

approved this document on October 3, 2016, for publication.

Dated: December 2, 2016.

**Michael Shores,**

*Acting Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

### PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

Sections 17.640 and 17.647 also issued under Public Law 114–2, sec. 4.

Sections 17.641 through 17.646 also issued under 38 U.S.C. 501(a) and Public Law 114–2, sec. 4.

#### § 17.110 [Amended]

■ 2. Amend § 17.110 as follows:

■ a. In paragraphs (b)(1)(i), (ii), and (iii), remove all references to “December 31, 2016” and add in each place “February 26, 2017”.

■ b. In paragraph (b)(2), remove all references to “December 31, 2016” and add in each place “February 26, 2017”.

[FR Doc. 2016–29337 Filed 12–6–16; 8:45 am]

**BILLING CODE 8320–01–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Parts 3015 and 3060

[Docket No. RM2016–13; Order No. 3641]

### Changes to Attributable Costing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is issuing a set of final rules amending some existing Commission rules related to attributable costing. The final rules are consistent with methodology changes approved by the Commission. Relative

to the proposed rules, one rule was revised to alleviate confusion and another revision was administrative in nature.

**DATES:** Effective January 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

81 FR 63448 (Sept. 15, 2016).

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#### I. Introduction

On September 9, 2016, the Commission issued proposed rules consisting of necessary changes, resulting from Order No. 3506, that specifically define or describe attributable costs.<sup>1</sup> For the reasons discussed below, the Commission adopts final rules on this topic, with minor revisions to the proposed rules as discussed in chapter IV.

#### II. Background

On September 9, 2016, the Commission issued Order No. 3506 after consideration of a United Parcel Service, Inc. (UPS) petition which sought to make changes to the methodologies employed by the Postal Service to account for the costs of the Postal Service’s products in its periodic reports.<sup>2</sup> In Proposal One, UPS recommended that the Postal Service calculate and attribute inframarginal costs to individual products in addition to the currently attributed volume-variable and product-specific fixed costs. Petition, Proposal One at 1. Proposal Two dealt with reclassifying some fixed costs as fully or partially variable, and attributing those costs to products. Petition, Proposal Two at 1. UPS also filed a third proposal, which

<sup>1</sup> Notice of Proposed Rulemaking on Changes Concerning Attributable Costing, September 9, 2016 (Order No. 3507). See also Docket No. RM2016–2, Order Concerning United Parcel Service, Inc.’s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Order No. 3506). Discussed in greater detail below, the Commission issued an errata related to Order No. 3506. Docket No. RM2016–2, Notice of Errata, October 19, 2016 (Errata). Any reference to Order No. 3506 refers to the updated version including the changes identified in the Errata.

<sup>2</sup> See generally Order No. 3506. See also Docket No. RM2016–2, Petition of United Parcel Service, Inc. for the Initiation of Proceedings to Make Changes to Postal Service Costing Methodologies, October 8, 2015 (Petition).

requested a review of competitive products’ share of institutional costs.<sup>3</sup>

The instant rulemaking stems from the Commission’s findings in Order No. 3506 on Proposal One. In that order, the Commission found that a portion of inframarginal costs (those inframarginal costs calculated as part of a product’s incremental cost) have a reliably identifiable causal relationship to products. Order No. 3506 at 61.

Therefore, pursuant to Order No. 3506, attributable costs must also include those inframarginal costs calculated as part of a competitive product’s incremental costs (in addition to a product’s volume-variable costs and product-specific fixed costs).<sup>4</sup>

As noted above, on October 19, 2016, the Commission issued the Errata to clarify the definition of inframarginal costs described in Order No. 3506. See Errata. Generally, when defining inframarginal costs, the Errata replaced the phrase “do not vary directly with volume,” with the phrase “are not volume-variable costs.” *Id.* at 1–2. The revised definition of inframarginal costs does not impact the Commission’s findings in Order No. 3506. However, the definition cited in Order No. 3507, “[i]nframarginal costs are variable costs that do not vary directly with volume,” would now be cited as “[i]nframarginal costs are variable costs that are not volume-variable costs.” *Id.* at 1; Order No. 3507 at 4; see also Order No. 3506 at 10.

#### III. Review and Analysis of Comments

On October 17, 2016, the Commission received comments from Amazon Fulfillment Services, Inc. (Amazon),<sup>5</sup> the Public Representative,<sup>6</sup> and the Postal Service.<sup>7</sup> On October 18, 2016, the Commission received comments from UPS<sup>8</sup> and, on October 20, 2016, it

<sup>3</sup> Petition, Proposal Three at 1. The Commission declined to consider Proposal Three as it planned to initiate its 5-year review pursuant to 39 U.S.C. 3633(b) following Order No. 3506’s issuance. Order No. 3506 at 124, 125; see also Docket No. RM2017–1, Order No. 3624, Advance Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, November 22, 2016.

<sup>4</sup> On October 7, 2016, UPS appealed Order No. 3506 to the United States Court of Appeals for the District of Columbia Circuit. *United Parcel Service, Inc. v. Postal Regulatory Commission*, No. 16–1354 (D.C. Cir. filed Oct. 7, 2016) (Case No. 16–1354).

<sup>5</sup> Comments of Amazon Fulfillment Services, Inc., October 17, 2016 (Amazon Comments).

<sup>6</sup> Public Representative Comments, October 17, 2016 (PR Comments).

<sup>7</sup> Comments of the United States Postal Service in Response to Order No. 3507, October 17, 2016 (Postal Service Comments).

<sup>8</sup> United Parcel Service, Inc.’s Comments on Notice of Proposed Rulemaking on Changes Concerning Attributable Costing, October 18, 2016 (UPS Comments). UPS also filed a motion for late

received comments from Valpak Direct Marketing Systems, Inc. and the Valpak Franchise Association, Inc. (Valpak).<sup>9</sup> Comments and the Commission's analysis of those comments are discussed below. In addition, Commission analysis related to revisions to the proposed rules is discussed in chapter IV of this Order.

#### a. Amazon

*Comments.* Amazon supports adoption of the proposed rules but requests clarification concerning statements made in Order No. 3507 and suggests revisions to proposed § 3015.7(b). Amazon Comments at 1. Amazon seeks clarification concerning the Commission's statement "[w]hile the Commission found that inframarginal costs are causally related to products, it determined inframarginal costs cannot be reliably identified, which is a necessary component of cost attribution." *Id.* at 1–2; *see* Order No. 3507 at 4 (citing Order No. 3506 at 56). Amazon argues that the statement is unclear considering the Commission's finding in Order No. 3506, that only *some* inframarginal costs are causally related to individual products. Amazon Comments at 2; *see also* Order No. 3506 at 35, 45–51, 55 (emphasis added).

Amazon also seeks clarification on the description of inframarginal costs (variable costs that do not vary directly with volume) in Order No. 3507. Amazon Comments at 2; *see also* Order No. 3507 at 4. Amazon states inframarginal costs should not be described based on a direct or indirect relationship between volume and cost, but instead should be described based on a causal relationship between the level of costs and the marginal unit of output of a product. Amazon Comments at 2–3.

Finally, Amazon suggests revisions to proposed 3015.7(b) in order to cure what it believes is a circular reference in the rule. *Id.* at 3. The proposed rule defines a product's attributable cost as its ". . . incremental costs, which is the sum of volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental costs. . . ." *Id.*

acceptance of its comments. Motion of the United Parcel Service, Inc. for Late Acceptance of Filing of Comments in Response to RM2016–13, October 18, 2016 (UPS Motion). The UPS Motion is granted.

<sup>9</sup> Valpak Direct Marketing Systems, Inc. and the Valpak Franchise Association, Inc. Comments on Changes Concerning Attributable Costing, October 20, 2016 (Valpak Comments). Valpak also filed a motion for late acceptance of its comments. Valpak Direct Marketing Systems, Inc. and the Valpak Franchise Association, Inc. Motion for Late Acceptance of Comments, October 20, 2016 (Valpak Motion). The Valpak Motion is granted.

(quoting proposed § 3015.7(b)). Because the term "incremental cost" appears both as a defined term, and as an element of the definition, Amazon asserts that this reference is circular. *Id.* Amazon provides a revised definition and states its adoption "would avoid needless confusion, and would allow the appropriate amount of inframarginal costs to be attributed to each product." *Id.* at 4.

*Commission analysis.* The Commission confirms that in Order No. 3506 it found only the portion of inframarginal costs calculated as part of an individual product's incremental costs is causally related and reliably identifiable to individual products, and therefore can be linked to those products. Order No. 3506 at 35, 45–51, 55–56. In addition, the Commission notes that the Errata Provided clarification as to the definition of inframarginal costs. *See supra* at 3; *see generally* Errata. In addition, the Commission recognizes the potential confusion related to the references to incremental costs in proposed § 3015.7(b). Clarifying changes to proposed § 3015.7(b) are discussed in chapter IV of this Order.

#### b. Public Representative

*Comments.* The Public Representative states that the proposed rules conform to Order No. 3506, but that the Commission should discuss the meaning of "to the extent that incremental cost data are unavailable," in proposed § 3015.7(a), in order to "forestall potential attempts to game the outcome." PR Comments at 2–3. In addition, the Public Representative suggests a rearrangement of the phrase "to calculate attributable costs" in proposed § 3015.7(b) for clarification and readability purposes. *Id.* at 7.

Finally, the Public Representative cites to his comments in Docket No. RM2016–2 and, just as in that docket, maintains that a review of compliance with section 703(d) of the Postal Accountability and Enhancement Act (PAEA) is necessary in order to consider changes to attributable costs and revise related rules.<sup>10</sup> He argues Order No. 3507 modifies rules under 39 U.S.C. 3633 and must therefore follow the requirements of section 703(d). PR Comments at 6.

<sup>10</sup> *Id.* at 3. "Uncodified section 703 of the PAEA, Public Law 109–435, 120 Stat. 3198 (2006) requires that when promulgating new or revised regulations under section 3633, the Commission 'shall take into account' Federal Trade Commission recommendations about the net economic effects of laws that apply to the United States Postal Service, and subsequent relevant events." Order No. 3507 at 3 n.4.

*Commission analysis.* The phrase "to the extent that incremental cost data are unavailable" stems from the original establishment of part 3015 in Docket No. RM2007–1 and remains unchanged in § 3015.7.<sup>11</sup> The Commission did not propose any revisions related to this particular phrase in Order No. 3507 and offers the following explanation. Currently, incremental cost data are available for all products with the exception of international mail. Incremental costs for international mail are not available because its cost pools are not sufficiently disaggregated between market dominant and competitive products. Order No. 3506, Appendix A at 18. The method of calculating incremental costs approved in Docket No. RM2010–4 is applicable to all domestic products, whether market dominant or competitive.<sup>12</sup> Because international mail makes up a small percentage of volume, volume-variable costs, and product-specific costs relative to all mail, it is unlikely that the inability to calculate its incremental costs would allow the Postal Service to "game the outcome" and materially reduce the level of cost attribution.

The Commission has previously discussed section 703(d) and its applicability to Order Nos. 3506 and 3507. In Order No. 3506, the Commission distinguished its review of attributable costing as a change in analytical principles pursuant to 39 U.S.C. 3652 rather than a proceeding under 39 U.S.C. 3633. Order No. 3506 at 117–122; *see also* 39 U.S.C. 3652 and 3633. In Order No. 3507, the Commission determined that "the proposed rules in this instance did not trigger the requirement to consider the net economic effect" because the proposed rules involve conforming changes required by the Commission's action taken in Docket No. RM2016–2 and therefore is required by law. Order No. 3507 at 3 n.4. It also stated that because the proposed revisions are required by law, "any consideration of the 'net economic effect' recommendations identified in

<sup>11</sup> Docket No. RM2007–1, Order No. 43, Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 138.

<sup>12</sup> The methodology for calculating incremental costs approved in Docket No. RM2010–4 is based on a methodology originally proposed in Docket No. R2000–1. When originally proposed, this methodology was applied to all domestic products. *See* Docket No. RM2010–4, Order No. 399, Order Accepting Analytical Principles Used in Periodic Reporting (Proposals Twenty-Two through Twenty-Five), January 27, 2010, at 2–5; *see also* Docket No. R2000–1, Direct Testimony of Nancy R. Kay on Behalf of United States Postal Service, January 12, 2000.

uncodified section 703 would be moot.” *Id.* The Commission maintains that, notwithstanding section 703’s applicability, these conforming changes represent an improved, more complete, or more accurate measure of attributable costs pursuant to section 3622(c) and an improvement in the attribution of costs pursuant to section 3652(e) and therefore reduce potential economic distortions. *Id.*

While the Commission appreciates the Public Representative’s comments, its conclusions related to section 703(d)’s applicability in this matter remain unchanged. Therefore, the Commission declines to consider compliance with section 703(d) because these conforming changes are required by law.

#### c. Postal Service

*Comments.* The Postal Service notes the same circular reference to incremental costs as indicated by Amazon in proposed § 3015.7(b). Postal Service Comments at 1; *see also* Amazon Comments at 3–4. The Postal Service suggests two alternative versions to proposed § 3015.7(b) that would eliminate the circular reference and would more “clearly and directly convey[] the intent of the provision.” Postal Service Comments at 1–2.

The Postal Service also recommends an update to PRC Form CP–01 as part of proposed § 3060.21 by including a “slightly broader housekeeping change.”<sup>13</sup> The Postal Service argues competitive market tests should be included in the institutional costs calculation pursuant to 39 U.S.C. 3641(b)(3) and 39 U.S.C. 3633(a)(3), but that in Fiscal Year (FY) 2014 the amounts were too small to “merit further consideration.” Postal Service Comments at 2.

However, the Postal Service explains that as part of its FY 2015 Annual Compliance Report (ACR), the amounts had grown larger and it was able to incorporate competitive market test amounts in its contribution target analysis by introducing a new row, Net Contribution Competitive Product Market Tests, into PRC Form CP–01.<sup>14</sup> The Postal Service recommends that the

<sup>13</sup> *Id.* at 2. The Postal Service also notes a numerical inaccuracy with line (8) of proposed § 3060.21 which should read “Line (8): Difference between Competitive Products total revenues and attributable costs (line 3 less line 7)” which will no longer be inaccurate should the Postal Service’s other recommended update be included. *Id.*; Order No. 3507 at 10 (emphasis added).

<sup>14</sup> *Id.*; *see also* Docket No. ACR2015, United States Postal Service FY 2015 Annual Compliance Report, December 29, 2015, at 69 (FY 2015 ACR); Docket No. ACR2015, Library Reference USPS–FY15–39, December 29, 2015.

Commission take this opportunity to add the Net Contribution Competitive Product Market Tests row to PRC Form CP–01 in § 3060.21, as the requirements of 39 U.S.C. 3641(b)(3) are “unlikely to change” and competitive product market tests have the potential to continue to contribute to institutional costs. Postal Service Comments at 2–3.

*Commission analysis.* The Commission approves of the update to PRC Form CP–01 as recommended by the Postal Service. While this additional revision to § 3060.21 is not directly related to the Commission’s findings in Order No. 3506, the Commission concludes the revision is appropriate as it will result in the Postal Service submitting a more accurate income report. In addition and as noted above, the Commission recognizes the potential confusion related to the references to incremental costs in proposed § 3015.7(b). Revisions to proposed §§ 3015.7(b) and 3060.21 are discussed in chapter IV of this Order.

#### d. UPS

*Comments.* UPS asserts the proposed rules are premature as Order No. 3506 is now under review by the Court in Case No. 16–1354 and the instant proceeding was initiated pursuant to that order. UPS Comments at 1; Case No. 16–1354. As a result, UPS requests that the Commission withdraw Order No. 3507 and defer any rule revisions until the Court issues its decision in Case No. 16–1354.<sup>15</sup> Despite its request to defer this proceeding, UPS argues the Postal Service should still be obligated to comply with the directives set forth by the Commission in Order No. 3506.<sup>16</sup>

*Commission analysis.* The Commission recognizes UPS’s concern regarding potential “procedural complications” should these rules need to be revised in the future; however, it finds no compelling reason for it to defer this final rulemaking pending the Court’s decision in Case No. 16–1354, a proceeding that has not been resolved. Conforming changes to the Code of Federal Regulations (CFR) are necessary in order to comply with Order No. 3506 and require the Postal Service to attribute costs pursuant to that order. In Order No. 3506, based on the information provided, the only costs

<sup>15</sup> UPS Comments at 1. UPS notes that the Court’s decision in Case No. 16–1354 could have a direct effect on any newly implemented rules and that revising any rules now could “create unnecessary procedural complications for the Commission and for interested parties.” *Id.* at 2–3.

<sup>16</sup> UPS Comments at 3 (*i.e.*, the calculation and attribution of product-level incremental costs for products and providing additional information for each cost segment sub-report). *See also* Order No. 3506 at 60–62, 108.

which the Commission found to have a reliably identified causal relationship to products are incremental costs. This finding expands the scope of cost attribution beyond volume-variable costs and product-specific costs. For these reasons, the Commission declines to defer the instant rulemaking proceeding.

#### e. Valpak

*Comments.* Valpak does not specifically support the adoption of the proposed rules but recommends the Commission revise certain CFR rules to require market dominant products to cover their attributable costs. Valpak Comments at 3–5. Valpak cites to a specific discussion in Order No. 3506 and states it “implies that the average revenue of every product, be it competitive or market dominant, henceforth will (or should) be required by the Commission to cover its incremental cost.” Valpak Comments at 2 (citing Order No. 3506 at 61). Based on this interpretation, Valpak asserts Order No. 3507 does not comport with Order No. 3506 because in Order No. 3507 the Commission notes attributable cost coverage is one of many factors considered when regulating market dominant products. Valpak Comments at 1–2 (citing Order No. 3507 at 3–4). Valpak argues the discussion in Order No. 3506 necessitates revisions to market dominant product rules that would require market dominant products to cover attributable costs just as competitive products are required to cover their attributable costs.<sup>17</sup> It also states the requirement would protect against the cross-subsidization of competitive products by market dominant products. *Id.* at 5–6.

*Commission analysis.* The Commission’s findings concerning incremental cost attribution across all postal products do not imply that the Commission intended for market dominant products to be *required* to cover their attributable costs. When referring to attributable costs, the definition is the same, *i.e.*, attributable costs are the sum of a product’s volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a product’s incremental costs, regardless of whether one is referring to the attributable costs of market dominant products or competitive products. This newly established definition applies to both product types

<sup>17</sup> Valpak Comments at 1–5. Valpak recommends revisions to §§ 3010.4 and 3050.1. *Id.* at 3–4.

equally. However, the requirement of attributable cost coverage does not.<sup>18</sup>

In 39 U.S.C. 3622(c)(2), a market dominant product's ability to cover attributable costs is a factor in market dominant product rate regulation. *See* 39 U.S.C. 3622(c)(2). The Commission has long held that should a market dominant product fail to cover its attributable costs, it does not "compel a finding of noncompliance" for that product.<sup>19</sup> The Commission's findings in Order No. 3506 do not change prior Commission determinations as to the role of attributable costs. Therefore, the Commission declines to incorporate Valpak's proposed changes to §§ 3010.4 and 3050.1 related to market dominant products and maintains that no rules aside from those discussed in Order No. 3507 require conforming revisions as a result of Order No. 3506.

**IV. Changes to Proposed Rules**

The Commission adopts final rules that reflect revisions to the proposed rules in response to comments.<sup>20</sup> Mainly, Amazon, the Postal Service, and the Public Representative suggest alternatives to proposed § 3015.7(b) citing a circular reference to incremental costs and readability issues.<sup>21</sup> The Commission finds that the Postal Service's second alternative to proposed § 3015.7(b) provides the most clarity and also improves readability. Accordingly, the Commission revises § 3015.7(b) as set forth in the rules below.

In addition, the Commission finds it appropriate, as an administrative matter, to update PRC Form CP-01 in proposed § 3060.21 and include a new row of expenses titled "Net Contribution Competitive Products Market Tests" as recommended by the Postal Service. *See Id.* at 2, 4.

**V. Ordering Paragraphs**

*It is ordered:*

1. Parts 3015 and 3060 of title 39, Code of Federal Regulations, are amended as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**  
*Secretary.*

**List of Subjects**

*39 CFR Part 3015*

Administrative practice and procedure, Postal service.

*39 CFR Part 3060*

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

**PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS**

■ 1. The authority citation of part 3015 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3633.

■ 2. Amend § 3015.7 by revising paragraphs (a) and (b) to read as follows:

**§ 3015.7 Standards for compliance.**

\* \* \* \* \*

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the

Commission will use the sum of competitive products' volume-variable costs and product-specific costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b). Pursuant to 39 U.S.C. 3631(b), the Commission will calculate a competitive product's attributable costs as the sum of its volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental costs.

\* \* \* \* \*

**PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE**

■ 3. The authority citation of part 3060 continues to read as follows:

**Authority:** 39 U.S.C. 503; 2011, 3633, 3634.

■ 4. Amend § 3060.10 by revising paragraph (b)(1) to read as follows:

**§ 3060.10 Costing.**

\* \* \* \* \*

(b) \* \* \*

(1) Attributable costs, including volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental costs; and

\* \* \* \* \*

■ 5. Amend § 3060.21 by revising table 1 to read as follows:

**§ 3060.21 Income report.**

\* \* \* \* \*

**TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP-01**  
[\$ in 000s]

|  | FY 20xx | FY 20xx-1 | Change from SPLY | Percent change from SPLY |
|--|---------|-----------|------------------|--------------------------|
| Revenue:                               | \$x,xxx | \$x,xxx   | \$xxx            | xx.x                     |
| (1) Mail and Services Revenues         | xxx     | xxx       | xx               | xx.x                     |
| (2) Investment Income                  | x,xx    | x,xxx     | xxx              | xx.x                     |
| (3) Total Competitive Products Revenue |         |           |                  |                          |
| Expenses:                              | x,xxx   |           |                  |                          |
| (4) Volume-Variable Costs              | x,xxx   | x,xxx     | xxx              | xx.x                     |
| (5) Product Specific Costs             | x,xxx   | x,xxx     | xxx              | xx.x                     |

<sup>18</sup> Compare 39 U.S.C. 3622(c)(2) (market dominant products) and 39 U.S.C. 3633 (a)(2) (competitive products).

<sup>19</sup> Docket No. ACR2010, FY 2010 Annual Compliance Determination Report, March 29, 2011, at 17 (FY 2010 ACD). Similar views were reiterated by the Commission in other dockets. *See* Docket No. ACR2013, Annual Compliance Determination Report Fiscal Year 2013, March 27, 2014 (FY 2013

ACD) ("The Commission must also consider the 9 objectives and 14 factors in their totality. . . ." FY 2013 ACD at 57.). *See also* Docket No. ACR2009, FY 2009 Annual Compliance Determination, March 29, 2010 (FY 2009 ACD) (The Commission stated "[a]s amended by the PAEA, section 3622(c)(2), along with the other factors enumerated, is to be taken into account in the rate-setting process" and "[a] finding that a particular factor (or objective) is

not satisfied need not result in a determination that a product is not in compliance with the PAEA." FY 2009 ACD at 16.).

<sup>20</sup> No comments were received on proposed §§ 3015.7(a) and 3060.10, and the Commission finds no reason to alter the proposed rules.

<sup>21</sup> Amazon Comments at 3; Postal Service Comments at 1; PR Comments at 7.

TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP-01—Continued  
[\$ in 000s]

|  | FY 20xx | FY 20xx-1 | Change from SPLY | Percent change from SPLY |
|--|---------|-----------|------------------|--------------------------|
| (6) Incremental Inframarginal Costs .....                    | x,xxx   | x,xxx     | xxx              | xx.x                     |
| (7) Total Competitive Products Attributable Costs .....      | x,xxx   | x,xxx     | xxx              | xx.x                     |
| (8) Net Contribution Competitive Products Market Tests ..... | x,xxx   | x,xxx     | xxx              | xx.x                     |
| (9) Net Income Before Institutional Cost Contribution .....  | x,xxx   | x,xxx     | xxx              | .....                    |
| (10) Required Institutional Cost Contribution .....          | x,xxx   | x,xxx     | xxx              | x.x.x                    |
| (11) Net Income (Loss) Before Tax .....                      | x,xxx   | x,xxx     | xxx              | xx.x                     |
| (12) Assumed Federal Income Tax .....                        | x,xxx   | x,xxx     | xxx              | xx.x                     |
| (13) Net Income (Loss) After Tax .....                       | x,xxx   | x,xxx     | xxx              | xx.x                     |

Line (1): Total revenues from Competitive Products volumes and Ancillary Services.  
 Line (2): Income provided from investment of surplus Competitive Products revenues.  
 Line (3): Sum total of revenues from Competitive Products volumes, services, and investments.  
 Line (4): Total Competitive Products volume-variable costs as shown in the Cost and Revenue Analysis (CRA) report.  
 Line (5): Total Competitive Products product-specific costs as shown in the CRA report.  
 Line (6): Inframarginal costs calculated as part of total Competitive Products incremental costs as shown in ACR Library Reference "Competitive Product Incremental and Group Specific Costs" (Currently NP10).  
 Line (7): Sum total of Competitive Products costs (sum of lines 4, 5, and 6).  
 Line (8) Net Contribution Competitive Products Market Tests as shown in the Annual Compliance Report.  
 Line (9): Difference between Competitive Products total revenues and attributable costs and Market Tests Contributions (line 3 less line 7 plus line 8).  
 Line (10): Minimum amount of Institutional cost contribution required under 39 CFR 3015.7 of this chapter.  
 Line (11): Line 9 less line 10.  
 Line (12): Total assumed Federal income tax as calculated under 39 CFR 3060.40.  
 Line (13): Line 11 less line 12.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2015-0495; FRL-9955-52-Region 6]

**Approval and Promulgation of Implementation Plans; Texas; Reasonable Further Progress Plan and Motor Vehicle Emissions Budgets for the Dallas/Fort Worth 2008 Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the Dallas/Fort Worth (DFW) moderate nonattainment area Reasonable Further Progress (RFP) State Implementation Plan (SIP) revision for the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard). EPA is also approving revisions to the 2011 base year emissions inventory for the DFW moderate nonattainment area for the 2008 ozone NAAQS, the 2017 transportation conformity motor vehicle emissions budgets (MVEBs), and the required contingency measures for

failure to meet RFP. This action is being taken under the Clean Air Act (CAA).

**DATES:** This rule is effective on January 6, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2015-0495. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Wendy Jacques, 214-665-7395, [jacques.wendy@epa.gov](mailto:jacques.wendy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" means the EPA.

**I. Background**

The background for this action is discussed in detail in our September 20, 2016 proposal (81 FR 64372). In that document we proposed to approve the DFW RFP SIP revision for the 2008 ozone standard submitted by the State

of Texas. EPA also proposed to approve revisions to the 2011 base year emissions inventory for the DFW moderate nonattainment area for the 2008 ozone NAAQS, the 2017 transportation conformity motor vehicle emissions budgets (MVEBs), and the required contingency measures for failure to meet RFP. We did not receive any comments regarding our proposal.

**II. Final Action**

We are approving the DFW RFP SIP revision for the 2008 ozone standard that was submitted on July 10, 2015 and supplemented on April 22, 2016. We are approving the revised base year emission inventory, the RFP plan, the 2017 MVEBs and the required contingency measures for failure to meet RFP. The 2017 MVEBs are listed in Table 1.

TABLE 1—DFW RFP MVEBs  
[Tons per day]

| Year       | NO <sub>x</sub> | VOC   |
|------------|-----------------|-------|
| 2017 ..... | 148.36          | 77.18 |

This action is being taken under section 110 of the CAA.

**III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the