

§ 403.912(a)(1) to correct the typographical error in the penalty ranges originally established in section 1128G of the Act.

### III. Waiver of Proposed Rulemaking and Delay in Effective Date

In accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), we ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide for a period of public comment before the provisions of a rule take effect. However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice. Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We believe that this document does not constitute a rulemaking that would be subject to the requirement for a public comment period. Specifically, we find that undertaking further notice and comment procedures to correct the IFR in unnecessary and contrary to public interest.

First, we believe it is unnecessary to allow for public comment regarding whether to correct a misstated penalty range that is inconsistent with, and exponentially higher than, that permitted by the authorizing statute. As noted previously, this correcting amendment merely corrects a typographical error in the base penalty range to which the inflation increase implemented by the IFR would be applied. This correction is necessary to ensure that the base penalty range does not exceed the range authorized under section 1128G(b)(1)(A) of the Act, as adjusted under the Inflation Adjustment Act. Public comment on this correction amendment is unnecessary because it could never change the statutory penalty range at issue. We note that the IFR never indicated that we were increasing the base penalty range identified in this or any other civil money penalty authority. In fact, on page 61548 of the IFR, we indicated that the new inflation adjusted penalty range under § 403.912(a) would be from \$1,087 to \$10,874 per unreported

arrangement, up to a calendar year cap of \$163,117. Furthermore, we note that the erroneous base range stated on page 61561 of the IFR makes little sense in light of the statutory calendar year cap for this penalty. Under the original base penalty range, CMS could impose the minimum penalty of \$1,000 for up to 150 unreported arrangements. Under the erroneous regulations text in the IFR, CMS would be permitted to impose the minimum penalty amount of \$10,000 for only a maximum of 16 unreported arrangements. Even if we had the statutory authority to increase the base penalty range through rulemaking, the maximum penalty amount erroneously stated in the IFR is patently inconsistent with one of the stated policies of the IFR—to maintain the deterrent effect of civil money penalties. Second, we believe that providing an opportunity for public comment on this correcting amendment is contrary to the public interest. First, as noted previously, public comment in this case could never change the statutory penalty range at issue. We believe that it would not be in the public interest to offer a futile comment period. Second, the entities subject to civil money penalties authorized under section 1128G(b) of the Act should be advised, in a timely manner, of the correct amounts for which they could be liable. It is in the public interest to ensure that the regulations accurately reflect the statutory authority.

For similar reasons, we are also waiving the 30-day delay in effective date for this correcting amendment. First, we believe it is unnecessary to delay the effective date of corrections to a typographical error in regulation text that was patently inconsistent with the relevant statutory authority. Second, we believe that delaying the effective date of these corrections would be contrary to the public interest because the entities subject to civil money penalties should be advised, in a timely manner, of the correct amounts for which they could be liable. Therefore, we find good cause to waive the 30-day delay in effective date.

Finally, the corrections indicated in this correcting amendment are applicable to civil monetary penalties as if they had been included in the IFR. That is, the corrections are applicable to civil money penalties imposed under § 403.912(a)(1) beginning September 6, 2016, the date the IFR became effective. We do not believe this correcting amendment constitutes retroactive rulemaking because the erroneous base penalty range was never authorized under section 1128G(b) of the Act. In addition, we have not imposed any

penalties under § 403.912(a)(1) since the effective date of the IFR.

### List of Subjects in 42 CFR Part 403

Grant programs—health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

Accordingly, as noted in section II. of this document, the Centers for Medicare & Medicaid Services is making the following correcting amendments to 42 CFR part 403:

### PART 403—SPECIAL PROGRAMS AND PROJECTS

■ 1. The authority citation for part 403 continues to read as follows:

**Authority:** 42 U.S.C. 1395b–3 and Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

#### § 403.912 [Amended]

■ 2. Section 403.912(a)(1) is amended by removing the phrase “not less than \$10,000, but not more than \$100,000” and adding in its place the phrase “not less than \$1,000, but not more than \$10,000.”

Dated: August 17, 2017.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: September 6, 2017.

**Thomas E. Price,**

*Secretary, Department of Health and Human Services.*

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MB Docket No. 12–106, FCC 17–41]

#### Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations* Report and Order's third-party fundraising rules. This document is consistent with the Report and Order,

which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

**DATES:** The amendments to 47 CFR 73.503(e)(1), 73.621(f)(1), and 73.2527(e)(14), published at 82 FR 21127, May 5, 2017, are effective November 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Kathy Berthot, Media Bureau, Policy Division, at (202) 418-7454, or email: [kathy.berthot@fcc.gov](mailto:kathy.berthot@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This document announces that, on August 30, 2017, OMB approved, for a period of three years, the information collection requirements relating to the third-party fundraising rules contained in the Commission's Report and Order, FCC 17-41, published at 82 FR 21127, May 5, 2017. The OMB Control Number is 3060-1174. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060-1174, in your correspondence. The Commission will also accept your comments via email at [PRA@fcc.gov](mailto:PRA@fcc.gov).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on August 30, 2017, for the information collection requirements contained in the Commission's rules at 47 CFR 73.503(e)(1), 73.621(f)(1), and 73.2527(e)(14).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control

Number. The OMB Control Number is 3060-1174.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060-1174.

*OMB Approval Date:* August 30, 2017.

*OMB Expiration Date:* August 31, 2020.

*Title:* Section 73.503, Licensing requirements and service; Section 73.621, Noncommercial educational TV stations; Section 73.3527, Local public inspection file of noncommercial educational stations.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 2,200 respondents; 33,000 responses.

*Estimated Time per Response:* 0.5 hours.

*Frequency of Response:*

Recordkeeping requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority which covers these information collections is contained in 47 U.S.C. 151, 154(i), 303, and 399B.

*Total Annual Burden:* 16,500 hours.

*Total Annual Cost:* No cost.

*Nature and Extent of Confidentiality:*

An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Act:* No impact(s).

*Needs and Uses:* On April 20, 2017, the Commission adopted a Report and Order in MB Docket No. 12-106, FCC 17-41, *In the Matter of Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organizations*.

Under the Commission's existing rules, a noncommercial educational (NCE) broadcast station may not conduct fundraising activities to benefit any entity besides the station itself if the activities would substantially alter or suspend regular programming. The Report and Order relaxes the rules to allow NCE stations to spend up to one percent of their total annual airtime conducting on-air fundraising activities that interrupt regular programming for the benefit of third-party non-profit organizations.

The following is a description of the information collection requirements for

which the Commission received OMB approval:

*Audience disclosure:* Pursuant to 47 CFR 73.503(e)(1), a noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. Pursuant to 47 CFR 73.621(f)(1), a noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The audience disclosure must be aired at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

*Retention of information on fundraising activities in local public inspection file:* Pursuant to 47 CFR 73.3527(e)(14), each noncommercial educational FM broadcast station and noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must place in its local public inspection file, on a quarterly basis, the following information for each third-party fundraising program or activity: The date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation, to the nearest \$10,000, of the total funds raised. The information for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October-December, April 10 for the quarter January-March, etc.).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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