

drugs that are currently within the individual's ESRD plan of care as well as those likely to result from other documented health care needs. This must include an overview of the health-related and financial risks and benefits of the individual market plans available to the patient (including plans offered through and outside the Exchange).

(ii) Medicare and Medicaid/Children's Health Insurance Coverage (CHIP) coverage, including Medicare Savings Programs, and how enrollment in those programs will affect the patient's access to and costs for health care providers, services, and prescription drugs that are currently within the individual's plan of care.

(iii) Each option's coverage and anticipated costs associated with transplantation, including patient and living donor costs for pre- and post-transplant care.

(2) Receive current information from the facility about premium assistance for enrollment in an individual market health plan that may be available to the patient from the facility, its parent organization, or third parties, including but not limited to limitations and any associated risks of such assistance.

(3) Receive current information about the facility's, or its parent organization's, contributions to patients or third parties that subsidize the individual's enrollment in individual market health plans for individuals on dialysis, including the reimbursements for services rendered that the facility receives as a result of subsidizing such enrollment.

* * * * *

■ 3. Section 494.180 is amended by adding a new paragraph (k) to read as follows:

§ 494.180 Condition: Governance.

* * * * *

(k) *Standard: Disclosure to Insurers of Payments of Premiums.* (1) Facilities that make payments of premiums for individual market health plans (in any amount), whether directly, through a parent organization (such as a dialysis corporation), or through another entity (including by providing contributions to entities that make such payments) must—

(i) Disclose to the applicable issuer each policy for which a third party payment described in this paragraph (k) will be made, and

(ii) Obtain assurance from the issuer that the issuer will accept such payments for the duration of the plan year. If such assurances are not provided, the facility shall not make payments of premiums and shall take

reasonable steps to ensure such payments are not made by the facility or by third parties to which the facility contributes as described in this paragraph (k).

(2) If a facility is aware that a patient is not eligible for Medicaid and is not eligible to enroll in Medicare Part A and/or Part B except during the General Enrollment Period, and the facility is aware that the patient intends to enroll in Medicare Part A and/or Part B during that period, the standards under this paragraph (k) will not apply with respect to payments for that patient until July 1, 2017.

Dated: November 28, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: November 29, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816, 1832, 1842, and 1852

RIN 2700-AE34

NASA Federal Acquisition Regulation Supplement: Revised Voucher Submission & Payment Process (NFS Case 2016-N025)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA has adopted as final, without change, an interim rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to implement revisions to the voucher submittal and payment process.

DATES: *Effective:* December 14, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Lopez, telephone 202-358-3740.

SUPPLEMENTARY INFORMATION:

I. Background:

NASA published an interim rule in the **Federal Register** at 81 FR 63143 on September 14, 2016, to amend the NASA Federal Acquisition Regulation Supplement (NFS) to implement revisions to the voucher submittal and payment process.

II. Discussion and Analysis

There were no public comments submitted in response to the interim rule. The interim rule has been

converted to a final rule, without change.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A final regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this rule is to implement revisions to the NASA voucher submittal and payment process. These revisions are necessary due to section 893 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92) prohibiting DCAA from performing audit work for non-Defense Agencies. This rule removes an outdated NFS payment clause and its associated prescription relative to the NASA voucher submittal and payment process and replaces it with a new clause that revises NASA's current cost voucher submission and payment process to ensure the continued prompt payment to its suppliers.

No comments were received in response to the initial regulatory flexibility analysis.

This rule applies to contractors requesting payment under cost reimbursement contracts. An analysis of data in the Federal Procurement Data System (FPDS) revealed that cost reimbursement contracts are primarily awarded to large businesses. FPDS data compiled over the past three fiscal years (FY 2013 through FY 2015) showed an average of 311 active cost reimbursement NASA contracts, of which 141 (approximately 45%) were awarded to small businesses. However, there is no significant economic or administrative cost impact to small or

large businesses because the rule does not impose any additional burden and will have a positive benefit in the way of fewer voucher rejections, rework, and payment delays.

There are no new reporting requirements or recordkeeping requirements associated with this rule. Further, there are no significant alternatives that could further minimize the already minimal impact on businesses, small or large.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the NFS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0070, entitled Payments—FAR Sections Affected: 52.232-1 thru 52.232-4 and 52.232-6 thru 52.232-11.

List of Subjects in 48 CFR Parts 1816, 1832, 1842, and 1852

Government procurement.

Manuel Quinones,

NASA FAR Supplement Manager.

■ Accordingly, the interim rule amending 48 CFR parts 1816, 1832, 1842, and 1852, which was published at 81 FR 63143 on September 14, 2016, is adopted as a final rule without change.

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SURFACE TRANSPORTATION BOARD

49 CFR Part 1122

[Docket No. EP 731]

Rules Relating to Board-Initiated Investigations

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board or STB) is adopting final rules for investigations conducted on the Board's own initiative pursuant to Section 12 of the Surface Transportation Board Reauthorization Act of 2015.

DATES: These rules are effective on January 13, 2017.

ADDRESSES: Information or questions regarding these final rules should reference Docket No. EP 731 and be in writing addressed to Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E

Street SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT:

Scott M. Zimmerman at (202) 245-0386. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Section 12 of the Surface Transportation Board Reauthorization Act of 2015, Public Law 114-110, 129 Stat. 2228 (2015) (*STB Reauthorization Act or Act*) (see 49 U.S.C. 11701) authorizes the Board to investigate, on its own initiative, issues that are "of national or regional significance" and are subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV, Part A. Under Section 12, the Board must issue rules implementing this investigative authority not later than one year after the date of enactment of the *STB Reauthorization Act* (by December 18, 2016).

By decision served on May 16, 2016, the Board issued a Notice of Proposed Rulemaking (NPRM) in which the Board proposed rules for investigations conducted on the Board's own initiative pursuant to Section 12 of the *STB Reauthorization Act*. The proposed rules were published in the **Federal Register**, 81 FR 30,510 (May 17, 2016), and comments were submitted in response to the NPRM.¹

After consideration of parties' comments, the Board is adopting final rules, to be set forth at 49 CFR part 1122, that establish the procedures for Board investigations conducted pursuant to Section 12 of the *STB Reauthorization Act*. These final rules do not apply to other types of investigations that the Board may conduct.

Introduction

The *STB Reauthorization Act* provides a basic framework for conducting investigations on the Board's own initiative, as follows:

Within 30 days after initiating an investigation, the Board must provide notice to parties under investigation stating the basis for such investigation. The Board may only investigate issues that are of national or regional significance. Parties under investigation

¹The Board received comments and replies from the following: Association of American Railroads (AAR); City of Jersey City, Rails to Trails Conservancy (Jersey City) (comments only); National Grain and Feed Association (NGFA); The National Industrial Transportation League (NITL) (comments only); Norfolk Southern Railway Company (NSR); and SMART/Transportation Division, New York State Legislative Board (SMART/TD-NY).

have a right to file a written statement describing all or any facts and circumstances concerning a matter under investigation. The Board should separate the investigative and decisionmaking functions of Board staff to the extent practicable.

Investigations must be dismissed if they are not concluded with administrative finality within one year after commencement.² In any such investigation, Board staff must make available to the parties under investigation and the Board Members any recommendations made as a result of the investigation and a summary of the findings that support such recommendations. Within 90 days of receiving the recommendations and summary of findings, the Board must either dismiss the investigation if no further action is warranted, or initiate a proceeding to determine whether a provision of 49 U.S.C. Subtitle IV, Part A has been violated. Any remedy that the Board may order as a result of such a proceeding may only be applied prospectively.

The *STB Reauthorization Act* further requires that the rules issued under Section 12 comply with the requirements of 49 U.S.C. 11701(d) (as amended by the *STB Reauthorization Act*), satisfy due process requirements, and take into account ex parte constraints.

Discussion of Issues Raised in Response to the NPRM

In the NPRM, the Board proposed a three-stage process, consisting of (1) Preliminary Fact-Finding, (2) Board-Initiated Investigations, and (3) Formal Board Proceedings. Having considered the comments, the Board will adopt this three-stage process in the final rules, subject to certain modifications from what was proposed in the NPRM. Below we address the comments received in response to the NPRM pertaining to each stage, as well as other related issues, and the Board's responses, including modifications from the NPRM. The final rules are below.

A. Preliminary Fact-Finding

As proposed in the NPRM, Preliminary Fact-Finding refers to the process in which Board staff would conduct, at their discretion, an initial, informal, nonpublic inquiry regarding an issue. The purpose of the Preliminary Fact-Finding would be to determine if there is enough information to warrant

²The one-year deadline for investigations conducted on the Board's own initiative does not include any Board proceeding conducted subsequent to the investigation. S. Rep. No. 114-52, at 13 (2015).