

Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Proposal

The FAA proposes an amendment to 14 CFR part 71 to Class E surface airspace, Class E airspace designated as an extension to a Class C surface area, and Class E airspace extending upward from 700 feet above the surface at Manchester Boston Regional Airport (formerly Manchester Airport) Manchester, NH, and update this airport's geographic coordinates to coincide with the FAA's database. Also, this action proposes to amend Class D airspace, Class E airspace designated as an extension to Class D surface area, and Class E airspace extending upward from 700 feet above the surface at Boire Field Airport (formerly Boire Field), by updating each airport's name, and removing unnecessary verbiage from the airport description, as per Order JO 7400.2N. This action would also replace the term Notice to Airmen with the term Notice to Air Missions, and the term Airport/Facility Directory with the term Chart Supplement in the airspace descriptions.

Class E airspace designations are published in Paragraphs 5000, 6002, 6003, 6004, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures", prior to any FAA final regulatory action.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

#### *Paragraph 5000 Class D Airspace.*

\* \* \* \* \*

#### **ANE NH D Nashua, NH [Amended]**

Boire Field Airport, NH  
(Lat. 42°46'57" N, long. 71°30'51" W)  
Pepperell Airport, MA  
(Lat. 42°41'46" N, long. 71°33'00" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5-mile radius of Boire Field Airport; excluding that airspace within a 2-mile radius of Pepperell Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

#### *Paragraph 6002 Class E Surface Airspace.*

\* \* \* \* \*

#### **ANE NH E2 Manchester, NH [Amended]**

Manchester Boston Regional Airport, NH  
(Lat. 42°55'58" N, long. 71°26'09" W)

That airspace extending upward from surface the within a 5-mile radius of the Manchester Boston Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

#### *Paragraph 6003 Class E Airspace Designated as an Extension to Class C Area.*

\* \* \* \* \*

#### **ANE NH E3 Manchester, NH [Amended]**

Manchester Boston Regional Airport, NH  
(Lat. 42°55'58" N, long. 71°26'09" W)

That airspace extending upward from the surface within 3.3-miles each side of the 337° bearing of Manchester Boston Regional Airport extending from the 5-mile radius to 8.5-miles northwest of the airport.

#### *Paragraph 6004 Class E Airspace Designated as an Extension to Class D Surface Area.*

\* \* \* \* \*

#### **ANE NH E4 Nashua, NH [Amended]**

Boire Field Airport, NH  
(Lat. 42°46'57" N, long. 71°30'51" W)  
Manchester VOR/DME  
(Lat. 42°52'07" N, long. 71°22'10" W)

That airspace extending upward from the surface within 1.1 miles on each side of the Manchester VOR/DME 231° radial extending from the 5-mile radius to 8.4 miles northeast of Boire Field Airport.

#### *Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

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#### **ANE NH E5 Nashua, NH [Amended]**

Boire Field Airport, NH  
(Lat. 42°46'57" N, long. 71°30'51" W)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Boire Field Airport.

#### **ANE NH E5 Manchester, NH [Amended]**

Manchester Boston Regional Airport, NH  
(Lat. 42°55'58" N, long. 71°26'09" W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Manchester Boston Regional Airport.

Issued in College Park, Georgia, on September 29, 2022.

**Lisa Burrows,**

*Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 300

[REG–100719–21]

RIN 1545–BQ26

### User Fees Relating to Enrolled Actuaries

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations relating to imposing user fees for enrolled actuaries. The proposed regulations increase both the enrollment and renewal of enrollment user fees for enrolled actuaries from \$250.00 to \$680.00. The proposed regulations affect individuals who apply to become an enrolled actuary or seek to renew their enrollment. The Independent Offices Appropriation Act of 1952 authorizes charging user fees.

**DATES:** Electronic or written comments must be received by December 5, 2022. The public hearing is being held by teleconference on December 16, 2022 at 10 a.m. EDT. Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 14, 2022. If no outlines are received by December 5, 2022, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. EDT on December 14, 2022. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by December 13, 2022.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-100719-21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. Send paper submissions to: CC:PA:LPD:PR (REG-100719-21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. The IRS will publish any comments submitted to the public docket.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-100719-21).

Individuals who want to testify by telephone at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-100719-21 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-100719-21. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want

to attend the public hearing by telephone must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-100719-21 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-100719-21. To request special assistance during the telephonic hearing contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-5177 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Carolyn M. Lee at 202-317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, Regina Johnson at (202) 317-5177 (not toll-free numbers), or [publichearings@irs.gov](mailto:publichearings@irs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background and Explanation of Provisions**

This document contains proposed amendments to 26 CFR part 300 regarding user fees.

Regulations establish certain requirements for individuals who seek to provide actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA) Pub. L. 93-406, Title III, § 3042, Sept. 2, 1974, 88 Stat. 1002. To account for its costs of providing enrolled actuary enrollment and renewal of enrollment services, the IRS charges a user fee to apply for enrollment or renew enrollment as an enrolled actuary. This proposal would increase the amount of the user fee from \$250.00 per enrollment application or renewal application to \$680.00 per enrollment application or renewal application.

**A. Enrolled Actuaries**

ERISA directed the Secretary of Labor and the Secretary of the Treasury to establish a Joint Board for the Enrollment of Actuaries (Joint Board). 29 U.S.C. 1241. The Joint Board consists of three members and one alternate member appointed by the Secretary of the Treasury, two members and one alternate member appointed by the Secretary of Labor, and one non-voting representative designated by the Director of the Pension Benefit Guaranty Corporation. Pursuant to the Joint Board's bylaws, the Secretary of the

Treasury appoints an Executive Director who has the delegated authority to administer the Joint Board's enrollment and renewal of enrollment processes. The Secretary of the Treasury delegated these functions to the IRS and the costs of these activities are borne by the IRS. The Executive Director, an IRS Return Preparer Office (RPO) employee, administers the enrollment and renewal of enrollment processes for the Joint Board.

Pursuant to 29 U.S.C. 1242(a), the Joint Board establishes reasonable standards and qualifications for persons performing actuarial services and is empowered to enroll such individuals who, upon application, satisfy these standards and qualifications. The regulations at 20 CFR part 901, subpart B prescribe eligibility requirements for enrollment and renewal of enrollment. An enrolled actuary is any individual who has satisfied the standards and qualifications as set forth in the regulations of the Joint Board and who has been approved by the Joint Board to perform actuarial services required under ERISA.

Before conferring status as an enrolled actuary to an individual, the Joint Board must verify the individual fulfills certain requirements related to experience, basic actuarial knowledge, and pension actuarial knowledge. 20 CFR 901.12(a). The RPO Joint Board staff oversees this verification as part of its responsibility to administer the enrollment application and renewal application processes for the Joint Board. An applicant may be denied enrollment for disreputable conduct (20 CFR 901.12(f)(1)), conviction of specified offenses (20 CFR 901.12(f)(2)), submitting false or misleading information on the enrollment application (20 CFR 901.12(f)(3)), or knowingly submitting false or misleading information on any report presenting actuarial information to any person (*id.*). An individual applying for enrollment as an enrolled actuary must submit a Form 5434, *Joint Board for the Enrollment of Actuaries—Application for Enrollment*, and pay the current non-refundable \$250.00 user fee. 20 CFR 901.10(a).

Enrollment is for a three-year term. 20 CFR 901.1(k). Before the Joint Board will renew an actuary's enrollment, the enrolled actuary must certify he or she has satisfied continuing professional education (CPE) requirements as prescribed by the regulations of the Joint Board, including a minimum of 36 (thirty-six) hours of CPE in prescribed core and non-core subject matter courses during the three-year enrollment cycle. 20 CFR 901.11(e).

Core subject matter is program content and knowledge integral and necessary to the satisfactory performance of pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code, and includes content concerning the ethical standards of performance for actuarial services. 20 CFR 901.11(f)(1)(i). An individual applying to renew enrollment as an enrolled actuary must submit a Form 5434-A, *Joint Board for the Enrollment of Actuaries—Application for Renewal of Enrollment*, and pay the current non-refundable \$250.00 user fee. 20 CFR 901.11(d). The RPO Joint Board staff verifies the enrolled actuary's certification as part of its responsibilities to administer the enrollment and renewal of enrollment processes for the Joint Board.

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury (Treasury Department) and requires that an individual seeking to practice demonstrate necessary qualifications, competency, and good character and reputation. The rules governing practice before the IRS are published in 31 CFR, Subtitle A, part 10, and reprinted as Treasury Department Circular No. 230 (Circular 230). Under section 10.3(d)(1) of Circular 230, any individual who is enrolled as an actuary by the Joint Board and who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. Section 10.3(d)(2) provides that an enrolled actuary's authority to practice before the IRS is limited to matters involving certain provisions of the Internal Revenue Code.

#### B. User Fee Authority

The Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services the agency provides (user fees). The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The IOAA provides that user fee regulations are subject to policies prescribed by the President. The policies are currently set forth in the Office of Management and Budget (OMB) Circular A-25 (OMB Circular A-25), 58 FR 38142 (July 15, 1993).

Section 6a(1) of OMB Circular A-25 states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service.

Section 8e of OMB Circular A-25 requires agencies to review user fees biennially and update the fees as necessary to reflect changes in the cost of providing the underlying services. During the biennial review, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. government. Under section 6d(1) of OMB Circular A-25, the full cost of providing a service includes, but is not limited to, an appropriate share of salaries, medical insurance and retirement benefits, management costs, and physical overhead, and other indirect costs, including rents, utilities, and travel associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full-cost requirement. Under section 6c(2) of OMB Circular A-25, the OMB may grant exceptions when the cost of collecting the fees would represent an unduly large part of the fee for the activity or when any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of providing the service and must fund the remaining cost of providing the service from other available funding sources. Consequently, the agency subsidizes the cost of the service to the recipients of reduced-fee services even though the service confers a special benefit on those recipients who would otherwise be required to pay the full cost of providing the service as provided for by the IOAA and OMB Circular A-25.

#### C. Enrolled Actuary User Fee

An individual who has been granted new enrollment or renewal of enrollment as an enrolled actuary by the Joint Board may perform actuarial services under ERISA and practice before the IRS as provided by section 10.3(d) of Circular 230. The enrollment confers benefits on individuals who are enrolled actuaries beyond those that accrue to the general public. Because these are specific benefits not available to the general public, the IRS charges a user fee to recover the full cost associated with the administration of the enrollment and renewal of enrollment processes.

Final regulations (TD 9370) published in the **Federal Register** (72 FR 72606-01) on December 21, 2007, established the current \$250.00 user fee for the enrollment application and renewal of enrollment application processes for enrolled actuaries. At that time, the

Treasury Department and the IRS determined that a \$250.00 user fee per application to enroll or renew enrollment as an enrolled actuary would recover the full direct and indirect costs the government would incur to administer the enrollment and renewal of enrollment processes.

As required by OMB Circular A-25, the IRS has conducted biennial reviews of this user fee since it was established by regulation in 2007. These reviews either resulted in a user fee calculation of approximately \$250.00 or otherwise did not result in the Treasury Department and the IRS increasing the fee. In 2021 the IRS conducted a biennial review and calculated its costs associated with administering the enrolled actuary enrollment and renewal of enrollment processes. As discussed in Section D of this preamble, during the review, the IRS took into account increases in labor, benefits, and overhead costs incurred in connection with providing services to individuals who enroll or renew enrollment as enrolled actuaries since the user fee was promulgated in 2007. The costs include activities related to verifying that an individual meets the requirements for enrollment or renewal of enrollment as an enrolled actuary. The RPO also took into account a re-allocation of certain labor costs in their methodology to include costs associated with certain human capital matters, formalizing policies and procedures, and other administrative support. The number of employees, the percentage allocation of time spent by employees performing activities directly related to the enrollment or renewal of enrollment processes, and the associated oversight and support labor costs were increased from those costs underlying the current \$250.00 user fee.

The costs to the RPO Joint Board staff of performing enrollment and renewal of enrollment processes are the same. The IRS determined that the full cost of administering the enrollment and renewal of enrollment processes increased from \$250.00 to \$680.00 per enrollment or renewal of enrollment. The proposed fee is an increase of \$143.33 per year for the three-year enrollment period.

#### D. Calculation of User Fees Generally

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of administering the enrolled actuary enrollment and renewal of enrollment processes. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for Federal reporting entities, such as the IRS.

FASAB publishes the FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended (Current Handbook), which is available at [https://files.fasab.gov/pdf/files/2021\\_%20FASAB\\_%20Handbook.pdf](https://files.fasab.gov/pdf/files/2021_%20FASAB_%20Handbook.pdf). The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) 4: Managerial Cost Accounting Standards and Concepts*.

SFFAS 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of Federal programs, and the methodology below is in accordance with SFFAS 4.

1. Cost Center Allocation

The IRS determines the cost of its services and the activities involved in providing them through a cost accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost accounting system is a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center are recorded in the IRS's cost accounting system. The costs charged to a cost center are the direct costs for the cost center's activities in addition to allocated overhead. Some cost centers work on different services across the IRS and are not fully dedicated to the services for which the IRS charges user fees.

2. Cost Estimation of Direct Costs

The IRS uses various cost measurement techniques to estimate the costs attributable to the enrolled actuary enrollment and renewal of enrollment processes. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject matter experts on the time devoted to a program. To determine the labor and benefits costs incurred to provide the service of enrolling actuaries, the IRS estimated the number of full-time employees required to conduct activities related to administering the enrollment and renewal of enrollment processes. The number of full-time employees is based on both current employment numbers and future hiring estimates. Other direct costs associated with administering the enrollment and renewal of enrollment processes include travel, training, and supplies.

3. Overhead

When the indirect cost of a service or activity is not specifically identified from the cost accounting system, an

overhead rate is added to the identifiable direct cost to arrive at full cost. Overhead is the indirect cost of operating an organization that is not specifically identifiable with a single activity. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

- These costs can include:
- General management and administrative services of sustaining and supporting organizations.
  - Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
  - Procurement and contracting services.
  - Financial management and accounting services.
  - Information technology services.
  - Services to acquire and operate property, plants, and equipment.
  - Publication, reproduction, graphics and video services.
  - Research, analytical, and statistical services.
  - Human resources/personnel services.
  - Library and legal services.

To calculate the overhead allocable to a specific service, the IRS multiplies an overhead rate by the estimated direct costs of the service. The IRS calculates the overhead rate annually based on the Statement of Net Cost included in the IRS annual financial statements. The financial statements are audited by the Government Accountability Office. The overhead rate is the ratio of the IRS's indirect costs divided by direct costs of its organizational units. Indirect costs are labor, benefits, and non-labor costs (excluding IT related to taxpayer services, enforcement, and business system modernization) from the supporting and sustaining organizational units. Direct costs are labor, benefits, and non-labor costs for the IRS's organizational units that interact directly with taxpayers.

For the enrolled actuary user fee review, an overhead rate of 58.83 percent was used. The rate was calculated based on the Fiscal Year (FY) 2020 Statement of Net Cost as follows:

Total Indirect Costs .....	\$4,274,512,375
Total Direct Costs .....	\$7,265,460,800
Overhead Rate .....	58.83%

E. Calculation of Enrolled Actuary Enrollment and Renewal of Enrollment User Fees

1. Cost Estimate

The IRS projected the estimated costs of direct labor and benefits based on the

actual salary and benefits of employees who devote time to conducting enrolled actuary enrollment and renewal of enrollment processes, reduced to reflect the percentage of time each individual spends on those activities. The RPO's managers estimated the percentage of time these employees devote to conducting enrolled actuary enrollment and renewal of enrollment activities based on their knowledge of actual program assignments. Four employees devote an average of sixty-five percent of their time over the three-year enrollment cycle to enrolled actuary enrollment or renewal of enrollment activities. Prior biennial review costing analyses had understated the cost by only taking into account an average of forty percent of their time to enrolled actuary enrollment or renewal of enrollment activities. Additional staffing costs include oversight and support associated with these functions.

The baseline for the labor and benefits estimate was the actual salary and benefits for FY 2021. From this baseline, the IRS estimated the direct labor and benefits costs over the next three years using an inflation factor for FYs 2022, 2023, and 2024. The IRS used a three-year projection because the increase in future labor and benefits costs are reliably predictable representations of the actual costs that will be incurred by the RPO. These estimated direct labor and benefits costs were then reduced to reflect the percentage of time each individual devoted to enrolled actuary enrollment and renewal of enrollment activities and are set out in the following table:

Year	Estimated costs for direct labor and benefits
2022 .....	\$546,457
2023 .....	557,659
2024 .....	569,101
Total .....	1,673,217

In addition, the IRS estimated \$3,500 in direct costs for each year for travel, training, and supplies, or \$10,500 total in this category for the three-year projection.

The total estimated direct costs for the three years is \$1,683,717. After estimating the total direct costs, the IRS applied the FY 2021 overhead rate of 58.83 percent to the estimated direct costs to calculate indirect costs of \$990,531, for a total cost for the three-year period of \$2,674,248.

The calculation of the total cost of the enrolled actuary enrollment and renewal of enrollment program for 2022 through 2024 is shown below:

Direct Costs .....	\$1,683,717
Overhead at 58.83% .....	+ 990,531
Total Costs .....	2,674,248

## 2. Volume of Applications

The number of applicants during FYs 2018, 2019, and 2020 were 214, 132, and 3,584, respectively. The higher number of applicants in 2020 follows the historical norm of most renewals of enrollment occurring every third year. The total number of applications for the three years was 3,930. The IRS used this historical three-year volume to estimate the number of applicants for FYs 2022, 2023, and 2024.

## 3. Unit Cost per Application

To arrive at the total cost per application, the IRS divided the estimated three-year total of enrolled actuaries costs by the total volume of applications expected over the same three-year period to determine a per-application cost of \$680.00, as shown below:

Total Costs .....	\$2,674,248
Number of Applications .....	+ 3,930
Cost per Application .....	\$680

## Special Analyses

### I. Regulatory Planning and Review

These regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

### II. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6), (RFA) requires the agency “to prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” See 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to the requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. See 5 U.S.C. 601(3) through (6). The Treasury Department and the IRS conclude that the proposed regulations, if promulgated, may have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

### *Description of the reasons why action by the agency is being considered.*

The change in enrolled actuary user fees is being considered in compliance with Section 6a(1) of OMB Circular A–25, which states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. Enrollment as an enrolled actuary confers special benefits to identifiable recipients; such “identifiable recipients” are new and renewing enrolled actuaries authorized to provide pension actuarial services and actuarial calculations under ERISA and the Internal Revenue Code. The IRS incurs costs associated with enrollment and renewal of enrollment verification and approval processes. The Treasury Department and the IRS previously determined that the full cost to the IRS of the enrollment and renewal of enrollment processes was \$250.00 for each enrollment and each renewal of enrollment. In accordance with OMB Circular A–25, the Treasury Department and the IRS conducted a biennial review of the enrolled actuary user fee amount in 2021 and determined that the full cost to the IRS of the enrollment and renewal of enrollment processes for each enrolled actuary candidate is \$680.00 per enrollment and renewal of enrollment, an increase of \$143.33 per year for the three-year enrollment period.

### *Succinct statement of the objectives of, and the legal basis for, the proposed rule.*

The objective of the proposed regulations is to recover the costs to the government associated with providing the services conferring the special benefit that accrues to an individual whom the Joint Board enrolls as a new or renewing enrolled actuary. When performing its duties, the RPO Joint Board staff conducts enrollment and renewal of enrollment processes including verifying that the individual applying for new or renewed enrolled actuary status fulfills certain requirements related to experience, basic actuarial knowledge, and pension actuarial knowledge. In addition, with respect to an individual seeking to renew as an enrolled actuary, the RPO Joint Board staff must verify that the renewing enrolled actuary properly certified that he or she satisfied continuing professional education (CPE) requirements as prescribed by the regulations of the Joint Board. Section 6a(1) of OMB Circular A–25 states that when a service offered by an agency confers special benefits to identifiable

recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. An individual who is enrolled as an actuary by the Joint Board is conferred the special benefits of being authorized to perform actuarial services under ERISA and to practice before the IRS as provided by section 10.3(d) of Circular 230. These benefits are not available to the general public.

The legal basis for the fee for initial enrollment and the fee for renewal of enrollment as an enrolled actuary with the Joint Board is section 9701 of title 31.

### *Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.*

The proposed regulations affect actuaries who apply for enrollment as an enrolled actuary or renewal of enrollment with the Joint Board. Only individuals, not businesses, can apply for new enrollment or to renew enrolled actuary certification. Therefore, the economic impact of these regulations on any small entity generally will be the result of an individual actuary owning a small business, or a small business employing an actuary and requiring the individual to apply for enrolled actuary status or renew as an enrolled actuary with the Joint Board. An estimate of the number of small entities to which the proposed rule will apply is not available.

The appropriate NAICS codes for enrolled actuaries are those that relate to the performance of pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code: NAICS code 524298, other insurance related activities; NAICS code 525110, employee benefit plans, retirement plans, pension funds and plans; and NAICS code 541611, administrative management and general management consulting services. The Small Business Administration establishes size standards for concerns considered to be small, as provided by 13 CFR 121.201. Pursuant to 13 CFR 121.201, concerns within NAICS 524298 are considered to be small if their annual receipts are less than or equal to \$27.0 million; NAICS 525110, \$35.0 million; and NAICS 541611, \$21.5 million.

*A description of the projected recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to such requirements that the type of professional skills necessary for preparation of the report or record.*

No reporting or recordkeeping requirements are projected to be associated with the proposed regulations.

*Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.*

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

*Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including a discussion of significant alternatives.*

The IOAA authorizes the government to charge user fees for agency services, subject to policies designated by the President. OMB Circular A–25 implements presidential policies regarding user fees and encourages user fees when a government agency provides services that confer a special benefit to a member of the public. In the IOAA, Congress has stated a preference that the costs of providing such services should be self-sustaining. OMB Circular A–25 expressly states that the agency providing such services generally must charge a user fee to recover the full cost of providing the service.

The IRS, acting through the RPO Joint Board staff, provides services which confer special benefits to the enrolled actuaries who will be subject to these user fees. Individuals who wish to perform pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code and practice before the IRS must satisfy the standards and qualifications as set forth in the regulations of the Joint Board for persons performing actuarial services required under ERISA. Only after the Joint Board verifies that an individual satisfied the stated standards and qualifications—either as a new enrolled actuary applicant or a renewing enrolled actuary—will the individual be enrolled as an enrolled actuary. An enrolled actuary must renew his or her certification every three years to ensure the required competence and compliance with ethical standards of performance for actuarial service.

Due to the costs of administering the new enrollment and renewal of enrollment processes, and the expressed preference in the IOAA that government services conferring special benefits be self-sustaining, there is no viable alternative to imposing a user fee.

### III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

### Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at [www.regulations.gov](http://www.regulations.gov) and upon request.

A public hearing is being held by teleconference on December 16, 2022 beginning at 10 a.m. EDT. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments by telephone at the hearing must submit electronic or written comments and an outline of the topics to be addressed and the time to be devoted to each topic by December 5, 2022 as prescribed in the preamble under the **ADDRESSES** section.

A period of 10 minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at [www.regulations.gov](http://www.regulations.gov), search IRS and

REG–100719–21. Copies of the agenda will also be available by emailing a request to [publichearings@irs.gov](mailto:publichearings@irs.gov). Please put “REG–100719–21 Agenda Request” in the subject line of the email.

### Drafting Information

The principal author of these regulations is Carolyn M. Lee, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of these regulations.

### List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 300 as follows:

### PART 300—USER FEES

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 31 U.S.C. 9701.

■ 2. Amend § 300.7 by revising paragraphs (b) and (d) to read as follows:

#### § 300.7 Enrollment of enrolled actuary fee.

\* \* \* \* \*

(b) *Fee.* The fee for initially enrolling as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is \$680.00.

\* \* \* \* \*

(d) *Applicability date.* This section is applicable beginning [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

■ 3. Amend § 300.8 by revising paragraphs (b) and (d) to read as follows:

#### § 300.8 Renewal of enrollment of enrolled actuary fee.

\* \* \* \* \*

(b) *Fee.* The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is \$680.00.

\* \* \* \* \*

(d) *Applicability date.* This section is applicable beginning [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

**Paul J. Mamo,**

*Assistant Deputy Commissioner for Services and Enforcement.*

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