

**SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection  
Submission for Rule 6b-1**

**Request for a New OMB Control Number**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

National securities exchanges (“exchanges”) that trade NMS stocks maintain pricing schedules that set forth the transaction pricing they apply to their broker-dealer members that execute orders on their trading platforms. Some exchanges offer differentiated incentives, where the member receives lower fees or higher rebates as the number of shares it executes on the exchange reaches successively higher predefined volume-based levels (“tiers”). The transaction volume that qualifies a member for a better fee or rebate tier typically is measured as a fraction of total market volume, rather than a fixed value.

The Securities Exchange Act of 1934 (“Exchange Act”) requires that exchange pricing proposals, among other things, provide for the “equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities” that “are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers” and “do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of” the Exchange Act.<sup>1</sup> Moreover, Section 11A of the Exchange Act directs the Commission to facilitate the establishment of a national market system in accordance with specified Congressional findings. Among the Congressional findings are assuring (i) fair competition among brokers and dealers and among exchange markets, and (ii) the practicability of brokers executing investors’ orders in the best market.<sup>2</sup>

The Commission is concerned about the effect of volume-based exchange transaction pricing on competition among exchange members. For example, lower-volume members may find it difficult to compete with higher-volume members for customer order flow because they are not able to offer to customers the best transaction pricing, which exchanges reserve for their higher-volume members. In addition, volume-based exchange transaction pricing creates a conflict of interest between members and customers on account of the incentive for a member to make routing decisions to qualify for volume tiers and the fact that members typically retain for themselves the benefits of tiered exchange transaction pricing, which can reward a member with lower fees and higher rebates that also apply to the member’s proprietary trading. Further, the Commission is concerned volume-based exchange transaction pricing may impose a burden on competition among exchanges.

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<sup>1</sup> 15 U.S.C. 78f(b)(8).

<sup>2</sup> 15 U.S.C. 78k-1(a)(1)(C)(ii) and (iv).

To address these concerns, pursuant to the statutory authority provided by the Exchange Act,<sup>3</sup> including Sections 6, 11A(a)(1), 17(a), and 23(a) thereof,<sup>4</sup> the Commission proposed new Rule 6b-1,<sup>5</sup> which comprises the following components.

1. Rule 6b-1(a) prohibits volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks.
2. If an exchange offers volume-based transaction pricing in connection with the execution of member proprietary orders, then:
  - a. Rule 6b-1(b) contains an anti-evasion clause with two parts. Rule 6b-1(b)(1) would require exchanges to have rules to require members to engage in practices that facilitate the exchange's ability to comply with the prohibition on volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders. Rule 6b-1(b)(2) would require exchanges to establish, maintain, and enforce written policies and procedures that are reasonably designed to detect and deter members from receiving volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks.
  - b. Rule 6b-1(c) would require exchanges to submit electronically to the Commission transparency disclosures. Those monthly disclosures would be machine-readable structured data tables of information, including the number of members that qualify for each volume-based transaction pricing tier an exchange offers.

## **2. Purpose and Use of the Information Collection**

### **1. Rule 6b-1(a)**

The collection of information associated with Rule 6b-1(a) would be exchange rule filings on Form 19b-4 (3235-0045) to eliminate volume-based pricing for agency or riskless principal orders from their pricing schedules. The collection of information would bring the exchanges into compliance with Rule 6b-1(a), which would foster competition among broker-dealers and mitigate conflicts of interest for members when routing agency-related volume.

### **2. Rule 6b-1(b)(1)**

Proposed Rule 6b-1(b)(1) would assist exchanges in complying with proposed Rule 6b-1(a) by requiring exchanges to have rules that require members to engage in practices to better enable the exchange to assess its pricing in compliance with the proposed rule. If an exchange decides to adopt or amend a rule under this provision, it would file it on Form 19b-4.

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<sup>3</sup> See 15 U.S.C. 78a.

<sup>4</sup> See 15 U.S.C. 78k-1, 78q, and 78w(a).

<sup>5</sup> See Securities Exchange Act Release No. 98766 (Oct. 19, 2023), 88 FR 76282 (Nov. 6, 2023).

### 3. Rule 6b-1(b)(2)

The collection of information under proposed Rule 6b-1(b)(2) would be a requirement to adopt written policies and procedures reasonably designed to detect and deter members from receiving volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks.

### 4. Rule 6b-1(c)

The collection of information under proposed Rule 6b-1(c) would be transparency disclosures submitted electronically to the Commission on a monthly basis. The transparency disclosures would be machine-readable structured data tables of information, including the number of members that qualify for each volume-based transaction pricing tier an exchange offers. The disclosures would show how an exchange's volume-based transaction pricing for member proprietary orders applies across its membership, which would enhance the transparency of an exchange's tiered pricing structure and enhance the ability of members, other exchanges, and the public in considering and commenting on proposed volume-based pricing changes applicable to member proprietary volume.

## **3. Consideration Given to Improved Information Technology**

Proposed Rule 6b-1 uses information technology to lessen the burden on the respondents. The disclosure requirements of Rule 6b-1(c) allow all data to be submitted electronically to the Commission.

## **4. Duplication**

The proposed rule would not result in, or require the collection of, duplicate information that is otherwise available in a similar form.

## **5. Effects on Small Entities**

The Commission does not believe that the requirements under Rule 6b-1 would affect small entities. The proposed rule would apply only to national securities exchanges registered with the Commission that trade NMS stocks. Rule 0-10(e) states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of 17 CFR 242.601 (Rule 601 of Regulation NMS), and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0-10.<sup>6</sup> The exchanges subject to this proposed rulemaking do not satisfy this standard. Therefore, none of the exchanges that would be subject to the proposed rule are "small entities" for purposes of the RFA.

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<sup>6</sup> See 17 CFR 240.0-10(e).

## **6. Consequences of Not Conducting Collection**

As discussed above, absent proposed Rule 6b-1, volume-based exchange transaction pricing would continue to be offered for agency and riskless principal orders, which would not address burdens on competition among exchange members and among exchanges caused by tiered exchange transaction pricing, as well as leave in place a conflict of interest between members and customers when members make routing decisions to qualify for volume tiers and the fact that members typically retain for themselves the benefits of tiered exchange transaction pricing, which can reward a member with lower fees and higher rebates that also apply to the member's proprietary trading.

## **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Proposed Rule 6b-1(c) requires respondents to submit certain disclosures to the Commission within five calendar days after the end of each calendar month. The content of the disclosures is intended to show a summary of the volume-based transaction tiers applicable to the execution of proprietary orders in NMS stocks for the account of a member and a count of how many members qualify for each pricing tier. Respondents generally review and change their transaction fee schedules on as frequently as a monthly basis. Therefore, disclosures on a monthly basis would provide the Commission and the public with readily available information to assess the impact of proposed tiered pricing changes.

The proposed rule also requires respondents to maintain records for a period of not less than five years. This time period is consistent with existing requirements for national securities exchanges and national securities associations pursuant to Rule 17a-1 under the Exchange Act.

## **8. Consultations Outside the Agency**

The Commission has issued a release soliciting comment on the new "collection of information" requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission's public website, and made available through <https://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

## **9. Payment or Gift**

No payment or gift is provided to respondents.

## **10. Confidentiality**

The collection of information under proposed Rule 6b-1(a) and 6b-1(b)(1) would not be confidential because exchange proposed rule changes filed with the Commission on Form 19b-4 are public information and posted publicly on exchange websites. Similarly, the collection of information under proposed Rule 6b-1(c) also would not be confidential. Rather, exchanges would be required to submit electronically to the Commission the transparency disclosure required under proposed Rule 6b-1(c) and the Commission would make that information publicly available. That information would not contain the names of any exchange member.

The collection of information under proposed Rule 6b-1(b)(2) concerning the written policies and procedures would contain information about an exchange's regulatory program, and the proposed rule would not require exchanges to make those materials public. Where the Commission requests that an exchange produce those documents, an exchange can request confidential treatment of the information. If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.

## **11. Sensitive Questions**

No information of a sensitive nature will be required under this collection of information. This information collection does not collect personally identifiable information ("PII"). The agency has determined that a system of records notice ("SORN") and privacy impact assessment ("PIA") are not required in connection with the collection of information.

## **12. Burden of Information Collection**

As noted above, the proposed rule requires the collection of four categories of data.

1. Rule 6b-1(a) prohibits volume-based transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks and would require some exchanges to submit proposed rule change filings on Form 19b-4 to revise their pricing schedules to comply with the prohibition.
2. Rule 6b-1(b)(1) requires equities exchanges that offer volume-based transaction pricing for member proprietary volume to have rules to require members to engage in practices that facilitate the exchange's ability to comply with the prohibition on volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders. New or amended rules would be filed with the Commission on Form 19b-4.
3. Rule 6b-1(b)(2) requires equities exchanges that offer volume-based transaction pricing for member proprietary volume to establish, maintain, and enforce written policies and procedures that are reasonably designed to detect and deter members from receiving volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks.

4. Rule 6b-1(c) requires equities exchanges that offer volume-based transaction pricing for member proprietary volume to submit electronically to the Commission transparency disclosures, which include a count of the number of members that qualify for each volume-based transaction pricing tier an exchange offers.

Each of these will be discussed below.

The respondents to these collections of information would be national securities exchanges that offer volume-based transaction fees, rebates, or other incentives in connection with the execution of proprietary orders in NMS stocks for the account of a member. Currently, while there are 16 national securities exchanges that trade NMS stocks, only 13 offer volume-based transaction pricing. Therefore, there are 13 estimated respondents.

#### Total Initial and Annual Reporting and Recordkeeping Burdens

1. Rule 6b-1(a) – Prohibition on Volume-Based Pricing for Agency-Related Volume

As discussed above, proposed Rule 6b-1(a) would require equities exchanges that offer volume-based transaction pricing to file a rule change with the Commission to update their price list, if necessary, to eliminate any existing volume-based pricing that would not comply with the proposed rule. This would be a one-time initial burden, and exchanges should not incur an ongoing burden once they have updated their rules. However, the PRA burden associated with the collection of information resulting from exchange rule filings that would be required pursuant to proposed Rule 6b-1(a) would be covered by the existing PRA burden estimates for Rule 19b-4 because those changes would be filed on Form 19b-4.<sup>7</sup>

2. Rule 6b-1(b)(1) – Rules to Prevent Evasion

Proposed Rule 6b-1(b)(1) would require an equities exchange that offers volume-based transaction pricing to have rules to require its members to engage in practices that facilitate the exchange's ability to comply with the prohibition in proposed Rule 6b-1(a). Similar to the burden for Rule 6b-1(a), this would be a one-time initial burden, although an exchange may decide to amend the rule it adopts pursuant to proposed Rule 6b-1(b)(1) from time to time. However, the PRA burden associated with the collection of information resulting from exchange rule filings that would be required pursuant to proposed Rule 6b-1(b)(1) would also be covered by the existing PRA burden estimates for Rule 19b-4 because those changes would be filed on Form 19b-4.<sup>8</sup>

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<sup>7</sup> See SEC File No. 270-38, OMB Control No. 3235-0045 (June 21, 2023), available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202304-3235-017](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202304-3235-017). The Commission believes the burden estimate for Form 19b-4 is broad enough to encompass the additional collection of information from proposed Rule 6b-1(a).

<sup>8</sup> See *id.* The Commission believes the burden estimate for Form 19b-4 is broad enough to encompass the additional collection of information from proposed Rule 6b-1(b)(1).

### 3. Rule 6b-1(b)(2) – Policies and Procedures to Prevent Evasion

Proposed Rule 6b-1(b)(2) would require exchanges to establish, maintain, and enforce written policies and procedures to detect and deter members from receiving volume-based exchange transaction pricing in connection with the execution of agency or riskless principal orders in NMS stocks. Exchanges would incur an initial burden and an annual ongoing burden associated with proposed Rule 6b-1(b)(2). The Commission believes that many exchanges generally already have rules and policies and procedures in place to ensure that members are correctly marking their orders, though those policies and procedures may need to be updated to ensure compliance with the proposed rule in the context of exchange transaction pricing.

Exchanges, at a minimum, would be required to review their existing policies and procedures. Certain exchanges may need to supplement or revise their policies and procedures to ensure that they are reasonably designed to deter and detect members from receiving tiered pricing on orders for which tiered pricing is prohibited. Although the exact nature and extent of compliance with proposed Rule 6b-1(b)(2) would likely differ based on the existing policies and procedures of each respondent, the Commission estimates that the one-time, initial burden to update or adopt any additional written policies and procedures required under proposed Rule 6b-1(b)(2) would be approximately 50 hours per exchange or 650 burden hours across 13 exchanges that have volume-based transaction pricing.<sup>9</sup> The total annualized burden hours across 13 exchanges would be 16.67 per exchange or **216.67 across all 13 exchanges**.

The 13 equities exchanges that have volume-based transaction pricing would incur annual ongoing burden hours to maintain and review their policies and procedures adopted under proposed Rule 6b-1(b)(2) to ensure their effectiveness. Those exchanges also would need to review for compliance pursuant to their policies and procedures. The Commission estimates that each exchange would likely spend an average of 25 hours per year on an ongoing basis, for **a total of 325 hours** across all 13 exchanges.<sup>10</sup>

### 4. Rule 6b-1(c) – Transparency for Volume-Based Pricing on Member Proprietary Orders

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<sup>9</sup> The Commission derived the total estimated burdens from the following estimates: (Attorney at 30 hours) + (Compliance Counsel at 10 hours) + (Chief Compliance Officer at 5 hours) + (General Counsel at 5 hours) = 50 burden hours. 50 burden hours per exchange x 13 respondents = 650 total burden hours. The Commission's estimate is informed by the estimated filing burden for Form 19b-4 (34 hours). See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Form 19b4 (Apr. 18, 2023), available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202304-3235-017](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202304-3235-017). The Commission believes that the policies and procedures required under proposed Rule 6b-1(b)(2) may require more effort to prepare than the proposed rule change required under proposed Rule 6b-1(b)(1).

<sup>10</sup> The Commission derived the total estimated burdens from the following estimates: (Compliance Attorney at 12 hours) + (Compliance Manager at 8 hours) + (Business analyst at 5 hours) = 25 burden hours. 25 burden hours per exchange x 13 respondents = 325 total burden hours. The ongoing burden hours associated with proposed Rule 6b-1(b)(2) is estimated to be lower than the initial burdens because the Commission expects it to be less burdensome to maintain and review existing policies and procedures than to establish new ones.

Proposed Rule 6b-1(c) would require exchanges that offer volume-based transaction pricing for the execution of proprietary orders in NMS stocks for the account of a member to submit electronically to the Commission aggregated information regarding how many members qualify for those pricing tiers. These submissions would be accessible to the public via the EDGAR system and would reflect each exchange's particular pricing structure. The exchanges would likely incur an initial burden and an annual ongoing burden associated with Rule 6b-1(c). Exchanges have ready access to all of the underlying information and data necessary to comply with proposed Rule 6b-1(c) because the disclosures are summaries of the pricing schedules that exchanges maintain and the exchanges know the number of members that qualify for a particular pricing tier because they calculate the fees, rebates, and other incentives applicable to their members on a monthly basis. Consequently, the proposed rule would not require exchanges to acquire or record an entirely new and unfamiliar set of information. The exchanges, however, would be required to present the required information and data in a new structured data format and submit such information electronically to the Commission on a monthly basis.

Exchange pricing schedules are publicly available and identify all of the exchange's volume-based transaction fees, rebates, and other incentives. To comply with proposed Rule 6b-1(c)(2), the exchange would have to identify each volume-based transaction fee, rebate, and other incentive, and: (i) use a label to identify the base fee or rebate, (ii) use a label to identify each pricing tier that corresponds to the label used in the exchange's pricing schedule, (iii) identify the amount of the fee, rebate, or other incentive, (iv) provide an explanation of the tier requirement, and (v) provide the total number of members that qualified for the base fee, base rebate, or each tier during the month. Parts (i) through (iv) would require the exchange to take information from its publicly accessible pricing schedule and put it into the required structured data format. The information required for part (v) would be readily available to the exchange since it assesses transaction prices to its members on a monthly basis in accordance with its pricing schedule and thus knows which members qualify for which tiers, though exchanges currently are not required to publicly disclose a tally of that information by tier.

Furthermore, proposed Rule 6b-1(c)(1) requires the exchange to identify the number of members that executed proprietary orders in NMS stocks for the member's account on the exchange during the month. Exchanges do not currently publicly disclose a tally of this information. However, exchanges generally have ready access to trading information of their members that would reveal this information and exchanges generally know which of their members are engaged in an agency business, which are engaged in proprietary trading, and which are engaged in both because exchanges broadly know about what lines of business their members are engaged in as part of their membership registration. Accordingly, the burden on exchanges to calculate the number of members engaged in proprietary trading would be low.

The Commission estimates that each exchange would incur 58 initial burden hours for the creation of new tables to ensure that data responsive to the proposed disclosure requirements is correctly collected and formatted, and to set up automated programs where appropriate, or 754 total initial burden hours across 13 exchanges.<sup>11</sup> The annualized burden would be 19.33 per

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<sup>11</sup> The Commission derived the total estimated burdens from the following estimates: (Sr. Programmer at 25 hours) + (Sr. Systems Analyst at 10 hours) + (Compliance Manager at 10 hours) + (Compliance Attorney at

exchange and **251.33 across all 13 exchanges**. The Commission does not believe the information required to be aggregated and included in disclosures made pursuant to proposed Rule 6b-1(c) would require respondents to acquire new hardware or systems to process the information required in the reports. Rather, the exchanges' initial burden would consist of creating and formatting a table that would be responsive to the requirements of proposed Rule 6b-1(c). As described above, this would require the exchanges to convert a portion of the information available on their publicly accessible pricing schedules into a structured data format. Once created, these tables should not change unless the exchanges create new pricing tiers or change the requirements or dollar amounts of existing tiers.

Furthermore, because exchanges are not currently subject to EDGAR filing requirements, equities exchanges would incur a one-time compliance burden of submitting Form ID in order to be able to submit the disclosures electronically to the Commission through EDGAR. Respondents would apply for access to EDGAR using Form ID and receive access codes to submit documents through the EDGAR system. The Commission estimates that each filer that currently does not have access to EDGAR would incur an initial, one-time burden of 0.30 hours to complete and submit a Form ID.<sup>12</sup> However, the PRA burden associated with completing and submitting a Form ID would be covered by the existing PRA burden estimates for Form ID.<sup>13</sup>

The 13 equities exchanges that have volume-based transaction pricing also would incur annual ongoing burden hours to aggregate and disseminate the information required under proposed Rule 6b-1(c). Proposed Rule 6b-1(c) would require exchanges to submit electronically updated information each month. An exchange generally would not need to update the disclosure information required under proposed Rule 6b-1(c)(2)(i)-(iv) unless the exchange amends its pricing schedule, in which case the exchange would need to make targeted changes to these disclosures in accordance with the changes it makes to its pricing schedule. The Commission expects that the disclosures required by proposed Rule 6b-1(c)(1) and Rule 6b-1(c)(2)(v) would possibly change and could need to be updated as frequently as each month. The Commission believes the exchanges would use automated programs to meet the ongoing monthly reporting obligation under proposed Rule 6b-1(c) but each report may require staff to verify the accuracy of the information. The Commission estimates that each exchange would incur 8 burden hours per monthly report for a total of 96 ongoing burden hours on an annual

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8 hours) + (Director of Compliance at 5 hour) = 58 burden hours. 58 burden hours per exchange x 13 respondents = 754 total burden hours.

<sup>12</sup> Form ID (OMB control number 3235-0328) must be completed and filed with the Commission by all individuals, companies, and other organizations who seek access to file electronically on EDGAR. Accordingly, a filer that does not already have access to EDGAR must submit a Form ID, along with the notarized signature of an authorized individual, to obtain an EDGAR identification number and access codes to file on EDGAR. See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Form ID (Dec. 20, 2021), available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202112-3235-003](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202112-3235-003) (stating that it takes 0.3 hours to prepare Form ID).

<sup>13</sup> See id.

basis.<sup>14</sup> Therefore, the Commission estimates **1,248 total ongoing annual burden hours** across 13 exchanges.<sup>15</sup>

**PRA Summary Table**

<b>Name of Information Collection</b>	<b>Type of Burden</b>	<b>No. of Respondents</b>	<b>Initial Burden Hours per Respondent</b>	<b>Initial Burden Annualized per Entity per Response</b>	<b>Ongoing Annual Burden per Respondent</b>	<b>Total Annual Burden</b>
<b>Rule 6b-1(b)(2)—Initial Burden</b>	Recordkeeping	13	50	16.67	-	216.67
<b>Rule 6b-1(b)(2)—Ongoing Burden</b>	Recordkeeping	13	-	-	25	325
<b>Rule 6b-1(c)—Initial Burden</b>	Recordkeeping	13	58	19.33	-	251.33
<b>Rule 6b-1(c)—Ongoing Burden</b>	Recordkeeping	13	-	-	96	1,248
<b>Total</b>						<b>2,041</b>

**13. Costs to Respondents**

Not applicable. It is not anticipated that the respondent exchanges will have to incur any capital and/or start-up costs to comply with the proposed 6b-1, nor is it anticipated that the respondents will have to incur any external operational or maintenance costs – other than the internal costs provided for in Item 12 – to comply with the proposed rule.

**14. Cost to Federal Government**

The federal government will not incur a cost in connection with the collection of this information.

**15. Changes in Burden**

Not applicable. The Commission is proposing Proposed Rule 6b-1 for the first time.

<sup>14</sup> The Commission derived the total estimated burdens from the following estimates: (Compliance Attorney at 6 hours) + (Compliance Manager at 2 hours) = 8 burden hours per monthly filing. 8 burden hours x 12 months = 96 annual burden hours per respondent.

<sup>15</sup> 96 annual burden hours per exchange x 13 respondents = 1,248 total burden hours per year.

**16. Information Collection Planned for Statistical Purposes**

Not applicable. The information collection is not used for statistical purposes.

**17. OMB Expiration Date Display Approval**

The Commission is not seeking approval to not display the OMB approval expiration date.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.