

Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

#### List of Subjects in 47 CFR Part 25

##### Satellites

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

#### Rule Changes

Part 25 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

#### § 25.113 Construction permits.

\* \* \* \* \*

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S.-licensed space stations. \* \* \*

\* \* \* \* \*

3. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

#### § 25.115 Applications for earth station authorizations.

\* \* \* \* \*

(c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-licensed or non-U.S.-licensed satellites for domestic services. \* \* \*

\* \* \* \* \*

4. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

#### § 25.130 Filing requirements for transmitting earth stations.

\* \* \* \* \*

(d) Transmissions of signals or programming to non-U.S.-licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. \* \* \*

\* \* \* \* \*

5. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

#### § 25.131 Filing requirements for receive-only earth stations.

\* \* \* \* \*

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251-25.256.

\* \* \* \* \*

(j) Receive-only earth stations operating with non-U.S.-licensed space stations shall file an FCC Form 493 requesting a license or modification to operate such station. Receive-only earth stations used to receive INTELNET I service from Intelsat space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86-214 (released May 19, 1986).

6. Section 25.137 is added to read as follows:

#### § 25.137 Application requirements for earth stations operating with non-U.S.-licensed space stations.

(a) Earth stations requesting authority to operate with a non-U.S.-licensed space station to participate in the U.S. satellite service market must attach an exhibit with their FCC Form 493 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in:

(1) The country in which the non-U.S.-licensed space station is licensed; and

(2) All countries in which communications with the U.S. earth station will originate or terminate. The

applicant bears the burden of showing that there are no *de jure* or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest.

(b) Earth stations requesting authority to operate with a non-U.S.-licensed space station must attach to their FCC Form 493 an exhibit providing legal, financial, and technical information for the non-U.S.-licensed space station in accordance with this Part 25 and Part 100 of this chapter. If the non-U.S.-licensed space station is in orbit and operating, the applicant need not include the financial information.

(c) A non-U.S.-licensed satellite system seeking to serve the United States can be considered contemporaneously with other U.S. satellite systems if it is:

(1) In orbit and operating;

(2) Has a license from another administration; or

(3) Has been submitted for coordination to the International Telecommunication Union and is pursuing a license in another administration.

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### OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1604, 1615, 1616, 1622, 1631, 1644, 1652, and 1653

RIN 3206-AH45

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

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

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

DATES: Comments must be received on or before July 24, 1996.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O.

Box 57, Washington, DC 20044; delivered to OPM, Room 3451, 1900 E Street NW., Washington, DC.; or FAXed to (202) 606-0633.

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

**SUPPLEMENTARY INFORMATION:** The Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355, effective October 13, 1994, amends Section 304A of the Truth in Negotiations Act (TINA) by increasing the threshold for Federal contractors and subcontractors submitting cost or pricing data from \$100,000 to \$500,000. FASA also amends other provisions of TINA affecting the submission of cost or pricing data.

This proposed regulation would amend the FEHBAR to conform to FASA by:

- Increasing the threshold for the submission of certified cost or pricing data for FEHB Program community rated contracts, and for the submission of certified cost or pricing data for FEHB Program experience rated contracts, subcontracts, and contract modifications, from \$100,000 to \$500,000;
- Ensuring uniform treatment of cost or pricing data as intended by FASA; and,
- Conforming the FEHBAR to these and other FASA changes.

#### Effect of FASA on Community Rated Contracts

A number of changes made by FASA and the implementing Federal Acquisition Regulation (FAR) provisions impact on the way OPM has treated FEHB Program community rated contracts in the past, specifically with regard to contract type and establishing the reasonableness of the carriers' rates. For example, TINA provides for special exceptions to the submission of cost or pricing data for contracts based on adequate price competition, contracts based on established catalog or market price of commercial items, and contracts for which prices are set by law or regulation.

FEHB Program contracts do not have price competition because the contracts are not subject to the competitive bidding requirements of Title 41 of the United States Code; nor are prices set by law or regulation. However, the FEHBAR identifies community rated contracts as contracts based on established market price. Under TINA, the contracting officer may not require a contractor to submit cost or pricing data for contracts based on established market prices of commercial items sold in substantial quantities to the general public.

The FAR clarifies the standards for determining an established market price [48 CFR 15.804-1(b)(1)(ii)] and the definitions of commercial items [48 CFR Part 12] and cost or pricing data [48 CFR 15.801]. As a result of these clarifications, we reevaluated our treatment of community rated contracts, as well as the entire process by which we require cost or pricing data, and the definitions of terms in the FEHBAR.

The FEHBAR has, since it was initially published, provided that community rated contracts are based on established market price. OPM has deemed community rated contracts to be based on market price in the past in an attempt to fit them neatly into a standard FAR classification. However, after reevaluating the concept of established market price, we do not believe that it really reflects the way in which community rates are established; nor do we believe the contracts can be considered contracts for commercial items or services.

Contrary to what many outside the health insurance industry believe, a community rate is not a single rate that an HMO (also known as a "comprehensive medical plan" or "CMP") charges all of its groups. The theory and practice of community rating has always been complex. In 1988, the enactment of the Health Maintenance Organization (HMO) Amendments of 1988 made community rating even more complicated. The HMO Amendments of 1988 authorized community rated plans to use a new rating method called "Adjusted Community Rating." In spite of its name, ACR is actually a form of experience rating (prospective experience rating). The HMO Amendments of 1988 so radically altered the traditional concept of community rating that it is no longer appropriate to call the community rate a "market price" as that term is intended to apply to Federal procurement.

In carrying out its responsibility under the FEHB Program's statutory mandate to ensure that the FEHB Program premium rates "reasonably and equitably reflect the cost of the benefits provided" [5 U.S.C. 8902(i)], OPM requires cost or pricing data. Cost or pricing data is fundamental to the development of the FEHB Program premium rate. The primary purpose of cost or pricing data as it relates to FEHB Program contracts is to determine whether the rating method used for the FEHB Program is consistent with the rating methods used for the carrier's two similarly sized subscriber groups (SSSGs). For example, if the rate for an SSSG is based on experience, if it

incorporates claims and administrative cost loadings, or any combination of these and other elements, OPM verifies that the carrier has used the same methodology for the FEHB Program rate. In addition, there are a multiplicity of requirements specific to the FEHB Program group that differentiate the needs of our Program from a carrier's other clients and for which we require cost or pricing data: physical therapy, infertility, prescription drugs, heart transplants, coverage for newborns on self-only enrollments, and no coinsurance, to name a few.

While the FEHB Program premium rates are price driven, competition in the FEHB Program is not based on price, as it is with competitively bid procurements. In the FEHB Program, competition is based on the employees' choice of health plans, considering their personal health care needs. The only way OPM can ensure price reasonableness in lieu of price competition is through obtaining cost or pricing data. Without cost or pricing data, OPM would be unable to ensure a fair and reasonable premium rate for Federal enrollees. The practice of asking for this cost or pricing data is widely accepted in the insurance industry. Although we have required this data for over 20 years, no FEHB Program carrier has advised us that it was burdensome.

For a number of years, OPM has been trying to determine the best way to apply the FAR cost and pricing requirements. We have tried to learn from our experience and understand how we might apply the FAR requirements to community rated contracts, while remaining in compliance with the FEHB law. We have modified our acquisition regulations on a number of occasions in an attempt to achieve the most appropriate implementation of the FAR, given the unique features of community rated health benefits contracts, as compared to the more common types of contracts entered into by Federal agencies. While we have in the past defined FEHB Program community rated contracts as contracts based on established market price and classified them as fixed price with economic price adjustment, we have consistently asked for cost or pricing data because of our statutory mandate to ensure that rates reasonably and equitably reflect the benefits provided.

In view of the above, and after evaluating the revised definitions and cost and pricing data requirements pursuant to FASA and case law, we have concluded that the determination that community rated contracts are based on established market price is no

longer appropriate and fails to meet our current requirements. Similarly, the exemption of FEHB Program contracts from competitive bidding requirements, the fact that the health services under community rated contracts are not commercial services, and the fact that FEHB premiums are not set by law or regulation have caused OPM to conclude that none of the FAR exceptions to the submission of cost or pricing data contained in FAR 15.804-1 apply to the community rated contracts. Accordingly, the cost or pricing provisions of FASA are applicable.

To clarify any perceived incongruity and inconsistency between the FEHBAR, the FAR, and FASA, we are withdrawing our determination that the community rated contracts are based on established market price, and we will more closely follow the cost and pricing data requirements in the FAR. Community rated contracts in reality fit neither of the two categories of negotiated contracts provided in the FAR, that is, fixed price and cost reimbursement. Given all the relevant information, we have made a determination to classify community rated contracts simply as "negotiated benefits contracts."

We are also clarifying an anomaly in the FEHBAR regarding cost or pricing data on which community rated carriers justify their community rate. The capitation rates, utilization and trend data, and other information that we require from health benefits carriers are not traditional cost or pricing data used in the more common types of Government contracting. Traditional cost and pricing data consists of costs for raw materials and for processing, such as, hours worked, overtime rates, and unit costs.

FASA states that cost or pricing data are all the facts that a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include the factual information from which a judgment was derived. In the FEHB Program, we must obtain factual and verifiable pricing data that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred in order to set a fair and reasonable premium rate for FEHB Program enrollees. We consider the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs) to be relevant cost and pricing data for the FEHB Program contracts.

Such data includes, but is not limited to, capitation rates; utilization data for prescription drug, hospital, and office visit benefits utilization; trend data; rating methodologies for other groups; standardized presentation of the plan's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; "step-up" factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation.

OPM's approach over the years has simply been an attempt to fit the community rated contracts into the context of the FAR and utilize the provisions of the FAR requiring cost or pricing data. OPM has modified the FEHBAR in this area over time, and at this point we have concluded that we should define in regulation "cost or pricing data" as it relates to FEHB Program contracts. OPM will not burden carriers with new FEHBAR requirements related to cost or pricing data. We intend to follow the requirements of the FAR. To clarify unequivocally that FEHB Program community rated carriers must comply with the FASA cost and pricing provisions, the regulation specifically defines the data that OPM requires for community rated contracts of \$500,000 and over as "cost and pricing data."

Further, the regulation classifies the community rated plans into two categories, large and small, with the number of enrollee contracts distinguishing the categories. However, because FASA sets a threshold of \$500,000 for collecting cost or pricing data, there are two types of small plans.

#### *Small Plans*

(a) Plans having less than 1500 enrollee contracts at the time of the rate proposal and whose FEHBP premiums are less than \$500,000 for the contract term.

(b) Plans having less than 1500 enrollee contracts at the time of the rate proposal and whose FEHBP premiums are \$500,000 or more for the contract term.

#### *Large Plans*

Plans having 1500 or more enrollee contracts at the time of the rate proposal and whose FEHBP premiums are \$500,000 or more for the contract term.

The regulation provides that the amount and nature of the back-up documentation for small plan rate proposals differs from the large plan requirements. All carriers must derive their Federal group rates according to OPM community rating principles. Under FASA, OPM cannot require

community rated carriers with FEHBP contracts in which the income from the Federal group will be under \$500,000 to submit cost or pricing data, although they may submit it voluntarily. Carriers with small plans in which the Federal group income is less than \$500,000 must submit only a rate proposal and abbreviated utilization data for the applicable contract year. Since carriers of small plans having fewer than 1,500 enrollee contracts will not submit detailed documentation, 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.

Carriers with small plans in which the Federal group income is \$500,000 or more must submit cost or pricing data consisting of a rate proposal, a certificate of accurate pricing, and utilization data for the applicable contract year. These carriers must complete proposed net-to-carrier rate sheets and the community rate questionnaire and keep them on file for OPM review. The OPM auditors will examine the documents during plan audits, and OPM may also periodically review the documents. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted.

Large plan carriers must submit proposed net-to-carrier rate sheets, certificate of accurate pricing, community rate questionnaire, and detailed utilization data. OPM will evaluate the information for consistency with the requirements of 48 CFR Chapter 16 (FEHBAR).

All contracts for \$500,000 or more will be subject to the interest and penalty assessments for defective rates enacted by FASA. Consistent with FASA and FEHBAR 1652.215-70, OPM will assess simple interest using the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2).

#### *Effect of FASA on Experience Rated Contracts*

OPM has determined that cost or pricing data are required for FEHB Program experience rated contracts in which the income from the Federal group will be \$500,000 or more. Cost or pricing data are also required for FEHB Program negotiated subcontracts at any tier, if the contractor and each higher tier subcontractor were required to furnish cost or pricing data, as well as for the modification of any FEHB Program contract (whether or not cost or pricing data were initially required) or subcontracts if the subcontractor was

required to submit cost or pricing data, if the subcontract or modification will equal or exceed \$500,000.

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

All contracts for \$500,000 or more will be subject to the interest and penalty assessments for defective rates enacted by FASA.

In the past, we have classified experience rated contracts as a combination of negotiated fixed-price contracts with provisions for a form of retroactive price redetermination. Like community rated contracts, experience rated contracts do not fit either of the two categories of negotiated contracts provided in the FAR (fixed price and cost reimbursement). Therefore, for consistency, we have decided to use the same contract type for all FEHBP contracts. Thus, the regulation provides that both community rated and experience rated contracts will be "negotiated benefits contracts." This is a change in terminology only. OPM has added no new requirements or clauses as a result of this change in terminology. For experience rated contracts, we will continue to use FAR provisions applicable to cost analysis; and for community rated contracts, we will continue to use FAR provisions applicable to price analysis. We will continue to apply the cost principles in FAR Part 31 to experience rated contracts.

#### Miscellaneous Changes

##### *Clarification of SSSGs*

We have made a number of clarifications to the definition of SSSGs [1602.170–12]. The regulation is intended to describe the methodology OPM uses. Specific instructions on SSSGs will be included in the annual FEHB Program rate instructions to community rated carriers.

We have clarified how OPM determines which SSSGs it will select as a basis for determining the FEHBP rate. Specifically, after reviewing the rating methods used for the SSSGs to determine whether the rating method the carrier used for the FEHBP is appropriate, OPM determines the FEHBP rate on the basis of the lower of the rates produced by applying—to the FEHB Program—rating methods

consistent with those used for the SSSGs.

In addition, we have clarified that any group with which a carrier enters into an agreement to provide health care services must be considered as a *potential* SSSG, and we have listed examples of groups that the carrier may not consider as SSSGs. For example, while health care purchasing alliances must be considered as potential SSSGs, OPM will not consider purchasing alliances mandated by state or local government which restrict membership to groups of less than 100 employees as SSSGs. OPM excludes groups from the SSSG pool based solely on the types of alliances.

We have also clarified that groups having multi-year contracts are potential SSSGs. Therefore, in selecting SSSGs, the duration of the contract term is not a factor. OPM will look at the rate year by year in determining the rate that will be applicable to the FEHB group.

These additions to the regulations are simply clarifications. Although OPM's requirements for SSSGs have not changed, as practices within the insurance industry have evolved we find it necessary to clarify our treatment of SSSGs so that there will be no question as to OPM's intent. The annual FEHB Program rate instructions incorporate these requirements; however, we have placed them in regulation because there appears to be confusion on the part of some of the carriers, and we wanted to clear up any misunderstanding.

The SSSG clarifications in § 1602.170–12 of the regulation will be applicable for the rate instructions for the 1998 contract year.

##### *Contract Clauses*

Because of the many changes to the FAR brought about by FASA, we have found it necessary to amend a number of FEHBP clauses and certain references to FAR clauses listed in the FEHBP Clause Matrix [FEHBP Part 1652.3]. We have also made a number of editorial changes to the Matrix and conforming changes to the applicable FAR clauses listed in Part 1652. For clarity of presentation, we have reproduced the entire Matrix. The changes are discussed below.

We have amended the Clause Matrix in Part 1652.3 to: 1) Add FAR clause 52.242–3, Penalties for Unallowable Costs, as a result of FASA; and, 2) Drop the following FAR clauses deleted by FASA: § 52.203–1, Officials Not to Benefit; § 52.215–1, Examination of Records by Comptroller General; § 52.219–13, Utilization of Women-Owned Small Businesses; and § 52.220–

3, Utilization of Labor Surplus Area Concerns.

The names of the following FAR clauses have been changed to conform to FASA: § 52.215–2, Audit & Records—Negotiation; and § 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns. FEHBP clause 1652.204–70, "Contractor Records Retention," has been changed to reflect FASA threshold and reference changes.

We have added § 1652.204–72, Filing Health Benefit Claims/Court Review of Disputed Claims to the Matrix to conform to OPM's regulation change of March 29, 1995 [60 FR 16037].

In light of our new understanding brought about by FASA, we have reconsidered the application of the FAR cost or pricing data clauses in FAR section 52.215. We have decided to discontinue using FAR 52.215–23, Price Reduction For Defective Cost Or Pricing Data—Modifications, and will rely solely on FEHBP 1652.215–70, Price Reduction for Defective Pricing or Defective Cost or Pricing Data. FEHBP 1652.215–70 captures all of the defective cost or pricing data elements of the FAR and FASA as they relate to the FEHB Program. Accordingly, there will be only one clause on defective cost or pricing data applicable to community rated contracts.

We have dropped the requirement for the following FAR clauses for community rated carriers: § 52.215–25, Subcontractor Cost or Pricing Data—Modifications, § 52.244–5, Competition in Subcontracting, § 1652.244–70, Subcontracts. These clauses have no practical application for community rated carriers. Subcontracts negotiated by community rated carriers generally are applicable to a community of participants. Any cost for subcontracts is generally factored into the rates of all the carrier's employer groups and cannot be split out for any single employer group.

We have added novation and change of name to the list of events in the Notice of Significant Events clause at § 1652.222–70. While the list of events in the clause is not exhaustive, OPM considers a novation or change of name sufficiently important to include on the list of events that might reasonably be expected to have a material effect upon the carrier's ability to meet its obligations under the contract.

We have amended § 1644.170, Policy for FEHBP Subcontracting Consent, by stating that the clause applies to subcontracts or modifications to subcontracts when the amount charged against the contract exceeds \$100,000 and is 25% of the total cost of the

subcontract. The inclusion of the 25% requirement makes the policy statement consistent with OPM's long-established practice and conforms to the contract clause at § 1652.244-70.

We have changed the method, frequency, and rate of calculating interest in FEHBAR clause 1652.215-71, Investment Income, to simple interest on lost investment income at the quarterly rate determined by the Secretary of the Treasury under the authority of 16 U.S.C. 6621(a)(2) to make it consistent with the treatment of interest under § 1652.215-70, Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

We have dropped the applicability of the following clauses to community rated contracts because they apply only to contracts based on cost analysis: § 52.215-27, Termination of Defined Benefit Pension Plans; § 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB); § 1652.232-71, Payments—Contracts With Letter of Credit Payment Arrangements.

We have dropped the application of § 1652.232-70, Payments—Contracts Without Letter of Credit Payment Arrangements, to experience rated contracts because it applies only to contracts based on price analysis. In addition, we have dropped the application of § 1652.232-71, Payments—Contracts with Letter of Credit Payment Arrangements, to community rated contracts because it applies only to contracts based on cost analysis.

FEHBAR 1652.216-70, Accounting and Price Adjustment has been amended to delete references to market price and to accommodate new industry trends in community rating.

In keeping with the spirit of the FAR, OPM is adopting FAR 52.222-21, Certification of Nonsegregated Facilities, and FAR 52.222-25, Affirmative Action Compliance for the FEHB Program. A technical change has been made to the clauses to replace the word "offeror" with the word "contractor" to reflect the fact that the statutory provisions of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

We have added the following clauses because we have determined that they are applicable to FEHB Program contracts: § 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era; § 52.227-1, Authorization and Consent; § 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement; § 52.232-28, Electronic Funds Transfer Payment Methods.

To conform with FEHBAR 1632.617, we have indicated in the Matrix that FAR 52.232-17, Interest, applies to experience rated contracts as well as to community rated contracts.

We have deleted the FAR clause dates in FEHBAR 1652.000. FAR clauses become outdated over time and, if the FAR clause dates are contained in the FEHBAR, OPM must continually revise the FEHBAR to keep it up-to-date. It has always been OPM's intent to apply to the contracts the most current FAR clause in effect at the beginning of each contract term. The FAR clause dates will continue to be included in the contract so that there will be no question as to which FAR clause version is applicable.

Three FEHBAR clause dates have been added in Subpart 1652.2 because they had been inadvertently omitted. The clauses are § 1652.232-70, Payments—community rated contracts, § 1652.232-71, Payments—experience rated contracts, and § 1652.204-72, Filing Health Benefit Claims/Court Review of Disputed Claims.

OPM has also updated a number of references in the proposed regulation.

#### *Regulatory Flexibility Act*

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

List of Subjects in 48 CFR Parts 1602, 1604, 1615, 1616, 1622, 1631, 1644, 1652, and 1653

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

Office of Personnel Management.  
James B. King,  
*Director.*

Accordingly, OPM is proposing to amend Chapter 16 of Title 48, Code of Federal Regulations, as follows:

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

1. The authority citation for 48 CFR Parts 1602, 1604, 1615, 1616, 1622, 1631, 1644, 1652, and 1653 continues to read as follows:

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

#### **PART 1602—DEFINITIONS OF WORDS AND TERMS**

2. In section 1602.170-2 paragraph (a) is revised to read as follows:

##### **1602.170-2 Community rate.**

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

\* \* \* \* \*

3. Sections 1602.170-5 through 1602.170-12 are redesignated as sections 1602.170-6 through 1602.170-13 respectively, a new section 1602.170-5 is added and newly redesignated section 1602.170-12 is revised to read as follows:

##### **1602.170-5 Cost or pricing data.**

(a) *Experience rated plans.* Cost or pricing data is the data OPM requests in the carrier's rate submission for the applicable contract period.

(b) *Community rated plans.* Cost or pricing data is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs) and requested by OPM in the rate instructions for the applicable contract period.

\* \* \* \* \*

##### **1602.170-12 Similarly sized subscriber groups.**

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

- (1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,
- (2) Use any rating method other than retrospective experience rating; and,
- (3) Meet the criteria specified in the rate instructions issued by OPM.

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

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

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

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

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

(4) A purchasing alliance mandated by state or local government which restricts membership to groups of less than 100 employees.

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

## **PART 1604—ADMINISTRATIVE MATTERS**

### **1604.705 [Amended]**

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

## **PART 1615—CONTRACTING BY NEGOTIATION**

5. Section 1615.802 is revised to read as follows:

### **1615.802 Policy.**

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

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

(b)(1) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

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

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

submitted. Rates failing this test will be subject to further review.

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

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

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

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

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

### **1615.804–70 Certificate of cost or pricing data for community rated plans.**

The contracting officer shall require a carrier with a contract meeting the requirements in § 1615.802(c)(2) or § 1615.802(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in § 1615.802(c)(2) shall

complete the Certificate and keep it on file at the plan in accordance with § 1652.204–70. A carrier with a contract meeting the requirements in § 1615.802(c)(3) shall submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

### **Certificate of Accurate Cost and Pricing Data for Community Rated Plans**

This is to certify that, to the best of my knowledge and belief: (1) the cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee, in support of the \_\_\_\_\_\* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the FEHBP rates were developed in a manner consistent with the methodology used to rate the plan's similarly sized subscriber groups and approved by OPM.

Firm: \_\_\_\_\_  
Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_  
(End of Certificate)

### **1615.804–71 [Removed and reserved]**

7. Section 1615.804–71 is removed and reserved, and section 1615.804–72 is revised to read as follows:

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

The clause set forth in § 1652.215–70 shall be inserted in FEHBP contracts for \$500,000 or more that are based on price analysis.

## **PART 1616—TYPES OF CONTRACTS**

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

### **1616.102 Policies.**

All FEHBP contracts shall be negotiated benefits contracts.

### **Subpart 1616.2—[Removed]**

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

### **Subpart 1616.70—Negotiated Benefits Contracts**

#### **1616.7001 Clause—contracts based on price analysis (community rate).**

The clause at § 1652.216–70 shall be inserted in all FEHBP contracts based on price analysis.

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

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

The clause at § 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis.

**PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

10.–11. In subpart 1622.8, sections 1622.810–70 and 1622.810–71 are added to read as follows:

**Subpart 1622.8—Equal Employment Opportunity.****1622.810–70 Contract clause.**

The statutory provisions of 5 U.S.C. Chapter 89 obviate the issuance of solicitations. Nevertheless, FAR clause 52.222–21, Certification of Nonsegregated Facilities, shall be inserted in all FEHBP contracts, and the contracting officer shall replace the word “offeror” with the word “contractor” wherever it appears in the clause.

**1622.810–71 Contract clause.**

The statutory provisions of 5 U.S.C. Chapter 89 obviate the issuance of solicitations. Nevertheless, FAR clause 52.222–25, Affirmative Action Compliance shall be inserted in all FEHBP contracts, and the contracting officer shall replace the word “offeror” with the word “contractor” wherever it appears in the clause.

**PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES**

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

**1631.205–75 Selling costs.**

\* \* \* \* \*

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

**PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES**

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

**1644.170 Policy for FEHBP subcontracting consent.**

For all experience rated FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged against the FEHBP contract exceeds \$100,000 and is 25% of the total cost of the subcontract.

14. In subpart 1644.2, section 1644.270 is revised to read as follows:

**1644.270 FEHBP contract clause.**

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

**SUBCHAPTER H—CLAUSES AND FORMS****PART 1652—CONTRACT CLAUSES**

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

**1652.000 Applicable clauses.**

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

**Section and Clause Title**

- 52.202–1 Definitions.
- 52.203–3 Gratuities.
- 52.203–5 Covenant Against Contingent Fees.
- 52.203–7 Anti-Kickback Procedures.
- 52.203–9 Requirement for Certificate of Procurement Integrity—Modification.
- 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
- 52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
- 52.215–2 Audit and Records—Negotiation.
- 52.215–22 Price Reduction for Defective Cost or Pricing Data.
- 52.215–24 Subcontractor Cost or Pricing Data.
- 52.215–27 Termination of Defined Benefit Pension Plans.
- 52.215–30 Facilities Capital Cost of Money.
- 52.215–31 Waiver of Facilities Capital Cost of Money.
- 52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
- 52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
- 52.222–1 Notice to the Government of Labor Disputes.
- 52.222–3 Convict Labor.
- 52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.
- 52.222–21 Certification of Nonsegregated Facilities.
- 52.222–25 Affirmative Action Compliance.

- 52.222–26 Equal Opportunity.
- 52.222–28 Equal Opportunity Preaward Clearance of Subcontracts.
- 52.222–29 Notification of Visa Denial.
- 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
- 52.222–36 Affirmative Action for Handicapped Workers.
- 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
- 52.223–2 Clean Air and Water.
- 52.223–6 Drug-Free Workplace.
- 52.227–1 Authorization and Consent.
- 52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.
- 52.229–3 Federal, State, and Local Taxes.
- 52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract).
- 52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
- 52.229–6 Taxes—Foreign Fixed-Price Contracts.
- 52.230–2 Cost Accounting Standards.
- 52.230–3 Disclosure and Consistency of Cost Accounting Practices.
- 52.230–5 Administration of Cost Accounting Standards.
- 52.232–8 Discounts for Prompt Payment.
- 52.232–17 Interest.
- 52.232–23 Assignment of Claims.
- 52.232–28 Electronic Funds Transfer Payment Methods.
- 52.233–1 Disputes.
- 52.242–1 Notice of Intent to Disallow Costs.
- 52.242–3 Penalties for Unallowable Costs.
- 52.242–13 Bankruptcy.
- 52.243–1 Changes—Fixed Price—Alternate I.
- 52.244–5 Competition in Subcontracting.
- 52.245–2 Government Property (Fixed-Price Contracts).
- 52.246–25 Limitation of Liability—Services.
- 52.247–63 Preference for U.S.-Flag Air Carriers.
- 52.249–2 Termination for Convenience of the Government (Fixed-Price).
- 52.249–8 Default (Fixed-Price Supply and Service).
- 52.251–1 Government Supply Sources.
- 52.232–2 Clauses Incorporated by Reference.
- 52.252–4 Alterations in Contract.
- 52.252–6 Authorized Deviations in Clauses.

16. In subpart 1652.2, sections 1652.204–70 and 1652.215–70 are revised, and section 1652.204–72 is amended by adding “(MAR 1995)” in the title of the clause after the words “Disputed Claims” and before the period to read as follows:

**1652.204–70 Contractor records retention.**

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

**Contractor Records Retention (Jan 1997)**

Notwithstanding the provisions of section 5.7 (FAR 52.215–2(f)) “Audit and Records—Negotiation,” the Carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that exceed the threshold at FAR 15.804–



2(a)(1), the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that individual enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.

(End of Clause)

**1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.**

As prescribed in 1615.804-72, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.804-2(a)(1) that are based on price analysis.

**Rate Reduction for Defective Pricing or Defective Cost or Pricing Data (Jan 1997)**

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBP 1615.804-70); (2) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBP 1602.170-12) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Plans; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

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

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

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

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

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

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's

knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

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

(ii) An offset shall not be allowed if—

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

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

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

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

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

(End of Clause)

17. Section 1652.215-71 is amended by removing "(JAN 1991)" from the clause heading and adding in its place "(JAN 1997)" and by revising paragraph (f) to read as follows:

**1652.215-71 Investment Income.**

\* \* \* \* \*

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All amounts payable shall bear simple interest on lost investment income at the quarterly rate determined by the Secretary of the Treasury under the authority of 16 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

\* \* \* \* \*

18. Section 1652.216-70 is revised to read as follows:

**1652.216-70 Accounting and price adjustment.**

As prescribed in 1616.7001, the following clause shall be inserted in all FEHBP contracts based on price analysis.

**Accounting and Price Adjustment (Jan 1997)**

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

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

(2) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the plan's similarly sized subscriber groups (SSSGs).

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

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

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

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

(End of Clause)

18(a). The introductory sentence of section 1652.216-71 is revised to read as follows:

**1652.216-71 Accounting and Allowable Cost.**

As prescribed in 1616.7002, the following clause shall be inserted in all FEHBP contracts based on cost analysis.

\* \* \* \* \*

19. Section 1652.222-70 is amended by removing the date "(JAN 1991)" in the clause heading and adding in its place "(JAN 1997)" and by adding a new paragraph (a)(14) to read as follows:

**1652.222-70 Notice of significant events.**

\* \* \* \* \*

(a) \* \* \*

(14) A novation or change of name.

20. Sections 1652.232-70 and 1652.232-71 are amended by adding dates in the clause titles to read as follows:

**1652.232-70 Payments—community rated contracts.**

\* \* \* \* \*

Payments (Jan 1989)

\* \* \* \* \*

**1652.232-71 Payments—experience rated contracts.**

\* \* \* \* \*



## Payments (May 1992)

\* \* \* \* \*

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

**1652.244-70 Subcontracts.**

As prescribed by 1644.270, the following clause shall be inserted in all contracts based on cost analysis:

## Subcontracts (Jan 1997)

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

\* \* \* \* \*

**Subpart 1652.3—FEHBP Clause Matrix**

22. In subpart 1652.3, section 1652.370 paragraph (a) is amended by removing the words “established catalog or market price” in the first sentence and adding in its place the words “price analysis;” and by revising the FEHBP Clause Matrix to read as follows:

**1652.370 Use of the matrix.**

\* \* \* \* \*

## FEHBP CLAUSE MATRIX

Clause No.	Text Reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.202-1 .....	FAR 2.2 .....	Definitions .....	M	T	T
FAR 52.203-3 .....	FAR 3.202 .....	Gratuities .....	M	T	T
FAR 52.203-5 .....	FAR 3.404(c) .....	Covenant Against Contingent Fees .....	M	T	T
FAR 52.203-7 .....	FAR 3.502-3 .....	Anti-Kickback Procedures .....	M	T	T
FAR 52.203-9 .....	FAR 3.104-10(b) .....	Requirement for Certificate of Procurement Integrity—Modification.	M	T	T
FAR 52.203-12 .....	FAR 3.808 .....	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203-70 .....	1603.703 .....	Misleading, Deceptive, or Unfair Advertising .....	M	T	T
1652.204-70 .....	1604.705 .....	Contractor Records Retention .....	M	T	T
1652.204-71 .....	1604.7001 .....	Coordination of Benefits .....	M	T	T
1652.204-72 .....	1604.7101 .....	Filing Health Benefit Claims/Court Review of Disputed Claims	M	T	T
FAR 52.209-6 .....	FAR 9.409(b) .....	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215-2 .....	FAR 15.105-2(b) .....	Audit & Records—Negotiation .....	M	T	T
FAR 52.215-22 .....	FAR 15.804-8(a) .....	Price Reduction for Defective Cost or Pricing Data .....	M	T	T
FAR 52.215-24 .....	FAR 15.804-8(c) .....	Subcontractor Cost or Pricing Data .....	M	T	T
FAR 52.215-27 .....	FAR 15.804-8(e) .....	Termination of Defined Benefit Pension Plans .....	M	T	T
FAR 52.215-30 .....	FAR 15.904(a) .....	Facilities Capital Cost of Money .....	M	T	T
FAR 52.215-31 .....	FAR 15.904(b) .....	Waiver of Facilities Capital Cost of Money .....	A	T	T
FAR 52.215-39 .....	FAR 15.804-8(f) .....	Reversion or Adjustment of Plans for Post-retirement Benefits Other Than Pensions (PRB).	M	T	T
1652.215-70 .....	1615.804-72 .....	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215-71 .....	1615.805-71 .....	Investment Income .....	M	T	
1652.216-70 .....	1616.7001 .....	Accounting and Price Adjustment .....	M		T
1652.216-71 .....	1616.7002 .....	Accounting and Allowable Cost .....	M	T	
FAR 52.219-8 .....	FAR 19.708(a) .....	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.	M	T	T
FAR 52.222-1 .....	FAR 22.103-5(a) .....	Notice to the Government of Labor Disputes .....	M	T	T
FAR 52.222-3 .....	FAR 22.202 .....	Convict Labor .....	M	T	T
FAR 52.222-4 .....	FAR 22.305(a) .....	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M	T	T
FAR 52.222-21 .....	FAR 22.810(a)(1) .....	Certification of Nonsegregated Facilities .....	M	T	T
	Modification: .....				
FAR 52.222-25 .....	FAR 22.810(d) .....	Affirmative Action Compliance .....	M	T	T
	Modification: .....				
	1622.810-71 .....				
FAR 52.222-26 .....	FAR 22.810(a) .....	Equal Opportunity .....	M	T	T
FAR 52.222-28 .....	FAR 22.810(g) .....	Equal Opportunity Preaward Clearance of Subcontracts .....	M	T	T
FAR 52.222-29 .....	FAR 22.810(h) .....	Notification of Visa Denial .....	A	T	T
FAR 52.222-35 .....	FAR 22.1308(a) .....	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	T	T
FAR 52.222-36 .....	FAR 22.1408(a) .....	Affirmative Action for Handicapped Workers .....	M	T	T
FAR 52.222-37 .....	FAR 22.1308(b) .....	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
1652.222-70 .....	1622.103-70 .....	Notice of Significant Events .....	M	T	T
FAR 52.223-2 .....	FAR 23.105(b) .....	Clean Air and Water .....	A	T	T
FAR 52.223-6 .....	FAR 23.505(b) .....	Drug-Free Workplace .....	A	T	T
1652.224-70 .....	1624.104 .....	Confidentiality of Records .....	M	T	T
FAR 52.227-1 .....	FAR 27.201-2(a) .....	Authorization and Consent .....	M	T	T
FAR 52.227-2 .....	FAR 27.202-2 .....	Notice and Assistance Regarding Patent and Copyright Infringement.	M	T	T

## FEHBP CLAUSE MATRIX—Continued

Clause No.	Text Reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.229-3 .....	FAR 29.401-3 .....	Federal, State and Local Taxes .....	M	T	T
FAR 52.229-4 .....	FAR 29.401-4 .....	Federal, State and Local Taxes (Noncompetitive Contract) .....	M	T	
FAR 52.229-5 .....	FAR 29.401-5 .....	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
FAR 52.229-6 .....	FAR 29.402-1(a) ..	Taxes—Foreign Fixed Price Contracts .....	A	T	T
FAR 52.230-2 .....	FAR 30.201-4(a)(1) ..	Cost Accounting Standards .....	A	T	T
FAR 52.230-3 .....	FAR 30.201-4(b)(1) ..	Disclosure and Consistency of Cost Accounting Practices .....	A	T	T
FAR 52.230-5 .....	FAR 30.201-4(d)(1) ..	Administration of Cost Accounting Standards .....	A	T	T
FAR 52.232-8 .....	FAR 32.111(c)(1) ..	Discounts for Prompt Payment .....	M	T	T
FAR 52.232-17 .....	FAR 32.617(a) .....	Interest .....	M	T	T
	Modification: .....				
	1632.617 .....				
FAR 52.232-23 .....	FAR 32.806(a)(1) ..	Assignment of Claims .....	A	T	T
FAR 52.232-28 .....	FAR 32.908(d) .....	Electronic Funds Transfer Payment Methods .....	M	T	T
1652.232-70 .....	1632.171 .....	Payments—Contracts Without Letter of Credit Payment Arrangements.	A		T
1652.232-71 .....	1632.172 .....	Payments—Contracts With Letter of Credit Payment Arrangements.	A	T	
1652.232-72 .....	1632.772 .....	Non-Commingling of FEHBP Funds .....	M	T	
1652.232-73 .....	1632.806-70 .....	Approval for Assignment of Claims .....	M	T	T
FAR 52.233-1 .....	FAR 33.215 .....	Disputes .....	M	T	T
FAR 52.242-1 .....	FAR 42.802 .....	Notice of Intent to Disallow Costs .....	M	T	
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
FAR 52.243-1 .....	FAR 43.205(a)(1) ..	Changes—Fixed Price—Alternate I .....	M	T	T
FAR 52.244-5 .....	FAR 44.204(e) .....	Competition in Subcontracting .....	M	T	
1652.244-70 .....	1644.270 .....	Subcontracts .....	M	T	
FAR 52.245-2 .....	FAR 45.106(b)(1) ..	Government Property (Fixed Price Contracts) .....	M	T	T
FAR 52.246-25 .....	FAR 46.805(a)(4) ..	Limitation of Liability—Services .....	M	T	
1652.246-70 .....	1646.301 .....	FEHBP Inspection .....	M	T	T
FAR 52.247-63 .....	FAR 47.405 .....	Preference for U.S.-Flag Air Carriers .....	M	T	T
FAR 52.249-2 .....	FAR 49.502(b)(1)(i) ..	Termination for Convenience of the Government—Fixed Price	M	T	T
FAR 52.249-8 .....	FAR 49.504(a)(1) ..	Default (Fixed-Price Supply and Service) .....	M	T	T
1652.249-70 .....	1649.101-70 .....	Renewal and Withdrawal of Approval .....	M	T	T
FAR 52.251-1 .....	FAR 51.107 .....	Government Supply Sources .....	A	T	
FAR 52.252-2 .....	FAR 52.107(b) .....	Clauses Incorporated by Reference .....	M	T	T
FAR 52.252-4 .....	FAR 52.107(d) .....	Alterations in Contract .....	M	T	T
FAR 52.252-6 .....	FAR 52.107(f) .....	Authorized Deviations in Clauses .....	M	T	T

**PART 1653—FORMS [AMENDED]**

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

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Part 6101

RIN 3090-AF99

### Board of Contract Appeals; Procedure Rules

**AGENCY:** Board of Contract Appeals, General Services Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This document announces the intention of the General Services Administration Board of Contract

Appeals (the Board) to issue proposed rules to implement section 5101 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106) (the Act). Section 5101 of the Act, which becomes effective August 8, 1996, eliminates the Board's jurisdiction to hear and decide bid protests regarding procurements of automatic data processing (ADP) equipment and services. The proposed amendments to the Board's rules of procedure, when final, will implement section 5101 by eliminating all references to bid protests in those rules.

The proposed rules also described the techniques intended to shorten and simplify, when appropriate, the formal proceedings normally used by the Board to resolve contract disputes, and support the use of alternative dispute resolution (ADR) in appropriate circumstances by providing that the Board will make a Board Neutral

available for an ADR proceeding either before or after the issuance of a decision by a contracting officer of any Government agency if a joint written request is submitted to the Board by the parties.

The Board intends to issue final, revised rules after considering all comments to the proposed amendments. The Board anticipates that, in issuing revised rules, it will provide that the revisions do not apply to protests pending on August 8, 1996, or to any motions or applications resulting from such protests. Such cases would be governed by the rules in effect at the time the underlying protests were filed.

**DATES:** Written comments must be submitted on or before July 24, 1996.

**ADDRESSES:** Copies of the proposed rules may be obtained from the Office of the Clerk of the Board, GSA Board of Contract Appeals, 18th & F Streets, N.W., Washington, DC 20405, (202)