

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/County	Notes (a)
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<sup>a</sup> A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2 and 27

[WT Docket No. 19–348; DA 22–1188; FR ID 116794]

### Facilitating Shared Use in the 3100–3550 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action.

**SUMMARY:** In this document, the Wireless Telecommunication Bureau (Bureau) selects the four entities that will represent the interest of the new entrants to the 3.45–3.55 GHz band in selecting the Reimbursement Clearinghouse. The four entities selected are NBCUniversal, Nexstar Broadcasting (Nexstar), CTIA-The Wireless Association (CTIA), and the Competitive Carriers Association (CCA). In addition, the Bureau adopts certain requirements regarding the Clearinghouse search committee process and the operation of the Clearinghouse. These requirements support the prevention of waste, fraud, and abuse in the handling of reimbursement funds and will protect confidential information.

**DATES:** This final agency action is effective January 23, 2023.

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Morgan Mendenhall, Wireless Telecommunications Bureau, Mobility Division, (202) 418–0154 or [morgan.mendenhall@fcc.gov](mailto:morgan.mendenhall@fcc.gov). For information regarding the Paperwork Reduction Act information collection requirements, contact Cathy Williams, Office of Managing Director, at 202–418–2918 or [cathy.williams@fcc.gov](mailto:cathy.williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This summary of the *3.45 GHz Clearinghouse Order* in WT Docket No. 19–348, DA 22–1188, adopted and released November 10, 2022. The full text of the

*3.45 GHz Clearinghouse Order*, including all Appendices, is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/DA-22-1188A1.pdf>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

### Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *3.45 GHz Band Second Report and Order (R&O)* (86 FR 17920, April 7, 2021) on small entities. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking (FNPRM)* released in October 2020 in this proceeding (85 FR 66888, October 21, 2020). The Commission sought written public comment on the proposals in the *FNPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This FRFA conforms to the RFA. The Commission will send a copy of the *3.45 GHz Clearinghouse Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

### Paperwork Reduction Act

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, it contains new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

### Congressional Review Act

The Commission will send a copy of the *3.45 GHz Clearinghouse Order (Order)* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### Synopsis

#### I. Introduction

With this final action, the Wireless Telecommunications Bureau (Bureau) identifies four entities that will form a search committee to select a Reimbursement Clearinghouse (Clearinghouse) to oversee the reimbursement of relocation expenses for certain secondary, non-Federal radiolocation licensees in the 3.45–3.55 GHz band (3.45 GHz band). These entities are NBCUniversal, Nexstar Broadcasting (Nexstar), CTIA, and the Competitive Carriers Association (CCA). In addition, the Bureau adopts certain requirements regarding the Clearinghouse search committee process and the operation of the Clearinghouse. These requirements support the prevention of waste, fraud, and abuse in the handling of reimbursement funds and will protect confidential information.

#### II. Background

In the *3.45 GHz Band Second R&O*, the Commission adopted rules to make 100 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States. To facilitate this goal, the Commission previously had determined that secondary, non-Federal radiolocation licensees in the band would be relocated to the 2.9–3.0 GHz band. In the *3.45 GHz Band Second R&O*, the Commission further determined that secondary, non-Federal radiolocation authorizations would sunset 180 days after new 3.45 GHz Service licenses are granted in the band. Because these licenses were granted on May 4, 2022, the non-Federal radiolocation authorizations sunset on October 31, 2022. In addition, the Commission in the *3.45 GHz Band Second R&O* required “new flexible-use licensees in the 3.45 GHz Service to reimburse secondary, non-federal radiolocation licensees for reasonable costs related to the relocation of those

operations to the 2.9–3.0 GHz band, including the costs of a relocation clearinghouse’s administration of the reimbursement.” 36 FCC Rcd 5987, 6042, para 155 (2021), 86 FR 60775 . Specifically, each new 3.45 GHz Service licensee will be responsible for reimbursement of a *pro rata* share of reasonable relocation costs of non-Federal radiolocation operations.

The Commission in the *3.45 GHz Band Second R&O* delegated authority to the Bureau, working in coordination with the Office of the Managing Director, to develop and implement a clearinghouse selection process similar to the process used in the 3.7 GHz proceeding. The Commission’s delegation also included the authority to seek notice and comment on the parameters of additional considerations that should inform the creation and administration of the cost-sharing plan to help implement the Commission’s decision and, if necessary for the purposes of the more limited relocation in the 3.45 GHz Service, to adjust the procedures adopted in the 3.7 GHz proceeding to tailor them to the relocation in the 3.45 GHz proceeding. As in the 3.7 GHz proceeding, the Commission in the *3.45 GHz Band Second R&O* provided for the creation of a neutral, independent clearinghouse to oversee the collection and distribution of relocation reimbursement payments from new 3.45 GHz Service licensees to non-Federal secondary radiolocation incumbents. Unlike in the 3.7 GHz context, however, in the 3.45 GHz proceeding, the Commission did not identify the specific industry stakeholders who would compose the search committee to select the Clearinghouse.

On August 20, 2021, the Bureau released a *Public Notice (Search Committee Public Notice)* seeking comment on the selection process for, and operation of, the Clearinghouse. Comments and replies were due on September 30, 2021, and October 12, 2021, respectively (86 FR 51335, September 15, 2021). The Bureau received comments from Nexstar, NBCUniversal, and CTIA; a reply from the Wireless Infrastructure Association (WIA); and a subsequent *ex parte* letter from CCA.

### III. Discussion

#### A. Composition of the Clearinghouse Search Committee

As noted above, the Commission delegated authority to the Bureau to implement a clearinghouse selection process similar to the process used in the 3.7 GHz band transition. In the 3.7

GHz proceeding, the Commission determined that the clearinghouse search committee would be composed of nine members appointed by nine entities that the Commission found, collectively, reasonably represented the interests of the stakeholders in the 3.7 GHz band transition. These entities represented incumbents in the band (space station operators—three entities, and earth station operators—three entities) as well as prospective flexible-use licensees (three entities). The Commission determined that the range of entities it had chosen would fairly represent the broad interests of the relevant stakeholders in the 3.7 GHz band transition. Since the clearinghouse search committee was not similarly identified in the *3.45 GHz Band Second R&O*, the Bureau sought comment on the optimal number of members and which appropriate industry stakeholders should be included on the search committee for the 3.45 GHz band transition.

NBCUniversal and Nexstar, the two secondary, non-Federal incumbents in the 3.45 GHz band, both seek representation on the search committee. Due to the difference between the use and size of their operations, NBCUniversal and Nexstar favor each company having its own seat, rather than a shared incumbent representative. Similarly, CTIA volunteered to represent traditional wireless providers on the search committee. CTIA also acknowledged the need for another representative to advocate for new entrants in the band that would not be covered by its own membership. WIA likewise supported representation for both small- and large-market new entrants, in addition to incumbents, suggesting two seats for the incumbents and two for new entrants to represent small and large auction winners. Although CCA did not initially file comments in this portion of the proceeding, CCA has since indicated an interest in serving on the search committee to represent the small-market segment of new entrants.

#### 1. Representation of Interests

The Bureau finds that equal representation of both interest groups present in the instant transition—incumbent radiolocation systems and new-entrant flexible-use licensees—is both consistent with the 3.7 GHz band transition and will ensure a fair and transparent Clearinghouse selection process in this proceeding. Specifically, each interest group will have two seats: two incumbent seats to represent NBCUniversal’s and Nexstar’s differing business models, and two new-entrant

seats to represent both small- and large-market flexible-use licensees.

*First*, the Bureau finds that equal representation of both interest groups is consistent with the approach used in the 3.7 GHz band proceeding. There, the search committee was comprised of nine members representing three distinct interest groups: incumbent space station operators, incumbent earth station operators, and prospective flexible-use licensees. Each interest group received three representatives on the search committee, which included seats for smaller and larger interests within each interest group segment. The corollary of the 3.7 GHz band approach here is thus equal representation of the two interest groups in the 3.45 GHz transition: non-Federal radiolocation incumbents and new entrants, with two seats on each side. The Bureau agrees with WIA that new entrants are a diverse group that would be best served by representatives for both smaller and larger new entrants.

*Second*, the Bureau finds that equal representation will foster compromise. By having equal representation from both interest groups on the search committee, no one group can act unilaterally in the selection process, ensuring that the resulting Clearinghouse fairly facilitates the transition process. WTB agreed with WIA that having equal representation for both interest groups on the search committee will provide “confidence that the clearinghouse selected remains impartial and will seek an equitable outcome for all the parties involved in the relocation.”

While this approach deviates from our proposal in the *Search Committee Public Notice* to have an odd number of members on the search committee, the Bureau sought comment on the optimal number of members to include on the search committee. Further, the Bureau specifically recognized that the 3.45 GHz relocation would be less complex than that in the 3.7 GHz band, and suggested that a smaller committee might be more efficient. The Bureau finds that a search committee comprised of four members, two incumbent representatives and two new entrant representatives, will accurately reflect the interests present in the 3.45 GHz band, is responsive to suggestions raised by commenters, and is well-positioned to facilitate compromise. In the event that equal representation leads to deadlock despite our instruction to proceed by consensus, the search committee shall inform the Bureau and the Bureau may then consider additional measures, including resolution by majority vote or

appointment of an additional search committee member. The Bureau shall act on such request within 30 days, and the search process shall continue consistent with this final action and the Commission's rules.

The Bureau disagrees with Nexstar that the approach most consistent with the 3.7 GHz band process would be to have two-thirds of the search committee seats here represented by incumbent interests. While two-thirds of the 3.7 GHz band search committee was comprised of incumbents, the incumbent space station operators and earth station operators represent distinct industry segments. For example, in the 3.7 GHz band space station operators provide downlink signals to various types of earth stations, and the earth station operators in turn deliver programming to television and radio broadcasters and telephone and data services to consumers. Each incumbent group was given its own equal representation on the 3.7 GHz band search committee to reflect the differences in their interests with respect to the transition process. The Bureau applies the same logic here, and thus have designated equal representation of both the incumbent and new entrant interest groups in the 3.45 GHz band.

#### 1. Number of Seats and Membership

As discussed above, the Bureau finds that here the appropriate implementation of equal representation is two search committee seats for the incumbents and two for the new entrants. Specifically, the Bureau finds that the four-member Clearinghouse search committee will be comprised of representatives from NBCUniversal, Nexstar, CTIA, and CCA. As proposed in the *Search Committee Public Notice*, each entity shall nominate one individual to serve on the search committee. WIA, the commenter to most directly address this issue, supports this process, and states that such representation will promote confidence that the selected clearinghouse will be fair to all parties in the transition.

NBCUniversal and Nexstar, both of which volunteered to be on the search committee, will represent their own respective interests as secondary incumbent radiolocation service users. The Bureau finds that CTIA and CCA together will best represent the interests of new entrants given their diverse memberships. CTIA, which also volunteered to be on the search committee, will represent the larger-new entrant interests to the band. CCA indicated an interest in serving on the

search committee and will represent the interests of smaller and rural entities.

The Bureau finds that CCA is best positioned to serve as the second new-entrant representative on the search committee. The Bureau agrees with WIA that the new entrants' interests are diverse and that it is important to have the interests of smaller and rural providers represented on the search committee. CCA notes that its members include "small, rural carriers serving fewer than 5,000 customers" and also indicates that some of its members are license winners in the 3.45 GHz band. Thus, the Bureau finds that CCA is well-situated to represent the smaller and rural new entrants in the band.

#### B. Search Committee's Selection of the Clearinghouse

In the 3.7 GHz proceeding, the Commission directed the search committee to proceed by consensus, but noted that if a vote on the selection of a clearinghouse was required, it would be by a majority vote. Likewise here, as proposed in the *Search Committee Public Notice*, the Bureau directs the search committee to proceed by consensus. In the event of deadlock, however, the Bureau directs the search committee to notify the Bureau. As noted above, in the event of deadlock under the current composition, the search committee shall inform the Bureau and the Bureau may then consider additional measures to resolve the deadlock. Further, the Bureau shall act on such request within 30 days of the search committee's request, and the search process shall continue consistent with the Commission's rules.

The Bureau requires each search committee member to certify that they have reviewed and understand the Commission's rules and requirements contained in this final action and the *3.45 GHz Band Second R&O*. Such certifications must be filed in the docket of this proceeding prior to the first meeting of the selection committee, but no later than January 5, 2023. In the event that a new search committee member is added, its certification must be filed in the docket of this proceeding no later than 30 days after the Bureau releases a Public Notice identifying the new search committee member.

The search committee must meet no later than January 5, 2023. In addition, by March 6, 2023, the search committee must release and file with the Bureau a Request for Proposal (RFP), or similar solicitation for Clearinghouse applications. Such solicitation must explain in detail the selection criteria for the position of Clearinghouse and must be consistent with the

qualifications, roles, and duties of the Clearinghouse as set forth in the Commission's rules and this final action. Entities responding to the RFP must describe how they will comply with these criteria and rules adopted by the Commission. The search committee should ensure that the Clearinghouse meets the relevant best practices and standards in its operation to ensure an effective and efficient transition.

Thus, at a minimum, the search committee's solicitation for the Clearinghouse must include the following requirements to: (1) engage in strategic planning and adopt goals and metrics to evaluate its performance; (2) adopt internal controls for its operations; (3) use enterprise risk management practices; and (4) use best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. In addition, the Clearinghouse must be required to create written procedures for its operations, using the Government Accountability Office's (GAO) Green Book to serve as a guide in satisfying such requirements.

CTIA asks that the selected Clearinghouse be required to enter into contracts with stakeholders—i.e., with incumbents and new entrants. CTIA explains that "contracts between new 3.45 GHz Service licensees and the Clearinghouse help ensure that the Clearinghouse's management of clearing funds has appropriate oversight." CTIA notes, however, that requiring contracts between the Clearinghouse and *all* stakeholders may stall the reimbursement process if some parties are hold outs because they lack the incentives to undertake the cost of negotiating a contract, which could significantly exceed their reimbursement liability. Instead, CTIA maintains that "appropriate oversight of the Clearinghouse can be assured by confirming that licensees covering some reasonable proportion of the total relocation liability have negotiated contracts with the Clearinghouse." In addition, CTIA proposes that "the Clearinghouse should be required to contract with any licensee that so desires on terms and conditions that are materially the same as those negotiated by other licensees."

The Bureau believe this proposal has merit and will require such contracts here. Thus, the Bureau requires the Clearinghouse to enter into contracts with both incumbents and sufficient licensees that hold the majority of 3.45 GHz Service licenses. The Bureau notes that while contracts were not required in the 3.7 GHz band context, that framework "expected" that contracts

would be entered into between the selected Clearinghouse and the stakeholders. Accordingly, the Bureau finds that it is both consistent with past precedent and appropriate here to require the Clearinghouse to enter into contracts with the two incumbents and a sufficient number of new entrant licensees holding the majority of 3.45 Service licenses.

In addition, the Clearinghouse must enter into a contract with any licensee that so requests on terms and conditions that are materially the same as those negotiated by other licensees. To this end, the Bureau requires the search committee to include a requirement in its RFP or other similar solicitation document that the selected Clearinghouse will be required to enter into contracts with stakeholders based on and consistent with the Commission's rules and this final agency action, the terms of the RFP, and the applicant's responses to the RFP, as described herein. Further, as part of its response to the RFP, the Clearinghouse selectee must affirmatively represent that it will enter into such contracts with two incumbents and a sufficient number of new entrant licensees holding the majority of 3.45 Service licenses.

The Bureau notes that CTIA also asks that such contracts "be on based on commercially reasonable terms for fiduciaries acting in the capacity of the 3.45 GHz Clearinghouse" and that the Clearinghouse recognize "that it owes fiduciary duties to both incumbents and new entrants." The Bureau believes that requiring contracts between the Clearinghouse and licensee stakeholders has merit in the context of this proceeding, and such contractual relationships and obligations will provide appropriate safeguards. Thus, the Bureau does not need to reach a decision on CTIA's request for imposing a fiduciary duty.

The search committee's solicitation shall also require that the Clearinghouse adopt robust privacy and data security best practices in its operations, given that it will receive and process information critical to ensuring a successful and expeditious transition. The Clearinghouse shall therefore also comply with, on an ongoing basis, all applicable laws and Federal Government guidance on privacy and information security requirements such as relevant provisions in the Federal Information Security Management Act (FISMA), National Institute of Standards and Technology (NIST) publications, and Office of Management and Budget guidance. The Clearinghouse must hire a third-party firm to independently

audit and verify, on an annual basis, the Clearinghouse's compliance with privacy and information security requirements and to provide recommendations based on any audit findings; to correct any negative audit findings and adopt any additional practices suggested by the auditor; and to report the results to the Bureau annually beginning April 1, 2024.

The Bureau will issue a Public Notice notifying the public that the search committee has published criteria for the selection of the Clearinghouse. The Public Notice will announce a closing date of April 2, 2023 for submission of responses to the RFP.

The search committee shall notify the Bureau of its tentative choice for the Clearinghouse by May 2, 2023. This notification shall: (1) be contingent on the selectee's agreement to enter into contracts with incumbent and new, flexible-use licensee stakeholders prior to finalization of the selection; (2) fully disclose any actual or potential organizational or personal conflicts of interest or appearance of such conflict of interest of the Clearinghouse or its officers, directors, employees, and/or contractors; and (3) set out in detail the salary and benefits associated with each position. The Clearinghouse shall have an ongoing obligation to update this information as soon as possible after any relevant changes are made.

Once the search committee has notified the Bureau of its tentative selection, the selectee must negotiate one or more contracts with stakeholder licensees. Specifically, by July 3, 2023, the selectee must submit negotiated and executed contracts to the search committee. The contracts should be consistent with the requirements of this final agency action and the Commission's rules, the RFP, and the selectee's RFP responses. Such contracts should address issues such as any limitations on liability, audits, and any such other commercially reasonable terms as may be expected to be included in contracts of this nature. After submission of contracts to the search committee, the search committee must review the contracts for compliance with the Commission's rules, the RFP, and the selectee's proposal by August 1, 2023. If the search committee determines contracts are in compliance, the search committee will notify the Bureau that it has finalized the selection of the Clearinghouse and will submit copies of the selectee's RFP response and contracts in the docket. The Bureau acknowledges that requiring contracts for all 3.45 GHz Service licensees to be executed prior to the finalization of the Clearinghouse selectee may unduly

delay the selection process. Thus, if the search committee has determined that the submitted contracts are in compliance and such contracts have been submitted for both incumbents and sufficient licensees that hold the majority of 3.45 GHz Service licenses, the search committee may submit the Clearinghouse selectee for final confirmation by the Bureau.

After receipt of the search committee's notification of its final selection, the Bureau will issue a Public Notice announcing the entity selected and inviting public comment on whether the selectee satisfies the criteria set out in this final agency action and in the Commission's rules. Following the comment period and submission of the RFP response and contracts in the docket, the Bureau will issue a determination as to whether the criteria for the Clearinghouse either have or have not been satisfied. Should the Bureau be unable to find the criteria have been satisfied, the selection process will start over and the search committee will submit a new proposed entity. The search committee shall remain in place at least until the Bureau issues its determination confirming the selection of the Clearinghouse.

In the event that: (1) the Clearinghouse selectee has not reached agreement with the two incumbent radiolocation service licensees and sufficient licensees that hold the majority of 3.45 GHz Service licenses; (2) the Bureau determines that the submitted contracts do not comply with the relevant requirements; or (3) the Bureau determines that the Clearinghouse selectee has otherwise not satisfied the selection criteria, the Bureau may in its discretion elect to give the parties 30 days to cure such noncompliance or instruct the search committee to reconvene and select a new Clearinghouse candidate, thus restarting the above process.

### *C. Clearinghouse Selection Process Deadlines*

Consistent with the terms of this final agency action and the Commission's rules, the Clearinghouse selection process must comply with the following deadlines:

- *January 5, 2023, or prior to first meeting:* search committee members must file certifications in WT Docket No. 19–348.
- *January 5, 2023:* the search committee must meet.
- *March 6, 2023:* the search committee must prepare and submit the RFP to the Bureau.

- *April 3, 2023*: deadline for applicants to submit responses to the RFP.
- *May 2, 2023*: the search committee must notify the Bureau of its tentative Clearinghouse selectee.
- *July 3, 2023*: the Clearinghouse selectee must enter into contracts with incumbents and new entrants and submit such contracts to the search committee. For good cause shown, the search committee may request one brief extension of this deadline.
- *August 1, 2023*: the search committee must review contracts and notify the Bureau whether or not the contracts are approved and whether or not the Clearinghouse selection is finalized, subject to the Bureau determination that the selection criteria have been satisfied.

#### *D. Duties of the Clearinghouse*

Consistent with the delegation of authority in the *3.45 GHz Band Second R&O* and the Commission's rules, the Bureau herein sets forth the duties of the Clearinghouse. As in other spectrum band transition processes, the Bureau finds that an independent clearinghouse that oversees the reimbursement process for the 3.45 GHz band transition in a "fair, and transparent manner will best serve the public interest." To that end, below the Bureau establishes procedures to prevent waste, fraud, and abuse in connection with relocation reimbursement disbursements.

*Collection of reimbursement requests and supporting documentation.* The Clearinghouse will be responsible for collecting from the two incumbent radiolocation operators a showing of their relocation costs for the transition as well as a demonstration of the reasonableness of those costs. The Clearinghouse will determine in the first instance whether costs submitted for reimbursement are reasonable. Parties seeking reimbursement for actual costs must submit to the Clearinghouse a claim for reimbursement, complete with sufficient documentation to justify the amount. The Clearinghouse shall review reimbursement requests to determine whether the costs are reasonable and to ensure they comply with the requirements adopted in the *3.45 GHz Band Second R&O*. The Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.

Incumbents seeking reimbursement for their actual costs shall provide justification for those costs. The Clearinghouse shall specify a procedure for the submission of relocation cost documentation. Entities must document their actual expenses and shall submit

such documentation pursuant to the procedures specified by the Clearinghouse at any time after those expenses have been incurred. The Clearinghouse may conduct audits of entities that receive reimbursements. Incumbents receiving reimbursements must make available all relevant documentation upon request from the Clearinghouse.

To determine the reasonableness of reimbursement requests, the Clearinghouse may consider the submission and supporting documentation and any relevant comparable reimbursement submissions. If the Clearinghouse determines that the amount sought for reimbursement is impermissible or unreasonable, it shall notify the party of any amount that it deems eligible for reimbursement. Approved, adjusted, or denied claims shall be simultaneously invoiced to the relevant claimant and the 3.45 Service licensees, allowing 30 days for review. To the extent that either a claimant or an 3.45 Service licensee wishes to dispute a final Clearinghouse decision, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance. The Bureau shall resolve any such dispute. To the extent necessary, the Bureau may establish supplemental procedures for the resolution of any disputes that may arise during the transition. Once the 30-day invoice review period has run and absent any dispute, the Clearinghouse shall disburse approved claims from the reimbursement fund.

*Apportionment of Costs Among 3.45 GHz Service Licensees.* The Clearinghouse shall apportion costs among 3.45 GHz Service licensees and distribute payments to incumbent radiolocation licensees pursuant to the cost allocation structure established in the *3.45 GHz Band Second R&O* and the Commission's rules. Specifically, each 3.45 GHz Service licensee that is granted an initial license (not a renewal) "must pay a *pro rata* portion to reimburse the costs incurred by authorized non-federal, secondary radiolocation licensees for relocating from the 3.3–3.55 GHz band." These costs shall include "the cost of a clearinghouse's administration of the reimbursement, which the radiolocation licensees will pay initially and include in their reimbursable costs." The Clearinghouse shall determine a licensee's *pro rata* share of relocation costs by dividing the total actual costs of the incumbents' relocation (as approved by the Clearinghouse), "by the total number of 3.45 GHz Service licenses granted, multiplied by the

number of such licenses [a] Licensee will hold." Forty-five days after the Clearinghouse has entered into contracts with incumbents and new licensees, the Clearinghouse shall calculate the share of each 3.45 Service licensee based upon the reimbursement documentation received from the incumbents. The initial share shall incorporate any relocation-related costs incurred prior to the issuance of new flexible-use licenses (May 4, 2022) as well as from the time of issuance until the time of calculation. 3.45 GHz Service licensees shall pay their share of the initial relocation payments into a reimbursement fund, administered by the Clearinghouse, within 30 days of receiving an invoice or other written notification of the calculation of their initial share. The Clearinghouse shall draw from the reimbursement fund to pay approved, invoiced claims that are not subject to a dispute before the Bureau.

Going forward, the Clearinghouse shall calculate the 3.45 GHz Service licensees' share of relocation costs at least every six months, with the discretion to calculate the share on a more frequent basis as needed, and provide each licensee with the amount it owes no more than 30 days after each period that it calculates the licensees' share of relocation costs. Within 30 days of receiving the invoice or other written notification of the calculation of its share, each 3.45 GHz Service licensee shall pay its share of costs into the reimbursement fund. The Clearinghouse shall draw from the reimbursement fund to pay approved reimbursement claims. The Clearinghouse shall pay approved claims 30 days after invoice submission to the relevant claimant and 3.45 GHz Service licensees for their review so long as: (1) funding is available; and (2) there is no dispute regarding the underlying Clearinghouse decision before the Bureau. If the reimbursement fund does not have sufficient funds to pay approved claims before a six-month replenishment, the Clearinghouse shall provide 3.45 GHz Service licensees with 30 days' notice of the additional shares each must contribute. Any interest arising from the reimbursement fund shall be used to defray the costs of the transition for all 3.45 GHz Service licensees on a *pro rata* basis. At the end of the transition, the Clearinghouse shall return any unused amounts to the 3.45 GHz Service licensees according to their *pro rata* shares.

If a 3.45 GHz Service license is relinquished to the Commission prior to all relocation cost reimbursements being paid, the remaining payments will be distributed among the remaining 3.45 GHz Service licensees. If a new license

is issued for the previously relinquished rights prior to final transition payments becoming due, the new 3.45 GHz Service licensee will be responsible for the same *pro rata* share of relocation costs as the initial 3.45 GHz Service licensee on a going forward basis from the new license grant date. If a 3.45 GHz Service licensee assigns its rights through the secondary market, the new 3.45 GHz Service licensee will be obligated to fulfill all outstanding and future transition payment obligations associated with the license.

3.45 GHz Service licensees will, collectively, pay for the services of the Clearinghouse and staff. The Clearinghouse shall include and itemize its own reasonable costs in the cost estimates it uses to collect reimbursement fund payments from 3.45 GHz Service licensees. To ensure the Clearinghouse's costs are reasonable, the Clearinghouse shall provide to the Office of the Managing Director and the Wireless Telecommunications Bureau, by April 1 of each year beginning in 2024, an audited statement of funds expended to date, including salaries and expenses of the Clearinghouse. It shall also provide additional financial information as requested by the Office or Bureau to satisfy the Commission's oversight responsibilities and/or agency-specific and government-wide reporting obligations.

**Dispute Resolution.** As in the 3.7 GHz transition and consistent with our rules, the Clearinghouse here will serve in an administrative role and in a function similar to a special master in a judicial proceeding. In contrast with the *3.7 GHz Band R&O* (85 FR 64062, October 9, 2020), which enabled the Clearinghouse to mediate any cost disputes or refer the parties to alternative dispute resolution fora, here the Commission directed that any disputes arising from Clearinghouse decisions shall be decided by the Bureau. The Bureau reiterates that to the extent that either a claimant or a 3.45 Service licensee wishes to dispute a final Clearinghouse decision, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance. To the extent that a 3.45 Service licensee wishes to dispute the calculation of its *pro rata* contributions to the reimbursement fund, or any transition-related payment obligation other than a reimbursement claim invoice, it may do so by providing written notice to the Bureau in the above-captioned docket within 30 days of invoice issuance or other written notification of its payment obligation. To the extent necessary, the Bureau may establish supplemental procedures for the resolution of any

disputes that may arise during the transition.

**Reports to the Bureau.** The Clearinghouse shall provide certain information and reports to the Commission to facilitate our oversight of the transition. Each quarter, the Clearinghouse shall submit progress reports to the Bureau that detail the status of reimbursement funds available, the payments issued, and the amounts collected from licensees. The first such report must be filed no later than April 1, 2024. The reports must account for all funds spent, including the Clearinghouse's own expenses (including salaries and fees paid to law firms, accounting firms, and other consultants). The Clearinghouse shall provide to the Wireless Telecommunications Bureau and the Office of the Managing Director additional information upon request.

No later than 18 months after the release of this final agency action, the Clearinghouse must issue a special, audited report identifying any issues that have not already been referred to the Commission as well as what actions, if any, need to be taken for the Clearinghouse to complete its obligations (including the estimated costs and time frame for completing that work).

**Bureau Oversight.** To ensure the timely and efficient transition of the band, the Bureau will provide the Clearinghouse with any needed clarifications or interpretations of the Commission's rules or orders issued by the Commission or Bureau. As noted above, the Bureau and the Office of the Managing Director may request any documentation from the Clearinghouse necessary to provide guidance or carry out oversight.

The Bureau will issue a Public Notice upon receipt of a request of the Clearinghouse to wind down and suspend operations. If no material issues are raised within 15 days of the release of said Public Notice, the Bureau may grant the Clearinghouse's request to suspend operations on a specific date. 3.45 GHz Service licensees must pay all transition costs incurred and invoiced prior to the date set forth in the Public Notice.

#### *E. Safeguards for Clearinghouse Operation*

In the *3.7 GHz Band R&O*, the Commission stated that the Clearinghouse should operate "pursuant to Commission rules and oversight, to mitigate financial disputes among stakeholders, and to distribute payments in a timely manner." 35 FCC Rcd 2343, 2446, para. 255 (2020). In addition, the

Commission concluded that it needed to "establish measures to prevent waste, fraud, and abuse with respect to reimbursement disbursements" and that the Clearinghouse should adopt "robust privacy and data security best practices in its operations." *Id.* para. 277. The Bureau agrees that such measures are likewise appropriate as part of the 3.45 GHz transition.

CTIA proposes a series of "appropriate safeguards" to protect all involved stakeholders and "ensure the integrity of the process." Given the Commission's directive in this proceeding to develop and implement a Clearinghouse selection process similar to the process used in the 3.7 GHz proceeding, the Bureau concludes those safeguards proposed by CTIA, which are consistent with the processes articulated in the *3.7 GHz Band R&O*, should be adopted here. Thus, the Clearinghouse here must:

- Process claims consistent with the *3.45 GHz Band Second R&O*, and any clarifications issued by the Commission or the Bureau;
- Operate in a fair and transparent manner;
- Adopt a process for protecting confidential information;
- Hold deposits to minimize the risk of loss, (e.g., all funds collected for reimbursement must be placed in a reputable financial institution and may only be invested in U.S. Treasury bonds); and
- Specify timing for the reimbursement process.

In addition, consistent with the need to prevent waste, fraud, and abuse in its handling of reimbursement funds, all Clearinghouse accounting related to such funds is subject to an annual audit to be performed by an independent third party selected by the Clearinghouse. The Clearinghouse shall report to the FCC all evidence and/or allegations of suspected fraud, waste, or abuse related to the 3.45 GHz relocation program, along with an initial assessment of their credibility and substantiality. Further, the Clearinghouse shall establish procedures enabling outside parties to report allegations of fraud, waste, or abuse to the RPC, and maintain a log of all such allegations that it receives. Parties seeking to report claims of fraud, waste, and abuse directly to the FCC may do so either by phone (202-418-1940) or electronically ([345clearinghouse@fcc.gov](mailto:345clearinghouse@fcc.gov)).

To the extent that any adjustments to the Clearinghouse process or administration are necessary going forward, the Commission delegated authority to the Bureau to make such

necessary modifications. Should the Clearinghouse violate or otherwise fail to comply with the Commission's rules, the Clearinghouse's authority to operate may be terminated and, subject to the delegated authority discussed above, the selection of a new clearinghouse may be initiated.

#### F. CTIA Waiver Requests

CTIA requests that certain rules relating to the operation of the Clearinghouse be waived in order to allow reimbursement payments directly from 3.45 GHz Service licensees to incumbent radiolocation service operators and to permit the Bureau to determine allowable costs for reimbursement as an initial matter. If granted, CTIA's requests would strip the Clearinghouse of its core functions—determining reasonable reimbursement costs, billing and collecting reimbursement funds from new entrants, and disbursing payments to incumbents—and would reduce the Clearinghouse's role to essentially an accounting function. The Bureau finds that CTIA's requests are not for waivers but rather appear to seek rule changes. As such, they are essentially untimely requests to reconsider decisions made by the Commission in the *3.45 GHz Band Second R&O* and are beyond the scope of the authority delegated to the Bureau in establishing procedures to select and administer a Clearinghouse. The Bureau therefore dismisses CTIA's requests.

#### IV. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 2, 4(i), 5(c), 157, 301, 303, 307, 308, 309, of the Communications Act of 1934, as amended, as well as the Commercial Spectrum Enhancement Act, Public Law 108–494, 118 Stat. 3986 (Dec. 23, 2004) as amended, and the MOBILE NOW Act, Public Law 115–141, 132 Stat. 1098, Div. P, Title VI, sec. 603 (Mar. 23, 2018), 47 U.S.C. 152, 154(i), 155(c), 157, 301, 303, 307, 308, 309, 309(j)(3)(B), 309(j)(4)(D), 923(g), 928, 1502, by the Beat China by Harnessing Important, National Airwaves for 5G Act of 2020, Public Law 116–260, Division FF, Title IX, Sec. 905, and by the authority delegated in paragraph 163 of the *3.45 GHz Second R&O*, the Order is hereby adopted.

*It is further ordered*, that, pursuant to the authority delegated in §§ 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331, CTIA's Waiver Requests are denied.

*It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference

Information Center, *shall send* a copy of the Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

*It is further ordered* that the Order shall be effective 30 days after publication in the **Federal Register**.

Federal Communications Commission.

**Amy Brett,**

*Acting Chief of Staff, Wireless Telecommunications Bureau.*

[FR Doc. 2022–27820 Filed 12–21–22; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 385

[Docket No. FMCSA–2022–0128]

**RIN 2126–AC48**

#### Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its Hazardous Materials Safety Permits regulations to incorporate by reference the April 1, 2022, edition of the Commercial Vehicle Safety Alliance's (CVSA) handbook (the handbook) containing inspection procedures and Out-of-Service Criteria (OOSC) for the inspection of commercial motor vehicles used in the transportation of transuranic waste and highway route-controlled quantities of radioactive material. The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for these inspections. Through this rule, FMCSA incorporates by reference the April 1, 2022, edition of the handbook.

**DATES:** Effective January 23, 2023. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of January 23, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mr. José Cestero, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–5541, [jose.cestero@dot.gov](mailto:jose.cestero@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** This final rule is organized as follows:

- I. Availability of Rulemaking Documents
- II. Executive Summary
- III. Abbreviations
- IV. Legal Basis for the Rulemaking
- V. Background
- VI. Discussion of Proposed Rulemaking and Comments
  - A. Proposed Rulemaking
  - B. Comments and Responses
- VII. International Impacts
- VIII. Section-by-Section Analysis
- IX. Regulatory Analyses
  - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations
  - B. Congressional Review Act
  - C. Regulatory Flexibility Act (Small Entities)
  - D. Assistance for Small Entities
  - E. Unfunded Mandates Reform Act of 1995
  - F. Paperwork Reduction Act
  - G. E.O. 13132 (Federalism)
  - H. Privacy
  - I. E.O. 13175 (Indian Tribal Governments)
  - J. National Environmental Policy Act of 1969

#### I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0128/document> and choose the document to review. To view comments, click this final rule, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

#### II. Executive Summary and 1 CFR 51

This final rule updates an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2021, edition of CVSA's handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” The CVSA handbook contains inspection procedures and OOSC for inspections of shipments of transuranic waste and highway route-controlled quantities of radioactive material. The