



This document is scheduled to be published in the Federal Register on 12/09/2016 and available online at <https://federalregister.gov/d/2016-29489>, and on FDsys.gov

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 57

[REG-123829-16]

RIN 1545-BN57

Electronic Filing of the Report of Health Insurance Provider Information

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Health Insurance Providers Fee regulations to require certain covered entities engaged in the business of providing health insurance for United States health risks to electronically file Form 8963, "Report of Health Insurance Provider Information." These proposed regulations affect those entities.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-123829-16), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-123829-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS REG-123829-16). FOR FURTHER INFORMATION CONTACT: Concerning the

proposed regulations, David Bergman, (202) 317-6844; concerning submissions of comments or to request a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Health Insurance Providers Fee Regulations (26 CFR part 57) under section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA). All references in this preamble to section 9010 are references to the ACA.

Section 9010(a) imposes an annual fee on each covered entity engaged in the business of providing health insurance. A covered entity, defined under section 9010(c), is any entity that provides health insurance for any United States health risk during each year, subject to certain exclusions. The total aggregate amount of the fee for all covered entities is determined by statute and is called the applicable amount. See section 9010(e). Each covered entity's annual fee is equal to an amount that bears the same ratio to the applicable amount as the covered entity's portion of net premiums written with respect to health insurance for United States health risks that are taken into account compared to the aggregate amount of net premiums written for all covered entities that are taken into account. Section 9010(b)(2) clarifies which net premiums are

taken into account for purposes of calculating the fee. A covered entity (including a controlled group) with no more than \$25 million in net premiums written does not have any premiums taken into account and is not liable for a fee.

Section 9010(b)(3) requires the Secretary to calculate the amount of each covered entity's fee on a calendar year basis. To facilitate these calculations, section 9010(g)(1) requires that each covered entity must report to the Secretary the covered entity's net premiums written for health insurance for any United States health risk for the preceding calendar year by the date prescribed by the Secretary. Section 9010(g)(1) also provides the Secretary with authority to prescribe the manner in which a covered entity reports its net premiums written. The reporting requirement applies regardless of whether a covered entity will be liable for a fee. Section 9010(g)(2) imposes a penalty on a covered entity for any failure to report the required information by the date prescribed by the Secretary (determined with regard to any extension of time for filing), unless such failure is due to reasonable cause. Section 9010(g)(3) imposes an accuracy-related penalty for understating the covered entity's net premiums written for health insurance for any United States health risk for any calendar year.

Section 57.3 of the Health Insurance Providers Fee regulations implements section 9010(g) and provides the rules for covered entities to report net premiums written for health insurance of United States health risks to the IRS. Under that section, information is reported to the IRS on Form 8963, "Report of Health Insurance Provider Information," which must be filed in accordance with the form instructions by April 15 of the year following the calendar year for which data is being reported. That section further provides that rules for the manner of reporting may be provided in guidance in

the Internal Revenue Bulletin. The IRS uses the information reported on Form 8963 as part of the determination of each covered entity's annual fee under section 9010.

Neither the statute nor the regulations currently specify whether Form 8963 must be submitted electronically or on paper. Covered entities currently have the option of filing the form in either manner.

Section 57.5 requires the IRS to send each covered entity notice of a preliminary fee calculation for that fee year (the calendar year in which the fee must be paid, beginning with 2014), and provides the content of that notice. Section 57.5 further provides that the timing of the notice will be provided in guidance published in the Internal Revenue Bulletin. Notice 2013-76 (2013-51 IRB 769) provides that the IRS will mail each covered entity its notice of preliminary fee calculation by June 15 of each fee year. Section 57.6 requires that a covered entity correct any errors identified after receiving the preliminary fee calculation by filing a corrected Form 8963. Notice 2013-76 provides that a corrected Form 8963 must be filed by July 15 of the fee year. The corrected Form 8963 replaces the original Form 8963 for all purposes, including the determination of whether an accuracy-related penalty applies. The covered entity remains liable for any failure to report penalty if it failed to timely submit the original Form 8963. As with the original report, the corrected Form 8963 may currently be submitted either electronically or on paper.

Under §57.7(b), the IRS must send each covered entity its final fee calculation no later than August 31. The IRS validates the data on Form 8963 in performing the final calculation, and, pursuant to section 9010(b)(3), the IRS is authorized to use any other source of information to determine each covered entity's net premiums written for health

insurance of United States health risks. The covered entity must pay the fee by September 30 of the fee year, as provided by section 9010(a)(2). The fee must be paid by electronic funds transfer. See §§57.7(d); 57.6302-1.

The Consolidated Appropriations Act of 2016 imposes a moratorium on the fee for the 2017 calendar year. P.L. 114-113, section 201. Thus, covered entities are not required to pay the fee or file Form 8963 for the 2017 fee year.

Explanation of Provisions

The IRS has now had three years of experience administering the Health Insurance Providers Fee. Based on this experience, the IRS concludes that the fee could be more efficiently administered if certain covered entities were required to file Forms 8963 and corrected Forms 8963 electronically.

The calculation of the fee is complex, and the statute requires that it be paid by the covered entity by September 30. The calculation of any one covered entity's fee depends upon the data reported on Form 8963 by all covered entities – an adjustment to one covered entity's fee affects other covered entities' fees. Covered entities need time after the end of the year to compile the information that needs to be reported. Accordingly, there is a short window of time for (1) the IRS to compile and analyze the reported information and send out preliminary letters, (2) covered entities to respond with any corrections, (3) the IRS to compile and analyze the amended reporting and issue final fee letters, and (4) covered entities to pay the fee.

Paper reporting slows this process because paper forms take time to travel through the mail. Additionally, once the paper Form 8963 (or corrected Form 8963)

reaches IRS personnel, the information on the paper form must be transcribed into IRS computers to calculate the fee. Transcription of paper forms is costly and time-consuming. And, because of the nature of the fee, no entity's proposed or final assessment can be determined until all the reporting of all payers has been taken into account.

The IRS uses electronic filing in several other contexts to streamline the collection of large volumes of paper forms and to efficiently use the information provided. Electronic filing of Forms 8963 and corrected Forms 8963 would benefit the administration of the fee by significantly reducing delays and the resources needed to calculate the preliminary and final fee amounts. Electronic filing will also benefit fee payers by facilitating the process for computing the fee for all covered entities.

Accordingly, pursuant to section 9010(g)(1), which provides authority to prescribe the manner for reporting, the proposed regulations amend §57.3(a)(2) to provide that a covered entity (including a controlled group) reporting more than \$25 million in net premiums written on a Form 8963 or corrected Form 8963 must electronically file these forms after December 31, 2017. Forms 8963 reporting \$25 million or less in net premiums written are not required to be electronically filed. This is because a covered entity (including a controlled group) reporting no more than \$25 million in net premiums written is not liable for a fee and therefore the time constraints applicable to computation of the fee are not applicable with respect to these entities. See §57.4(a)(4). The proposed regulation also provides that if a Form 8963 or corrected Form 8963 is required to be filed electronically, any subsequently filed Form 8963 filed for the same fee year must also be filed electronically, even if such subsequently filed Form 8963

reports \$25 million or less in net premiums written. In addition, the proposed regulation provides that failure to electronically file will be treated as a failure to file for purposes of §57.3(b).

Proposed Effective/Applicability Date

These amendments are proposed to apply to any covered entity reporting more than \$25 million in net premiums written on any Form 8963 filed after December 31, 2017.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that the electronic filing requirement would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the rule is expected to affect primarily larger entities because the electronic filing requirement is not met unless the filer must report more than \$25 million in net premiums. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the Federal Register.

Drafting Information

The principal author of the proposed regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 57

Health Insurance, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 57 is proposed to be amended to read as follows:

PART 57—HEALTH INSURANCE PROVIDERS FEE

Paragraph 1. The authority citation for 26 CFR part 57 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 57.3 is amended by revising paragraph (a)(2) to read as follows:

§57.3 Reporting requirements and associated penalties.

* * * * *

(a) * * *

(2) Manner of reporting---(i) In general. The IRS may provide rules in guidance published in the Internal Revenue Bulletin for the manner of reporting by a covered entity under this section, including rules for reporting by a designated entity on behalf of a controlled group that is treated as a single covered entity.

(ii) Electronic filing required. Any Form 8963 (including corrected forms) filed pursuant to paragraph (a)(1) of this section reporting more than \$25 million in net premiums written must be filed electronically in accordance with the instructions to the form. If a Form 8963 or corrected Form 8963 is required to be filed electronically under this paragraph (a)(2)(ii), any subsequently filed Form 8963 filed for the same fee year must also be filed electronically. For purposes of paragraph (b) of this section, any Form 8963 required to be filed electronically under this section will not be considered filed unless it is filed electronically.

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Par. 3 Section 57.10 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§57.10 Effective/applicability date.

(a) Except as provided paragraphs (b) and (c) of this section, §§ 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

* * * * *

(c) Section 57.3(a)(2)(ii) applies to Forms 8963, including corrected Forms 8963, filed after December 31, 2017.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.