

§ 4.11 Initial and final communications outage reports that must be filed by communications providers.

Initial and final communications outage reports shall be submitted by a person authorized by the communications provider to submit such reports to the Commission. The person submitting the Final report to the Commission shall also be authorized by the provider to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report. Each Initial report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief. Each Final report shall be attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete, and accurate. The Final report shall contain all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the Initial report.

§ 4.13 Reports by the National Communications System (NCS) and by special offices and facilities, and related responsibilities of communications providers.

Reports by the National Communications System (NCS) and by special offices and facilities (other than 911 special offices and facilities) of outages potentially affecting them (*see* paragraphs (a) through (d) of § 4.5) shall be made according to the following procedures:

(a) When there is a mission-affecting outage, the affected facility will report the outage to the NCS and call the communications provider in order to determine if the outage is expected to last 30 minutes. If the outage is not expected to, and does not, last 30 minutes, it will not be reported to the Commission. If it is expected to last 30 minutes or does last 30 minutes, the NCS, on the advice of the affected special facility, will either:

(1) Forward a report of the outage to the Commission, supplying the information for initial reports affecting special facilities specified in this section of the Commission's Rules;

(2) Forward a report of the outage to the Commission, designating the outage

as one affecting "special facilities," but reporting it at a level of detail that precludes identification of the particular facility involved; or

(3) Hold the report at the NCS due to the critical nature of the application.

(b) If there is to be a report to the Commission, an electronic, written, or oral report will be given by the NCS within 120 minutes of an outage to the Commission's Duty Officer, on duty 24 hours a day in the FCC's Communications and Crisis Management Center in Washington, DC. Notification may be served at such other facility designated by the Commission by public notice or (at the time of the emergency) by public announcement only if there is a telephone outage or similar emergency in Washington, DC. If the report is oral, it is to be followed by an electronic or written report the next business day. Those providers whose service failures are in any way responsible for the outage must consult and cooperate in good faith with NCS upon its request for information.

(c) Additionally, if there is to be a report to the Commission, the communications provider will provide a written report to the NCS, supplying the information for final reports for special facilities required by this section of the Commission's rules. The communications provider's final report to the NCS will be filed within 28 days after the outage, allowing the NCS to then file the report with the Commission within 30 days after the outage. If the outage is reportable as described in paragraph (b) of this section, and the NCS determines that the final report can be presented to the Commission without jeopardizing matters of national security or emergency preparedness, the NCS will forward the report as provided in either paragraphs (a)(1) or (a)(2) of this section.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

5. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403, and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 214, 218, 403, and 571, unless otherwise noted.

6. Section 63.100 is revised to read as follows:

§ 63.100 Notification of service outage.

The requirements for communications providers concerning communications disruptions and the filing of outage reports are set forth in part 4 of this chapter.

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OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1631 and 1699

RIN 3206–AJ10

Federal Employees Health Benefits Program; Revision of Contract Cost Principles and Procedures, and Miscellaneous Changes, Parts 1631 and 1699

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation amending the Federal Employees Health Benefits (FEHB) Acquisition Regulation (FEHBAR). This regulation includes additional contract cost principles and procedures for FEHB Program experience-rated contracts and is intended to clarify our requirements and enhance our oversight of FEHB carriers.

DATES: Comments must be received on or before May 25, 2004.

ADDRESSES: Send or deliver comments to Abby L. Block, Deputy Associate Director, Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 3400, 1900 E Street NW., Washington, DC; 20415–3601, or by fax: (202) 606–0633, or e-mail to: aseaston@opm.gov.

FOR FURTHER INFORMATION CONTACT: Anne Easton, Senior Policy Analyst (202) 606–0004.

SUPPLEMENTARY INFORMATION: We are enhancing our oversight of experience-rated FEHB contracts by requiring carriers to apply additional cost principles and procedures. We currently contract with thirty-two experience-rated fee-for-service carriers and Health Maintenance Organizations (HMOs).

Under the FEHB law, 5 U.S.C. 8902, it is part of OPM's responsibility to ensure that rates charged by health benefits plans reasonably and equitably reflect the cost of the benefits provided. Our interest, from a financial standpoint, is to pay a reasonable price for the health care coverage we purchase

from private contractors on behalf of FEHB enrollees.

OPM's independent Inspector General regularly audits experience-rated carriers to determine if they are in compliance with the Cost Principles in part 31 of title 48, Code of Federal Regulations (the Federal Acquisition Regulation (FAR)) and chapter 16 of title 48, Code of Federal Regulations (FEHBAR)). In addition, we have other requirements and practices in place to provide assurance to FEHB Program administrators that carriers' financial reporting and contractual requirements are met. The FEHBAR and part 31 of the FAR are the sole sources of cost accounting principles and practices for FEHB contracts. The basic cost accounting principles in part 31 of the FAR have been in place for over 40 years. During this time period, significant improvements in cost accounting principles and practices have been made. Advances in information technology have enabled FEHB contractors to implement cost accounting practices more complex than those generally used when we adopted the FAR cost principles. Also, we have observed some differences in interpretation regarding the allocation of costs to carriers' contracts. Therefore, we are updating the FEHBAR to allow carriers to use more current contract cost accounting principles and practices and to provide for consistent interpretation of our requirements across the Program. FAR Part 31 provides certain factors that are required to be considered in allocating indirect costs and which must accord with generally accepted accounting principles (GAAP) that are consistently applied. It does not, however, provide specific guidance on the formation of indirect cost groupings and the methods for their allocation. This regulation provides guidance to carriers on allocating certain indirect costs to FEHB experience-rated contracts. For example, we have included a section to supplement FAR 31.203 that describes techniques for accumulating and allocating groupings of indirect costs (FEHBAR 1631.203–70). We have also provided more guidance on the allocation of business unit general and administrative expenses (FEHBAR 1631.203–71) and home office expenses to carriers' business segments (FEHBAR 1631.203–72). These sections also supplement FAR 31.203. Our intent is to supplement, but not to supplant FAR. Therefore, we believe that the provisions of FAR 31.203 dealing with the allocation of indirect costs, including G&A expenses and home

office expenses, are rendered more useful for our purposes when supplemented by FEHBAR 1631.203–70: 71 and 72. We believe that the proposed FEHBAR provisions are compatible with existing FAR provisions dealing with the allocation of indirect costs. However, any comments on this topic would be appreciated. In addition, we have modified the FEHBAR to specifically recognize that monthly indirect cost rates are a practice of the insurance industry and are therefore permitted by FAR 31.203(e)(2).

We have added subrogation settlements, prescription drug rebates, and volume discounts to the list of FEHB credits in FEHBAR 1631.201–70. This guidance specifies that the applicable portion of any credit relating to any allowable cost and received by or accruing to the carrier must be credited to the FEHB Program. We have always expected carriers to ensure that the Program actually receives these credits. Identifying them makes it even clearer that they are to be credited to the Program. While the list of credits is not intended to be exhaustive, we have added these examples to demonstrate how all credits should be treated. Other enhancements we have made include modifying FAR 31.205–10 to make facilities cost of money (COM) allowable under certain circumstances, even if it is not specifically identified in a carrier proposal (FEHBAR 1631.205–10). This change is intended to more closely reflect the procedures we follow in our annual negotiation process with carriers.

We have also added a provision to establish that compensated personal absence must be assigned to the cost accounting period in which the entitlement was earned (FEHBAR 1631.205–72). This section is included to ensure all carriers are following GAAP requirements applicable to accrual procedures. We are also providing a transition rule to permit carriers to recover prior years' allocable liability for compensated personal absence not previously charged to FEHB contracts. We believe that the provisions of this section ensure that there is compatibility between the applicable requirements of GAAP, FAR and FEHBAR. It should be also stressed that the transition rule dealing with the recovery of prior years' costs applies only to costs that have not been previously charged to contracts or other final cost objectives. Any relevant comments on these points would be appreciated.

Consistent with OPM's waiver of Cost Accounting Standards (CAS)

requirements, a new Subpart 1699.70 is added to clarify they do not apply to experience rated FEHB contracts.

We have worked collaboratively with carriers to develop procedures that are consistent with insurance industry practices and assure an equitable allocation of costs to the FEHB Program. When added to our current financial reporting and disclosure requirements, these new provisions will enhance our oversight of the FEHB Program. Because they have been developed in coordination with the standard practices used by experience-rated carriers, we expect they can be implemented within the FEHB Program promptly and without impediments, following the public comment period.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it is based on requirements already in place in the Federal Acquisition Regulation (FAR).

Executive Order 12866, Regulatory Review

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

List of Subjects in 48 CFR Parts 1631 and 1699

Administrative practice and procedure, Government employees, Government procurement, Health facilities, Health insurance, Health professions, Reporting and record keeping requirements, Retirement.

Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, we propose to amend chapter 16 of title 48, Code of Federal Regulations, as follows:

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

1. The authority citations for 48 CFR part 1631 continues to read as follows:

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

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Subpart 1631.1 consisting of section 1631.1 is added to read as follows:

Subpart 1631.1 Definitions.**1631.1 Definitions.**

The definitions in FAR 31.001 are applicable to this section unless otherwise noted.

Subpart 1631.2—Contracts with Commercial Organizations

3. Section 1631.201–70 is revised to read as follows:

1631.201–70 Credits.

The provisions of FAR 31.201–5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments. Examples of such credits include:

- (a) Coordination of benefit refunds, including subrogation settlements;
- (b) Hospital year-end settlements and other applicable provider discounts;
- (c) Uncashed and returned checks;
- (d) Utilization review refunds;
- (e) Contract prescription drug rebates;
- (f) Volume discounts;
- (g) Refunds and other payments or recoveries attributable to litigation with subscribers or providers of health services; and,
- (h) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

4. A new section 1631.203 is added to read as follows:

1631.203 Indirect Costs.

For the purposes of applying FAR 31.203(e) to FEHB Program contracts, OPM considers the monthly rates used by some carriers to be a general practice in the insurance industry.

5. Section 1631.203–70 is revised to read as follows:

1631.203–70 Allocation techniques.

(a) Carriers shall use the following methods for allocating groupings of business unit indirect costs. Carriers shall consistently apply the methods and techniques established to classify direct and indirect costs, to group indirect costs and to allocate indirect costs to cost objectives.

(1) *Input method*—The preferred allocation technique is one that shows the consumption of resources in performance of the activities (input) for the function(s) represented by the cost grouping. This allocation technique should be used in circumstances where there is a direct and definitive relationship between the function(s) and the benefiting cost objectives. Measures of input ordinarily may be expressed in terms such as labor hours or square footage. This means costs may be allocated by use of a rate, such as a rate per labor hour or cost per square foot.

(2) *Output method*—Where input measures are unavailable or impractical to determine, the basis for allocation may be a measure of the output of the function(s) represented by the cost grouping. The output becomes a substitute measure for the use of resources and is a reasonable alternative when a direct measure of input is impractical. Output may be measured in terms of units of end product produced by the function(s). Examples of output measures include number of claims processed by a claims processing center, number of pages printed in a print shop, number of purchase orders processed by a purchasing department, or number of hires by a personnel office.

(3) *Surrogate method*—Where neither activity (input) nor output of the function(s) can be measured practically, a surrogate must be used to measure the resources utilized. Surrogates used to represent the relationship generally measure the benefit to the cost objectives receiving the service and should vary in proportion to the services received. For example, if a personnel department provides various services that cannot be measured practically on an activity (input) or output basis, number of personnel served might reasonably represent the use of resources of the personnel function for the cost objectives receiving the service, where this base varies in proportion to the services performed.

(4) *Other method*—Some cost groupings cannot readily be allocated on measures of specific beneficial or causal relationships under paragraph (a)(1), (a)(2), or (a)(3) of this section. Such costs do not have a direct and definitive relationship to the benefiting cost objectives. Generally, the cost of overall management activities falls in this category. Overall management costs should be grouped in relation to the activities managed. The base selected to measure the allocation of these indirect costs to cost objectives should be a base representative of the entire activity being managed. For example, the total operating expenses of activities managed might be a reasonable base for allocating the general indirect costs of a business unit. Another reasonable method for allocating general indirect costs might be to base them on a percentage of contracts. These examples are not meant to be exhaustive, but rather are examples of allocation methods that may be acceptable under individual circumstances. See also Business Unit General and Administrative (G&A) expenses, FEHBAR 48 CFR 1631.203–71.

(b) Carriers that use multiple cost centers to accumulate and allocate costs

shall apply the techniques in paragraph (a) of this section at each step of the allocation process. Accordingly, the allocation of costs among cost centers at the initial entry into the cost accounting system shall be made in compliance with paragraph (a) of this section. Likewise, the allocation of the cost of interim cost centers to final cost centers is subject to paragraph (a) of this section. If costs of final cost centers are allocated among final cost objectives, the allocation shall also be made in accordance with paragraph (a) of this section. It is possible that carriers using multiple cost centers to accumulate and allocate costs may not have any direct costs, *i.e.*, costs identified specifically with a final cost objective.

(c) The allocation of business unit general and administrative expenses and the allocation of home office expenses to segments are also subject to FEHBAR 48 CFR 1631.203–71 and 1631.203–72, respectively.

6. Section 1631.203–71 is added to read as follows:

1631.203–71 Business Unit General and Administrative (G&A) expenses.

G&A expenses shall be allocated to final cost objectives by a base or method that represents the total activity of the business unit.

7. Section 1631.203–72 is added to read as follows:

1631.203–72 Home office expense.

A carrier's practices for allocating home office expenses to the segments of the carrier will be acceptable for purposes of FAR 31.203(b) if they are allocated on the basis of the beneficial or causal relationship between the home office activities and the segments to which the expenses are allocated. Expenses that cannot be allocated on the basis of a more specific beneficial or causal relationship should be allocated on a basis representative of the entire activity being managed. The compliance of such allocations with FAR 31.203 shall be determined on the basis of the facts and circumstances of each situation.

8. Section 1631.205–10 is added to read as follows:

1631.205–10 Cost of money.

For the purposes of FAR 31.205–10(a)(2)(iii), the estimated facilities capital cost of money is specifically identified if it is identified in the prior year's Annual Accounting Statement or, for new experience-rated carriers, the supplemental information supporting submitted costs (such as the Supplemental Schedule of Administrative Expenses).

9. Section 1631.205-72 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

1631.205-72 FEHBP compensation for personal services.

(a) * * *

(b)(1) The costs of compensated personal absence shall be assigned to the cost accounting period or periods in which entitlement was earned. Entitlement means an employee's right, whether conditional or unconditional, to receive a determinable amount of compensated personal absence, or pay in lieu thereof.

(2) If at the beginning of the 1st year a carrier subject to paragraph (b)(1) of this section has a liability for accrued but unpaid expenses for compensated personal absences that would otherwise be allocable to FEHB contracts, the carrier may include such costs in a suspense account. The suspense account may be amortized and included in government contract costs at a rate not exceeding 20 percent per year.

10. Part 1699 is added consisting of subpart 1699.7, section 1699.70 to read as follows:

PART 1699—COST ACCOUNTING STANDARDS

Subpart 1699.7—Cost Accounting Standards

1699.70 Cost accounting standards.

With respect to all experience-rated contracts currently existing under the FEHB Program, the Cost Accounting Standards, found at 48 CFR part 9904, of the Code of Federal Regulations, do not apply.

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

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period, notice of availability of draft economic analysis

and draft environmental assessment, and notice of a public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for Mexican spotted owl (owl) (*Strix occidentalis lucida*) under the Endangered Species Act of 1973, as amended. We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on and request changes to the proposed critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment. Over a 10-year time period, the future efficiency impacts associated with owl conservation are forecast to range from \$8.7 to \$30.4 million (or \$0.9 to \$3.0 million per year). Comments previously submitted on the July 21, 2000, proposed rule (65 FR 45336) or the November 18, 2003, notice (68 FR 65020) need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period and will be fully considered in preparation of the final rule.

DATES: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before April 26, 2004, or at the public meeting to be held in April 2004.

We will hold a public informational session on April 20, 2004, in Las Cruces, New Mexico, from 5 p.m. to 7 p.m.

ADDRESSES: *Meeting:* The public informational session will be held at the Corbett Center, New Mexico State University Campus, Jordan and University Streets, Las Cruces, New Mexico.

If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113.

2. You may hand-deliver written comments and information to our New Mexico Ecological Services Field Office, at the above address, or fax your comments to 505-346-2542.

You may obtain copies of the draft economic analysis and draft environmental assessment by mail, review comments and materials received, and review supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, New Mexico State Administrator, New Mexico Ecological Services Field Office (telephone 505-761-4706, facsimile 505-346-2542).

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl (owl) inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. On November 18, 2003 (68 FR 65020), we reopened the public comment period on our July 21, 2000, proposed rule to designate critical habitat for the owl (65 FR 45336). The proposal included approximately 5.5 million hectares (ha) (13.5 million acres (ac)) in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands. On November 12, 2003, the United States District Court for the District of Arizona, (*Center for Biological Diversity v. Norton*, Civ. No. 01-409 TUC DCB), ordered the Service to submit a final rule for designation of critical habitat for the owl to the **Federal Register** by August 20, 2004. Additional background information is available in the November 18, 2003, notice reopening the public comment period.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have developed a draft economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for the owl. We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat,