Department requests information as to why this should be so. Additionally, the Department seeks views and proposals on what an entirely new proposed rule may look like. For instance, if the Department should no longer issue licenses, what do commenters envision Federal involvement to be?

3. How can revisions to the existing rule ensure that persons who conduct trade are reputable and that there are mechanisms in place to address traders who violate Federal or Tribal law?

If there is a need to update 25 CFR part 140, we solicit information and suggestions on how revisions to the existing rule can ensure that there are reputable actors in Indian Country. Further, the Department requests information and suggestions on revisions to the existing rule to ensure that violations of Federal or Tribal law are properly addressed. The Department acknowledges that many Tribes have comprehensive schemes in place regulating traders conducting business within their jurisdiction.

4. How do Tribes currently regulate trade in Indian Country, and how might revisions to 25 CFR part 140 help Tribes regulate trade in Indian Country?

As mentioned, the Department recognizes that many Tribes have enacted comprehensive laws concerning economic activity occurring on Tribal lands and that many Tribal courts retain jurisdiction over Indian traders. For example, the Department is aware that some Tribes have required disclosure of violations of business licenses and of enforcement actions taken by a Federal, Tribal, or State entity for trade-related activity. Tribes have also required the disclosure of any pending lawsuits involving the person and the business, and disclosure of tax liens against the business and other unsatisfied judgments. Other items that Tribes have required include a Federal employer identification number, a State registration number, insurance or bonding information, copies of all licenses (state, county, city or Tribal) currently held by the business, and affiliation with any other businesses.

With this in mind, the Department requests information on how Tribes currently regulate trade within their jurisdiction. The Department requests specific information and suggestions, including language on how the Federal government can bolster those Tribes that currently comprehensively regulate trade, as well as those Tribes that do not do so presently.

5. What types of trade should be regulated and what types of traders should be subject to regulation?

The Department has received numerous proposals from various Tribes pertaining to Indian Trader regulation. Many of these proposals suggest that trade regulated under part 140 should include not only commercial activities, but also mineral and energy development and any form of natural-resources extraction or agriculture.

Currently, section 140.5(a)(1) of the existing rule has the following definitions:

(5) *Contract* means any agreement made or under negotiation with any Indian for the purchase, transportation or delivery of goods or supplies.

(6) *Trading* means buying, selling, bartering, renting, leasing, permitting and any other transaction involving the acquisition of property or services.

(7) *Commercial trading* means any trading transaction where an employee engages in the business of buying or selling services or items which he/she is trading.

The Department seeks comments on whether the definitions of contract, trading, and commercial trading should be revised, or struck in their entirety, and why.

Additionally, the current definitions do not define the type of trader conducting business with an Indian Tribe. The draft proposals the Department has received recommend that the revised rule apply to any person conducting trade in Indian Country, including non-Indians. The Department solicits comments on whether an updated part 140 should define who the rule would apply to and whether or not this definition should broadly include any person conducting trade within Indian Country.

6. How might revisions to the regulations promote economic viability and sustainability in Indian Country?

The Department is interested in receiving feedback on how revisions to the trade regulations could facilitate economic activity in Indian country and tribal economic self-sufficiency.

7. What services do Tribes currently provide to individuals or entities doing business in Indian Country and what role do tax revenues play in providing such services?

The Department recognizes that Tribes provide a range of services to Indians and non-Indians doing business within their Indian Country. The Department seeks comments identifying the types of services offered, such as law enforcement, food sanitation and health inspections, transportation and other infrastructure, etc. The Department also seeks information on whether and to what extent Tribes are able to rely on tax revenues to provide such services.

Dated: December 1, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–29253 Filed 12–8–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 57

[REG–134438–15]

RIN 1545–BN10

Health Insurance Providers Fee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would modify the current definition of ''net premiums written'' for purposes of the fee imposed by section 9010 of the Patient Protection and Affordable Care Act, as amended. The proposed regulations will affect persons engaged in the business of providing health insurance for United States health risks.

DATES: Comments and requests for a public hearing must be received by March 9, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–134438–15), room 5203, 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–134438–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking portal at *www.regulations.gov* (IRS REG–134438–15)

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rachel S. Smith, (202) 317–6855; concerning submissions of comments and request for a hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

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. Section 9010 did not amend the Internal Revenue Code (Code) but contains cross-references to specified Code sections. In this preamble all references to section 9010 are references to section 9010 of the ACA and all references to ''fee'' are references to the fee imposed by section 9010.

Section 9010(a) imposes an annual fee on each covered entity engaged in the business of providing health insurance. The fee is due by the annual date specified by the Secretary, but in no event later than September 30th of each calendar year in which a fee must be paid (fee year).

Section 9010(b) requires the Secretary to determine the annual fee for each covered entity based on the ratio of the covered entity's net premiums written for health insurance for any United States health risk that are taken into account for the calendar year immediately before the fee year (data year) to the aggregate net premiums written for health insurance of United States health risks of all covered entities that are taken into account during the data year. In calculating the fee, the Secretary must determine each covered entity's net premiums written for United States health risks based on reports submitted to the Secretary by the covered entity and through the use of any other source of information available to the Secretary. Section 9010 does not define the term ''net premiums written.''

On November 29, 2013, the Treasury Department and the IRS published in the **Federal Register** (TD 9643; 78 FR 71476) final regulations regarding the fee (final regulations). The final regulations define *net premiums written* to mean premiums written, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions and medical loss ratio (MLR) rebates with respect to the data year. Net premiums written do not include premiums written for indemnity reinsurance (and are not reduced by indemnity reinsurance ceded) because indemnity reinsurance is not considered health insurance for purposes of section 9010. However, net premiums written do include premiums written (and are reduced by premiums ceded) for assumption reinsurance; that is, reinsurance for which there is a novation and the reinsurer takes over the entire risk.

The preamble to the final regulations explained that, for covered entities that file the Supplemental Health Care Exhibit (SHCE) with the National Association of Insurance Commissioners (NAIC), net premiums written for health insurance generally will equal the amount reported on the SHCE as direct premiums written minus MLR rebates with respect to the data year, subject to any applicable exclusions under section 9010. The instructions to Form 8963, *Report of Health Insurance Provider Information,* provide additional information on how to determine net premiums written using the SHCE and any equivalent forms as the source of data, and can be updated to reflect changes to the SHCE.

Explanation of Provisions

The proposed regulations would amend and clarify the rules for how ''net premiums written'' take into account certain premium adjustments and payments.

1. Retrospective Premium Adjustments

Following the publication of the final regulations, the Treasury Department and the IRS received comments requesting that premium adjustments related to retrospectively rated contracts be taken into account in determining net premiums written. The NAIC's Accounting Practices and Procedures Manual Statement of Statutory Accounting Principles No. 66, *Retrospectively Rated Contracts,* defines a retrospectively rated contract as a contract which has the final policy premium calculated based on the loss experience of the insured during the term of the policy (including loss development after the term of the policy) and on the stipulated formula set forth in the policy or a formula required by law. These premium adjustments, made periodically, may involve either the payment of return premium to the insured (a ''retrospectively rated contract payment'') or payment of an additional premium by the insured (a ''retrospectively rated contract receipt''), or both, depending on experience.

Commenters recommended that in calculating net premiums written, premiums written should be increased by retrospectively rated contract receipts and reduced by retrospectively rated contract payments. Commenters asserted that retrospectively rated contract payments are refunded to policyholders in much the same way as MLR rebates. Therefore, without an adjustment for retrospectively rated contract payments, covered entities that make these payments will bear a liability for an amount of the annual fee that correlates to premiums from which they do not actually receive an economic benefit.

In response to these comments, the proposed regulations would modify the current definition of net premiums written to account for premium adjustments related to retrospectively rated contracts, computed on an accrual basis. These amounts are received from and paid to policyholders annually based on experience. Retrospectively rated contract receipts and payments do not include changes to funds or accounts that remain under the control of the covered entity, such as changes to premium stabilization reserves.

2. Risk Adjustment Payments and Charges

Following the publication of the final regulations, questions also arose about the treatment of risk adjustment payments under the ACA. Section 1343 of the ACA provides a permanent risk adjustment program for certain plans in the individual and small group markets. In general, the program transfers risk adjustment funds from health insurance plans with relatively lower-risk enrollees to issuers that disproportionately attract high-risk populations, such as individuals with chronic conditions. Section 1343(a)(1) generally requires each state, or the Department of Health and Human Services (HHS) acting on behalf of the state, to assess a charge on health plans and health insurance issuers in the individual or small group markets within a state (with respect to health insurance coverage) if the actuarial risk of the enrollees of such plans or coverage for a year is less than the average actuarial risk of all enrollees in all plans or coverage in the state for the year that are not self-insured group health plans. Section 1343(a)(2) generally requires each state, or HHS acting on behalf of the state, to make a payment to health plans and health insurance issuers in the individual or small group markets within a state (with respect to health insurance coverage) if the actuarial risk of the enrollees of such plans or coverage for a year is greater than the average actuarial risk of all enrollees in all plans and coverage in the state for the year that are not self-insured group health plans.

Although not specifically listed, net premiums written, as defined in the final regulations, include risk adjustment payments received by a covered entity under section 1343(a)(2) of the ACA and are reduced for risk adjustment charges paid by a covered entity under section 1343(a)(1) of the ACA. Nonetheless, several covered entities asked whether net premiums

written included risk adjustment payments received and charges paid. Therefore, these proposed regulations add specific language to the definition of net premiums written to clarify that net premiums written include risk adjustment payments received and are reduced for risk adjustment charges paid. If a covered entity did not include risk adjustment payments received as direct premiums written on its SHCE or did not file an SHCE, these amounts are still part of net premiums written and must be reported as such on Form 8963. For this purpose, risk adjustment payments received and charges paid are computed on an accrual basis.

3. Other Premium Adjustments

These proposed regulations would authorize the IRS to provide rules in guidance published in the Internal Revenue Bulletin for additional amounts to be taken into account in determining net premiums written. If the Treasury Department and the IRS determine that published guidance providing additional adjustments to net premiums written is warranted, such guidance will be published in the Internal Revenue Bulletin.

Proposed Effective/Applicability Date

These regulations are proposed to apply with respect to any fee that is due on or after September 30, 2018.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Because these regulations do not include a collection of information, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to Code section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of these proposed regulations. The Treasury Department and the IRS specifically request comments on the following:

1. How the adjustments to net premiums written under these proposed regulations tie to amounts reported on the SHCE.

2. Whether there should be a transition rule for premium adjustments related to retrospectively rated contracts and how any such rule should be implemented.

All comments will be available for public inspection and copying. A public hearing may 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 hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Rachel S. Smith, IRS Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

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 as follows:

PART 57—HEALTH INSURANCE PROVIDERS FEE

■ 1. The authority citation for part 57 continues to read in part as follows:

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

* * * * *

■ 2. Section 57.2 is amended by revising paragraph (k) to read as follows:

§ 57.2 Explanation of terms.

* * * * *

(k) *Net premiums written*—(1) *In general.* The term *net premiums written* means premiums written, adjusted as provided in paragraph (k)(2) of this section.

(2) *Adjustments.* Net premiums written include adjustments to account for:

(i) *Assumption reinsurance, but not indemnity reinsurance.* Net premiums written include reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions with respect to the data year. Net premiums written do not include premiums written for indemnity reinsurance and are not reduced by indemnity reinsurance ceded because indemnity reinsurance within the meaning of paragraph (h)(5)(i) of this section is not health insurance under paragraph (h)(1) of this section. However, in the case of assumption reinsurance within the meaning of paragraph (h)(5)(ii) of this section, net premiums written include premiums written for assumption reinsurance, reduced by assumption reinsurance premiums ceded.

(ii) *Medical loss ratio (MLR) rebates.* Net premiums written are reduced by MLR rebates with respect to the data year. For this purpose, MLR rebates are computed on an accrual basis.

(iii) *Premium adjustments related to retrospectively rated contracts.* Net premiums written include retrospectively rated contract receipts and are reduced by retrospectively rated contract payments with respect to the data year. For this purpose, net premium adjustments related to retrospectively rated contracts are computed on an accrual basis.

(iv) *Amounts related to the risk adjustment program under section 1343 of the ACA.* Net premiums written include risk adjustment payments (within the meaning of 42 U.S.C. 18063(b)) received with respect to the data year and are reduced by risk adjustment charges (within the meaning of 42 U.S.C. 18063(a)) paid with respect to the data year. For this purpose, risk adjustment payments and risk adjustment charges are computed on an accrual basis.

(v) *Additional adjustments published in the Internal Revenue Bulletin.* The IRS may provide rules in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) for additional adjustments against premiums written in determining net premiums written.

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

§ 57.10 Effective/applicability date.

(a) *In general.* Except as provided in 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) *Paragraph (k) of § 57.2.* Paragraph (k) of § 57.2 applies to any fee that is due on or after September 30, 2018.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–29487 Filed 12–8–16; 8:45 am]

BILLING CODE 4830–01–P