

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

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

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

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

Collection of Information Requirement

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

Regulatory Flexibility Act

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

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

Regulatory Impact Analysis

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

Executive Order 12866, Regulatory Review

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

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

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

Office of Personnel Management.

Kay Coles James,
Director.

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

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

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

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

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

SUBCHAPTER A—GENERAL

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1601.1—Purpose, Authority, Issuance.

2. Section 1601.105 is redesignated as 1601.106.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Subpart 1602.1—Definitions of FEHB Program Terms

3. In 1602.170–5, paragraph (a) is revised to read as follows:

1602.170–5 Cost or pricing data.

(a) *Experience rated carriers.* Cost or pricing data for experience rated carriers includes:

- (1) Information such as claims data;
- (2) Actual or negotiated benefits payments made to providers of medical services for the provision of healthcare, such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and Diagnostic Related Group (DRG) payments;

- (3) Cost data;
- (4) Utilization data; and
- (5) Administrative expenses and retentions, including capitated administrative expenses and retentions.

* * * * *

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

1602.170–7 Experience rate.

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

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

1602.170–15 Large provider agreement.

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