

have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date." This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

#### Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This final rule is exempt from the notice and comment requirements of the APA because the 2015 Act directed the Department to issue the annual adjustments without regard to section 553 of the APA. Therefore, the requirements of the RFA applicable to notice and comment rulemaking do not apply to this rule. Accordingly, the Department is not required either to certify that the final rule would not have a significant economic impact on a substantial number of small entities or to conduct a regulatory flexibility analysis.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing Guaranteed and Insured Loans.

#### List of Subjects

##### 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

##### 38 CFR Part 42

Administrative practice and procedure, Claims, Fraud, Penalties.

#### Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on January 23, 2019, for publication.

Dated: January 23, 2019.

#### Jeffrey M. Martin,

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR parts 36 and 42 as set forth below:

#### PART 36—LOAN GUARANTY

- 1. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501 and 3720.

##### § 36.4340 [Amended]

- 2. In § 36.4340, amend paragraphs (k)(1)(i) introductory text and (k)(3) by removing "\$22,363" and adding in its place "\$22,927".

#### PART 42—STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT

- 3. The authority citation for part 42 continues to read as follows:

**Authority:** Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874, codified at 31 U.S.C. 3801–3812.

##### § 42.3 [Amended]

- 4. In § 42.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing "\$11,181" and adding in its place "\$11,463".

[FR Doc. 2019–00369 Filed 1–30–19; 8:45 am]

**BILLING CODE 8320–01–P**

#### POSTAL REGULATORY COMMISSION

##### 39 CFR Part 3015

[Docket No. RM2017–1; Order No. 4963]

#### Competitive Postal Products

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting a final rule concerning the minimum amount that the Postal Service's competitive products as a whole are required to contribute to institutional costs annually. The rule as adopted uses a formula-based approach to annually calculate competitive products' appropriate share of institutional costs. For additional information, Order No. 4963 can be accessed electronically through the Commission's website at <https://www.prc.gov>.

**DATES:** *Effective:* March 4, 2019.

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

#### SUPPLEMENTARY INFORMATION:

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- I. Relevant Statutory Requirements
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- III. Basis and Purpose of Rule Change
- IV. Final Rule

#### I. Relevant Statutory Requirements

Section 3633(a)(3) of title 39 of the United States Code requires the Commission to "ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service." 39 U.S.C. 3633(a)(3). Section 3633(b) requires that the Commission revisit the appropriate share regulation at least every 5 years in order to determine if the minimum contribution requirement should be "retained in its current form, modified, or eliminated." 39 U.S.C. 3633(b). In making such a determination, the Commission is required to consider "all relevant circumstances, including the prevailing competitive conditions in the market, and the degree to which any costs are uniquely or disproportionately associated with any competitive products." *Id.*

#### II. Background

Pursuant to section 3633(b), the Commission initiated Docket No. RM2017–1 for the purpose of conducting its second review of the appropriate share requirement since the enactment of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006). In the decade following the PAEA's

enactment, competitive products' appropriate share has been set at 5.5 percent of the Postal Service's total institutional costs. When the Commission promulgated its initial competitive product rules in Docket No. RM2007-1, it found that basing the appropriate share on a percentage of total institutional costs was an easily understood approach that mirrored the directive of section 3633(a)(3).<sup>1</sup> The Commission considered the amount that competitive products had historically contributed to the Postal Service's institutional costs and set the appropriate share at 5.5 percent.<sup>2</sup> In Docket No. RM2012-3, the Commission completed its first review of the appropriate share and, after performing a qualitative evaluation of the criteria of section 3633(b), determined that the appropriate share should be maintained at 5.5 percent.<sup>3</sup>

In its second review of the appropriate share, the Commission found that market conditions have changed since the PAEA's enactment and since the Commission's last review of the appropriate share.<sup>4</sup> Most significantly, the parcel delivery market has experienced a significant increase in demand, particularly over the last 5 years, due to the growing prevalence of e-commerce. Order No. 4963 at 5-12. This has led to steady increases in revenue and profit for all competitors in the market, as well as growth in competitive volumes and market share for the Postal Service. *Id.*

### III. Basis and Purpose of Rule Change

In light of the changes described above, Order No. 4963 implements a formula-based approach to determining the appropriate share and adopts related rule changes. *Id.* at 19-29. The purpose of the Commission's formula-based approach is to provide an objective basis on which to quantify the statutory considerations of section 3633(b) in

order to determine the year-to-year change in competitive products' joint minimal capacity to generate profit that can be contributed to the coverage of institutional costs. *Id.*

The objective basis that the formula relies on is the Postal Service's market power, which implicitly captures the vast majority of the qualitative considerations that the Commission has previously looked to in assessing the prevailing competitive conditions in the market and other relevant circumstances. *Id.* at 20. Market power is a firm's ability to price a product or service higher than the marginal cost of producing it and, as a concept, embodies both absolute and relative aspects. *Id.* at 20-21. A firm's absolute market power is its ability to raise prices with regard to its own consumers. *Id.* at 21, 22. A firm's relative market power, which can also be described as its market position, is its capacity to exercise market power relative to its competitors. *Id.* at 21, 25. A firm's absolute market power in a competitive market will necessarily be limited by its market position and, as such, the Postal Service's absolute market power and its market position must be assessed in conjunction. *Id.* at 21.

In order to assess the Postal Service's absolute market power and its market position, the formula utilizes two distinct components. The first component is the Competitive Contribution Margin, which measures the Postal Service's absolute market power. *Id.* at 22-24. Specifically, the Competitive Contribution Margin is calculated by subtracting the total attributable costs of producing the Postal Service's competitive products collectively from the total amount of revenue the Postal Service is able to realize from those competitive products collectively in a given fiscal year, and then dividing this result by the total competitive product revenue. *Id.* at 23-24. The formula assesses the year-over-year percent change in the Competitive Contribution Margin to determine how much, if any, the Postal Service's absolute market power has changed. *Id.* at 22.

The second component of the formula is the Competitive Growth Differential, which measures the Postal Service's market position. *Id.* at 25-26. Specifically, the Competitive Growth Differential is calculated by subtracting the year-over-year percent change in the combined revenue for the Postal Service's competitors from the year-over-year percent change in the Postal Service's competitive product revenue. *Id.* at 25. This relative growth is then

weighted by the Postal Service's market share. *Id.*

Using the above-described components, the Commission's formula is represented by the following equation:

$$AS_{t+1} = AS_t * (1 + \% \Delta CCM_{t-1} + CGD_{t-1})$$

If  $t=0$ =FY 2007, AS = 5.5%

Where,

AS = Appropriate Share  
CCM = Competitive Contribution Margin  
CGD = Competitive Growth Differential  
 $t$  = Fiscal Year

*Id.* at 26.

In order to calculate an upcoming fiscal year's appropriate share percentage ( $AS_{t+1}$ ), the formula multiplies the sum of the prior fiscal year's Competitive Growth Differential and percentage change in the Competitive Contribution Margin ( $1 + \% \Delta CCM_{t-1} + CGD_{t-1}$ ) by the current fiscal year's appropriate share ( $AS_t$ ). *Id.* at 27. Both components of the formula are given equal weight. *Id.* The formula is recursive in order to incorporate all changes in the parcel delivery market since the PAEA was enacted and the appropriate share was initially set. *Id.* The formula's calculation thus begins in FY 2007 with a beginning appropriate share of 5.5 percent. *Id.* The upcoming fiscal year's appropriate share will be updated by the Commission each year as part of the Commission's Annual Compliance Determination, which is performed pursuant to 39 U.S.C. 3653. *Id.*

### IV. Final Rule

In order to implement the Commission's formula, existing § 3015.7(c) is revised. Final § 3015.7(c)(1) establishes the formula which is to be used in calculating the appropriate share and defines each of the formula's terms. Existing § 3015.7(c) states that the appropriate share of institutional costs to be covered by competitive products set forth in that rule is a minimum contribution level, and final § 3015.7(c)(1) retains this concept.

Final § 3015.7(c)(2) establishes the process by which the Commission shall update the appropriate share for each fiscal year. The Commission will annually use the formula to calculate the minimum appropriate share for the upcoming fiscal year and report the new appropriate share level for the upcoming fiscal year as part of its Annual Compliance Determination.

### List of Subjects for 39 CFR Part 3015

Administrative practice and procedure.

<sup>1</sup> See Docket No. RM2007-1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, at 70 (Order No. 26).

<sup>2</sup> See Order No. 26 at 70-74; Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 91, 138 (Order No. 43).

<sup>3</sup> See generally Docket No. RM2012-3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012 (Order No. 1449).

<sup>4</sup> See Docket No. RM2017-1, Order Adopting Final Rules Relating to the Institutional Cost Contribution Requirement for Competitive Products, January 3, 2019, at 4-12, 114-170 (Order No. 4963); Docket No. RM2017-1, Revised Notice of Proposed Rulemaking, August 7, 2018, at 41-42 (Order No. 4742); Docket No. RM2017-1, Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, February 8, 2018, at 12, 32, 34-53 (Order No. 4402).

For the reasons stated 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 for part 3015 continues to read as follows:

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

■ 2. Amend § 3015.7 by revising paragraph (c) to read as follows:

### § 3015.7 Standard for Compliance.

\* \* \* \* \*

(c)(1) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula:

$$AS_{t+1} = AS_t * (1 + \% \Delta CCM_{t-1} + CGD_{t-1})$$

Where,

AS = Appropriate Share, expressed as a percentage and rounded to one decimal place

CCM = Competitive Contribution Margin

CGD = Competitive Growth Differential

t = Fiscal Year

If t = 0 = FY 2007, AS = 5.5 percent

(2) The Commission shall, as part of each Annual Compliance Determination, calculate and report competitive products' appropriate share for the upcoming fiscal year using the formula set forth in paragraph (c)(1) of this section.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2019-00399 Filed 1-30-19; 8:45 am]

**BILLING CODE 7710-FW-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 414

[CMS-1693-CN]

RIN 0938-AT31

### Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2019; Medicare Shared Savings Program Requirements; Quality Payment Program; Medicaid Promoting Interoperability Program; Quality Payment Program—Extreme and Uncontrollable Circumstance Policy for the 2019 MIPS Payment Year; Provisions From the Medicare Shared Savings Program—Accountable Care Organizations Pathways to Success; and Expanding the Use of Telehealth Services for the Treatment of Opioid Use Disorder Under the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule.

**SUMMARY:** This document corrects technical errors that appeared in the final rule published in the **Federal Register** on November 23, 2018 entitled “Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2019; Medicare Shared Savings Program Requirements; Quality Payment Program; Medicaid Promoting Interoperability Program; Quality Payment Program—Extreme and Uncontrollable Circumstance Policy for the 2019 MIPS Payment Year; provisions from the Medicare Shared Savings Program—Accountable Care Organizations Pathways to Success; and Expanding the Use of Telehealth Services for the Treatment of Opioid Use Disorder under the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act.”

**DATES:** This correcting document is effective January 31, 2019, and is applicable beginning January 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Chin, (410) 786-0679, Alesia Hovatter (410) 786-6861 or Molly MacHarris, (410) 786-4461.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In FR Doc. 2018-24170 of November 23, 2018 (83 FR 59452 through 60303), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. These corrections are effective January 1, 2019.

## II. Summary of Errors

### A. Summary of Errors in the Regulation Text

On page 60090, in regulation text regarding § 414.1415, we made a typographical error in identifying the year in the effective date.

### B. Summary of Errors in the Appendix

On page 60151, we inadvertently omitted Table B.6. Internal Medicine (Removal Table), Table B.7. Emergency Medicine, Table B.8. Obstetrics/Gynecology, Table B.9. Ophthalmology, Table B.10. Orthopedic Surgery, Table B.11. Otolaryngology, Table B.12. Pathology, and Table B.13 Pediatrics.

## III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the