

852.246–70, Guarantee.

The Contractor guarantees the equipment against defective material, workmanship and performance for a period of \_\_\_\_\_ [Normally, insert one year. If industry policy covers a shorter or longer period, i.e., 90 days or for the life of the equipment, insert such period.], said guarantee to run from date of acceptance of the equipment by the Government. The Contractor agrees to furnish, without cost to the Government, replacement of all parts and material that are found to be defective during the guarantee period. Replacement of material and parts will be furnished to the Government at the point of installation, if installation is within the continental United States, or f.o.b. the continental U.S. port to be designated by the Contracting Officer if installation is outside of the continental United States. Cost of installation of replacement material and parts shall be borne by the contractor. [The above clause will be modified to conform to standards of the industry involved.]

(End of clause)

- 852.246–71, Inspection or Alternate I.
- 852.246–72, Frozen Processed Foods.
- 852.246–73, Noncompliance with packaging, packing, and/or marking requirements.
- 852.270–1, Representatives of Contracting Officers.
- 852.270–2, Bread and Bakery Products—Quantities.
- 852.270–3, Purchase of Shellfish.
- 852.271–72, Time Spent by Counselee in Counseling Process.
- 852.271–73, Use and Publication of Counseling Results.
- 852.271–74, Inspection.
- 852.271–75, Extension of Contract Period.
- 852.273–70, Late Offers.
- 852.273–71, Alternative Negotiation Techniques.
- 852.273–72, Alternative Evaluation.
- 852.273–73, Evaluation—Health-Care Resources.
- 852.273–74, Award without Exchanges.

(b) When appropriate and in accordance with the prescriptions for the clause, the contracting officer may use the following clause in requests for quotations, solicitations, and contracts for the acquisition of commercial items if the contracting officer determines that the use is consistent with customary commercial practices:

852.211–70, Service Data Manuals or Alternate I.

(c) All requests for quotations, solicitations, and contracts for commercial item services to be provided to beneficiaries must include the following clause at

852.271–70, Nondiscrimination in Services Provided to Beneficiaries.

(End of clause)

■ 19. Section 852.212–71 is added to read as follows:

#### 852.212–71 Gray Market Items.

As prescribed in 812.301(f)(2), insert the following provision in solicitations

and contracts for new medical equipment:

#### Gray Market Items (APR 2020)

(a) No gray market or remanufactured items will be acceptable. Gray market items are Original Equipment Manufacturers' (OEM) goods sold through unauthorized channels in direct competition with authorized distributors. This procurement is for new OEM medical equipment only for VA medical facilities.

(b) Vendor shall be an OEM, authorized dealer, authorized distributor or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

#### PART 853—FORMS

■ 20. The authority citation for part 853 is revised to read as follows:

**Authority:** 38 U.S.C. 501; 40 U.S.C. 121(c); and 48 CFR 1.301 through 1.304.

#### 853.213 [Removed]

■ 21. Section 853.213 is removed.

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#### OFFICE OF PERSONNEL MANAGEMENT

#### 48 CFR Parts 1603 and 1652

#### RIN 3206–AN56

#### Federal Employees Health Benefits Acquisition Regulations: Self Plus One and Contract Matrix Update

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is making a technical correction to the Federal Employees Health Benefits Acquisition Regulations (FEHBAR) to add the self plus one enrollment type to carrier advertising instructions. OPM is also updating and amending the Federal Employees Health Benefits (FEHB) Program contract clause matrix.

**DATES:** This rule is effective March 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Kaszynski, Senior Policy Analyst, at [Michael.Kaszynski@opm.gov](mailto:Michael.Kaszynski@opm.gov).

**SUPPLEMENTARY INFORMATION:** On April 2, 2019, OPM issued proposed regulations to the FEHBAR (84 FR

12569) to list a self plus one enrollment type in carrier advertising instructions. The proposed rule clarified that carriers are required to list all current enrollment types when advertising their health plans enrollment codes and premium rates to enrollees. This change is a technical correction and does not alter current FEHB family member eligibility guidelines.

Section 706 of the Bipartisan Budget Act of 2013 amended chapter 89 of title 5 United States Code by adding a self plus one enrollment type for Federal employees and annuitants under the FEHB Program. The self plus one enrollment type became available during the 2015 Open Season for the 2016 plan year and was codified in a final rule at <https://www.federalregister.gov/documents/2015/09/17/2015-23348/federal-employees-health-benefits-program-self-plus-one-enrollment-type>. A self plus one enrollment covers the enrollee and one eligible family member, designated by the enrollee. Eligible family members under a self plus one enrollment include a spouse or eligible child as set forth in § 890.302 of title 5 CFR.

This final rule amends the FEHBAR at 48 CFR part 1603 to list a self plus one enrollment type in the advertising instructions. OPM considers this change a technical correction as it does not change the operational requirements of the FEHB Program and does not alter current FEHB family member eligibility guidelines.

This final rule also updates and amends the contract clause matrix to align with current FAR and FEHBAR requirements. OPM publishes applicable contract clauses and clause headings in the FEHBAR. Annually, OPM determines which Federal Acquisition Regulation (FAR) and FEHBAR contract clauses are applicable to FEHB carrier contracts and includes them in these contracts.

The proposed regulation provided notice to interested stakeholders that OPM is updating the FEHBAR contract clause matrix at 48 CFR 1652.370. This final regulation updates the contract clause matrix to align with current FAR and FEHBAR requirements and include clauses currently incorporated in all Federal Employees Health Benefits (FEHB) Program carrier contracts.

**Response to Comments**

The 30-day comment period for the proposed rule ended on May 2, 2019. OPM received comments from a citizen and an association of FEHB health organizations. The citizen commenter, who supports the regulatory change, asserted that it is important that federal

workers have a clear ability to see self and self plus one codes.

OPM also received comments from an association of health organizations. The association expressed support for OPM's update to the FEHBAR matrix and suggested a few technical corrections. The commenter stated that the title at FAR 52.204-7 should read "Award Management." This change has been incorporated into this final rule.

The commenter also proposed a change at FAR 52.203-19 (Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements) to apply this clause to only community rated carrier contracts. FAR 3.909-3(b)(1) directs us to include the clause at 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements, in all solicitations and resultant contracts, other than personal services contracts with individuals. Therefore, no change has been made to the final rule based on this comment.

The commenter stated that FAR Clause 52.204-9, captioned "Personnel Identity Verification of Contractor Personnel" applies to experience rated carrier contracts based on their use of OPM's letter of credit system but suggested that the clause does not apply to community rated carriers. OPM agrees with this comment. Accordingly, the "T" has been removed from community rated carrier contracts column of the matrix for this clause.

The commenter recommended that we adopt FAR 52.204-23 (Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities) for both community rated and experience rated carrier contracts. We agree that this is an appropriate change, so we have added the clause to the matrix for both experience rated and community rated carrier contracts.

The commenter also proposed that we update the FEHBAR Truth in Negotiations Act (TINA) threshold. The FEHBAR contract clauses that reference the TINA dollar threshold state that the threshold shall be adjusted by the same amount and at the same time as any change to the threshold for application of the Truth in Negotiations Act pursuant to 41 U.S.C. 254b(a)(7). Therefore, the clauses are self-updating and there is no need to further update the FEHBAR.

### Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under E.O. 12866.

### Reducing Regulation and Controlling Regulatory Costs

This final rule is not an E.O. 13771 regulatory action because is not significant under E.O. 12866.

### Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of state, local, or tribal governments.

### Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of no agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

### Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a

collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves an OMB approved collection of information subject to the PRA—OMB No. 3206-0160, Health Benefits Election Form. The public reporting burden for this collection is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this form is 9,000 hours. The systems of record notice for this collection is: OPM/Central 1 Civil Service Retirement and Insurance Records, available at <https://www.opm.gov/information-management/privacy-policy/sorn/opm-sorn-central-1-civil-service-retirement-and-insurance-records.pdf>.

### List of Subjects in 48 CFR Parts 1603 and 1652

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

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM amends title 48, Code of Federal Regulations, parts 1603 and 1652, as follows:

### PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 1. The authority citation for part 1603 continues to read as follows:

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

- 2. In § 1603.7002, paragraph (e) is revised to read as follows:

#### 1603.7002 Additional guidelines.

\* \* \* \* \*

(e)(1) 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 Election Form (Standard Form 2809) from your personnel office indicating the enrollment you want or use your agency's electronic enrollment system.

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

- (i) Self Only \_\_\_ Enrollment Code \_\_\_
- (i) Self Plus One \_\_\_ Enrollment Code \_\_\_

(iii) Self and Family \_\_\_ Enrollment Code \_\_\_

(3) 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, 1900 E Street NW, Attn: Retirement Benefits Branch, Washington, DC 20415 or visit [www.opm.gov/forms](http://www.opm.gov/forms).

\* \* \* \* \*

**PART 1652—CONTRACT CLAUSES**

■ 3. The authority citation for part 1652 continues to read as follows:

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

■ 4. Section 1652.370 is revised to read as follows

**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 a combination of cost and price analysis. 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        | Title  | Use status | Use with experience rated contracts | Use with community rated contracts |
|---------------|--|------------|-------------------------------------|------------------------------------|
| FAR 52.202-1  | Definitions  | M          | T                                   | T                                  |
| FAR 52.203-3  | Gratuities   | M          | T                                   | T                                  |
| FAR 52.203-5  | Covenant Against Contingent Fees   | M          | T                                   | T                                  |
| FAR 52.203-7  | Anti-Kickback Procedures   | M          | T                                   | T                                  |
| FAR 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions.  | M          | T                                   | T                                  |
| FAR 52.203-13 | Contractor Code of Business Ethics and Conduct   | M          | T                                   | T                                  |
| FAR 52.203-17 | Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.                              | M          | T                                   | T                                  |
| FAR 52.203-19 | Prohibition Requiring Internal Confidentiality Agreements or Statements.   | M          | T                                   | T                                  |
| FAR 52.204-7  | System For Award Management  | M          | T                                   | T                                  |
| FAR 52.204-9  | Personnel Identity Verification of Contractor Personnel  | M          | T                                   |                                    |
| FAR 52.204-21 | Basic Safeguarding of Contractor Information Systems   | M          | T                                   | T                                  |
| FAR 52.204-23 | Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. | M          | T                                   | T                                  |
| FAR 52.209-9  | Updates of Publicly Available Information Regarding Responsibility Matters.  | M          | T                                   |                                    |
| 1652.203-70   | Misleading, Deceptive, or Unfair Advertising   | M          | T                                   | T                                  |
| 1652.204-70   | Contractor Records Retention   | M          | T                                   | T                                  |
| 1652.204-71   | Coordination of Benefits   | M          | T                                   | T                                  |
| 1652.204-72   | Filing Health Benefit Claims/Court Review of Disputed Claims.  | M          | T                                   | T                                  |
| 1652.204-73   | Taxpayer Identification Number   | M          | T                                   | T                                  |
| 1652.204-74   | Large Provider Agreements  | M          | T                                   |                                    |
| FAR 52.209-6  | Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.          | M          | T                                   | T                                  |
| FAR 52.215-2  | Audit & Records—Negotiation  | M          | T                                   | T                                  |
| FAR 52.215-10 | Price Reduction for Defective Cost or Pricing Data   | M          | T                                   |                                    |
| FAR 52.215-12 | Subcontractor Certified Cost or Pricing Data   | M          | T                                   |                                    |
| FAR 52.215-15 | Pension Adjustments and Asset Reversions   | M          | T                                   |                                    |
| FAR 52.215-18 | Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.  | M          | T                                   |                                    |
| 1652.215-70   | Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.  | M          | T                                   | T                                  |
| 1652.215-71   | Investment Income  | M          | T                                   |                                    |
| 1652.216-70   | Accounting and Price Adjustment  | M          |                                     | T                                  |
| 1652.216-71   | Accounting and Allowable Cost  | M          | T                                   |                                    |
| FAR 52.219-8  | Utilization of Small Business Concerns   | M          | T                                   | T                                  |
| FAR 52.222-1  | Notice to the Government of Labor Disputes   | M          | T                                   | T                                  |
| FAR 52.222-3  | Convict Labor  | M          | T                                   | T                                  |
| FAR 52.222-4  | Contract Work Hours and Safety Standards Act—Overtime Compensation.  | M          | T                                   | T                                  |
| FAR 52.222-21 | Prohibition of Segregated Facilities   | M          | T                                   | T                                  |
| FAR 52.222-26 | Equal Opportunity  | M          | T                                   | T                                  |
| FAR 52.222-29 | Notification of Visa Denial  | A          | T                                   | T                                  |
| FAR 52.222-35 | Equal Opportunity for Veterans   | M          | T                                   | T                                  |
| FAR 52.222-36 | Equal Opportunity for Workers With Disabilities  | M          | T                                   | T                                  |

FEHBP CLAUSE MATRIX—Continued

| Clause        | Title  | Use status | Use with experience rated contracts | Use with community rated contracts |
|---------------|--|------------|-------------------------------------|------------------------------------|
| FAR 52.222-37 | Employment Reports on Veterans   | M          | T                                   | T                                  |
| FAR 52.222-50 | Combating Trafficking in Persons   | M          | T                                   | T                                  |
| FAR 52.222.54 | Employment Eligibility Verification  | M          | T                                   | T                                  |
| 1652.222-70   | Notice of Significant Events   | M          | T                                   | T                                  |
| FAR 52.223-6  | Drug-Free Workplace  | A          | T                                   | T                                  |
| FAR 52.223-18 | Encouraging Contractor Policies to Ban Text Messaging While Driving.               | M          | T                                   | T                                  |
| 1652.224-70   | Confidentiality of Records   | M          | T                                   | T                                  |
| FAR 52.227-1  | Authorization and Consent  | M          | T                                   | T                                  |
| FAR 52.227-2  | Notice and Assistance Regarding Patent and Copyright Infringement.                 | M          | T                                   | T                                  |
| FAR 52.229-4  | Federal, State and Local Taxes (State and local Adjustments).                      | M          | T                                   | T                                  |
| 1652.229-70   | Taxes—Foreign Negotiated Benefits Contracts  | A          | T                                   | T                                  |
| FAR 52.232-8  | Discounts for Prompt Payment   | M          | T                                   | T                                  |
| FAR 52.232-17 | Interest   | M          | T                                   | T                                  |
| FAR 52.232-23 | Assignment of Claims   | A          | T                                   | T                                  |
| FAR 52.232-33 | Payment by Electronic Funds Transfer—System for Awards Management.                 | M          | T                                   | T                                  |
| 1652.232-70   | Payments—Community-Rated Contracts   | A          |                                     | T                                  |
| 1652.232-71   | Payments—Experience-Rated Contracts  | A          | T                                   |                                    |
| 1652.232-72   | Non-Commingling of FEHBP Funds   | M          | T                                   |                                    |
| 1652.232-73   | Approval for Assignment of Claims  | M          | T                                   | T                                  |
| FAR 52.233-1  | Disputes   | M          | T                                   | T                                  |
| FAR 52.233-4  | Applicable Law for Breach of Contract Claim  | M          | T                                   | T                                  |
| FAR 52.239-1  | Privacy or Security Safeguards   | M          | T                                   | T                                  |
| FAR 52.242-1  | Notice of Intent to Disallow Costs   | M          | T                                   |                                    |
| FAR 52.242-3  | Penalties for Unallowable Costs  | M          | T                                   |                                    |
| FAR 52.242-13 | Bankruptcy   | M          | T                                   | T                                  |
| 1652.243-70   | Changes—Negotiated Benefits Contracts  | M          | T                                   | T                                  |
| FAR 52.244-5  | Competition in Subcontracting  | M          | T                                   |                                    |
| FAR 52.244-6  | Subcontracts for Commercial Items  | M          | T                                   |                                    |
| 1652.244-70   | Subcontracts   | M          | T                                   |                                    |
| 1652.245-70   | Government Property (Negotiated Benefits Contracts)                                | M          | T                                   | T                                  |
| FAR 52.246-25 | Limitation of Liability—Services   | M          | T                                   |                                    |
| 1652.246-70   | FEHB Inspection  | M          | T                                   | T                                  |
| FAR 52.247-63 | Preference for U.S.-Flag Air Carriers  | M          | T                                   | T                                  |
| 1652.249-70   | Renewal and Withdrawal of Approval   | M          | T                                   | T                                  |
| 1652.249-71   | FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts. | M          | T                                   | T                                  |
| 1652.249-72   | FEHBP Termination for Default—Negotiated Benefits Contracts.                       | M          | T                                   | T                                  |
| FAR 52.251-1  | Government Supply Sources  | A          | T                                   |                                    |
| FAR 52.252-4  | Alterations in Contract  | A          | T                                   | T                                  |
| FAR 52.252-6  | Authorized Deviations in Clauses   | M          | T                                   | T                                  |

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