

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

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

#### List of Subjects in 40 CFR Part 81

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

Dated: August 6, 2003.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*  
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#### OFFICE OF PERSONNEL MANAGEMENT

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

**RIN 3206-AJ20**

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

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulation.

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

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

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

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

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

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

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

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