DEPARTMENT OF ENERGY

U.S. Energy Information Administration

CIPSEA Confidentiality Pledge Revision Notice

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy

ACTION: Notice of Revision of Confidentiality Pledges under the Confidential Information Protection and Statistical Efficiency Act

SUMMARY: EIA is announcing revisions to the confidentiality pledge(s) it provides to its respondents under the Confidential Information Protection and Statistical Efficiency Act. These revisions are required by the passage and implementation of provisions of the Federal Cybersecurity Enhancement Act of 2015 which permit and require the Secretary of the Department of Homeland Security (DHS) to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic.

DATES: These revisions become effective upon publication of this notice in the **Federal Register**.

ADDRESSES: Questions about this notice should be addressed to Jacob Bournazian, U.S. Energy Information Administration, 1000 Independence Avenue SW., Washington, DC 20585 or by fax at 202–586–3045 or by email at jacob.bournazian@eia.gov.

FOR FURTHER INFORMATION CONTACT: Jacob Bournazian, U.S. Energy Information Administration, 1000 Independence Avenue SW., Washington, DC 20585, phone: 202–586–5562 (this is not a toll-free number), email:jacob.bournazian@eia.gov. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Under 44 U.S.C. 3506(e), and 44 U.S.C. 3501 (note), EIA is revising the confidentiality pledge(s) it provides to its respondents under the Confidential Information Protection and Statistical Efficiency Act (44 U.S.C. 3501 (note)) (CIPSEA). These revisions are required by provisions of the Federal Cybersecurity Enhancement Act of 2015 (Pub. L. 114-11, Division N, Title II, Subtitle B, Sec. 223), which permit and require the Secretary of the Department of Homeland Security (DHS) to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. Federal statistics provide key information that the Nation uses to measure its performance and make informed choices about budgets, employment, health, investments, taxes, and a host of other significant topics. The overwhelming majority of Federal surveys are conducted on a voluntary basis. Respondents, ranging from businesses to households to institutions, may choose whether or not to provide the requested information. Many of the most valuable Federal statistics come from surveys that ask for highly sensitive information such as proprietary business data from companies or particularly personal information or practices from individuals. Strong and trusted confidentiality and exclusively statistical use pledges under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) and similar statistical confidentiality pledges are effective and necessary in honoring the trust that businesses, individuals, and institutions, by their responses, place in statistical agencies.

Under CIPSEA and similar statistical confidentiality protection statutes, many Federal statistical agencies make statutory pledges that the information respondents provide will be seen only by statistical agency personnel or their sworn agents, and will be used only for statistical purposes. CIPSEA and similar statutes protect the confidentiality of information that agencies collect

solely for statistical purposes and under a pledge of confidentiality. These acts protect such statistical information from administrative, law enforcement, taxation, regulatory, or any other non-statistical use and immunize the information submitted to statistical agencies from legal process. Moreover, many of these statutes carry criminal penalties of a Class E felony (fines up to $250,000, or up to five years in prison, or both) for conviction of a knowing and willful unauthorized disclosure of covered information.

As part of the Consolidated Appropriations Act for Fiscal Year 2016 signed on December 17, 2015, the Congress included the Federal Cybersecurity Enhancement Act of 2015 (Pub. L. 114-11, Division N, Title II, Subtitle B, Sec. 223). This Act, among other provisions, permits and requires DHS to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. The technology currently used to provide this protection against cyber malware is known as Einstein 3A; it electronically searches Internet traffic in and out of Federal civilian agencies in real time for malware signatures.

When such a signature is found, the Internet packets that contain the malware signature are moved to a secured area for further inspection by DHS personnel. Because it is possible that such packets entering or leaving a statistical agency's information technology system may contain a small portion of confidential statistical data, statistical agencies can no longer promise their respondents that their responses will be seen only by statistical agency personnel or their sworn agents. However, they can promise, in accordance with provisions of the Federal Cybersecurity Enhancement Act of 2015, that such monitoring can be used only to protect

information and information systems from cybersecurity risks, thereby, in effect, providing stronger protection to the integrity of the respondents' submissions.

The DHS cybersecurity program's objective is to protect Federal civilian information systems from malicious malware attacks. The Federal statistical system's objective is to ensure that the DHS Secretary performs those essential duties in a manner that honors the Government's statutory promises to the public to protect their confidential data. Given that the Department of Homeland Security is not a Federal statistical agency, both DHS and the Federal statistical system worked to balance both objectives and achieve these mutually reinforcing objectives.

Accordingly, DHS and Federal statistical agencies, in cooperation with their parent departments, developed a Memorandum of Agreement for the installation of Einstein 3A cybersecurity protection technology to monitor their Internet traffic. However, EIA's current CIPSEA statistical confidentiality pledge promises that respondents' data will be seen only by statistical agency personnel or their sworn agents. Since it is possible that DHS personnel could see some portion of those confidential data in the course of examining the suspicious Internet packets identified by Einstein 3A sensors, EIA needs to revise its confidentiality pledge to reflect this process change.

Therefore, EIA is providing this notice to alert the public of this revision in its confidentiality pledge in an efficient and coordinated fashion. Below is a listing of EIA's current Paperwork Reduction Act OMB numbers and information collection titles and their associated revised confidentiality pledge(s) for the Information Collections whose confidentiality pledges will

change to reflect the statutory implementation of DHS' Einstein 3A monitoring for cybersecurity protection purposes.

The following EIA statistical confidentiality pledge will now apply to the Information Collections whose Paperwork Reduction Act Office of Management and Budget numbers and titles are listed below.

> "The information you provide on Form EIA-XXX will be used for statistical purposes only and is confidential by law. In accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 and other applicable Federal laws, your responses will not be disclosed in identifiable form without your consent. Per the Federal Cybersecurity Enhancement Act of 2015, Federal information systems are protected from malicious activities through cybersecurity screening of transmitted data. Every EIA employee, as well as every agent, is subject to a jail term, a fine, or both if he or she makes public ANY identifiable information you reported."

OMB No: 1905-0174 Petroleum Marketing Program
- Form EIA-863, "Petroleum Product Sales Identification Survey"
- Form EIA-878, "Motor Gasoline Price Survey"
- Form EIA-888, "On-Highway Diesel Fuel Price Survey"

OMB No: 1905-0175 Natural Gas Data Collection Program
- Form EIA-910, "Monthly Natural Gas Marketers Survey"
- Form EIA-912, "Weekly Underground Natural Gas Storage Report"

OMB No: 1905-0205 Monthly Natural Gas Production Report
- Form EIA-914, "Monthly Crude Oil, Lease Condensate, and Natural Gas Production Report"

OMB No: 1905-0160 Uranium Data Program
- Form EIA-851Q, "Domestic Uranium Production Report – Quarterly"
- Form EIA-851A, "Domestic Uranium Production Report – Annual"
- Form EIA-858, "Uranium Marketing Annual Survey"

OMB No: 1905-0145 Commercial Buildings Energy Consumption Survey
- Form EIA-871, "Commercial Buildings Energy Consumption Survey"

OMB No. 1905-0092 Residential Energy Consumption Survey
- Form EIA-457, "Residential Energy Consumption Survey"

The pledge provided to respondents over the telephone is shorter for the respondents to Forms EIA-878 and EIA-888. The statistical confidentiality pledge for collecting information over the telephone reads:

> The information you provide on Form EIA-xxx will be used for statistical purposes only. Your responses will be kept confidential and will not be disclosed in identifiable form. Per the Federal Cybersecurity Enhancement Act of 2015, Federal information systems are protected from malicious activities through cybersecurity screening of transmitted data. By law, every EIA employee, as well as every agent, is subject to a jail term, a fine, or both if he or she makes public ANY identifiable information you reported."

Issued in Washington, DC on December 28, 2016.

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Nanda Srinivasan
Director
Office of Survey Development and Statistical Integration
U.S. Energy Information Administration

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