

relating to swaps entered into before the date of enactment of the Dodd-Frank Act, the terms of which had not expired as of the date of enactment of the Dodd-Frank Act (“pre-enactment swaps”) and data relating to swaps entered into on or after the date of enactment of the Dodd-Frank Act and prior to the compliance date specified in the the CFTC’s final swap data reporting rules (“transition swaps”). On May 17, 2012, the CFTC adopted regulation 46, which imposes recordkeeping and reporting requirements relating to pre-enactment and historical swaps.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the CFTC, including whether the information will have a practical use;
- The accuracy of the CFTC’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC’s regulations.<sup>1</sup> The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other

applicable laws, and may be accessible under the Freedom of Information Act.

**Burden Statement:** Provisions of CFTC Regulations 46.2, 46.3, 46.4, 46.8, 46.10, and 46.11 result in information collection requirements within the meaning of the PRA. These regulations required SDs, MSPs and non-SD/MSP counterparties to incur one-time costs to establish systems and processes associated with swaps data recordkeeping and reporting. The CFTC estimates that SDs, MSPs, and non-SD/MSP counterparties incurred a one-time burden of 91,250 hours associated with part 46 recordkeeping and reporting requirements. With respect to the ongoing reporting and recordkeeping burdens associated with pre-enactment and transition swaps, the CFTC believes that SDs, MSPs, and non-SD/MSP counterparties incur an annual time-burden of 18,903 hours. This time-burden represents a proportion of the burden respondents incur to operate and maintain their swap data recordkeeping and reporting systems.

17 CFR 45 imposes swap recordkeeping and reporting requirements on respondents related to swaps that are not pre-enactment or transition swaps. The CFTC believes that respondents use the same recordkeeping and reporting systems to comply with both parts 45 and 46. The CFTC has computed the estimated burden for 17 CFR 46 by estimating the burden incurred by respondents to operate and maintain their swap data recordkeeping and reporting systems and then estimating the percentage of that burden associated with pre-enactment and transition swaps. Since the enactment of 17 CFR 45, the vast majority of pre-enactment and transition swaps have been terminated by the parties to the swaps or are otherwise no longer in existence. As 17 CFR 46 only requires respondents to make ongoing reports regarding pre-enactment and transition swaps that continue to be in existence, the number of reports being made pursuant to 17 CFR 46 has declined significantly over time. As the volume of reports made pursuant to 17 CFR 46 is estimated to be very small relative to the estimated volume of reports made pursuant to 17 CFR 45, the CFTC’s burden estimate has allocated the vast majority of the estimated burden to operate and maintain respondents’ swap data recordkeeping and reporting systems to the burden estimate associated with 17 CFR 45.

**Respondents/Affected Entities:** Swap Dealers, Major Swap Participants, and other counterparties to a swap transaction (*i.e.*, end-user, non-SD/non-MSP counterparties).

**Estimated number of respondents:** 30,125.

**Estimated total annual burden on respondents:** 18,903 hours.

**Frequency of collection:** Ongoing.

**Authority:** 44 U.S.C. 3501 *et seq.*

Dated: November 6, 2015.

**Robert N. Sidman,**

*Deputy Secretary of the Commission.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DoD–2015–OS–0124]

### U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

**ACTION:** Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

**SUMMARY:** This notice announces the following proposed changes to Rules 5, 21(b)(5)(F), and 26 of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces.

**DATES:** Comments on the proposed changes must be received by December 14, 2015.

**ADDRESSES:** You may submit comments, identified by docket number and title by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

**Instructions:** All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

<sup>1</sup> 17 CFR 145.9.

Dated: November 5, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison  
Officer, Department of Defense.*

**Rules 5 and 21(b)(5)(F):**

*Rule 5—Scope of Review—currently reads:*

The Court acts only with respect to the findings and sentence as approved by reviewing authorities, and as affirmed or set aside as incorrect in law by a Court of Criminal Appeals, except insofar as it may take action on a certificate for review or a petition for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, or to grant extraordinary relief in aid of its jurisdiction, including the exercise of its supervisory powers over the administration of the UCMJ. The Court may specify or act on any issue concerning a matter of law which materially affects the rights of the parties.

*The proposed change to Rule 5 would read:*

The Court acts only with respect to the findings and sentence as approved by reviewing authorities, and as affirmed or set aside as incorrect in law by a Court of Criminal Appeals, except insofar as it may take action on a certificate for review or a petition for review of a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 U.S.C. 862, or to grant extraordinary relief in aid of its jurisdiction. The Court may specify or act on any issue concerning a matter of law which materially affects the rights of the parties.

*Rule 21(b)(5)(F)—Supplement to Petition for Grant of Review—currently reads:*

(b) The supplement to the petition shall be filed in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or (B), shall include an Appendix containing a copy of the decision of the Court of Criminal Appeals, unpublished opinions cited in the brief, relevant extracts of rules and regulations, and shall conform to the provisions of Rules 24(b), 35A, and 37. Unless authorized by Order of the Court or by motion of a party granted by the Court, the supplement and any answer thereto shall not exceed 25 pages, except that a supplement or answer containing no more than 9,000 words or 900 lines of text is also acceptable. Any reply to the answer shall not exceed 10 pages, except that a reply containing 4,000 words or 400 lines of text is also

acceptable. The supplement shall contain:

. . . (5) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant. Where applicable, the supplement to the petition shall also indicate whether the court below has: . . . (F) so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a court-martial or other person acting under authority of the UCMJ, as to call for an exercise of this Court's power of supervision; or . . .

*The proposed change to Rule 21(b)(5)(F) would read:*

. . . (F) so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a court-martial or other person acting under authority of the UCMJ, as to warrant review by the Court; or . . .

*Comment:* Documents have recently been filed with the Court citing to the supervisory power noted in the Court's Rules 5 and 21(b)(5)(F). This is somewhat problematic because the references to supervisory power in these rules predate the Supreme Court's decision in *Clinton v. Goldsmith*, 526 U.S. 529 (1999), which rejected an expansive view of the Court's supervisory power over all aspects of military justice. Specifically the Court stated: "[T]he CAAF is not given authority, by the All Writs Act or otherwise, to oversee all matters arguably related to military justice or to act as a plenary administrator of final judgments it has affirmed." 526 U.S. 529, 536. Given *Goldsmith*, the broad references to supervisory power in the rules should be deleted. That is not to say that supervisory authority does not exist, only that it is not as expansive as it was pre-*Goldsmith*, and its contours will need to be resolved in future cases. However, the Court's Rules of Practice and Procedure should not be cited as a source for this authority in the absence of settled case law.

**Rule 26:**

*Rule 26—Amicus Curiae Briefs—currently reads:*

(a) A brief of an amicus curiae may be filed (1) by an appellate government or defense division of an armed service other than that in which the case has arisen, (2) by invitation of the Court, or (3) by motion for leave to file granted by the Court.

(b) Unless otherwise ordered by the Court, a brief of an amicus curiae in

support of a party may be filed no later than 10 days after that party has filed its brief. If neither party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the first brief is filed.

(c) Neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an amicus curiae brief or a motion of an amicus curiae to participate in a hearing, or to await the filing of a brief of an amicus curiae under this rule.

(d) Except by the Court's permission, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief for an appellant/petitioner. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) A member of the Bar of the Court who represents an amicus curiae and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of the amicus curiae. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 13A(b)(1)–(5) and (c)(1)–(11). Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion filed under Rule 30.

*The proposed change to Rule 26 would read:*

(a) A brief of an amicus curiae may be filed (1) by an appellate government or defense division of an armed service other than that in which the case has arisen, (2) by invitation of the Court, or (3) by motion for leave to file granted by the Court.

(b) All motions and briefs filed under Rule 26(a)(3) must contain a statement of the movant's interest and why the matters asserted are relevant to the disposition of the case. Amicus curiae briefs filed pursuant to Rule 26(a)(3) that bring relevant matter to the attention of the Court not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored. The motion must also provide a statement as to whether the parties consent to the filing of the amicus curiae brief. Only an attorney admitted to practice as a member of the Bar of the Court or an attorney appearing pro hac vice may file an amicus curiae brief.

(c) An amicus curiae brief submitted before the Court's consideration of a petition for grant of review, petition for extraordinary relief, writ-appeal petition, or petition for new trial may be filed under subparagraphs (a)(1) or (a)(2), or if the Court grants leave to file under subparagraph (a)(3) of this rule.

(d) Unless otherwise ordered by the Court, a brief of an amicus curiae in support of a party shall be filed no later than 10 days after that party has filed its brief, supplement to the petition for grant of review, petition for extraordinary relief, writ-appeal petition, or answer. If neither party is supported, the brief of an amicus curiae shall be filed no later than 10 days after the first brief, supplement to the petition for grant of review, petition for extraordinary relief, or writ-appeal petition is filed. In the case of a petition for new trial, the brief of an amicus curiae shall be filed no later than 10 days after the petitioner's brief in support of the petition has been filed with the Court. Motions for leave to file an amicus curiae brief under Rule 26(a)(3) must be filed within the time allowed for the filing of the brief and contemporaneously with the amicus curiae brief itself. Requests for extensions of time to file an amicus curiae brief will not be granted. A party may file a motion under Rule 30 for leave to reply to the brief of an amicus curiae.

(e) Neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an amicus curiae brief or a motion of an amicus curiae to participate in a hearing, or to await the filing of a brief of an amicus curiae under this rule.

(f) Except by the Court's permission, a brief of an amicus curiae may be no more than one-half the maximum length authorized by Rule 24 for a brief for an appellant/petitioner. If the Court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(g) A member of the Bar of the Court who represents an amicus curiae and is authorized to file a brief under paragraph (a) of this rule may file a motion for leave to have a law student enter an appearance on behalf of the amicus curiae. To be eligible to participate under this rule, a law student must be acting under the attorney's supervision and the attorney and the law student must substantially comply with the requirements of Rule 13A(b)(1)–(5) and (c)(1)–(11). Argument by a law student granted permission to appear on behalf of an amicus curiae may be requested by motion filed under Rule 30.

*Comment:* The first part of new paragraph (b) tracks similar language in Supreme Court Rule 37. It advises that “me too” briefs are not favored, and this is generally the view of all appellate courts. The proposal goes on to require that motions for leave to file, as well as the amicus briefs themselves, contain a statement of the movant's interest and explain why the matters asserted in the brief are relevant to the disposition of the case. The proposal operates differently from the practice in the Article III courts of appeal in that even with the consent of the parties, an amicus filer must still ask for leave of the Court to file an amicus curiae brief. In this way, the Court retains the authority to decide all requests to file amicus briefs based on its own determination that the brief will be helpful. It is believed that party consent may not be an adequate filter that ensures that amicus briefs are helpful to the Court. While party consent is not a guarantee that the brief will be accepted, lack of consent is not a guarantee that it will be rejected. Rather, the Court oversees all filings to be sure that amicus participation is warranted. Paragraph (b) also includes a requirement that only members of the Court's Bar or attorneys appearing pro hac vice may file motions for leave to file amicus curiae briefs.

Paragraph (c) proposes a new rule to clarify that motions to file amicus curiae briefs can be filed in support of petitions for grant of review, petitions for extraordinary relief, writ-appeal petitions, petitions for new trial, and answers to such pleadings.

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**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Intent To Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Navy Atlantic Fleet Training and Testing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), and Executive Order (EO) 12114, the Department of the Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS)/

Overseas EIS (OEIS) to evaluate the potential environmental effects associated with continuing to conduct military readiness activities, which consist of training activities and research, development, testing, and evaluation (hereinafter referred to as “testing”) activities in the Atlantic Fleet Training and Testing (AFTT) Study Area. The Study Area consists of sea space in and airspace over the Atlantic Ocean along the eastern coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico. The AFTT Study Area begins seaward from the mean high water line and moves east to the 45 degree longitude line. The Study Area covers approximately 2.6 million square nautical miles of ocean area, including designated Navy operating areas, warning areas, select Navy pier-side locations, and associated port transit channels.

In order to both achieve and maintain military readiness, the Navy proposes to:

- Conduct training and testing activities at levels required to support Navy military readiness requirements beginning in 2018 into the reasonably foreseeable future; and
- Accommodate evolving mission requirements associated with force structure changes, including those resulting from the development, testing, and ultimate introduction of new platforms (vessels, aircraft, and weapon systems) into the fleet; thereby ensuring critical Navy requirements are met.

As part of this process the Navy will seek to obtain authorization and permitting, as required under the Marine Mammal Protection Act and Endangered Species Act, respectively.

The Navy invites comments on the scope and content of the EIS/OEIS from all interested parties. Comments may be provided by mail and through the EIS/OEIS Web site at: <http://www.AFTTEIS.com>. Mailed comments must be postmarked no later than January 16, 2016 and mailed to the address below to ensure they are considered.

#### FOR FURTHER INFORMATION CONTACT:

Lesley Dobbins-Noble, Naval Facilities Engineering Command, Code EV22LDN (AFTT EIS/OEIS Project Manager), 6506 Hampton Boulevard, Norfolk, Virginia 23508–1278. 703–322–4625.

**SUPPLEMENTARY INFORMATION:** The Navy's lead action proponent is Commander, U.S. Fleet Forces Command. Additional action proponents include Naval Sea Systems Command (NAVSEA), Naval Air Systems Command (NAVAIR), and the Office of Naval Research (ONR). The