

the basis of material nonpublic information related to cybersecurity risks and incidents. The Commission believes that it is important to have well designed policies and procedures to prevent trading on the basis of all types of material non-public information, including information relating to cybersecurity risks and incidents.

In addition, while companies are investigating and assessing significant cybersecurity incidents, and determining the underlying facts, ramifications and materiality of these incidents, they should consider whether and when it may be appropriate to implement restrictions on insider trading in their securities. Company insider trading policies and procedures that include prophylactic measures can protect against directors, officers, and other corporate insiders trading on the basis of material nonpublic information before public disclosure of the cybersecurity incident. As noted above, we believe that companies would be well served by considering how to avoid the appearance of improper trading during the period following an incident and prior to the dissemination of disclosure.

### 3. Regulation FD and Selective Disclosure

Companies also may have disclosure obligations under Regulation FD in connection with cybersecurity matters. Under Regulation FD, “when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons it must make public disclosure of that information.”<sup>63</sup> The Commission adopted Regulation FD owing to concerns about companies making selective disclosure of material nonpublic information to certain persons before making full disclosure of that same information to the general public.<sup>64</sup>

In cases of selective disclosure of material nonpublic information related to cybersecurity, companies should ensure compliance with Regulation FD. Companies and persons acting on their behalf should not selectively disclose material, nonpublic information regarding cybersecurity risks and incidents to Regulation FD enumerated persons<sup>65</sup> before disclosing that same

information to the public.<sup>66</sup> We expect companies to have policies and procedures to ensure that any disclosures of material nonpublic information related to cybersecurity risks and incidents are not made selectively, and that any Regulation FD required public disclosure is made simultaneously (in the case of an intentional disclosure as defined in the rule) or promptly (in the case of a non-intentional disclosure) and is otherwise compliant with the requirements of that regulation.<sup>67</sup>

By the Commission.

Dated: February 21, 2018.

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011–01–P**

## DEPARTMENT OF LABOR

### Benefits Review Board

#### 20 CFR Part 802

RIN 1290–AA32

#### Change of Mailing Address for the Benefits Review Board

**AGENCY:** Benefits Review Board, Labor.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This rule amends one section of the Benefits Review Board’s regulations in order to change the mailing address for notices of appeal and correspondence sent to the Board.

**DATES:** This rule is effective March 28, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Shepherd, Clerk of the Appellate Boards, at 202–693–6319 or *Shepherd.Thomas@dol.gov*.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On March 7, 1997, the Department issued a technical amendment to 20 CFR 802.204 to include a U.S. Post

persons associated with an investment advisor; (3) an investment company or persons affiliated with an investment company; or (4) a holder of the issuer’s securities under circumstances in which it is reasonably foreseeable that the person will trade in the issuer’s securities on the basis of the information. 17 CFR 243.100(b)(1).

<sup>66</sup> Final Rule: Selective Disclosure and Insider Trading, Release No. 34–43154 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)].

<sup>67</sup> “Under the regulation, the required public disclosure may be made by filing or furnishing a Form 8–K, or by another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public.” *Id.* at 3.

Office Box mailing address for filing notices of appeal with the Board. 62 FR 10666. The Department added the P.O. Box to augment timely receipt of incoming mail. Over time, the Department has found this supplemental process is not needed to ensure the timely receipt of mail. Therefore, to save costs, the Department is eliminating the P.O. Box and amending its regulations to direct that all notices of appeal and correspondence filed by mail be sent directly to the Board’s offices in the Frances Perkins Department of Labor Building in Washington, DC. This document amends the relevant section in the Code of Federal Regulations governing the procedural rules of the Board in order to present the new mailing address.

##### **II. Statutory Authority**

This rule is promulgated by the Secretary of Labor under the authority of 5 U.S.C. 301, as well as the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, and the Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. 901 *et seq.*

##### **III. Rulemaking Analyses**

###### *A. Administrative Procedure Act*

Section 553(b)(3) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3), provides that an agency is not required to publish a notice of proposed rulemaking in the **Federal Register** for “rules of agency organization, procedure, or practice.” 5 U.S.C. 553(b)(3)(A). Rules are also exempt when an agency finds “good cause” that notice and comment rulemaking procedures would be “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3)(B). The Department has determined that this rulemaking meets the notice and comment exemption requirements in 5 U.S.C. 553(b)(3)(A) and (B). The Department’s revision makes a technical and non-substantive change to the rules of procedure before the Benefits Review Board and does not alter any substantive standard. The Department does not believe that public comment is necessary for this minor revision.

###### *B. Regulatory Flexibility Act, Unfunded Mandates Reform Act, and Small Business Regulatory Enforcement Fairness Act*

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act at 5 U.S.C. 601(2) do not apply to this rule, and the rule is not

<sup>63</sup> 17 CFR 243.100. Final Rule: Selective Disclosure and Insider Trading, Release No. 34–43154 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)].

<sup>64</sup> *Id.*

<sup>65</sup> Regulation FD applies generally to selective disclosures made to persons outside the issuer who are (1) a broker or dealer or persons associated with a broker or dealer; (2) an investment advisor or

subject to sections 202 or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 and 1535). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of the UMRA (2 U.S.C. 1533 and 1534).

This action is further not classified as a “rule” under Chapter 8 of the Small Business Regulatory Enforcement Fairness Act of 1996, because it pertains to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

#### C. Paperwork Reduction Act

This rule does not contain a collection of information requirements subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### D. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999). This rule does not have federalism implications as outlined in E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### E. Executive Order 13175, Indian Tribal Governments

The Department has reviewed this rule under the terms of Executive Order 13175 (65 FR 67249, November 6, 2000) and determined it does not have “tribal implications.” The rule does not have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” As a result, no Tribal summary impact statement has been prepared.

#### F. Executive Order 12866 and Executive Order 13771

This rule has been drafted and reviewed in accordance with Executive Order 12866. The rule is not a “significant regulatory action” as defined by section 3(f) of the order. Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. In addition, this rule is not an E.O. 13771 regulatory

action because this rule is not significant under E.O. 12866.

#### List of Subjects in 20 CFR Part 802

Administrative practice and procedure, Black lung benefits, Longshore and harbor workers, Workers’ compensation.

For the reasons set forth above, the Department of Labor amends 20 CFR part 802 as follows:

#### PART 802—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 802 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 30 U.S.C. 901 *et seq.*; 33 U.S.C. 901 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174; Secretary of Labor’s Order 03–2006, 71 FR 4219, January 25, 2006.

■ 2. Section 802.204 is revised to read as follows:

#### § 802.204 Place for filing notice of appeal and correspondence.

Any notice of appeal or other correspondence filed by mail shall be sent to the U.S. Department of Labor, Benefits Review Board, ATTN: Office of the Clerk of the Appellate Boards (OCAB), 200 Constitution Ave. NW, Washington, DC 20210–0001. Notices of appeal or other correspondence may be otherwise presented to the Clerk. A copy of the notice of appeal shall be served on the deputy commissioner who filed the decision or order being appealed and on all other parties by the party who files a notice of appeal. Proof of service of the notice of appeal on the deputy commissioner and other parties shall be included with the notice of appeal.

Signed at Washington, DC, this 15th day of February, 2018.

**R. Alexander Acosta,**

*Secretary, Department of Labor.*

[FR Doc. 2018–03783 Filed 2–23–18; 8:45 am]

**BILLING CODE 4510–HT–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 57

[TD 9830]

RIN 1545–BM52

#### Health Insurance Providers Fee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations that provide rules for the definition of a covered entity for purposes of the fee imposed by section 9010 of the Patient Protection and Affordable Care Act, as amended. The final regulations supersede and adopt the text of temporary regulations that provide rules for the definition of a covered entity. The final regulations affect persons engaged in the business of providing health insurance for United States health risks.

**DATES:** *Effective Date:* The final regulations are effective February 22, 2018.

**FOR FURTHER INFORMATION CONTACT:** Rachel S. Smith at (202) 317–6855 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

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) imposes an annual fee on covered entities that provide health insurance for United States health risks. All references in this preamble to section 9010 are references to section 9010 of the ACA. Section 9010 did not amend the Internal Revenue Code (Code) but contains cross-references to specified Code sections. Unless otherwise indicated, all other references to subtitles, chapters, subchapters, and sections in this preamble are references to subtitles, chapters, subchapters, and sections in the Code and related regulations. All references to “fee” in this preamble are references to the fee imposed by section 9010.

On November 27, 2013, the Department of the Treasury (Treasury Department) and the IRS published final regulations (TD 9643) relating to the health insurance providers fee in the **Federal Register** (78 FR 71476). On February 26, 2015, the Treasury Department and the IRS published temporary regulations (TD 9711) relating to the health insurance providers fee in the **Federal Register** (80 FR 10333). A notice of proposed rulemaking (REG–143416–14) cross-referencing the temporary regulations was published in the **Federal Register** in the same issue (80 FR 10435). The temporary regulations provided further guidance on the definition of a covered entity for the 2015 fee year and subsequent fee years.