

Channel Assignment	Urbanized Area	General access pool	
		Base and mobile	Mobile
15	Los Angeles, CA	470.05625 to 472.99375	473.05625 to 475.99375
	Chicago, IL	476.30625 to 478.99375	479.30625 to 481.99375
	Cleveland, OH		
16	Detroit, MI		
	New York/N.E. NJ		
	Boston, MA	482.30625 to 484.99375	485.30625 to 487.99375
	Dallas/Fort Worth, TX		
17	Detroit, MI		
	San Francisco/Oakland, CA		
	Los Angeles, CA (Use is restricted to Public Safety Pool eligibles).	482.00625 to 484.99375	485.00625 to 487.99375
	Houston, TX	488.30625 to 490.99375	491.30625 to 493.99375
18	San Francisco/Oakland, CA		
	Washington, DC/MD/VA		
19	Pittsburgh, PA	494.30625 to 496.99375	497.30625 to 499.99375
	Washington, DC/MD/VA		
20	Philadelphia, PA	500.30625 to 502.99375	503.30625 to 505.99375
	Los Angeles, CA	506.13125 to 508.99375	509.13125 to 511.99375
	Philadelphia, PA	506.30625 to 508.99375	509.30625 to 511.99375

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**OFFICE OF PERSONNEL
 MANAGEMENT**

48 CFR Parts 1615, 1632, and 1652

RIN 3206 AI67

Federal Employees Health Benefits (FEHB) Program and Department of Defense (DoD) Demonstration Project; and Other Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Interim regulation.

SUMMARY: OPM is issuing an interim regulation to implement the portion of the Defense Authorization Act for 1999 that establishes authority for a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans in certain geographic areas under the Federal Employees Health Benefits (FEHB) Program. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. This regulation specifies only the requirements that differ from existing FEHB Program regulations because of unique aspects of the demonstration project.

DATES: The effective date of this regulation is July 6, 1999. Comments must be received on or before September 7, 1999.

ADDRESSES: Comments must be sent to Abby L. Block, Chief, Insurance Policy and Information Division, OPM, Room

3425, 1900 E Street, NW., Washington, DC 20415-0001.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, (202) 606-0004. You may submit comments and data by sending electronic mail (E-mail) to: *mwkaszyn@opm.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to implement the portion of the Defense Authorization Act for 1999, Public Law 105-261, that amended chapter 55 of title 10, United States Code, and chapter 89 of title 5, United States Code, to establish a demonstration project under which certain Medicare and other eligible DoD beneficiaries can enroll in health benefit plans under the FEHB Program. The legislation was signed into law on October 17, 1998. The demonstration project will run for a period of three years from January 1, 2000, through December 31, 2002. DoD, with OPM concurrence, has selected eight geographic areas to serve as demonstration project areas. The legislation requires that between 6 and 10 geographic areas be selected. No more than 66,000 individuals can participate in the demonstration project at any one time. Beneficiaries who are provided coverage under the demonstration project will not be eligible to receive care at a military medical treatment facility or to enroll in a health care plan under DoD's TRICARE program. Individuals who disenroll or cancel enrollment from the demonstration project are not eligible to reenroll in the demonstration project. OPM will establish separate risk pools for developing demonstration project enrollee premium rates. The Government contribution for demonstration enrollees will be paid by

DoD and cannot exceed the percentage that the Government would have contributed had the enrollee been enrolled as a regular FEHB enrollee in the same health benefits plan and level of benefits.

The legislation requires OPM and DoD to jointly produce and submit two reports to Congress designed to assess the viability of expanding access to the FEHB Program to certain Medicare and other eligible DoD beneficiaries permanently. The first report is due by April 1, 2001; the second is due by December 31, 2002. The reports will focus on enrollee participation levels, impact on Medicare Part B enrollment, impact on premium rates and costs as compared to regular FEHB enrollees, impact on accessibility of care in military treatment facilities, impact on medical readiness and training in military treatment facilities, impact on the cost, accessibility, and availability of prescription drugs for DoD beneficiaries, and recommendations on eligibility and enrollment.

OPM has determined it necessary to specify certain differences from existing FEHB Program regulations because of the unique features of the demonstration project. This regulation amends chapter 16 of title 48, Code of Federal Regulations (CFR) to enumerate these differences.

When developing premium rates for demonstration project community-rated carriers, OPM will not use similarly sized subscriber group (SSSG) rating methodologies to determine the reasonableness of the carrier's demonstration project premium rates. We are not using SSSG's because we have learned from our consultations with community-rated carriers that

there are no similar employer sponsored groups with which to compare. Instead we are benchmarking premiums against adjusted community-rates if available, Medigap offerings, or other similar products to determine reasonableness. We believe that these data will result in competitively developed premium rates.

We have determined the most cost effective and administratively efficient way for the federal government to track expenditures is to allow experience-rated carriers participating in the demonstration project to draw funds from their existing FEHB Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits costs incurred by regular FEHB members. However, experience-rated carriers must account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.

Because of the way premiums are collected from enrollees and annuitants and the way the government distributes them to carriers, there will be a period between the effective date of demonstration project enrollees' coverage and the first payment of premium into experience-rated carriers' LOC accounts. DoD enrollments will become effective on January 1, 2000, and the first demonstration project premiums will be withheld from annuities on February 1, 2000. The enrollees' and Government's share of the premiums are due to OPM from DoD on the first day of each month thereafter through the conclusion of the demonstration project. However, since enrollees will be entitled to coverage for at least a month before the first premium payment, there won't be an opportunity for carriers to build a sufficient cash flow to cover the costs of the demonstration project group during this period. By allowing experience-rated carriers to draw on their existing LOC accounts in the same manner as for regular FEHB claims, this problem is addressed.

Since this is a start-up program with no specific experience, we have determined that experience-rated carrier risk must be mitigated in order to keep premiums as low as possible. Experience rated-carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM and they will perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. Experience-rated carrier costs in excess of the premiums will be reimbursed first from the carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by carriers to OPM's Administrative Reserve. Should the program be extended beyond the three year demonstration project period, we will regulate to address any necessary changes to these provisions.

We also have made minor editorial changes to clarify title 48, CFR.

Waiver of Notice of Proposed Rule Making

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because FEHB Program carriers need the information contained in these regulations now in order to have sufficient time to develop reserve accounts and premiums for enrollments to be effective January 1, 2000, as required by Public Law 105-261.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect health insurance carriers under the Federal Employees Health Benefits Program.

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 1615, 1632, and 1652

Government employees, Government procurement, Health insurance.

Office of Personnel Management.

Janice R. Lachance,
Director.

For the reasons set forth in the preamble, OPM is amending chapter 16 of title 48, CFR as follows:

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

1. The authority citation for 48 CFR Parts 1615, 1632, and 1652 continues to read as follows:

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

PART 1615—CONTRACTING BY NEGOTIATION

Subpart 1615.8—Price Negotiation

2. In § 1615.802 paragraph (e) is added to read as follows:

1615.802 Policy.

* * * * *

(e) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

(1) Similarly sized subscriber group (SSSG) rating methodologies will not be used to determine the reasonableness of a community-rated carrier's demonstration project premium rates. Carrier premium rates will not be adjusted for equivalency with SSSG rating methodologies. Carriers will benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

(2) Community-rated carriers must propose premium rates with cost or pricing data and rating methodology, and experience-rated carriers must propose premium rates with cost data and rating methodology regardless of group size or annual premiums.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

3. In § 1632.170 paragraph (c) is added to read as follows:

1632.170 Recurring premium payments to carriers.

* * * * *

(c) *Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

(1) Carriers will create and maintain separate risk pools for demonstration project experience and regular FEHB experience for the purpose of establishing separate premium rates.

(2) OPM will create and maintain a demonstration project Contingency Reserve separate from the regular FEHB Contingency Reserve for each carrier participating in the demonstration project.

(3) Experience-rated carriers participating in the demonstration project will draw funds from their Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as they do for benefits

costs incurred by regular FEHB members. Experience-rated carriers will account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project will be fully chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the experience-rated carrier's service charge that will be allocated to the demonstration project.

(4) Carriers will report on demonstration project revenues, health benefits charges, and administrative expenses as directed by OPM. Experience-rated carriers will perform a final reconciliation of revenue and costs for the demonstration group at the end of the demonstration project. Experience-rated carrier costs in excess of the premiums will be reimbursed first from the carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by experience-rated carriers to OPM's Administrative Reserve.

PART 1652—CONTRACT CLAUSES

Subpart 1652.2—Texts of FEHBP Clauses

4. Section 1652.215–70 is amended by removing “(JAN 1998)” from the clause heading and adding in its place “(JAN 2000)” and by adding a new paragraph (d) to read as follows:

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

* * * * *

(d) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

5. Section 1652.216–70 is amended by removing “(JAN 1998)” from the clause heading and adding in its place “(JAN 2000)” and by adding a new paragraph (c) to read as follows:

1652.216–70 Accounting and price adjustment.

* * * * *

(c) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

Similarly sized subscriber group (SSSG) rating methodologies shall not be used to determine the reasonableness of the Carrier's demonstration project premium rates. The Carrier's rates shall not be adjusted for equivalency with SSSG rating methodologies. The Carrier shall benchmark premiums against adjusted community rates if available, Medigap offerings, or other similar products.

6. Section 1652.216–71 is amended by revising the clause to read as follows:

1652.216–71 Accounting and allowable cost.

* * * * *

Accounting and Allowable Cost (FEHBP 1652.216–71) (JAN 2000)

(a) *Annual Accounting Statements.* (1) The Carrier shall furnish to OPM an accounting of its operations under the contract. In preparing the accounting, the Carrier shall follow the reporting requirements and statement formats prescribed by OPM in the FEHBP Experience-Rated Carrier and Service Organization Audit Guide (Guide).

(2) The Carrier shall have its Annual Accounting Statements and that of its underwriter, if any, audited in accordance with the Guide. The Carrier shall submit the audit report and the Annual Accounting Statements to OPM in accordance with the requirements of the Guide.

(3) Based on the results of the independent audit prescribed by the Guide and/or a Government audit, the Carrier shall adjust its annual accounting statements (i) By amounts found not to constitute actual, reasonable, allowable, or allocable costs; and/or (ii) to reflect prior overpayments or underpayments.

(4) The Carrier shall develop corrective action plans, in accordance with and as defined by the Guide, to resolve all audit findings.

(b) *Definition of costs.* (1) The Carrier may charge a cost to the contract for a contract term if the cost is actual, allowable, allocable, and reasonable. In addition, the Carrier must:

(i) On request, document and provide accounting support for the cost and justify that the cost is reasonable and necessary; and

(ii) Determine the cost in accordance with: (A) The terms of this contract, and (B) Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employees Health Benefits Program Acquisition Regulation (FEHBP) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, the Carrier shall classify contract costs in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.*

Administrative expenses consist of all actual, allocable, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205–41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit.

Administrative expenses exclude the cost of Carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* The Carrier shall invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses. Investment expenses are those actual, allowable, allocable, and reasonable contract costs which are attributable to the investment of FEHBP funds, such as consultant or management fees.

(iv) *Other charges.* (A) *Mandatory statutory reserves.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term “mandatory statutory reserve” is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, the Carrier shall return to the FEHBP a pro rata share based upon FEHBP's contribution to the total Carrier's set aside in accordance with FAR 31.201–5.

(B) *Premium taxes.* When the term “premium taxes” is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is

applicable to a broad range of business activity.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. The Carrier's chief executive officer and the chief financial officer shall sign the certificate.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this reporting period in conformity with those guidelines.

2. The costs included in the statement are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation.

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines. Carrier Name: _____

Name of Chief Executive Officer: _____
(Type or Print)

Name of Chief Financial Officer: _____

Signature of Chief Executive Officer: _____

Signature of Chief Financial Officer: _____

Date Signed: _____

Date Signed: _____

Underwriter: _____
Name and Title of Responsible Corporate Official: _____
(Type or Print:)
Signature of Responsible Corporate Official: _____

Date Signed: _____
(End of Certificate)

(d) Exceptions for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).

(1) The Carrier shall draw funds from its Letter of Credit (LOC) account to pay demonstration project benefits costs in the same manner as it does for benefits costs incurred by regular FEHB members. The Carrier shall account separately for health benefits charges paid using demonstration project funds and regular FEHB funds. Direct administrative costs attributable solely to the demonstration project shall be fully

chargeable to the demonstration project. Indirect administrative costs associated with the demonstration project will be allocated to the demonstration project based on the percentage obtained by dividing the dollar amount of claims processed under the demonstration project by the total claims processed for FEHB Program activity. This same percentage will also be used to determine the amount of the Carrier's service charge that will be allocated to the demonstration project.

(2) The Carrier shall submit a separate annual accounting statement and monthly incurred claims report for demonstration project experience.

(End of Clause)

7. Section 1652.232-71 is amended by removing "(Jan. 1999)" from the clause heading and adding in its place "(JAN 2000)," and adding a new paragraph (f) to read as follows:

1652.232-71 Payments—experience-rated contracts.

* * * * *

(f) *Exception for the 3-Year DoD Demonstration Project (10 U.S.C. 1108).*

The Carrier will perform a final reconciliation of revenue and costs for the demonstration project group at the end of the demonstration project. Costs in excess of the premiums will be reimbursed first from the Carrier's demonstration project Contingency Reserve and then from OPM's Administrative Reserve. Any surplus after the final accounting will be paid by the Carrier to OPM's Administrative Reserve.

(End of Clause)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Rio Grande Silvery Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*), a species federally listed as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). This species, also referred to herein as silvery minnow or minnow, presently occurs only in the Rio Grande from

Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir, New Mexico, approximately five percent of its known historical range. Critical habitat overlays this last remaining portion of occupied range. It encompasses 262 kilometers (km) (163 miles (mi)) of the mainstem Rio Grande from the downstream side of the State Highway 22 bridge crossing the Rio Grande immediately downstream of Cochiti Dam, to the crossing of the Atchison Topeka and Santa Fe Railroad near San Marcial, New Mexico.

EFFECTIVE DATES: This rule becomes effective August 5, 1999.

ADDRESSES: You may inspect the complete file for this rule at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, New Mexico 87113, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, New Mexico Ecological Services Field Office (See **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, Texas. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth. Adults may reach 90 millimeters (mm) (3.5 inches (in)) in total length (Sublette *et al.* 1990). Its dorsal fin is distinctly pointed with the front of it located slightly closer to the tip of the snout than to the base of the tail. Life color is silver with emerald reflections. Its belly is silvery white; fins are plain; and barbels are absent (Sublette *et al.* 1990).

This species was historically one of the most abundant and widespread fishes in the Rio Grande Basin, occurring from Espanola, New Mexico, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the Pecos River, a major tributary of the Rio Grande, from Santa Rosa, New Mexico, downstream to its confluence with the Rio Grande (Pflieger 1980). It is completely extirpated from the Pecos River and from the Rio Grande downstream of Elephant Butte Reservoir (Bestgen and Platania 1991). Throughout much of its historical range, decline of the silvery minnow may be attributed to modification of stream discharge patterns and channel drying because of impoundments, water