

**CONTACT PERSON FOR MORE**

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Dated, Washington, DC, 28 April 1987.

By direction of the Board.

**Joseph E. Moore,**

*Acting Executive Secretary, National Labor  
Relations Board.*

[FR Doc. 87-10026 Filed 4-29-87; 2:01 pm]

BILLING CODE 7545-01-M

**UNITED STATES INSTITUTE OF PEACE****TIMES AND DATES:**

9:00 a.m.-5:00 p.m., Thursday, May 7, 1987

9:00 a.m.-5:00 p.m., Friday, May 8, 1987

**PLACE:** The United States Institute of  
Peace, 730 Jackson Place, NW.,  
Washington, DC 20036.

**STATUS:** Open (portions may be closed  
pursuant to subsection (c) of section  
552(b) of Title 5, United States Code, as  
provided in subsection 1706(h)(3) of the  
United States Institute of Peace Act,  
Pub. L. 98-525).

**Agenda (Tentative):**

Meeting of the Board of Directors  
convened. President's Report. Committee  
Reports. Consideration of Grant Applications.

**CONTACT:** Mrs. Olympia Diniak.  
Telephone: (202) 789-5700.

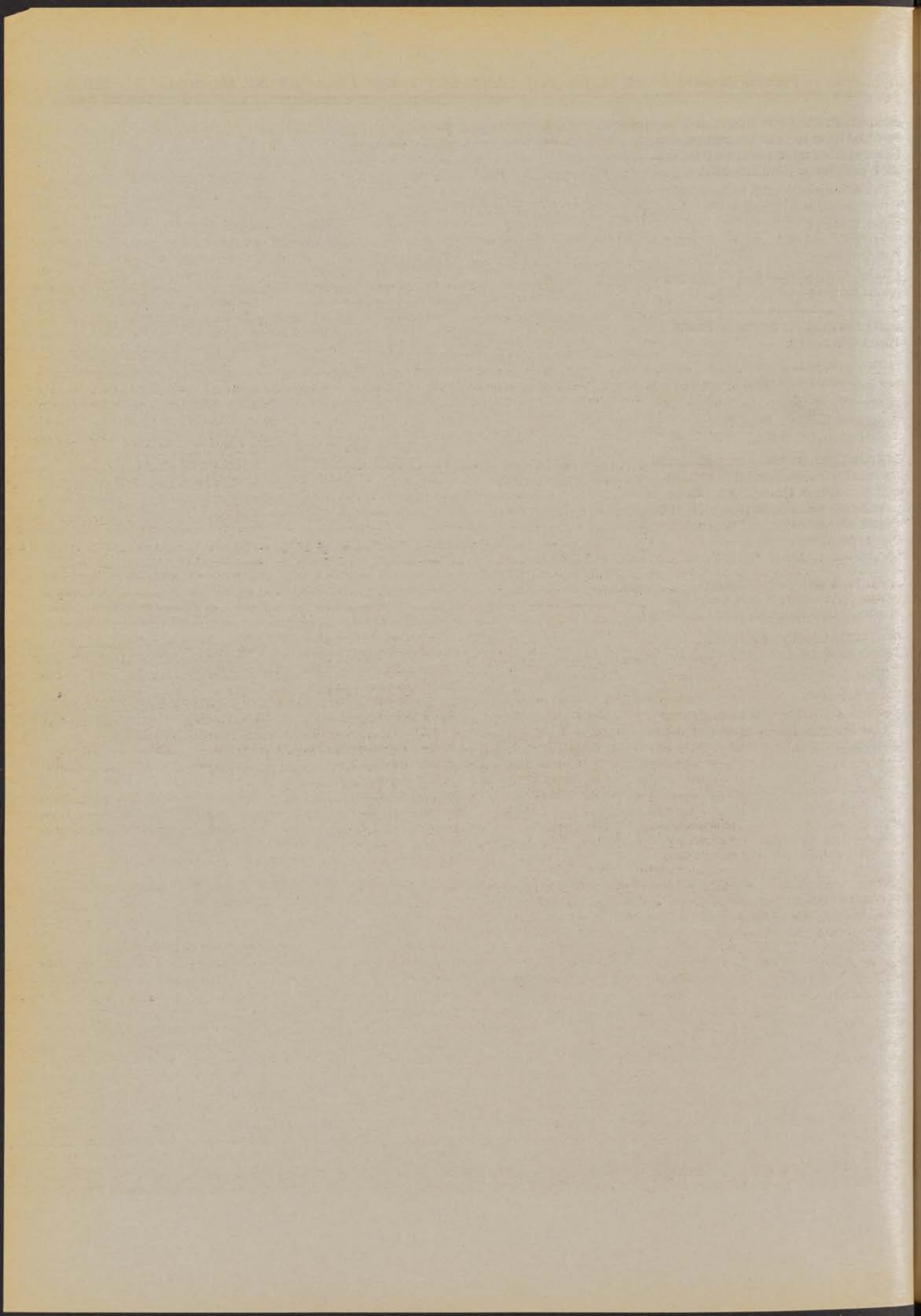
Dated: April 28, 1987.

**Robert F. Turner,**

*President, United States Institute of Peace.*

[FR Doc. 87-10027 Filed 4-29-87; 2:02 pm]

BILLING CODE 3155-01-M



# Federal Register

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Friday  
May 1, 1987

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## Part II

### Environmental Protection Agency

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40 CFR Part 716

Health and Safety Data Reporting;  
Submission of Lists and Copies of  
Health and Safety Studies on Certain  
Substances; Final Rule

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 716

[OPTS-84022A; FRL-3181-5]

### Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies on Certain Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is adding 102 chemical substances to the list of chemical substances and mixtures (henceforth referred to as substances) in the Health and Safety Data Reporting Rule, 40 CFR Part 716. Once EPA lists these substances in the Health and Safety Data Reporting Rule, past, current, and prospective manufacturers, importers, and processors of these substances will be required to provide EPA with lists and copies of unpublished health and safety studies on these substances. EPA will use this information to support a detailed assessment of the health and environmental risks of these substances.

**DATES:** This rule is effective on June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Telephone. (202) (554-1404).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. On Rule

Under section 8(d) of the Toxic Substances Control Act (TSCA), EPA issued the model Health and Safety Data Reporting Rule (40 CFR Part 716). An amendment to the model rule was published in the *Federal Register* of September 15, 1986 (51 FR 32720). The amendment lengthened the rule's sunset provision, added a provision for biennial review, limited three reporting exemptions and added an express exemption, clarified the rule's confidentiality provisions, and made technical revisions. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies furnish EPA with useful information and have provided

significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

The use of TSCA authority to gather information for other Federal agencies, and for other EPA offices outside the Office of Toxic Substances, provides them access to unpublished health and safety data which is otherwise unavailable. The data are vital to these offices and agencies in analyzing the risks posed by the listed substances.

As part of a continuing effort to coordinate information gathering requests from different offices in EPA and other Federal agencies, EPA included in this rule substances nominated by the Office of Toxic Substances, the Office of Drinking Water, the Office of Water Regulations and Standards, the Office of Solid Waste, and the Consumer Product Safety Commission (CPSC). This coordination will lead to resource savings for both industry and the government by avoiding duplicative information requests from multiple offices in EPA or other Federal agencies. This savings will be reflected in reduced Agency implementation costs and industry reporting costs.

A list of the substances being added and their nominating offices is given in Unit III of this preamble. This list represents an initial effort to coordinate the assessment activities of all offices in EPA, as well as certain other Federal agencies. It incorporates a backlog of requests for health and safety information and covers many currently identified Agency health and safety data needs for Fiscal Years 1986, 1987, and, in some cases, 1988. One hundred and seven substances comprised the list in the proposed rule published in the *Federal Register* of August 1, 1986 (51 FR 27562). Five substances have been removed from the list for the reasons discussed in Unit II of this preamble.

##### B. On Nominated Chemicals

Prior to listing the substances in this rule, information searches of several government chemical data bases were conducted by EPA to determine if the information needed by the requesting office was available. The list of substances was also given to other offices and programs in EPA, and to CPSC, requesting previously unavailable unpublished information for any of the listed substances. Thirty-eight substances were eliminated from the original list after the nominating office determined that the information provided met their needs. Only if the information needed on a substance was unavailable, or the available information did not meet the particular

needs of the nominating office, was the substance retained on the list.

The particular reasons for each office's information request on the substances listed in this rule are discussed below.

1. *Office of Toxic Substances (OTS).* EPA's OTS has requested information on 26 diisocyanates. There is a concern about the potential for widespread human exposure to diisocyanates. With a few exceptions, toxicologic and health effects data are available only for toluene diisocyanate (TDI) and polymeric methylene diphenyl diisocyanate (PMDI). The health effects of greatest concern for these substances are those resulting from acute and chronic exposure, including respiratory tract effects, dermal irritation, nose and eye irritation, neurotoxic effects, hepatic, renal, and hematologic changes, and immune-mediated physiologic and pathologic changes.

The information obtained on these substances will help OTS to analyze quantitatively and qualitatively risks posed by them.

2. *Office of Water (OW).* The information requested on the 31 chemicals nominated by the Office of Drinking Water (ODW) and the Office of Water Regulations and Standards (OWRS) in EPA is necessary to develop drinking water regulations, health advisories, and ambient water quality criteria. Available toxicological information about these chemicals is variable in quality and quantity, and in some instances inadequate for proper scientific assessment of toxicity. Toxicity assessment requires the evaluation of acute, subchronic, and chronic studies. The primary health concerns are damage to the central nervous system, liver, kidneys, and/or adrenals, and testicular toxicity. Toxicity data on additional effects such as teratogenesis, mutagenesis, reproductive effects, and metabolism, as well as effects on aquatic organisms and the environment, must be assessed since they may make a significant contribution to toxicity assessment of these chemicals.

3. *Office of Solid Waste (OSW).* EPA's OSW needs health and environmental effects data for the development of background documents and *Federal Register* notices for its Listing Program. The Listing Program analyzes industrial wastes and their constituents and develops the background information, rationales, and support documents needed to add waste streams to the list of hazardous wastes from non-specific sources (40 CFR 261.31), or hazardous wastes from specific sources (40 CFR

261.32). The identification and listing of these industrial waste streams as hazardous results in their regulation under the authority of the Resource Conservation and Recovery Act (RCRA). OSW is particularly concerned with carcinogenicity, teratogenicity, reproductive effects, and chronic and systemic health effects data. It also needs information on environmental effects, aquatic toxicity, environmental fate, persistence and bioaccumulation. The existing literature yields only inconclusive or no data on the 34 chemicals nominated by OSW for this rule.

4. *Consumer Product Safety Commission (CPSC)*. The 11 chemicals nominated by CPSC are found in a variety of consumer products such as deodorizers, paints, adhesives, textiles, flame retardants, dyes, solvents, and plastics, and are known or suspected of producing chronic effects in animals or adverse human health effects. CPSC hopes this rule will provide information that will help in evaluating potential consumer health risks from exposure to these chemicals. This information is not currently available in the published literature.

## II. Comments on Proposed Rule

Most of the comments received from the public during the comment period for the proposed rule were chemical-specific, and some contained additional information on the chemicals. The nominating offices or agency reviewed the material received and determined whether the additional data met their needs. Three chemicals were removed from the list as a result. They are:

Methane, trichlorofluoro (CAS No. 75-69-4)

Methane, dichlorodifluoro- (CAS No. 75-71-8)

Urea, N-(4-chlorophenyl)-N'-(3,4-dichlorophenyl)- (CAS No. 101-20-2)

Several commenters stated that the only use of the above listed urea (commonly known as trichlorocarbanilide) was as an antimicrobial in bar soap and thus it fell under the purview of the Food and Drug Administration, and was therefore not subject to TSCA reporting. However, this chemical had been reported for the TSCA Inventory and one manufacturer was listed. If, in fact, its only use is a non-TSCA one, then it was incorrectly reported. Nevertheless, CPSC has decided to drop its request for unpublished health and safety studies on trichlorocarbanilide.

Two additional chemicals were removed for other reasons—Pentachloroethane (CAS No. 76-01-7)

because it is no longer produced or imported into the United States, and 2-Propanol (CAS No. 67-63-0) because it was included in the 19th List of the Interagency Testing Committee (ITC) and was automatically added to the Health and Safety Data Reporting Rule (51 FR 41328).

One commenter opposed the inclusion of Methane, trichloro- (CAS No. 67-66-3), Ethane, 1,2-dichloro- (CAS No. 107-06-2), and Ethene, tetrachloro- (CAS No. 127-18-4), saying that EPA had published health assessment documents in the last 2 years which contained the most current health and environmental information, and which had been extensively reviewed. OWRS, which nominated these chemicals, has noted that the focus of the health assessment documents was on human health, while OWRS needs to obtain data on the chemical's effects on aquatic organisms and/or the environment, as well as on human health. Furthermore, the health assessment documents were based on available studies and may not reflect unpublished studies that will be submitted under this rule.

Another commenter had three main concerns which are enumerated below with EPA's reply following each:

(1) The use and review of information received from industry on chemicals as a result of this rule will not be coordinated.

EPA plans to conduct a follow-up review to assess the utility of the information received and to ascertain what the ultimate use by the nominating offices or agency will be.

(2) EPA did not reiterate assurances to protect confidential business information in the proposed version of this rule.

The Agency will continue to protect confidential business information (CBI) which is properly submitted under the provisions of the model rule. It should be noted, however, that the amendment to the model Health and Safety Data Reporting Rule, which was cited in Unit I.A. of this preamble, changed the confidentiality provisions and made the exemptions less extensive.

(3) There has been a "sudden proliferation of new reporting requirements under section 8." The commenter specifically noted the Inventory Update Rule (51 FR 21438) and the proposed Comprehensive Assessment Information Rule (CAIR) (51 FR 35762).

EPA has made provision in the Inventory Update Rule to avoid potential duplicative reporting requirements between TSCA section 8 reporting rules. If similar information has been submitted under a section 8(a)

rule within the year preceding the start of a reporting period under the Update rule, the submitter will not be required to report the same information again for that reporting period. However, the type of information to be reported under section 8(d) is quite different from the section 8(a) rules mentioned.

Finally, one commenter expressed strong support for the rule and stated that "it represents an exercise of discretionary authority by EPA that was clearly envisioned and intended by Congress."

## III. Summary of This Rule

This rule adds 102 chemical substances to the list of substances in 40 CFR 716.120.

By listing these substances in the section 8(d) model rule, EPA triggers the model rule's reporting requirements for past, current, and prospective manufacturers, importers, and processors of these substances. The model rule requires manufacturers, importers, and processors of listed substances to submit data within 60 days of the effective date of any amendment to the model rule.

TSCA section 8(d) health and safety studies must be sent to: Document Processing Center (TS-790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L-100, 401 M Street, S.W., Washington, D.C. 10460, ATTN: (8(d) Reporting).

The substances are listed by CAS number below with the requesting offices noted:

| CAS No. | Chemical name                                        | Requesting office* |
|---------|------------------------------------------------------|--------------------|
| 67-66-3 | Methane, trichloro-.....                             | OWRS               |
| 74-83-9 | Methane, bromo-.....                                 | ODW                |
| 74-95-3 | Methane, dibromo-.....                               | ODW                |
| 74-97-5 | Methane, bromochloro-.....                           | ODW                |
| 75-00-3 | Ethane, chloro-.....                                 | ODW                |
| 75-04-7 | Ethanamine.....                                      | OSW                |
| 75-25-2 | Methane, tribromo-.....                              | ODW/OWRS           |
| 75-27-4 | Methane, bromodichloro-.....                         | ODW/OWRS           |
| 75-29-6 | Propane, 2-chloro-.....                              | OSW                |
| 75-34-3 | Ethane, 1,1-dichloro-.....                           | ODW/OWRS           |
| 78-88-6 | 1-Propene, 2,3-dichloro-.....                        | OSW                |
| 78-97-7 | Propanenitrile, 2-hydroxy-.....                      | OSW                |
| 79-00-5 | Ethane, 1,1,2-trichloro-.....                        | ODW/OWRS/OTS       |
| 79-34-5 | Ethane, 1,1,2,2-tetrachloro-.....                    | ODW/OWRS           |
| 90-42-6 | [1,1'-Bicyclohexyl]-2-one.....                       | OSW                |
| 91-08-7 | Benzene, 1,3-diisocyanato-2-methyl-.....             | OTS                |
| 91-20-3 | Naphthalene.....                                     | ODW                |
| 91-97-4 | 1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-..... | OTS                |
| 92-69-3 | [1,1'-Biphenyl]-4-ol.....                            | OSW                |
| 92-34-2 | 10H-Phenothiazine.....                               | OSW                |
| 92-87-5 | [1,1'-Biphenyl]-4,4'-diamine.....                    | OWRS               |
| 96-18-4 | Propane, 1,2,3-trichloro-.....                       | ODW                |
| 97-18-7 | Phenol, 2,2'-thiobis[4,6-dichloro-.....              | CPSC               |
| 97-23-4 | Phenol, 2,2'-methylenebis[4-chloro-.....             | CPSC               |
| 98-01-1 | 2-Furancarboxaldehyde.....                           | OSW                |

| CAS No.    | Chemical name                                                   | Requesting office* |
|------------|-----------------------------------------------------------------|--------------------|
| 98-06-6    | Benzene, (1,1-dimethylethyl)-                                   | ODW                |
| 98-83-9    | Benzene, (1-methylethyl)-                                       | OSW                |
| 99-87-6    | Benzene, 1-methyl-4-(1-methylethyl)-                            | ODW                |
| 100-48-1   | 4-Pyridinecarbonitrile                                          | OSW                |
| 100-54-9   | 3-Pyridinecarbonitrile                                          | OSW                |
| 100-70-9   | 2-Pyridinecarbonitrile                                          | OSW                |
| 101-68-8   | Benzene, 1,1'-methylenebis[4-isocyanato-]                       | OTS                |
| 104-49-4   | Benzene, 1,4-diisocyanato-                                      | OTS                |
| 104-51-8   | Benzene, butyl-                                                 | ODW                |
| 104-76-7   | 1-Hexanol, 2-ethyl-                                             | OSW                |
| 105-60-2   | 2-H-Azepin-2-one, hexahydro-                                    | OSW                |
| 106-43-4   | Benzene, 1-chloro-4-methyl-                                     | ODW                |
| 107-06-2   | Ethane, 1,2-dichloro-                                           | OWRS               |
| 108-60-1   | Propane, 2,2'-oxybis[1-chloro-]                                 | ODW                |
| 108-86-1   | Benzene, bromo-                                                 | ODW                |
| 108-95-2   | Phenol                                                          | OWRS               |
| 109-87-5   | Methane, dimethoxy-                                             | CPSC               |
| 109-89-7   | Ethanamine, N-ethyl-                                            | OSW                |
| 111-69-3   | Hexanedinitrile                                                 | OSW                |
| 111-92-2   | 1-Butanamine, N-butyl-                                          | CPSC               |
| 120-12-7   | Anthracene                                                      | OSW                |
| 121-44-8   | Ethanamine, N,N-diethyl-                                        | OSW                |
| 121-47-1   | Benzenesulfonic acid, 3-amino-                                  | OSW                |
| 122-66-7   | Hydrazine, 1,2-diphenyl-                                        | OWRS               |
| 123-61-5   | Benzene, 1,3-diisocyanato-                                      | OTS                |
| 124-48-1   | Methane, dibromochloro-                                         | ODW                |
| 127-18-4   | Ethane, tetrachloro-                                            | OWRS               |
| 129-00-0   | Pyrene                                                          | OSW                |
| 135-98-8   | Benzene, (1-methylpropyl)-                                      | ODW                |
| 137-26-8   | Thioperoxydicarbonic diamide tetramethyl-                       | CPSC               |
| 139-25-3   | Benzene, 1,1'-methylenebis[4-isocyanato-3-methyl-]              | OTS                |
| 472-41-3   | Phenol, 4-(3,4-dihydro-2,2,4-trimethyl-2H-1-benzopyran-4-yl)-   | OSW                |
| 506-96-7   | Acetyl bromide                                                  | OSW                |
| 530-50-7   | Hydrazine, 1,1-diphenyl-                                        | OWRS               |
| 534-07-6   | 2-Propanone, 1,3-dichloro-                                      | OSW                |
| 540-54-5   | Propane, 1-chloro-                                              | OSW                |
| 540-84-1   | Penitane, 2,2,4-trimethyl-                                      | CPSC               |
| 542-75-6   | 1-Propene, 1,3-dichloro-                                        | OSW                |
| 580-51-8   | [1,1'-Biphenyl]-3-ol                                            | OSW                |
| 584-84-9   | Benzene, 2,4-diisocyanato-1-methyl-                             | OTS                |
| 598-21-0   | Acetyl bromide, bromo-                                          | OSW                |
| 630-20-6   | Ethane, 1,1,1,2-tetrachloro-                                    | ODW/OWRS           |
| 685-91-6   | Acetamide, N,N-diethyl-                                         | OSW                |
| 812-03-3   | Propane, 1,1,1,2-tetrachloro-                                   | OSW                |
| 822-06-0   | Hexane, 1,6-diisocyanato-                                       | OTS                |
| 828-00-2   | 1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate                         | CPSC               |
| 1070-78-6  | Propane, 1,1,1,3-tetrachloro-                                   | OSW                |
| 1208-52-2  | Benzenamine, 2-[(4-aminophenyl)methyl]-                         | OSW                |
| 1300-71-6  | Phenol, dimethyl-                                               | OWRS               |
| 1321-38-6  | Benzene, diisocyanatomethyl- (unspecified isomer)               | OTS                |
| 1331-47-1  | [1,1'-Biphenyl]-4,4'-diamino, dichloro-                         | OWRS               |
| 2536-05-2  | Benzene, 1,1'-methylenebis[2-isocyanato-]                       | OTS                |
| 2556-36-7  | Cyclohexane, 1,4-diisocyanato-                                  | OTS                |
| 2778-42-9  | Benzene, 1,3-bis(1-isocyanato-1-methylethyl)-                   | OTS                |
| 3173-72-6  | Naphthalene, 1,5-diisocyanato-                                  | OTS                |
| 3298-90-0  | 1,3-Propanediol, 2,2-bis(bromomethyl)-                          | CPSC               |
| 4098-71-9  | Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl- | OTS                |
| 5124-30-1  | Cyclohexane, 1,1'-methylenebis[4-isocyanato-]                   | OTS                |
| 5873-54-1  | Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)methyl]-           | OTS                |
| 7440-28-0  | Thallium                                                        | OWRS               |
| 7440-48-4  | Cobalt                                                          | OWRS               |
| 9016-87-9  | Isocyanic acid, polymethylenepolyphenylene ester                | OTS                |
| 10347-54-3 | Cyclohexane, 1,4-bis(isocyanatomethyl)-                         | OTS                |
| 10436-39-2 | 1-Propene, 1,1,2,3-tetrachloro-                                 | OSW                |
| 12001-85-3 | Naphtheneic acids, zinc salts                                   | CPSC               |
| 15646-96-5 | Hexane, 1,6-diisocyanato-2,4,4-trimethyl-                       | OTS                |
| 16938-22-0 | Hexane, 1,6-diisocyanato-2,2,4-trimethyl-                       | OTS                |
| 18495-30-2 | Propane, 1,1,2,3-tetrachloro-                                   | OSW                |
| 19660-16-3 | 2-Propenoic acid, 2,3-dibromopropyl ester                       | CPSC               |

| CAS No.    | Chemical name                                                  | Requesting office* |
|------------|----------------------------------------------------------------|--------------------|
| 26447-40-5 | Benzene, 1,1'-methylenebis(isocyanato-)                        | OTS                |
| 26471-62-5 | Benzene, 1,3-diisocyanatomethyl-                               | OTS                |
| 26530-20-1 | 3(2H)-Isothiazolone, 2-octyl-                                  | CPSC               |
| 26952-23-8 | 1-Propene, dichloro-                                           | OSW                |
| 32052-51-0 | Isocyanic acid, trimethylcyclohexyl ester                      | OTS                |
| 38661-72-2 | Cyclohexane, 1,3-bis(isocyanatomethyl)-                        | OTS                |
| 75790-84-0 | Benzene, 2-isocyanato-4-[(4-isocyanatophenyl)methyl]-1-methyl- | OTS                |
| 75790-87-3 | Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)thio]-            | OTS                |

\*Requesting Office Designations:  
 CPSC—Consumer Product Safety Commission.  
 OSW—Office of Solid Waste, EPA.  
 OTS—Office of Toxic Substances, EPA.  
 ODW—Office of Drinking Water, EPA.  
 OWRS—Office of Water Regulations and Standards, EPA.

#### IV. Reporting Requirements

Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are reporting exemptions. As stated in Unit I.A. of this preamble, an amendment to the model rule (51 FR 32720) limited three reporting exemptions. Listed below are the general reporting requirements of the section 8(d) model rule.

1. A person who, in the 10 years preceding the date a substance is listed, either had proposed to manufacture, import, or process, or had manufactured, imported, or processed, the listed substance, must submit to EPA a copy of each unpublished health and safety study which is in their possession at the time the substance is listed.

2. A person who, at the time the substance is listed, proposes to manufacture, import, or process, or is manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each unpublished health and safety study which is in their possession at the time the substance is listed.

b. A list of unpublished health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of health and safety studies that are initiated after the date the substance is listed and are conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. A person who, after the time a substance is listed, proposes to

manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of unpublished health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of health and safety studies that are initiated after the time they propose to manufacture, import, or process the listed substance, and are conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

#### V. Economic Impact

EPA estimates that the establishment of section 8(d) reporting requirements for the substances listed in Unit III of this preamble, would cost industry approximately \$342,659. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, those projections incorporate data submitted to the TSCA Inventory of Chemical Substances in 1979. Uncertainty is introduced into the economic analysis because some of the Inventory data is not current. Where there is uncertainty in the Agency's estimate of regulatory impact, EPA estimates an upper bound cost so as not to underestimate the potential impact. This cost maximizing approach is incorporated so as not to overlook a situation in which adverse economic impact may result from a regulatory action. Nevertheless, the cost of this rule is low in comparison with its potential benefits. Health and Safety studies concerning the listed substances will improve EPA's ability to identify and evaluate potential public health and environmental problems with regard to these substances. The Agency therefore will be better able to determine whether further regulatory action will be necessary.

The studies on chemicals nominated by CPSC will help that agency in evaluating potential consumer health risks from exposure to these chemicals.

The costs for reporting are broken down as follows:

|                                |           |
|--------------------------------|-----------|
| Initial corporate review ..... | \$67,932  |
| Site identification .....      | 46,818    |
| File search .....              | 90,882    |
| Title listing .....            | 5,814     |
| Photocopying .....             | 18,911    |
| Managerial review .....        | 93,636    |
| Ongoing reporting .....        | 18,666    |
| Total .....                    | \$342,659 |

## VI. Rulemaking Record

The following documents constitute the public record for this rule (docket control number OPTS-84022A). All of these documents, including the index to this public record, are available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Public Information Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, D.C. The public record includes the following information considered by the Agency in developing this rule.

1. The proposed rule.
2. Comments received on the proposed rule.
3. The final rule.
4. The economic analysis for this rule.

## VII. Regulatory Assessment Requirements

### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this rule is not "major" because it will not have an effect of \$100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

### B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than \$100 million in annual sales. EPA does not expect this amendment to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA determined that this rule will not have a significant economic impact on a substantial number of small entities.

## C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Number 2070-0004.

### List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: March 27, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 716 is amended as follows:

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By adding substances to paragraph (a)(1) numerically by CAS Number, and alphabetically to paragraph (a)(2) of § 716.120 to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

(a) \* \* \*

(1) \* \* \*

| CAS No. | Chemical name                                       | Special exemptions | Effective date | Sunset date |
|---------|-----------------------------------------------------|--------------------|----------------|-------------|
| 67-66-3 | Methane, trichloro.....                             | *                  | 6/1/87         | 6/1/97      |
| 74-83-9 | Methane, bromo.....                                 | *                  | 6/1/87         | 6/1/97      |
| 74-95-3 | Methane, dibromo.....                               | *                  | 6/1/87         | 6/1/97      |
| 74-97-5 | Methane, bromochloro.....                           | *                  | 6/1/87         | 6/1/97      |
| 75-00-3 | Ethane, chloro.....                                 | *                  | 6/1/87         | 6/1/97      |
| 75-04-7 | Ethanamine.....                                     | *                  | 6/1/87         | 6/1/97      |
| 75-25-2 | Methane, tribromo.....                              | *                  | 6/1/87         | 6/1/97      |
| 75-27-4 | Methane, bromodichloro.....                         | *                  | 6/1/87         | 6/1/97      |
| 75-29-6 | Propane, 2-chloro.....                              | *                  | 6/1/87         | 6/1/97      |
| 75-34-3 | Ethane, 1,1-dichloro.....                           | *                  | 6/1/87         | 6/1/97      |
| 78-88-6 | 1-Propene, 2,3-dichloro.....                        | *                  | 6/1/87         | 6/1/97      |
| 78-97-7 | Propanenitrile, 2-hydroxy.....                      | *                  | 6/1/87         | 6/1/97      |
| 79-00-5 | Ethane, 1,1,2-trichloro.....                        | *                  | 6/1/87         | 6/1/97      |
| 79-34-5 | Ethane, 1,1,2,2-tetrachloro.....                    | *                  | 6/1/87         | 6/1/97      |
| 90-42-6 | [1,1'-Bicyclohexyl]-2-one.....                      | *                  | 6/1/87         | 6/1/97      |
| 91-08-7 | Benzene, 1,3-diisocyanato-2-methyl.....             | *                  | 6/1/87         | 6/1/97      |
| 91-20-3 | Naphthalene.....                                    | *                  | 6/1/87         | 6/1/97      |
| 91-97-4 | 1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl..... | *                  | 6/1/87         | 6/1/97      |
| 92-69-3 | [1,1'-Biphenyl]-4-ol.....                           | *                  | 6/1/87         | 6/1/97      |
| 92-84-2 | 10H-Phenothiazine.....                              | *                  | 6/1/87         | 6/1/97      |
| 92-87-5 | [1,1'-Biphenyl]-4,4'-diamine.....                   | *                  | 6/1/87         | 6/1/97      |
| 96-18-4 | Propane, 1,2,3-trichloro.....                       | *                  | 6/1/87         | 6/1/97      |
| 97-18-7 | Phenol, 2,2'-thiobis[4,6-dichloro.....              | *                  | 6/1/87         | 6/1/97      |
| 97-23-4 | Phenol, 2,2'-methylenebis[4-chloro.....             | *                  | 6/1/87         | 6/1/97      |
| 98-01-1 | 2-Furan-carboxaldehyde.....                         | *                  | 6/1/87         | 6/1/97      |
| 98-06-6 | Benzene, (1,1-dimethylethyl).....                   | *                  | 6/1/87         | 6/1/97      |

| CAS No.   | Chemical name                                                     | Special exemptions | Effective date | Sunset date |
|-----------|-------------------------------------------------------------------|--------------------|----------------|-------------|
| 98-83-9   | Benzene, (1-methylethyl).....                                     |                    | 6/1/87         | 6/1/97      |
| 99-87-6   | Benzene, 1-methyl-4-(1-methylethyl).....                          |                    | 6/1/87         | 6/1/97      |
| 100-48-1  | 4-Pyridinecarbonitrile.....                                       |                    | 6/1/87         | 6/1/97      |
| 100-54-9  | 3-Pyridinecarbonitrile.....                                       |                    | 6/1/87         | 6/1/97      |
| 100-70-9  | 2-Pyridinecarbonitrile.....                                       |                    | 6/1/87         | 6/1/97      |
| 101-68-8  | Benzene, 1,1'-methylenebis[4-isocyanato].....                     |                    | 6/1/87         | 6/1/97      |
| 104-49-4  | Benzene, 1,4-diisocyanato.....                                    |                    | 6/1/87         | 6/1/97      |
| 104-51-8  | Benzene, butyl.....                                               |                    | 6/1/87         | 6/1/97      |
| 104-76-7  | 1-Hexanol, 2-ethyl.....                                           |                    | 6/1/87         | 6/1/97      |
| 105-60-2  | 2H-Azepin-2-one, hexahydro.....                                   |                    | 6/1/87         | 6/1/97      |
| 106-43-4  | Benzene, 1-chloro-4-methyl.....                                   |                    | 6/1/87         | 6/1/97      |
| 107-06-2  | Ethane, 1,2-dichloro.....                                         |                    | 6/1/87         | 6/1/97      |
| 108-60-1  | Propane, 2,2'-oxybis[1-chloro].....                               |                    | 6/1/87         | 6/1/97      |
| 108-86-1  | Benzene, bromo.....                                               |                    | 6/1/87         | 6/1/97      |
| 108-95-2  | Phenol.....                                                       |                    | 6/1/87         | 6/1/97      |
| 109-87-5  | Methane, dimethoxy.....                                           |                    | 6/1/87         | 6/1/97      |
| 109-89-7  | Ethanamine, N-ethyl.....                                          |                    | 6/1/87         | 6/1/97      |
| 111-89-3  | Hexanedinitrile.....                                              |                    | 6/1/87         | 6/1/97      |
| 111-92-2  | 1-Butanamine, N-butyl.....                                        |                    | 6/1/87         | 6/1/97      |
| 120-12-7  | Anthracene.....                                                   |                    | 6/1/87         | 6/1/97      |
| 121-44-8  | Ethanamine, N,N-diethyl.....                                      |                    | 6/1/87         | 6/1/97      |
| 121-47-1  | Benzenesulfonic acid, 3-amino.....                                |                    | 6/1/87         | 6/1/97      |
| 122-66-7  | Hydrazine, 1,2-diphenyl.....                                      |                    | 6/1/87         | 6/1/97      |
| 123-61-5  | Benzene, 1,3-diisocyanato.....                                    |                    | 6/1/87         | 6/1/97      |
| 124-48-1  | Methane, dibromochloro.....                                       |                    | 6/1/87         | 6/1/97      |
| 127-18-4  | Ethane, tetrachloro.....                                          |                    | 6/1/87         | 6/1/97      |
| 129-00-0  | Pyrene.....                                                       |                    | 6/1/87         | 6/1/97      |
| 135-98-8  | Benzene, (1-methylpropyl).....                                    |                    | 6/1/87         | 6/1/97      |
| 137-26-8  | Thioperoxydicarbonic diamide, tetramethyl.....                    |                    | 6/1/87         | 6/1/97      |
| 139-25-3  | Benzene, 1,1'-methylenebis[4-isocyanato-3-methyl].....            |                    | 6/1/87         | 6/1/97      |
| 472-41-3  | Phenol, 4-(3,4-dihydro-2,2,4-trimethyl-2H-1-benzopyran-4-yl)..... |                    | 6/1/87         | 6/1/97      |
| 506-96-7  | Acetyl bromide.....                                               |                    | 6/1/87         | 6/1/97      |
| 530-50-7  | Hydrazine, 1,1-diphenyl.....                                      |                    | 6/1/87         | 6/1/97      |
| 534-07-6  | 2-Propanone, 1,3-dichloro.....                                    |                    | 6/1/87         | 6/1/97      |
| 540-54-5  | Propane, 1-chloro.....                                            |                    | 6/1/87         | 6/1/97      |
| 540-84-1  | Pentane, 2,2,4-trimethyl.....                                     |                    | 6/1/87         | 6/1/97      |
| 542-75-6  | 1-Propene, 1,3-dichloro.....                                      |                    | 6/1/87         | 6/1/97      |
| 580-51-8  | [1,1'-Biphenyl]-3-ol.....                                         |                    | 6/1/87         | 6/1/97      |
| 584-84-9  | Benzene, 2,4-diisocyanato-1-methyl.....                           |                    | 6/1/87         | 6/1/97      |
| 598-21-0  | Acetyl bromide, bromo.....                                        |                    | 6/1/87         | 6/1/97      |
| 630-20-6  | Ethane, 1,1,1,2-tetrachloro.....                                  |                    | 6/1/87         | 6/1/97      |
| 685-91-6  | Acetamide, N,N-diethyl.....                                       |                    | 6/1/87         | 6/1/97      |
| 812-03-3  | Propane, 1,1,1,2-tetrachloro.....                                 |                    | 6/1/87         | 6/1/97      |
| 822-06-0  | Hexane, 1,6-diisocyanato.....                                     |                    | 6/1/87         | 6/1/97      |
| 828-00-2  | 1,3-Dioxan-4-ol, 2,6-dimethyl, acetate.....                       |                    | 6/1/87         | 6/1/97      |
| 1070-78-6 | Propane, 1,1,1,3-tetrachloro.....                                 |                    | 6/1/87         | 6/1/97      |
| 1208-52-2 | Benzenamine, 2-[(4-aminophenyl)methyl].....                       |                    | 6/1/87         | 6/1/97      |
| 1300-71-6 | Phenol, dimethyl.....                                             |                    | 6/1/87         | 6/1/97      |
| 1321-38-6 | Benzene, diisocyanatomethyl- (unspecified isomer).....            |                    | 6/1/87         | 6/1/97      |
| 1331-47-1 | [1,1'-Biphenyl]-4,4'-diamino, dichloro.....                       |                    | 6/1/87         | 6/1/97      |
| 2538-05-2 | Benzene, 1,1'-methylenebis[2-isocyanato].....                     |                    | 6/1/87         | 6/1/97      |
| 2556-36-7 | Cyclohexane, 1,4-diisocyanato.....                                |                    | 6/1/87         | 6/1/97      |

| CAS No.    | Chemical name                                                   | Special exemptions | Effective date | Sunset date |
|------------|-----------------------------------------------------------------|--------------------|----------------|-------------|
| 2778-42-9  | Benzene, 1,3-bis(1-isocyanato-1-methylethyl)-                   |                    | 6/1/87         | 6/1/97      |
| 3173-72-6  | Naphthalene, 1,5-diisocyanato-                                  |                    | 6/1/87         | 6/1/97      |
| 3296-90-0  | 1,3-Propanediol, 2,2-bis(bromoethyl)-                           |                    | 6/1/87         | 6/1/97      |
| 4098-71-9  | Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl- |                    | 6/1/87         | 6/1/97      |
| 5124-30-1  | Cyclohexane, 1,1'-methylenebis[4-isocyanato-                    |                    | 6/1/87         | 6/1/97      |
| 5873-54-1  | Benzene, 1-isocyanato-2-[(4-isocyanatophenyl) methyl]-          |                    | 6/1/87         | 6/1/97      |
| 7440-28-0  | Thallium                                                        |                    | 6/1/87         | 6/1/97      |
| 7440-48-4  | Cobalt                                                          |                    | 6/1/87         | 6/1/97      |
| 9016-87-9  | Isocyanic acid, polymethylenepolyphenylene ester                |                    | 6/1/87         | 6/1/97      |
| 10347-54-3 | Cyclohexane, 1,4-bis(isocyanatomethyl)-                         |                    | 6/1/87         | 6/1/97      |
| 10436-39-2 | 1-Propene, 1,1,2,3-tetrachloro-                                 |                    | 6/1/87         | 6/1/97      |
| 12001-85-3 | Naphthenic acids, zinc salts                                    |                    | 6/1/87         | 6/1/97      |
| 15646-96-5 | Hexane, 1,6-diisocyanato-2,4,4-trimethyl-                       |                    | 6/1/87         | 6/1/97      |
| 16938-22-0 | Hexane, 1,6-diisocyanato-2,2,4-trimethyl-                       |                    | 6/1/87         | 6/1/97      |
| 18495-30-2 | Propane, 1,1,2,3-tetrachloro-                                   |                    | 6/1/87         | 6/1/97      |
| 19660-16-3 | 2-Propenoic acid, 2,3-dibromopropyl ester                       |                    | 6/1/87         | 6/1/97      |
| 26447-40-5 | Benzene, 1,1'-methylenebis(isocyanato-                          |                    | 6/1/87         | 6/1/97      |
| 26471-62-5 | Benzene, 1,3-diisocyanatomethyl-                                |                    | 6/1/87         | 6/1/97      |
| 26530-20-1 | 3(2H)-isothiazolone, 2-octyl-                                   |                    | 6/1/87         | 6/1/97      |
| 26952-23-8 | 1-Propene, dichloro-                                            |                    | 6/1/87         | 6/1/97      |
| 32052-51-0 | Isocyanic acid, trimethylcyclohexyl ester                       |                    | 6/1/87         | 6/1/97      |
| 38661-72-2 | Cyclohexane, 1,3-bis(isocyanatomethyl)-                         |                    | 6/1/87         | 6/1/97      |
| 75790-84-0 | Benzene, 2-isocyanato-4-[(4-isocyanatophenyl) methyl]-1-methyl- |                    | 6/1/87         | 6/1/97      |
| 75790-87-3 | Benzene, 1-isocyanato-2-[(4-isocyanatophenyl) thio]-            |                    | 6/1/87         | 6/1/97      |

(2) \* \* \*

| Chemical name                                                  | CAS number | Special exemptions | Effective date | Sunset date |
|----------------------------------------------------------------|------------|--------------------|----------------|-------------|
| Acetamide, <i>N,N</i> -diethyl-                                | 685-91-6   |                    | 6/1/87         | 6/1/97      |
| Acetyl bromide                                                 | 506-96-7   |                    | 6/1/87         | 6/1/97      |
| Acetyl bromide, bromo-                                         | 598-21-0   |                    | 6/1/87         | 6/1/97      |
| Anthracene                                                     | 120-12-7   |                    | 6/1/87         | 6/1/97      |
| 2H-Azepin-2-one, hexahydro-                                    | 105-60-2   |                    | 6/1/87         | 6/1/97      |
| Benzenamine, 2-[(4-aminophenyl)methyl]-                        | 1208-52-2  |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,3-bis(1-isocyanato-1-methylethyl)-                  | 2778-42-9  |                    | 6/1/87         | 6/1/97      |
| Benzene, bromo-                                                | 108-86-1   |                    | 6/1/87         | 6/1/97      |
| Benzene, butyl-                                                | 104-51-8   |                    | 6/1/87         | 6/1/97      |
| Benzene, 1-chloro-4-methyl-                                    | 106-43-4   |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,3-diisocyanato-                                     | 123-61-5   |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,4-diisocyanato-                                     | 104-49-4   |                    | 6/1/87         | 6/1/97      |
| Benzene, diisocyanatomethyl-(unspecified isomer)               | 1321-38-6  |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,3-diisocyanatomethyl-                               | 26471-62-5 |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,3-diisocyanato-2-methyl-                            | 91-08-7    |                    | 6/1/87         | 6/1/97      |
| Benzene, 2,4-diisocyanato-1-methyl-                            | 584-84-9   |                    | 6/1/87         | 6/1/97      |
| Benzene, (1,1-dimethylethyl)-                                  | 98-06-6    |                    | 6/1/87         | 6/1/97      |
| Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)methyl]-          | 5873-54-1  |                    | 6/1/87         | 6/1/97      |
| Benzene, 2-isocyanato-4-[(4-isocyanatophenyl)methyl]-1-methyl- | 75790-84-0 |                    | 6/1/87         | 6/1/97      |
| Benzene, 1-isocyanato-2-[(4-isocyanatophenyl)thio]-            | 75790-87-3 |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,1'-methylenebis(isocyanato-                         | 26447-40-5 |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,1'-methylenebis[2-isocyanato-                       | 2538-05-2  |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,1'-methylenebis[4-isocyanato-                       | 101-68-8   |                    | 6/1/87         | 6/1/97      |
| Benzene, 1,1'-methylenebis[4-isocyanato-3-methyl-              | 139-25-3   |                    | 6/1/87         | 6/1/97      |
| Benzene, (1-methylethyl)-                                      | 98-83-9    |                    | 6/1/87         | 6/1/97      |
| Benzene, 1-methyl-4-(1-methylethyl)-                           | 99-87-6    |                    | 6/1/87         | 6/1/97      |
| Benzene, (1-methylpropyl)-                                     | 135-98-8   |                    | 6/1/87         | 6/1/97      |
| Benzenesulfonic acid, 3-amino-                                 | 121-47-1   |                    | 6/1/87         | 6/1/97      |
| [1,1'-Bicyclohexyl]-2-one                                      | 90-42-6    |                    | 6/1/87         | 6/1/97      |
| [1,1'-Biphenyl]-4,4'-diamine                                   | 92-87-5    |                    | 6/1/87         | 6/1/97      |
| [1,1'-Biphenyl]-4,4'-diamino, dichloro-                        | 1331-47-1  |                    | 6/1/87         | 6/1/97      |
| 1,1'-Biphenyl, 4,4'-diisocyanato-3,3'-dimethyl-                | 91-97-4    |                    | 6/1/87         | 6/1/97      |

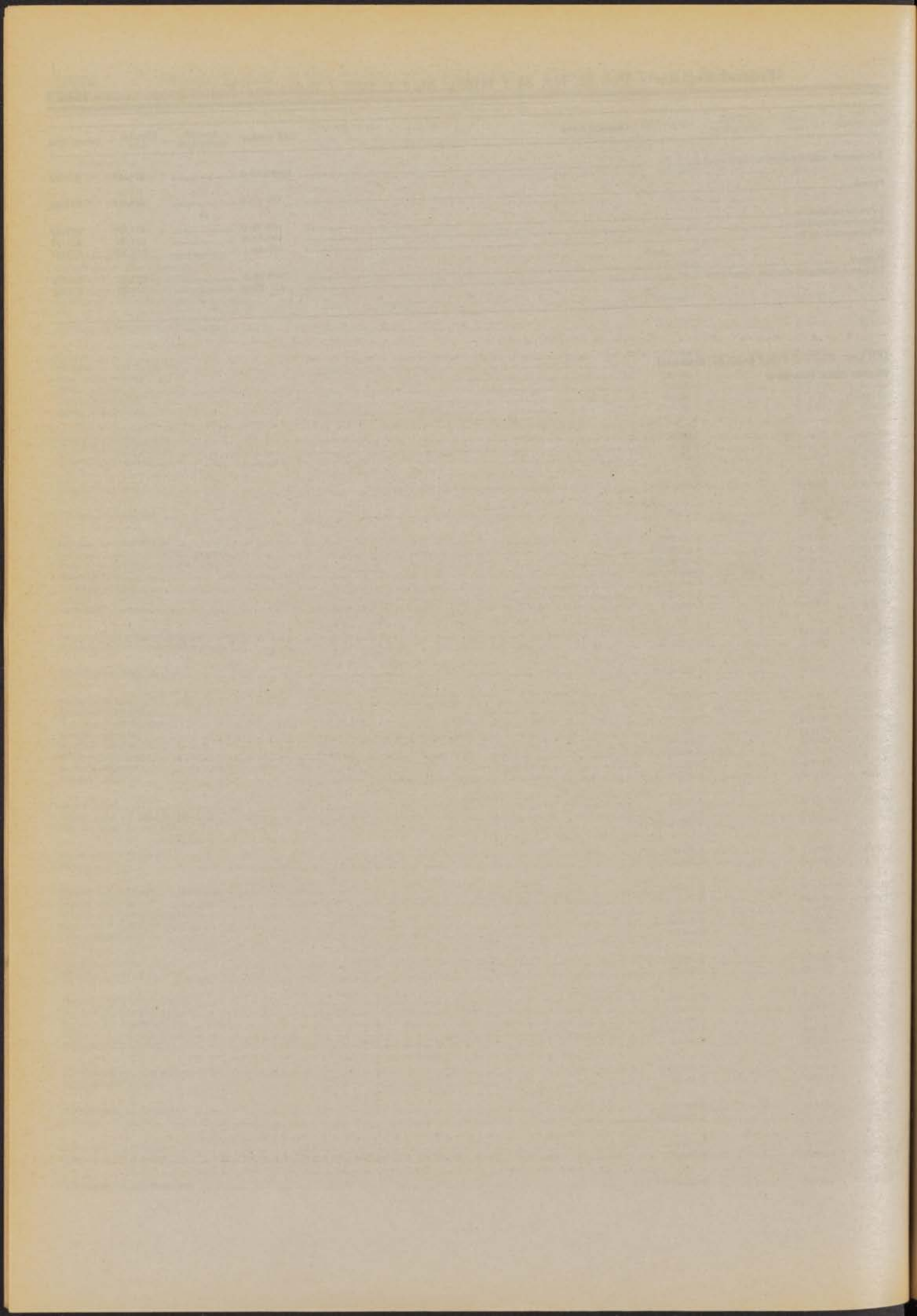
| Chemical name                                                              | CAS number | Special exemptions | Effective date | Sunset date |
|----------------------------------------------------------------------------|------------|--------------------|----------------|-------------|
| [1,1'-Biphenyl]-3-ol.....                                                  | 580-51-8   | 6/1/87             | 6/1/87         | 6/1/97      |
| [1,1'-Biphenyl]-4-ol.....                                                  | 92-69-3    |                    | 6/1/87         | 6/1/97      |
| 1-Butanamine, <i>N</i> -butyl.....                                         | 111-92-2   |                    | 6/1/87         | 6/1/97      |
| Cobalt.....                                                                | 7440-48-04 |                    | 6/1/87         | 6/1/97      |
| Cyclohexane, 1,3-bis(isocyanatomethyl).....                                | 38661-72-2 |                    | 6/1/87         | 6/1/97      |
| Cyclohexane, 1,4-bis(isocyanatomethyl).....                                | 10347-54-3 |                    | 6/1/87         | 6/1/97      |
| Cyclohexane, 1,4-diisocyanato.....                                         | 2556-36-7  |                    | 6/1/87         | 6/1/97      |
| Cyclohexane, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl.....        | 4098-71-9  |                    | 6/1/87         | 6/1/97      |
| Cyclohexane, 1,1'-methylenebis[4-isocyanato.....                           | 5124-30-1  |                    | 6/1/87         | 6/1/97      |
| 1,3-Dioxan-4-ol, 2,6-dimethyl-, acetate.....                               | 828-00-2   |                    | 6/1/87         | 6/1/97      |
| Ethanamine.....                                                            | 75-04-7    |                    | 6/1/87         | 6/1/97      |
| Ethanamine, <i>N,N</i> -diethyl.....                                       | 121-44-8   |                    | 6/1/87         | 6/1/97      |
| Ethanamine, <i>N</i> -ethyl.....                                           | 109-89-7   |                    | 6/1/87         | 6/1/97      |
| Ethane, chloro.....                                                        | 75-00-3    |                    | 6/1/87         | 6/1/97      |
| Ethane, 1,1-dichloro.....                                                  | 75-34-3    |                    | 6/1/87         | 6/1/97      |
| Ethane, 1,2-dichloro.....                                                  | 107-06-2   |                    | 6/1/87         | 6/1/97      |
| Ethane, 1,1,1,2-tetrachloro.....                                           | 830-20-6   |                    | 6/1/87         | 6/1/97      |
| Ethane, 1,1,2,2-tetrachloro.....                                           | 79-34-5    |                    | 6/1/87         | 6/1/97      |
| Ethane, 1,1,2-trichloro.....                                               | 79-00-5    |                    | 6/1/87         | 6/1/97      |
| Ethane, tetrachloro.....                                                   | 127-18-4   |                    | 6/1/87         | 6/1/97      |
| 2-Furancarboxaldehyde.....                                                 | 98-01-1    |                    | 6/1/87         | 6/1/97      |
| Hexane, 1,6-diisocyanato.....                                              | 822-06-0   |                    | 6/1/87         | 6/1/97      |
| Hexane, 1,6-diisocyanato-2,2,4-trimethyl.....                              | 16938-22-0 |                    | 6/1/87         | 6/1/97      |
| Hexane, 1,6-diisocyanato-2,4,4-trimethyl.....                              | 15646-96-5 |                    | 6/1/87         | 6/1/97      |
| Hexanedinitrile.....                                                       | 111-69-3   |                    | 6/1/87         | 6/1/97      |
| 1-Hexanol, 2-ethyl.....                                                    | 104-76-7   |                    | 6/1/87         | 6/1/97      |
| Hydrazine, 1,1-diphenyl.....                                               | 530-50-7   |                    | 6/1/87         | 6/1/97      |
| Hydrazine, 1,2-diphenyl.....                                               | 122-66-7   |                    | 6/1/87         | 6/1/97      |
| Isocyanic acid, polymethylene polyphenylene ester.....                     | 9016-87-9  |                    | 6/1/87         | 6/1/97      |
| Isocyanic acid, trimethylcyclohexylester.....                              | 32052-51-0 |                    | 6/1/87         | 6/1/97      |
| 3(2 <i>H</i> )-Isothiazolone, 2-octyl.....                                 | 26530-20-1 |                    | 6/1/87         | 6/1/97      |
| Methane, bromo.....                                                        | 74-83-9    |                    | 6/1/87         | 6/1/97      |
| Methane, bromochloro.....                                                  | 74-97-5    |                    | 6/1/87         | 6/1/97      |
| Methane, bromodichloro.....                                                | 75-27-4    |                    | 6/1/87         | 6/1/97      |
| Methane, dibromo.....                                                      | 74-95-3    |                    | 6/1/87         | 6/1/97      |
| Methane, dibromochloro.....                                                | 124-48-1   |                    | 6/1/87         | 6/1/97      |
| Methane, dimethoxy.....                                                    | 109-87-5   |                    | 6/1/87         | 6/1/97      |
| Methane, tribromo.....                                                     | 75-25-2    |                    | 6/1/87         | 6/1/97      |
| Methane, trichloro.....                                                    | 67-66-3    |                    | 6/1/87         | 6/1/97      |
| Naphthalene.....                                                           | 91-20-3    |                    | 6/1/87         | 6/1/97      |
| Naphthalene, 1,5-diisocyanato.....                                         | 3173-72-6  |                    | 6/1/87         | 6/1/97      |
| Naphthenic acids, zinc salts.....                                          | 12001-85-3 |                    | 6/1/87         | 6/1/97      |
| Pentane, 2,2,4-trimethyl.....                                              | 540-84-1   |                    | 6/1/87         | 6/1/97      |
| Phenol.....                                                                | 108-95-2   |                    | 6/1/87         | 6/1/97      |
| Phenol, 4-(3,4-dihydro-2,2,4-trimethyl-2 <i>H</i> -1-benzopyran-4-yl)..... | 472-41-3   |                    | 6/1/87         | 6/1/97      |
| Phenol, dimethyl.....                                                      | 1300-71-6  |                    | 6/1/87         | 6/1/97      |
| Phenol, 2,2'-methylenebis[4-chloro.....                                    | 97-23-4    |                    | 6/1/87         | 6/1/97      |
| Phenol, 2,2'-thiobis[4,6-dichloro.....                                     | 97-18-7    |                    | 6/1/87         | 6/1/97      |
| 10 <i>H</i> -Phenothiazine.....                                            | 92-84-2    |                    | 6/1/87         | 6/1/97      |
| Propane, 1-chloro.....                                                     | 540-54-5   |                    | 6/1/87         | 6/1/97      |
| Propane, 2-chloro.....                                                     | 75-29-6    |                    | 6/1/87         | 6/1/97      |
| Propane, 2,2'-oxybis[1-chloro.....                                         | 108-60-1   |                    | 6/1/87         | 6/1/97      |
| Propane, 1,1,1,2-tetrachloro.....                                          | 812-03-3   |                    | 6/1/87         | 6/1/97      |
| Propene, 1,1,1,3-tetrachloro.....                                          | 1070-78-6  |                    | 6/1/87         | 6/1/97      |
| Propene, 1,1,2,3-tetrachloro.....                                          | 18495-30-2 |                    | 6/1/87         | 6/1/97      |
| Propene, 1,2,3-trichloro.....                                              | 96-18-4    |                    | 6/1/87         | 6/1/97      |
| 1,3-Propanediol, 2,2-bis(bromoethyl).....                                  | 3286-90-0  |                    | 6/1/87         | 6/1/97      |
| Propanenitrile, 2-hydroxy.....                                             | 78-97-7    |                    | 6/1/87         | 6/1/97      |
| 2-Propanone, 1,3-dichloro.....                                             | 534-07-6   |                    | 6/1/87         | 6/1/97      |
| 1-Propene, dichloro.....                                                   | 26952-23-8 |                    | 6/1/87         | 6/1/97      |
| 1-Propene, 1,3-dichloro.....                                               | 542-75-6   |                    | 6/1/87         | 6/1/97      |
| 1-Propene, 2,3-dichloro.....                                               | 78-88-6    |                    | 6/1/87         | 6/1/97      |
| 1-Propene, 1,1,2,3-tetrachloro.....                                        | 10436-39-2 |                    | 6/1/87         | 6/1/97      |

| Chemical name                                  | CAS number | Special exemptions | Effective date | Sunset date |
|------------------------------------------------|------------|--------------------|----------------|-------------|
| 2-Propenoic acid, 2,3-dibromopropyl ester..... | 19660-16-3 |                    | 6/1/87         | 6/1/97      |
| Pyrene.....                                    | 129-00-0   |                    | 6/1/87         | 6/1/97      |
| 2-Pyridinecarbonitrile.....                    | 100-70-9   |                    | 6/1/87         | 6/1/97      |
| 3-Pyridinecarbonitrile.....                    | 100-54-9   |                    | 6/1/87         | 6/1/97      |
| 4-Pyridinecarbonitrile.....                    | 100-48-1   |                    | 6/1/87         | 6/1/97      |
| Thallium.....                                  | 7440-28-0  |                    | 6/1/87         | 6/1/97      |
| Thioperoxydicarbonic diamide, tetramethyl..... | 137-26-8   |                    | 6/1/87         | 6/1/97      |

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[FR Doc. 87-7747 Filed 4-30-87; 8:45 am]

BILLING CODE 6560-50-M



# Federal Register

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Friday  
May 1, 1987

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## Part III

### Office of Personnel Management

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48 CFR Ch. 16

Federal Employees Health Benefits  
Acquisition Regulation; Final Rule

# OFFICE OF PERSONNEL MANAGEMENT

## 48 CFR Ch. 16

### Federal Employees Health Benefits Acquisition Regulation

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a regulation to implement and supplement the Federal Acquisition Regulation (FAR) for the Federal Employees Health Benefits (FEHB) Program. This regulation identifies basic and significant acquisition policies unique to the FEHB Program. The regulation is referred to as the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). For the most part, these policies were contained in the Office of Personnel Management Procurement Regulation (OPMPR) (41 CFR Chapter 16).

**EFFECTIVE DATE:** January 1, 1987, and to be applied to the 1987 FEHB contracts.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Mercer, (202) 632-4634.

**SUPPLEMENTARY INFORMATION:** On July 30, 1986, OPM published a proposed regulation in the *Federal Register* (51 FR 27384) that describes the method by which OPM will implement and supplement the FAR for the specific purpose of acquiring and administering contracts with health insurance carriers in the FEHB Program. The FAR system consists of those Governmentwide acquisition regulations in 48 CFR Chapter 1 and agency acquisition regulations in subsequent chapters issued by individual agencies.

OPM received comments from 16 FEHB Program carriers, 3 health benefits underwriters, 2 associations representing Federal health organizations, and 1 law firm. The commenters offered a number of suggestions concerning specific provisions of the FEHBAR. These comments are treated below with explanations as to why they were or were not adopted.

#### Effective Date

A number of commenters questioned the effective date of the FEHBAR and two suggested that OPM delay its implementation until the 1988 contract year so that it would be in place during contract negotiations.

The FAR, as supplemented by the FEHBAR, applies beginning with contracts covering calendar year 1987. We understand the reason for the

comments in favor of an effective date prior to the beginning of contract negotiations. Nevertheless, to maintain continuity of those contract policies established under OPM's previous procurement regulation, the OPMPR, that lapsed December 31, 1985, we must have the FEHBAR in place for the 1987 contract year. For the 1986 contract year only, the entire FAR applies. Further, the FEHB carriers have been aware since July 1986 that OPM intends to apply the FEHBAR to the 1987 contracts and have had sufficient time to prepare for its application. We will apply some flexibility in certain administrative requirements in cases where a carrier can show it will be unduly harmed by the application of the FEHBAR in the 1987 contract year. In addition, those Parts dealing with contract negotiation would not be applicable until the 1988 rate negotiations.

#### Applicable and Irrelevant Provisions

Four commenters noted the format change from that of the OPMPR. These groups favor the OPMPR format, which cited applicable provisions, over that of the proposed FEHBAR, which does not cite the applicable provisions.

The entire FAR applies to all Federal Government contracts, even though some provisions of the FAR have no immediate practical applicability to certain types of contracts. According to the FAR-prescribed format, agency regulations must be limited to those necessary to implement FAR policies and procedures and to supplement the FAR according to the specific needs of the agency. Further, agency regulations may not unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR. Following these guidelines, the FEHBAR does not address FAR sections that are clearly applicable. Yet, it provides supplementary information where necessary to conform to the FEHB Program. Where the FAR has no practical applicability to the FEHB contracts but OPM believes this fact may be unclear, the FEHBAR makes specific notation, along with the authority for the determination of nonapplicability. Portions that are clearly irrelevant are not addressed in the FEHBAR.

The required FAR and FEHBAR contract clauses denote the most significant actions required of carriers for satisfying FAR requirements. Carriers and/or underwriters should refer to these clauses as guides in applying the FAR. When a carrier or underwriter has a particular concern, that concern should be presented in

writing to the contracting officer for clarification.

#### Definitions

A number of carriers suggested that OPM define some of the terms used in the regulation. Of particular concern are the definitions of "subcontractor" and those having to do with community rating. The carriers suggested that some or all of the definitions in the OPMPR be incorporated into the FEHBAR to make clear what OPM intends by those terms. The regulation now includes definitions of terms that have specific application to the FEHB Program. More general terms are defined in the FAR.

#### Advertising (1603.70)

Two carriers believe that advertising should be an allowable charge against FEHB contracts because OPM provides insufficient information to Federal employees to enable them to select the best plan for their needs. We disagree. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements because we believe that the benefits comparison booklet and benefits brochures made available to Federal employees provide them with sufficient information to make an informed choice. While we have made some clarifying changes to this section of the FEHBAR, we have not eliminated the restriction on advertising costs.

One carrier commented that FEHBAR 1603.701(b) could lead to the inference that carriers are obliged to ensure that individuals purchase coverage suited to their needs, when OPM has always placed that burden on the individual subscribers. We have adopted the language suggested by the carrier that accurate advertising is required "so that individuals can exercise an informed choice."

The same carrier suggested that union-sponsored plans be required to include the cost of associate membership entitling individuals to join the organization's health plan as part of their rate so that subscribers are not misled about the actual cost of the plan. We have not adopted the suggestion because associate membership dues are not part of the contract and OPM has no role in their determination.

Three commenters objected to OPM's restrictions on advertising. They believe that OPM should allow general comparisons in carrier advertising and that OPM should permit the message to suggest contacting the plan for information. We disagree with the commenters that carriers should be allowed to depict portions of the OPM

comparison charts in advertisements and that OPM should allow the message to suggest contacting the plan. However, we have adopted language at 1603.702(e) that permits the plan to advertise its enrollment code and advise the viewer to contact his or her personnel office to enroll.

One carrier commented that OPM should enforce "cease and desist" orders that would enable OPM to respond quickly to obvious violations during open season. When we learn of violations of our advertising policy, we will determine the action necessary to meet the particular circumstances.

The carrier also suggested that 1603.701(d) be clarified to state that it is not intended to grant a new cause of action to subscribers to sue carriers for misleading advertising. The intent of this section was not to grant any new cause of action to subscribers to sue carriers. However, OPM has no authority to bar a subscriber from suing a carrier for any reason.

Another carrier suggested that FEHBAR 1603.702 be changed to apply only to advertising directed to Federal employees. Although such clarification in the FEHBAR should not be necessary since the FEHBAR applies only to matters within the scope of the FEHBP, we have made some clarifying changes.

Five commenters were concerned that proposed FEHBAR 1603.702(a)(2) may be a violation of the freedom of speech granted by the Constitution. These concerns are valid and we have removed the provision.

Three commenters wanted clarification of the term "subcontractor" used in the clause required by 1603.703. We have, therefore, added the definition of "subcontractor" to 1602.170 to clear up any questions that may arise.

#### Contractor Records Retention (1604.7)

Three commenters objected to the new records retention provisions contained in the FEHBAR that call for a carrier's retaining records until OPM makes an audit or until the contracting officer agrees to make alternative arrangements as to costs without an audit. The commenters suggested reverting to the OPMR requirement of 3 years for claim records and 5 years for administrative expense records.

We understand the respondents' concerns. Consequently, we have agreed to revert to the OPMR requirement. The section has been changed accordingly.

#### Price Negotiation (1615.8)

These comments also relate to 1652.215-70 (Price Reduction for Defective Certificate of Community

Rating) and 1652.216-70 (Accounting and Price Adjustment).

Seven community rated carriers believe that the terms "community rate" and "true community rate" should be defined. Others suggested that OPM define "adjusted community rate." The final FEHBAR contains a definition of "community rate." References to "true" and "adjusted" community rate have been deleted.

One carrier questioned whether OPM recognized community rating by class. The definition of "community rate" now in the FEHBAR allows OPM to consider variations reflecting prospective rating methodologies that OPM approves in advance. Any variation will be at the sole discretion of OPM and will be based on data and methodology presented by the plan. The data and methodology must, in the judgment of OPM, predict differences in the use of health services and be in keeping with the spirit of one rate for the same level of benefits during the same contract period. Any carrier using a methodology which OPM does not deem to comply with community rating will be required to experience rate the contract and follow all of the requirements of experience rating.

We have not adopted the definition of community rating defined by the Health Care Finance Administration (HCFA) of the Department of Health and Human Services, as suggested by some respondents, because HCFA regulations provide broad rate selection guidelines for the Health Maintenance Organizations (HMO) industry for the sole purpose of determining plan qualification. OPM, on the other hand, contracts as an employer for health benefits on behalf of Federal employees under the FEHB law. In this capacity, OPM has a responsibility to establish criteria that it believes to be in the best interest of FEHB subscribers.

Three plans believe that the Certificate of Community Rating is unnecessary in view of the fact that community rates are filed with the Department of Insurance in the various States. This certificate is necessary because not all plans operate in States that require Insurance Department approval. Further, the Certificate provides OPM with a basis for adjusting rates which are found inconsistent with OPM community rating requirements.

#### Profit (1615.9)

General. Some community rated prepaid plans commented that the profit factors are sound in principle but vague and subjective and suggested that they should be translated into a formula that can be applied evenhandedly. These

plans should note that the service charge factors apply only to contracts based on cost analysis. OPM wants to guarantee that the contracting officer has sufficient latitude in determining an appropriate service charge for each experience rated plan. By definition, a "formula" approach would reduce, or virtually eliminate, such latitude.

Other commenters are concerned that the service charge factors do not guarantee a minimum profit for FEHBP contracts. The commenters stated that, inasmuch as carriers could receive no profit or a minimum profit, the factors and weights proposed are not reasonable and ignore explicit Federal procurement policy.

We are not aware of any Federal policy governing acquisition contracts that mandate a profit. The FAR states that the profit prenegotiation objectives represent that element of the total remuneration that contractors may receive for contract performance over and above allowable costs (FAR 15.901). The FAR also states that it is in the Government's interest to offer contractors opportunities for financial rewards. It does not state that the contractor should receive a profit when it fails to meet the basic criteria outlined in the structured approach. In response to these comments, however, we have reconsidered the weight ranges for contractor performance and cost control and have increased the maximum weight ranges for these two factors by .05.

Three commenters believed that the contractor performance factor undervalues contractor effort. They believed that OPM-mandated cost containment efforts increase contractor effort and should, therefore, be reflected in this factor. We continue to hold that contractors who merely perform tasks required and implement features directed by OPM will receive a minimum weight. Nevertheless, we agree that cost control measures mandated by OPM, such as coinsurance and hospice care, should not be considered in the cost control factor. Consequently, we have amended the cost control factor and have revised the factor's minimum weight from -.1 to 0. To offset this increase, we have revised the minimum weight under contractor effort from -.1 to -.2. This offset allows a greater reduction for an inadequate response to OPM-mandated features on the part of the carriers.

The carriers suggested that OPM adopt a definition of a disputed claim that takes into account plan design features that generate a higher volume, but no more valid, disputed claims. We

believe that our description of a disputed claim and revised administrative procedures published under the FEHB Program (5 CFR Part 890) in the Federal Register on May 21, 1986, (51 FR 18562) are adequate. The carriers may be confused about the application of the volume of disputed claims to the contractor performance factor. OPM does not discount plan performance solely on the basis of the number of disputed claims received. However, OPM's determination that the plan is not effectively processing claims would be a cause to reduce the service charge.

The carriers also believed that plan enrollment should make up a lesser percentage of the total contract cost factor. We believe that the percentage split between the enrollment factor and other factors represents the most effective way to illustrate and determine the enrollment portion of cost risk to be considered for individual carriers.

The same three commenters also believed that, while the loss carry forward basis of experience rated group insurance practices can limit the amount of contractor risk, the concept is limited in the FEHBP. The carriers contended that the competitive environment of the FEHBP precludes make-up of high losses in a single year. We recognize that, under experience rating, losses may not be made up within 1 year, and we take this fact into consideration. However, we believe that this is one facet of risk that must be considered during contract negotiations.

One carrier objected to a weight range that minimizes the cost risk associated with underwriting FEHBP contracts and conversion contracts. We believe the adverse experience is lessened because gains and losses under experience rated plans are carried forward into future years. Further, the FEHBP does not prevent carriers from raising premiums for converted contracts to cover possible added risk.

We believe that the proposed factors are adequate. The guidelines are not intended to increase the general level of profits currently being awarded under the contracts. They are intended to give structure to the process of determining the service charge and to provide justification and documentation of the profits paid.

#### Cost Principles (1631)

**FEHBP credits (1631.201-701).** This FEHBP provision, derived from FAR 31.201-5, requires the applicable portion of any income, rebate, allowance, or other credits resulting from benefit payments (including erroneous benefit payments) received by or accruing to the

carrier to be credited to the Government. One carrier cited a conflict between this provision and its State law that requires payment to it for uncashed and returned checks made by health care contractors. The carrier should be aware, however, that the FEHB law preempts State law in matters pertaining to the nature or extent of coverage or benefits (including payments with respect to benefits) (5 U.S.C. 8902(m)(1)). The same carrier was also concerned that this provision includes unrecovered amounts due to erroneous benefit payments. This provision pertains only to actual receipt of income, rebates, refunds, allowances, etc.

**Contracts with commercial organizations (1631.203-70).** Two commenters questioned OPM's limiting this FAR requirement to the allocation of general and administrative (G&A) costs. They suggested that the requirement should be applied to the allocation of all home office indirect costs. It was not our intention to restrict the application of this section to G&A expenses. We have clarified this provision by stating that the FAR provision applies to the allocation of indirect costs.

**Advertising (1631.205-70).** Three carriers objected to the requirement for OPM approval of advertising messages. We reserve the right to approve media messages that are not directed at advising current FEHBP subscribers on how to obtain benefits. However, we have clarified 1631.205-70(b)(3) to require contracting officer approval of the total dollar amount of only those carrier messages that are to be charged to the FEHBP.

**Interest expense (1631.205-73).** Four respondents suggested that this provision be modified to provide that borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio, and not solely to the positive balance of the carrier's FEHBP Special Reserve. We agree and have amended the paragraph as suggested.

Two carriers questioned why the service charge risk factor will be adjusted downward if interest expenses are allowed. The carriers stated that the FEHBP contract cost risk factor does not include interest costs and suggest that the risk factor include a statement that it includes a consideration of the extent of financial assistance the carrier renders to the contract. In the treatment of interest, OPM does not want to allow credit for interest in the risk portion of the service charge if it agrees to recover interest under 1631.205-73. We agree with the carriers' comments and have clarified the contract cost risk factor.

**FEHBP professional and consultant service costs (proposed FEHBP 1631.205-75).** One carrier objected to the disallowance of legal expenses incurred by a contractor in bringing suit against the Government to secure a right under the contract. FAR 31.205-33(d) makes unallowable the costs of prosecuting claims against the Government. An April 1986 amendment to the FAR also makes unallowable the cost of services incurred in the defense against Government claims. This is designed so that each party to the claim bears its own expense. If the contractor could charge the costs of litigation to the contract, the Government would be paying both to defend the action and to prosecute the action against itself. It would also encourage frivolous legal actions against the Government. Because FAR 31.205-33 now incorporates the principle intended by this FEHBP provision, the FEHBP provision is no longer necessary and has been deleted from the final regulation. For a more detailed explanation of the FAR change, see Federal Acquisition Circular No. 84-15 of April 9, 1986.

**Selling costs (1631.205-76).** Two carriers disagreed with the unallowability of selling costs. Selling costs have traditionally been considered unallowable in the FEHBP. OPM has long held that participating plans are not permitted to charge costs related to advertising or promoting their respective plans. Each Open Season, OPM provides all Federal employees and annuitants information that they may use to select a health plan. We believe that the publication of rates and benefits offered by each plan is sufficient notice to all interested Federal employees and annuitants. Therefore, we have modified the FAR cost principle to make unallowable commissions and/or fees paid to individuals for enrolling Federal employees and annuitants in FEHBP plans. Such costs have not been allowable in the past and it is not our intent to make them allowable as a consequence of implementing the FAR.

**Trade, business, technical, and professional activity costs (1631.205-77).** Two commenters are concerned that carriers will be required to obtain approval from OPM before joining a trade association. OPM is not requiring carriers to obtain OPM approval before joining a trade association. OPM is concerned about the benefits accruing to the FEHBP from such activities and the reasonableness and allowability of the associated costs. For most activity in this area, we believe that allocations to the FEHBP would not exceed \$1,000 and that advance approval would not be

necessary. However, to alleviate concern, we have diminished the approval level by adding a provision that approval need only be sought if the carrier allocates more than 50 percent of membership costs to the FEHBP and the amount exceeds \$1000.

*Reinsurance premiums and stop loss insurance (proposed FEHBP 1631.205-80).* Four HMOs commented that the contracting officer should not have to approve charges for reinsurance or stop loss protection because the timing of negotiations for reinsurance and stop loss insurance does not always lend itself to a subsequent sign-off by the contracting officer. We have decided to delete this provision because reinsurance and stop loss insurance are purchased primarily by community rated plans, to which the cost principles do not apply.

*Major subcontractor service charges (1631.205-81 (renumbered)).* Two carriers questioned whether this provision applies to experience rated plans and, if so, how it would be applied. The provision does apply to experience rated plans. It means that the service charge awarded the carrier is the total profit payable under the contract. A subcontractor's profit must be paid from the carrier's service charge and only the actual costs of the subcontract may be charged to the FEHBP contract. The FEHBP now contains a definition of "subcontractor" that should clarify the application of this provision to HMOs.

#### **Contract Financing Clause (1632.111)**

A number of community rated plans commented on the date premium money is paid to the carrier. FEHBP creates a payment date of 30 days after premiums are received by the FEHB Fund. The carriers contended that under insurance industry practices, payment is due in advance of the period during which the employee is eligible to receive services from the plan. Thus, the carriers argued that the due date for payment under the Federal contract is the first day of each pay period and that the date payment must be received by the plan is 30 days after the first day of the pay period.

OPM's responsibility under the Prompt Payment Act extends to only those funds over which OPM has control. Under the FEHBP, the due date for all FEHBP plans will be 30 days after premiums are received by the FEHB Fund. Nevertheless, OPM will consider adopting a rate loading for an individual plan if the plan can present a case that it will be financially harmed by the regulatory provision, and the plan charges all of its accounts a similar

loading to equalize income from alternate payment practices.

#### **Tax Credit (1632.607, 1632.617)**

FAR 32.607 requires an agency to comply with a contractor's request to recognize a tax credit in its debt collection. FEHBP has deemed this provision as having no practical application to FEHBP contracts because the FEHB Fund is comprised of contributions by enrollees as well as the Government and carriers may not offset debts to the Fund by a tax credit that is solely a Government obligation. Two commenters objected to OPM's decision.

Under the FAR provision, a contractor's debt to the contracting agency is reduced by the amount of the tax credit previously deposited in the U.S. Treasury. If this provision were to be applied to the FEHBP contracts, the carrier would deduct the amount of the tax credit from the amount it owes the FEHB Fund and the withheld money would not be available for program purposes. For this reason, we will retain the provision as set out in the proposed FEHBP.

#### **Contingency Reserve Payments (1632.770)**

One underwriter believed OPM's assertion of "sole discretion" in making "good cause" payments from the contingency reserve is ambiguous. It contended that the FEHBP could be interpreted to mean that, even when a carrier has shown good cause to OPM's satisfaction, OPM nevertheless has discretion to deny the payment of contingency funds below the preferred minimum balance. The underwriter claims that this is in conflict with OPM's reserve regulations published on March 4, 1986 (51 FR 7428).

The FEHBP does not conflict with OPM's reserve regulations. OPM retains discretion to determine "good cause" and to make payments accordingly.

#### **Non-commingling of FEHBP Funds (1632.771)**

Many community rated plans commented on non-commingling of funds. This provision does not apply to community rated plans. Because there appears to be a misunderstanding concerning the type of plans to which this provision applies, we have added a clarifying introductory statement.

One underwriter felt that the FEHBP requirement of maintaining separate accounts for FEHB Funds may conflict with State insurance laws. We recognize that the requirement to maintain separate accounts may present a burden to the underwriters. Demonstration by the underwriter that it will have extreme

difficulty harmonizing FEHB law with State law may be the basis for granting a waiver under the redesignated 1632.771(d). However, the underwriter must provide evidence satisfactory to OPM that its investment policy is sound and that the FEHBP will not suffer a detriment as a result of commingling funds.

The objective of the non-commingling provision is to prevent commingling not only of cash but also of investment funds of the carrier or underwriter. The comments we received indicate that the second objective was unclear. Consequently, we have clarified this point in the final regulation.

Further, because the proposed FEHBP was unclear about the duration of and criteria for the waiver discussed at 1632.771(c) (now 1632.771(d)), we have amended the section to provide that the non-commingling waiver will remain in effect until withdrawn by OPM. The waiver would be withdrawn if it is found that the carrier or underwriter no longer provides adequate accounting controls.

#### **Subcontracting (1644)**

The FAR definition of "subcontractor" has been adopted in the final FEHBP, with modification to exclude providers of direct medical services or supplies. It is not OPM's intention to review the records of and approve those entities. The elimination of providers from the definition of "subcontractor" enables OPM to apply the provisions of the subcontract clause (1652.244-70) to contracts based on price analysis as well as to those based on cost analysis.

The adaptation of the FAR definition called for some minor technical revisions to the FEHBP subcontracting provision and the clause required under that provision to maintain consistency with the FAR.

#### **Termination of Contracts (1649)**

One commenter questioned whether the substantive remedies portion of FAR Part 49 are applicable. The FEHBP specifically incorporates the FAR settlement procedures, but does not incorporate the procedures relating to substantive remedies.

Termination procedures for FEHBP contracts are found in the FEHBP law and regulations at 5 U.S.C. 8902(e) and 5 CFR 890.204, respectively. These provisions outline established remedies for termination, including the carrier's right to a hearing. Because these remedies are already established in FEHBP law and regulation, it is

appropriate to apply only the settlement provisions of the FAR.

#### Contract Clauses (Part 1652)

##### Clause Dates

One carrier noted that FAR clause 52.222-4 has been revised since April 1985, the clause date cited in the proposed FEHBP. The date has been revised in the final regulation. OPM expects to use the most recent FAR clauses in effect at the beginning of each contract year in the FEHBP contracts. The contracts will reflect the dates of the applicable FAR and FEHBP clauses to avoid questions concerning which version of a clause applies to any given contract.

*Officials Not To Benefit (FAR 52.203-1).* One carrier was concerned that this provision would prohibit a Member of Congress from enrolling as a subscriber in an FEHBP plan. This is not a valid concern. Congress clearly provided that Members of Congress could enroll in a plan under the FEHBP Program (5 U.S.C. 8901(1)(B)).

*Price Reduction for Defective Cost or Pricing Data (FAR 52.215-23, 52.215-25).* One carrier believes that these clauses are not applicable to community rated contracts. The clauses are required in community rated contracts to ensure that the Government recovers monies lost because of a plan's or a subcontractor's providing defective cost or pricing data. The clauses refer not only to loadings but also to the basic community rate where a plan has filed a capitation with the State but uses Federal demographic data to convert the capitation rate to a self and family rate. If the data on which the initial rate was converted is found defective, the clause provides a remedy for the Government.

*Price Reduction for Defective Certificate of Community Rating (1652.215-70).* One carrier questioned why OPM dropped its OPMPR requirement that community rated plans who failed to charge a community rate must determine a community rate or experience rate the contract. The proposed FEHBP substituted a requirement that the carrier determine a community rate or adjust its rate to one that does not exceed the lowest rate charged by the carrier to another group with similar benefits. OPM, in its experience under the OPMPR, has never encountered a community rated plan that was able to retroactively experience rate the FEHBP contract. Nevertheless, we have amended this clause to include an option for experience rating in the event a community rated plan is able to do so.

Two carriers suggested that the requirement for a community rate be replaced with a requirement that the subscription rate be "based on" a community rate. We reject this terminology as too broad for the FEHBP.

*Refunds Due the Government (1652.215-70(c)).* Two carriers were concerned that the refunds due under this paragraph would not be used to reduce future FEHBP subscription charges. The clause text is clear on this point. The preceding paragraph (1652.215-70(b)) explicitly states that one of the uses of a refund will be "to reduce future FEHBP subscription charges of the Carrier. . . ." The Government will use its discretion through negotiations with the carrier as to whether the refunds will be used to reduce future FEHBP subscription charges of the carrier, returned for deposit to the FEHBP Fund, or used to offset contingency reserve payments to the carrier.

*Investment income (1652.215-71).* One carrier stated that this clause should not be required for direct service plans regardless of the means by which the carrier determines the Federal rate. The clause does not apply to price analysis contracts. The carrier is attempting to draw a distinction between direct service plans and other types of comprehensive medical plans. We would like to point out that FEHBP Program contracts are based on two pricing mechanisms, cost analysis or price analysis, not on the provision of service.

Upon review of this clause, we believe the phrase "due consideration to the safety and liquidity of investments" needs clarification. OPM's intention is that reserves be invested in securities of appropriate risk, marketability, and maturity. As a general rule, we would expect that maturities will not exceed one year's duration and would under no circumstances exceed three years' duration.

*Accounting and Allowable Cost (1652.216-71(b)).* Four commenters objected to the provision that allowable costs chargeable to the contract for a contract period are those "determined in accordance with . . . (stated provisions) applicable on the first day of the contract period." The commenters are concerned that a cost principle change will become effective prior to the first day of a new contract period but after the conclusion of the benefits and rate negotiations for that new contract period.

Changes to cost principles generally do not have a major impact on contract costs. So long as carriers are aware of

the provisions before any costs are incurred, we see no reason for changing the FEHBP requirement. Thus, if a regulatory change occurs before the commencement of a new contract year that impacts on cost, it will be effective during the new contract year. However, if, in OPM's opinion, a change would impact on a carrier's rates for that year, consideration will be given to adjusting the effective date.

*Payment for overtime premiums (FAR 52.222-2).* One commenter believed that this clause should be deleted because FEHBP contracts are fixed-price contracts and the clause applies only to cost reimbursement contracts. We agree and have deleted the clause requirement from the FEHBP.

*Notice of significant events (1652.222-70).* One carrier objected to the requirement that notice be given of the withdrawal of State licensing, HHS qualification, or any other status under State or Federal law and suggested that the section be limited to a status that would affect the plan's qualification to provide services to Federal members. Another carrier objected to the requirement that notice be given if a carrier loses 15 percent of its overall membership. It contends that the loss of one or two large groups could result in a 15 percent loss of membership without seriously jeopardizing the financial integrity of the HMO.

This is a current contract provision that has not been changed. Elimination of these requirements automatically assumes that the occurrence of these events would not jeopardize the financial integrity of the plan. We believe that in certain circumstances the occurrence of these events may affect the plan's qualification to provide services to Federal members, and we want to retain the right to make such a determination. The carriers should note that OPM has added the addition and termination of provider agreements to this clause as events requiring notice to OPM. Because providers are not included in the definition of "subcontractor," and are, therefore, not subject to FEHBP subcontracting provisions, this addition to the significant events clause gives OPM additional control over the Comprehensive Medical Plan's ability to meet FEHBP requirements. The clause has also been modified to incorporate the provisions of FAR 52.222-1 "Notice to the Government of Labor Disputes." Thus, the requirement to include the FAR provision in FEHBP contracts is redundant and has been deleted from the FEHBP.

*Federal, State, and local taxes (FAR 52.229-3).* This FAR provision calls for an increase in price resulting from an after-imposed tax, providing the contracting officer determines that no amount for the newly imposed tax was included in the contract price, as a contingency reserve payment or otherwise. It also calls for a decrease in price resulting from an after-relieved tax.

One carrier believes that OPM should agree to pay to a carrier from the contingency reserve the amount of any tax imposed during a contract period upon the carrier which is measured by the amount of subscription charges or by a carrier's gross receipts, or any portion of either, limited to the portion of tax attributable to the contract.

We do not believe that such a provision needs to be singled out for taxes. Any changes in the community rate occurring after rate negotiations are covered under the Accounting and Price Adjustment clause, 1652.216-70(b)(2).

*Coordination of benefits (proposed FEHBP 1652.232-70).* One carrier objected to the requirement that this clause be incorporated into all contracts because many HMOs do not coordinate benefits. The carrier believes that forcing the plans to coordinate benefits solely for the Federal group will result in an increase in costs.

The coordination of benefits requirement is not new. It reflects OPM's longstanding policy, based on the National Association of Insurance Commissioners' (NAIC) guidelines, that all carriers coordinate benefits. It is contained in our health benefits brochures as the double coverage provision, and we believe that it is a valid requirement. While the clause has been revised somewhat from the proposed FEHBP, it will continue to be required in all FEHBP contracts.

Another commenter was concerned about the coordination of benefits for automobile/medical payments insurance and homeowners insurance. The NAIC guidelines followed by OPM in administering the FEHBP contracts do not suggest coordinating with individual type contracts, with the exception of no-fault automobile insurance. Consequently, we will not require coordination of benefits for automobile/medical payments insurance and homeowners insurance unless they are brought within the NAIC guidelines at some future date.

Upon review, we have determined that the section requiring the coordination of benefits clause (proposed FEHBP 1632.170) should be removed from Part 1652—"Contract Financing" and should more properly be

placed under Part 1604—"Administrative Matters." The reference may now be found at FEHBP Part 1604.

*Non-commingling of FEHBP funds (652.232-71 (renumbered)).* The comments received concerning this clause were from carriers whose premiums and subscription income are determined on the basis of community rating and whose pricing is therefore based on price analysis. We have added a statement to 1632.771 clarifying that the non-commingling of funds provisions apply only to contracts based on cost analysis.

*Government property (fixed-price contracts) (FAR 52.245-2) and limitation of liability—services (FAR 52.246-25).* One carrier questioned how this clause applies to FEHBP contracts since Government property is not a part of the contract with the carrier. On occasion, OPM has allowed FEHBP carriers to use FEHBP funds to purchase equipment through Government contracts. Under the terms of these contracts, the items purchased remain the property of the Government. Consequently these FAR requirements may apply under some circumstances.

#### OPM-Carrier Public Hearing

One plan requested that OPM schedule a public hearing prior to publication of the final regulation to discuss significant changes from prior OPM procurement policy. The FEHBP does not represent a significant departure from OPM's established procurement policy. Consequently, we do not believe a public hearing is necessary.

Numerous clarifying changes have been made to the FEHBP as a result of suggestions received pursuant to the proposed regulation. We wish to thank the commenters for their continuing interest in the FEHBP Program.

#### Waiver of 30-day Delay in Effective Date of Final Regulation

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective immediately so that it will be applicable to contracts covering calendar year 1987.

#### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

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

This regulation implements and supplements the Federal Acquisition Regulation (FAR), which has already been established for entities contracting with the Federal Government.

#### List of Subjects in 48 CFR Chapter 16

Administrative practice and procedure, Government contracts, Health insurance.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending Title 48, Code of Federal Regulations, by establishing Chapter 16 to read as follows:

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

##### SUBCHAPTER A—GENERAL

#### PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

##### Subpart 1601.1—Purpose, Authority, Issuance

###### Sec.

1601.101 Purpose.

1601.102 Authority.

1601.103 Applicability.

1601.104 Issuance.

1601.104-1 Publication and code arrangement.

1601.104-2 Arrangement of regulation.

1601.105 OMB approval under the Paperwork Reduction Act.

##### Subpart 1601.1—Purpose, Authority, Issuance

1601.301 Policy.

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

##### Subpart 1601.1—Purpose, Authority, Issuance

###### 1601.101 Purpose.

(a) This subpart establishes Chapter 16, Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation, within Title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be FEHBP.

(b) The purpose of the FEHBP is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering contracts with health insurance carriers in the Federal Employees Health Benefits Program (FEHBP).

###### 1601.102 Authority.

The FEHBP is issued by the Director of the Office of Personnel Management in accordance with the authority of 5

U.S.C. Chapter 89 and other applicable law and regulation.

#### 1601.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEHBP pursuant to 5 U.S.C. Chapter 89. The FEHBP implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEHBP.

#### 1601.104 Issuance.

##### 1601.104-1 Publication and code arrangement.

(a) The FEHBP and its subsequent changes are published in

(1) Daily issues of the *Federal Register*; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The FEHBP is issued as Chapter 16 of Title 48 of the Code of Federal Regulations.

##### 1601.104-2 Arrangement of regulation.

(a) *General.* The FEHBP conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding FEHBP part, subpart, etc. The FEHBP is to be used in conjunction with the FAR and the order for use is:

(1) FAR;

(2) FEHBP.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of Chapter 16 material that has been published in the *Federal Register* will be to Title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of Chapter 16 may be identified as "FEHBP" followed by the section number.

#### 1601.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

| Provision      | Control No. |
|----------------|-------------|
| FEHBP 1604.705 | 3206-0145   |
| FAR 9.1        | 3206-0145   |

### Subpart 1601.3—Agency Acquisition Regulation (FEHBP)

#### 1601.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBP and published in the *Federal Register*, or as deviations to the FAR in accordance with FAR Subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBP within OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBP must—

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

### PART 1602—DEFINITIONS OF WORDS AND TERMS

#### Sec.

1602.000-70 Scope of part.

#### Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.

1602.170-1 Carrier.

1602.170-2 Community rate.

1602.170-3 Comprehensive medical plan.

1602.170-4 Contractor.

1602.170-5 Director.

1602.170-6 Experience rate.

1602.170-7 FEHBP.

1602.170-8 Health benefits plan.

1602.170-9 OPM.

1602.170-10 Subcontractor.

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

#### 1602.000-70 Scope of part.

This part defines words and terms commonly used in this regulation.

### Subpart 1602.1—Definitions of FEHBP Terms

#### 1602.170 Definition of terms.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

##### 1602.170-1 Carrier.

"Carrier," as defined in 5 U.S.C. 8901(7), means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization.

##### 1602.170-2 Community rate.

"Community rate" means a rate of payment that is equivalent to that charged on the effective date to all subscriber groups of the carrier for the same contract period for the same level of health benefits. The rate of payment will be determined without regard to the differences among the subscriber groups in actual or projected utilization of health care services, except that rates may be determined for individuals and families by classes if such rates are equivalent across all subscriber groups for all individuals in the same class and for all families of similar composition in the same class. Proposed classes must be approved by OPM prior to the contract year in which their use is implemented.

##### 1602.170-3 Comprehensive medical plan.

"Comprehensive Medical Plan" means a plan as defined under 5 U.S.C. 8903(4).

##### 1602.170-4 Contractor.

"Contractor" means carrier.

##### 1602.170-5 Director.

"Director" means the Director of the Office of Personnel Management.

##### 1602.170-6 Experience rate.

"Experience rate" means a rate for a given group that is the result of that group's actual paid claims, administrative expenses, retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and trends in the economy.

**1602.170-7 FEHBP.**

"FEHBP" means the Federal Employees Health Benefits Program.

**1602.170-8 Health benefits plan.**

"Health benefits plan," as defined in 5 U.S.C. 8901(6), means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services.

**1602.170-9 OPM.**

"OPM" means the Office of Personnel Management.

**1602.170-10 Subcontractor.**

"Subcontractor" means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

**PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST****Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising**

Sec.

**1603.701 Policy.****1603.702 Additional guidelines.****1603.703 Contract clause.**

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

**Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising****1603.701 Policy.**

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to continue participation in the FEHB Program.

**1603.702 Additional guidelines.**

Any advertisements which identify a carrier's participation in the FEHB shall—

(a) Be limited to the merits of the carrier's FEHB plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHB plans is the comparison chart issued by OPM.

(b) Not use the FEHB logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as:

To sign up, fill out a Health Benefits Registration Form (Standard Form 2809) from your personnel office indicating the enrollment you want:

The enrollment codes for (plan's name) are:

Self Only \_\_\_\_\_ Enrollment

Code \_\_\_\_\_

Self and Family \_\_\_\_\_ Enrollment

Code \_\_\_\_\_

The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms, contact the Office of Personnel Management at P.O. Box 809, Washington, DC 20044.

**1603.703 Contract clause.**

The clause at 1652.203-70 shall be inserted in all FEHB contracts.

**PART 1604—ADMINISTRATIVE MATTERS****Subpart 1604.7—Contractor Records Retention**

Sec.

**04.703 Policy.****04.705 Specific retention periods.****Subpart 1604.70—Coordination of Benefits****1604.7001 Coordination of benefits clause.**

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

**Subpart 1604.7—Contractor Records Retention****1604.703 Policy.**

In view of the unique payment schedules of FEHB contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

**1604.705 Specific retention periods.**

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215-2 "Audit—Negotiation," the contracting officer shall insert the clause at 1652.204-70 in all FEHB contracts.

**Subpart 1604.70—Coordination of Benefits****1604.7001 Coordination of benefits clause.**

OPM expects all FEHB plans to coordinate benefits. Accordingly, the clause set forth at 1652.204-71 shall be inserted in all FEHB contracts.

**PART 1605—PUBLICIZING CONTRACT ACTIONS**

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

**1605.000 Applicability.**

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

**PART 1606—COMPETITION REQUIREMENTS**

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

**1606.001 Applicability.**

FAR Part 6 has no practical application to FEHB contracts in view of the statutory exception provided by 5 U.S.C. 8902.

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES****PART 1614—SEALED BIDDING**

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

**1614.000 Applicability.**

FAR Part 14 has no practical application to FEHB contracts in view

of the statutory exemption provided by 5 U.S.C. 8902.

## PART 1615—CONTRACTING BY NEGOTIATION

### Subpart 1615.1—General Requirements for Negotiation

Sec.

1615.170 Negotiation authority.

### Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

### Subpart 1615.6—Source Selection

1615.602 Applicability.

### Subpart 1615.8—Price Negotiation

1615.802 Policy.

1615.804-70 Certificate of community rating.

1615.804-71 Price reduction for defective certificate of community rating clause.

1615.805-70 Carrier investment of FEHB funds.

1615.805-71 Investment income clause.

### Subpart 1615.9—Profit

1615.902 Policy.

1615.905 Profit analysis factors.

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

### Subpart 1615.1—General Requirements for Negotiation

1615.170 Negotiation authority.

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

### Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

FAR Subpart 15.4 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR Part 890.

### Subpart 1615.6—Source Selection

1615.602 Applicability.

FAR Subpart 15.6 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. Chapter 89 and 5 CFR Part 890 rather than on the basis of competition between prospective carriers.

### Subpart 1615.8—Price Negotiation

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) Cost analysis for contracts where premiums and subscription income are determined on the basis of experience rating; and

(b) Price analysis for contracts where premiums and subscription income are determined on the basis of community rating. A community rate is deemed the equivalent of the FAR's description of an established catalog or market price.

(c) 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.

#### 1615.804-70 Certificate of community rating.

Each carrier proposing a community rate shall submit the following certification. The certification shall be signed by an official authorized to execute the contract.

#### Certificate of Community Rating

(a) This is to certify that the proposed subscription rate(s), subject to adjustments recognized by OPM, is a community rate(s).

(b) If it is determined that the subscription rate, subject to the allowable adjustments, is not a community rate, the Government shall be entitled to an adjustment of the price in accordance with the clause at FEHBP 1652.215-70, Price Reduction for Defective Certificate of Community Rating.

Organization: \_\_\_\_\_  
Certifying Official: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(End of Certificate)

#### 1615.804-71 Price reduction for defective certificate of community rating clause.

The clause set forth in 1652.215-70 shall be inserted in all FEHBP contracts based on established catalog or market price.

#### 1615.805-70 Carrier investment of FEHB funds.

(a) This subsection does not apply to contracts based on price analysis.

(b) The carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

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

#### 1615.805-71 Investment income clause.

The clause set forth in 1652.215-71

shall be inserted in all contracts based on cost analysis.

### Subpart 1615.9—Profit

#### 1615.902 Policy.

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

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

#### 1615.905 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHBP contracts. The following factors as defined in FAR 15.905-1 will be applied to projected incurred claims and allowable administrative expenses:

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

(2) *Contract cost risk.* OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract, in assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor in negotiating profit. It should be noted that the "loss carry forward basis" of experience rated group insurance

practices limits this factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of cost risks only, taking into account such elements as the adequacy and reliability of data for estimating costs, etc., offset by the "loss carry forward basis" of experience rating.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905-1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a plus weight; poor support will receive a negative weight.

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

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

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

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

| Profit factor                      | Weight ranges (percent) |
|------------------------------------|-------------------------|
| 1. Contractor performance.         | -.2 to +.45.            |
| 2. Contract cost risk* .....       | +.02 to +.2.            |
| 3. Federal socioeconomic programs. | -.05 to +.05.           |
| 4. Capital investments.....        | 0 to +.02.              |
| 5. Cost control.....               | 0 to +.35.              |
| 6. Independent development.        | 0 to +.03.              |

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

| Enrollment            | Weight (percent) |
|-----------------------|------------------|
| 10,000 or less.....   | .06 to .10.      |
| 10,001-50,000.....    | .05 to .09.      |
| 50,001-200,000.....   | .04 to .07.      |
| 200,001-500,000.....  | .03 to .06.      |
| 500,001 and over..... | .02 to .04.      |

## PART 1616—TYPES OF CONTRACTS

### Subpart 1616.1—Selecting Contract Types

Sec.

- 1616.102 Policies.  
1616.105 Solicitation provision.

### Subpart 1616.2—Fixed-Price Contracts

- 1616.270 Clause—contracts based on established catalog or market price (community rate).  
1616.271 Clause—contracts based on cost analysis (experience rate).

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

### Subpart 1616.1—Selecting Contract Types

#### 1616.102 Policies.

(a) FEHBP contracts in which benefits provided and subscription income are based on community rating (i.e., established catalog or market price) shall be negotiated fixed-price contracts with economic price adjustments.

(b) FEHBP contracts in which benefits provided and subscription income are based on experience rating shall be a combination of negotiated fixed-price contracts with provisions for a form of retroactive price redetermination.

#### 1616.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. Chapter 89 obviate the issuance of solicitations.

## Subpart 1616.2—Fixed-Price Contracts

1616.270 Clause—contracts based on established catalog or market price (community rate).

The clause at 1652.216-70 shall be inserted in all FEHBP contracts based on established catalog or market price.

1616.271 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.

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

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

### Subpart 1622.1—Basic Labor Policies

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

#### 1622.103-70 Contract clause.

The clause at 1652.222-70 shall be inserted in all FEHBP contracts with Comprehensive Medical Plans.

## PART 1624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 1624.1—Protection of Individual Privacy

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

#### 1624.104 Contract clause.

Records retained by FEHBP carriers on Federal subscribers and members of their families serve the carriers' own commercial function of paying health benefits claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for carriers to keep certain records confidential. The clause at 1652.224-70 shall be inserted in all FEHBP contracts.

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 1631.2—Contracts With Commercial Organizations

Sec.

- 1631.200 Scope of subpart.  
1631.201-70 FEHBP credits.  
1631.203-70 FEHBP General and Administrative (G&A) expenses.  
1631.205 Selected costs.  
1631.205-70 FEHBP public relations and advertising costs.  
1631.205-71 FEHBP bad debts.

- 1631.205-72 FEHBP compensation for personal services.
- 1631.205-73 FEHBP interest expense.
- 1631.205-74 FEHBP losses on other contracts.
- 1631.205-75 Selling costs.
- 1631.205-76 Trade, business, technical and professional activity costs.
- 1631.205-77 FEHBP start-up and other nonrecurring costs.
- 1631.205-78 FEHBP printed material costs.
- 1631.205-79 Mandatory statutory reserves.
- 1631.205-80 Major subcontractor service charges.

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

## Subpart 1631.2—Contracts With Commercial Organizations

### 1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

### 1631.201-70 FEHBP credits.

The provisions of FAR 31.201-5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments that include, but are not limited to—

- (a) Coordination of benefit refunds;
- (b) Hospital year-end settlements;
- (c) Uncashed and returned checks;
- (d) Utilization review refunds;
- (e) Refunds attributable to litigation with subscribers or providers of health services; and
- (f) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

### 1631.203-70 FEHBP General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a "dividend or retention formula."

### 1631.205 Selected costs.

#### 1631.205-70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205-1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is

specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

#### 1631.205-71 FEHBP bad debts.

Erroneous benefit payments are not automatically disallowed by FAR 31.205-3.

#### 1631.205-72 FEHBP compensation for personal services.

Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

#### 1631.205-73 FEHBP interest expense.

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205-20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHBP Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

#### 1631.205-74 FEHBP losses on other contracts.

FAR 31.205-23 shall not be construed to prohibit the application of the normal "loss carry forward" principle that is fundamental to continuing insurance contracts that are based on experience rating.

#### 1631.205-75 Selling costs.

(a) FAR 31.205-38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHBP plan.

(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 Federal Personnel Manual Supplement 890-1, Subchapter S2-3(f) "Controlling contacts between employees and carriers").

#### 1631.205-76 Trade, business, technical, and professional activity costs.

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205-43) when the allocable costs of such participation to the FEHBP will exceed \$1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those

cited in FAR 31.205-22 (lobbying costs) for which costs are not allowable.

**1631.205-77 FEHBP start-up and other nonrecurring costs.**

Precontract costs (FAR 31.205-32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

**1631.205-78 FEHBP printed material costs.**

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the "rider system" from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

**1631.205-79 Mandatory statutory reserves.**

Charges for mandatory statutory reserves are not allowed unless 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, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

**1631.205-80 Major subcontractor service charges.**

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract.

Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

**PART 1632—CONTRACT FINANCING**

**Subpart 1632.1—General**

Sec.

1632.111 Contract clause.

**Subpart 1632.6—Contract Debts**

1632.607 Tax credit.

1632.617 Contract clause.

**Subpart 1632.7—Contract Funding**

1632.770 Contingency reserve payments.

1632.771 Non-commingling of FEHBP funds.

1632.772 Contract clause.

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

**Subpart 1632.1—General**

1632.111 Contract clause.

The funding provisions of 5 U.S.C. 8909 obviate the need for carriers to submit invoices or vouchers. Consequently, the clause at FAR 52.232-1 shall be modified in all FEHBP contracts to delete the phrase "upon the submission of proper invoices or vouchers" and insert "within thirty days after receipt of premiums by the Federal Employees Health Benefits Fund."

**Subpart 1632.6—Contract Debts**

1632.607 Tax credit.

FAR 32.607 has no practical application to FEHBP contracts. The statutory provisions at 5 U.S.C. 8906(c) and (d) authorize joint enrollee and Government contributions to the FEHBP Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, carriers may not offset debts to the Fund by a tax credit which is solely a Government obligation.

1632.617 Contract clause.

The clause at FAR 52.232-17 will be modified in FEHBP contracts based on established catalog or market price to exclude the words "net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)."

**Subpart 1632.7—Contract Funding**

1632.770 Contingency reserve payments.

(a) Payments from the contingency reserve shall be made in accordance with 5 CFR 890.503.

(b) A carrier for an FEHBP plan may apply to OPM at any time for a payment from the contingency reserve that is in addition to those amounts, if any, paid under 5 CFR 890.503(c)(1) through (c)(4), if the carrier can show good cause, such as, unexpected adverse claims experience. OPM will decide whether to

allow the request in whole or in part and will advise the carrier of its decision. However, OPM shall not unreasonably withhold approval for amounts requested that exceed the plan's preferred minimum balance for the contingency reserve.

**1632.771 Non-commingling of FEHBP funds.**

(a) This section applies to contracts based on cost analysis.

(b) Carrier or underwriter commingling of FEHBP funds with those from other sources makes it difficult to precisely determine FEHBP cash balances at any given time or to precisely determine investment income attributable to FEHBP invested assets.

(c) FEHBP funds shall be maintained separately from other cash and investments of the carrier or underwriter. Cash and investment balances reported on FEHBP Annual Accounting Statements must agree with the carrier's books and records.

(d) This requirement may be waived by the contracting officer in accordance with the clause at 1652.232-70 when adequate accounting and other controls are in effect. If the requirement is waived, the waiver will remain in effect until it is withdrawn by OPM. The waiver shall be withdrawn if OPM determines that the accounting controls are no longer adequate to properly account for FEHBP funds.

1632.772 Contract clause.

The clause at 1652.232-70 shall be included in all contracts that are based on cost analysis.

**PART 1633—PROTESTS, DISPUTES, AND APPEALS**

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

**1633.070 Designation of the Board of Contract Appeals.**

The Armed Services Board of Contract Appeals (ASBCA) serves as the Board of Contract Appeals for the FEHBP. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

**PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES**

**Subpart 1644.1—General**

Sec.

1644.170 Policy for FEHBP subcontracting consent.

**Subpart 1644.2—Consent to Subcontracts**

1644.270 FEHBP contract clause.

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

**Subpart 1644.1—General****1644.170 Policy for FEHBP subcontracting consent.**

For all FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged the FEHBP contract exceeds \$100,000.

**Subpart 1644.2—Consent to Subcontracts****1644.270 FEHBP contract clause.**

The clause set forth at 1652.244-70 shall be inserted in all FEHBP contracts.

**PART 1646—QUALITY ASSURANCE**

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

**1646.301 Contractor inspection requirements.**

The clause set forth at 1652-246-70 shall be inserted in all FEHBP contracts.

**PART 1649—TERMINATION OF CONTRACTS**

Sec.  
1649.002-70 Applicability of the FAR to FEHB acquisitions.

**Subpart 1649.1—General Principles****1649.101-70 FEHBP renewal and withdrawal of approval clause.**

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

**1649.002-70 Applicability of the FAR to FEHB acquisitions.**

Termination of FEHBP contracts is controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204. The procedures for settlement of contracts after they are terminated shall be those contained in FAR Part 49.

**Subpart 1649.1—General Principles****1649.101-70 FEHBP renewal and withdrawal of approval clause.**

The clause in 1652.249-70 shall be inserted in all FEHBP contracts.

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

Sec.  
1652.000 Applicable clauses.

**Subpart 1652.2—Texts of FEHBP Clauses****1652.203-70 Misleading, deceptive, or unfair advertising.****1652.204-70 Contractor records retention.****1652.204-71 Coordination of benefits.****1652.215-70 Price reduction for defective certificate of community rating.****1652.215-71 Investment income.****1652.216-70 Accounting and price adjustment.****1652.216-71 Accounting and allowable cost.****1652.222-70 Notice of significant events.****1652.224-70 Confidentiality of records.****1652.232-70 Non-commingling of FEHBP funds.**

Sec.  
1652.244-70 Subcontracts.  
1652.246-70 FEHBP inspection.  
1652.249-70 Renewal and withdrawal of approval.

**Subpart 1652.3—FEHBP Clause Matrix****1652.370 Use of the matrix.**

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

**1652.000 Applicable clauses.**

The clauses of Subpart 52.2 specified below shall be applicable to FEHBP acquisitions.

**Section and clause title**

52.202-1 Definitions (Apr. 1984).  
52.203-1 Officials not to Benefit (Apr. 1984).  
52.203-3 Gratuities (Apr. 1984).  
52.203-5 Covenant Against Contingent Fees (Apr. 1984).  
52.215-1 Examination of Records by Comptroller General (Apr. 1984).  
52.215-2 Audit—Negotiation (Jan. 1987).  
52.215-22 Price Reduction for Defective Cost or Pricing Data (Apr. 1984).  
52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications (Apr. 1985).  
52.215-24 Subcontractor Cost or Pricing Data (Apr. 1985).  
52.215-25 Subcontractor Cost or Pricing Data—Modifications (Apr. 1985).  
52.215-30 Facilities Capital Cost of Money (Apr. 1984).  
52.215-31 Waiver of Facilities Capital Cost of Money (Apr. 1984).  
52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (June 1985).  
52.219-13 Utilization of Women-Owned Small Businesses (Aug. 1986).  
52.220-3 Utilization of Labor Surplus Area Concerns (Apr. 1984).  
52.222-3 Convict Labor (Apr. 1984).  
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Mar. 1986).  
52.222-26 Equal Opportunity (Apr. 1984).  
52.222-28 Equal Opportunity Preaward Clearance of Subcontracts (Apr. 1984).  
52.222-29 Notification of Visa Denial (Apr. 1984).  
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr. 1984).  
52.222-36 Affirmative Action for Handicapped Workers (Apr. 1984).  
52.223-2 Clean Air and Water (Apr. 1984).  
52.229-3 Federal, State, and Local Taxes (Apr. 1984).  
52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract) (Apr. 1984).  
52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (Apr. 1984).  
52.229-6 Taxes—Foreign Fixed-Price Contracts (Apr. 1984).  
52.230-3 Cost Accounting Standards (Aug. 1986).  
52.230-4 Administration of Cost Accounting Standards (Apr. 1984).  
52.230-5 Disclosure and Consistency of Cost Accounting Practices (Aug. 1986).  
52.230-6 Consistency in Cost Accounting Practices (Apr. 1984).

Sec.  
52.232-1; 1632.111 Payments (Jan. 1987).  
52.232-8 Discounts for Prompt Payment (July 1985).  
52.232-11 Extras (Apr. 1984).  
52.232-17; 1632.617 Interest (Jan. 1987).  
52.232-23 Assignment of Claims (Jan. 1986).  
52.232-24 Prohibition of Assignment of Claims (Jan. 1986).  
52.233-1 Disputes (Apr. 1984).  
52.242-1 Notice of Intent to Disallow Costs (Apr. 1984).  
52.243-1 Changes—Fixed Price—Alternate I (Apr. 1984).  
52.244-5 Competition in Subcontracting (Apr. 1984).  
52.245-2 Government Property (Fixed-Price Contracts) (Apr. 1984).  
52.246-25 Limitation of Liability—Services (Apr. 1984).  
52.247-63 Preference for U.S.-Flag Air Carriers (Apr. 1984).  
52.251-1 Government Supply Sources (Apr. 1984).  
52.252-2 Clauses Incorporated by Reference (Apr. 1984).  
52.252-4 Alterations in Contract (Apr. 1984).  
52.252-6 Authorized Deviations in Clauses (Apr. 1984).

**Subpart 1652.2—Texts of FEHBP Clauses****1652.203-70 Misleading, deceptive, or unfair advertising.**

As prescribed in 1603.703, the following clause shall be inserted in all FEHBP contracts:

**Misleading, Deceptive, or Unfair Advertising (Jan. 1987)**

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful, not misleading, and consistent with the guidelines set forth in 1603.702.

(End of Clause)

**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. 1987)**

Notwithstanding the provisions of FAR 52.215-2(d) "Audit—Negotiation," carriers will retain and make available all records applicable to a contract year that support the annual statement of operations for that year for a period of 5 years after the end of the contract year 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 year to which the claim records relate.

(End of Clause)

**1652.204-71 Coordination of benefits**

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

**Coordination of Benefits (Jan. 1987)**

(a) The Carrier shall implement a coordination of benefits program to coordinate on a primary-secondary basis the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault automobile insurance.

(b) The Carrier shall normally not pay benefits under this contract until it has determined whether it is the primary or secondary Carrier.

(c) In coordinating benefits between plans, the Carrier shall follow the model guidelines for Coordination of Benefits set forth in the FEHBP contracts.

(End of Clause)

**1652.215-70 Price reduction for defective certificate of community rating.**

As prescribed in 1615.804-71, the following clause shall be inserted in contracts based on established catalog or market price:

**Price Reduction for Defective Certificate of Community Rating (Jan. 1987)**

(a) If it is determined that the subscription rate(s), subject to the adjustments recognized by OPM is not a community rate, the Government shall be entitled to an adjustment of the price so that it is a community rate. If the Carrier cannot determine a community rate, OPM may require the Carrier to experience rate the contract or charge a rate for that contract period that does not exceed the lowest rate charged by the Carrier to another group or groups with similar benefits for similar contract periods.

(b) If the price of the community rate determined under paragraph 1652.215-70(a), the experience rate, or the lowest rate charged to another group, is less than the original subscription price, the price of this contract shall be reduced accordingly. At the discretion of the Contracting Officer, refunds due the Government shall be used to reduce future FEHBP subscription charges of the Carrier, returned to the Government for deposit in the FEHB Fund, or used to offset Contingency Reserve payments to the Carrier.

(c) When the Contracting Office determines that the Carrier submitted a defective community rate and the Government is entitled to a refund under 1652.215-70(b), the refund shall bear interest from the date the overcharge was paid by the Government to the Carrier until the date the overcharge is liquidated as provided in 1652.215-70(b). In calculating the amount of interest due, the semiannual rate determinations by the Secretary of the Treasury under the authority of the Renegotiation Act of 1951 (50 U.S.C., para. 1211, *et seq.*) applicable to the periods the overcharge was retained by the Carrier shall be used.

(End of Clause)

**1652.215-71 Investment income.**

As prescribed in 1615.805-71, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

**Investment Income (Jan 1987)**

(a) The Carrier or underwriter shall invest and reinvest all FEHBP funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier or underwriter shall seek to maximize investment income with due consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHBP funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier or underwriter has failed to comply with paragraphs (a) or (b) of this clause, the Contracting Officer may direct the Carrier or underwriter to credit the Special Reserve with investment income that would have been earned at the rate(s) specified in paragraph (e) had it not been for the Carrier's or underwriter's noncompliance. "Failed to comply with paragraphs (a) or (b)" means failure to place excess funds, including refunds, credits, payments, deposits, investment income earned, or other amounts owed the Special Reserve, in income producing investments and accounts. Interest income shall be due for the period from the date the Carrier or underwriter failed to invest the funds until the date the Carrier or underwriter invests such funds.

(d) On charges for benefits, administrative expenses, and other items, made by the Carrier or underwriter that are subsequently determined to be unallowable, interest shall be charged from the date of the Contracting Officer's notification of disallowance of the cost to the date the funds are deposited in the Special Reserve.

(e) If directed, the Carrier or underwriter shall credit the Special Reserve for income due in accordance with this clause. In calculating the amount of the interest credit due the FEHBP, the semiannual rate determinations by the Secretary of the Treasury under authority of the Renegotiation Act of 1951 (50 U.S.C. App., para. 1211, *et seq.*) applicable to the period of noncompliance shall be used.

(f) The Carrier shall incorporate this clause into agreements with underwriters that underwrite the Carrier's FEHBP plan.

(End of Clause)

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

As prescribed in 1616.270, the following clause shall be inserted in all FEHBP contracts based on established catalog or market price:

**Accounting and Price Adjustment (Jan 1987)**

(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 FEHBAR § 1602.170-2.

(2) If during the contract period the Carrier establishes a community rate higher than the rate established for the contract period and

the rate increase is made effective on the same calendar date in all other group health benefits contracts held by the Carrier, OPM agrees to pay the Carrier an amount equal to the product of—

(i) The increase in the rates that has been produced by the community rate increase, multiplied by

(ii) The number of subscribers determined by OPM, multiplied by

(iii) The number of months between the effective date of the increase and the end of the contract period during which the rates apply.

(3) Amounts payable under this subsection may, at the discretion of the Contracting Officer, be paid to the Carrier by (i) paying all or part of the amount from funds available in the Contingency Reserve (or as funds become available in later contract periods); or (ii) accepting an additional loading to the rates for the earliest possible contract period following the community rate increase; or (iii) establishing a reimbursement schedule combining elements of both (i) and (ii) of this subparagraph.

(4) If during the contract period the Carrier establishes a community rate that is lower than the rate agreed upon for the contract benefit period or if the agreed upon rate is based on an anticipated community rate increase that exceeds the actual community rate increase established for the contract period, the Carrier agrees to accept an adjustment to the agreed upon rate that is calculated to recover the amount of the excess charged under this contract as a result of the lower community rate. At the discretion of the Contracting Officer, refunds due the Government shall be (i) returned to the Government for deposit in the FEHB Fund; (ii) used to reduce future FEHBP subscription charges of the Carrier; or (iii) used to offset Contingency Reserve payments to the Carrier. The refund calculated pursuant to this clause shall not bear interest as described in FEHBAR 1652.215-70(c).

(End of Clause)

**1652.216-71 Accounting and allowable cost.**

As prescribed in 1616.271, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

**Accounting and Allowable Cost (Jan 1987)**

(a) *Annual Accounting Statement.* (1) 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 and shall include, among other things, the following items for each option provided by the contract:

(i) Subscription charges received and accrued (including those received from the Contingency Reserve);

(ii) Health benefits charges;

(iii) Expenses and other charges;

(iv) Income on investments;

(v) Sum of items (i) minus (ii) minus (iii) plus (iv).

(2) Based on the results of audit, the Carriers' annual accounting statements may

be (i) reduced by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Allowable cost.* The allowable costs chargeable to the contract for a contract period shall be the actual, necessary amounts incurred in the administration of this contract, with proper justification and accounting support, determined in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 1631.2 of the Federal Employee Health Benefits Acquisition Regulation (FEHBP) applicable on the first day of the contract period.

(End of Clause)

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

As prescribed in 1622.103-70, the following clause shall be inserted in all FEHBP contracts with Comprehensive Medical Plans:

##### Notice of Significant Events (Jan 1987)

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

- (1) Disposal of major assets;
- (2) Loss of 15% or more of the Carrier's overall membership;
- (3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;
- (4) Addition or termination of provider agreements;
- (5) Any changes in underwriters, reinsurers, or participating plans;
- (6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;
- (7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;
- (8) Default on a loan or other financial obligation;
- (9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;
- (10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or
- (11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.

(b) Upon learning of a Significant Event, OPM may institute action as it deems necessary to protect the interest of subscribers, including, but not limited to—

- (1) Suspending new enrollments under this contract;

(2) Advising subscribers of the Significant Event and providing them an opportunity to transfer to another Carrier;

(3) Terminating the enrollment of those subscribers who, in the judgment of OPM, would be adversely affected by the Significant Event;

(4) Terminating this contract pursuant to the clause set forth in 1652.249-70 entitled "Renewal and Withdrawal of Approval."; or

(5) Directing the Carrier to take corrective action.

(c) The Carrier shall insert this provision in all subcontracts and provider agreements over \$25,000.

(End of Clause)

#### 1652.224-70 Confidentiality of records.

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

##### Confidentiality of Records (Jan. 1987)

(a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the Federal Register as a part of OPM's notice of systems of records.

(b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:

- (1) As may be reasonably necessary for the administration of this contract;
- (2) As authorized by the patient or his or her guardian;
- (3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged criminal actions;
- (4) As necessary to audit the contract;
- (5) As necessary to carry out the coordination of benefits provisions of this contract; and
- (6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of Clause)

#### 1652.232-70 Non-commingling of FEHBP funds.

As prescribed in 1632.772, the following clause shall be inserted in all contracts based on cost analysis.

##### Non-Commingling of Funds (Jan. 1987)

(a) The Carrier or its underwriter shall keep all FEHBP funds (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) In certain instances the physical separation of FEHBP funds may not be practical or desirable. In such cases, the Carrier may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Carrier shall demonstrate that accounting techniques have been established that will clearly measure FEHBP cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(c) This clause shall be included in all subcontracts that exceed \$25,000.

(End of clause)

#### 1652.244-70 Subcontracts.

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts:

##### Subcontracts (Jan. 1987)

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

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

- (1) A description of the supplies or services to be subcontracted;
- (2) Identification of the type of subcontract to be used;
- (3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
- (4) The proposed subcontract price and the Carrier's cost or price analysis;
- (5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;
- (6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and
- (7) A negotiation memorandum reflecting—

- (i) The principal elements of the subcontract price negotiations;
- (ii) The most significant consideration controlling establishment of initial or revised prices;
- (iii) The reason cost or pricing data were or were not required;

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

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

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

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

(c) The Carrier shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

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

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

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

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Carrier of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d).

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

(End of Clause)

#### 1652.246-70 FEHBP Inspection.

As prescribed in 1646.301, the following clause shall be inserted in all FEHBP contracts:

##### FEHB Inspection (Jan 1987)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Carrier or a subcontractor, the Carrier shall furnish and require the subcontractor to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of Clause)

#### 1652.249-70 Renewal and Withdrawal of Approval.

As prescribed in 1649.101-70, the following clause shall be inserted in all FEHBP contracts:

##### Renewal and Withdrawal of Approval (Jan 1987)

(a) The contract renews automatically for a term of one (1) year each January first, unless written notice of non-renewal is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement.

(b) This contract also may be terminated at other times by order of OPM pursuant to 5

U.S.C. 8902(e). Pending termination, OPM may take action as it deems necessary to protect the interests of enrollees, including but not limited to—

(1) Suspending new enrollments under the contract;

(2) Advising enrollees of the asserted deficiencies; and

(3) Providing enrollees an opportunity to transfer to another plan.

(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have at least 300 subscribers enrolled in its plan at any time during the two preceding contract periods.

(End of Clause)

#### Subpart 1652.3—FEHBP Clause Matrix

##### 1652.370 Use of the matrix.

(a) The matrix in this section lists the FAR and FEHBP clauses to be used with contracts based on cost analysis and contracts based on established catalog or market price. Carriers shall submit initial applications and requests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBP. An "M" in the "Use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the matrix indicates a "T". If the clause is incorporated by reference, the matrix indicates an "R".

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          | R                            | R              |
| FAR 52.203-1  | FAR 3.102-2     | Officials Not to Benefit                                                         | M          | R                            | R              |
| FAR 52.203-3  | FAR 3.202       | Gratuities                                                                       | M          | R                            | R              |
| FAR 52.203-5  | FAR 3.404(c)    | Covenant Against Contingent Fees                                                 | M          | R                            | R              |
| 1652.203-70   | 1603.703        | Misleading, Deceptive, or Unfair Advertising                                     | M          | R                            | R              |
| 1652.204-70   | 1604.705        | Contractor Records Retention                                                     | M          | T                            | T              |
| 1652.204-71   | 1604.7001       | Coordination of Benefits                                                         | M          | R                            | R              |
| FAR 52.215-1  | FAR 15.106-1(b) | Examination of Records by Comptroller General                                    | M          | R                            | R              |
| FAR 52.215-2  | FAR 15.106-2(b) | Audit-Negotiation                                                                | M          | T                            | T              |
| FAR 52.215-22 | FAR 15.804-8(a) | Price Reduction for Defective Cost or Pricing Data                               | M          | R                            |                |
| FAR 52.215-23 | FAR 15.804-8(b) | Price Reduction for Defective Cost or Pricing Data-Modifications                 | M          |                              | R              |
| FAR 52.215-24 | FAR 15.804-8(c) | Subcontractor Cost or Pricing Data                                               | M          | R                            |                |
| FAR 52.215-30 | FAR 15.904      | Facilities Capital Cost or Money                                                 | M          | R                            |                |
| FAR 52.215-25 | FAR 15.804-8(d) | Subcontractor Cost or Pricing Data-Modifications                                 | M          |                              | R              |
| FAR 52.215-31 | FAR 15.904      | Waiver of Facilities Capital Cost of Money                                       | A          | R                            |                |
| 1652.215-70   | 1615.804-71     | Price Reduction for Defective Certificate of Community Rating                    | M          |                              | R              |
| 1652.215-71   | 1615.805-71     | Investment Income                                                                | M          | R                            |                |
| 1652.216-70   | 1616.270        | Accounting and Price Adjustment                                                  | M          |                              | R              |
| 1652.216-71   | 1616.271        | Accounting and Allowable Cost                                                    | M          | R                            |                |
| FAR 52.219-8  | FAR 19.708(a)   | Utilization of Small Business Concerns and Small Disadvantaged Business Concerns | M          | R                            | R              |
| FAR 52.219-13 | FAR 19.902      | Utilization of Women-Owned Small Businesses                                      | M          | R                            | R              |
| FAR 52.220-3  | FAR 20.302(a)   | Utilization of Labor Surplus Area Concerns                                       | M          | R                            | R              |
| FAR 52.222-3  | FAR 22.202      | Convict Labor                                                                    | M          | R                            | R              |

## FEHBP CLAUSE MATRIX—Continued

| Clause No.    | Text reference                            | Title                                                                       | Use status     | Use with contracts based on— |                |
|---------------|-------------------------------------------|-----------------------------------------------------------------------------|----------------|------------------------------|----------------|
|               |                                           |                                                                             |                | Cost analysis                | Price analysis |
| FAR 52.222-4  | FAR 22.305(a)                             | Contract Work Hours and Safety Standards Act—Overtime Compensation—General. | M              | R                            | R              |
| FAR 52.222-26 | FAR 22.810(e)                             | Equal Opportunity                                                           | M              | R                            | R              |
| FAR 52.222-28 | FAR 22.810(g)                             | Equal Opportunity Preaward Clearance of Subcontracts                        | M              | R                            | R              |
| FAR 52.222-29 | FAR 22.810(h)                             | Notification of Visa Denial                                                 | A              | R                            | R              |
| FAR 52.222-35 | FAR 22.1308(a)                            | Affirmative Action for Special Disabled and Vietnam Era Veterans.           | M              | R                            | R              |
| FAR 52.222-36 | FAR 22.1406(a)                            | Affirmative Action for Handicapped Workers                                  | M              | R                            | R              |
| 1652.222-70   | 1622.103-70                               | Notice of Significant Events                                                | A <sup>1</sup> | R                            | R              |
| FAR 52.223-2  | FAR 23.105(b)                             | Clean Air and Water                                                         | M              | R                            | R              |
| 1652.224-70   | 1624.104                                  | Confidentiality of Records                                                  | M              | R                            | R              |
| FAR 52.229-3  | FAR 29.401-3                              | Federal, State and Local Taxes                                              | M              | R                            | R              |
| FAR 52.229-4  | FAR 29.401-4                              | Federal, State and Local Taxes (Noncompetitive Contract)                    | M              | R                            | R              |
| FAR 52.229-5  | FAR 29.401-5                              | Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.               | A              | R                            | R              |
| FAR 52.229-6  | FAR 29.402-1(a)                           | Taxes—Foreign Fixed Price Contracts                                         | A              | R                            | R              |
| FAR 52.230-3  | FAR 30.303-2(a)(1)                        | Cost Accounting Standards                                                   | A              | R                            | R              |
| FAR 52.230-4  | FAR 30.303-2(b)(1)                        | Administration of Cost Accounting Standards                                 | A              | R                            | R              |
| FAR 52.230-5  | FAR 30.303-2(c)(1)                        | Disclosure and Consistency of Cost Accounting Practices                     | A              | R                            | R              |
| FAR 52.230-6  | FAR 30.303-2(d)                           | Consistency in Cost Accounting Practices                                    | A              | R                            | R              |
| FAR 52.232-1  | FAR 32.111(a)(1) (Modification: 1632.111) | Payments                                                                    | M              | T                            | T              |
| FAR 52.232-8  | FAR 32.111(c)(1)                          | Discounts for Prompt Payment                                                | M              | R                            | R              |
| FAR 52.232-11 | FAR 32.111(d)(2)                          | Extras                                                                      | M              | R                            | R              |
| FAR 52.232-17 | FAR 32.617(a) (Modification: 1632.617)    | Interest                                                                    | M              | R                            | T              |
| FAR 52.232-23 | FAR 32.806-(a)(1)                         | Assignment of Claims                                                        | M              | R                            | R              |
| FAR 52.232-24 | FAR 32.806(b)                             | Prohibition of Assignment of Claims                                         | A              | R                            | R              |
| 1652.232-70   | 1632.772                                  | Non-Commencing of FEHBP Funds                                               | M              | R                            | R              |
| FAR 52.233-1  | FAR 33.214                                | Disputes                                                                    | M              | R                            | R              |
| FAR 52.242-1  | FAR 42.802                                | Notice of Intent to Disallow Costs                                          | M              | R                            | R              |
| FAR 52.243-1  | FAR 43.205(a)(1)                          | Changes—Fixed-Price—Alternate 1                                             | M              | R                            | R              |
| 1652.244-70   | 1644.270                                  | Subcontracts                                                                | M              | R                            | R              |
| FAR 52.244-5  | FAR 44.204(e)                             | Competition in Subcontracting                                               | M              | R                            | R              |
| FAR 52.245-2  | FAR 45.106(b)(1)                          | Government Property (Fixed-Price Contracts)                                 | M              | R                            | R              |
| FAR 52.246-25 | FAR 46.805(a)(4)                          | Limitation of Liability—Services                                            | M              | R                            | R              |
| 1652.246-70   | 1646.301                                  | FEHBP Inspection                                                            | M              | R                            | R              |
| FAR 52.247-63 | FAR 47.405                                | Preference for U.S.-Flag Air Carriers                                       | M              | R                            | R              |
| 1652.249-70   | 1649.101-70                               | Renewal and Withdrawal of Approval                                          | M              | R                            | R              |
| FAR 52.251-1  | FAR 51.107                                | Government Supply Sources                                                   | A              | R                            | R              |
| 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              |

<sup>1</sup> Applies to all Comprehensive Medical Plans.

## PART 1653—FORMS

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

## 1653.000 FEHBP forms.

The following forms specified in FAR Subparts 53.2 and 53.3 are applicable to FEHBP acquisitions:

| Part 53.2   | Part 53.3   | Form title                                                     | Part 53.2   | Part 53.3    | Form title                                                                     |
|-------------|-------------|----------------------------------------------------------------|-------------|--------------|--------------------------------------------------------------------------------|
| 53.201-1    | 53.301-1402 | SF 1402—Certificate of Appointment.                            | 53.215-2(b) | 53.301-1412  | SF 1412—Claim for Exemption from Submission of Certified Cost or Pricing Data. |
| 53.203      | 53.301-119  | SF 119—Statement of Contingent or Other Fees.                  | 53.229      | 53.301-1094  | SF 1094—U.S. Tax Exemption Certificate.                                        |
| 53.204-2(a) | 53.301-279  | SF 279 FPDS—Individual Contract Action Report (over \$10,000). | 53.229      | 53.301-1094A | SF 1094A—Tax Exemption Certificate Accountability Record.                      |
| 53.204-2(b) | 53.301-281  | SF 281 FPDS—Summary of Contract Actions of \$10,000 or less.   |             |              |                                                                                |

[FR Doc. 87-9607 Filed 4-30-87; 8:45 am]

BILLING CODE 6325-01-M