear, explicit and consistent for all experience-rated carriers by mirroring the regulatory requirements for subcontracting arrangements that are already in place. As is currently the case with audit findings in subcontract arrangements, any audit findings regarding large providers would be referred to the FEHB carriers holding the provider contract.

For FAR audit purposes, we define a *large provider agreement* as an agreement between (1) an FEHB carrier, at least 25 percent of whose total contracts are comprised of FEHB enrollee contracts, and (2) a provider, where the total costs charged to the FEHB carrier for a contract term for FEHB members, including benefits and services, are reasonably expected to exceed 5 percent of the carrier's total FEHB benefits costs, or 5 percent of the carrier's total FEHB administrative costs (where the provider is not responsible for benefits costs under the agreement). We will use the FEHB Program Annual Accounting Statement for the prior contract year to determine the 5 percent threshold.

The proposed regulation requires experience rated carriers to meet minimum notification and information requirements with respect to any new

procurement, renewal, significant modification, or option relating to such a provider agreement. Examples of information to be provided are a description of the supplies or services required, basis for reimbursement, reason the proposed provider was selected, method of contracting and competition obtained, methodology used to compute profit, and provider risk provisions. This new oversight initiative reflects OPM's need to be informed of the types of carrier large provider agreements and their terms and conditions, because of the value and cost of such agreements to the FEHB Program.

The proposed regulation authorizes the contracting officer to request additional information after he or she receives the carrier's notification and required information and prior to award of a large provider agreement, and any time during the performance of the agreement. The contracting officer will give the carrier either written comments on the agreement, or will give written notice that there will be no comments. If the contracting officer provides comments, the carrier must tell the contracting officer how it intends to address the contracting officer's concerns.

In the event the carrier awards the large provider agreement without providing notification and addressing each of the contracting officer's written concerns, the contracting officer may disallow the carrier's costs incurred under the agreement.

Under the proposed regulation, large providers must retain and make available for Government inspection all records applicable to the carrier's provider contractual agreement. The Government will have audit rights with respect to large provider contractual agreements that are the same as for carriers. The contract clause at 1652.204-74, Large provider agreements, contains a flow-down provision that requires the carrier to insert the clause in all large provider agreements.

We are updating our policy for FEHB Program subcontracting consent which currently requires advance approval of carrier subcontracts or modifications that exceed \$100,000. The proposed regulation increases the threshold so that subcontracts and modifications will require advance approval only if they equal or exceed \$550,000. The regulation also clarifies the cost components the carrier must consider in determining the \$550,000 threshold. Under the Competition in Subcontracting Clause (FAR 52.244-5), however carriers must still comply with

the competition requirements even when the subcontract does not require OPM approval.

We have added a new section in part 1631, Contract Cost Principles and Procedures, concerning the inferred reasonableness of a subcontract's costs. If the carrier follows the notification and consent requirements of 1652.244-70, Subcontracts, and later obtains the contracting officer's consent or ratification of the subcontract's costs, then the reasonableness of the subcontract's costs will be inferred.

The modified definitions of Cost or Pricing Data and Experience Rate incorporate mental health benefits capitation rates to reflect the new mental health parity requirements in the FEHB Program effective as of the 2001 contract year. Specifically, we are clarifying that mental health capitation rates are considered to be cost or pricing data and are included as actual paid claims and administrative expenses in experience rating.

We are also updating the contractor records retention requirement for carrier rate submissions, patient claims, large provider agreements, and subcontracts to 6 years. Earlier in the history of the Program when virtually all records were maintained in paper format, we established a requirement for carriers to retain claims records for three years and financial records for five years. Since electronic data storage significantly reduces the maintenance burden and the Program can benefit from having records available for a slightly longer period, we are modifying and standardizing the records retention requirement. All carriers' records are subject to The Health Insurance Portability and Accountability Act (HIPAA) standards for privacy of individually identifiable health information.

To conform with the current FAR sections, we have redesignated and/or retitled certain sections and references in FEHBAR parts 1615, 1632, and 1652. No material changes were made to these three Parts. Old FEHBAR 1615.1, General Requirements for Negotiation, is retitled "Source Selection Processes and Techniques." Old FEHBAR 1615.170, Negotiation authority, is now section 1615.070. Old FEHBAR 1615.4, Solicitations and Receipt of Proposals and Quotations, is now 1615.2, Solicitations and Receipt of Proposals and Information. Old 1615.401, Applicability, is now 1615.270. Old FEHBAR 1615.6, Source Selection, is now 1615.3. Old FEHBAR 1615.602, Applicability, is now 1615.370. We moved the provisions in old FEHBAR Subparts 1615.8, Price Negotiation, and

1615.9, Profit, to Subpart 1615.4, Contract Pricing, to correspond with the FAR. We removed and reserved sections 1615.8 and 1615.9 because there are no longer corresponding references in the FAR. Old Section 1615.802, Policy, is now 1615.402, Pricing policy. Old paragraph 1615.804-70, Certificate of accurate cost or pricing data for community rated carriers, is now 1615.406-2, Certificate of accurate cost or pricing data for community rated carriers. Old paragraph 1615.804-72, Rate reduction for defective pricing or defective cost or pricing data, is now 1615.407-1. Old paragraph 1615.805-70, Carrier investment of FEHB funds, is now 1615.470. Old paragraph 1615.805-71, Investment income clause, is now 1615.470-1. Old Section 1615.902, Policy, is now 1615.404-4, Profit, and old Section 1615.905, Profit analysis factors, is now 1615.404-70.

In 1632.170, Recurring premium payments to carriers, we removed paragraph (c) relating to the 3-Year DoD Demonstration Project (10 U.S.C. 1108) because the term of the demonstration project expired December 31, 2002.

In 1632.771, Non-commingling of FEHB Program funds, and 1632.772, Contract clause, we removed the incorrect reference to paragraph 1652.232-70 and replaced it with the reference 1652.232-72.

We removed the reference to "1615.804-72" in the introductory text of "1652.215-70, Rate reduction for defective pricing or defective cost or pricing data," and replaced it with "1615.407-1." In the same section, we removed the reference to "15.804-2(a)(1)" and replaced it with "15.403-4(a)(1)." We also replaced the clause date with "2003." In paragraph (a) of the clause, we replaced "1615.804-70" with "1615.406-2." Finally, we removed paragraph (d) relating to the 3-Year DoD Demonstration Project (10 U.S.C. 1108) because the term of the demonstration project expired December 31, 2002.

In the introductory text of 1652.215-71, Investment income, we replaced "1615.805-71" with "1615.470-1."

In 1652.216-70, Accounting and price adjustment, we changed the clause date to "2003" and removed paragraph (c) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.216-71, Accounting and allowable cost, we changed the clause date to "2003" and removed paragraph (d) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.222-70, Notice of significant events, we revised paragraph (d) of the clause to increase the threshold for

inserting the clause in the carrier's subcontracts and subcontract modifications.

In 1652.232-70, Payments—Community-rated contracts, we changed the clause date to “2003” and removed paragraph (f) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

In 1652.232-71, Payments—Experience-rated contracts, we changed the clause date to “2003” and removed paragraph (f) because the term of the 3-Year DoD Demonstration Project (10 U.S.C. 1108) expired December 31, 2002.

We have also updated the FEHB Clause Matrix by removing clauses that relate to the Cost Accounting Standards.

Collection of Information Requirement

This rulemaking imposes additional oversight and audit requirements on individual Federal contractors. The requirements do not represent routine information collection. Carriers are required to provide the information on an individual case by case basis only when they are initiating a new large provider contract or renewing an existing contract. It does not impose information collection and recordkeeping requirements that meet the definition of the Paperwork Reduction Act of 1995's term “collection of information” which means obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes * * * Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies with revenues of \$11.5 million or less in any 1 year. This rulemaking primarily affects FEHB Program experience rated carriers and their large provider contractual arrangements which exceed that dollar

threshold. Therefore, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This proposed rule is not considered a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate its impact will only affect FEHB carriers and their large provider agreements and would mirror current FEHB Program practice with regard to carriers' subcontract arrangements. Any economic impact resulting from oversight or audit efforts would not be expected to exceed the dollar threshold.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 48 CFR Parts 1601, 1602, 1604, 1615, 1631, 1632, 1644, and 1652

Government employees, Government procurement, Health insurance, Reporting & recordkeeping requirements.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to amend chapter 16 of title 48, CFR as follows:

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

1. The authority citation for 48 CFR parts 1601, 1602, 1604, 1615, 1631,

1632, 1644, and 1652 continues to read as follows:

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

SUBCHAPTER A—GENERAL

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1601.1—Purpose, Authority, Issuance.

2. Section 1601.105 is redesignated as 1601.106.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Subpart 1602.1—Definitions of FEHB Program Terms

3. In 1602.170-5, paragraph (a) is 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:

- (1) Information such as claims data;
- (2) Actual or negotiated benefits payments made to providers of medical services for the provision of healthcare, such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and Diagnostic Related Group (DRG) payments;
- (3) Cost data;
- (4) Utilization data; and
- (5) Administrative expenses and retentions, including capitated administrative expenses and retentions.

* * * * *

4. Section 1602.170-7 is revised to read as follows:

1602.170-7 Experience rate.

Experience rate means a rate for a given group that is the result of that group's actual paid claims, administrative expenses (including capitated administrative expenses), retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of medical services for the provision of healthcare such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and Diagnostic Related Group (DRG) payments.

5. Section 1602.170-15 is added to read as follows:

1602.170-15 Large provider agreement.

(a) *Large provider agreement* means an agreement between—

(1) An FEHB carrier, at least 25 percent of whose total contracts are comprised of FEHB enrollee contracts, and

(2) A provider of services or supplies (including organizations that own or contract with direct providers, or organizations that process claims or manage patient care),

(i) Where the total costs charged to the FEHB carrier for a contract term for FEHB members, including benefits and services, are reasonably expected to exceed 5 percent of the carrier's total FEHB benefits costs, or

(ii) Where the total administrative costs charged to the FEHB carrier for the contract term for FEHB members are reasonably expected to exceed 5 percent of the carrier's total FEHB administrative costs (applicable to agreements where the provider is not responsible for FEHB benefits costs).

(b) The FEHB Program Annual Accounting Statement for the prior contract year will be used to determine the 5 percent threshold under large provider agreements.

(c) Large provider agreements are subject to the audit provisions of FAR 52.215-2, "Audit and Records-Negotiation."

PART 1604—ADMINISTRATIVE MATTERS

6. Subpart 1604.72 is added to read as follows:

Subpart 1604.72—Large Provider Agreements

Sec.

1604.7201 FEHB Program large provider agreements.

1604.7202 Large provider agreement clause.

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

Subpart 1604.72—Large Provider Agreements

1604.7201 FEHB Program large provider agreements.

The following provisions apply to all experience rated carriers participating in the FEHB Program:

(a) *Notification and information requirements.* (1) All experience rated carriers must provide notice to the contracting officer of its intent to enter into or to make a significant modification of a large provider agreement:

(i) Not less than 60 days before entering into any large provider agreement; and

(ii) Not less than 60 days before exercising renewals or other options, or making a significant modification.

(2) The carrier's notification to the contracting officer must be in writing and must, at a minimum:

(i) Describe the supplies and/or services the proposed provider agreement will require;

(ii) Identify the proposed basis for reimbursement;

(iii) Identify the proposed provider agreement, explain why the carrier selected the proposed provider, and what contracting method it used, where applicable, including the kind of competition obtained;

(iv) Describe the methodology the carrier used to compute the provider's profit; and,

(v) Describe provider risk provisions.

(3) The contracting officer may request from the carrier any additional information on a proposed provider agreement and its terms and conditions prior to a provider award and during the performance of the agreement.

(4) Within 30 days of receiving the carrier's notification, the contracting officer will either give the carrier written comments or written notice that there will be no comments. If the contracting officer comments, the carrier must respond in writing within 10 calendar days and explain how it intends to address any concerns.

(5) The contracting officer may inform the carrier that if it awards the provider agreement before addressing OPM's concerns, it may not charge costs incurred under the agreement to the contract.

(6) When computing the carrier's annual service charge, the contracting officer will consider how well the carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the carrier's performance factor.

(7) The contracting officer's review of any provider agreement, option, renewal, or modification shall not constitute a determination of the acceptability of terms or conditions of any provider agreement or the allowability of any costs under the carrier's contract, nor shall it relieve the carrier of any responsibility for performing the contract.

(b) *Records and Inspection.* The carrier must insert in all large provider agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement as follows:

(1) Records that support the annual statement of operations—Retain for 6 years after the agreement term ends.

(2) Enrollee records, if applicable—Retain for 6 years after the agreement term ends.

(c) *Audit.* The provisions of FAR 52.215-2, Audit and Records—Negotiation, apply to all experience rated carriers' large provider agreements.

1604.7202 Large provider agreement clause.

The Contracting Officer shall insert the clause set forth at section 1652.204-74 in all experience rated FEHB Program contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1615—CONTRACTING BY NEGOTIATION

7. A new § 1615.070 is added to read as follows:

1615.070 Negotiation authority.

The authority to negotiate FEHB contracts is conferred by 5 U.S.C. 8902.

8. Subpart 1615.1 is revised to read as follows:

Subpart 1615.1—Source Selection Processes and Techniques.

Sec.

1615.170 Applicability.

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

1615.170 Applicability.

FAR subpart 15.1 has no practical application to the FEHB Program because prospective contractors (carriers) are considered for inclusion in the FEHB Program according to criteria in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than by competition between prospective carriers.

9. Subpart 1615.2 is added to read as follows:

Subpart 1615.2—Solicitation and Receipt of Proposals and Information

Sec.

1615.270 Applicability.

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

1615.270 Applicability.

FAR subpart 15.2 has no practical application to the FEHB Program because OPM does not issue formal procurement solicitations to health benefits carriers. Eligible contractors (*i.e.*, qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

Subpart 1615.6—[Amended]

10. Subpart 1615.6 is redesignated as 1615.3 and Section 1615.602 is redesignated as 1615.370. In newly redesignated 1615.370 remove "15.6" and add in its place "15.3".

11. Subpart 1615.4 is revised to read as follows:

Subpart 1615.4—Contract Pricing

Sec.

1615.402 Pricing policy.

1615.404–4 Profit.

1615.404–70 Profit analysis factors.

1615.406–2 Certificate of accurate cost or pricing data for community rated carriers.

1615.407–1 Rate reduction for defective pricing or defective cost or pricing data.

1615.470 Carrier investment of FEHB funds.

1615.470–1 Investment income clause.

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

Subpart 1615.4—Contract Pricing

1615.402 Pricing 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 15.4 shall be implemented by applying its policies and procedures—to the extent practicable—as follows:

(a) For both experience rated and community rated contracts for which the FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403–4(a)(1), 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 FEHB Program premiums for the contract term will be less than the threshold at FAR 15.403–4(a)(1), OPM shall not require the carrier to provide cost or pricing data. The carrier is required to 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 FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM shall require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.406–2. 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 FEHB Program premiums for the contract term will be at or above the threshold at FAR 15.403–4(a)(1), OPM shall require the carrier to provide the data and methodology used to determine the FEHB Program 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) FEHB Program 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 15.402(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.

1615.404–4 Profit.

(a) When the pricing of FEHB Program contracts is determined by cost analysis, OPM will determine the profit or fee prenegotiation objective (service charge) portion of the contracts by use of a weighted guidelines structured approach. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

1615.404–70 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHB Program contracts. The following factors, as defined in FAR 15.404–4(d), will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's basic responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHB Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHB Program will generally result in a positive weight; documented inattention or indifference to cost control will generally result in a negative weight.

(2) *Contract cost risk.* In assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor to be considered in negotiating profit, OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract. However, the "loss carry forward basis" of experience rated group insurance practices, which mitigates contract risk, will likely serve to diminish this profit analysis factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of cost risks only, taking into account elements such as the adequacy and reliability of data for estimating costs.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support Federal socioeconomic programs such as drug and substance abuse deterrents and concerns of the type enumerated in FAR 15.404–4(d)(iii), as a factor in negotiating profit. This factor will be

assessed by considering the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a positive weight; poor support will receive a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEHB Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEHB Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a positive weight.

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. OPM shall use this factor to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHB Program and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. OPM will use this factor to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, and practices having viability to the program at large. OPM will not consider improvements and innovations recognized and rewarded under any of the other profit factors.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth as follows:

Profit factor	Weight ranges (percent)
1. Contractor performance.	-.2 to +.45
2. Contract cost risk*.	+.02 to +.2
3. Federal socioeconomic programs.	-.05 to +.05
4. Capital investments.	0 to +.02
5. Cost control	0 to +.35

Profit factor	Weight ranges (percent)
6. Independent development.	0 to +.03

*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less06 to .10
10,001-50,00005 to .09
50,001-200,000	.04 to .07
200,001-500,000	.03 to .06
500,001 and over	.02 to .04

1615.406-2 Certificate of accurate cost or pricing data for community rated carriers.

The contracting officer shall require a carrier with a contract meeting the requirements in 1615.402(c)(2) or 1615.402(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 1615.402(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 1615.402(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 _____* FEHB Program rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHB Program contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHB Program 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)

1615.407-1 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in section 1652.215-70 shall be inserted in FEHB Program contracts, at or above the

threshold in FAR 15.403-4(a)(1), that are based on a combination of cost and price analysis (community rated).

1615.470 Carrier investment of FEHB funds.

(a) Except for contracts based on a combination of cost and price analysis (community rated), the carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(b) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier, for any reason, fails to invest excess FEHB funds or to credit any income due to the contract, it shall return or credit any investment income lost to OPM or the special reserve.

(c) Investment income. Investment income is the net amount earned by the carrier after deducting investment expenses.

1615.470-1 Investment income clause.

The clause set forth in 1652.215-71 shall be inserted in all FEHB contracts based on cost analysis.

Subpart 1615.8 [Reserved]

12. Subpart 1615.8 is removed and reserved.

Subpart 1615.9 [Reserved]

13. Subpart 1615.9 is removed and reserved.

Subpart 1615.70—Audit and Records—Negotiation

14. Section 1615.7001 is added to read as follows:

1615.7001 Audit and records.

The Contracting Officer shall modify 52.215-2 in all FEHB Program experience rated contracts by amending paragraph (g) of that section to replace the words "exceed the simplified acquisition threshold" with "equals or exceeds \$550,000."

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.2—Contracts With Commercial Organizations

15. A new 1631.205-81, is added to read as follows:

1631.205–81 Inferred Reasonableness.

If the Carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of 1652.244–70, and subsequently obtains the Contracting Officer's consent or ratification, then the reasonableness of the subcontract's costs will be inferred.

PART 1632—CONTRACT FINANCING**Subpart 1632.1—General****1632.170 [Amended]**

16. In 1632.170, remove paragraph (c).

Subpart 1632.7—Contract Funding**1632.771 [Amended]**

17. In 1632.771 paragraph (d), remove “1652.232–70” and add in its place “1652.232–72.”

1632.772 [Amended]

18. In 1632.772, remove “1652.232–70” and add in its place “1652.232–72.”

SUBCHAPTER G—CONTRACT MANAGEMENT**PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES****Subpart 1644.1—General**

19. Section 1644.170 is revised to read as follows:

1644.170 Policy for FEHB Program subcontracting consent.

For all experience rated contracts, the Carriers shall notify the Contracting Officer in writing at least 60 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by the contract, if the amount of the subcontract or modification charged to the FEHB Program equals or exceeds \$550,000. Failure to provide advance notice may result in the Contracting Officer's disallowance of the costs. In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the \$550,000 threshold, the following rules apply:

(a) For initial advance notification, the Carrier shall add the total price for the base year and all options, including quantity or service options and option periods, and

(b) The Carrier shall give advance notification of modifications not accounted for in paragraph (a) of this section that cause the total price to equal or exceed the threshold. Carriers shall follow appropriate procurement procedures that comply with the Federal Acquisition Regulation's (FAR)

policies and procedures relating to competition and contract pricing for the acquisition of both commercial and non-commercial items. All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215–2 Audit and Records—Negotiation.

SUBCHAPTER H—CLAUSES AND FORMS**PART 1652—CONTRACT CLAUSES****Subpart 1652.2—Texts of FEHB Program Clauses**

20. Section 1652.204–70 is revised to read as follows:

1652.204–70 Contractor Records Retention.

As prescribed in 1604.705 the following clause shall be inserted in all FEHB Program contracts.

Contractor Records Retention (Jan 2003)

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 equal or exceed the threshold at FAR 15.403–4(a)(1), the rate submission for that contract term for a period of 6 years after the end of the contract term to which the records relate. This includes all records of large provider agreements and subcontracts that equal or exceed the threshold requirements. In addition, individual enrollee and/or patient claim records shall be maintained for 6 years after the end of the contract term to which the claim records relate.
(End Clause)

21. Section 1652.204–74 is added to read as follows:

1652.204–74 Large provider agreements.

As prescribed by 1604.7202, the contracting officer shall insert the following clause in all FEHB Program contracts based on cost analysis (experience rated):

Large Provider Agreements (JAN 2003)

(a) *Notification and Information Requirements.* (1) The experience rated Carrier must provide notice to the contracting officer of its intent to enter into or to make a significant modification of a large provider agreement:

- (i) Not less than 60 days before entering into any large provider agreement; and
- (ii) Not less than 60 days before exercising a renewal or other option, or significant modification to a large provider agreement.

(2) The Carrier's notification to the contracting officer must be in writing and must, at a minimum:

- (i) Describe the supplies and/or services the proposed provider agreement will require;

(ii) Identify the proposed basis for reimbursement;

(iii) Identify the proposed provider agreement, explain why the Carrier selected the proposed provider, and what contracting method it used, where applicable, including the kind of competition obtained;

(iv) Describe the methodology the carrier used to compute the provider's profit; and,

(v) Describe provider risk provisions.

(3) The Contracting Officer may request from the Carrier any additional information on a proposed provider agreement and its terms and conditions prior to a provider award and during the performance of the agreement.

(4) Within 30 days of receiving the Carrier's notification, the Contracting Officer will give the Carrier either written comments or written notice that there will be no comments. If the Contracting Officer comments, the Carrier must respond in writing within 10 calendar days, and explain how it intends to address any concerns.

(5) The Contracting Officer may inform the Carrier that if it awards the provider agreement before addressing OPM's concerns, it may not charge costs incurred under the agreement to the contract.

(6) When computing the carrier's service charge, the Contracting Officer will consider how well the Carrier complies with the provisions of this section, including the advance notification requirements, as an aspect of the Carrier's performance factor.

(7) The Contracting Officer's review of any provider agreement, option, renewal, or modification shall not constitute a determination of the acceptability of the terms and conditions of any provider agreement or of the allowability of any costs under the Carrier's contract, nor shall it relieve the Carrier of any responsibility for performing the contract.

(b) *Records and Inspection.* The Carrier must insert in all large provider agreements the requirement that the provider will retain and make available to the Government all records relating to the agreement that support the annual statement of operations and enrollee records—Retain for 6 years after the agreement term ends.

(c) *Audit.* The provisions of FAR 52.215–2, Audit and Records—Negotiation, apply to all experience rated Carriers' large provider agreements. The Carrier shall insert the clause, 52.215–2, in all large provider agreements and shall substitute

(1) The term “provider” for the term “Contractor” throughout the clause, and

(2) The term “large provider contracts” for the term “Subcontracts” in paragraph (g) of FAR 52.215–2. The term “Contracting Officer” shall mean the FEHB Program Contracting Officer at OPM. The Carrier shall be responsible for ensuring the large provider complies with the provisions set forth in the clause.

(d) *Prohibited Agreements.* No provider agreement made under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Carrier shall insert this clause, 1652.204–74, in all large provider agreements.

(End of Clause)

1652.215-70 (Amended)

22. In the introductory text of section 1652.215-70, remove "1615.804.72" and add in its place "1615.407-1," remove "15.804-2(a)(1)" and add in its place "15.403-4(a)(1)," in the clause title, remove "JAN 2000" and add in its place "JAN 2003," in paragraph (a)(1) of the clause remove "1615.804.70" and add in its place "1615.406-2," and remove paragraph (d).

1652.215-71 [Amended]

23. In the introductory text of section 1652.215-71, remove "1615.805-71" and add in its place "1615.470-1."

1652.216-70 [Amended]

24. In 1652.216-70, remove "JAN 2000" in the clause title and add in its place "JAN 2003," and remove paragraph (c) of the clause.

1652.216-71 [Amended]

25. In 1652.216-71, remove "JAN 2000" in the clause title and add in its place "JAN 2003," and remove paragraph (d) of the clause.

26. In 1652.222-70, paragraph (d) of the clause is revised to read as follows:

1652.222-70 Notice of Significant Events.

* * * * *

Notice of Significant Events (Jan 2001)

* * * * *

(d) The Carrier shall insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification charged to the FEHB Program (or in the case of a community rated carrier, applicable to the FEHB Program) equals or exceeds \$550,000.
(End of Clause)

27. Section 1652.244-70, is revised to read as follows:

1652.244-70 Subcontracts.

As prescribed in section 1644.270, the following clause shall be inserted in all FEHB Program contracts based on cost analysis (experience rated):
Subcontracts (Jan 2003)

(a) The Carrier shall notify the Contracting Officer in writing at least 60 days in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if the amount of the subcontract or modification charged to the FEHB Program equals or exceeds \$550,000. Failure to provide advance notice may result in the Contracting Officer's disallowance of the costs. In determining whether the amount chargeable to the FEHB Program contract for a given subcontract or modification equals or exceeds the \$550,000 threshold, the following rules apply:

(1) For initial advance notification, the Carrier shall add the total price for the base

year and all options, including quantity or service options and option periods, and

(2) The Carrier shall give advance notification of modifications not accounted for in paragraph (a) of this clause, if they cause the total price to equal or exceed the threshold. The Carrier shall follow appropriate procurement procedures that comply with the Federal Acquisition Regulation's (FAR) policies and procedures relating to competition and contract pricing for the acquisition of both commercial and non-commercial items. All subcontracts or subcontract modifications that equal or exceed the threshold are subject to audit under FAR 52.215-2 Audit and Records-Negotiations.

(b) The advance notification required by paragraph (a) of this clause shall include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Carrier's cost or price analysis;

(5) An explanation of why the subcontract has been categorized as a subcontract for a commercial item as defined in 48 CFR 2.101. If the subcontract is not for a commercial item, then the subcontractor's current, complete, and accurate cost or pricing data and a Certificate of Current Cost or Pricing Data must be submitted to the Contracting Officer.

(6) (Reserved)

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) An explanation of the reason cost or pricing data are not required, if the item is not a commercial item but the carrier believes that cost or pricing data are not required.

(iv) The extent, if any, to which the Carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan, when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Carrier shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract for which written consent was not obtained.

Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b) and (c) of this clause where the Carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR Subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the Plan's rates that were reviewed and approved by the Contracting Officer during negotiation of the contract or contract renewal.

(e) If the Carrier follows the notification and consent requirements of paragraphs (a), (b) and (c) of this clause and subsequently obtains the Contracting Officer's consent or ratification, then the reasonableness of the subcontract's costs will be inferred as provided for in 1631.205-81. However, consent or ratification by the Contracting Officer will not constitute a determination

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) That the Carrier should be relieved of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i). Any profit or fee payable under a subcontract shall be in accordance with the provision of Section 3.7, Service Charge.

(g) The Carrier shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Carrier by any subcontractor or vendor that, in the opinion of the Carrier, may result in litigation related in any way to this contract with respect to which the Carrier may be entitled to reimbursement from the Government.
(End of Clause)

Subpart 1652.3-FEHB Program Clause Matrix

28. In section 1652.370, the FEHB Program Clause Matrix, is revised 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 2.201	Definitions	M	T	T
FAR 52.203-3	FAR 3.202	Gratuities	M	T	T
FAR 52.203-5	FAR 3.404	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(b)	Limitation on Payments to Influence Certain Federal Transactions	M	T	T
1652.203-70	1603-7003	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
1652.204-73	1604.970	Taxpayer Identification Number	M	T	T
1652.204-74	1604.7202	Large Provider Agreements	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 15.209(b)	Audit & Records—Negotiation	M	T	T
FAR 52.215-10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M	T	T
FAR 52.215-12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M	T	T
FAR 52.215-15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M	T	T
FAR 52.215-16	FAR 15.408(h)	Facilities Capital Cost of Money	M	T	T
FAR 52.215-17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A	T	T
FAR 52.215-18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions	M	T	T

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
1652.215-70	1615.407-70	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data	M		T
1652.215-71	1615.407-72	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 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	Contract Work Hours and Safety Standards Act--Overtime Compensation	M	T	T
FAR 52.222-21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M	T	T
FAR 52.222-26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222-29	FAR 22.810(g)	Notification of Visa Denial	A	T	T
FAR 52.222-35	FAR 22.1308(a)	Equal Opportunity for Special Disabled Veterans, and Other Eligible Veterans	M	T	T
FAR 52.222-36	FAR 22.1408(a)	Affirmative Action for Workers With Disabilities	M	T	T
FAR 52.222-37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	M	T	T
1652.222-70	1622.103-70	Notice of Significant Events	M	T	T
FAR 52.223-6	FAR 23.505	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	T

Clause No.	Text Reference	Title	Use Status	Use With Experience Rated Contracts	Use With Community Rated Contracts
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 52.232-8	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)	Payment by Electronic Funds Transfer—Central Contractor Registration	M	T	T
1652.232-70	1632.171	Payments—Community-Rated Contracts	A	T	T
1652.232-71	1632.172	Payments—Experience-Rated Contracts	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	
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(c)	Competition in Subcontracting	M	T	
FAR 52.244-6	FAR 44.403	Subcontracts for Commercial Items	M	T	
1652.244-70	1644.270	Subcontracts	M	T	
1652.245-70	1645.303-70	Government Property (Negotiated Benefits Contracts)	M	T	T

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 Air 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	A	T	
FAR 52.252-4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252-6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 380

[Docket No. FMCSA-97-2199]

RIN 2126-AA09

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

August 4, 2003.

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) is proposing standards for mandatory training requirements for entry-level operators of commercial motor vehicles (CMVs) who are required to hold or obtain a commercial driver's license (CDL). This action responds to a study mandated by the Intermodal Surface Transportation Efficiency Act of 1991 that found the training of entry-level drivers in the heavy truck, motorcoach, and school bus industries was not adequate. The purpose of this proposal is to enhance the safety of CMV operations on our nation's highways.

DATES: Submit comments on or before October 14, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA-1997-2199 by any of the following methods:

- *Web Site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note

that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, Office of Safety Programs, (202) 366-0647, Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Training Curriculum

In the early 1980's, the agency determined that there was a need for technical guidance in the area of truck driver training. Research showed that few driver training institutions offered a structured curriculum or a standardized training program for any type of CMV.

In 1984, the agency developed the "Proposed Minimum Standards for Training Tractor-Trailer Drivers" as a curriculum standard based upon research conducted by the agency. The proposed minimum curriculum standards were used by the agency to produce a curriculum for the heavy truck industry. This Model Curriculum contains standardized minimum core curriculum requirements and training materials as well as guidelines pertaining to vehicles, facilities, instructor hiring practices, graduation requirements, and student placement.

Curriculum content addresses the following areas: basic operation, safe operating practices, vehicle maintenance, and non-vehicle activities. In 1995, the agency created a similar curriculum, the "Model Curriculum for Training Motorcoach Drivers," that can be used to train motorcoach drivers.

In 1986, the motor carrier, truck driver training school, and insurance industries created the Professional Truck Driver Institute (PTDI) to certify training programs offered by training institutions. The PTDI used the truck driver Model Curriculum as the basis for its training institute certification criteria and has recently made major revisions to its curriculum. As of December 2002, 71 training schools were PTDI certified.

The Commercial Motor Vehicle Safety Act of 1986 and the CDL Program

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*) established national minimum testing and licensing standards for operators of CMVs. The goal was to ensure that drivers of large trucks and buses possess the knowledge and skill necessary to safely operate on public highways. The CMVSA established the CDL program and directed the agency to establish minimum Federal standards that States must meet when licensing CMV drivers. The CMVSA applies to anyone who operates a CMV in interstate or intrastate commerce, including employees of Federal, State, and local governments. As defined by the implementing regulation in 49 CFR 383.5, a CMV is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

(a) Has a gross combination weight rating (GCWR) of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds); or

(b) Has a GVWR of 11,794 or more kilograms (26,001 or more pounds); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

See the FMCSA's recently published interim final rule entitled "Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement" (68 FR 23844, 23849; May 5, 2003) implementing certain requirements in section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) [Pub. L.