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The Code of Federal Regulations is sold by the Superintendent of Documents.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards: Revised Size Standards Methodology

AGENCY: U.S. Small Business Administration.

ACTION: Notification of availability of white paper.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) advises the public that it has revised its size standards methodology white paper explaining how it establishes, reviews, or revises small business size standards. The revised white paper, entitled ''SBA's Size Standards Methodology (April 2019)'' (Revised Methodology) is available on the SBA's website at *http://www.sba.gov/size-standards-methodology* as well as on the Federal rulemaking portal at *http://www.regulations.gov.* SBA intends to apply the Revised Methodology to the ongoing second five-year comprehensive review of size standards required by the Small Business Jobs Act of 2010 (Jobs Act). On April 27, 2018, SBA published a notification seeking comments on proposed revisions to its size standards methodology. This notification discusses the comments SBA received on the proposed Revised Methodology and Agency's responses, followed by a description of major changes to the methodology and their impacts on size standards.

DATES: The Revised Methodology is effective on April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Chief, Office of Size Standards, (202) 205–7189 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

To determine eligibility for Federal small business assistance programs, SBA establishes small business definitions (commonly referred to as size standards) for all private industries in the United States. SBA's existing size standards use two primary measures of business size: Average annual receipts and number of employees. Financial assets and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC/504) Programs determine small business eligibility using either the industry based size standards or net worth and net income based alternative size standards. Presently, there are 27 different industry based size standards, covering 1,023 North American Industry Classification System (NAICS) industries and 13 ''exceptions.'' Of these, 526 are based on average annual receipts, 505 on number of employees (one of which also includes barrels per day total refining capacity), and five on average assets.

In 2010, Congress passed the Small Business Jobs Act (Jobs Act) (Sec. 1344, Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010) requiring SBA to review, every five years, all size standards and make necessary adjustments to reflect market conditions. In 2016, SBA completed the first 5-year review of size standards under the Jobs Act and is now conducting the second 5-year review of size standards. SBA also reviews and adjusts, as necessary, all monetary based size standards for inflation every five years. SBA's latest inflation adjustment to size standards became effective on July 14, 2014 (79 FR 33647 (June 12, 2014)). SBA also updates its size standards, also every five years, to adopt the Office of Management and Budget's (OMB) 5-year NAICS revisions to its table of small business size standards. SBA adopted OMB's 2017 NAICS revisions for its size standards, effective October 1, 2017 (82 FR 44886 (September 27, 2017)).

As part of the previous comprehensive size standards review, in 2009 SBA established a detailed size standards methodology (2009 Methodology) explaining how SBA establishes, reviews, or adjusts size standards based on the evaluation of industry and Federal contracting factors. SBA has now revised the 2009 Methodology to incorporate the recent amendments to the Small Business Act (Act) relating to the establishment of size standards, to address public comments the Agency received on the 2009 Methodology, and to make certain analytical improvements to its size standards analysis based on its own review of the methodology.

On April 27, 2018, SBA published a notification in the **Federal Register** advising the public that the Agency had revised its size standards methodology (Revised Methodology) and made it available on SBA's website at *http://www.sba.gov/size-standards-methodology* and on the Federal rulemaking portal at *http://www.regulations.gov* for review and comments (83 FR 18468). SBA proposed a number of changes to its size standards methodology, including moving from an ''anchor'' approach to a ''percentile'' approach for evaluating industry characteristics, assigning a separate size standard for each NAICS industry instead of selecting a size standard from a limited number of fixed size standards as in the 2009 Methodology, lowering the threshold for selecting industries for the evaluation of the Federal contracting factor to $20 million in annual Federal contracting dollars from the $100 million threshold as in the 2009 Methodology, and applying the 4-firm concentration ratio to all industries, as opposed to using it only when the ratio is 40% or more as in the 2009 Methodology.

SBA sought comments on these changes as well as on a number of policy issues/questions that the Agency faces when developing a methodology for establishing, evaluating, or revising its small business size standards, such as: Whether SBA's size standards should be higher than entry level business size; whether SBA should vary size standards from program to program or geographically; whether SBA should establish a ceiling or cap beyond which a business concern cannot be considered small; whether SBA should apply a single measure of business size for all industries (*i.e.,* employees or annual receipts); and whether SBA should adjust employee based size standards to account for labor productivity, similar to the adjustment of monetary based size standards for inflation. The comment period for the Revised Methodology was from April 27, 2018 to June 26, 2018.

SBA received a total of 14 comments on the proposed Revised Methodology, two of which were not pertinent and

were not considered. The 12 valid comments and SBA's responses thereto are discussed below.

B. Comments on the Proposed Revised Methodology

1. Comments on Calculation of Average Annual Receipts

Five commenters suggested that SBA should revise its method for calculating the average annual receipts for size standards purposes by allowing firms to use the three lowest annual receipts over the preceding five years or, at least, to calculate the average annual receipts over the preceding five years, as opposed to the three preceding years. The commenters argued that the increased use of large contract vehicles (such as governmentwide acquisition vehicles or indefinite-delivery, indefinite-quantity contracts) to award Federal contracts to small businesses can cause very rapid growth in firms' size, thereby resulting in the loss of their small business status. The commenters asserted that small businesses need time to develop infrastructure to be able to compete for unrestricted procurements with large firms after graduating to other-than-small status. Commenters also mentioned that some industries are subject to fluctuating market conditions that may skew average annual receipts calculated over the 3-year period.

Three commenters suggested that SBA should only consider Federal contractor size when determining average firm size within any NAICS industry. They noted that including firms which do not do business with the Federal Government could skew the true size of businesses participating in Federal contracting, resulting in size standards that are not reflective of government buying practices.

One commenter asserted that firms should be allowed to deduct subcontractor costs from annual receipts calculations. The commenter argued that subcontracting services can be very expensive and take up a substantial portion of the total contract value, at least for Advertising Agencies (NAICS 541810).

SBA's Response

Any consideration to change the rule on how SBA calculates average annual receipts for size standards or any other part of SBA's small business regulations would require formal rulemaking in accordance with the Administrative Procedure Act. The purpose of the size standards methodology white paper is to explain what data sources and factors SBA considers when establishing and revising size standards, but not to change SBA's small business regulations.

The Small Business Runway Extension Act of 2018 (Runway Extension Act) (Pub. L. 115–324 (Dec. 17, 2018)) amended section 3(a)(2)(C)(ii)(II) of the Small Business Act by changing the period for calculation of annual average receipts of businesses providing services from three (3) years to five (5) years. This change to the calculation of annual average receipts requires the issuance of a proposed rule and approval by the SBA Administrator. Accordingly, SBA will be initiating a rulemaking to implement the new law into SBA's regulations. Businesses must continue to report their annual receipts based on a 3-year average until SBA amends its regulations.

SBA would not consider the average size of government contractors only as a measure of average firm size in establishing size standards for several reasons. First, SBA's size standards are used not only for Federal procurement purposes, but also for various non-procurement purposes, including establishing eligibility for SBA's loan programs, conducting flexibility regulatory analyses for Federal rulemaking under the Regulatory Flexibility Act, and determining eligibility for small business exemptions from certain Federal reporting and compliance requirements. Second, firms that are government contractors in an industry do not provide an adequate representation of all firms that are interested, willing, or able to perform Federal work in that industry. For example, of about 5.5 million employer firms in the U.S., only about 400,000 firms (or about 7.2 percent) are registered in the System for Award Management (SAM) for Federal contracting purposes, of which about 38 percent have received any Federal contracts during fiscal years 2014–2017. Third, for size standards purposes, SBA considers receipts from all sources (*e.g.,* commercial, Federal, etc.) and the receipts data on government contractors in SAM and the Federal Procurement Data System—Next Generation (FPDS–NG) also include receipts from all sources, not just from Federal work. Fourth, as current size standards are, on average, several times higher than the average size of all firms in the industry, SBA's size standards already reflect that firms that receive Federal contracts are typically larger than all firms in the overall industry. Finally, in accordance with the Jobs Act, every five years, SBA reviews, and adjusts, where necessary, all size standards to ensure that they reflect current market conditions, including government buying trends.

SBA's regulation in 13 CFR 121.104(a) provides several exclusions from the calculation of receipts for size standards purposes, but subcontracting costs is not one of them, meaning that subcontracting costs are part of receipts and cannot be excluded from the calculation. However, as stated in Footnote 10 to the SBA table of size standards, for certain industries, including Advertising Agencies (NAICS 541810), funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions, are excluded from receipts. Subcontracting occurs in most industries (although at varying degrees) and may even vary from firm to firm within the same industry. For example, while some small businesses may want to perform all or most of their Federal work themselves, others may elect to subcontract a large part or most of their work out to others. Allowing businesses to exclude subcontractor costs from receipts would put firms performing most of their work in-house in serious competitive disadvantage relative to those who subcontract a significant portion of their work out to others. This may also encourage businesses to subcontract more of their set-aside contract work to others to maintain their small business status, which would defeat the very intent of the set-aside program, especially if the work is subcontracted out to large businesses. As stated elsewhere in this notification, any consideration to amend the rule on how SBA defines and calculates receipts for size purposes would require formal rulemaking. Additionally, the methodology white paper is not meant to address issues concerning size standards for specific industries. SBA will consider such issues in future rulemakings as part of the ongoing second 5-year review of size standards under the Jobs Act.

2. Comment on Data Sources

One commenter argued that SBA should not use the 2012 Economic Census data for evaluating industry characteristics. The commenter argued that the 2012 Economic Census only reflects industry conditions before 2012 and is, therefore, outdated. The commenter suggested that SBA should look at industry-specific publications that provide richer and more current industry data. To support its argument that the Advertising Agencies size standard should be higher than the current $15 million, the commenter submitted reports from the two industry associations.

SBA's Response

While the methodology states that the 2012 Economic Census data is the latest available principal source of industry data that SBA uses for size standards analysis, SBA will consider the 2017 Economic Census data as it becomes available, as well as any other newer data available from other sources, including industry specific publications, provided that such data provides an accurate and comprehensive representation of all firms within the industry. However, many industry publications do not provide a comprehensive picture of the industry they represent. For example, the two industry associations referred to by one of the commenters included about 600–700 advertising agencies, whereas there are more than 12,000 advertising firms in the United States. SBA believes that, for consistency, all industries sharing the same measure of size standards (such as receipts based or employee based) should be evaluated using the single set of industry data. Moreover, the data from industry publications does not usually provide information on all industry factors that SBA examines when establishing size standards. Not all industries have industry publications and, where they do, the information is likely to be incomplete and inconsistent with the Economic Census data SBA uses for size standards analysis. However, SBA will consider any industry specific data submitted as part of the public comments to proposed rulemakings. Despite a time lag for the availability of the Economic Census data, SBA believes that the Economic Census is still the most consistent and comprehensive data available out there for evaluating industry structure to comply with the statutory requirement that the size standards vary from industry to industry in order to reflect differences in characteristics among the various industries.

3. Comments on Industry Analysis

One commenter suggested using the median instead of the mean for average firm size calculations. The same commenter also did not see the usefulness of using the ''percentile'' approach in the Revised Methodology and asked where the ''anchor'' size standard values came from. Another commenter, however, agreed with SBA's proposal to replace the ''anchor'' approach in the 2009 Methodology with the ''percentile'' approach in the Revised Methodology. The commenter stated that the new approach provides a reasonable methodology for incorporating the economic characteristics of individual industries into SBA's size standards analysis and suggested that, for transparency, SBA should provide the primary factor values and associated size standards supported by each factor for each industry and sub-industry reviewed. This commenter disagreed with the idea to use the median instead of the mean as a measure of the average firm size.

SBA's Response

In response to these opposing comments (*i.e.,* one supporting the median and another supporting the mean), SBA conducted analyses using both the mean (simple average) and the median firm size. In terms of numbers of industries for which size standards would change or remain the same, the results from the two approaches were very similar for a large majority of industries. For most industries where the levels of calculated size standards differed between the two approaches, such differences were generally small. SBA has provided a detailed justification in the Revised Methodology white paper for replacing the old ''anchor'' approach with the new ''percentile'' approach. SBA has determined that the ''percentile'' approach provides a better approach to evaluating differences among industries and varying size standards accordingly. In addition, as stated in the Revised Methodology, the ''anchor'' approach that entails grouping all industries under a common (so-called ''anchor'') size standard (*i.e.,* the size standard shared by most industries) is inconsistent with the statute that such groupings should be limited to the 4-digit NAICS level. For these reasons, SBA will continue to use the simple average (mean) as one of the two measures of firm size (other being the weighted average) and is adopting the ''percentile'' approach to evaluate industry characteristics, as proposed.

SBA does not provide in the methodology white paper the primary factor values and associated size standards supported for each industry and sub-industry in the methodology as the results are likely to change with the availability of new data. The methodology is intended to explain SBA's approach to establishing, reviewing, or adjusting size standards. SBA will provide such results for the public review and comment on individual proposed rulemakings on reviews of size standards for various NAICS sectors.

4. Comments on Number of Size Standards and Rounding

One commenter agreed with SBA's approach to rounding size standards to the nearest $500,000 for receipts based size standards and to the nearest 50 employees for employee based size standards (or to the nearest 25 employees for employee based size standards in Wholesale Trade and Retail Trade). This commenter believed that the increased number of and reduced increments between size standards would limit the effect of errors, counteract the limitations of the data used by SBA in calculating size standards, and ensure that similar industries are treated in an equitable fashion, and more accurately reflect each industry's economic characteristics. The same commenter disagreed with SBA's policy of capping calculated size standards at some predetermined maximum levels instead of allowing the data to determine what the maximum size standard levels should be. If the agency decides to continue with this policy, the commenter suggested that capping should be applied for the calculation of the aggregated size standard, not for size standard for each factor individually. Another commenter questioned where do the minimum and maximum size standards levels come from, although they were fully explained in the proposed Revised Methodology.

SBA's Response

The National Defense Authorization Act of Fiscal Year 2013 (NDAA 2013) (Pub. L. 112–239, Section 1661, Jan. 2, 2013) amended the Small Business Act requiring SBA not to impose the limitation on the number of size standards and to establish specific size standards for each NAICS industry. In absence of any adverse comments to this approach, SBA is adopting the number of size standards and the rounding procedure, as proposed.

Allowing the data alone to determine a maximum size standard would lead to very high size standards for some industries, thereby allowing very successful businesses with hundreds of millions in receipts or tens of thousands of employees to qualify as small and be eligible for Federal assistance intended for small businesses. For example, under receipts based size standards, if not capped, about 20 industries (excluding Retail Trade) would end up with a size standard of $100 million or more (with some being as high as more than $1 billion) and another 30 industries would have a size standard between $50 million and $100 million,

as compared to the proposed receipts based cap of $40 million and the current maximum of $38.5 million. Similarly, for employee based size standards, about a dozen industries would end up with having a size standard of 5,000 employees or more (some being as large as 20,000 employees) and another 25 would have a size standard between 2,000 employees and 5,000 employees, as compared to the proposed and current maximum of 1,500 employees. From a policy standpoint, it would be almost impossible for SBA to justify such large businesses as small for Federal small business programs. Additionally, in the absence of caps, the calculated size standards will be very small (in some cases even negative) for some industries such that businesses qualifying as small would not only lack capabilities to meet the Federal Government small business procurement requirements, but also businesses graduating out of such small size standards would not have yet developed enough size to be competitive in the market and would still need Federal support to grow and be competitive on their own. SBA believes that such very high or very low size standards would not enable the Agency to effectively fulfill its critical mission to serve and protect the interests of American small businesses. Accordingly, SBA is adopting its policy of capping calculated size standards, both at the factor level and the aggregate level, at maximum or minimum values, as proposed.

5. Comments on Federal Contracting Factor

One commenter noted the asymmetry in using the Federal contracting factor to increase size standards when small business Federal contract shares are lower than for their overall market shares while not decreasing them when those shares are higher than the overall market share. Another commenter agreed with the increased utilization of the Federal contracting factor for industries with at least $20 million in Federal contracting dollars (as opposed to a $100 million level in the previous methodology). This commenter felt that the adoption of a lower threshold allows for a more detailed analysis of competitive and economic characteristics of relevant industries. However, the commenter disagreed with SBA's use of ''maximum size caps'' as it would not allow, the commenter argued, the size standard to increase according to the Federal contracting factor.

SBA's Response

The objective of the Federal contracting factor is to assess how successful small businesses have been in receiving Federal contracts under the current size standards and to adjust them if small businesses are not faring well in the Federal marketplace relative to the overall market, but not to penalize small businesses by lowering size standards where they are doing well. Generally, SBA adjusts size standards upwards for industries where the small business shares in the Federal market are substantially lower (*i.e.,* 10 percent or more) than their shares in the overall market and maintains them at their current levels (instead of lowering them) for industries where those differences are less than 10 percent or where small business shares in the Federal market are higher than the small business shares in the overall market. Lowering size standards, simply because the shares of small businesses in the Federal contracts are higher than their shares in the industry's overall market, would not serve the interests of small businesses or contribute to SBA's mission to ensure that small businesses receive a fair proportion of Federal government contracts. Accordingly, for the Federal contracting factor, SBA will maintain size standards at their current levels where the small business shares of the Federal market are higher than the small business shares in the overall market. Additionally, to be consistent, SBA will apply the same capping procedure for all factors, including the Federal contracting factor.

6. Comments on Industry Competition

One commenter stated that he did not feel the ''industry competition'' or ''size distribution of firms'' were necessary factors for analyzing industry structure. This commenter suggested examining a correlation matrix of all factors, which may result in the need of using only one or two factors to determine size standards. The commenter also insisted that the Herfindahl index is a more generally accepted measure of industry competitive structure and that this is preferable to the four- or eight-firm concentration ratio. A different commenter agreed with the use of a four-firm concentration ratio for all industries in the Revised Methodology, as opposed to using it only for those industries where that ratio was 40 percent or higher in the 2009 Methodology.

SBA's Response

The statute requires that small business definitions vary from industry to industry to reflect differences among the various industries. For that, in accordance with its regulations in 13 CFR 121.102, SBA evaluates four industry factors, namely average firm size, average assets as a proxy for start-up costs and entry barriers, industry competition, and size distribution of firms. SBA examined correlations among all industry factors and found that using just one or two factors alone would not adequately account for differences among the various industries. To account for industry competition, SBA also tried using the Herfindahl index instead of the four-firm concentration ratio and the results were found to be very similar between the two measures. Because it is simpler and easier to explain to the public and it has long been used for SBA's size standards analyses, in the Revised Methodology, SBA is adopting the four-firm concentration ratio as a measure of industry competition.

7. Comments on Industry-Specific Size Standards

Several commenters expressed various viewpoints concerning size standards for various industries as well as how NAICS codes should be defined for contracting purposes. One commenter suggested creating a new NAICS code to accommodate firms supplying finished products to the government as ''nonmanufacturers'' while also performing supply chain management and distribution services. Another commenter argued that the size standards for sale and rental of heavy equipment should be harmonized by changing the receipt based size standard for the equipment rental companies to the one that is employee based. A further commenter proposed adding additional sub-industry categories (or ''exceptions'') to NAICS codes 541330, 541513, and 236220 to more adequately describe the scope of Federal work in these industries. This commenter also felt that the size standards for some industries in NAICS Sector 54 and Subsector 236 should be raised. Yet another commenter argued that the size standard for NAICS code 561440 should be higher than the current $15 million level. A final commenter disagreed with SBA's approach in a 2016 final rule to excluding the largest firms in its calculation of the employee based size standard for the Environmental Remediation Services (ERS) exception to NAICS 562910 (Remediation Services). It further argued that no firms at the proposed 1,250-employee size standard would have been dominant in the ERS industry. The same commenter also suggested that SBA should provide

a full description of SBA's approach to evaluating industries with size standards exceptions.

SBA's Response

SBA neither defines nor modifies NAICS industry definitions. It simply adopts the NAICS industry definitions and their updates, as published by OMB. Any suggestions for the creation of new NAICS industry categories should be submitted during OMB's notice and comment process of its reviews and revisions of the NAICS definitions. Every five years, OMB (in coordination with government statistical agencies in the U.S., Canada and Mexico) reviews and modifies existing NAICS definitions or creates new ones to ensure that industry definitions reflect changes in the economy.

Some firms may elect to both sell and rent the equipment. However, because firms that are primarily engaged in the equipment rental activity are very different from those primarily engaged in selling equipment (as a manufacturer or a distributor), the industry data does not support the same size standard for the two groups. Accordingly, whereas SBA's size standards for equipment rental industries are based on receipts, those for equipment manufacturers and distributors are based on employees. A firm that sells the equipment that it did not manufacture itself is considered a nonmanufacturer and can qualify as small under the 500-employee nonmanufacturer size standard.

The size standards methodology does not revise any size standards as such. It only explains the methodology on how SBA establishes and reviews size standards. Therefore, with the release of the final Revised Methodology, SBA is not making any changes to any size standards that are currently in effect. However, as part of the ongoing second 5-year comprehensive review of size standards under the Jobs Act, SBA will review all size standards and make necessary adjustments in the coming years to ensure that they reflect current industry and Federal market conditions. The Agency plans to issue proposed rules on all receipts based size standards, including those in NAICS Sector 54 and Subsector 236, in the near future. Depending upon the results from the analysis of the latest data available, some industries may see their size standards adjusted, while others may see no changes. Interested parties will have opportunity to comment on SBA's proposed size standards and suggest alternatives, along with supporting data and analysis, if they believe that the proposed standards are not appropriate.

As the industry data from the Economic Census are limited to the 6-digit NAICS levels, SBA does not have the necessary data to be able to create new sub-industry categories below the 6-digit levels and establish size standards thereto. SBA is already faced with difficulty in reviewing size standards for the existing sub-industry categories (''exceptions'') particularly because the industry data from SAM and FPDS–NG used to evaluate these ''exceptions'' are not consistent with the industry data from the Economic Census that SBA uses to evaluate industry characteristics.

When evaluating the SAM and FPDS–NG data for reviews of size standards under ''exceptions,'' SBA trims the data on firms on both ends of the size distribution to prevent extreme observations (*i.e.,* observations with questionable receipts values given the number employees or vice versa) from distorting the results. Additionally, to make the SAM and FPDS–NG data more consistent with the Economic Census tabulations where an industry's data only includes firms that are primarily engaged in that industry, SBA also removes very large firms for which the contribution of Federal contracts under that ''exception'' is quite small relative to their overall enterprise revenues. Accordingly, SBA removed from the evaluation of the ERS size standard a few of the largest firms for which Federal contracts received under that ''exception'' accounted for less than 25 percent of their overall receipts. Additionally, several commenters opposing the proposed size standard also argued that the large, diversified environmental firms for which the Federal environmental remediation work is not their major activity should be excluded in evaluating the ERS size standard. While the law states that a firm qualifying as small should not be dominant in its industry, it does not, however, mean that all non-dominant firms can or should be classified as small. In response to the comment, in the final Revised Methodology, SBA is including a new section describing its general approach to evaluating the size standard for ''exceptions.''

8. Comments on Policy Issues

Several commenters addressed various policy issues concerning the size standards methodology for which SBA sought comments and suggestions from interested parties. These comments are discussed below.

a. Should SBA establish size standards that are higher than industry's entry-level business size?

One commenter stated that it made sense for size standards to be higher than the industry entry-level size since firms larger than entry-level size could still experience disadvantages in the industry. However, the commenter suggested imposing time limits for participation in SBA programs to disincentivize firms to remain at an inefficient size.

SBA's Response

Except for businesses participating in the 8(a) business development program, SBA does not impose time limits for eligibility for small business programs. Doing so would be too complicated as the time to reach an efficient size is likely to vary from industry to industry and firm to firm within an industry, not to mention the complexity time limits would add to determining eligibility for such programs.

b. Should size standards vary from program to program or geographically?

Two commenters agreed with SBA that varying size standards by program or geography would create confusion and be difficult to administer.

SBA's Response

SBA's methodology provides for establishing a single set of industry specific size standards for both SBA's financial programs and Federal procurement programs. Similarly, as size standards are applied at the national level and market dominance is evaluated nationally, SBA does not vary size standards geographically.

c. Should there be a single basis for size standards—i.e., should SBA apply the number of employees, receipts, or some other basis to establish its size standards for all industries?

One commenter who addressed this issue asserted that receipts are the best measure for determining size, not gross profits. Using gross profits would require, the commenter maintained, SBA to review a concern's balance sheet, possibly with risks of disclosure of the concern's financial records to its competitors.

SBA's Response

SBA does not use profits as a measure of business size for any industry nor does it review a concern's balance sheet or financial records for size standards analysis, except for size determination of a company whose small business size status is protested. SBA mostly uses either receipts or number of employees.

As explained in the methodology, SBA uses receipts for most services, retail trade, construction and agricultural enterprises and employees for all manufacturing, most mining and utilities, and a few other industries.

d. Should there be a ceiling beyond which a business concern cannot be considered as small?

One commenter thought a maximum ceiling was a good idea but acknowledged it might be somewhat arbitrary. Another commenter strongly disagreed with placing ''caps'' on size standards and reasoned that SBA should follow the results from its analysis when establishing size standards and allow natural maximums to develop based on the data. The commenter felt that imposing caps on size standards before conducting the economic data analysis would be arbitrary and non-transparent.

SBA's Response

SBA has addressed this issue elsewhere in this notice, that capping calculated size standards at certain minimum and maximum levels is crucial for fulfilling its mission to serve and protect the interests of American small businesses and ensuring that Federal small business assistance goes to small businesses in need of such assistance the most.

e. Should there be a fixed number of size standard ranges or ''bands'' as SBA applied for the recently completed comprehensive size standards review?

Two commenters agreed with using ''bands'' of size standards across related industries. One of them further recommended putting groups of related industries under the same size standards. The use of size standard ''bands,'' the commenters noted, prevents confusion and could also discourage size protests.

SBA's Response

While SBA agrees that using ''bands'' or limited number of fixed size standard levels (as under the previous methodology) would simplify size standards, it would run counter to the statute that there shall not be any limitation on the number of size standards and that each NAICS industry be assigned the appropriate size standard. SBA has, in the past, used common size standards for industries within certain NAICS Industry Groups, even if the data suggested different standards for individual industries in the group. However, a 2013 amendment to the statute limits the use of common size standards, except where a justification would exist for establishing a single size standard for industries within the 4-digit NAICS Industry Group, provided that such size standard is appropriate for each individual industry in the group. Thus, in view of these statutory limitations on the number of size standards and use of common size standards, SBA is adopting the size standards structure, as proposed.

f. Should SBA consider adjusting employee based size standards for labor productivity growth or increased automation?

Three commenters disagreed with the idea of adjusting employee-based size standards for productivity and/or automation. While one commenter thought that this would be arbitrary, another stated that the effects of productivity changes are already captured in the Economic Census data that SBA uses for industry analysis. The third commenter asserted that labor productivity changes are too small to warrant meaningful size standard adjustments and would already be captured in each 5-year comprehensive industry review. This commenter also believed that productivity growth would have to be accounted for on an industry-by-industry basis which would result in a very complicated adjustment process.

SBA's Response

SBA does not quite agree that adjusting employee based size standards for productivity would be arbitrary as there is available data on measures of productivity, both by industry (by NAICS subsector or industry group) and for the overall economy. However, SBA agrees that accounting for productivity changes on an industry-by-industry basis would entail a complicated methodology. SBA concurs with the commenters that the effects of productivity changes are already captured by the Economic Census data and would be reflected in the 5-year size standards reviews. Accordingly, the Revised Methodology does not provide for adjustments to employee based size standards for productivity changes.

g. Should SBA consider lowering its size standards?

One commenter stated that SBA should perhaps consider lowering size standards depending on the goals of its programs. Another commenter opposed lowering size standards in view of the government procurement trend of using larger and longer-term procurements.

SBA's Response

As stated in the Revised Methodology, while the results from SBA's analysis of the relevant data would serve as a principal basis for proposing revisions to size standards, other factors (such as public comments, administration's policies and priorities, the current market conditions, and impacts on small businesses) would also be important when proposing or finalizing size standards revisions. When SBA decides to deviate from the results of its analysis, it would provide in the rule a detailed justification for such decisions.

C. Changes in the Revised Methodology

The Revised Methodology, entitled ''SBA's Size Standards Methodology (April 2019)'', is available for review and download on the SBA's website at *http://www.sba.gov/size-standards-methodology* as well as on the Federal rulemaking portal at *http://www.regulations.gov.* It describes in detail how SBA establishes, evaluates, or adjusts its small business size standards pursuant to the Act and related legislative guidelines. Specifically, the document provides a brief review of the legal authority and early legislative and regulatory history of small business size standards, followed by a detailed description of the size standards analysis.

Section 3(a) of the Act (15 U.S.C. 632(a); Pub. L. 85–536, 67 Stat. 232, as amended) provides SBA's Administrator (Administrator) with authority to establish small business size standards for Federal government programs. The Administrator has discretion to determine precisely how small business size standards should be established. The Act and its legislative history highlight three important considerations for establishing size standards. First, size standards should vary from industry to industry according to differences among industries. 15 U.S.C. 632(a)(3). Second, a firm that qualifies as small shall not be dominant in its field of operation. 15 U.S.C. 632(a)(1). Third, pursuant to 15 U.S.C. 631(a), the policies of the Agency should be to assist small businesses as a means of encouraging and strengthening their competitiveness in the economy. These three considerations continue to form the basis for SBA's methodology for establishing, reviewing, or revising small business size standards.

1. Industry Analysis

SBA examines the structural characteristics of an industry as a basis to assess differences among the various industries and the overall degree of competitiveness of the industry and of firms therein. As described more fully in the Revised Methodology document, SBA generally evaluates industry

structure by analyzing four primary factors—average firm size (both the simple and weighted average), degree of competition within an industry (the 4-firm concentration ratio), start-up costs and entry barriers (average assets as a proxy), and distribution of firms by size (the Gini coefficient). This approach to assessing industry characteristics that SBA has applied historically remains very much intact in the Revised Methodology. As the fifth primary factor, SBA assesses the ability of small businesses to compete for Federal contracting opportunities under the current size standards. For this, SBA examines the small business share of total Federal contract dollars relative to the small business share of total industry's receipts for each industry. SBA also considers other secondary factors as they relate to specific industries and interests of small businesses, including technological change, competition among industries, industry growth trends, and impacts of the size standards on SBA programs.

While the factors SBA uses to examine industry structure remain intact, its approach to assessing the differences among industries and translating the results to specific size standards has changed in the Revised Methodology. Specifically, in response to the public comments against the ''anchor'' size standards approach applied in the previous review of size standards, a recent amendment to the Act limiting the use of common size standards (*see* section 3(a)(7) of the Act under NDAA 2013), and SBA's own review of the methodology, in the Revised Methodology, SBA replaces the ''anchor'' approach with a ''percentile'' approach as an analytical framework for assessing industry differences and deriving a size standard supported by each factor for each industry.

Under the ''anchor'' approach, SBA generally compared the characteristics of each industry with the average characteristics of a group of industries associated with the ''anchor'' size standard. For the recent review of size standards, the $7 million was the ''anchor'' for receipts based size standards and 500 employees was the ''anchor'' for employee based size standards (except for Wholesale Trade and Retail Trade). If the characteristics of a specific industry under review were similar to the average characteristics of industries in the anchor group, SBA generally adopted the anchor standard as the appropriate size standard for that industry. If the specific industry's characteristics were significantly higher or lower than those for the anchor group, SBA assigned a size standard that was higher or lower than the anchor.

In the past, including the recent review of size standards, the anchor size standards applied to a large number of industries, making them a good reference point for evaluating size standards for individual industries. For example, at the start of the recent review of size standards, the $7 million (now $7.5 million due to the adjustment for inflation in 2014) anchor standard was the size standard for more than 70 percent of industries that had receipts based size standards. A similar proportion of industries with employee based size standards had the 500-employee anchor standard. However, when the characteristics of those industries were evaluated individually, for a large majority of them the results yielded a size standard different from the applicable anchor. Consequently, now just 24 percent of industries with receipts based size standards and 22 percent of those with employee based size standards have the anchor size standards. Additionally, section 3(a)(7) of the Act limits the SBA's ability to create common size standards by grouping industries below the 4-digit NAICS level. The ''anchor'' approach would entail grouping industries from different NAICS sectors, thereby making it inconsistent with the statute.

Under the ''percentile'' approach in the Revised Methodology, SBA ranks each industry within a group of industries with the same measure of size standards using each of the four industry factors. As stated earlier, these four industry factors are average firm size, average assets size as proxy for startup costs and entry barriers, industry competition (the 4-firm concentration ratio), and distribution of firms by size (the Gini coefficient). As detailed in the Revised Methodology, the size standard for an industry for a specific factor is derived based on where the factor of that industry falls relative to other industries sharing the same measure of size standards. If an industry ranks high for a specific factor relative to most other industries, all else remaining the same, a size standard assigned to that industry for that factor is higher than those for most industries. Conversely, if an industry ranks low for a specific factor relative to most industries in the group, a lower size standard is assigned to that industry. Specifically, for each industry factor, an industry is ranked and compared with the 20th percentile and 80th percentile values of that factor among the industries sharing the same measure of size standards (*i.e.,* receipts or employees). Combining that result with the 20th percentile and 80th percentile values of size standards among the industries with the same measure of size standards, SBA computes a size standard supported by each industry factor for each industry. The Revised Methodology provides detailed illustration of the statistical analyses involved in this approach.

2. Number of Size Standards

SBA applied a limited number of fixed size standards in the 2009 Methodology used in the first 5-year review of size standards: Eight revenue based size standards and eight employee based size standards. In response to comments against the fixed size standards approach and section 3(a)(8) of the Act requiring SBA to not limit the number of size standards, in the Revised Methodology, SBA has relaxed the limitation on the number of small business size standards. Specifically, SBA will calculate a separate size standard for each NAICS industry, with a calculated receipts based size standard rounded to the nearest $500,000, except for industries in NAICS Subsectors 111 (Crop Production) and 112 (Animal Production and Aquaculture) for which the calculated standard is rounded to the nearest $250,000. Similarly, a calculated employee based size standard is rounded to the nearest 50 employees for the manufacturing and other industries with employee based standards, except those in Wholesale Trade and Retail Trade for which the calculated standard is rounded to the nearest 25 employees.

However, as a policy decision, SBA will continue to maintain the minimum and maximum size standard levels. Accordingly, SBA will not generally propose or adopt a size standard that is either below the minimum or above the maximum level, even though the calculations might yield values below the minimum or above the maximum level. The minimum size standard generally reflects the size a small business should be to have adequate capabilities and resources to be able to compete for and perform Federal contracts. On the other hand, the maximum size standard represents the level above which businesses, if qualified as small, would cause significant competitive disadvantage to smaller businesses when accessing Federal assistance. SBA's minimum and maximum size standards are shown in Table 1, ''Minimum and Maximum Receipts and Employee Based Size Standards,'' below.

TABLE 1—MINIMUM AND MAXIMUM RECEIPTS AND EMPLOYEE BASED SIZE STANDARDS

Type of size standards	Minimum	Maximum
Receipts based size standards (excluding agricultural industries in Subsectors 111 and 112)	$5 million	$40 million.
Receipts based size standards for agricultural industries in Subsectors 111 and 112	$1 million	$5 million.
Employee based standards for Manufacturing and other industries (except Wholesale and Retail Trade).	250 employees	1,500 employees.
Employee based standards in Wholesale and Retail Trade	50 employees	250 employees.

With respect to receipts based size standards, SBA is establishing $5 million and $40 million, respectively, as the minimum and maximum size standard levels (except for most agricultural industries in Subsectors 111 and 112). These levels reflect the current minimum receipts-based size standard of $5.5 million and the current maximum of $38.5 million, rounded for simplicity. Section 1831 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017) (Pub. L. 114–328, 130 Stat. 2000, December 23, 2016) amended the Act directing SBA to establish and review size standards for agricultural enterprises in the same manner it establishes and reviews size standards for all other industries. The evaluation of the industry data from the 2012 Census of Agriculture (the latest available) seems to suggest that $5 million minimum and $40 million maximum size standards would be too high for agricultural industries in Subsectors 111 and 112. Accordingly, SBA is establishing $1 million as the minimum size standard and $5 million as the maximum size standard for industries in NAICS Subsector 111 (Crop Production) and Subsector 112 (Animal Production and Aquaculture). Regarding employee based size standards, SBA's minimum and maximum levels for manufacturing and other industries (excluding Wholesale and Retail Trade) reflect the current minimum and maximum size standards among those industries. For employee based size standards for wholesale and retail trade industries, the proposed minimum and maximum values are the same as what SBA used in its 2009 Methodology.

3. Evaluation of Federal Contracting Factor

For industries where Federal contracting is significant, SBA considers Federal contracting as one of the primary factors when establishing, reviewing, or revising size standards. Under the 2009 Methodology that was applied in the previous comprehensive size standards review, SBA evaluated the Federal contracting factor for industries with $100 million or more in Federal contract dollars annually for the latest three fiscal years. However, the analysis of the FPDS–NG data suggests that the $100 million threshold is too high, thereby rendering the Federal contracting factor irrelevant for about 73 percent of industries (excluding wholesale trade and retail trade industries that are not used for Federal contracting purposes), including those for which the Federal contracting factor is significant (*i.e.,* the small business share of industry's total receipts exceeding the small business share of industry's total contract dollars by 10 percentage points or more). Thus, SBA determined that the threshold should be lowered. In the Revised Methodology, SBA evaluates the Federal contracting factor for industries with $20 million or more in Federal contract dollars annually for the latest three fiscal years. Under the $20 million threshold, excluding wholesale trade and retail trade industries, nearly 50 percent of all industries would be evaluated for the Federal contracting factor as compared to just about 27 percent under the $100 million threshold. Because NAICS codes in Wholesale Trade and Retail Trade do not apply to Federal procurement, SBA does not consider the Federal contracting factor for evaluating size standards industries in those sectors.

For each industry averaging $20 million or more in Federal contract dollars annually, SBA compares the small business share of total Federal contract dollars to the share of total industrywide receipts attributed to small businesses. In general, if the share of Federal contract dollars awarded to small businesses in an industry is 10 percentage points or more lower than the small business share of total industry's receipts, keeping everything else the same, a justification would exist for considering a size standard higher than the current size standard. In cases where that difference is less than 10 percent or the small business share of the Federal market is already higher than the small business share of the overall market, it would generally support the current size standards.

4. Evaluation of Industry Competition

For the reasons provided in the Revised Methodology and discussed above with respect to the public comments, SBA continues to use the 4-firm concentration ratio as a measure of industry competition. In the past, SBA did not consider the 4-firm concentration ratio as an important factor in size standards analysis when its value was below 40 percent. If an industry's 4-firm concentration ratio was 40 percent or higher, SBA used the average size of the four largest firms as a primary factor in determining a size standard for that industry. In response to public comments as well as based on its own evaluation of industry factors, in the Revised Methodology SBA apples all values of the 4-firm concentration ratios directly in the analysis, as opposed to using the 40 percent rule. Based on the 2012 Economic Census data, the 40 percent rule applies only to about one-third of industries for which 4-firm ratios are available. For the same reason, SBA is also dropping the average firm size of the four largest firms as an additional factor of industry competition. Moreover, the four-firm average size is found to be highly correlated with the weighted average firm size, which is used as one of the two measures of average firm size.

5. Summary of and Reasons for Changes

Table 2, ''Summary of and Reasons for Changes,'' below, summarizes what has changed in the Revised Methodology as compared to the 2009 Methodology and the impetus for such changes, specifically whether the changes are based on statute or discretionary.

TABLE 2—SUMMARY OF AND REASONS FOR CHANGES

Process/factor	Current	Revised	Reason
Industry analysis	"Anchor" approach ..... Average characteristics of industries with so called "anchor" size standards formed the basis for evaluating individual industries.	"Percentile" approach ..... The 20th percentile and 80th percentile values for industry characteristics form the basis for evaluating individual industries.	• Section 3(a)(7) of the Small Business Act limits use of common size standards only to the 4-digit NAICS level. • The percentage of industries with "anchor" size standards decreased from more than 70 percent at the start of the recent size standards review to less than 25 percent today. • Some public comments objected to the "anchor" approach as being outdated and not reflective of current industry structure.
Number of size standards.	The calculated size standards were rounded to one of the predetermined fixed size standards levels. There were eight fixed levels each for receipts based and employee based standards.	Each NAICS industry is assigned a specific size standard, with a calculated receipts based standard rounded to the nearest $500,000 and a calculated employee-based standard rounded to 50 employees (to 25 employees for Wholesale and Retail Trade).	• Section 3(a)(8) of the Small Business Act mandates SBA to not limit the number of size standards and to assign an appropriate size standard for each NAICS industry. • Some public comments also raised concerns with the fixed size standards approach.
Federal contracting factor.	Evaluated the small business share of Federal contracts vis-à-vis the small business share of total receipts for each industry with $100 million or more in Federal contracts annually.	Each industry with $20 million or more in Federal contracts annually is evaluated for the Federal contracting factor.	• The $100 million threshold excludes about 73 percent of industries from the consideration of the Federal contracting factor. Lowering that threshold to $20 million increases the percentage of industries that will be evaluated for the Federal contracting factor to almost 50 percent. • Evaluating more industries for the Federal contracting factor also improves the analysis of the industry's competitive environment pursuant to section 3(a)(6) of the Small Business Act.
Industry competition.	Was considered as significant factor if the 4-firm concentration ratio was 40 percent or more and 4-firm average formed the basis for the size standard calculation for that factor.	Considers all values of the 4-firm concentration ratio and calculates the size standard based directly on the 4-firm ratio. Industries with a higher (lower) 4-firm concentration ratio will be assigned a higher (lower) standard.	• Some commenters opposed using the 40 percent threshold and recommended using all values of the 4-firm concentration ratio. • The 4-firm average is highly correlated with the weighted average.

6. Impacts of Changes in the Methodology

To determine how the above changes in the methodology would generally affect size standards across various industries and sectors, SBA estimated new size standards using both the 2009 Methodology (*i.e.,* "anchor" approach) and the Revised Methodology (*i.e.,* "percentile" approach) for each industry (except those in Sectors 42 and 44–45, and Subsectors 111 and 112).

For receipts based size standards, the anchor group consisted of industries with the $7.5 million size standard, and the higher size standard group included industries with the size standard of $25 million or higher, with the weighted average size standard of $33.2 million for the group. Similarly, for employee based size standards the anchor group comprised industries with the 500-employee size standard, and higher size standard group comprised industries with size standard of 1,000 employees or above, with the weighted average size standard of 1,180 employees. These and 20th percentile and 80th percentile values for receipts-based and employee-based size standards are shown, below, in Table 3, "Reference Size Standards under Anchor and Percentile Approaches."

TABLE 3—REFERENCE SIZE STANDARDS UNDER ANCHOR AND PERCENTILE APPROACHES

	Anchor approach		Percentile approach	
	Anchor level	Higher level	20th percentile	80th percentile
Receipts standard ($ million)	$7.5	$33.2	$7.5	$32.5
Employee standard (no. of employees)	500	1,180	500	1,250

Under the anchor approach, SBA derived the average value of each industry factor for industries in the anchor industry groups as well as those in the higher size standard groups. In the percentile approach, the 20th percentile and 80th percentile values were computed for each industry factor. These results are presented, below, in Table 4, "Industry Factors under Anchor and Percentile Approaches." As shown in the table, generally, the anchor values are comparable with the 20th percentile values and higher level

values are comparable with the 80th percentile values.

TABLE 4—INDUSTRY FACTORS UNDER ANCHOR AND PERCENTILE APPROACHES

	Anchor approach		Percentile approach	
	Anchor	Higher level	20th percentile	80th percentile
Industry factors for receipts based size standards, excluding Subsectors 111 and 112				
Simple average receipts size ($ million)	0.78	6.99	0.83	7.52
Weighted average receipts size ($ million)	18.10	685.87	19.42	830.65
Average assets size ($ million)	0.35	5.08	0.34	5.22
Four-firm concentration ratio (%)	10.4	34.4	7.9	42.4
Gini coefficient	0.678	0.829	0.686	0.834
Industry factors for employee based size standards, excluding Sectors 42 and 44–45				
Simple average firm size (no. of employees)	33.4	96.8	29.5	118.3
Weighted average firm size (no. of employees)	232.2	1,371.3	250.7	1,629.0
Average assets size ($ million)	4.79	23.34	4.14	40.54
Four-firm concentration ratio (%)	24.8	50.2	24.7	61.3
Gini coefficient	0.770	0.842	0.760	0.853

Under the anchor approach, using the anchor size standard and average size standard for the higher size standard group, SBA computed a size standard for an industry's characteristic (factor) based on that industry's position for that factor relative to the average values of the same factor for industries in the anchor and higher size standard groups. Similarly, for the percentile approach, combining the factor value for an industry with the 20th percentile and 80th percentile values of size standards and industry factors among the industries with the same measure of size standards, SBA computed a size standard supported by each industry factor for each industry. Under both approaches, a calculated receipts based size standard was rounded to the nearest $500,000 and a calculated employee based size standard was rounded to the nearest 50 employees.

With respect to the Federal contracting factor, for each industry averaging $20 million or more in Federal contracts annually, SBA considered under both approaches the difference between the small business share of total industry receipts and that of Federal contract dollars under the current size standards. Specifically, under the Revised Methodology, the existing size standards would increase by certain percentages when the small business share of total industry receipts exceeds the small business share of total Federal contract dollars by 10 percentage points or more. Those percentage increases, detailed in the Revised Methodology, to existing size standards generally reflect receipts and employee levels needed to bring the small business share of Federal contracts at par with the small business share of industry receipts.

The results were generally similar between the two approaches in terms of changes to the existing size standards, with size standards increasing for some industries and decreasing for others under both approaches. The sector that was most impacted was NAICS Sector 23 (Construction), with a majority of industries experiencing decreases to the current size standard affecting about 1 percent of all firms in that sector under both approaches. Other negatively impacted sectors under both approaches were Sector 31–33 (Manufacturing), Sector 48–49 (Transportation and Warehousing), and Sector 51 (Information), affecting, respectively, 0.1 percent, 0.6 percent, and less than 0.1 percent of total firms in those sectors, with slightly higher impacts under the percentile approach. All other sectors would see moderate positive impacts under both approaches, impacting 0.1–0.2 percent of all firms in most of those sectors. Overall, the changes to size standards as the result of the changes in the methodology, if adopted, would have a minimal impact on number businesses that qualify as small under the existing size standards. Excluding NAICS Sectors 42 and 44–45 and Subsectors 111 and 112, 97.75 percent of businesses would qualify as small under the new calculated size standards using the ''anchor'' approach vs. 97.70 percent qualifying under the ''percentile'' approach in the Revised Methodology. Under the current size standards, 97.73 percent of businesses are classified as small.

D. Conclusion

After considerations of all relevant comments, SBA is adopting the Revised Methodology, as proposed for comments, except that the Agency has now included a new section on the evaluation of size standards at sub-industry levels (usually referred to as ''exceptions'') in response to comment. The Revised Methodology, entitled ''SBA's Size Standards Methodology (April 2019),'' is available for review/download on the SBA website at *http://www.sba.gov/size-standards-methodology* as well as on the Federal rulemaking portal at *http://www.regulations.gov.* SBA will apply the Revised Methodology in the ongoing, second five-year review of size standards as required by the Jobs Act.

Dated: April 4, 2019.

Linda M. McMahon,

Administrator.

[FR Doc. 2019–07130 Filed 4–10–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0839; Product Identifier 2017–NE–31–AD; Amendment 39–19614; AD 2019–07–03]

RIN 2120–AA64

Airworthiness Directives; Zodiac Seats France Cabin Attendant Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Zodiac Seats France 536-Series Cabin Attendant Seats. This AD was prompted by potential risk of premature corrosion on the seat structure and clamps. This AD requires inspection and, if damage or corrosion is found, modification of all Zodiac Seats France 536-Series Cabin Attendant Seats. This AD also allows modification and re-identification of the seats as an optional terminating action to the repetitive inspection requirements of this AD. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 16, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 16, 2019.

ADDRESSES: For service information identified in this final rule, contact Safran Seats France, 61, Rue Pierre Curie, CS20001, Plaisir Cedex, France phone: + 33 977 428 378; email: *AOG.3S@safrangroup.com;* website: *https://www.safran-group.com.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0839.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0839; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Zodiac Seats France 536-Series Cabin Attendant Seats. The NPRM published in the **Federal Register** on September 14, 2018 (83 FR 46679). The NPRM was prompted by potential risk of premature corrosion on the seat structure and clamps. The NPRM proposed to require inspection and modification of all Zodiac Seats France 536-Series Cabin Attendant Seats. We are issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0167R1, dated February 2, 2018 (corrected March 1, 2018), to address the unsafe condition on these products. The MCAI states:

> Cases of corrosion and cracks were found on Zodiac Seats France CAS 536 rear cabin attendant seats installed on some ATR 42 and ATR 72 aeroplanes. The detected damage was located on the lower parts of the attendant seat, at the level of the seat-to-floor interface.
>
> This condition, if not detected and corrected, could lead to failure of the seat occupied by the cabin attendant, possibly resulting in injury to the seat occupant.
>
> To address this potential unsafe condition, Zodiac Seats France issued Service Bulletin (SB) No. 536–25–002 to provide inspection instructions.
>
> Consequently, EASA issued AD 2016–0167, requiring repetitive inspections of the affected attendant seats, and, depending on findings, accomplishment of the temporary corrective action(s). Since that AD was issued, Zodiac Seats France developed a solution preventing this kind of damage and published SB No. 536–25–004, providing instructions for modification and re-identification of affected seats.
>
> For the reason described above, this [EASA] AD is revised to include reference to an optional terminating action.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0839.

Addition of Optional Terminating Action

Since EASA issued its AD No. 2016–0167, dated August 17, 2016, Zodiac Seats France developed a solution preventing the type of corrosion and cracks identified in that EASA AD and published SB No. 536–25–004, Rev. 0, dated October 19, 2017, which provides instructions for modification and re-identification of the affected seats. EASA subsequently revised its AD 2016–0167 with the publication of AD No. 2016–0167R1, dated February 2, 2018 (corrected March 1, 2018). In the NPRM, we had referenced EASA AD 2016–0167, dated August 17, 2016, but are now updating this reference in our final rule AD to EASA AD No. 2016–0167R1. We are also revising our AD to include the optional terminating action identified in EASA AD 2016–0167R1.

Revision to Costs of Compliance Section

We revised the Costs of Compliance section by removing the estimated costs for replacement of parts (seat structures) and adding On-condition costs for replacement of parts (seat structures). We have no way of estimating how many parts would require replacement.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response to each comment.

Request To Revise Compliance

An individual commenter noted that in an attempt to address and correct the issue of premature corrosion and cracks on Zodiac Seats France 536 series cabin attendant seats, this NPRM would require that these seats be inspected and modified regularly to detect corrosion. The commenter disagreed with this proposal because it fails to eliminate completely the known safety hazard. The commenter reasoned that regular inspection would increase the chances of detecting the corrosion, but would not fix the issues with the seats.

The commenter also argued that the cost of inspecting all 55 [cabin attendant] seats aboard the two aircraft models that use these seats outweighs the cost of seat replacement. The commenter indicated this airworthiness directive should require operators to replace all seats that possibly have this known safety risk of corrosion and cracks. The commenter reasoned that this will not only save the operator time, not having to down an aircraft every three months for the [cabin attendant] seats inspections, but also eliminate the risks of seat failure from corrosion and cracks.

We disagree with requiring replacement of the affected cabin attendant seats. The unsafe condition referenced in this AD is represented by the possible failure of the seat occupied by the cabin attendant, which could result in injury to the cabin attendant. The requirements of this AD adequately address this unsafe condition. We have, however, added an optional terminating

action section to this AD to be consistent with EASA AD 2016–0167R1, dated February 2, 2018 (corrected March 1, 2018). This optional terminating action section allows operators to replace the seat's structure instead of continuing inspections.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

We reviewed Zodiac Seats France SB No. 536–25–002, Revision 3, dated November 2, 2016. This SB describes procedures for inspection, repair, or replacement of the seat structure and clamps known to be installed on the main structure. We also reviewed Zodiac Seats France SB No. 536–25–004, Rev. 0, dated October 19, 2017. This SB allows operators to replace the seat structure instead of continuing inspections. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 55 seat structures installed on, but not limited to, ATR 42 and ATR 72 model airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Seat inspection, visual (on-wing)	0.2 work-hours × $85 per hour = $17	$0	$17	$935
Seat inspection, (shop visit)	0.5 work-hours × $85 per hour = $42.50	0	42.50	2,337.50

We estimate the following costs to do any necessary part replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of parts	2 work-hours × $85 per hour = $170	$2,000	$2,170

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–07–03 Zodiac Seats France (formerly SICMA Aero Seat): Amendment 39–19614; Docket No. FAA–2017–0839; Product Identifier 2017–NE–31–AD.

(a) Effective Date

This AD is effective May 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Zodiac Seats France, 536-Series Cabin Attendant Seats, part number (P/N) 53600, all dash numbers, all serial numbers. These appliances are installed on, but not limited to: Avions de transport regional (ATR) 42 and ATR 72 model airplanes of U.S. registry.

(d) Subject

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by corrosion found on the seat structure or on clamps of the Zodiac Seats France 536-Series Cabin Attendant Seats. We are issuing this AD to prevent failure of these seats. The unsafe condition, if not addressed, could result in failure of the seat occupied by the cabin attendant, and possible injury to the cabin attendant.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) Within 14 months after the first installation of the seat on an aircraft, or within 3 months after the effective date of this AD, whichever occurs later, remove the seat from the aircraft and perform a detailed visual inspection in accordance with the Accomplishment Instructions, Paragraph 2.B., of Zodiac Seats France Service Bulletin (SB) No. 536–25–002, Revision 3, dated November 2, 2016. If the date of the first installation of a seat on an airplane is unknown, use the date of manufacture of the seat (which can be found on the ID placard of the seat) to determine when the inspection must be accomplished.

(2) Within 3 months after the inspection required by paragraph (g)(1) of this AD, and, thereafter, at intervals not to exceed 3 months, perform a detailed visual inspection in accordance with the Accomplishment Instructions, Paragraphs 2.A. and 2.B., of Zodiac Seats France SB No. 536–25–002, Revision 3, dated November 2, 2016.

(3) If corrosion or other damage is found, before next flight or before (re)installation of the seat on an aircraft, as applicable, repair the seat in accordance with the Accomplishment Instructions, Paragraphs 2.B. and 2.C., of Zodiac Seats France SB No. 536–25–002, Revision 3, dated November 2, 2016.

(4) Temporarily stowing and securing a damaged attendant seat in a retracted position to prevent occupancy, in accordance with the provisions and limitations applicable Master Minimum Equipment List item, is an acceptable alternative method to defer compliance with the requirements of paragraph (g)(3) of this AD.

(h) Installation Prohibition

After the effective date of this AD, do not install on any aircraft an affected Zodiac Seats France 536-Series Cabin Attendant Seat that has accumulated more than 14 months since first installation on any aircraft, unless it has passed an inspection in accordance with the Accomplishment Instructions, Paragraph 2.B., of Zodiac Seats France SB No. 536–25–002, Revision 3, dated November 2, 2016.

(i) Optional Terminating Action

Modification and re-identification (P/N change) of a seat in accordance with the Accomplishment Instructions, paragraph 2.A., of Zodiac Seats France SB No. 536–25–004, Rev. 0, dated October 19, 2017, constitutes a terminating action for the repetitive inspections as required by this AD. Operators are not required to perform the steps in Sections A6 and A9 in paragraph 2.A. of the SB to complete this terminating action.

(j) Credit for Previous Actions

You may take credit for actions required by paragraph (g) of this AD if you performed these actions before the effective date of this AD using Zodiac Seats France SB No. 536–25–002, Revision 2, dated August 29, 2016.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO Branch, send it to the attention of the person identified in paragraph (l)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Union Aviation Safety Agency AD 2016–0167R1, dated February 2, 2018 (corrected March 1, 2018) for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2017–0839.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Zodiac Seats France Service Bulletin (SB) No. 536–25–002, Revision 3, dated November 2, 2016.

(ii) Zodiac Seats France SB No. 536–25–004, Rev. 0, dated October 19, 2017.

(3) For Zodiac Seats France service information identified in this AD, contact Safran Seats France, 61, Rue Pierre Curie, CS20001, Plaisir Cedex, France phone: + 33 977 428 378; email: *AOG.3S@safrangroup.com;* website: *https://www.safran-group.com.*

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 2, 2018.

Karen M. Grant,

Acting Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–07164 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0191; Product Identifier 2018–NM–161–AD; Amendment 39–19610; AD 2019–06–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all

Airbus SAS Model A330–201, –202, and –203; and Model A330–301, –302, and –303 airplanes. This AD was prompted by reports of disbonds on the engine air inlet cowl inner barrel lower panel between the back skins and the honeycomb core of airplanes equipped with certain engines. This AD requires repetitive detailed inspections of the engine air inlet cowls, and corrective actions if necessary, as specified in an European Aviation Safety Agency (EASA) AD, which is incorporated by reference. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 26, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 26, 2019.

We must receive comments on this AD by May 28, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the incorporation by reference (IBR) material described in the ''Related IBR Material Under 1 CFR part 51'' section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 1000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov.*

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0191; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0228, dated October 22, 2018 (''EASA AD 2018–0228'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–201, –202, and –203; and Model A330–301, –302, and –303 airplanes. The MCAI states:

> Occurrences were reported on A330 aeroplanes fitted with General Electric CF6–80E1 engines, where the air inlet cowl inner barrel lower panel, was found disbonded between the back skins and the honeycomb core. The technical investigation results revealed that this occurrence may have been caused by freezing of water, accumulated in the non-drained honeycomb cells, damaging the adhesive bond between the panel core and the back skin.
>
> This condition, if not corrected, in combination with an engine surge condition, could lead to in-flight detachment of an air inlet cowl inner barrel, possibly resulting in damage to the aeroplane, and/or injury to persons on the ground.
>
> To address this potential unsafe condition, Airbus issued the inspection SB [Airbus Service Bulletin A330–71–3035] to provide instructions for [repetitive] detailed inspections (DET, tap test inspection method) of the air inlet cowl inner barrel lower panels, based on the Goodrich SB [Goodrich Aerospace Service Bulletin CF6–80E1–NAC–71–048]. Airbus also developed mod [modification] 203989, installation of improved inner barrel lower panels, based on Goodrich Aerospace SB CF6–80E1–NAC–71–052, and published the modification SB [Airbus SB A330–71–3036] as terminating action.
>
> For the reasons described above, this EASA AD requires repetitive DET (tap tests) of the inner barrel lower panels of each affected part on both engines and, depending on findings, replacement with an improved inner barrel lower panel [which terminates the repetitive inspections]. This [EASA] AD also allows, in case of no findings, the modification SB [Airbus SB A330–71–3036 (replacement with an improved inner barrel lower panel) to be accomplished] as optional terminating action for the repetitive inspections.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0228 describes procedures for repetitive detailed inspections of the engine air inlet cowls, and corrective actions. Corrective actions include an inspection of the inlet anti-ice seal installation, modification of affected parts, and replacement of damaged inlet anti-ice seals. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section and it is publicly available through the EASA website.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2018–0228 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2018–0228 is incorporated by reference in the FAA final rule. This AD, therefore, requires compliance with the provisions specified in EASA AD 2018–0228, except for any differences identified as exceptions in the regulatory text of this AD. Service information specified in EASA AD 2018–0228 that is required for compliance with EASA AD 2018–0228 is available on the internet at *http://www.regulations.gov* by searching for

and locating Docket No. FAA–2019–0191.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0191; Product Identifier 2018–NM–161–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, we provide the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
10 work-hours × $85 per hour = $850 per inspection cycle ...	$2,814 per inspection cycle	$3,664 per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 172 work-hours × $85 per hour = $14,620 per engine	Up to $184,124 per engine	Up to $198,744 per engine.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 172 work-hours × $85 per hour = $14,620 per engine	Up to $184,124 per engine	Up to $198,744 per engine.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–06–12 Airbus SAS: Amendment 39–19610; Docket No. FAA–2019–0191; Product Identifier 2018–NM–161–AD.

(a) Effective Date

This AD becomes effective April 26, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus SAS Model A330–201, –202, and –203 airplanes.

(2) Airbus SAS Model A330–301, –302, and –303 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of disbonds on the engine air inlet cowl inner barrel lower panel between the back skins and the honeycomb core of airplanes equipped with certain engines. We are issuing this AD to address such disbonds, which, in combination with an engine surge, could lead to in-flight detachment of an air inlet cowl inner barrel, possibly resulting in damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Aviation Safety Agency (EASA) AD 2018–0228, dated October 22, 2018 (''EASA AD 2018–0228'').

(h) Exceptions to EASA AD 2018–0228

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2018–0228 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0228 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2018–0228 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2018–0228 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Aviation Safety Agency (EASA) AD 2018–0228, dated October 22, 2018.

(ii) [Reserved]

(3) For EASA AD 2018–0228, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 6017; email: *ADs@easa.europa.eu;* Internet: *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0228 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0191.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on March 26, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–07187 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0190; Product Identifier 2018–NM–177–AD; Amendment 39–19607; AD 2019–06–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by reports that baby bassinet inserts installed on airplane stowages and partitions were found loose because a self-securing fixation device (Loctite) had not been applied. This AD requires repetitive tightness checks of the baby bassinet inserts installed on stowages and partitions and, depending on findings, accomplishment of applicable corrective actions, as specified in an European Aviation Safety Agency (EASA) AD, which is incorporated by reference. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 26, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 26, 2019.

We must receive comments on this AD by May 28, 2019.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
• *Fax:* 202–493–2251.
• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the incorporation by reference (IBR) material described in the ''Related IBR Material Under 1 CFR part 51'' section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov.*

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0190; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0271, dated December 12, 2018 (''EASA AD 2018–0271'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states:

> Occurrences were reported that baby bassinet inserts installed on Airbus A350 aeroplane stowages and on partitions were found loose. Further investigation identified that a self-securing fixation device (Loctite) had not been applied.
>
> This condition, if not detected and corrected, could lead to detachment of a baby bassinet, possibly resulting in injury to the infant or other aeroplane occupants.
>
> To address this potential unsafe condition, Airbus issued the AOT [Alert Operators Transmission A25P011–17, Revision 1, dated December 19, 2017] to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive tightness checks of the baby bassinet inserts installed on stowages and partitions and, depending on findings, accomplishment of applicable corrective action(s).
>
> This [EASA] AD is considered to be an interim measure and further [EASA] AD action may follow.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0271 describes procedures for repetitive tightness checks of baby bassinets inserts installed on stowages and partitions and corrective actions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section, and it is publicly available through the EASA website.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2018–0271 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2018–0271 is incorporated by reference in the FAA final rule. This AD, therefore, requires compliance with the provisions specified in EASA AD 2018–0271, except for any differences identified as exceptions in the regulatory text of this AD. Service information specified in EASA AD 2018–0271 that is required for compliance with EASA AD 2018–0271 is available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0190.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0190; Product Identifier 2018–NM–177–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, we provide the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–06–09 Airbus SAS: Amendment 39–19607; Docket No. FAA–2019–0190; Product Identifier 2018–NM–177–AD.

(a) Effective Date

This AD becomes effective April 26, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2018–0271, dated December 12, 2018 (''EASA AD 2018–0271'').

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports that baby bassinet inserts installed on airplane stowages and partitions were found loose because a self-securing fixation device (Loctite) had not been applied. We are issuing this AD to address this condition, which, if not detected and corrected, could lead to detachment of a baby bassinet, possibly resulting in injury to the infant or other airplane occupants.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0271.

(h) Exceptions to EASA AD 2018–0271

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2018–0271 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0271 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2018–0271 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal

inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2018–0271 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Aviation Safety Agency (EASA) AD 2018–0271, dated December 12, 2018.

(ii) [Reserved]

(3) For EASA AD 2018–0271, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0271 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0190.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on March 26, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–07188 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1063; Product Identifier 2018–NM–160–AD; Amendment 39–19606; AD 2019–06–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–223, A330–223F, A330–321, A330–322, and A330–323 airplanes. This AD was prompted by a report of fatigue cracking in the latch beam gussets on a certain thrust reverser (T/R). This AD requires a one-time special detailed inspection of certain latch beam gussets of certain T/Rs for cracks, and modifying the latch beam gussets of the T/Rs, if necessary, as specified in an European Aviation Safety Agency (EASA) AD, which is incorporated by reference. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 16, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 16, 2019.

ADDRESSES: For the incorporation by reference (IBR) material described in the ''Related IBR Material Under 1 CFR part 51'' section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *http://www.regulations.gov.*

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1063; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–223, A330–223F, A330–321, A330–322, and A330–323 airplanes. The NPRM published in the **Federal Register** on December 28, 2018 (83 FR 67158). The NPRM was prompted by a report of fatigue cracking in the latch beam gussets on a certain T/R. The NPRM proposed to require a one-time special detailed inspection of certain latch beam gussets of certain T/Rs for cracks, and modifying the latch beam gussets of the T/Rs, if necessary, as specified in, and in accordance with, EASA AD 2018–0227, dated October 22, 2018 (''EASA AD 2018–0227'').

We are issuing this AD to address fatigue cracking in the latch beam gussets on a certain T/R, which, if not detected and corrected, could lead to crack propagation until part failure and potential departure of the T/R cascade during T/R operation, which could result in damage to the airplane and hazards to persons or property on the ground.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD

2018–0227 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–223, A330–223F, A330–321, A330–322, and A330–323 airplanes. The MCAI states:

A report was received of an in-service occurrence where an operator found a crack in the latch beam gussets of an affected TR [thrust reverser], between the forward (L2) and middle (L3) latches, adjacent to the aft cascade frame attachment bracket in the 6 o'clock beam. Subsequent investigation revealed that the crack surface of the latch beam gusset showed indication of high fatigue cycle, leading to development of a design modification, reinforcing the latch beam gussets. This was introduced through Airbus production mod 48539 (improvement of 6 o'clock latch beam) and Airbus issued the modification SB [Airbus Service Bulletin A330–78–3014, dated May 9, 2001] as a recommendation for in-service aeroplanes. Since these measures were introduced, a new case was reported of finding a crack beyond prediction at the latch beam gusset of an affected TR, on which the recommended modification SB had not been accomplished.

This condition, if not detected and corrected, could lead to crack propagation until part failure and potentially departure of TR cascade during TR operation, which could create runway hazards for other aeroplanes [which could result in damage to the airplane and hazards to persons or property on the ground].

To address this potential unsafe condition, Airbus issued the inspection SB [Airbus Service Bulletin A330–78–3024, dated June 28, 2018] to provide instructions for special detailed inspection (SDI) of the latch beam gussets.

For the reasons described above, this [EASA] AD requires a one-time SDI of the latch beam gussets between the forward and middle latches of the affected TR [for cracks] and, depending on findings, replacement with improved (reinforced, modified) TR latch beam gussets.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1063.

Comments

We gave the public the opportunity to participate in developing this final rule. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0227 describes procedures for a one-time special detailed inspection of the latch beam gussets between the forward and middle latches of the affected T/R for cracks and modifying the latch beam gussets. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section and it is publicly available through the EASA website.

Costs of Compliance

We estimate that this AD affects 9 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
12 work-hours × $85 per hour = $1,020	$0	$1,020	$9,180

We estimate the following costs to do any necessary on-condition action that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
26 work-hours × $85 per hour = $2,210 (per thrust reverser)	$0	$2,210 (per thrust reverser).

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–06–08 Airbus SAS: Amendment 39–19606; Docket No. FAA–2018–1063; Product Identifier 2018–NM–160–AD.

(a) Effective Date

This AD is effective May 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A330–223, A330–223F, A330–321, A330–322, and A330–323 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Reason

This AD was prompted by a report of fatigue cracking in the latch beam gussets on a certain thrust reverser (T/R). We are issuing this AD to address this condition, which, if not detected and corrected, could lead to crack propagation until part failure and potential departure of the T/R cascade during T/R operation, which could result in damage to the airplane and hazards to persons or property on the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, the European Aviation Safety Agency (EASA) AD 2018–0227, dated October 22, 2018 (''EASA AD 2018–0227'').

(h) Exceptions to EASA AD 2018–0227

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2018–0227 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0227 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2018–0227 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Aviation Safety Agency (EASA) AD 2018–0227, dated October 22, 2018.

(ii) [Reserved]

(3) For EASA AD 2018–0227, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2018–0227 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–1063.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on March 25, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–07186 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2014–0396]

Interpretation of the Special Rule for Model Aircraft; Withdrawal

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of interpretation; withdrawal.

SUMMARY: This action withdraws the FAA's interpretation of the special rule for model aircraft. That interpretation no longer is valid or necessary because Congress repealed the special rule for model aircraft.

DATES: The interpretation published on June 25, 2014 (79 FR 36172) is withdrawn as of April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan W. Cross, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202–267–7173; email: *jonathan.cross@faa.gov.*

SUPPLEMENTARY INFORMATION: Section 336 of the FAA Modernization and Reform Act of 2012 (FMRA) established the special rule for model aircraft (Pub. L. 112–95, Feb. 14, 2012). On June 25, 2014, the FAA published an interpretation of that special rule with a request for comments (79 FR 36172). The interpretation clarified, among other things, that: (1) Model aircraft must satisfy all criteria of section 336(a) to qualify as model aircraft and be exempt from future FAA rulemaking; and (2) the FAA retains enforcement authority against operators who endanger the safety of the national airspace system. The FAA received more than 18,000 comments from organizations and individuals to the interpretation.

Section 349 of the FAA Reauthorization Act of 2018 repealed section 336 of FMRA and replaced it with a new exception to conduct limited recreational operations of unmanned aircraft without FAA certification or operating authority (Pub. L. 115–254, Oct. 5, 2018).

As a result of the repeal of the special rule for model aircraft, the FAA's June 25, 2014, interpretation is no longer valid or necessary. Accordingly, the FAA is withdrawing the interpretation. Because that interpretation is withdrawn, the FAA will take no further action to respond to any comments to the interpretation.

Issued in Washington, DC, on March 12, 2019.

Daniel K. Elwell,

Acting Administrator.

[FR Doc. 2019–07215 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1264 and 1271

RIN 2700–AE48

[Document Number NASA–19–003: Docket Number–NASA–2019–0002]

Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2019

Correction

In rule document 2019–06555 appearing on pages 13114–13115 in the issue of April 4, 2019, make the following correction:

§ 1264.102 [Corrected]

■ On page 13115, in the second column, in amendatory instruction 2, the fifth line ''(b)(1)(iii)'' should read ''(b)(1)(ii)''.

[FR Doc. C1–2019–06555 Filed 4–10–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 190130021–9021–01]

RIN 0694–AH73

Revisions to the Unverified List (UVL)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by adding fifty (50) persons to the Unverified List (''UVL''), removing ten (10) persons, and adding an additional address for one (1) person currently listed on the UVL. The fifty persons are added to the UVL on the basis that BIS could not verify their *bona fides* because an end-use check could not be completed satisfactorily for reasons outside the U.S. Government's control. BIS is adding a new address for one person as BIS has determined that this person is receiving exports from the United States at an additional address.

DATES: *This rule is effective:* April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Kevin Kurland, Director, Office of Enforcement Analysis, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–4255 or by email at *UVLRequest@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Unverified List, found in Supplement No. 6 to Part 744 to the EAR, contains the names and addresses of foreign persons who are or have been parties to a transaction, as that such parties are described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR, and whose *bona fides* (*i.e.,* legitimacy and reliability relating to the end use and end user of items subject to the EAR) BIS has been unable to verify through an end-use check. BIS may add persons to the UVL when BIS or federal officials acting on BIS's behalf have been unable to verify a foreign person's *bona fides* because an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for such purposes for reasons outside the U.S. Government's control.

There are occasions where, for a number of reasons, end-use checks cannot be completed. These include reasons unrelated to the cooperation of the foreign party subject to the end-use check. For example, BIS sometimes initiates end-use checks and cannot find a foreign party at the address indicated on export documents and cannot locate the party by telephone or email. Additionally, BIS sometimes is unable to conduct end-use checks when host government agencies do not respond to requests to conduct end-use checks, are prevented from scheduling such checks by a party to the transaction other than the foreign party that is the proposed subject of the end-use check, or refuse to schedule them in a timely manner. Under these circumstances, although BIS has an interest in informing the public of its inability to verify the foreign party's *bona fides,* there may not be sufficient information to add the foreign person at issue to the Entity List under § 744.11 of the EAR (Criteria for revising the Entity List). In such circumstances, BIS may add the foreign person to the UVL.

Furthermore, BIS sometimes conducts end-use checks but cannot verify the *bona fides* of a foreign party. For example, BIS may be unable to verify *bona fides* if during the conduct of an end-use check a recipient of items subject to the EAR is unable to produce those items for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of those items. The inability of foreign persons subject to end-use checks to demonstrate their *bona fides* raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-

country) of items subject to the EAR and indicates a risk that such items may be diverted to prohibited end uses and/or end users. However, BIS may not have sufficient information to establish that such persons are involved in activities described in parts 744 or 746 of the EAR, preventing the placement of the persons on the Entity List. In such circumstances, the foreign persons may be added to the Unverified List.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, reexporters, and transferors to obtain (and keep a record of) a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports and transfers (in-country) are not subject to a license requirement.

Requests for removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL listings will be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of its *bona fides.*

Changes to the EAR

Supplement No. 6 to Part 744 (''the Unverified List'' or ''UVL'')

This rule adds fifty (50) persons to the UVL by amending Supplement No. 6 to Part 744 of the EAR to include their names and addresses. BIS adds these persons in accordance with the criteria for revising the UVL set forth in § 744.15(c) of the EAR. The new entries consist of thirty-seven persons located in China, six in Hong Kong, four in the United Arab Emirates, two in Malaysia, and one in Indonesia. Each listing is grouped within the UVL by country with each party's name(s) listed in alphabetical order under the country; each entry includes available alias(es) and address(es), as well as the **Federal Register** citation and the date the person was added to the UVL. The UVL is included in the Consolidated Screening List, available at *www.export.gov.*

This rule also adds one additional address for one person currently listed on the UVL, Ling Ao Electronic Technology Co. Ltd, a.k.a. Voyage Technology (HK) Co., Ltd., a.k.a. Xuan Qi Technology Co. Ltd., as BIS has determined that this person is receiving exports from the United States at an additional address. Further, this rule fixes minor typographical errors in two of the existing addresses for the same company.

Finally, this rule removes ten persons from the UVL. BIS is removing these persons pursuant to information received by BIS pursuant to § 744.15(d) of the EAR and further review conducted by BIS. This final rule implements the decision to remove the following three persons located in China, one person located in Finland, five persons located in Russia, and one person located in the United Arab Emirates from the UVL:

China

(1) Jiujiang Jinxin Nonferrous Metals Co., Ltd., Xunyang Chem. Bldg., Materials Factory, Xunyang District, Jiujiang City, China,

(2) Liupanshui Normal University, 19 Minhu Road, Zhongshan District, Liupanshui, Guizhou, 553004, China, *and*

(3) Yantai Salvage Bureau, No. 100 Zhifudao East Road, Zhifu District, Yantai, Shandong, 264012, China

Finland

(1) Net Logistics JVM OY, a.k.a. Net Logistic JVM OY, Eskolantie 1, Helsinki, Finland, 00720 *and* Merituulentie 486, Port Mussalo, Kotka, Finland 48310

Russia

(1) Eltech Ltd., 3A, pl. Konstitutsii, Saint Petersburg 196247, Russia,

(2) MT Systems, Kalinina Street 13, Saint Petersburg 198099, Russia,

(3) Romona Inc., Prospekt Mira 426, Yuzhno-Sakhalinsk 693004, Russia,

(4) Sakhalin Energy Investment Company Ltd., Dzerzhinskogo Street 35, Yuzhno-Sakhalinsk 693020, Russia, *and*

(5) SIC Dipaul, Bolshaya Monetnaya Street 16, Saint Petersburg 197101, Russia, *and* 5B, Rentgena ul., Saint Petersburg 197101, Russia

United Arab Emirates

(1) GenX Middle East FZE, a.k.a. GenX Systems LLC, #510–511 Le Solarium Building, Dubai Silicon Oasis, Dubai, UAE, *and* P.O. Box 121225, Office M07, Al Zahra, Khaleed Bin Al Waleed Road, Bur Dubai, Dubai, UAE.

Savings Clause

Shipments (1) removed from license exception eligibility or that are now subject to requirements in § 744.15 of the EAR as a result of this regulatory action; (2) eligible for export, reexport, or transfer (in-country) without a license before this regulatory action; and (3) on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 11, 2019, pursuant to actual orders, may proceed to that UVL listed person under the previous license exception eligibility or without a license so long as the items have been exported from the United States, reexported or transferred (in-country) before May 13, 2019. Any such items not actually exported, reexported or transferred (in-country) before midnight on May 13, 2019 are subject to the requirements in § 744.15 of the EAR in accordance with this regulation.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. 115–232) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. This rule is not

an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Pursuant to Section 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

3. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694–0088, 0694–0122, 0694–0134, and 0694–0137.

This rule slightly increases public burden in a collection of information approved by OMB under control number 0694–0088, which authorizes, among other things, export license applications. The removal of license exceptions for listed persons on the Unverified List will result in increased license applications being submitted to BIS by exporters. Total burden hours associated with the Paperwork Reduction Act and OMB control number 0694–0088 are expected to increase minimally, as the suspension of license exceptions will only affect transactions involving persons listed on the Unverified List and not all export transactions. Because license exceptions are restricted from use, this rule decreases public burden in a collection of information approved by OMB under control number 0694–0137 minimally, as this will only affect specific individual listed persons. The increased burden under 0694–0088 is reciprocal to the decrease of burden under 0694–0137, and results in no change of burden to the public. This rule also increases public burden in a collection of information under OMB control number 0694–0122, as a result of the exchange of UVL statements between private parties, and under OMB control number 0694–0134, as a result of appeals from persons listed on the UVL for removal of their listing. The total increase in burden hours associated with both of these collections is expected to be minimal, as they involve a limited number of persons listed on the UVL.

4. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for part 744 is revised to read as follows:

Authority: Pub. L. 115–232, Title XVII, Subtitle B. 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018); Notice of September 19, 2018, 83 FR 47799 (September 20, 2018); Notice of November 8, 2018, 83 FR 56253 (November 9, 2019); Notice of January 16, 2019, 84 FR 127 (January 18, 2019).

■ 2. Supplement No. 6 to Part 744 is amended by:

■ a. Adding thirty-seven entries, in alphabetical order, under ''China'';

■ b. Removing the entry for ''Jiujiang Jinxin Nonferrous Metals Co, Ltd.'' under ''China'';

■ c. Removing the entry for ''Liupanshui Normal University'' under ''China'';

■ d. Removing the entry for ''Yantai Salvage Bureau'' under ''China'';

■ e. Removing the entry for ''Net Logistics JVM OY, a.k.a. Net Logistic JVM OY'' under ''Finland'';

■ f. Adding six entries, in alphabetical order, under ''Hong Kong'';

■ g. Revising the entry for ''Ling Ao Electronic Technology Co. Ltd., a.k.a. Voyage Technology (HK) Co., Ltd., a.k.a. Xuan Qi Technology Co. Ltd.'' under ''Hong Kong'';

■ h. Adding an entry in alphabetical order for ''Indonesia;

■ i. Adding an entry in alphabetical order for ''Malaysia'';

■ j. Removing the entry for ''Eltech Ltd.'' under ''Russia'';

■ k. Removing the entry for ''MT Systems'' under ''Russia'';

■ l. Removing the entry for ''Romona Inc.'' under ''Russia'';

■ m. Removing the entry for ''Sakhalin Energy Investment Company Ltd.'' under ''Russia'';

■ n. Removing the entry for ''SIC Dipaul'' under ''Russia'';

■ o. Adding four entries, in alphabetical order, under ''United Arab Emirates''; and

■ p. Removing the entry for ''GenX Middle East FZE, a.k.a. GenX Systems LLC'' under the ''United Arab Emirates''.

The additions and revision read as follows:

Supplement No. 6 to Part 744—Unverified List

Country	Listed person and address	**Federal Register** citation and date of publication
* *	* * *	* *
CHINA	Aisin Nantong Technical Center, No 11 Chen Yang Road, Nantong Development Zone, Nantong, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Anhui Institute of Metrology, No. 13, Yanan Road, Baohe Industrial Development District, Hefei, China 230051.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.

Country	Listed person and address	Federal Register citation and date of publication
* *	* * *	* *
	Beijing Bayi Space LCD Materials Technology Co., Ltd, Dongfeng Rd, Yanshan, Beijing, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Beijing Institute of Nanoenergy and Technology, 30 Xue YuanLu HaiDianQu, Beijing, China 100083.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Center for High Pressure Science and Technology Advanced Research, 1690 Cailun Rd, Bldg #6, Pudong, Shanghai, China 201203.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Changchun Institute of Applied Chemistry, Chinese Academy of Sciences, 5625 Renmin Street, Changchun City, China 130022.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Changchun National Extreme Precision Optics Co Ltd, No. 3608 Dong Nanhu Road, Jilin Province, Changchun, China 130000.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Chengde Oscillator Electronic Technology Co., #17 Siheyuan Village, Pingquan Town, Pingquan City, Hebei Province, Chengde City, China 067506.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Guangdong University of Technology, No 100 Waihuan Xi Road, Guangzhou Higher Education Mega Ctr, Guangzhou, China 510006.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Gucheng Xian Fengxin Titanium Alloy, Xiyuan Industrial District, Gucheng County, Hebei Province, Hengshui City, China 253800.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Hefei Institutes of Physical Science, Chinese Academy of Sciences, No. 350, Shushanhu Rd, Shushan District, Hefei City, China 230031.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Huaduan (Anhui) Machine Tool Manufacturer Co., Chaoyang Rd #888, Dongguan Development, Si Town, Anhui Province, Suzhou, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Hubei Flying Optical, No 1, Changfei Avenue, Yanhua, Industrial Park, Jianghan Oil Field, Qianjiang, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Luoyang Weimi Optics, No. 18 Lingbo Road, New & High Tech Industry Development Zone, Luoyang, China 471000.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Ningbo Zhongxian Optoelectronic Technology Co, Ltd., Floor 11 Technology Innovation Center, No. 1188 Binhai 2nd Road, Hangzhou Bay New District, Ningbo, Zhejiang, China 315336.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Renmin University, No. 59 Zhongguancun Street, Haidian District, Beijing, China 100872.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Shaanxi Hongyuan Aviation Forging, Building Hongyuan Street, Luqiao Town, Shaanxi, China 713801.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Shanghai Institute of Applied Physics, Chinese Academy of Sciences, 239 Zhangheng Road, Pudong District, Shanghai, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Shanghai Institute of Technical Physics, Chinese Academy of Sciences, 500 Yu Tian Road, Shanghai, China 200083.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Shanghai SKEQI Automation Engineering Co., Bldg 8, No. 650 Guanghua Road, Songjiang District, Shanghai, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
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	Shi Jia Zhuang Suin Instruments, A–2 No. 99 Yuyuan Road, LuQuan District, Shijiazhuang, China 050000.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Sunder Tools (Changxing) Technology, Zhongtie Avenue Huaxi Industrial Area, Changxing County, Huzhou, Zhejiang Province, China 313100.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.

Country	Listed person and address	**Federal Register** citation and date of publication
	Termei Torch & Tip Company, No. 9 Huanbao 3rd Road, Xinbei District, Changzhou, Jiangsu, China 213034.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Tongji University, 1239 Siping Road, Shanghai, China 200092	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	TRI Microsystems, Rm 2806, Building A, Rongchao Yinglong Mansion, No. 5 Longfu Road, Longchen Street, Longgang District, Shenzhen, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Wuhan Yifi Laser Equipment Co., Dingxin Industry Park, Jiayuan Road, Optics Valley, Hubei, Wuhan, China 430074.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Wuxi Beetech Inc., No. 58 4th Floor Feihong Road, Nanhu, Wuxi, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Wuxi Hengling Technology Co. Ltd., Bldg C1, No. 999 East Gaolang Rd., Binhu District, Jiangsu Province, Wuxi City, China 214131.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Xiamen Sanan Optoelectronics, Luling Road 1721–1725#, Ximing, Xiamen, China 361008.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Xi'an Caijing Opto-Electronics, Science & Technology Co., Ltd, No. 168, East Zhangba Road, Shaanxi Province, Xi'an City, China.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Xi'an Micromach Photon Manufacture Technology, No. 60 Western Road, New High Tech Park, Xi'an, China 710000.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Xi'an Jiaotong University, School of Electrical Engineering, No. 28 Xianning West Road, Xi'an, Shaanxi, China 710049.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Xi'an Jiaotong University, No. 99 Yanxiang Road, Qujiang, Xi'an, China 71000.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
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	Yunnan Observatories, Chinese Academy of Sciences (CAS), No. 396 Yangfangwang, Kunming, Yunnan, China 650216.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Zhejiang Xizi Aviation, No. 277 Xinken Road, Qianjin, Technological Development Area, Zhejiang, China 311222.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Zhongshan Thincloud Optics Co. Ltd., 8 KA, Building A, No. 5 Kuxing Road, Sanjiao Town, Zhongshan, China 528445.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Zolix Instruments Co., LDUV 68B, No. 16 Huanke Middle Rd, Tongzhou Zone, Tongzhou District, Beijing, China 101102.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
HONG KONG	Able Supply Chain Limited, Rm 511, 5/F, Corporation Park, 1 On Lai Street, Sha Tin, New Territories, Hong Kong; *and* Rm 605, 6/F, Corporation Park, 1 On Lai Street, Sha Tin, New Territories, Hong Kong; *and* Unit C, 9/F, Winning House, No. 72–76 Wing Lok Street, Sheung Wan, Hong Kong.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Boson Technology Co., Limited., Unit 22, 10/F, Nan Fung Commercial Centre, 19 Lam Lok Street, Kowloon, Kwun Tong, Hong Kong; *and* Room 1907, 19/F, Lee Garden One, 33 Hysan Avenue, Causeway Bay, Hong Kong; *and* Room 1501 (462), 15/F., SPA Centre, 53–55 Lockhart Road, Wan Chai, Hong Kong.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	HK Hengyu Storage Logistics Limited, Rm 2309, 23/F, Ho King Commercial Centre, 2–16 Fayuen St, Mongkok, Kwun Tong, Hong Kong; *and* Flat/Rm B10, 9/F, Mai Hing Factory Building, 16–18 Shing Yip Street, Kowloon, Kwun Tong, Hong Kong; *and* Flat/Rm B11, 12/F Mai Hing Factory Building, 16–18 Shing Yip Street, Kowloon, Kwun Tong, Hong Kong.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.

Country	Listed person and address	Federal Register citation and date of publication
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	Ling Ao Electronic Technology Co. Ltd, a.k.a. Voyage Technology (HK) Co., Ltd., a.k.a. Xuan Qi Technology Co. Ltd, Room 17, 7/F, Metro Centre Phase 1, No. 32 Lam Hing St., Kowloon Bay, Kwun Tong, Hong Kong; *and* 15B, 15/F, Cheuk Nang Plaza, 250 Hennessy Road, Wan Chai, Hong Kong; *and* Flat C, 11/F, Block No. 2, Camelpaint Bldg., 62 Hoi Yuen Street, Kwun Tong, Kowloon, Hong Kong; *and* Room C1–D, 6/F, Wing Hing Industrial Building, 14 Hing Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Flat/Rm. A30, 9/F Silvercorp International Tower, 707–713 Nathan Road, Mongkok, Kowloon, Hong Kong; *and* Room 912A, 9/F. Witty Commercial Building, 1A–1L Tung Choi Street, Mongkok, Kowloon, Hong Kong; *and* Unit A, 7/F, King Yip Factory Bldg., 59 King Yip Street, Kwun Tong, Kowloon, Hong Kong; *and* Unit D, 16/F, One Capital Place, 18 Luard Road, Wan Chai, Hong Kong; *and* Unit B213, 1/F, New East Sun Industrial Bldg., 18 Shing Yip Street, Kowloon, Kwun Tong, Hong Kong.	80 FR 4779, 01/29/15., 80 FR 60532, 10/7/15., 82 FR 16733, 04/06/17., 83 FR 22845, 05/17/18., 84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Rising Logistics Company Limited, Workshop 12, 13/F, Block B, New Trade Plaza, No. 6, On Ping Street, Sha Tin, New Territories, Hong Kong; *and* Unit 208, 2/F, Block B, Hoi Luen Industrial Centre, 55 Hoi Yuen Road, Kowloon, Kwun Tong, Hong Kong; *and* Unit 1105, Hua Qin International Building, 340 Queens Road, Central, Hong Kong Island, Hong Kong.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Swelatel Technology Limited, Rm. 19C, Lockhart Ctr., 301–307 Lockhart Rd., Wan Chai, Hong Kong; *and* Rm. 2107, Lippo Centre Tower 2, 89 Queensway, Admiralty, Wan Chai, Hong Kong.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Universe Market Limited, Unit A, 17/F, Good Will Industrial Building, 36–44 Pak Tin Par Street, Tsuen Wan, New Territories, Hong Kong.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
INDONESIA	PetroChina International Jabung Ltd., Menara Kuningan, 25th Floor, JL. HR Rusuna, Said Block X–7, Kav. 5, Jakarta, Indonesia.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
MALAYSIA	Infomaya Tech Sdn Bhd, Level 2, Enterprise 5 Technology Park, Bukit Jalil 57000, Kuala Lumpur, Malaysia.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Premier Kiosk Global Supply Co., aka PKGS, aka Global Kiosk, No. 5, 18th Floor, Plaza 138, Hotel Maya, Jalan Ampang, Kuala Lumpur, Malaysia 50450.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
*	* * * *	*
UNITED ARAB EMIRATES	* * *	* *
	EBN AUF Trading, P.O. Box 330073, Ras Al Khaimah, United Arab Emirates; *and* P.O. Box 42558, Ras Al Khaimah, United Arab Emirates.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
	Empire of East General Trading, M110, Al Khaleej Center, Bur Dubai, Dubai, UAE; *and* 112 Al-Ain Center, Al Mankhool Road, Bur Dubai, Dubai, UAE 34608; *and* 112 Al-Ain Center, P.O. Box 112100, Bur Dubai, Dubai, UAE 34608; *and* Office #1904, Al Mousa Tower 2, Sheikh Zayed Road, Dubai, UAE.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Kassem IT, Techno Park Office 135, JAFZA Building 22, P.O. Box 98166, Jebel Ali Free Zone, Dubai, UAE; *and* Warehouse UD2, Between Roundabout 7,8, Jebel Ali Free Zone, Dubai, UAE; *and* Roundabout 8 WA—06, Jebel Ali Free Zone, Dubai, UAE.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.
* *	* * *	* *
	Pacific Ocean Star General Trading, aka Pacific Ocean Marine Services, Floor 12A/Office 04, Damac Executive Bay Tower B, Al A'amal St., Business Bay, P.O. Box 187128, Dubai, UAE; *and* Office 707, Damac Executive Bay Tower B, Al A'amal St., Business Bay, P.O. Box 187128, Dubai, UAE.	84 FR [INSERT **FEDERAL REGISTER** PAGE NUMBER] 4/11/2019.

Country	Listed person and address	**Federal Register** citation and date of publication
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Dated: April 5, 2019.

Nazak Nikakhtar,

Assistant Secretary for Industry & Analysis, Performing the Non-Exclusive Duties of the Under Secretary for Industry and Security.

[FR Doc. 2019–07211 Filed 4–10–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 16

[Docket No. TTB–2019–0002; Notice No. 180]

Civil Monetary Penalty Inflation Adjustment—Alcoholic Beverage Labeling Act

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of civil monetary penalty adjustment.

SUMMARY: This document informs the public that the maximum penalty for violations of the Alcoholic Beverage Labeling Act (ABLA) is being adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Prior to the publication of this document, any person who violated the provisions of the ABLA was subject to a civil penalty of not more than $20,521, with each day constituting a separate offense. This document announces that this maximum penalty is being increased to $21,039.

DATES: The new maximum civil penalty for violations of the ABLA takes effect on April 11, 2019 and applies to penalties that are assessed after that date.

FOR FURTHER INFORMATION CONTACT: Rita D. Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; (202) 453–1039, ext. 101.

Background

Statutory Authority for Federal Civil Monetary Penalty Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, section 701, 129 Stat. 584, requires the regular adjustment and evaluation of civil monetary penalties to maintain their deterrent effect and helps to ensure that penalty amounts imposed by the Federal Government are properly accounted for and collected. A ''civil monetary penalty'' is defined in the Inflation Adjustment Act as any penalty, fine, or other such sanction that is: (1) For a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act, as amended, requires agencies to adjust civil monetary penalties annually by the inflation adjustment described in section 5 of the Inflation Adjustment Act. The Act also provides that any increase in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such an increase, which are assessed after the date the increase takes effect.

The Inflation Adjustment Act, as amended, provides that the inflation adjustment does not apply to civil monetary penalties under the Internal Revenue Code of 1986 or the Tariff Act of 1930.

Alcoholic Beverage Labeling Act

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the Federal Alcohol Administration Act (FAA Act) pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013, (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

The FAA Act contains the Alcoholic Beverage Labeling Act (ABLA) of 1988, Public Law 100–690, 27 U.S.C. 213–219a, which was enacted on November 18, 1988. Section 204 of the ABLA, codified in 27 U.S.C. 215, requires that a health warning statement appear on the labels of all containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States, as well as on containers of alcoholic beverages that are manufactured, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement requirement applies to containers of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States on or after November 18, 1989. The statement reads as follows:

> GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

Section 204 of the ABLA also specifies that the Secretary of the Treasury shall have the power to ensure the enforcement of the provisions of the ABLA and issue regulations to carry them out. In addition, section 207 of the ABLA, codified in 27 U.S.C. 218, provides that any person who violates the provisions of the ABLA is subject to a civil penalty of not more than $10,000, with each day constituting a separate offense.

Most of the civil monetary penalties administered by TTB are imposed by the Internal Revenue Code of 1986, and thus are not subject to the inflation adjustment mandated by the Inflation Adjustment Act. The only civil monetary penalty enforced by TTB that is subject to the inflation adjustment is the penalty imposed by the ABLA at 27 U.S.C. 218.

TTB Regulations

The TTB regulations implementing the ABLA are found in 27 CFR part 16, and the regulations implementing the Inflation Adjustment Act with respect to the ABLA penalty are found in 27 CFR 16.33. This section indicates that the ABLA provides that any person who violates the provisions of this part shall be subject to a civil penalty of not more than $10,000, but also states that, pursuant to the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, this civil penalty is subject to periodic cost-of-living adjustment. Accordingly, any person who violates the provisions

of 27 CFR part 16 shall be subject to a civil penalty of not more than the amount listed at *https://www.ttb.gov/regulation_guidance/ablapenalty.html.* Each day shall constitute a separate offense.

To adjust the penalty, § 16.33(b) indicates that TTB will provide notice in the **Federal Register** and at the website mentioned above of cost-of-living adjustments to the civil penalty for violations of 27 CFR part 16.

Penalty Adjustment

In this document, TTB is publishing its yearly adjustment to the maximum ABLA penalty, as required by the amended Inflation Adjustment Act.

As mentioned earlier, the ABLA contains a maximum civil monetary penalty. For such penalties, section 5 of the Inflation Adjustment Act indicates that the inflation adjustment shall be determined by increasing the maximum penalty by the cost-of-living adjustment. The cost-of-living adjustment means the percentage (if any) by which the Consumer Price Index for all-urban consumers (CPI–U) for the month of October preceding the date of the adjustment exceeds the CPI–U for the month of October 1 year before the month of October preceding the date of the adjustment.

The CPI–U in October 2017 was 246.663, and the CPI–U in October 2018 was 252.885. The rate of inflation between October 2017 and October 2018 is therefore 2.522 percent. When applied to the current ABLA penalty of $20,521, this rate of inflation yields a raw (unrounded) inflation adjustment of $517.53962. Rounded to the nearest dollar, the inflation adjustment is $518, meaning that the new maximum civil penalty for violations of the ABLA will be $21,039.

The new maximum civil penalty will apply to all penalties that are assessed after April 11, 2019. TTB will also update its web page at *https://www.ttb.gov/regulation_guidance/ablapenalty.html* to reflect the adjusted penalty.

Dated: April 8, 2019.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2019–07220 Filed 4–10–19; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0542; FRL–9991–96–Region 4]

Air Plan Approval; Florida; 2008 8-Hour Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve Florida's October 3, 2017, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment or interfere with maintenance of a NAAQS in any other state. In this action, EPA is making a determination that Florida's SIP contains adequate provisions to prohibit emissions within the state from contributing significantly to nonattainment or interfering with maintenance of the 2008 8-hour ozone NAAQS in any other state.

DATES: This rule will be effective May 13, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0542. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can also be reached via telephone at (404) 562–9009 and via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 2008 (73 FR 16436), EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm. Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four sub-elements, or ''prongs,'' within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor'' provision, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4).

On October 3, 2017, Florida submitted a SIP submittal containing a certification that the State's SIP meets the requirements of CAA section

110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. Florida's certification is based on available emissions data, air quality monitoring and modeling data, and SIP-approved and state provisions regulating emissions of ozone precursors within the State. In a notice of proposed rulemaking (NPRM) published on February 15, 2019 (84 FR 4403), EPA proposed to approve Florida's SIP as meeting the requirements of prongs 1 and 2 for the 2008 8-hour ozone NAAQS.[1] In that notice, EPA discussed the final determination made in the update to the Cross-State Air Pollution Rule ozone season program that addresses good neighbor obligations for the 2008 8-hour ozone NAAQS (known at the ''CSAPR Update'')[2] that emissions activities within Florida will not significantly contribute to nonattainment or interfere with maintenance of that NAAQS in any other state. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before March 18, 2019. EPA received no comments on the proposed action.

II. Final Action

EPA is taking final action to approve Florida's October 3, 2017, SIP submission addressing the good neighbor infrastructure SIP requirements, section 110(a)(2)(D)(i)(I) (prongs 1 and 2), for the 2008 8-hour ozone NAAQS. EPA is taking final action to approve the SIP submission because it is consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 29, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart K—Florida

■ 2. Section 52.520(e), is amended by adding the entry ''110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS'' at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

[1] This action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i). All other infrastructure SIP elements for Florida for the 2008 8-hour ozone NAAQS were addressed in separate rulemakings. *See* 78 FR 65559 (November 1, 2013); 79 FR 50554 (August 25, 2014).

[2] *See* 81 FR 74504 (October 26, 2016). The CSAPR Update establishes statewide nitrogen oxide (NOx) budgets for certain affected electricity generating units in 22 eastern states for the May–September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and thereby help downwind states and communities meet and maintain the 2008 8-hour ozone NAAQS. The rule also determined that emissions from 14 states (including Florida) will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. Accordingly, EPA determined that it need not require further emission reductions from sources in those states to address the good neighbor provision as to the 2008 ozone NAAQS. *Id.*

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register, notice	Explanation
* *	*	*	* *	* *
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS.	10/3/2017	4/11/2019	[Insert **Federal Register** citation] ..	Addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.

[FR Doc. 2019–07114 Filed 4–10–19; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0673; FRL–9990–02]

Fenazaquin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenazaquin in or on multiple commodities which are identified and discussed later in this document. Gowan Company, LLC, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 11, 2019. Objections and requests for hearings must be received on or before June 10, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0673, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0673 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 10, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0673, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 6, 2018 (83 FR 9471) (FRL–9973–27), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8618) by Gowan Company, LLC, P.O. Box 556, Yuma, AZ 85364. The petition requested that 40 CFR 180.632 be amended by establishing tolerances for residues of the miticide/insecticide fenazaquin, 4-[2-[4-(1,1-dimethylethyl)phenyl]ethoxy] quinazoline, in or on alfalfa, forage at 4.0 parts per million (ppm); alfalfa, hay at 15 ppm; avocado at 0.15 ppm; bushberry, subgroup 13–07B at 0.8 ppm; caneberry, subgroup 13–07A at 0.7 ppm;

fruit, citrus, group 10–10 at 0.4 ppm; fruit, low growing berry, subgroup 13–07G at 2.0 ppm; corn, field, grain at 0.09 ppm; corn, field, forage at 7.0 ppm; corn, field, stover at 40 ppm; corn, field, aspirated grain fractions at 3.0 ppm; corn, field, refined oil at 0.2 ppm; corn, sweet, forage at 9.0 ppm; corn, sweet, grain at 0.03 ppm; cotton, gin byproducts at 15.0 ppm; cotton, undelinted seed at 0.4 ppm; fruit, pome, group 11–10 at 0.4 ppm; fruit, small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.7 ppm; fruit, stone, group 12–12 at 1.5 ppm; grape, raisins at 0.8 ppm; mint at 10.0 ppm; vegetable, cucurbit, group 9 at 0.3 ppm; vegetable, fruiting, group 8–10 at 0.3 ppm; vegetable, legume, edible podded, subgroup 6A at 0.4 ppm; vegetables, legumes, dried shelled pea and bean (except soybean) subgroup 6C at 0.3 ppm; vegetables, legumes, succulent shelled pea and bean subgroup 6B at 0.02 ppm; beef, fat at 0.05 ppm; pork, fat at 0.05 ppm; sheep, fat at 0.05 ppm; milk at 0.01 ppm; liver at 0.02 p.m.; and kidney at 0.01 ppm. That document referenced a summary of the petition prepared by Gowan Company, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* EPA received one favorable comment in response to the Notice of Filing from the Northwest Horticultural Council in support of establishing tolerances for fruit, pome, group 11–10 and fruit, stone, group 12–12.

Based upon review of the data supporting the petition, EPA has modified the commodity definitions and the tolerance levels for many of the proposed uses. Additionally, EPA is increasing the current tolerance level for citrus, oil and is not establishing tolerances on alfalfa, cotton, corn, and livestock commodities. The reasons for the changes and modifications are further explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fenazaquin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenazaquin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The most consistently observed effects of fenazaquin exposure across species, sexes, and treatment durations were decreases in body weight, food consumption, and food efficiency. The effects on body weight and food consumption were consistent with the commonly observed effects for compounds that disrupt mitochondrial respiration. Other effects noted were mild dehydration and certain clinical signs seen at relatively high dose levels in the acute activity, sluggish arousal, unusual posture, abnormal gait, and altered response to auditory stimuli were seen in the absence of any neuropathological changes and were not considered to be related to neurotoxicity. In a 90-day study in hamsters, treated animals had an increased incidence of testicular hypospermatogenesis and reduced testicular and prostate weight; however, these findings were not replicated in the hamster carcinogenicity study which suggest the effects were transient or reversible.

Fenazaquin did not cause any developmental or reproductive toxicity at the doses tested in rats and rabbits. In the rat study, developmental toxicity was not observed in the presence of maternal toxicity (*i.e.* decreases in body weight gain, food consumption, and food efficiency). In the rabbit study, no developmental or maternal toxicity was seen. In the reproduction study, systemic toxicity manifested in parental animals as excessive salivation and decreased body weight and food intake; and in offspring as decreased body weight gain; and there was no observed reproductive toxicity. Therefore, there is no developmental toxicity or reproductive susceptibility with respect to fetal and developing young animals with *in utero* and postnatal exposures.

Carcinogenicity was evaluated in the hamster instead of the mouse because the hamster was found to be more sensitive to the effects of fenazaquin than mice due to slower elimination kinetics for hamster. In a three-month feeding study in the mouse, it was found that 6–22x higher dose levels were required to elicit a comparable effect in mice than in the hamster. The results of the rat and hamster carcinogenicity studies demonstrated no increase in treatment-related tumor incidence. Therefore, fenazaquin was classified as ''*not likely to be carcinogenic to humans.*''

Fenazaquin did not cause mutagenicity, genotoxicity, neurotoxicity, or immunotoxicity. Fenazaquin did not demonstrate any systemic toxicity in a 21-day dermal toxicity study in rabbits up to the limit dose (1,000 milligram/kilogram/day (mg/kg/day)).

Specific information on the studies received and the nature of the adverse effects caused by fenazaquin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Fenazaquin: Human Health Risk Assessment in Support of Proposed Uses on Avocado, Bushberry Subgroup 13–07B, Caneberry Subgroup 13–07A, Citrus Fruit Group 10–10, Cucurbit Vegetables Group 9, Fruiting Vegetables Group 8–10, Edible-Podded Legume Vegetable Subgroup 6A, Succulent Pea And Bean Subgroup 6B, Dried Shelled Pea And Bean (Except Soybean) Subgroup 6C, Low Growing Berry Subgroup 13–07G, Mint, Pome Fruit Group 11–10, Small Fruit Vine Climbing Subgroup, Except Fuzzy Kiwifruit 13–07F, and Stone Fruit Group 12–12'' in pages 11–17 in docket ID number EPA–HQ–OPP–2017–0673.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human

exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for fenazaquin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of May 6, 2015 (80 FR 25953) (FRL–9925–97).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fenazaquin, EPA considered exposure under the petitioned-for tolerances as well as all existing fenazaquin tolerances in 40 CFR 180.632. EPA assessed dietary exposures from fenazaquin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for fenazaquin. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues, DEEM default processing factors for tomato (paste and juice), dried apple, dried pear, dried apricot, cherry juice, plum/prune juice, and dried coconut, and 100 percent crop treated (PCT) for all proposed and registered uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM–FCID Version 3.16. This software uses USDA's NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance-level residues, DEEM default processing factors for tomato (paste and juice), dried apple, dried pear, dried apricot, cherry juice, plum/prune juice, and dried coconut, and 100 percent crop treated (PCT) for all proposed and registered uses.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fenazaquin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for fenazaquin. Tolerance-level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* In drinking water, the residues of concern are fenazaquin (parent) and two metabolites: Metabolite M29 or 2-(4-{2-[(2-hydroxyquinazolin-4-yl)oxy]ethyl}phenyl)-2-methylpropanoic acid and its tautomer 2-methyl-2-(4-{2-[(2-oxo-1,2-dihydroquinazolin-4-yl)oxy]ethyl}phenyl)propanoic acid; and Metabolite 1 or 4-[2-(4-tert-butyl-phenyl)-ethoxy]-quinazolin-2-ol and its tautomer 4-[2-(4-tert-butylphenyl)ethoxy]quinazolin-2(1H)-one..

Although a screening level drinking water assessment (DWA) was conducted, EPA used the solubility limit of fenazaquin at 20 °C, 102 parts per billion (ppb), in place of EDWCs from the modeling that are well below the solubility limit of fenazaquin, for the proposed new uses and rate increases in the human health risk assessment. This concentration is not representative of anticipated exposures in drinking water, but is used as an upper bound limit to represent the potential exposure to fenazaquin and the two additional residues of concern.

The solubility limit of fenazaquin at 20 °C, 102 ppb, was directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 102 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 102 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenazaquin is currently registered for the following uses that could result in residential exposures: Ornamental plants. There is a potential for exposure associated with handling (*i.e.,* mixing, loading and applying), as well as post-application exposure from the use of fenazaquin on ornamental plants. However, for residential exposure associated with handlers, all registered fenazaquin product labels with residential use sites (*e.g.,* ornamental plants) require that handlers wear specific clothing (*e.g.,* long-sleeve shirt/long pants/chemical resistant gloves) and/or use personal protective equipment (PPE). Therefore, the Agency has made the assumption that these products are not for homeowner use, and has not conducted a quantitative residential handler assessment. With respect to the potential residential post-application exposure from the use of fenazaquin on ornamental plants, since there is (1) no adverse systemic hazard via the dermal route of exposure; (2) inhalation exposures are typically negligible in outdoor settings; and (3) there is no incidental oral exposure expected from fenazaquin use on ornamental plants, a residential post-application assessment is unnecessary. Furthermore, since the extent to which young children engage in activities associated with these areas or utilize these areas for prolonged periods of play is low, significant non-dietary ingestion exposure is not expected. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found fenazaquin to share a common mechanism of toxicity with any other substances, and fenazaquin does not

appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenazaquin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Susceptibility/sensitivity in the developing animals was evaluated in developmental toxicity studies in rats and rabbits as well as a reproduction and fertility study in rats. The data showed no evidence of increased sensitivity/susceptibility in the developing or young animal. Clear NOAELs and LOAELs are available for all the parental and offspring effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fenazaquin is complete.

ii. There is no indication that fenazaquin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional Uncertainty Factors (UFs) to account for neurotoxicity.

iii. There is no concern for susceptibility in infants and young children.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were based on 100% CT and tolerance level residues for both the acute and chronic dietary exposure. EPA made conservative (protective) assumptions when using the solubility limit of fenazaquin to account for exposure to fenazaquin in drinking water. These assessments will not underestimate the exposure and risks posed by fenazaquin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fenazaquin will occupy 31% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenazaquin from food and water will utilize 37% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for fenazaquin which contribute to the aggregate exposure.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because there is no toxicological hazard via the dermal route of exposure for fenazaquin, short-term and intermediate-term aggregate exposure consists solely of chronic exposure to food and water, which is below the Agency's level of concern.

4. Aggregate cancer risk for U.S. population. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fenazaquin is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenazaquin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods are available for enforcing fenazaquin tolerances on plant commodities. The high-performance liquid chromatography (HPLC) method with tandem mass spectrometry detection (HPLC/MS–MS) method is the same as that used for data collection and has been shown to be acceptable over a range of commodities. The method has undergone successful independent laboratory confirmation and radio validation. The ion transitions monitored for fenazaquin are m/z 307.0 → 161.2 for (quantitation) and m/z 307.0 → 147.2 (confirmation). The LOQ of the method was determined to be 0.01 ppm for fenazaquin. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for fenazaquin.

C. Revisions to Petitioned-for Tolerances

Based upon review of the data supporting the petition, EPA is establishing tolerances for the following commodities requested using the Agency's preferred commodity terminology: Instead of establishing a tolerance for grape, raisins as requested, the Agency is establishing a tolerance for grape, raisin; revising fruit, low

growing berry, subgroup 13–07G to berry, low growing, subgroup 13–07G; revising the requested mint to peppermint, fresh leaves and spearmint, fresh leaves; revising the requested vegetables, legumes, succulent shelled pea and bean subgroup 6B to pea and bean, succulent shelled, subgroup 6B; revising vegetables, legumes, dried shelled pea and bean (except soybean) subgroup 6C to pea and bean, dried shelled, except soybean, subgroup 6C. In addition, based on supporting data, the Agency is establishing tolerance levels higher than requested for fruit, stone, group 12–12 at 2 ppm and for fruit, pome, group 11–10 at 0.6 ppm. In addition, because the current residue data supporting fruit, citrus, group 10–10 indicates that residues concentrate in citrus, oil, EPA is establishing a tolerance for fruit, citrus, group 10–10, oil consistent with the requirements in 40 CFR 180.40(f)(1). This tolerance supersedes the existing tolerance for citrus, oil, so EPA is removing that tolerance. The Agency is also establishing tolerances and revising current tolerance levels consistent the Organization for Economic Cooperation and Development (OECD) maximum residue limits calculator. Finally, due to a lack of supporting data, EPA is not establishing any tolerances for alfalfa, forage; alfalfa, hay; corn, field, forage; corn, field, aspirated grain fractions; corn, field, grain; corn, field, refined oil; corn, field, stover; corn, sweet, forage; corn, sweet, grain; cotton, gin byproducts; cotton, undelinted seed; beef, fat; pork, fat; sheep, fat; liver; kidney; and milk.

D. International Trade Considerations

In this rule, EPA is revising the commodity definition of and reducing the existing tolerance for citrus commodities as follows: Fruit, citrus, group 10 except grapefruit will become fruit, citrus, group 10–10 and the tolerance will be revised from 0.5 ppm to 0.4 ppm. The Agency is reducing this tolerance based on review of available data. This reduction in tolerance level is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA will notify the WTO of its tolerance revision. In addition, the SPS Agreement requires that Members provide a ''reasonable interval'' between the publication of a regulation subject to the Agreement and its entry into force in order to allow time for producers in exporting Member countries to adapt to the new requirement. At this time, EPA is establishing an expiration date for the existing tolerances to allow those tolerances remain in effect for a period of six months after the effective date of this final rule, in order to address this requirement. Prior to the expiration date, residues of fenazaquin up to the existing tolerance level will be permitted; after the expiration date, residues will need to be compliant with the reduced tolerance level.

V. Conclusion

Therefore, tolerances are established for residues of fenazaquin, 4-[2-[4-(1,1-dimethylethyl)phenyl] ethoxy]quinazoline, in or on avocado at 0.15 ppm; berry, low growing, subgroup 13–07G at 2 ppm; bushberry, subgroup 13–07B at 0.8 ppm; caneberry, subgroup 13–07A at 0.7 ppm; fruit, citrus, group 10–10, oil at 20 ppm; fruit, citrus, group 10–10 at 0.4 ppm; fruit, pome, group 11–10 at 0.6 ppm; fruit, small fruit vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.7 ppm; fruit, stone, group 12–12 at 2 ppm; grape, raisin at 0.8 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.3 ppm; pea and bean, succulent shelled, subgroup 6B at 0.03 ppm; peppermint, fresh leaves at 10 ppm; spearmint, fresh leaves at 10 ppm; vegetable, cucurbit, group 9 at 0.3 ppm; vegetable, fruiting, group 8–10 at 0.3 ppm; and vegetable, legume, edible podded, subgroup 6A at 0.4 ppm. In addition, EPA is removing the following tolerances: (1) Individual tolerances for apple, pear, and cherry because they are superseded by the new tolerances for pome fruit group 11–10 and stone fruit group 12–12; (2) the group tolerance for fruit, citrus, group 10, except grapefruit because it is superseded by a new group tolerance for fruit, citrus, group 10–10; and (3) the tolerance for citrus, oil because it is superseded by the new group tolerance for fruit, citrus, group 10–10, oil. The Agency is setting a 6-month expiration date on the current group tolerance for fruit, citrus, group 10, except grapefruit to provide a reasonable interval for exporting countries to adjust to the lower fruit, citrus, group 10–10 tolerance.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001); Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology

Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.632, revise the table in paragraph (a) to read as follows:

§ 180.632 Fenazaquin; Tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	4
Avocado	0.15
Berry, low growing, subgroup 13–07G	2
Bushberry, subgroup 13–07B	0.8
Caneberry, subgroup 13–07A	0.7
Fruit, Citrus, Group 10 except Grapefruit [2]	0.5
Fruit, citrus, group 10–10	0.4
Fruit, citrus, group 10–10, oil	20
Fruit, pome, group 11–10	0.6
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.7
Fruit, stone, group 12–12	2
Grape, raisin	0.8
Hop, dried cones	30
Nuts, Tree, Group 14–12	0.02
Pea and bean, dried shelled, except soybean, subgroup 6C	0.3
Pea and bean, succulent shelled, subgroup 6B	0.03
Peppermint, fresh leaves	10
Pineapple [1]	0.2
Spearmint, fresh leaves	10
Tea, dried [1]	9
Vegetable, cucurbit, group 9	0.3
Vegetable, fruiting, group 8–10	0.3
Vegetable, legume, edible podded, subgroup 6A	0.4

[1] There are no U.S. registrations as of May 25, 2017 for use on pineapple and tea.

[2] This tolerance expires on October 11, 2019.

* * * * *

[FR Doc. 2019–07173 Filed 4–10–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 5b

RIN 0991–AC10

Privacy Act; Implementation

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department) is issuing this final rule to make effective the exemptions that HHS proposed for certain records covered in a new Privacy Act system of records, System No. 09–90–1701, HHS Insider Threat Program Records.

DATES: This final rule is effective April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Michael W. Schmoyer, Assistant Deputy Secretary for National Security by email at *insiderthreat@hhs.gov* or telephone at (202) 690–5756, or by mail to the HHS Office of Security and Strategic Information (OSSI), 200 Independence Ave. SW, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a (Privacy Act or Act), the exemptions were described in a Notice of Proposed Rulemaking (NPRM) published for public notice and comment at 83 FR 42627 (Aug. 23, 2018). The new system of records is described in a System of Records Notice (SORN) which was published for public notice and comment the same day, at 83 FR 42667 (Aug 23, 2018). Only law enforcement investigatory material and classified intelligence information were proposed to be exempted, based on subsections (k)(1) and (k)(2) of the Act, from the requirements contained in subsections (c)(3), (d)(1)-(4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Act, which require the agency to provide an accounting of disclosures; provide notification, access, and amendment rights, rules, and procedures; maintain only relevant and necessary information; and identify categories of record sources. The NPRM also explained that if the HHS Insider Threat Program obtains law enforcement investigatory material from another Privacy Act system of records that has been exempted from Privacy Act requirements based on subsection (j)(2) of the Act, that material will be exempt in System No. 09–90–1701 to the same extent it is exempt in the source system, so it may be exempt from requirements in any of these subsections of the Act: (c)(3)–(4); (d)(1)–(4); (e)(1)–(3), (e)(4)(G)–(I), (e)(5), (e)(8), (e)(12); (f); (g); and (h).

The comment period for the SORN and NPRM was open through September 24, 2018. No comments were received on the NPRM and no comments were received on the SORN. No changes to the proposed exemptions or to the SORN were made following the public comment period.

The specific rationales that support the exemptions as to each affected Privacy Act provision, remain as stated in the NPRM; the exemptions from the particular subsections are necessary and appropriate, and justified for the following reasons:

• *5 U.S.C. 552a(c)(3) (the requirement to provide accountings of disclosures) and 5 U.S.C. 552a(d)(1)–(4) (requirements addressing notification, access, and amendment rights, collectively referred to herein as access requirements).* Providing individual record subjects with accountings of disclosures and with notification, access, and amendment rights with respect to Insider Threat Program records could reveal the existence of an investigation, investigative interest, investigative techniques, details about an investigation, security-sensitive information such as information about security measures and security vulnerabilities, information that must remain non-public to protect national security or personal privacy-identities of law enforcement personnel, or other sensitive or classified information. Revealing such information to record subjects would thwart or impede pending and future law enforcement investigations and efforts to protect national security, and would violate personal privacy. Revealing the information would enable record subjects or other persons to evade detection and apprehension by security and law enforcement personnel; destroy, conceal, or tamper with evidence or fabricate testimony; or harass, intimidate, harm, coerce, or retaliate against witnesses, complainants, investigators, security personnel, law enforcement personnel, or their family members, their employees, or other individuals. With

respect to investigatory material compiled for law enforcement purposes, the exemption pursuant to 5 U.S.C. 552a(k)(2) from access requirements in subsection (d) of the Act is statutorily limited. If any individual is denied a right, privilege, or benefit to which the individual would otherwise be entitled by federal law or for which the individual would otherwise be eligible, access will be granted, except to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

• *5 U.S.C. 552a(e)(1) (the requirement to maintain only relevant and necessary information authorized by statute or Executive Order).* It will not always be possible to determine at the time information is received or compiled in this system of records whether the information is or will be relevant and necessary to a law enforcement investigation or to protecting national security. For example, a tip or lead that does not appear relevant or necessary to uncovering an insider threat by itself or at the time the tip or lead is received may prove to be relevant and necessary when combined with other information that reveals a pattern or that comes to light later.

• *5 U.S.C. 552a(e)(4)(G) and (H) (the requirements to describe procedures by which subjects may be notified of whether the system of records contains records about them and seek access or amendment of a record).* These requirements concern individual access to records, and the records are exempt under (c) and (d), as described above. To the extent that (e)(4)(G) and (H) are interpreted to require more detailed procedures regarding record notification, access, or amendment than have been published in the **Federal Register**, exemption from those provisions is necessary for the same rationale as applies to (c) and (d).

• *5 U.S.C. 552a(e)(4)(I) (the requirement to describe the categories of record sources).* To the extent that this subsection is interpreted to require a more detailed description regarding the record sources in this system than has been published in the **Federal Register**, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to HHS. Further, greater specificity of sources of properly classified records could compromise national security. Moreover, because records used in the Insider Threat Program could come from any source, it is not possible to know every category in advance in order to list them all in the SORN. Some record source categories may not be appropriate to make public in the SORN if, for example, revealing them could enable record subjects or other individuals to discover investigative techniques and devise ways to bypass them to evade detection and apprehension.

• *5 U.S.C. 552a(f) (the requirement to promulgate rules to implement provisions of the Privacy Act).* To the extent that this subsection is interpreted to require agency rules addressing the above exempted requirements, exemption from this provision is also necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to HHS. Greater specificity in rulemaking regarding properly classified records could compromise national security.

Accordingly, based on 5 U.S.C. 552a(k)(1) and (k)(2) and the specific rationales indicated above, HHS is now exempting law enforcement investigatory material and classified intelligence information in system of records 09–90–1701 HHS Insider Threat Program Records from subsections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Act, which contain requirements to provide an accounting of disclosures; provide notification, access, and amendment rights, rules, and procedures; maintain only relevant and necessary information; and identify categories of record sources. In addition, HHS affirms that if the HHS Insider Threat Program obtains law enforcement investigatory material from another Privacy Act system of records that has been exempted from Privacy Act requirements based on subsection (j)(2) of the Act, that material will be exempt in System No. 09–90–1701 to the same extent it is exempt in the source system.

Notwithstanding these exemptions, consideration will be given to any requests for notification, access, and amendment that are addressed to the System Manager, as provided in the SORN for system of records 09–90–1701, and to accounting of disclosure requests. Where HHS determines that compliance with a request would not interfere with or adversely affect the purpose of this system of records to detect, deter, or mitigate insider threats, the applicable exemption may be waived by HHS in its sole discretion.

The **Federal Register** notice containing the SORN proposed for new system of records 09–90–1701 provides for that SORN to be effective upon publication of this final rule. No changes were made to the SORN as a result of public comments and, therefore, the SORN, as published at 83 FR 42667 (Aug. 23, 2018), is now effective.

Analysis of Impacts

The agency has reviewed this rule under Executive Orders 12866 and 13563, which direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to maximize the net benefits. The agency believes that this rule is not a significant regulatory action under Executive Order 12866, and therefore does not constitute an Executive Order 13771 regulatory action, because it will not (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the rule imposes no duties or obligations on small entities, the Department certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $144 million, using the most current (2015) Implicit Price Deflator for the Gross Domestic Product. The Department does not expect that this final rule would result in any one-year expenditure that would meet or exceed this amount.

List of Subjects in 45 CFR Part 5b

Privacy.

For the reasons stated in the preamble, the Department amends part 5b of title 45 of the Code of Federal Regulations as follows:

PART 5b—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Section 5b.11 is amended by adding paragraph (b)(2)(viii)(A) and reserved paragraph (b)(2)(viii)(B) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(viii) Pursuant to subsections (k)(1) and (k)(2) of the Act:

(A) HHS Insider Threat Program Records, 09–90–1701.

(B) [Reserved]

* * * * *

Michael Schmoyer,

Assistant Deputy Secretary for National Security.

Dated: April 4, 2019.

Alex M. Azar II,

Secretary.

[FR Doc. 2019–07122 Filed 4–10–19; 8:45 am]

BILLING CODE 4151–17–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CG Docket No. 17–59; FCC 18–177]

Advanced Methods To Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** of March 26, 2019 (84 FR 11226), regarding the establishment of a single, comprehensive database that will contain the most recent permanent disconnection date for toll free numbers and for each number allocated to or ported to each provider that receives North American Numbering Plan U.S. geographic numbers. The document contained references to an incorrect rule section for compliance. This document corrects those inaccurate references.

DATES: This correction is effective April 11, 2019. The compliance dates for the final rule published March 26, 2019, at 84 FR 11226, are corrected as follows: *Compliance date:* Compliance will not be required for §§ 52.15(f)(1)(ii) and (f)(8), 52.103(d), and 64.1200(l)(1) and (2) until the Commission publishes documents in the **Federal Register** announcing the compliance dates.

FOR FURTHER INFORMATION CONTACT: Josh Zeldis, Consumer Policy Division, Consumer and Governmental Affairs Bureau (CGB), at (202) 418–0715, email: *Josh.Zeldis@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 26, 2019, in FR Doc. 2019–05620, on page 11226, in the first column, the compliance dates are corrected to read as set forth in the **DATES** section above and the first paragraph of the ''Compliance'' section in **SUPPLEMENTARY INFORMATION** is corrected to read:

''*Compliance*

''The amendments of the Commission's rules as set forth in this document are effective 30 days after publication of a notice in the **Federal Register** announcing approval by the Office of Management and Budget (OMB). Compliance will not be required for §§ 52.15(f)(1)(ii) and (f)(8), 52.103(d), and 64.1200(l)(1) until after approval by the OMB of information collection requirements contained in §§ 52.15(f)(8) and 64.1200(l)(1). The compliance date for §§ 52.15(f)(1)(ii) and (f)(8), 52.103(d), and 64.1200(l)(1) will be specified in a document published in the **Federal Register**. Compliance will not be required for § 64.1200(l)(2) until after approval by OMB and the reassigned numbers database administrator is ready to begin accepting reports of the data collected in accordance with § 64.1200(l)(1). The Commission will publish another document in the **Federal Register** announcing the compliance date for the requirements contained in § 64.1200(l)(2).''

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–06961 Filed 4–10–19; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 516, 532, 538, 546 and 552

[GSAR Amendment 2008–02; GSAR Case 2008–G517; Docket No. 2008–0007; Sequence No. 02]

RIN 3090–AI68

General Services Administration Acquisition Regulation; GSAR Case 2008–G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is adopting as final, without change, an interim rule amending the General Services Administration Acquisition Regulation (GSAR) to implement The Local Preparedness Acquisition Act of 2008. The Act authorizes the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the GSA safety equipment and services.

DATES: *Effective Date:* May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, at 202–445–0390, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR Case 2008–G517.

SUPPLEMENTARY INFORMATION:

I. Background

As part of GSA's regulatory reform efforts, GSA has been performing a comprehensive review of the regulatory requirements in the GSAR. As a part of these efforts, GSA discovered that a **Federal Register** notification had not been published to finalize this interim rule. As a result, GSA included as part of the Fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions in the **Federal Register** at 83 FR 58086 on November 16, 2018 its intention to publish a final rule notification in the **Federal Register**.

The purpose of this rule is the straightforward implementation of the statutory authority provided by Public Law 110–248, The Local Preparedness Acquisition Act to open Schedule 84 or any amended or subsequent version of that Federal supply classification group

to cooperative purchasing. GSA exercised this authority effective on the date of publication of the interim rule. GSA published the interim rule in the **Federal Register** at 73 FR 54334, on September 19, 2008.

The interim rule was a straight implementation of the statute. No public comments were submitted in response to the interim rule. The program has been operating under the interim rule since 2008 without concern and with no statutory changes. Therefore, there are no changes from the interim rule made in the final rule. This action represents administrative clean-up for purposes of publishing a notification in the **Federal Register** of the finalization of this rule.

II. Discussion and Analysis

No public comments were submitted in response to the interim rule. Therefore, there are no changes from the interim rule made in the final rule.

III. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

GSA has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

In order to implement Public Law 110–248, The Local Preparedness Acquisition Act, GSA is adopting as final the interim rule as laid out in GSAR Case 2008–G517, which published in the **Federal Register** at 73 FR 54334, on September 19, 2008. The Act amends section 502 of Title 40, United States Code, to authorize the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group). The rule opens the Federal Supply Schedule 84 for use by other governmental entities to enhance intergovernmental cooperation. The objective of this rule is to make ''government'' (considering all levels) more efficient by reducing duplication of effort and utilizing volume purchasing techniques for the acquisition of law enforcement, security, and certain other related items.

No public comments were submitted in response to the interim rule. Therefore, there are no changes from the interim rule made in the final rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 3090–0250, titled: Zero Burden Information Collection Reports.

List of Subjects in 48 CFR Parts 511, 516, 532, 538, 546, and 552

Government procurement.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 511, 516, 532, 538, 546, and 552, which was published in the **Federal Register** at 73 FR 54334, on September 19, 2008, is adopted as a final rule without change.

[FR Doc. 2019–07171 Filed 4–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 801

RIN 2900–AQ18

VA Acquisition Regulation: Construction and Architect-Engineer Contracts; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: On March 19, 2019, the Department of Veterans Affairs (VA) published a rule updating its VA Acquisition Regulation (VAAR) in phased increments. The changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. An error occurred in one amendatory instruction. This document corrects that error.

DATES: This correction is effective April 18, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 19, 2019, VA published a rule in the **Federal Register** (84 FR 9968) which contained an error in the description of the contents of section 801.106.

Correction

In FR Rule Doc. No. 2019–04900, appearing on page 9968 in the **Federal Register** of March 19, 2019, make the following correction:

§ 801.106 [Corrected]

■ 1. On page 9971, in the third column, in section 801.106, correct instruction number 2.a. to read as follows:

''a. Remove the reference to 852.236–82 through 852.236–84 and the corresponding OMB Control Number 2900–0422, and remove the reference to 852.236–89 and the corresponding OMB Control Number 2900–0622.''

Date: April 8, 2019.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–07193 Filed 4–10–19; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register

Vol. 84, No. 70

Thursday, April 11, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0866; Product Identifier 2018–SW–083–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2011–12–08 for Bell Helicopter Textron Inc. (Bell) Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters. AD 2011–12–08 requires a one-time inspection of the tail rotor (T/R) blade for corrosion and pitting. Since we issued AD 2011–12–08, Bell has implemented new manufacturing and inspection procedures that correct the unsafe condition on more recently manufactured T/R blades. This proposed AD would retain the requirements of AD 2011–12–08 while excluding certain T/R blades from the applicability. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 10, 2019.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0866; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Daniel Moore, Aviation Safety Engineer, DSCO Branch, Compliance and Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5418; email *daniel.e.moore@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We issued AD 2011–12–08, Amendment 39–16715 (76 FR 35334, June 17, 2011) (AD 2011–12–08) for Bell Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters with a T/R blade, part number 212–010–750 (all dash numbers), all serial numbers (S/Ns) except those with a prefix of ''A'' and the number 17061 or larger. AD 2011–12–08 requires a one-time inspection of the T/R blade for corrosion and pitting after sanding the paint from the spar area between blade stations 22.5 and 40.0, and repairing or replacing the T/R blade if corrosion or pitting is discovered. AD 2011–12–08 was prompted by a report from Bell that T/R blades with certain S/Ns may have manufacturing anomalies, identified as pits or corrosion, in the spar area as a result of the chemical milling process. The actions in AD 2011–12–08 are intended to detect corrosion or pitting in the forward spar area of a T/R blade to prevent a crack in the T/R blade, loss of the T/R blade, and subsequent loss of helicopter control.

Actions Since AD 2011–12–08 Was Issued

Since we issued AD 2011–12–08, Bell has implemented new manufacturing and inspection procedures for its T/R blades. These recently-manufactured T/R blades have a prefix of ''BH'' before the S/N and are not subject to the unsafe condition. Therefore, we propose to supersede AD 2011–12–08 to remove these blades from the applicability of the AD. This proposed AD would not change the inspection requirements.

Additionally, since AD 2011–12–08 was issued, the FAA's Aircraft Certification Service has changed its organization structure. The new structure replaces product directorates with functional divisions. We have revised some of the office titles and nomenclature throughout this proposed AD to reflect the new organizational changes. Information about the new structure can be found in the Notice

published on July 25, 2017 (82 FR 34564).

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is still likely to exist or develop in other products of these same type designs.

Related Service Information Under 1 CFR Part 51

We have reviewed the following Bell Alert Service Bulletins, all Revision A, and all dated December 8, 2009, which specify a one-time inspection of the T/R blades for corrosion or pitting, and repairing or replacing the T/R blade if corrosion, pitting, or other damage is discovered:

- Alert Service Bulletin (ASB) No. 205–09–102, for Model 205A and 205A–1 helicopters;
- ASB No. 205B–09–54, for Model 205B helicopters;
- ASB No. 212–09–134, for Model 212 helicopters;
- ASB No. 412–09–136, for Model 412 and 412EP helicopters; and
- ASB No. 412CF–09–38, for Model 412CF helicopters.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements

This proposed AD would continue to require inspecting the T/R blades for corrosion and pitting in the forward spar area by following specified portions of Bell's service information. In addition to those serial-numbered blades that are exempt from the applicability, this proposed AD would exclude blades with a S/N prefix of ''BH.''

Costs of Compliance

We estimate that this proposed AD would affect 384 helicopters of U.S. Registry and that labor costs average $85 per work hour. Based on these estimates, we expect the following costs:

- Inspecting a T/R blade would require about 10 work-hours and no parts for a cost of $850 per helicopter and $326,400 for the U.S. fleet.
- Repairing a T/R blade would require 10 work-hours and parts would cost $750 for a cost of $1,600 per helicopter.
- Replacing a T/R blade would require about 10 work-hours and $28,120 for parts for a cost of $28,970 per blade.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–12–08, Amendment 39–16715 (76 FR 35334, June 17, 2011), and adding the following new AD:

Bell Helicopter Textron Inc. (Bell): Docket No. FAA–2018–0866; Product Identifier 2018–SW–083–AD.

(a) Applicability

This AD applies to Bell Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters, certificated in any category, with a tail rotor (T/R) blade part number 212–010–750 (all dash numbers) installed, all serial numbers (S/Ns) except:

(i) S/Ns with a prefix of ''BH''; or

(ii) S/Ns with a prefix of ''A'' and a number 17061 or larger.

(b) Unsafe Condition

This AD defines the unsafe condition as a pit or corrosion in the forward spar of a T/R blade. This condition could result in a crack in the T/R blade, loss of the T/R blade, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD replaces AD 2011–12–08, Amendment 39–16715 (76 FR 35334, June 17, 2011) (AD 2011–12–08).

(d) Comments Due Date

We must receive comments by June 10, 2019.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 25 hours time-in-service or 30 days, whichever occurs first:

(i) Remove the T/R hub and blade assembly from the helicopter and remove the T/R blade from the hub. Remove the paint from the spar area on both sides of the T/R blade by following the Accomplishment Instructions, paragraphs 3. through 5., of the following Bell Alert Service Bulletins, all Revision A, and all dated December 8, 2009: Alert Service Bulletin (ASB) No. 205–09–102 for the Model 205A and 205A–1 helicopters; ASB No. 205B–09–54 for the Model 205B helicopters; ASB No. 212–09–134 for the Model 212 helicopters; ASB No. 412CF–09–38 for the Model 412CF helicopters; and ASB No. 412–09–136 for the Model 412 and 412EP helicopters.

(ii) Using a 3-power or higher magnifying glass, visually inspect both sides of the T/R blade for any corrosion or pitting in the spar inspection areas as depicted in Figure 1 of the ASB for your model helicopter.

(2) Before further flight:

(i) If you find any corrosion or pitting that is 0.003 inch deep or less, either replace the T/R blade with an airworthy T/R blade or repair the T/R blade.

(ii) If you find any corrosion or pitting that is greater than 0.003 inch deep, replace the T/R blade with an airworthy T/R blade.

(iii) If any parent material is removed during the sanding operation required by paragraph (f)(1)(i) of this AD, either replace the T/R blade with an airworthy T/R blade, or repair the T/R blade if the parent material removed is within the maximum repair damage limits.

(iv) If there is no corrosion or pitting and no damage greater than 0.003 inch deep, refinish the inspection areas and reinstall each T/R blade onto the T/R hub, install the T/R assembly on the helicopter and track and balance the T/R in accordance with the Accomplishment Instructions, paragraphs 8. through 10., of the ASB for your model helicopter.

(g) Credit for Previous Actions

Actions accomplished before the effective date of this AD in accordance with the procedures specified in AD 2011–12–08 are acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO, FAA, may approve AMOCs for this AD. Send your proposal to: Daniel Moore, Aviation Safety Engineer, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5418; email *9-ASW-190-COS@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6410, Tail Rotor Blades.

Issued in Fort Worth, Texas, on March 29, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–07176 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

RIN 2700–AE47

[Document Number NASA–19–002: Docket Number–NASA–2019–0001]

Procedures for Disclosure of Records Under the Freedom of Information Act (FOIA)

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing to amend its Freedom of Information Act (FOIA) regulations, in accordance with the FOIA Improvement Act of 2016.

DATES: Send comments on or before May 28, 2019.

ADDRESSES: You may send comments, identified by 2700–AE47 to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for send comments.

FOR FURTHER INFORMATION CONTACT: Nikki Gramian, (202) 358–0625, *nikki.n.gramian@nasa.gov.*

SUPPLEMENTARY INFORMATION: NASA's last rule amending its FOIA policies was published in the **Federal Register** at 79 FR 46678, August. 11, 2014.

The Freedom of Information Act (FOIA) at 5 U.S.C. 552, requires agencies to ''promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests [the FOIA] and establishing procedures and guidelines for determining when such fees should be waived or reduced.'' Additionally, an agency may, in its regulation, designate those components that can receive FOIA requests, provide for the aggregation of certain requests, and provide for multitrack processing of requests. Finally, the FOIA requires agencies to ''promulgate regulations . . . providing for expedited processing of requests for records.''

On June 30, 2016, the FOIA Improvement Act of 2016 (Act) was signed. The Act requires agencies to notify requesters for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services. It also requires that agencies:

(i) Make records that have been both released previously and requested three or more times available to the public in electronic format,

(ii) establish a minimum of ninety days for requesters to appeal an adverse determination, and

(iii) provide, or direct requesters to, dispute resolution services at various times throughout the FOIA process.

The FOIA Improvement Act also adds restrictions to when agencies can charge certain fees if they are not able to meet FOIA's time limits.

II. Changes Proposed By NASA in This Rulemaking

The revisions required by the 2016 FOIA Improvement Act codifies a ''presumption of openness'' that was previously a matter of policy. Thus, under NASA's revised rule, the agency may refuse to disclose requested information ''only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption . . . or disclosure is prohibited by law.''

The 2016 FOIA Improvement Act requires NASA to make several changes beneficial to requesters.

- NASA must allow 90 days from the date of the adverse determination (to file an appeal. Previously, FOIA did not set a timeline for requestors to file an appeal, and many agencies set appeal deadlines of 30 days by regulation. The FOIA Improvement Act of 2016 mandates agencies to inform requesters of appeal rights that is not less than 90 days after the date of an adverse determination letter has been issued.
- The Act created the Office of Government Information Services (OGIS) within National Archives and Records Administration. Its mission is to review FOIA policies, procedures and compliance of Federal agencies and identify ways to improve compliance as well as resolving FOIA disputes between Federal agencies and requesters. OGIS first opened in 2009 and since then has assisted requesters and agencies in several thousand FOIA disputes.
- The Act specifically requires all agencies to provide dispute resolution services at various times throughout the FOIA process. All forms of FOIA disputes (*e.g.,* agencies release determination, or fee status/fee determination, denial of expedited review, etc.) can be mediated through the Office of Government Information Services (OGIS) or through NASA's internal FOIA Public Liaison (FPL). The OPEN Government Act of 2007 codified the role of FPL from provisions of the Executive Order 13392. The FPL are given the responsibilities of assisting in reducing delays, increasing transparency, and also resolving disputes.

Additional information about NASA's FOIA program—including how to submit a FOIA request to NASA can be found at *https://www.nasa.gov/FOIA/index.html.* NASA's latest Chief FOIA Officer Report can be accessed at *https://www.nasa.gov/sites/default/files/atoms/files/2018_chief_foia_officer_report.pdf.*

III. Expected Impact of the Proposed Rule

NASA actively works to make certain its FOIA system operates as efficiently as possible. NASA's website provides explicit instructions for those who wish to submit a FOIA request and has an electronic library listing categories of documents or information specifically identified for inclusion under FOIA as well as documents or links to information for which NASA has received multiple FOIA requests.

NASA's FOIA requesters are a diverse community, including lawyers, industry professionals, reporters, and members of the public. Costs for these requestors can include the time required to research NASA's current FOIA rule and the time and preparation required to submit a request/appeal.

The Agency receives about 900 FOIA requests per year. Half of these requests are from commercial entities seeking information about NASA contracts awarded to winning contractors for services or technology used in a center mission related activity. Other requests are from members of the general public for items such as an image or video, a NASA study or mission activity, or records about an individual associated with NASA.

NASA believes these proposed edits will primarily impact the 450 requestors who are members of the general public for the reasons discussed in Section 2 of the proposed rule. In addition to making it easier to research and review NASA's FOIA rule before submitting a request, the ''housekeeping measures'' also discussed in Section 2 of this rule should facilitate FOIA requests and production. Although NASA is unable to quantify these savings, the Agency does believe it is deregulatory in nature in that it provides relief to requestors.

IV. Regulatory Procedures

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is not a significant regulatory action, under E.O. 12866.

Executive Order 13771—Reducing Regulations and Controlling Regulatory Costs

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details can be found in Section III—Expected Impact of the Proposed Rule.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

List of Subjects in 14 CFR Part 1206

Administrative practice and procedure, Freedom of Information Act, Privacy Act.

For reasons set forth in the preamble, NASA proposes to amend 14 CFR part 1206 as follows:

PART 1206—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 51 U.S.C. 20113(a).

Subpart A—Basic Policy

■ 2. Amend § 1206.100 by revising the section heading to read as follows:

§ 1206.100 Scope.

* * * * *

■ 3. Amend § 1206.101 by adding paragraph (c) to read as follows:

§ 1206.101 General policy.

* * * * *

(c) Unofficial release of NASA information: The disclosure of exempt records, without authorization by the appropriate NASA official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of NASA to assert FOIA exemptions to withhold the same records in response to a FOIA request. In addition, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

Subpart B—Types of Records to be Made Available

§ 1206.200 [Amended]

■ 4. Amend § 1206.200 by:

■ a. Removing ''and copying'' and adding in its place ''in an electronic format'' in paragraph (b)(1) introductory text.

■ b. Removing ''which'' and adding in its place ''that'' and adding '', or that have been requested 3 or more times'' after ''documents'' in paragraph (b)(1)(iv).

■ c. Removing ''1997'' and adding in its place ''1996'' and removing ''(b)(l)(i) through (b)(l)(iv)'' and adding in its place ''(b)(1)(i) through (iv)'' in paragraph (b)(2)(i).

■ d. Removing ''1997'' and adding in its place ''1996'' in paragraph (c)(2).

§ 1206.201 [Amended]

■ 5. Amend § 1206.201 by adding ''in an electronic format'' after the word ''copying'' in the first sentence.

Subpart C—Procedures

■ 6. Amend § 1206.300 by revising paragraphs (a), (b), (d), and (e)(1) to read as follows:

§ 1206.300 How to make a request for Agency records.

(a) A requester submitting a request for records must include his/her name, and an email or mailing address in order for the Agency to be able to send responsive records and/or to be able to contact the requester to obtain additional information or clarification of the request sought (see § 1206.301). The request must also address fees or provide justification for a fee waiver (see § 1206.302) as well as address the fee category in accordance with § 1206.507. The request should also include a telephone number in case the FOIA office needs to contact the requester regarding the request;

however, this information is optional when submitting a request if an email or mailing address is provided. A requester may also submit a request online via the NASA FOIA website, *https://www.nasa.gov/FOIA/Contacts.html.* Do not include a social security number on any correspondence with the FOIA office. If the FOIA unit determines processing fees will exceed the fee category entitlement, the unit will require a personal mailing address for billing purposes or for commercial use requesters, a business mailing address.

(b) NASA does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, Agency records are decentralized and maintained by various Centers and offices throughout the country. All NASA Centers have the capability to receive requests electronically, either through email or a web portal. To make a request for any of the NASA Center records, a requester should write directly to the FOIA office of the center that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the Center that maintains the records requested. If a requester does not know which center(s) may have the requested records, he/she may send his/her request(s) to the NASA's Headquarters (HQ) FOIA Public Liaison, 300 E Street SW, Room 5L19, Washington, DC 20546, Fax number: (202) 358–4332, email address: *hq-foia@nasa.gov,* and the HQ FOIA unit will forward the request to the center(s) that it determines to be most likely to maintain the records that are sought.

* * * * *

(d) A member of the public may submit a FOIA request for an Agency record by mail, facsimile (FAX), electronic-mail (email), or by submitting a written request in person to the FOIA office having responsibility over the record requested or to the NASA Headquarters (HQ) FOIA Office. A requester may also submit a request online via the NASA FOIA website.

(e) * * *

(1) For locations, mailing/email addresses of NASA FOIA Centers, visit our website at *https://www.nasa.gov/FOIA/Contacts.html.*

* * * * *

■ 7. Amend § 1206.301 by revising paragraphs (c) and (d) to read as follows:

§ 1206.301 Describing records sought.

* * * * *

(c) If NASA after receiving a request determines that the request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the NASA's designated FOIA contact, or the Principal Agency FOIA Officer, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed or NASA may at its discretion close the request administratively.

(d) Requests for clarification or more information will be made in writing (either via U.S. mail or electronic mail whenever possible). Requesters may respond by U.S. Mail or by electronic mail regardless of the method used by NASA to transmit the request for additional information. In order to be considered timely, responses to requests for additional information must be postmarked or received by electronic mail within 20 working days of the postmark date or date of the electronic mail request for additional information or received by electronic mail by 11:59:59 p.m. ET on the 20th working day. If the requester does not respond to a request for additional information within the twenty (20) working days, the request may be administratively closed at NASA's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

* * * * *

■ 8. Amend § 1206.302 by revising paragraph (c) to read as follows:

§ 1206.302 Fee agreements.

* * * * *

(c) If the FOIA office does not receive a written response within 20 working days after requesting the information, it will presume the requester is no longer interested in the records requested and will administratively close the request without further notification.

* * * * *

■ 9. Amend § 1206.305 by revising paragraph (a) to read as follows:

§ 1206.305 Responding to requests.

(a) Except in the instances described in paragraphs (e) and (f) of this section, the FOIA office that first receives a request for a record and maintains that record is the FOIA office responsible for responding to the request. The office shall acknowledge the request and assign it an individualized tracking number if it will take longer than ten working days to process. The NASA office responding to the request shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

* * * * *

■ 10. Amend § 1206.306 by revising paragraph (a) to read as follows:

§ 1206.306 Granting a request.

(a) Ordinarily, NASA shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. The FOIA office will not begin processing a request until all issues regarding scope and fees have been resolved. NASA will notify the requester of the availability of the FOIA Public Liaison to offer assistance in resolving these issues.

* * * * *

■ 11. Amend § 1206.307 by revising paragraphs (a)(2) and (b)(4) to read as follows:

§ 1206.307 Denying a request.

(a) * * *

(2) Records do not exist, cannot be located, are not in the Agency's possession, or the request does not reasonably describe the records sought; or

(b) * * *

(4) A statement that the denial may be appealed under subpart G of this part and a description of the requirements set forth therein. NASA shall also inform the requester of the availability of its FOIA Public Liaison to offer assistance, and include a statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services (OGIS). Should the requester elect to mediate any dispute related to the FOIA request with OGIS, NASA will participate in the mediation process in good faith.

* * * * *

Subpart D—Procedures and Time Limits for Responding to Requests

■ 12. Amend § 1206.401 by revising paragraph (e) to read as follows:

§ 1206.401 Procedures and time limits for acknowledgement letters and initial determinations.

* * * * *

(e) Any notification of an initial determination that does not comply fully with the request for an Agency record, including those searches that produce no responsive documents, shall include a statement of the reasons for

the adverse determination, include the name and title of the person making the initial determination, and notify the requester of the right to appeal to the Administrator or the Inspector General, as appropriate, pursuant to subpart G of this part, and the right to seek dispute resolution services from the NASA FOIA Public Liaison or Office of Government Information Services.

■ 13. Amend § 1206.403 by revising paragraph (c) to read as follows:

§ 1206.403 Time extensions

* * * * *

(c) If initial processing time will exceed or is expected to exceed 30 working days, the FOIA office will notify the requester of the delay in processing and:

(1) Provide the opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request;

(2) Provide contact information for the NASA FOIA Public Liaison;

(3) Offer the right of the requester to seek dispute resolution services from the Office of Government Information Services;

(4) Provide information regarding the intended determination; and

(5) Shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

* * * * *

Subpart E—Fees Associated With Processing Requests

■ 14. Amend § 1206.502 by revising paragraphs (d) and (f) to read as follows:

* * * * *

(d) For copies of records produced on tapes, disks, or other electronic media, FOIA offices will charge the direct costs of producing the copy in the form or format requested, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under this subpart.

* * * * *

(f) For other forms of duplication, FOIA offices will charge the direct costs as well as any associated personnel costs. For standard-sized copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.15 per copy of each page; charges for double-sided copies will be $0.30. For copies of oversized documents, such as maps, charts, etc., fees will be assessed as direct costs. Charges for copies (and scanning) include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the direct cost to NASA of reproducing, copying, or scanning the record. In circumstances where a request for a videotape or other outdated media is requested and NASA does not have the capability to readily reproduce the record in the form or format requested and which requires the Agency to enlist the services of a private contractor to fulfill the request, the direct costs of any services by the private contractor will be charged to the requester. Specific charges will be provided upon request.

* * * * *

■ 15. Revise § 1206.503 to read as follows:

§ 1206.503 Restrictions on charging fees.

(a) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media, unless the records are sought for a commercial use.

(b) If NASA fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (a) of this section, may not charge duplication fees, except as described in paragraphs (b)(1) through (3) of this section.

(1) If a NASA component has determined that unusual circumstances as defined by the FOIA apply and the component provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(2) If NASA has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the agency may charge search fees, or, in the case of requesters described in paragraph (a) of this section, may charge duplication fees, if the following steps are taken. The agency must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the agency may charge all applicable fees incurred in the processing of the request.

(3) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(c) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(d) Except for requesters seeking records for a commercial use, NASA will provide without charge:

(1) The first 100 pages of duplication (or the cost equivalent for other media); and

(2) The first two hours of search.

(e) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under § 1206.504 is less than $50.00 for any request, no fee will be charged.

■ 16. Amend § 1206.504 by revising paragraphs (a) through (c) to read as follows:

§ 1206.504 Charging fees.

(a) NASA shall charge for processing requests under the FOIA in accordance with the provisions of this section and the OMB Guidelines. NASA will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, NASA may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. The submission of a FOIA request shall be considered a firm commitment by the requester to pay all applicable fees charged under this section, up to $50.00, unless the requester seeks a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States. When a FOIA office determines or estimates the fees to be assessed in accordance with this section will amount to or exceed $50.00, the FOIA office shall notify the requester unless the requester has indicated a willingness to pay fees as high as those anticipated. If a portion of the fees can be readily estimated, the FOIA office shall advise the requester accordingly.

(b) In cases in which a requester has been notified that actual or estimated fees are in excess of $50.00, the request shall be placed on hold and further work will not be completed until the requester commits in writing to pay the actual or estimated fees. Such a commitment must be made by the

requester in writing, must indicate a given dollar amount or a willingness to pay all processing fees, and must be received by the FOIA office within 20 working days from the date of the letter providing notification of the fee estimate. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(c) After the FOIA office begins processing a request, if it finds that the actual cost will exceed the amount the requester previously agreed to pay, the FOIA office will stop processing the request and promptly notify the requester of the higher amount. The request will be placed on hold until the fee issue has been resolved. If the issue is not resolved within 20 working days from the date of the notification letter, NASA will provide the requester, if the requester is a non-commercial use requester, the statutory entitlements of 100 pages of duplication at no charge and shall advise the requester that his statutory entitlements have been provided before closing the request.

* * * * *

■ 17. Amend § 1206.505 by revising paragraph (e) to read as follows:

§ 1206.505 Advance payments.

* * * * *

(e) In cases in which a FOIA office requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 20 working days after the date of the FOIA office's letter, the request will be closed without further notification.

* * * * *

■ 18. Amend § 1206.506 by revising paragraphs (d) and (e) to read as follows:

§ 1206.506 Requirements for a waiver or reduction of fees.

* * * * *

(d) In deciding whether the standards of paragraph (c)(1) of this section is satisfied the agency must consider the factors described in paragraphs (d)(1) through (3) of this section:

(1) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(2) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(i) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(ii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. NASA will presume that a representative of the news media will satisfy this consideration.

(3) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following criteria:

(i) NASA and its centers processing requests must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(ii) If there is an identified commercial interest, NASA must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (d)(1) and (2) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. NASA ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (d)(1) and (2) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to NASA and should address the criteria referenced in paragraph (d) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

(e) FOIA offices may make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees; however, the FOIA staff may not assist a requester in composing a request, advising what specific records to request, or how to write a request to qualify for a fee waiver.

* * * * *

■ 19. Amend § 1206.507 by revising paragraphs (c)(1) through (4) to read as follows:

§ 1206.507 Categories of requesters.

* * * * *

(c) * * *

(1) *Commercial use requesters.* When NASA receives a request for documents appearing to be for commercial use, meaning a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests, which can include furthering those interests through litigation, of either the requester or the person on whose behalf the request is made, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. NASA will not consider a commercial-use request for a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. A request from a corporation (not a news media corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category. Commercial use requesters are not entitled to two (2) hours of search time or to 100 pages of duplication of documents without charge.

(2) *Education and non-commercial scientific institution requesters.* To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use (not

operated for commerce, trade or profit), but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(i) Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with the requester's role at the educational institution. NASA may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category. A request for educational purposes may be presumed if submitted on the Institution's letterhead and signed by the Dean of the School or Department.

(A) Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(B) Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(C) Example 3. A student who makes a request in furtherance of the student's coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(ii) For the purposes of a non-commercial scientific institution, it must be solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Requests must be sent on the letterhead of the scientific institution and signed by the responsible official in charge of the project/program associated with the subject of the documents that are being requested.

(3) *Representative of the news media.* (i) NASA shall provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages when the requester demonstrates the following:

(A) The requester's intended dissemination,

(B) Whether the information is current news and/or of public interest, and

(C) Whether the information sought will shed new light on agency statutory operations.

(ii) Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of new media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, agencies can also consider a requester's past publication record in making this determination. Agencies will advise requesters of their placement in this category. NASA's decision to grant a requester news media status for the purposes of assessing fees will be made on a case-by-case basis based upon the requesters intended use.

(iii) Requesters seeking this fee category who do not articulate sufficient information to support their request will not be included in this fee category. Additionally, FOIA staff may grant a reduction of fees if the requester can articulate the information of this section for some of the documents.

(4) *All other requesters.* NASA shall charge requesters who do not fit into any of the categories mentioned in this section fees in accordance with the fee table in paragraph (b) of this section.

Subpart G—Appeals

§ 1206.700 [Amended]

■ 20. Amend § 1206.700 by:

■ a. Removing the number ''30'' and adding in its place the number ''90'' in paragraph (a);

■ b. Adding ''Room 8U71, 300 E Street SW,'' after the second occurrence of the word ''Headquarters'' in paragraph (b)(2); and

■ c. Removing the number ''30'' and adding in its place the number ''90'' in paragraph (b)(6).

Subpart H—Responsibilities

■ 22. Amend § 1206.801 by revising paragraphs (b)(1) and (6) and (c) to read as follows:

§ 1206.801 Chief FOIA Officer.

* * * * *

(b) * * *

(1) Developing regulations in consultation with the Office of General Counsel, providing guidelines, procedures, and standards for the Agency's FOIA program;

* * * * *

(6) Preparing all other reports as required to DOJ, OGIS, and Congress or within the Agency;

* * * * *

(c) The Chief FOIA Officer is responsible for ensuring NASA has appointed FOIA Public Liaisons, who are responsible for and able to assist in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes at each Center or Component.

■ 23. Amend § 1206.804 by revising paragraphs (b) and (c) to read as follows:

§ 1206.804

* * * * *

(b) This delegated authority has further been delegated to the FOIA Officers who are designated to work at NASA Centers and supervised by the Director of Public Affairs or Head of the Public Affairs Office for that Center. If a FOIA Officer working at a particular NASA center vacates the position, the Deputy Associate Administrator for Communications will designate a new FOIA Officer, supervised by the Principal Chief FOIA Officer, to process FOIA requests for that particular center.

(c) When denying records in whole or in part, the FOIA Officer designated to process records for the Center will consult with the Chief Counsel or the Counsel charged with providing legal advice to that FOIA office before releasing an initial determination under § 1206.307.

§ 1206.805 [Amended]

■ 24. Amend § 1206.805 by adding a comma after the second occurrence of the word ''General'' in paragraph (a).

* * * * *

Cheryl E. Parker,

Federal Register Liaison Officer.

[FR Doc. 2019–06554 Filed 4–10–19; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104464–18]

RIN 1545–BO55

Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–104464–18) that was published in the **Federal Register** on Wednesday, March 6, 2019. The proposed regulations provided guidance to determine the amount of the deduction for foreign-derived intangible income and global intangible low-taxed income.

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking at 84 FR 8188 (March 6, 2019) are still being accepted and must be received by May 6, 2019.

FOR FURTHER INFORMATION CONTACT: Concerning proposed §§ 1.250(a)–1 through 1.250(b)–6, 1.962–1, 1.6038–2, 1.6038–3, and 1.6038A–2, Kenneth Jeruchim at (202) 317–6939; concerning proposed §§ 1.1502–12, 1.1502–13 and 1.1502–50, Michelle A. Monroy at (202) 317–5363 or Austin Diamond-Jones at (202) 317–6847; concerning submissions of comments and requests for a public hearing, Regina L. Johnson, (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under sections 250, 962, 1502, 6038, and 6038A of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the notice of proposed rulemaking published at 84 FR 8188 (March 6, 2019) is corrected as follows:

■ 1. On page 8190, in the preamble, under the heading: ''2. Determination of DEI and FDDEI'', in the third column, in the 23rd line, add a sentence at the end of the paragraph to read: ''Finally, the proposed regulations define financial services income by reference to section 904(d)(2)(D) and proposed § 1.904–4(e)(1)(ii).''

§ 1.250(b)–1 [Corrected]

■ 2. On page 8216, first column, the last line of paragraph (d)(3)(ii)(B)(*2*)(*i*), the language ''distributive of PRS's gross FDDEI'' is corrected to read ''distributive share of PRS's gross FDDEI''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2019–07118 Filed 4–10–19; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0744; FRL–9992–01–Region 9]

Air Plan Approval; Hawaii; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Hawaii's Regional Haze Progress Report (''Progress Report'' or ''Report'') submitted by the State of Hawaii on October 20, 2017, as a revision to its state implementation plan (SIP). Hawaii submitted its Progress Report and a negative declaration stating that further revision of the existing regional haze plan is not needed at this time. The Progress Report addresses the federal Regional Haze Rule (RHR) requirements under the Clean Air Act (CAA) to submit a report describing progress in achieving reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the State's existing plan addressing regional haze. Hawaii's Progress Report notes that Hawaii has implemented the measures in the regional haze plan due to be in place by the date of the Progress Report and that visibility in Class I areas affected by emissions from Hawaii is improving. The EPA is proposing to approve Hawaii's determination that the State's regional haze plan is adequate to meet RPGs in Class I areas affected by emissions from Hawaii for the first implementation period, which extended through 2018, and requires no substantive revision at this time.

DATES: Comments must be received on or before May 13, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0744 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, EPA Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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I. Background

A. Description of Regional Haze

Regional haze is visibility impairment produced by many sources and activities located across a broad geographic area that emit fine particles

that impair visibility by scattering and absorbing light, thereby reducing the clarity, color, and visible distance that one can see. These fine particles also can cause serious health effects and mortality in humans and contribute to environmental impacts, such as acid deposition and eutrophication of water bodies.

B. History of Regional Haze Rule

In section 169A(a)(1) of the CAA Amendments of 1977, Congress created a program to protect visibility in designated national parks and wilderness areas, establishing as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' In accordance with section 169A of the CAA and after consulting with the Department of the Interior, the EPA promulgated a list of 156 mandatory Class I federal areas where visibility is identified as an important value.[1] In this notice, we refer to mandatory Class I federal areas on this list as ''Class I areas.''

With the CAA Amendments of 1990, Congress added section 169B to address regional haze issues. The EPA promulgated the RHR on July 1, 1999.[2] In the RHR, the EPA revised the existing visibility regulations to integrate provisions addressing regional haze impairment and to establish a comprehensive visibility protection program for Class I areas. As defined in the RHR, the RPGs must provide for an improvement in visibility for the most impaired days (''worst days'') over the period of the implementation plan and ensure no degradation in visibility for the least impaired days (''best days'') over the same period.[3] The first implementation plan generally covers the period from 2000–2018 (also known as the first planning period).

Five years after submittal of the initial regional haze plan, states were required to submit progress reports that evaluate progress towards the RPGs for each Class I area within the state and in each Class I area outside the state which may be affected by emissions from within the state.[4] States were also required to submit, at the same time as the progress report, a determination of the adequacy of the state's existing regional haze plan.[5]

C. Hawaii's Regional Haze Plan

Hawaii did not submit an initial regional haze SIP. Consequently, the EPA developed a regional haze federal implementation plan (FIP), which was promulgated on October 9, 2012.[6]

On October 20, 2017, the State of Hawaii submitted the Progress Report to meet the requirements of 40 CFR 51.308(g) and (h). In accordance with these requirements, the Progress Report describes the status of the implementation of measures included in the regional haze implementation plan,[7] emissions reductions from these measures, and improvements in visibility conditions at the State's Class I areas. The Progress Report also includes a negative declaration stating that further revision of the existing implementation plan is not needed in accordance with 40 CFR 51.308(h)(1).

The EPA is proposing to approve Hawaii's Progress Report.

II. Context for Understanding Hawaii's Progress Report

To better understand Hawaii's Progress Report as well as the EPA's evaluation of it, this section provides background on the regional haze program in Hawaii.

A. Framework for Measuring Progress

The EPA has established a metric for determining visibility conditions at Class I areas referred to as the ''deciview index,'' which is measured in deciviews (dv), as defined in 40 CFR 51.301. A deciview expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Deciviews are determined by using air quality data collected from the Interagency Monitoring of Protected Visual Environments (IMPROVE) network monitors to estimate light extinction, and then transforming the value of light extinction using a logarithmic function.

Hawaii has two Class I areas within its borders: Haleakala National Park (NP) on Maui Island and Hawaii Volcanoes NP on the island of Hawaii. For this Progress Report, monitoring data representing visibility conditions in Hawaii's two Class I areas were based on the three IMPROVE monitors identified in Table 1.[8] As shown in the table, the HACR1 and HALE1 monitoring sites represent Haleakala NP, and the HAVO1 site represents Hawaii Volcanoes NP.

TABLE 1—HAWAII IMPROVE MONITORING SITES AND REPRESENTED CLASS I AREAS

Class I area	Site code
Haleakala NP	[a] HACR1.
	[b] HALE1.
Hawaii Volcanoes NP	HAVO1.

[a] Monitoring at the HACR1 site began in 2007.

[b] The HALE1 monitoring site operated from 2001 to 2011.

Under the RHR, a state's initial regional haze SIP must establish two RPGs for each of its Class I areas: One for the 20 percent least impaired days and one for the 20 percent most impaired days. The RPGs must provide for an improvement in visibility on the 20 percent most impaired days and ensure no degradation in visibility on the 20 percent least impaired days, as compared to visibility conditions during the baseline period. In establishing the RPGs, a state must consider the uniform rate of visibility improvement from the baseline to natural conditions in 2064 and the emission reduction measures needed to achieve that uniform rate. The typical method for determining RPGs is to use meteorological and air quality modeling to predict the visibility at Class I areas for the end of the planning period (2018 in this case). However, the dominant cause of visibility impairment in Hawaii's Class I areas is sulfate compounds, and over 96 percent of the sulfate emissions are from Hawaii's volcano. Volcanic eruptions vary greatly from year to year with no discernable patterns. As a result, modeling to project overall visibility conditions has little value for Hawaii's Class I areas. Consequently, the EPA set the RPGs for Hawaii's two Class I areas based on island-specific inventories for Maui and Hawaii, the islands that contain Class I areas.[9]

B. Data Sources for Hawaii's Progress Report

To demonstrate visibility progress, Hawaii used data from the Western

[1] The Class I areas are listed at 40 CFR part 81, subpart D. Areas designated as Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)).

[2] 64 FR 35714 (July 1, 1999). The rule was subsequently revised on July 6, 2005 (70 FR 39104), October 13, 2006 (71 FR 60612), and January 10, 2017 (82 FR 3078).

[3] 40 CFR 51.308(d)(1).

[4] 40 CFR 51.308(g).

[5] 40 CFR 51.308(h).

[6] 77 FR 61478.

[7] ''Implementation plan,'' as defined in 40 CFR 51.301, includes FIP provisions, as well as SIPs.

[8] The HALE1 IMPROVE monitor began operation on Maui in 1990 at a site about 3.5 miles outside of Haleakala NP. In 2007, a second IMPROVE monitor (HACR1) was installed at a higher elevation within Haleakala NP. The HACR1 site was considered more representative of visibility conditions within Haleakala NP and replaced the HALE1 monitoring station in 2012. See Progress Report, 3, and Appendix.A.

[9] 77 FR 31692, 31707–13 (May 29, 2012).

Regional Air Partnership (WRAP) Technical Support System (TSS). Hawaii used the most recent visibility information available from the WRAP TSS as a technical basis for its progress report. It also used the technical data and analyses in a report titled ''Western Regional Air Partnership Regional Haze Rule Reasonable Progress Summary Report'' (''WRAP Report''), dated June 28, 2013.[10] The WRAP Report was prepared for WRAP, ''on behalf of the 15 western state members in the WRAP region, to provide the technical basis for use by the western states to develop the first of RHR individual Progress Reports.''[11] Hawaii's Progress Report presented data for both of its Class I areas, comparing visibility conditions for the 20 percent most impaired and 20 percent least impaired days during the baseline period (2000–2004), the current period for the Progress Report (2011–2015), and years between those periods.

III. The EPA's Evaluation of Hawaii's Progress Report

This section describes the contents of Hawaii's Progress Report and the EPA's review of the report, the determination of adequacy required by 40 CFR 51.308(h), and the requirement for state and Federal Land Manager (FLM) coordination in 40 CFR 51.308(i).

A. Status of Implementation of All Measures Included in the Regional Haze Implementation Plan

In its Progress Report, Hawaii described the status of the control measures that the EPA and the State relied on to implement the regional haze program: The sulfur dioxide (SO_2) emissions cap from the FIP; the State's renewable portfolio standard and energy efficiency programs; the North American Emissions Control Area (ECA); federal mobile source regulations; the State's open burning regulations; and facility closures. Hawaii included a description of these programs, which are summarized below. Hawaii also explained that the FIP did not include any controls to implement best available retrofit technology (BART).

1. SO_2 Emissions Cap for Electricity Generating Units (EGUs)

The Hawaii regional haze FIP established an SO_2 emissions cap in 40 CFR 52.633(d). Affected EGUs shall not emit or cause to be emitted more than 3,550 tons per year (tpy), summed over 5 units using a rolling 12-month period. These units are Kanoelehua Hill Generating Station, boilers Hill 5 and Hill 6; Puna Power Plant, boiler 1; and Shipman Power Plant, boilers S–3 and S–4. The primary fuel for these boilers is fuel oil number 6. The Shipman Power Plant permanently closed on December 31, 2015; thus, the SO_2 emissions cap applies only to the affected EGUs at Kanoelehua Hill and Puna. The Hawaii Department of Health (DOH) provided copies of the current air permits for each facility to the EPA in November 2018 to document the State's implementation of the FIP.[12]

2. Renewable Portfolio Standard (RPS) and Energy Efficiency Programs

Hawaii has state-level renewable energy and energy efficiency programs for greenhouse gas reduction that have reduced electricity generation. These programs have also resulted in reductions in emissions of SO_2 and nitrogen oxides (NO_X) due to reduced fuel use. As part of Hawaii's RPS, Hawaiian Electric Light Company (HELCO) plans to achieve 100 percent renewable energy by 2045.[13]

3. Hawaii Agricultural and Open Burning Programs

The Hawaii DOH regulates open burning, including agricultural, residential, and prescribed burning. For agricultural burning, the State has established a permit program for burning green waste, which may be restricted during times of drought, fire hazard, or designated ''No Burn'' periods. Hawaii Commercial and Sugar Company (HC&S) on Maui had agricultural burn permits to burn cane, but the facility closed in 2016.[14]

4. Facility Closures

Table. 2.2–1 in the Progress Report lists three sources that have closed, including HC&S Puunene Sugar Mill, Maui Pineapple Company, and HELCO Shipman. Although these closures were not required under the FIP, all of these closures have reduced emissions of visibility-impairing pollutants.[15]

5. North American ECA

The North American ECA became enforceable in August 2012 and regulates emissions of NO_X, SO_2, and fine particulate from ships. The North American ECA includes waters adjacent to the eight main Hawaiian Islands. The North American ECA emissions standards include a decreasing fuel sulfur limit and engine NO_X standards, both of which will contribute to reductions of visibility-impairing pollutants near Class I areas in Hawaii.

6. Federal Mobile Source Controls

In its Progress Report, Hawaii discussed several rules the EPA has promulgated to reduce emissions from mobile sources. In 2001, the EPA promulgated a rule with an emissions limit for NO_X from heavy-duty highway vehicles of 0.20 grams per brake-horsepower-hour, which was phased in between 2007 and 2010.[16] In 2004, the EPA promulgated a Clean Air Nonroad Diesel Rule to reduce emissions from nonroad diesel engines and/or fuels, including construction, agricultural, industrial, airport, locomotive, and marine vessel engines. The rule established limits to be phased in by 2014.[17] The EPA also issued new fuel sulfur requirements for ultra-low sulfur diesel fuel in 2006.[18] Federal Tier II fuel standards reduced the sulfur content of gasoline by up to 90 percent.[19]

B. Summary of Emissions Reductions

Section 5.0 of the Hawaii Progress Report includes a summary of the emissions reductions achieved throughout the State through implementation of the control measures relied upon to achieve reasonable progress. In addition, the Progress Report summarizes changes in emissions inventories for all major visibility-impairing pollutants from point, area, on-road mobile, non-road mobile, marine, and anthropogenic fire source categories in the State. For these summaries, emissions during the baseline years are represented using a 2005 inventory, which was the most complete inventory available at the time the regional haze FIP was developed. It was developed with support from ENVIRON International Corporation and some emissions estimates were refined by Hawaii DOH. The EPA also worked with contractors at the University of North Carolina and ICF International on estimating on-road emissions.[20]

[10] See Progress Report, 3, and Western Regional Air Partnership Regional Haze Rule Reasonable Progress Summary Report (June 28, 2013). *http://www.wrapair2.org/documents/Fullpercent20Report/WRAP_RHRPR_Full_Report_without_Appendices.PDF.* (Also included as Appendix A of the Progress Report).

[11] Progress Report, Appendix A, 12.

[12] See letter dated November 15, 2018, from Bruce S. Anderson, Ph.D., Director of Health, Hawaii DOH, to Mr. Michael Stoker, Regional Administrator, U.S. EPA Region 9.

[13] Progress Report, 14.

[14] Id. at 16.

[15] Id. at 17.

[16] 66 FR 5002 (January 18, 2001).

[17] 69 FR 38958 (June 29, 2004).

[18] 65 FR 6698 (February 10, 2000).

[19] See *https://www.epa.gov/gasoline-standards/gasoline-sulfur.*

[20] Technical Support Document for the Proposed Action on the Federal Implementation Plan for the Regional Haze Program in the State of Hawaii, U.S. EPA Region 9, May 14, 2012.

Differences between inventories are represented as the difference between the 2005 inventory developed for the Hawaii regional haze FIP and a 2011 inventory based on the 2011 National Emissions Inventory.

Hawaii's Progress Report noted that in the SO_2 emissions inventory, volcanic emissions dominate the inventory, far exceeding anthropogenic sources of SO_2. Likewise, nonanthropogenic particulate matter (PM_{10}) emissions from sea spray dominate the PM_{10} inventory. Specifically, Hawaii identified in the Progress Report:

- SO_2 emissions reductions achieved through controls on point and area sources with slight (less than 1 percent of total SO_2 emissions) increases between 2005 and 2011 in other fire/prescribed burning;
- Decreases in NO_X emissions from area sources and mobile sources, which more than offset increases in point source emissions and emissions from other fire/prescribed burning; and
- A slight (4 percent) increase in statewide volatile organic compound (VOC) emissions due to increases from point and area sources that was not offset by decreases from mobile sources.

The emissions inventories were complicated by the changes and enhancements that have occurred between development of the baseline and current period emissions inventories. Hawaii stated that some of the differences between inventories are more reflective of changes in inventory methodology, rather that changes in actual emissions. For example, both biogenic VOC emissions and volcanic emissions were updated.[21]

Notwithstanding these differences between the 2005 and 2011 emissions inventory methodologies, estimated emissions for SO_2, NO_X, VOC, PM_{10} and ammonia (NH_3) are summarized in Tables 2 and 3 below.

TABLE 2—2005 STATEWIDE EMISSIONS INVENTORY

	SO_2	NO_X	VOC	PM_{10}	NH_3
Anthropogenic Sources					
Point Sources	27,072	22,745	2,695	3,536	12
Area Sources	3,716	1,509	16,920	33,408	11,136
Agricultural Burning	178	406	535	1,567	60
Other Fire	0	1	7	7	0
On-Road Mobile	321	20,642	12,066	638	1,085
Non-Road Mobile	669	6,296	6,383	649	0
Marine	3,619	5,624	209	398	0
Total Anthropogenic	35,575	57,223	38,815	40,203	12,298
Natural Sources					
Volcano	961,366	0	0	0	0
Sea Spray	0	0	0	382,637	0
Windblown Dust	0	0	0	46,808	0
Wildfire	591	2,156	4,729	4,771	540
Biogenic	0	4,617	130,153	0	0
Total Natural	961,957	6,773	134,882	439,216	540
All Sources					
Total Emissions	997,531	63,996	173,697	479,419	12,838

Source: Progress Report, 42.

TABLE 3—2011 STATEWIDE EMISSIONS INVENTORY

	SO_2	NO_X	VOC	PM_{10}	NH_3
Anthropogenic Sources					
Point Sources	22,047	28,982	3,059	2,813	1,031
Area Sources	3,331	1,176	18,425	34,803	7,547
Agricultural Burning	178	405	535	1,567	148
Other Fire	36	389	1,672	853	59
On-Road Mobile	102	15,503	11,180	305	412
Non-Road Mobile	7	3,842	5,428	403	6
Marine	2,037	4,895	154	338	3
Total Anthropogenic	27,738	55,192	40,453	41,420	9,749
Natural Sources					
Volcano	406,030	0	0	0	0
Sea Spray	0	0	0	382,637	0
Windblown Dust	0	0	0	46,808	0
Wildfire	9	99	390	162	12

[21] See Progress Report, 42, footnotes 4 and 5 to Table 5.0–3.

TABLE 3—2011 STATEWIDE EMISSIONS INVENTORY—Continued

	SO_2	NO_X	VOC	PM_{10}	NH_3
Biogenic	0	4,617	130,153	0	0
Total Natural	406,039	4,716	130,543	429,607	12
All Sources					
Total Emissions	433,768	59,808	170,996	471,027	9,761

Source: Progress Report, 42.

Changes in emissions from 2005 to 2011 for SO_2, NO_X, and VOC, respectively, are noted in absolute value and as a percentage of baseline emissions presented in tables 4, 5, and 6.

TABLE 4—CHANGES IN ANTHROPOGENIC SO_2 EMISSIONS AND PERCENT CHANGES FROM 2005–2011

Source category	Statewide SO_2 (tpy)			
	2005	2011	Change	Percent change
Point Sources	27,072	22,047	−5,025	−19
Area Sources	3,716	3,331	−385	−10
Agricultural Burning	178	178	0	0
Other Fire/Prescribed Burning	0	36	36	>100
On-Road Mobile Sources	321	102	−219	−68
Non-Road Mobile Sources	669	7	−662	−99
Marine	3,619	2,037	−1,582	−44
Total Anthropogenic	35,575	27,738	−7,837	−22

Source: Progress Report, 44.

TABLE 5—CHANGES IN ANTHROPOGENIC NO_X EMISSIONS AND PERCENT CHANGES FROM 2005–2011

Source category	Statewide SO_2 (tpy)			
	2005	2011	Change	Percent change
Point Sources	22,745	28,892	6,237	27
Area Sources	1,509	1,176	−333	−22
Agricultural Burning	406	405	−1	−0.2
Other Fire/Prescribed Burning	1	389	388	>100
On-Road Mobile Sources	20,642	15,503	−5,139	−25
Non-Road Mobile Sources	6,296	3,842	−2,454	−39
Marine	5,624	4,895	−729	−13
Total Anthropogenic	57,223	55,192	−2,031	−4

Source: Progress Report, 45.

TABLE 6—CHANGES IN ANTHROPOGENIC VOC EMISSIONS AND PERCENT CHANGES FROM 2005–2011

Source category	Statewide SO_2 (tpy)			
	2005	2011	Change	Percent change
Point Sources	2,695	3,059	364	14
Area Sources	16,920	18,425	1,505	9
Agricultural Burning	535	535	0	0
Other Fire/Prescribed Burning	7	1,672	166	>100
On-Road Mobile Sources	12,066	11,180	−886	−25
Non-Road Mobile Sources	6,383	5,428	−955	−15
Marine	209	154	−55	−26
Total Anthropogenic	38,815	40,452	1,638	4

Source: Progress Report, 46.

In its Progress Report, Hawaii concluded that the control strategies in the existing regional haze plan are adequate to meet the 2018 RPGs. Progress includes significant reductions in SO_2 and NO_X emissions from Maui and Hawaii Island point sources, including the SO_2 emissions cap, renewable energy projects, the retirement of some units, and facility closures.

C. Summary of Visibility Conditions

Hawaii's Progress Report provided visibility data during the baseline period (2000–2004), the current period for the Progress Report (2011–2015), and for the rolling 5-year periods between the baseline and current periods, based on IMPROVE data that were available at the time Hawaii developed the Progress Report. These RPGs are listed in Table 7 along with the baseline and current (as of submission of the Progress Report) visibility conditions.

TABLE 7—HAWAII CLASS I AREA VISIBILITY CONDITIONS ON THE 20 PERCENT MOST AND LEAST IMPAIRED DAYS

Hawaii Class I area	Monitor/region	20% Most impaired days				20% Least impaired days			
		2000–04 Baseline (dv)	2005–09 First progress period (dv)	2011–15 current period (dv)	2018 RPGs (dv)	2000–04 Baseline (dv)	2005–09 First progress period (dv)	2011–15 Current period (dv)	2018 RPGs (dv)
Haleakala NP	[a] HACR1	[b] 9.5	[b] 10.8	[c] 9.7	[d] 13	[e] 1.0	[e] 0.9	[f] 0.6	[g] 4.5
	HALE1	[b] 13.3	[b] 14.8			[e] 4.5	[e] 4.4		
Hawaii Volcanoes NP	HAVO1	[b] 18.9	[h] 24.9	[i] 18.0	[d] 18.7	[j] 4.1	[k] 3.8	[l] 3.4	[m] 4.0

[a] The HACR1 IMPROVE monitor began operation in 2007, thus 2007–2009 data used for Haleakala NP for the 2005–2009 period. See Progress Report, 26–27.
[b] Progress Report, Appendix A, Table 6.5–4.
[c] Id., Table 4.1–1.
[d] Id., Table 6.5–5.
[e] 77 FR 31692, 31713 (May 29, 2012). The RPG for Haleakala was based on monitoring data from HALE1.
[f] Progress Report, Table 4.1–1.
[g] Id., Table 7.0–2 (sum of values for all species under "2018 With FIP").
[h] Id., Table 4.2–3.
[i] Id., Table 4.1–3.
[j] Id., Table 4.2–4.
[k] Id.
[l] Id., Table 4.1–4.
[m] Id., Table 7.0–2 (sum of values for all species under "2018 With FIP").

Based on the information in Chapter 4.0 of the Progress Report, Hawaii demonstrated that both Class I areas experienced improvements in visibility for the 20 percent most and least impaired days between the baseline (2000–2004) and current (2011–2015) visibility periods, as summarized in table 7 above and shown in tables 4.0–1, 4.0–2, 4.0–3, 4.1–1 and 4.1–2 of the Progress Report. Table 7 also shows that the five-year average worst days and best days during the current period (2011–2015) were below (*i.e.,* better than) the 2018 RPGs. Thus, both of the State's Class I areas are on track to meet or surpass their 2018 RPGs.

Hawaii's Progress Report included an analysis of progress and impediments to progress. Hawaii evaluated visibility trends from 2007 to 2015 from the HACR1 monitor and 2001 to 2015 at the HAVO1 monitor.[22] Hawaii noted that five-year rolling averages of the haze index show slight visibility improvements on both the 20 percent most-impaired days and more significant visibility improvements for the 20 percent least-impaired days for both Class I areas.[23] Hawaii's Progress Report concluded that control strategies in the existing regional haze plan are adequate to meet the 2018 RPGs. The average trends for least-impaired days show improvement at both monitoring locations. Similarly, average trends for most-impaired days show improvement. The Progress Report also contains a review of Hawaii's visibility monitoring strategy. In the Progress Report, Hawaii concludes that the IMPROVE network continues to comply with the monitoring requirements in the Regional Haze Rule and that no modifications to Hawaii's visibility monitoring strategy are necessary at this time.

The Progress Report did not expressly address Class I areas outside the state. As explained in our proposed regional haze FIP:

> Hawaii lies approximately 2,390 miles southwest of the Continental United States and has been included by EPA in the regional haze program, "because of the potential for emissions from sources within [its] borders to contribute to regional haze impairment in Class I areas also located within [Hawaii's] own jurisdiction." [24]

Therefore, we found that emissions from Hawaii were not reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another state or states.[25] For the same reasons, we now find that it was appropriate for Hawaii to exclude discussion of out-of-state areas in its Progress Report.

D. Determination of Adequacy

Within the Progress Report, the State of Hawaii provided a negative declaration stating that further revision of the existing implementation plan is not needed in accordance with 40 CFR 51.308(h)(1).[26] The basis for the State's negative declaration is the information in the Progress Report and the determination that Hawaii was on track to achieve 2018 RPGs for the State's Class I areas. Given the reductions in SO_2 and NO_X emissions and the improvements in visibility at the State's Class I areas achieved during the planning period, the EPA proposes to approve Hawaii's determination that the existing Hawaii regional haze plan requires no substantive revisions at this time to achieve the established RPGs for Class I areas.

E. Consultation With FLMs

The State of Hawaii invited the FLMs to comment on its draft Progress Report on May 12, 2017, and provided a 60-day comment period prior to releasing the report for public comment.[27] In a letter dated July 6, 2017, the FLMs concurred with Hawaii's conclusion in its draft progress report that additional revisions

[22] See Progress Report, 37.
[23] Id. at 31.
[24] 77 FR 31713 (quoting 64 FR 35714, 35720).
[25] Id.
[26] See Progress Report, 81.
[27] See electronic mail dated May 12, 2017, from Michael Madsen, Hawaii DOH, to Susan Johnson and Patricia Brewer, National Park Service, requesting comment on Hawaii's Regional Haze Progress Report, in the docket for today's action.

to the State's regional haze implementation plan were not needed at this time.[28] The EPA proposes to find that Hawaii has addressed the requirements in 40 CFR 51.308(i).

IV. The EPA's Proposed Action

The EPA is proposing to approve the Hawaii Regional Haze Progress Report submitted to the EPA on October 20, 2017, as meeting the applicable requirements of the CAA and RHR, as set forth in 40 CFR 51.308(g). The EPA proposes to approve Hawaii's determination that the existing regional haze plan is adequate to meet the established RPGs in Class I areas affected by emissions from Hawaii and requires no substantive revision at this time. We propose to find that Hawaii fulfilled the requirements in 40 CFR 51.308(i) regarding state coordination with FLMs.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations.[29] Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements, and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because actions such as SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 26, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–07212 Filed 4–10–19; 8:45 am]

BILLING CODE 6560–50–P

[28] See letter dated July 6, 2017, from Patricia Brewer, National Park Service, to Michael Madsen, Hawaii DOH.

[29] 42 U.S.C. 7410(k); 40 CFR 52.02(a).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0795; FRL–9992–13–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Negative Declaration for the Oil and Natural Gas Industry Control Techniques Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to a negative declaration for the October 2016 Oil and Natural Gas Control Techniques Guidelines (CTG) (2016 Oil and Gas CTG). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 13, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0795 at *https://www.regulations.gov,* or via email to *Spielberger.susan@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Erin Trouba, (215) 814–2023, or by email at *trouba.erin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The revision consists of the State of Delaware's negative declaration for the October 2016 Oil and Natural Gas CTG. On October 27, 2016, EPA published in the **Federal Register** the ''Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry.'' 81 FR 74798. The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compounds (VOC) emissions from select oil and natural gas industry emission sources. Section 182(b)(2)(A) of the CAA requires that for ozone nonattainment areas

classified as Moderate, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. Section 184(b)(1)(B) of the CAA extends this requirement to states in the Ozone Transport Region (OTR). States with no applicable sources for a specific CTG may submit as a SIP revision a negative declaration stating that there are no applicable sources in the state.

II. Summary of SIP Revision and EPA Analysis

On June 28, 2018, Delaware's Department of Natural Resources and Environmental Control (DNREC) submitted to EPA a SIP revision concerning a negative declaration for the 2016 Oil and Gas CTG. In its submittal, DNREC stated that the State has no sources applicable to this CTG. This conclusion is based in part on Delaware's investigation of three companies identified through an EPA information collection request (ICR) letter, as facilities in Delaware where the 2016 Oil and Gas CTG was potentially applicable. DNREC investigated the status of the three facilities. The results of the investigation are detailed in Delaware's submittal which demonstrates that the 2016 Oil and Gas CTG is not applicable to the three facilities in question. Delaware stated that it also reviewed State air permits, emissions inventory files, and business listings and found no applicable facilities in the State. DNREC asserts that there are no facilities in the State that are currently involved in oil and gas production and processing activities covered by the 2016 Oil and Gas CTG.

III. Proposed Action

EPA is proposing to approve the Delaware SIP revision concerning the negative declaration for the 2016 Oil and Gas CTG, which was submitted on June 28, 2018. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, Delaware's negative declaration for the 2016 Oil and Gas CTG, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 1, 2019.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2019–07115 Filed 4–10–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 20, 27 and 90

[WT Docket No. 17–200; FCC 19–18]

Commission Proposes To Reconfigure the 900 MHz Band To Facilitate Broadband Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission (Commission) published a document in the **Federal Register** on April 3, 2019, regarding the Commission's proposal to facilitate broadband deployment in the 896–901/935–940 MHz band. The document provided incorrect dates by which parties may file comments and reply comments. This document corrects those dates.

DATES: April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Stana Kimball, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–1306, email: *stanislava.kimball@fcc.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 3, 2019 (84 FR 12987, in FR Doc. 2019–06349, on page 12987, in the third column, correct the **DATES** section to read:

DATES: Interested parties may file comments on or before June 3, 2019, and reply comments on or before July 2, 2019.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–07093 Filed 4–10–19; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 84, No. 70

Thursday, April 11, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0061]

Notice of Availability of Proposed Changes to the National Poultry Improvement Plan Program Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that proposed changes to the National Poultry Improvement Plan Program Standards are available for review and comment.

DATES: We will consider all comments that we receive on or before May 13, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0061.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0061, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The proposed standards and any comments we receive may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0061* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Denise Heard, DVM, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496; email: *npip@usda.gov.*

SUPPLEMENTARY INFORMATION: The National Poultry Improvement Plan (NPIP), also referred to below as ''the Plan,'' is a cooperative Federal-State-Industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs.

The Plan identifies States, flocks, hatcheries, dealers, and slaughter plants that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of certain diseases or that has been produced under disease-prevention conditions.

The regulations in 9 CFR parts 56, 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

In the past, APHIS has updated the regulations once every 2 years, following the Biennial Plan Conference of the NPIP General Conference Committee. The NPIP General Conference Committee advises the Secretary on poultry health and represents cooperating State agencies and poultry industry members. During its meetings and Biennial Conferences, the Committee discusses significant poultry health issues and makes recommendations to improve the NPIP.

However, while changes in diagnostic science, testing technology, and best practices for maintaining sanitation are continual, the rulemaking process can be lengthy. As a result, the regulations have, at times, become outdated. To remedy this problem, we determined that we needed a more flexible process for amending provisions of the Plan. On July 9, 2014, we published in the **Federal Register** (79 FR 38752–38768, Docket No. APHIS–2011–0101) a final rule [1] that, among other things, amended the regulations by removing tests and detailed testing procedures, as well as sanitation procedures, from part 147, and making these available in an NPIP Program Standards document. The rule also amended the regulations to provide for the Program Standards document to be updated through the issuance of a notice in the **Federal Register** followed by a period of public comment. The latter change was intended to enable us to make the NPIP program more effective by allowing Plan provision updates without the need for rulemaking.

We are advising the public that we have prepared updates to the NPIP Program Standards document. The proposed updates would amend the standards by:

- Adding and amending definitions of H5/H7 low pathogenicity avian influenza (LPAI) (exposed) and H5/H7 LPAI (infected);
- Clarifying and amending the testing protocol for *Mycoplasma;*
- Allowing use of molecular-based examination procedures to screen for *Mycoplasma;*
- Removing specific agar gel immunodiffusion Avian Influenza testing procedures with directions to use the current National Veterinary Services Laboratories protocol;
- Amending and clarifying salmonella isolation procedures;
- Updating and clarifying bacteriological examination procedures for cull chicks and poults for salmonella;
- Adding a new salmonella diagnostic test kit;
- Removing outdated testing procedures for the sanitation monitored program;
- Updating and clarifying hatching egg and hatchery sanitation requirements;
- Updating and clarifying flock sanitation procedures;
- Updating and clarifying cleaning and disinfecting procedures;
- Adding new dealer sanitation requirements;
- Updating and clarifying compartmentalization language as well as amending and clarifying audit guidelines and checklists; and

[1] To view the final rule and related documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0101.*

• Adding Newcastle disease virus compartmentalization physical requirements for an egg depot receiving/shipping dock.

After reviewing any comments we receive on the proposed updates, we will publish a second notice in the **Federal Register** announcing our decision regarding the proposed changes.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements included in this notice will be approved by the Office of Management and Budget (OMB) under OMB control number 0579–0007.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 5th day of April 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–07214 Filed 4–10–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Create a New Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new survey. The Irrigation Organizations Survey will be conducted in early 2020 referencing 2019 as the target year. A similar survey was last conducted by the U.S. Census Bureau in 1978. The new survey supports the call for Federal research and data on drought resiliency under the National Drought Resilience Partnership (NDRP) initiative, providing valuable input to Federal agencies and other stakeholders involved in resource assessment, conservation, and analysis. This survey will be conducted through a cooperative agreement between the USDA National Agricultural Statistics Service (NASS) and the Economic Research Service (ERS).

DATES: Comments on this notice must be received by June 10, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–NEW, by any of the following methods:

• *Email: ombofficer@nass.usda.gov.* Include the docket number above in the subject line of the message.

• *E-fax:* (855) 838–6382.

• *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202)690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 2019 Irrigation Organizations Survey.

OMB Control Number: 0535–NEW.

Expiration Date of Previous Approval: None.

Type of Request: Intent to Seek Approval to create a New Information Collection.

Abstract: The 2019 Irrigation Operations Survey will be conducted through a cooperative agreement between the USDA National Agricultural Statistics Service (NASS) and the Economic Research Service (ERS). This agreement is for the development and implementation of a survey of irrigation organizations—defined to include irrigation districts and other entities that supply water (primarily surface water) directly to agricultural users, as well as groundwater management districts that may influence the supply of groundwater for irrigation. While NASS regularly surveys agricultural producers who irrigate every five years through the Irrigation and Water Management Surveys (formerly called the Farm and Ranch Irrigation Survey), the last census of irrigation organizations was conducted in 1978 by the U.S. Census Bureau. The sector has undergone substantial change in the past forty years, with consolidation in surface water organizations, particularly among ditch companies, and many new organizations overseeing groundwater access. A new survey of irrigation organizations would collect local, district-scale information, including the adoption of alternative types of water allocation institutions and conservation policies that impact farm-level drought resilience and adaptation to long-run water scarcity. The work supports the call for Federal research and data on drought resiliency under the National Drought Resilience Partnership (NDRP) initiative, providing valuable input to Federal agencies and other stakeholders involved in resource assessment, conservation, and analysis. The development of this important economic agricultural database serves the best interest of USDA, the agricultural community, and the Nation.

The project develops a nationally representative survey of irrigation water-supply management organizations. Data collected through the survey would include information compiled under the 1978 Census—such as organizational and governance structure, land area and farms, storage and conveyance facilities and services, water volumes by source, and costs and revenues. Additional data collected would involve water allocation institutions and drought mitigation measures. The survey of irrigation organizations would extend the scope of organizations to encompass groundwater management districts. The survey questionnaire would be developed by NASS and ERS, with input from Federal agency partners and other stakeholders.

Authority: A foundation for coordinated action on climate change preparedness and resilience across the Federal Government was established by Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance), and the Interagency Climate Change Adaptation Task Force led by the Council on Environmental Quality (CEQ), the Office of Science and Technology Policy (OSTP), and the National Oceanic and Atmospheric Administration (NOAA). In addition,

through the U.S. Global Change Research Program (USGCRP), established by section 103 of the Global Change Research Act of 1990 (15 U.S.C. 2933), and agency programs and activities, the Federal Government will continue to support scientific research, observational capabilities, and assessments necessary to improve our understanding of and response to climate change and its impacts on the Nation.

Individually identifiable data that will be collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees respondents that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only aggregate data. These data are used by Congress when developing or changing farm programs. Many national and state programs are designed or allocated based on census data, *i.e.,* soil conservation projects, funds for cooperative extension programs, and research funding. Private industry uses the data to provide more effective production and distribution systems for the agricultural community.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes per response. Publicity materials and instruction sheets will account for about 5 minutes of additional burden per respondent. Respondents who refuse to complete the survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Water district managers and other entities that provide irrigation water to farmers.

Estimated Number of Respondents: 8,000.

Estimated Total Annual Burden on Respondents: 6,000 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods; and (e) comments relating to the proposed name change.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 26, 2019.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2019–07218 Filed 4–10–19; 8:45 am]

BILLING CODE 3410–20–P

ARCTIC RESEARCH COMMISSION

Notice of 111th Commission Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 111th meeting in Anchorage, AK, on May 8, 2019. The business sessions, open to the public, will convene at 10:00 a.m. at the Hotel Captain Cook, 939 W 5th Ave., Anchorage, AK 99501.

The Agenda items include:

(1) Call to order and approval of the agenda
(2) Approval of the minutes from the 110th meeting
(3) Commissioners and staff reports
(4) Discussion and presentations concerning Arctic research activities

The meeting will focus on reports and updates relating to programs and research projects affecting Alaska and the greater Arctic.

The Arctic Research and Policy Act of 1984 (Title I Pub. L. 98–373) and the Presidential Executive Order on Arctic Research (Executive Order 12501) dated January 28, 1985, established the United States Arctic Research Commission.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: Kathy Farrow, Communications Specialist, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Dated: April 5, 2019.

Kathy Farrow,

Communications Specialist.

[FR Doc. 2019–07162 Filed 4–10–19; 8:45 am]

BILLING CODE 7555–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Minnesota Advisory Committee (Committee) to the Commission will be held at 12 p.m. CDT Wednesday April 24, 2019 to discuss civil rights concerns in the State.

DATES: The meeting will be held on Wednesday April 24, 2019, at 12 p.m. CDT. Public Call Information: Dial: 1–877–260–1479; Conference ID: 5511250.

FOR FURTHER INFORMATION CONTACT: Carolyn Allen at *callen@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the U.S. Commission on Civil Rights, Regional Programs Unit, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may be faxed to the Commission at (312) 353–8324, or

emailed Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting on the Federal Advisory Committee database (*facadatabase.gov*), under the Minnesota Advisory Committee link. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Approval of Minutes
III. Discussion: Racial Trauma and Civil Rights
IV. Public Comment
V. Next Steps
VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: April 8, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–07219 Filed 4–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

RIN 0690–ZA03

Request for Information on Commercial Capabilities in Space Situational Awareness Data and Space Traffic Management Services

AGENCY: Office of Space Commerce, U.S. Department of Commerce, National Oceanic and Atmospheric Administration.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of Commerce (Department), via the Office of Space Commerce, seeks information from interested parties on: Specific capabilities commercial entities might currently and in the future provide through an open architecture data repository to the public to enhance the space situational awareness (SSA) data and the space traffic management (STM) services the U.S. government currently provides; SSA, STM, and orbital debris mitigation best practices; and perspectives on the appropriate regulatory structures the Department should adopt to drive the development and responsible use of such SSA and STM enhancements in order to protect national interests and further encourage U.S. commercial space investment.

DATES: Submit written comments on or before May 13, 2019.

ADDRESSES: The public may submit written comments on issues addressed in this Notice by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=DOC-2019-0001,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Patrick Sullivan, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 53027, Washington, DC 20230.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by the Department. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. The Department will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Patrick Sullivan, Office of Space Commerce, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 53027, Washington, DC 20230; *Psullivan@doc.gov;* (202) 482–6167. Please direct media inquiries to Office of Public Affairs; via email to: *publicaffairs@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Leveraging Commercial Innovation To Enhance Existing Federal SSA/STM Data

The President and the Secretary of Commerce (Secretary) have taken significant steps to ensure that the U.S. continues to lead the world in innovation and economic prosperity from space operations, research, and communications. On February 21, 2018, in accordance with prior law and practice, the National Space Council recommended that the President make the Department of Commerce (Department) responsible for a variety of commercial space regulatory functions.[1] Similarly, the President recognized that the U.S. ''must set priorities for space situational awareness (SSA) and [space traffic management (STM)] innovation in science and technology (S&T), incorporate national security considerations, encourage growth of the U.S. commercial space sector, establish an updated STM architecture, and promote space safety standards and best practices across the international community'' and placed responsibility for addressing commercial SSA and STM services upon the Department.[2] Nongovernmental SSA solutions are being developed that could significantly improve, beyond the current provisioning of SSA data and limited STM services by the Federal government, the ability to detect and characterize space objects and these improvements could further enhance integration of SSA and STM cooperation between US government and non-governmental space operators.

Reflective of these commercial innovations, on June 18, 2018, the President issued Space Policy Directive–3, the National Space Traffic Management Policy (SPD–3), charging the Department to take significant actions regarding commercial SSA and STM services.[3] While recognizing that U.S. citizens, businesses, and national interests depend heavily on space technologies and space-based capabilities, the President made clear that the increasing congestion in space threatens both current uses of space and future investments to grow the space economy.[4] For the purposes of this RFI, both SSA and STM are defined in Section 2 of SPD–3.[5]

[1] *See* Record of Decision, National Space Council, NSpC ROD–2018–01 (Feb. 21, 2018), 5.

[2] *See* Space Policy Directive–3, National Space Traffic Management Policy, 83 FR 28969 (Jun. 21, 2018) (SPD–3).

[3] *See id.*

[4] *See* id. at 28969.

[5] See id. at 28970 (defining SSA as ''the knowledge and characterization of space objects

Continued

The President acknowledged the critical existing SSA and STM function the Department of Defense currently provides: ''Already, the Department of Defense (DoD) tracks over 20,000 objects in space, and that number will increase dramatically as new, more capable sensors come online and are able to detect smaller objects. DoD publishes a catalog of space objects and makes notifications of potential conjunctions (that is, two or more objects coming together at the same or nearly the same point in time and space).'' [6] The President stated that, pursuant to 10 U.S.C. 2274, a basic level of SSA data in the form of the publicly releasable portion of the DoD catalog is, and should continue to be, provided free of direct user fees.[7] The President directed the Secretary and the Secretary of Defense, in coordination with the Secretary of State and the Secretary of Transportation, the NASA Administrator, and the Director of National Intelligence, to develop a plan for providing basic SSA data and basic STM services either directly or through a partnership with industry or academia.[8]

However, the President cautioned that the bounds of current Federal capabilities are tested by the dramatic increase in commercial space activity: ''As the number of space objects increases, however, this limited traffic management activity and architecture will become inadequate. At the same time, the contested nature of space is increasing the demand for DoD focus on protecting and defending U.S. space assets and interest.'' [9] The President also emphasized the need to partner with private industry to ''develop a new approach to [STM] that addresses current and future operational risks'' and ''set priorities for [SSA] and STM innovation in science and technology (S&T), incorporate national security considerations, encourage growth of the U.S. commercial space sector, establish an updated STM architecture, and promote space safety standards and best practices across the international community.'' [10]

The President specifically noted the promise commercial innovation holds for enhanced SSA and STM: ''As additional sources of space tracking data become available, the United States has the opportunity to incorporate civil, commercial, international, and other available data to allow users to enhance and refine this service.'' [11] To realize this promise, the President directed the Department and other Federal agencies to develop a number of initiatives that will leverage publicly available SSA and STM data, spur commercial development and use of enhanced SSA/STM data, and develop procedures and regulations, if necessary, to protect national security and U.S commercial assets in space. The President established the following goals that the Department and other agencies must realize pursuant to his directive:

(a) Advance SSA and STM Science and Technology (S&T);

(b) Mitigate the effect of orbital debris on space activities;

(c) Encourage and facilitate U.S. commercial leadership in S&T, SSA, and STM;

(d) Provide U.S. government-supported basic SSA data and basic STM services to the public;

(e) Develop STM standards and best practices;

(f) Prevent unintentional radio frequency (RF) interference;

(g) Improve the U.S. domestic space object registry; and

(h) Develop policies and regulations for future U.S. orbital operations.[12]

In order to meet the goals related to leveraging non-governmental SSA and STM capabilities, the Department issues this Notice seeking stakeholder insight. The insight obtained from this Notice will drive the Department's efforts to make basic and enhanced SSA data and STM services available to the public and develop standards for responsible commercial use of STM and SSA data to protect national security and commercial space investments.

II. Request for Comment

A. Commercial Enhanced SSA/STM Capabilities

The President required the Department to develop the standards and protocols for creation of an open architecture SSA/STM data repository to facilitate greater data sharing with satellite operators and enable the commercial development of enhanced space safety services. The repository must include:

(1) Data integrity measures to ensure data accuracy and availability;

(2) Data standards to ensure sufficient quality from diverse sources;

(3) Measures to safeguard proprietary or sensitive data, including national security information;

(4) The inclusion of satellite owner-operator ephemerides to inform orbital location and planned maneuvers; and

(5) Standardized formats to enable development of applications to leverage the data.[13]

To facilitate the development of this open architecture data repository, the Department seeks public input on key aspects of current and future non-governmental SSA and STM products, technologies, and approaches that will enhance current publicly available SSA data and STM services. Specifically, the Department seeks information on:

(1) In the context of SPD–3, [14] what specific capabilities could commercial entities currently provide through an open architecture data repository to enhance the limited STM services and SSA data the U.S. government provides to the public? These capabilities can include, but not are not limited to, developments in sensing, analytics, visualization, data sharing, and data management.

(2) How will those commercial capabilities, servicing both government-sponsored and non-government-sponsored activities change in the next 10 years, and what emerging commercial capabilities will develop in that time?

(3) What attributes of an open architecture STM/SSA data repository are essential to providing accurate data to mitigate risk of collision and enable SSA and STM services?

(4) What service-oriented open architecture data repository models and examples should guide the Department as it develops the open architecture SSA/STM data repository? These models and examples should highlight maximum use and exploration across sensitive, multidimensional data sources and tools while protecting any sensitivity of these data.

(5) What STM-related incentives, such as regulatory approaches to orbital debris mitigation, will encourage industry to make America their flag of choice for commercial space activities?

and their operational environment to support safe, stable, and sustainable space activities'' and STM as the planning, coordination, and on-orbit synchronization of activities to enhance the safety, stability, and sustainability of operations in the space environment.''

[6] *See* id. at 28969.

[7] *See* id.

[8] Id. at 28975.

[9] Id. at 28969.

[10] Id.

[11] Id. at 28972.

[12] *See* id. at 28973.

[13] *See* id.

[14] The Department acknowledges that, in 2016, the Federal Aviation Administration (FAA) released a report on commercial STM and SSA data, titled: ''Evaluating Options for Civil Space Situational Awareness (SSA)''. The report can be found at *https://www.ida.org/idamedia/Corporate/Files/Publications/STPIPubs/2016/P-8038.pdf*. The Department appreciates the FAA's work on this report and will collaborate further with the FAA to complement stakeholder's input into this inquiry with this report's relevant findings.

(6) What actions will strengthen partnerships in effective development of SSA and STM services?

B. STM, SSA, and Orbital Debris Mitigation Best Practices

The President made clear that, alone, the SSA/STM open architecture data repository will not sufficiently protect U.S. national and commercial interests in space; minimum safety standards and best practices must be adopted in the United States and globally to utilize SSA/STM data to mitigate risk of collision and address the growing orbital debris issue threatening current and future space operation. The President directed the Department to lead a global effort to develop minimum safety standards and best practices that promote safe and responsible behavior in space.[15] Already, the Department is considering national and international activities, such as those under development in the International Organization for Standardization (ISO) and the Consultative Committee for Space Data Systems (CCSDS).

To develop these space traffic standards and best practices, the Department seeks information on:

(1) In the context of enhanced SSA/STM data, what best practices, technical guidelines, minimum safety standards, behavioral norms, and orbital deconfliction protocols should be adopted by the United States? Of these, are there any that should only be adopted in the United States if they are also adopted globally? If globally, what is the appropriate forum for such adoption?

(2) What pre-launch and on-orbit collision avoidance support services or technologies exist that will mitigate risk of collision, and improve situational awareness, and how should they be incorporated into best practices?

(3) What U.S. actions might incentivize global adherence to SSA/STM standards and compliance with space treaty obligations?

(4) What research methods for tracking whether international commercial entities are implementing such standards and best practices will assist in facilitating global adoption of a standards set of SSA/STM best practices?

C. Appropriate SSA/STM-Related Regulations To Spur U.S. Space Commerce

In coalescing his SSA/STM directives into specific agency actions, the President required the Secretaries of Defense, Commerce, and Transportation, in coordination with the Secretary of State, the NASA Administrator, and the Director of National Intelligence, to regularly evaluate emerging trends in space missions and recommend revisions, as appropriate and necessary, to existing SSA and STM policies and regulations.[16]

The Department is actively engaged internally and in coordination with other agencies to assess how existing regulations related to STA/SSM and orbital debris mitigation are working and what changes are needed to implement the President's Space Policy Directives. To further inform Department regarding the policies or regulations needed to protect Federal and commercial space interests and enable significant growth in U.S. space commerce investment, the Department seeks information on:

(1) What existing policies and regulations, across agencies, positively and negatively enhance SSA/STM use and related orbital debris mitigation?[17]

(2) How do such existing policies and regulations encourage U.S. and allied space commerce investment, and how should they be revised?

(3) What emerging trends in space missions and proposed commercial spaceflight activity, including spacecraft safety standards, protection requirements, satellite tracking standards, and satellite control standards, impact existing and future SSA and STM policies and regulations? How should these trends drive revision to those policies and regulations?

(4) How can the proper regulatory environment drive a space activity insurance market that encourages investment?

(5) What, if anything, should the Federal government do to encourage insurance parameters for space activities that will encourage responsible space activities and make the U.S. the flag of choice for leading space innovators?

(6) Are there any other policies or regulations that the Department should consider in the context of SSA, STM, and orbital debris mitigation in order to promote the United States as the flag of choice for space commerce?

(7) What specific capabilities and technologies could commercial entities provide to characterize the small, millimeter-sized orbital debris population to improve the orbital debris impact risk assessments to support the development and implementation of cost-effective protective measures for the safe operations of future space missions?

III. Request for Public Comment and Ex Parte Communications

The Department invites public comment on any and all issues identified in this Notice. Any non-public oral presentation to the Department regarding the substance of this Notice will be considered an ex parte presentation, and the substance of the meeting will be placed on the public record and become part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum to OSC summarizing the substance of the communication and attaching any documents presented in the meeting. The Department reserves the right to supplement the memorandum with additional information as necessary, or to request that the party making the filing do so, if the Department believes that important information was omitted or characterized incorrectly. Any written presentation provided in support of the oral communication or meeting will also be placed on the public record and become part of this docket. Such ex parte communications must be submitted to this docket as provided in the **ADDRESSES** section above and clearly labeled as an ex parte presentation. Federal entities are not subject to these procedures.

Kevin O'Connell,

Director, Office of Space Commerce, U.S. Department of Commerce.

[FR Doc. 2019–07169 Filed 4–8–19; 11:15 am]

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[15] *See* id. at 28970.

[16] *See* id. at 28976.

[17] To the extent commenters discuss any existing or proposed regulations of another agency, the Department will provide those comments to the agency referenced.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–824]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of laminated woven sacks (LWS) from the Socialist Republic of Vietnam (Vietnam) during the period of investigation (POI),

January 1, 2017, through December 31, 2017.

DATES: Applicable April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Ariela Garvett, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–3609, respectively.

SUPPLEMENTARY INFORMATION:

Background

This final determination is made in accordance with section 705 of the Tariff Act of 1930, as amended (the Act). Commerce published the Preliminary Determination on August 13, 2018.[1] In the Preliminary Determination, Commerce aligned the final countervailing duty (CVD) determination with the final determination in the companion antidumping duty (AD) investigation, in accordance with section 705(a)(1) of the Tariff Act of 1930 (the Act) and 19 CFR 351.210(b)(4). Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[2] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the final determination is now April 4, 2019.

For a complete description of the events that followed the Preliminary Determination, see the Issues and Decision Memorandum.[3] A list of topics discussed in the Issues and Decision Memorandum is included as Appendix II to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decisions Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are laminated woven sacks from Vietnam. For a full description of the scope of this investigation, see the ''Scope of the Investigation,'' at Appendix I.

Scope Comments

During the course of this investigation and the concurrent AD investigation of LWS from Vietnam, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments.[4] In response to Commerce's invitation to comment on its preliminary scope determination, Commerce received scope comments from Halsted Corporation (Halsted),[5] and rebuttal comments from the petitioners.[6] However, Commerce rejected Halsted's scope comments because they contained untimely filed new factual information.[7] Because Halsted's scope comments have been removed from the record of these investigations and Halsted did not file a redacted version of its scope comments within the deadline allotted by Commerce, Halsted's comments have not been considered in these investigations.[8] Furthermore, because the petitioners' rebuttal comments respond to Halsted's comments, which have been removed from the record of these investigations, Commerce has not considered the petitioners' comments. Therefore, Commerce has made no changes to the scope of these investigations since the *Preliminary Determination*.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] For a full description of the methodology underlying our final determination, see the Issues and Decision Memorandum.

In making these findings, Commerce, in part, selected from among the facts otherwise available and, because it determined that one or more interested parties did not act to the best of their ability to respond to Commerce's requests for information, Commerce used an adverse inference where appropriate in selecting from among the facts otherwise available.[10] For further information, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from the interested parties and our findings at verification, we made certain changes to the respondents'' subsidy rate calculations. For a discussion of these changes, see the Issues and Decision Memorandum.

[1] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 39983 (August 13, 2018) (*Preliminary Determination*).

[2] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Scope Determination,'' dated October 3, 2018 (Preliminary Scope Decision Memorandum).

[5] *See* Letter from Halstead, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Rejection of Untimely Filed Factual Information,'' dated December 12, 2018 (rejecting Halsted Corporation's November 13, 2018 scope brief).

[6] *See* Letter from Petitioners, ''Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam: Petitioners'' Rebuttal Scope Brief,'' dated November 19, 2018.

[7] *See* Letter from Commerce, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Rejection of Untimely Filed Factual Information,'' dated December 12, 2018; *see also* Letter from Halstead, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Request for Withdrawal of Scope Comments,'' dated February 8, 2019.

[8] *Id.*

[9] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[10] *See* sections 776(a), (b), and 782(d) of the Act.

Final Determination

In accordance with section 705(c)(l)(B)(i)(I) of the Act, we calculated a rate for Duong Vinh Hoa Packaging Company Limited (DVH Packaging), a producer/exporter of subject merchandise selected for individual examination in this investigation. With regard to Xinsheng Plastic Industry Co. Ltd. (Xinsheng), for the reasons described in the Issues and Decision Memorandum, Commerce assigned a rate based entirely on adverse facts available pursuant to section 776 of the Act.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. DVH Packaging is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis* , or based entirely on facts otherwise available. Therefore, for purposes of determining the ''all-others'' rate, and pursuant to section 705(c)(5)(A) of the Act, we are using the subsidy rate calculated for DVH Packaging.

Commerce determines the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Duong Vinh Hoa Packaging Company Limited	3.02
Xinsheng Plastic Industry Co. Ltd	198.87
All-Others	3.02

Disclosure

We intend to disclose the calculations performed to parties in this proceeding, for this final determination, within five days of the date of publication of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our affirmative Preliminary Determination and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of any entries of merchandise under consideration from Vietnam that were entered, or withdrawn from warehouse, for consumption on or after August 13, 2018, which is the publication date in the **Federal Register** of the Preliminary Determination. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after December 11, 2018, but to continue the suspension of liquidation of all entries from August 13, 2018, through December 10, 2018.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of the final affirmative determination of countervailable subsidies are being provided to producers and exporters of LWS from Vietnam. Because Commerce's final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of LWS from Vietnam no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: April 4, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP), polyester (PET), polyethylene (PE), nylon, or any film suitable for printing, or to an exterior ply of paper; printed; displaying, containing, or comprising three or more visible colors (*e.g.,* laminated woven sacks printed with three different shades of blue would be covered by the scope), not including the color of the woven fabric; regardless of the type of printing process used; with or without lining; with or without handles; with or without special closing features (including, but not limited to, closures that are sewn, glued, easy-open (*e.g.,* tape or thread), re-closable (*e.g.,* slider, hook and loop, zipper), hot-welded, adhesive-welded, or press-to-close); whether finished or unfinished (*e.g.,* whether or not closed on one end and whether or not in roll form, including, but not limited to, sheets, lay-flat, or formed in tubes); not exceeding one kilogram in actual weight. Laminated woven sacks produced in the Socialist Republic of Vietnam are subject to the scope regardless of the country of origin of the fabric used to make the sack.

The scope of this investigation excludes laminated woven sacks having each of the following physical characteristics: (1) No side greater than 24 inches, (2) weight less than 100 grams, (3) an open top that is neither sealable nor closable, the rim of which is hemmed or sewn around the entire circumference, (4) carry handles sewn on the open end, (5) side gussets, and (6) either a bottom gusset or a square or rectangular bottom. The excluded items with the above-mentioned physical characteristics may be referred to as reusable shopping bags.

Subject laminated woven sacks are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0040 and 6305.33.0080. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including, but not limited to, sheets, lay-flat tubing, and sleeves), laminated woven sacks may be

classifiable under other HTSUS subheadings, including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500,4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. List of Issues
III. Background
IV. Scope Comments
V. Scope of the Investigation
VI. Subsidies Valuation Information
VII. Benchmarks and Interest Rates
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Analysis of Programs
X. Analysis of Comments
XI. Recommendation

[FR Doc. 2019–07197 Filed 4–10–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–911]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the countervailing duty order on circular welded carbon quality steel pipe (CWP) from the People's Republic of China (China) for the period of review (POR) January 1, 2017, through December 31, 2017.

DATES: Applicable April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Darla Brown, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1791.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2018, Commerce published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the countervailing duty (CVD) order [1] on circular welded carbon quality steel pipe from China for the POR.[2]

On July 31, 2018, Commerce received timely requests from the petitioners [3] and from Zekelman Industries (Zekelman), a domestic interested party, to conduct an administrative review of the *CVD Order*.[4]

On September 10, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of initiation of an administrative review of the *CVD Order*.[5] The administrative review was initiated with respect to 128 companies, covering the POR January 1, 2017, through December 31, 2017.

On September 25, 2018, Commerce placed on the record information obtained from U.S. Customs and Border Protection (CBP) indicating that there were no reviewable entries of subject merchandise exported by the companies subject to this administrative review during the POR.[6] On October 17, 2018, Zekelman withdrew its request for review in its entirety.[7]

On November 15, 2018, the petitioners submitted comments regarding alleged discrepancies in the import data on the record.[8] Specifically, the petitioners claim that, although the results of the CBP data query do not provide evidence of reviewable entries of subject merchandise during the POR, data from a third-party subscription service that the petitioners placed on the record purportedly show that there were substantial imports of CWP from China during the POR. The petitioners argue that this record information suggests that companies under review could be evading the order by misreporting entry types, and the petitioners urge Commerce to obtain CBP entry documents with respect to the entries of CWP for a subset of 27 companies under review, to determine whether these companies misclassified subject merchandise entries as non-subject merchandise entries.[9] In their submission, the petitioners identified 27 of the 128 companies for which Commerce initiated this review which they believe produced and/or exported CWP during the POR.

On February 27, 2019, Commerce placed on the record POR entry data from Datamyne, a public data source, for the 27 companies identified by the petitioners in their November 15, 2018, submission.[10] We invited parties to comment on these data and received timely comments from the petitioners.[11] In their comments, the petitioners reiterate their concerns that Chinese producers and/or exporters of CWP may be attempting to evade the order by misrepresenting entries.[12]

Rescission of Review

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[13] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period. *See* 19 CFR 351.212(b)(2). Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated countervailing duty assessment rate calculated for the review period.[14] Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR for any of the 128 companies named in our initiation notice, we are now rescinding

[1] *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 73 FR 42545 (July 22, 2008) (*CVD Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 31121 (July 3, 2018).

[3] The petitioners in this proceeding are Independence Tube Corporation and Southland Tube, Incorporated.

[4] *See* Letter from Petitioners, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Request for Administrative Review,'' dated July 31, 2018. *See also* Letter from Zekelman, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Request for Administrative Review,'' dated July 31, 2018.

[5] *See Initiation of Countervailing and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 10, 2018).

[6] *See* Memorandum to the File, ''Release of Customs Entry Data from U.S. Customs and Border Protection (CBP),'' dated September 25, 2018.

[7] *See* Letter from Zekelman, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated October 17, 2018.

[8] *See* Letter from Petitioners, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Comments on Import Data,'' dated November 15, 2018 (Petitioners' November 15 Letter).

[9] *Id.* at 8–10.

[10] *See* Memorandum to the file, ''Release of Datamyne Data,'' dated February 27, 2019.

[11] *See* Letter from Petitioners, ''Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Comments on Release of Datamyne Data,'' dated March 6, 2019.

[12] *Id.* at 6–7.

[13] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017).

[14] *See* 19 CFR 351.213(d)(3).

this administrative review in accordance with 19 CFR 351.213(d)(3).

Furthermore, in response to the petitioners' claim that companies under review could be evading the *CVD Order* by misreporting entry types, this is a matter within the jurisdiction of CBP, and, hence, any determination as to whether entries have been misclassified must be made by that agency. In light of that, Commerce intends to provide CBP with the petitioners' allegations and relevant documentation from this record.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: April 5, 2019.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–07196 Filed 4–10–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–823]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of laminated woven sacks (LWS) from the Socialist Republic of Vietnam (Vietnam) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2017, through December 31, 2017.

DATES: Applicable April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Celeste Chen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4406 or (202) 482–0890, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* and invited interested parties to comment.[1] On October 23, 2018, Commerce postponed the final determination of this investigation until February 25, 2019.[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the final determination is now April 4, 2019. A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum that is dated concurrently with this determination and hereby adopted by this notice.[4]

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation is July 1, 2017, through December 31, 2017.

Scope of the Investigation

The products covered by this investigation are laminated woven sacks from Vietnam. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' at Appendix I.

Scope Comments

During the course of this investigation and the concurrent countervailing duty (CVD) investigation of LWS from Vietnam, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments.[5] In response to Commerce's invitation to comment on its preliminary scope determination, Commerce received scope comments from Halsted Corporation (Halsted),[6] and rebuttal comments from the petitioners.[7] However, Commerce rejected Halsted's scope comments because they contained untimely filed new factual information.[8] Because Halsted's scope comments have been removed from the record of these investigations and Halsted did not file a redacted version of its scope comments within the deadline allotted by Commerce, Halsted's comments have not been considered in these investigations.[9] Furthermore, because

[1] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 51436 (October 11, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Postponement of Final Determination of Sales at Less Than Fair Value Investigation,* 83 FR 53452 (October 23, 2018).

[3] *See* memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Laminated Woven Sacks from the Socialist Republic of Vietnam,'' (Issues and Decision Memorandum).

[5] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Preliminary Scope Determination,'' dated October 3, 2018 (Preliminary Scope Decision Memorandum).

[6] *See* Letter, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Rejection of Untimely Filed Factual Information,'' dated December 12, 2018 (rejecting Halsted Corporation's November 13, 2018 scope brief).

[7] *See* Petitioners' Letter, ''Investigation of Laminated Woven Sacks from the Socialist Republic of Vietnam: Petitioners' Rebuttal Scope Brief,'' dated November 19, 2018.

[8] *See* Letter, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Rejection of Untimely Filed Factual Information,'' dated December 12, 2018. *See also* Letter, ''Antidumping and Countervailing Duty Investigations of Laminated Woven Sacks from the Socialist Republic of Vietnam: Request for Withdrawal of Scope Comments,'' dated February 8, 2019.

[9] *Id.*

the petitioners' rebuttal comments respond to Halsted's comments, which have been removed from the record of these investigations, Commerce has not considered the petitioners' comments. Therefore, Commerce has made no changes to the scope of these investigations since the *Preliminary Determination.*

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce verified the sales and factors of production data reported by Duong Vinh Hoa Packaging Company Limited (DVH Packaging) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

For the final determination Commerce continues to rely upon facts otherwise available, with adverse inferences (AFA), for the Vietnam-wide entity, which includes Xinsheng Plastic Industry Co., Ltd. (Xinsheng Plastic) a mandatory respondent, pursuant to sections 776(a) and (b) of the Act.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for DVH Packaging since the Preliminary Determination. For a discussion of these changes, see the Issues and Decision Memorandum.

Separate Rates

For the final determination, we continue to find that four exporters are entitled to a separate rate, as noted below. In the *Preliminary Determination,* we assigned, as the separate rate, the margin calculated for DVH Packaging, the sole mandatory respondent for which we preliminarily calculated an estimated weighted-average dumping margin, consistent with our practice.[10] For the final determination, we continue to assign the estimated weighted-average dumping margin calculated for DVH Packaging to the exporters that are entitled to a separate rate.

Vietnam-Wide Entity

For the final determination, we continue to find that the Vietnam-wide entity, which includes certain Vietnamese exporters and/or producers that did not respond to Commerce's requests for information, failed to provide necessary information, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. We also continue to find that the Vietnam-wide entity failed to cooperate. As a result, we continue to determine for the Vietnam-wide entity an estimated weighted-average dumping margin on the basis of AFA pursuant to section 776(b) of the Act. In the *Preliminary Determination,* Commerce based the AFA rate for the Vietnam-wide entity on the petition margin of 292.61 percent.[11] For this final determination, we continue to rely on AFA in determining the rate for the Vietnam-wide entity and, as AFA, we continue to select the petition margin of 292.61 percent as the estimated weighted-average dumping margin for the Vietnam-wide entity (including Xinsheng Plastic), as corroborated in the *Preliminary Determination.*

Combination Rates

In the *Initiation Notice,*[12] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[13]

Final Determination

The finalestimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Duong Vinh Hoa Packaging Company Limited	Duong Vinh Hoa Packaging Company Limited	109.46	108.33
C.P. Packaging (Vietnam) Industry Co., Ltd	C.P. Packaging (Vietnam) Industry Co., Ltd	109.46	108.33
Tan Dai Hung d.b.a. Tan Dai Hung Joint Stock Co. and Tan Dai Hung Plastic Joint Stock Company.	Tan Dai Hung d.b.a. Tan Dai Hung Joint Stock Co. and Tan Dai Hung Plastic Joint Stock Company.	109.46	108.33
TKMB Joint Stock Company	TKMB Joint Stock Company	109.46	108.33
Trung Dong Corporation	Trung Dong Corporation	109.46	108.33
Vietnam-wide entity[14]		292.61	291.48

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of LWS from Vietnam, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after October 11, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.* Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of

[10] *See Preliminary Determination,* 83 FR 51436 and accompanying PDM at 11–18.

[11] *Id.* at 51437 and accompanying PDM at 17–18.

[12] *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 14257 (April 3, 2018) (*Initiation Notice*).

[13] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[14] The Vietnam-wide entity includes Xinsheng Plastic Industry Co., Ltd.

Vietnamese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the Vietnam-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Vietnamese producer/exporter combination (or the Vietnam-wide entity) that supplied that third-country exporter. Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding when the CVD measures are in effect. Accordingly, where Commerce made an affirmative determination for countervailable subsidies that are export contingent,[15] Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate(s). Any such adjusted cash deposit rates may be found in the ''Final Determination Margin'' section, above. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of LWS, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: April 4, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (BOPP), polyester (PET), polyethylene (PE), nylon, or any film suitable for printing, or to an exterior ply of paper; printed; displaying, containing, or comprising three or more visible colors (*e.g.,* laminated woven sacks printed with three different shades of blue would be covered by the scope), not including the color of the woven fabric; regardless of the type of printing process used; with or without lining; with or without handles; with or without special closing features (including, but not limited to, closures that are sewn, glued, easy-open (*e.g.,* tape or thread), re-closable (*e.g.,* slider, hook and loop, zipper), hot-welded, adhesive-welded, or press- to-close); whether finished or unfinished (*e.g.,* whether or not closed on one end and whether or not in roll form, including, but not limited to, sheets, lay-flat, or formed in tubes); not exceeding one kilogram in actual weight. Laminated woven sacks produced in the Socialist Republic of Vietnam are subject to the scope regardless of the country of origin of the fabric used to make the sack.

The scope of this investigation excludes laminated woven sacks having each of the following physical characteristics: (1) No side greater than 24 inches, (2) weight less than 100 grams, (3) an open top that is neither sealable nor closable, the rim of which is hemmed or sewn around the entire circumference, (4) carry handles sewn on the open end, (5) side gussets, and (6) either a bottom gusset or a square or rectangular bottom. The excluded items with the above-mentioned physical characteristics may be referred to as reusable shopping bags.

Subject laminated woven sacks are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0040 and 6305.33.0080. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including, but not limited to, sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings, including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500,4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Changes from the Preliminary Determination
IV. Discussion of the Issues
  Comment 1: Surrogate Value for Colored Ink
  Comment 2: Financial Statements Used to Value Overhead; Selling, General and Administrative Expenses; and Profit
V. Recommendation

[FR Doc. 2019–07198 Filed 4–10–19; 8:45 am]

BILLING CODE 3510–DS–P

[15] In the CVD final determination, we found the ''Import duty exemptions on imports of raw materials for exporting goods'' program to be an export subsidy. *See Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination,* and accompanying Issues and Decision Memorandum, dated concurrently with this AD final determination. The rate applied to that program was 1.13 percent.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 1, 2019. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 18–010. Applicant: University of Connecticut, 91 North Eagelville Road, Storrs, CT 06269. Instrument: STED Confocal Microscope. Manufacturer: Abberior Instruments GmBH, Germany. Intended Use: The instrument will be used to study a variety of biological material related to medical research. Scientists at the University of Connecticut will be able to reveal the protein nano-structure of: mouse/rat brain tissue and cells, mouse colon tissue, fruit fly chromosomes, mouse spinal cord tissue, and mammalian or invertebrate cultured cells. The experiments to be conducted involve taking the material and examining it with various wavelengths of light to obtain fluorescent images of cellular structures with high levels of detail. The objectives pursued by research with this equipment are understanding of the normal and pathological mechanisms of cellular function relating to human health and disease. The techniques used by employing this equipment include using the method of stimulated emission depletion (STED), which enables the visualization of high resolution, microscopic structure of biological specimens. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: November 28, 2018.

Dated: April 5, 2019.

Gregory W. Campbell,

Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2019–07199 Filed 4–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces changes to the existing provisions of the National Institute of Standards and Technology's (NIST) Alternative Personnel Management System (APMS) published October 21, 1997 (62 FR 54604), and August 13, 2012 (77 FR 48128). NIST is modifying its current APMS direct-hire authority to include positions in the General Engineering, 801 series; General Physical Science, 1301 series; and Information Technology Management, 2210 series at the Pay Band III and above.

DATES: This notice is applicable on April 11, 2019.

FOR FURTHER INFORMATION CONTACT: Susanne Porch at the National Institute of Standards and Technology, (301) 975–2487 or *Susanne.Porch@nist.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Public Law 99–574, the National Bureau of Standards Authorization Act for Fiscal Year 1987, the Office of Personnel Management (OPM) approved a demonstration project plan, ''Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology (NIST),'' and published the plan in the **Federal Register** on October 2, 1987 (52 FR 37082). The published demonstration project plan was modified twice, once to clarify certain NIST authorities (54 FR 21331, May 17, 1989) and once to revise the performance appraisal system and the pay administration system in order to better link pay with performance (55 FR 39220, September 25, 1990). The APMS was made permanent in Section 10 of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, 110 Stat. 775 (Mar. 7, 1996) (codified at 15 U.S.C. 275 note), and the project plan and subsequent amendments were consolidated in the final APMS plan, which was published in the **Federal Register** on October 21, 1997 (62 FR 54604). NIST published eight subsequent amendments to the final APMS plan: one on May 6, 2005 (70 FR 23996), which became effective upon publication in the **Federal Register**; one on July 15, 2008 (73 FR 40500), which became effective on October 1, 2008; one on July 21, 2009 (74 FR 35841), which became effective upon publication in the **Federal Register**; one on January 5, 2011 (76 FR 539), which became effective upon publication in the **Federal Register**; one on June 19, 2012 (77 FR 36485), which became effective upon publication in the **Federal Register**; one on August 13, 2012 (77 FR 48128), which became effective upon publication in the **Federal Register**; one on August 24, 2012 (77 FR 51518), which became effective upon publication in the **Federal Register**; and one on September 24, 2015 (80 FR 57580), which became effective upon publication in the **Federal Register**. NIST also published a correction to the final APMS plan on July 21, 2009 (74 FR 35843), which became effective upon publication in the **Federal Register**.

On March 20, 2018, the Office of Management and Budget unveiled the fiscal year 2019 Presidential Management Agenda (PMA) outlining a long-term vision for modernizing the Federal government in key areas that would improve the ability of agencies to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars on behalf of the American people. One aspect of the PMA highlights the government need to develop and manage the workforce of the 21st century by simplifying and expediting the hiring process for top talent.

The APMS plan provides for modifications to be made as experience is gained, results are analyzed, and conclusions are reached on how the system is working. This notice formally modifies the current APMS direct-hire authority to include positions in the General Engineering, 801 series; General Physical Science, 1301 series; and Information Technology Management, 2210 series at the Pay Band III and above. The expanded direct-hire authority will allow NIST to simplify and expedite hiring for managers in mission critical occupations, and, in accordance with the PMA, take a step

towards building the workforce of the 21st century.

Kevin A. Kimball,

Chief of Staff.

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I. Executive Summary

NIST is expanding its current APMS direct-hire authority to simplify and expedite hiring in mission critical occupations.

This amendment modifies the August 13, 2012 (77 FR 48128) amendment. Positions in the General Engineering, 801 series; General Physical Science, 1301 series; and Information Technology Management, 2210 series at the Pay Band III and above will be covered under the current NIST APMS direct-hire authority.

NIST will continually monitor the effectiveness of this amendment.

II. Basis for APMS Plan Modification

In August 2012, NIST published a **Federal Register** notice (77 FR 48128) which implemented direct-hire authority under 5 U.S.C. 3304(a)(3) on a permanent basis for the Nuclear Reactor Operation position in NIST's Scientific and Engineering Technician (ZT) career path at the Pay Band III and above, and for all positions in NIST's Scientific and Engineering (ZP) career path at the Pay Band III and above except for the Information Technology Management, 2210 series; the General Engineer, 801 series; and the General Physical Science, 1301 series. The modification in 2012 enabled NIST to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A. Based upon NIST's hiring needs and the PMA objective of simplifying and expediting hiring, NIST is expanding its current APMS direct-hire authority to include all positions in the Scientific and Engineering (ZP) career path at the Pay Band III and above.

NIST's APMS allows the NIST Director to modify procedures if no new waiver from law or regulation is added. Given this modification is in accordance with existing law and regulation, the NIST Director is authorized to make the changes described in this notice. The modification to our final **Federal Register** notice, dated October 21, 1997 (62 FR 54604), with respect to our Staffing authorities is provided below.

III. Changes in the APMS Plan

The APMS at NIST, published in the **Federal Register** on October 21, 1997 (62 FR 54604) is amended as follows:

The information under the subsection titled: ''Direct Hire: Critical Shortage Occupations'' is replaced with:

NIST uses direct-hire procedures for categories of occupations which require skills that are in short supply. All Nuclear Reactor Operator positions at the Pay Band III and above in the ZT Career Path constitute a shortage category, and all occupations at the Pay Band III and above in the ZP Career Path constitute a shortage category. Any positions in these categories may be filled through direct-hire procedures in accordance with 5 U.S.C. 3304(a)(3). NIST advertises the availability of job opportunities in direct-hire occupations by posting on the OPM USAJOBS website. NIST will follow internal direct-hire procedures for accepting applications and continue to provide consideration to eligible veteran preference applicants.

[FR Doc. 2019–07155 Filed 4–10–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, the Department of Defense announces that the following Federal advisory committee meeting will take place.

DATES: The meeting will be held on Friday, May 3, 2019, Time 9:00 a.m.–11:30 a.m. Members of the public wishing to attend the meeting will be required to show a government photo ID upon entering West Point in order to gain access to the meeting location. All members of the public are subject to security screening.

ADDRESSES: The meeting will be held in Building 600 (Taylor Hall), Superintendent's Conference Room, West Point, New York 10996.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer for the committee, in writing at: Secretary of the General Staff, ATTN: Deadra K. Ghostlaw, 646 Swift Road, West Point, NY 10996; by email at: *deadra.ghostlaw@westpoint.edu* or *BoV@westpoint.edu;* or by telephone at (845) 938–4200.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2019 Spring/Organizational Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues. Agenda: Introduction; Board Business; Superintendent Topics: Events since last BOV/Semester Highlights; Campaign Plan: Leaders of Character & Culture of Character, Stand Down Day; Diverse and Effective Team: Class of 2023 Update; Modernize, Secure and Reform: Strengthen Partnerships; Upcoming events

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Mrs. Ghostlaw, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting, and members of the public attending the committee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the committee meeting will be held in a Federal Government facility on a military post, security screening is required. A government photo ID is required to enter post. In order to enter the installation, members of the public must first go to the Visitor Control Center in the Visitor Center and go through a background check before being allowed access to the installation. Members of the public then need to park in Buffalo Soldier Field parking lot and ride the north-bound Central Post Area (CPA) shuttle bus to Thayer Road, get off at the Thayer Road Extension and

walk up the road to the Guard Station; a member of the USMA staff will meet members of the public wishing to attend the meeting at 08:30am and escort them to the meeting location. Please note that all vehicles and persons entering the installation are subject to search and/or an identification check. Any person or vehicle refusing to be searched will be denied access to the installation. Members of the public should allow at least an hour for security checks and the shuttle ride. The United States Military Academy, Taylor Hall, is fully handicap accessible. Wheelchair access is available on the west (Main) entrance of the building. For additional information about public access procedures, contact Mrs. Ghostlaw, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2019–07217 Filed 4–10–19; 8:45 am]

BILLING CODE 5003–01–P

ELECTION ASSISTANCE COMMISSION

Notice of Public Meeting for EAC Board of Advisors

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting for EAC Board of Advisors.

Date & Time: Wednesday, April 24, 2019, 8:30 a.m.–5:45 p.m. thru Thursday, April 25, 2019, 8:15–11:45 a.m., MDT.

Place: Salt Lake Marriott Downtown at City Creek, 75 SW Temple, Salt Lake City, UT 84101, 801–531–0800.

Purpose: In accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. Appendix 2), the U.S. Election Assistance Commission (EAC) Board of Advisors will meet to address its responsibilities under the Help America Vote Act of 2002 (HAVA), to present its views on issues in the administration of Federal elections, formulate recommendations to the EAC, and receive updates on EAC activities.

Agenda: The Board of Advisors will receive an overview and updates on EAC agency operations. The Board will hold an Intel briefing discussion, a panel discussion on Disaster Management & Recovery Working Group presentations, an EAVS presentation, and a panel discussion on accessibility. The Board will receive updates on the Voluntary Voting System Guidelines (VVSG) 2.0 Principles and Guidelines and on the Requirements from NIST and EAC staff. The Board of Advisors will hold discussions on the VVSG 2.0's Technical Requirements. The Board of Advisors will elect new officers, and the Executive Board will appoint subcommittee members and chairs, receive reports from the committees, and consider other administrative matters.

Supplementary: Members of the public may submit relevant written statements to the Board of Advisors with respect to the meeting no later than 5:00 p.m. EDT on Monday, April 22, 2019. Statements may be sent via email at *facaboards@eac.gov,* or via standard mail addressed to the U.S. Election Assistance Commission, 1335 East West Highway, Suite 4300, Silver Spring, MD 20910, or by fax at 301–734–3108.

This meeting will be open to the public.

Person to contact for information: Bert Benavides, Telephone: (301) 563–3937.

Clifford D. Tatum,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2019–07151 Filed 4–10–19; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–20–000]

Notice of Complaint: American Airlines, Inc. v. Colonial Pipeline Company

Take notice that on April 3, 2019, pursuant to sections 1(5), 6, 8, 9, 13, 15 and 16 of the Interstate Commerce Act,[1] section 1803 of the Energy Policy Act of 1992 (EPAct),[2] Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission),[3] and Rules 343.1(a) and 343.2(c) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings,[4] American Airlines, Inc. (Complainant) filed a formal complaint (complaint) against Colonial Pipeline Company (Colonial or Respondent) challenging the lawfulness of the rates charged by Colonial for transportation of petroleum products, including aviation kerosene and jet fuel, from all the origins to all destinations in the challenged tariffs, as more fully explained in the complaint.

The Complainant certify that a copy of the complaint was served on the contacts for the Respondent as listed on the official service list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

[1] 49 U.S.C. App. 1(5), 6, 8, 9, 13, 15 and 16.

[2] Public Law 102–486, 106 Stat. 2772 (1992).

[3] 18 CFR 385.206 (2018).

[4] 18 CFR 343.1(a) and 343.2(c) (2018).

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time May 3, 2019.

Dated: April 5, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–07159 Filed 4–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–21–000]

Notice of Complaint: American Airlines, Inc., Chevron Products Company, HollyFrontier Refining & Marketing LLC, Southwest Airlines Co., Valero Marketing and Supply Company v. SFPP, LP

Take notice that on April 4, 2019, Pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC), 18 CFR 385.206, Section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, and Sections 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. 1(5), 8, 9, 13, 15, and 16 (1988), American Airlines, Inc., (American), Chevron Products Company, a division of Chevron U.S.A. Inc. (Chevron), HollyFrontier Refining & Marketing LLC (HollyFrontier), Southwest Airlines Co. (Southwest), and Valero Marketing and Supply Company (VMSC) (jointly, Complainants) filed a formal complaint (complaint) against SFPP, L.P. (SFPP) challenging the justness and reasonableness of West Line (Tariff No. 198.20.0), East Line (Tariff No. 197.13.0), North Line (Tariff No. 199.9.0), and Oregon Line (Tariff No. 200.12.0) index rate increases taken and implemented for the 2018 Index, as more fully explained in the complaint.

The Complainant certify that copies of the complaint was served on the contacts for SFPP, L.P. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time May 3, 2019.

Dated: April 5, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–07160 Filed 4–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–54–000]

Constellation Power Source Generation, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 5, 2019, the Commission issued an order in Docket No. EL19–54–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the continued justness and reasonableness of Constellation Power Source Generation, LLC's rate for providing Reactive Supply and Voltage Control Service. *Constellation Power Source Generation, LLC,* 167 FERC 61,018 (2019).

The refund effective date in Docket No. EL19–54–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL19–54–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), within 21 days of the date of issuance of the order.

Dated: April 5, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–07158 Filed 4–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1526–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Tariff Cancellation: DEC-Cancellation Filing RS Nos. 327, 331,

334 (Concord, Kings Mtn, Greenwood) to be effective 6/5/2019.

Filed Date: 4/5/19.

Accession Number: 20190405–5044.

Comments Due: 5 p.m. ET 4/26/19.

Docket Numbers: ER19–1527–000.

Applicants: SmartestEnergy US LLC.

Description: Baseline eTariff Filing: SmartestEnergy US LLC MBR Tariff to be effective 4/5/2019.

Filed Date: 4/5/19.

Accession Number: 20190405–5066.

Comments Due: 5 p.m. ET 4/26/19.

Docket Numbers: ER19–1528–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5319; Queue No. AB2–015 to be effective 3/7/2019.

Filed Date: 4/5/19.

Accession Number: 20190405–5097.

Comments Due: 5 p.m. ET 4/26/19.

Docket Numbers: ER19–1529–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Third Amendment to IFA—Riverside Wilderness, SA No. 59 to be effective 4/6/2019.

Filed Date: 4/5/19.

Accession Number: 20190405–5098.

Comments Due: 5 p.m. ET 4/26/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–07161 Filed 4–10–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OW–2018–0724; FRL–9990–97–Region 8]

Approval of Transfer of the Authority To Implement and Enforce the North Dakota Pollutant Discharge Elimination System (NDPDES) Program From the North Dakota Department of Health (NDDOH) to the Newly Established North Dakota Department of Environmental Quality (NDDEQ)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: On March 29, 2019, the Administrator for the Environmental Protection Agency (EPA) approved the transfer of authority for the North Dakota Pollutant Discharge Elimination System (NDPDES) from the North Dakota Department of Health (NDDOH) program to their newly established North Dakota Department of Environmental Quality (NDDEQ). With this action, the EPA has retained the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters.

DATES: On March 29, 2019, the Administrator for the Environmental Protection Agency (EPA) approved the transfer of authority from the NDDOH to the NDDEQ.

FOR FURTHER INFORMATION CONTACT: VelRey Lozano, U.S. Environmental Protection Agency, Region 8, (8WP–CWW), 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6128, email *lozano.velrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. Does this action apply to me?

Entities potentially affected by this action are: The EPA; tribal programs; and the regulated community and citizens within the state of North Dakota. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to regulate.

TABLE 1—ENTITIES POTENTIALLY AFFECTED BY THIS PROPOSED APPROVAL

Category	Examples of potentially affected entities
State and Indian Tribal Governments	States and Indian Tribes that provide certification under section 401 of the Clean Water Act (CWA); States and Indian Tribes that own or operate treatment works.
Municipalities	POTWs required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
NPDES Stakeholders	Any party that may review and provide comments on NPDES permits.
Residents of the state of North Dakota	Any party that may review and provide comments on NPDES permits.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is EPA taking?

The EPA if providing final notice of approval of the transfer of authority from the State of North Dakota's Department of Health (NDDOH) granting the North Dakota Department of Environmental Quality (NDDEQ) the authority to administer the NDPDES program in North Dakota to regulate discharges of pollutants into waters of the United States under its jurisdiction. Concurrent with this approval, EPA is approving updated NDPDES program revisions. With this action the EPA will retain the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters.

C. What is EPA's authority for taking this action?

Under 40 CFR 123.62(b) and 123.62(c), the CWA requires the EPA to approve substantial revisions to a state program. The EPA considers the change of state authority and updating of the NDPDES program rules to be substantial and has therefore taken this action.

Public Process: EPA opened a 30-day public comment period that ended on November 29, 2018. One comment was received questioning the States authority to properly implement the enforcement provisions under the CWA. The comment was determined to be beyond the scope of the state's transfer of authority request. EPA provided response to the commenter and no change to the NDPDES program application was deemed necessary.

Authority: This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. I hereby provide public notice of EPA's final action authorizing the State of North Dakota through the NDDEQ to administer the approval NDPDES program regulating discharges of pollutants to waters of the U.S. under its jurisdiction.

Dated: April 5, 2019.

Debra Thomas,

Acting Regional Administrator, EPA Region 8.

[FR Doc. 2019–07157 Filed 4–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0119; FRL–9992–06–OAR]

Proposed Information Collection Request; Comment Request; Motor Vehicle and Engine Compliance Program Fees (Renewal), EPA ICR 2080.07, OMB Control No. 2060–0545

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Motor Vehicle and Engine Compliance Program Fees (Renewal)'' (EPA ICR No. 2080.07, OMB Control No. 2060–0545) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through December 31, 2019. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 10, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2013–0119 referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Dr., Ann Arbor, MI 48105; telephone number: 734–214–4851, fax number: 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: As required by the Clean Air Act, EPA has regulations establishing emission standards and other requirements for various classes of vehicles, engines, and evaporative emission component. These regulations require that compliance be demonstrated prior to EPA granting a ''Certificate of Conformity''. EPA charges fees for administering this certification program. In 2004 the fees program was expanded to include nonroad categories of vehicles and engines, such as several categories of marine engines, locomotives, non-road recreational vehicles, and many nonroad compression-ignition and spark-ignition engines. Manufacturers and importers of covered vehicles, engines and components are required to pay the applicable certification fees prior to their certification applications being reviewed by the Agency. Under section 208 of the Clean Air Act (42 U.S.C. 7542(c)) all information, other than trade secret processes or methods, must be publicly available. Information about fee payments is treated as confidential information prior to certification.

Form Numbers: 3520–29.

Respondents/affected entities: Manufacturers or importers of passenger cars, motorcycles, light trucks, heavy duty truck engines, nonroad vehicles or engines, and evaporative emissions components are required to receive a certificate of conformity from EPA prior to selling or introducing these products into commerce in the U.S.

Respondent's obligation to respond: Required to obtain or retain a benefit (40 CFR part 1027).

Estimated number of respondents: 611 (total).

Frequency of response: An average of approximately eight responses per respondent per year.

Total estimated burden: 1,019 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $67,445 (per year), includes $11,411 annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 92 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is based on the increase in the number applications for certification and the associated fees, updates and corrections that are filed by the manufacturer as part of the fee payment process.

Dated: April 3, 2019.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2019–07213 Filed 4–10–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 29, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Paul Mellini, Saint Petersburg, Florida, as Personal Representative of the Jeno F. Paulucci Estate, Sanford, Florida;* to retain voting shares of Republic Bancshares, Inc., Duluth, Minnesota, and thereby indirectly retain shares of Republic Bank, Inc., Duluth, Minnesota.

Board of Governors of the Federal Reserve System, April 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–07191 Filed 4–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Y–12 Plant in Oak Ridge, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION: On February 26, 2019, as provided for under 42 U.S.C. 7384l(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

> All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Y–12 Plant in Oak Ridge, Tennessee, during the period January 1, 1958, through December 31, 1976, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on March 28, 2019. Therefore, beginning on March 28, 2019, members of this class of employees, defined as reported in this notice, became members of the SEC.

Authority: 42 U.S.C. 7384q(b). 42 U.S.C. 7384*l*(14)(C).

Frank J. Hearl,

Chief of Staff, National Institute for Occupational Safety and Health.

[FR Doc. 2019–07210 Filed 4–10–19; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1388]

Responsible Innovation in Dietary Supplements; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Responsible Innovation in Dietary Supplements.'' The purpose of the public meeting is to give interested parties an opportunity to present ideas for facilitating responsible innovation in the dietary supplement industry while preserving and strengthening FDA's ability to efficiently and effectively protect the public from unsafe and unlawful products.

DATES: The public meeting will be held on May 16, 2019, from 8:30 a.m. to 4 p.m. Eastern Time. Submit either electronic or written comments on this public meeting by July 15, 2019. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at Food and Drug Administration, Center for Food Safety and Applied Nutrition, Wiley Auditorium, 5001 Campus Dr., College Park, MD 20740.

FDA is establishing a docket for public comment on this meeting. You may submit comments as follows. Please note that late, untimely filed comments may not be considered. Electronic comments must be submitted on or before July 15, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 15, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the

public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–1388 for ''Responsible Innovation in Dietary Supplements; Public Meeting; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Juanita Yates, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–009), 5001 Campus Dr., College Park, MD 20740, 240–402–1731, email: *Juanita.yates@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 11, 2019, FDA announced new efforts to strengthen the regulation of dietary supplements by modernizing and reforming FDA's oversight (see Statement from FDA Commissioner Scott Gottlieb, M.D., on the Agency's new efforts to strengthen regulation of dietary supplements by modernizing and reforming FDA's oversight, available at *https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm631065.htm*). FDA's announcement acknowledged the need to ensure that our regulatory framework is flexible enough to adequately evaluate product safety without unnecessarily restricting innovation. We invite public input about whether and how we should adjust our current dietary supplement regulatory approach to better allow for innovation and growth in the dietary supplement marketplace while maintaining and strengthening our ability to efficiently and effectively evaluate product safety and protect the public health.

The Dietary Supplement Health and Education Act of 1994 (DSHEA) (Pub. L. 103–417) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) and defined ''dietary supplement,'' in part, as a product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) a mineral;

(C) an herb or other botanical;

(D) an amino acid;

(E) a dietary substance for use by man to supplement the diet by increasing the total dietary intake; or

(F) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in clause (A), (B), (C), (D), or (E).

Section 201(ff)(1) of the FD&C Act (21 U.S.C. 321(ff)(1)).

DSHEA clarified that dietary supplements are generally subject to regulation as foods under the FD&C Act but also included dietary supplement-specific adulteration and misbranding provisions. Among other things, DSHEA provided authority for FDA to establish current good manufacturing practice requirements for dietary supplements and clarified the statements of nutritional support that can be made in product labeling. Dietary supplement manufacturers and distributors are responsible for selling products that comply with these requirements. FDA is responsible for regulating dietary supplements and has authority to take enforcement action when dietary supplements are adulterated or misbranded.

DSHEA also added section 413 of the FD&C Act (21 U.S.C. 350b), which defines the term ''new dietary ingredient'' (NDI) and describes requirements for NDIs. Among other things, section 413 of the FD&C Act requires the manufacturer or distributor of an NDI, or of a dietary supplement containing an NDI, to submit a premarket notification to FDA at least 75 days before introducing the NDI or dietary supplement into interstate commerce, unless the NDI and any other dietary ingredients in the dietary supplement have been present in the food supply as an article used for food in a form in which the food has not been chemically altered (21 U.S.C. 350b(a)(1)).

DSHEA contemplated a dynamic dietary supplement market with a role for innovation. In the 25 years since DSHEA was enacted, the dietary supplement market has grown significantly. What was once a $4 billion industry comprising about 4,000 products is now an industry worth more than $40 billion with more than 50,000—and possibly as many as 80,000 or even more—products available to consumers. Innovative new products involving novel technologies related to ingredients, manufacturing processes, and delivery systems represent a substantial portion of this growth.

A robust NDI notification process is an integral part of the DSHEA framework and represents FDA's only opportunity to evaluate the safety of NDIs in dietary supplements before they become available to consumers. Despite the expanded marketplace, however, we have only received about 1,200 NDI notifications since DSHEA's enactment. FDA recognizes that not every new

dietary supplement product is subject to the notification requirement, so we continue to provide clarifications on when premarket notifications are required.[1] A transparent, common understanding of the requirements surrounding dietary ingredient status and notification, with predictable expectations regarding compliance and consequences for non-compliance, will help our regulatory processes operate effectively. Public discussion of these issues will further our efforts to strengthen regulation of dietary supplements through modernization and reform and help us better protect the public health.

II. Topics for Discussion at the Public Meeting

FDA will host a one-day public meeting to provide interested parties an opportunity to discuss various issues related to responsible innovation in dietary supplements, including the following topics:

(1) The scope of the phrase ''dietary substance for use by man to supplement the diet by increasing the total dietary intake,'' as used in DSHEA (section 201(ff)(1)(E) of the FD&C Act);

(2) Understanding exceptions to the requirement for premarket notification, and evaluating whether and how growth in the marketplace since 1994 has altered the impact of those provisions;

(3) Potential commercial or marketing advantages to incentivize responsible innovation; and

(4) Promoting overall compliance with the premarket notification requirement through enforcement.

The issues discussed at the public meeting, including the above topics, and any comments submitted to the docket by July 15, 2019, will help us evaluate how to proceed with our efforts to modernize and reform FDA's oversight of dietary supplements.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm632939.htm.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability. Persons interested in attending this public meeting should register by May 6, 2019, 11:59 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public meeting. Please visit the website at *https://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm632939.htm* for this information as well as the final meeting agenda.

If you need special accommodations due to a disability, please contact Juanita Yates (see **FOR FURTHER INFORMATION CONTACT**) no later than May 1, 2019.

Requests for Oral Comments: During online registration you may indicate if you wish to present during a public comment session and which topic(s) you wish to address. We are seeking a broad representation of ideas and issues presented at the meeting. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their remarks and to request time for a joint comment. After registration closes, we will determine the amount of time allotted to each participant and the approximate time each oral comment is to begin and will select and notify participants by May 10, 2019. All requests to make oral comments must be received by the close of registration on May 1, 2019. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Those without internet or email access can register and/or request to participate by contacting Juanita Yates by the above dates (see **FOR FURTHER INFORMATION CONTACT**).

Streaming Webcast of the public meeting: This public meeting will also be webcast. Please visit the following website to register: *https://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm632939.htm.*

FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It also may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/Food/NewsEvents/WorkshopsMeetingsConferences/ucm632939.htm.*

Dated: April 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–07168 Filed 4–10–19; 8:45 am]

BILLING CODE 4164–01–P

[1] See, *e.g.,* Draft Guidance for Industry: Dietary Supplements: New Dietary Ingredient Notifications and Related Issues (August 2016), available at *https://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/dietarysupplements/ucm257563.htm.* This draft guidance, when finalized, will represent FDA's current thinking on this topic.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Council of Research Advocates, April 11, 2019, 9:30 a.m. to 4:00 p.m., National Institutes of Health, Building 31, Room 10A28, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 15, 2019, 84 FR 4487.

This meeting notice is amended to change the meeting date, start time, and location. The meeting will now be held on May 20, 2019 at 9:00 a.m. at the National Institutes of Health, Building 40, Room 1201/1203, 40 Convent Drive, Bethesda, MD 20892. This meeting is open to the public.

Dated: April 8, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07181 Filed 4–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Brain Initiative RFAs (EB–17–003; EB–17–004) Review SEP.

Date: May 3, 2019.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, Two Democracy Boulevard, Suite 957, 6707 Democracy Blvd., Bethesda, MD 20892, 301–496–4773, *zhour@mail@nih.gov.*

Dated: April 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07183 Filed 4–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Applications in Oncological Sciences.

Date: May 22, 2019.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: June 5, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fouad A El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: June 6–7, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 5, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07180 Filed 4–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 6–7, 2019.

Time: May 6, 2019, 9:00 a.m. to 5:00 p.m.

Agenda: NICHD Director's report; Strategy to update the NIH Rehabilitation Research Plan; Initial Planning for the Rehabilitation Research Conference; Complementary and Integrative Health Update; Centers for Medicare and Medicaid Services Research Policies and Efforts.

Place: NICHD Offices, 6710B Rockledge Drive, Rooms 1425/1427, Bethesda, MD 20892.

Time: May 7, 2019, 9:00 a.m. to 12:00 p.m.

Agenda: Concept Clearance; Use of Secondary Data for Rehabilitation Science; Scientific Presentation on Extending the Reach of Rehabilitation Using Technology.

Place: NICHD Offices, 6710B Rockledge Drive, Rooms 1425/1427, Bethesda, MD 20892.

Contact Person: Ralph M. Nitkin, Ph.D., Deputy Director, National Center for Medical Rehabilitation Research (NCMRR), Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Room 2116, Bethesda, MD 20892–7002, (301) 402–4206, *RN21e@nih.gov.*

Individuals will also be able to view the meeting via NIH Videocast. Select the following link for Videocast the day of the meeting: *https://videocast.nih.gov/default.asp.*

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/advisory/nabmrr/Pages/index.aspx* where the current roster and minutes from past meetings are posted. (Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 8, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–07182 Filed 4–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–1057]

RIN 1625–AA00

Extension of Comment Period for the Safety Zone; Gastineau Channel, Juneau, AK

AGENCY: Coast Guard, DHS.

ACTION: Extension of comment period.

SUMMARY: The United States Coast Guard is extending the comment period for the notice of proposed rulemaking

for a safety zone which appeared in the **Federal Register** on April 2, 2019 (33 CFR 165) for the proposed modification of an existing safety zone for certain waters of the Gastineau Channel in Juneau, AK. The notice of proposed rulemaking is to expand an existing safety zone for certain waters of the Gastineau Channel in order to improve safety of large passenger vessels anchoring within the safety zone. The comment period has been extended an additional 30 days to May 13, 2019.

DATES: Comments and related material must be submitted to the online docket at *http://www.regulations.gov* or reach the Docket Management Facility on or before May 13, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–1057 using the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice please contact LT Kristi Sloane, Sector Juneau, Waterways Management Division, U.S. Coast Guard, at telephone number 907–463–2846 or email to *D17–SMB-Sector-Juneau-WWM@uscg.mil.*

Dated: April 5, 2019.

Stephen R. White,

Captain, U.S. Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 2019–07192 Filed 4–10–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of June 20, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Carroll County, Indiana and Incorporated Areas Docket No.: FEMA–B–1811	
Unincorporated Areas of Carroll County	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Montgomery County, Kansas and Incorporated Areas Docket No.: FEMA–B–1759	
City of Caney	City Hall, 100 West 4th Avenue, Caney, KS 67333.
City of Cherryvale	City Hall, 123 West Main Street, Cherryvale, KS 67335.
City of Coffeyville	Engineering Department, 102 West 7th Street, Coffeyville, KS 67337.
City of Dearing	City Clerk's Office, 306 South Independence Avenue, Dearing, KS 67340.
City of Elk City	City Hall, 114 North Montgomery Avenue, Elk City, KS 67344.
City of Havana	Montgomery County Judicial Center, 300 East Main Street, Lower Level, Independence, KS 67301.

Community	Community map repository address
City of Independence	Montgomery County Judicial Center, 300 East Main Street, Lower Level, Independence, KS 67301.
City of Liberty	Montgomery County Judicial Center, 300 East Main Street, Lower Level, Independence, KS 67301.
City of Tyro	City of Tyro Clerk's Office, 1655 County Road 2700, Caney, KS 67333.
Unincorporated Areas of Montgomery County	Montgomery County Judicial Center, 300 East Main Street, Lower Level, Independence, KS 67301.
Jefferson County, Missouri and Incorporated Areas Docket No.: FEMA–B–1720	
City of Arnold	City Hall, 2101 Jeffco Boulevard, Arnold, MO 63010.
City of Byrnes Mill	City Hall, 141 Osage Executive Circle, Byrnes Mill, MO 63051.
City of Crystal City	City Hall, 130 Mississippi Avenue, Crystal City, MO 63019.
City of De Soto	City Hall, 17 Boyd Street, De Soto, MO 63020.
City of Festus	City Hall, 711 West Main Street, Festus, MO 63028.
City of Herculaneum	City Hall, 1 Parkwood Court, Herculaneum, MO 63048.
City of Hillsboro	City Hall, 101 Main Street, Hillsboro, MO 63050.
City of Kimmswick	City Hall, 6041 3rd Street, Kimmswick, MO 63053.
City of Olympian Village	Olympian Village City Hall, 205 Kronos Drive, De Soto, MO 63020.
City of Pevely	City Hall, 401 Main Street, Pevely, MO 63070.
Town of Scotsdale	Jefferson County Annex, 725 Maple Street, Hillsboro, MO 63050.
Unincorporated Areas of Jefferson County	Jefferson County Annex, 725 Maple Street, Hillsboro, MO 63050.
Village of Cedar Hill Lakes	Cedar Hill Lakes Village Office, 7344B Springdale Drive, Cedar Hill, MO 63016.
City of Carson City, Nevada (Independent City) Docket No.: FEMA–B–1738	
City of Carson City	Carson City Permit Center, 108 East Proctor Street, Carson City, NV 89701.
Perry County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1808	
Borough of Blain	Borough Office, 155 East Main Street, Blain, PA 17006.
Borough of Bloomfield	Bloomfield Borough Building, 25 East McClure Street, New Bloomfield, PA 17068.
Borough of Duncannon	Borough Office, 428 North High Street, Duncannon, PA 17020.
Borough of Liverpool	Liverpool Borough Office, 401 Locust Street, Liverpool, PA 17045.
Borough of Marysville	Borough Office, 200 Overcrest Road, Marysville, PA 17053.
Borough of New Buffalo	Borough Office, 32 Mill Street, New Buffalo, PA 17069.
Township of Buffalo	Buffalo Township Office, 22 Cherry Road, Liverpool, PA 17045.
Township of Carroll	Carroll Township Municipal Building, 50 Rambo Hill Road, Shermans Dale, PA 17090.
Township of Centre	Centre Township Office, 2971 Cold Storage Road, New Bloomfield, PA 17068.
Township of Greenwood	Greenwood Township Municipal Building, 17 Pines Drive, Millerstown, PA 17062.
Township of Jackson	Jackson Township Office, 890 Fowler Hollow Road, Blain, PA 17006.
Township of Liverpool	Liverpool Township Office, 1121 Ridge Road, Liverpool, PA 17045.
Township of Miller	Miller Township Office, 554 Old Limekiln Lane, Newport, PA 17074.
Township of Northeast Madison	Northeast Madison Township Office, 979 Quarry Road, Loysville, PA 17047.
Township of Penn	Penn Township Office, 100 Municipal Building Road, Duncannon, PA 17020.
Township of Rye	Rye Township Office, 1775 New Valley Road, Marysville, PA 17053.
Township of Saville	Saville Township Office, 3954 Veterans Way, Elliottsburg, PA 17024.
Township of Southwest Madison	Southwest Madison Township Office, 94 Bistline Bridge Road, Loysville, PA 17047.
Township of Spring	Spring Township Office, 539 Paige Hill Road, Landisburg, PA 17040.
Township of Toboyne	Toboyne Township Office, 50 Lower Buck Ridge Road, Blain, PA 17006.
Township of Tyrone	Tyrone Township Office, 3129 Shermans Valley Road, Loysville, PA 17047.
Township of Watts	Watts Township Office, 112 Notch Road, Duncannon, PA 17020.
Township of Wheatfield	Wheatfield Township Office, 1280 New Bloomfield Road, New Bloomfield, PA 17068.
Greenwood County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1814	
Unincorporated Areas of Greenwood County	Greenwood County Courthouse, 528 Monument Street, Greenwood, SC 29646.

Community	Community map repository address
Laurens County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1814	
Unincorporated Areas of Laurens County	Laurens County Administration Office, 100 Hillcrest Square, Suite C, Laurens, SC 29360.
Newberry County, South Carolina and Incorporated Areas Docket No.: FEMA–B–1814	
Unincorporated Areas of Newberry County	Newberry County Planning and Zoning Department, 1512 Martin Street, Newberry, SC 29108.
Mason County, Washington and Incorporated Areas Docket No.: FEMA–B–1710	
City of Shelton	City Hall, 525 West Cota Street, Shelton, WA 98584.
Skokomish Indian Tribe	Skokomish Tribal Center, 80 North Tribal Center Road, Skokomish Nation, WA 98584.
Squaxin Island Tribe	Squaxin Island Tribal Center, 10 Southeast Squaxin Lane, Shelton, WA 98584.
Unincorporated Areas of Mason County	Mason County Public Works, 100 West Public Works Drive, Shelton, WA 98584.

[FR Doc. 2019–07165 Filed 4–10–19; 8:45 am]
BILLING CODE 9110–12–p

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1918]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 10, 2019.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminary floodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1918, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of

the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazardata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Carroll County, Kentucky and Incorporated Areas **Project: 12–04–8528S Preliminary Date: September 20, 2018**	
City of Prestonville	Carroll County Emergency Operations Center, 829 Polk Street, Carrollton, KY 41008.
Unincorporated Areas of Carroll County	Carroll County Emergency Operations Center, 829 Polk Street, Carrollton, KY 41008.
Henry County, Kentucky and Incorporated Areas **Project: 12–04–8528S Preliminary Date: September 20, 2018**	
Unincorporated Areas of Henry County	Henry County Planning and Zoning Department, 19 South Property Road, New Castle, KY 40050.
Oldham County, Kentucky and Incorporated Areas **Project: 12–04–8528S Preliminary Date: September 20, 2018**	
City of Crestwood	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
City of La Grange	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
City of Orchard Grass Hills	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
Unincorporated Areas of Oldham County	Oldham County Planning and Zoning Department, 100 West Jefferson Street, La Grange, KY 40031.
Spencer County, Kentucky and Incorporated Areas **Project: 18–04–0034S Preliminary Date: September 28, 2018**	
City of Taylorsville	Spencer County Planning and Zoning, 220 Main Cross, Taylorsville, KY 40071.
Unincorporated Areas of Spencer County	Spencer County Planning and Zoning, 220 Main Cross, Taylorsville, KY 40071.
Trimble County, Kentucky and Incorporated Areas **Project: 12–04–8528S Preliminary Date: September 20, 2018**	
City of Milton	City Hall, 10179 Highway 421 North, Milton, KY 40045.
Unincorporated Areas of Trimble County	Office of Executive County Judge, 123 Church Street, Bedford, KY 40006.
Bradford County, Pennsylvania (All Jurisdictions) **Project: 16–03–0615S Preliminary Date: August 30, 2018**	
Borough of Athens	Municipal Building, 2 South River Street, Athens, PA 18810.
Borough of Sayre	Borough Hall, 110 West Packer Avenue, Sayre, PA 18840.
Borough of Towanda	Municipal Building, 724 Main Street, Towanda, PA 18848.
Borough of Wyalusing	Borough Hall, 50 Senate Street, Wyalusing, PA 18853.
Township of Asylum	Asylum Township Building, 19981 Route 187, Towanda, PA 18848.
Township of Athens	Athens Township Building, 45 Herrick Avenue, Sayre, PA 18840.
Township of Litchfield	Litchfield Township Building, 1391 Hill Road, Sayre, PA 18840.
Township of North Towanda	North Towanda Township Office, 292 Old Mills Road, Towanda, PA 18848.
Township of Sheshequin	Sheshequin Township Office, 1774 North Middle Road, Ulster, PA 18850.
Township of Standing Stone	Standing Stone Township Building, 35165 Route 6, Wysox, PA 18854.
Township of Terry	Terry Township Building, 1876 Rienze Road, Wyalusing, PA 18853.
Township of Towanda	Township Office, 44 Chapel Street, Towanda, PA 18848.
Township of Tuscarora	Tuscarora Township Building, 2298 Underhill Road, Laceyville, PA 18623.

Community	Community map repository address
Township of Ulster	Municipal Building, 23849 Route 220, Ulster, PA 18850.
Township of Wilmot	Wilmot Township Municipal Building, 4861 Route 187, Sugar Run, PA 18846.
Township of Wyalusing	Township Hall, 41908 Route 6, Wyalusing, PA 18853.
Township of Wysox	Township Building, 1789 Hillside Drive, Wysox, PA 18854.

[FR Doc. 2019–07163 Filed 4–10–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2018–N172; FXES11130900000C2–190–FF09E32000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Review for Atlantic Sturgeon (Gulf Subspecies)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA–NMFS), are initiating a 5-year status review for the Gulf subspecies of the Atlantic sturgeon under the Endangered Species Act. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. We are requesting submission of information that has become available since the last review of this subspecies.

DATES: To ensure consideration, we are requesting submission of new information no later than June 10, 2019. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review information that we receive on this subspecies, see Request for New Information under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For species-specific information, see Request for New Information under **SUPPLEMENTARY INFORMATION**. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year reviews?

Under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species (referred to as the Lists) in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

Which species are under review?

This notice announces our active 5-year review of the species in the following table.

Common name/scientific name	Contact person, email, phone	Status (endangered or threatened)	States where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact's mailing address
ANIMALS					
Fishes					
Sturgeon, Atlantic (Gulf subspecies) (*Acipenser oxyrinchus desotoi*).	Adam Kaeser, *panamacity@fws.gov*, 850–769–0552, or Nick Farmer, *nick.farmer@noaa.gov*, 727–824–5305.	Threatened	Alabama, Florida, Louisiana, Mississippi.	56 FR 49653; 9/30/1991.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of a species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see the five factors under How Do We Determine Whether A Species Is Endangered or Threatened?); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

We request any new information concerning the status of this subspecies. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Definitions

A. *Species* means any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the ESA requires that we determine whether a species is

endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Request for New Information

To do any of the following, contact the persons associated with the subspecies under the table in Which Species Are Under Review?:

A. To get more information on this subspecies;

B. To submit information on this subspecies; or

C. To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the addresses given in the table.

Public Availability of Comments

Comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Availability of Status Reviews

All completed status reviews under the ESA are available via either of the following websites:

- *Service: https://www.fws.gov/endangered/species/us-species.html.*
- *NOAA–NMFS: https://www.fisheries.noaa.gov/resources/documents?title=&field_category_document_value%5Besa_five_review%5D=esa_five_review&sort_by=created.*

Authority: We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 20, 2019.

Mike Oetker,

Acting Regional Director, Southeast Region.

[FR Doc. 2019–07174 Filed 4–10–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2018–N165; FXES11130900000C2–190–FF09E32000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 36 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 36 species under the Endangered Species Act. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. We are requesting submission of information that has become available since the last reviews of these species.

DATES: To ensure consideration, we are requesting submission of new information no later than June 10, 2019. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review information that we receive on these species, see Request for New Information under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For species-specific information, see Request for New Information under **SUPPLEMENTARY INFORMATION.** Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year reviews?

Under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html.*

Which species are under review?

This notice announces our active 5-year reviews of the species in the following table.

Common name/scientific name	Contact person, email, phone	Status (endangered or threatened)	States where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact's mailing address
ANIMALS					
Mammals					
Mouse, Key Largo cotton (*Peromyscus gossypinus allapaticola*).	Roxanna Hinzman, *keylargocottonmouse_5-yearreview@fws.gov*, 772–469–4357.	Endangered	Florida	49 FR 34504; 8/31/1984.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Mouse, Perdido Key beach (*Peromyscus polionotus trissyllepsis*).	Kristi Yanchis, *panamacity@fws.gov*, 850–769–0552.	Endangered	Florida	50 FR 23872; 6/6/1985.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Birds					
Sparrow, Cape-sable seaside (*Ammodramus maritimus mirabilis*).	Roxanna Hinzman, *CSSS_5-yearreview@fws.gov,* 772–469–4358.	Endangered	Florida	32 FR 4001; 3/11/1967.	USFWS, 1339 20th St., Vero Beach, FL 32960.

Common name/scientific name	Contact person, email, phone	Status (endangered or threatened)	States where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact's mailing address
Caracara, Audubon's crested (*Polyborus plancus audubonii*).	Roxanna Hinzman, *crestedcaracara_5-yearreview@fws.gov,* 772–469–4359.	Threatened	Florida	32 FR 4001; 3/11/1967.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Kite, Everglade snail (*Rostrhamus sociabilis plumbeus*).	Roxanna Hinzman, *Evergladesnailkite_5-yearreview@fws.gov,* 772–469–4360.	Endangered	Florida	32 FR 4001; 3/11/1967.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Reptiles					
Skink, bluetail mole (*Eumeces egregious lividus*).	Roxanna Hinzman, *Bluetailmoleskink_5-yearreview@fws.gov,* 772–469–4338.	Threatened	Florida	52 FR 42658; 11/6/1987.	USFWS, 1339 20th St. Vero Beach, FL 32960.
Skink, sand (*Neoseps reynoldsi*)	Roxanna Hinzman, *sandskink_5-yearreview@fws.gov,* 772–469–4339.	Threatened	Florida	52 FR 42658; 11/6/1987.	USFWS, 1339 20th St. Vero Beach, FL 32960.
Fishes					
Darter, bluemask (*Etheostoma akatulo*).	Todd Shaw, *cookeville@fws.gov*, 931–528–6481.	Endangered	Tennessee	58 FR 68480; 12/27/1993.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Darter, duskytail (*Etheostoma percnurum*).	Warren Stiles, *cookeville@fws.gov*, 931–528–6481.	Endangered	Kentucky, Tennessee, Virginia.	58 FR 25758; 4/27/1993.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Darter, snail (*Percina tanasi*)	Stephanie Chance, *cookeville@fws.gov*, 931–528–6481.	Threatened	Alabama, Georgia, Mississippi, Tennessee.	49 FR 27510; 7/5/1984.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Silverside, Waccamaw (*Menidia extensa*).	Sarah McRae, *raleigh_es@fws.gov*, 919–856–4520.	Threatened	North Carolina	52 FR 11277; 4/8/1987.	USFWS, 551 Pylon Drive, #F, Raleigh, NC 27606.
Sunfish, spring pygmy (*Elassoma alabamae*).	Evan Collins, *alabama@fws.gov*, 251–441–5184.	Threatened	Alabama	78 FR 60766; 10/2/2013.	USFWS, 1208B Main Street, Daphne, AL 36526.
Clams					
Fatmucket, Arkansas (*Lampsilis powellii*).	Chris Davidson, *arkansas-es_recovery@fws.gov,* 501–513–4483.	Threatened	Arkansas	55 FR 12797; 4/5/1990.	USFWS, 110 South Amity Rd., Suite 300, Conway, AR 72032.
Bean, Choctaw (*Villosa choctawensis*).	Sandy Pursiful, *panamacity@fws.gov*, 850–769–0552.	Endangered	Florida	77 FR 61663; 10/10/2012.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Pigtoe, fuzzy (*Pleurobema stodeanum*).	Sandy Pursiful, *panamacity@fws.gov,* 850–769–0552.	Threatened	Florida	77 FR 61663; 10/10/2012.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Pigtoe, narrow (*Fusconaia escambia*).	Sandy Pursiful, *panamacity@fws.gov,* 850–769–0552.	Threatened	Florida	77 FR 61663; 10/10/2012.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Mucket, Neosho (*Lampsiis rafineoqueana*).	Chris Davidson, *arkansas-es_recovery@fws.gov,* 501–513–4483.	Endangered	Arkansas, Kansas, Missouri, Oklahoma.	78 FR 57076; 9/17/2013.	USFWS, 110 South Amity Rd., Suite 300, Conway, AR 72032.
Rabbitsfoot (*Quadrula cylindrica cylindrica*).	Rebecca Peak, *arkansas-es_recovery@fws.gov,* 501–513–4475.	Threatened	Alabama, Arkansas, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee.	78 FR 57076; 9/17/2013.	USFWS, 110 South Amity Rd., Suite 300, Conway, AR 72032.
Ebonyshell, round (*Fusconaia rotulata*).	Sandy Pursiful, *panamacity@fws.gov,* 850–769–0552.	Endangered	Florida	77 FR 61663; 10/10/2012.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Kidneyshell, southern (*Ptychobranchus jonesii*).	Sandy Pursiful, *panamacity@fws.gov,* 850–769–0552.	Endangered	Florida	77 FR 61663; 10/10/2012.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Sandshell, southern (*Hamiota australis*).	Sandy Pursiful, *panamacity@fws.gov*, 850–769–0552.	Threatened	Florida	77 FR 61663; 10/10/2012.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Pigtoe, tapered (*Fusconaia burkei*).	Sandy Pursiful, *panamacity@fws.gov,* 850–769–0552.	Threatened	Florida/Georgia	77 FR 61663; 10/10/2012.	USFWS, 1601 Balboa Ave., Panama City, FL 32405.
Snails					
Snail, noonday, (*Mesodon clarki nantahala*).	Jason Mays, *fw4esasheville@fws.gov,* 828–258–3939.	Threatened	North Carolina	43 FR 28932; 7/3/1978.	USFWS, 160 Zillicoa St., Asheville, NC 28801.
Marstonia, royal (*Pyrgulopsis ogmorhaphe*).	Stephanie Chance, *cookeville@fws.gov,* 931–528–6481.	Endangered	Tennessee	59 FR 17994; 4/15/1994.	USFWS, 446 Neal Street, Cookeville, TN 38501.
Insects					
Butterfly, Saint Francis satyr (*Neonympha mitchellii francisci*).	Rebecca Harrison, *raleigh_admin@fws.gov,* 919–856–4520.	Endangered	North Carolina	60 FR 5264; 1/26/1995.	USFWS, 551 Pylon Drive, #F, Raleigh, NC 27606.

Common name/scientific name	Contact person, email, phone	Status (endangered or threatened)	States where the species is known to occur	Final listing rule (**Federal Register** citation and publication date)	Contact's mailing address
PLANTS					
Flowering Plants					
Arabis georgiana (Georgia rockcress).	Michele Elmore, *georgiaes@fws.gov,* 706–613–9493.	Threatened	Alabama, Georgia	79 FR 54627; 9/12/2014.	USFWS, 355 East Hancock Ave., Room 320, Athens, GA 30601.
Banara vanderbiltii (palo de ramon).	Carlos Pacheco, *caribbean_es@fws.gov,* 787–851–7297.	Endangered	Puerto Rico	52 FR 1459; 1/14/1987.	USFWS, Road 301, Km 5.1, P.O. Box 491, Boquerón, PR 00622.
Chionanthus pygmaeus (pygmy fringe tree).	Roxanna Hinzman, *pygmyfringetree_5-yearreview@fws.gov,* 772–469–4324.	Endangered	Florida	52 FR 2227; 1/21/1987.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Chromolaena frustrata (Cape Sable thoroughwort).	Roxanna Hinzmanc, *capesablethoroughwort_5-yearreview@fws.gov,* 772–469–4325.	Endangered	Florida	78 FR 63795; 10/24/2013.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Dicerandra christmanii (Garrett's mint).	Roxanna Hinzman, *garrettsmint_5-yearreview@fws.gov,* 772–469–4326.	Endangered	Florida	54 FR 38946; 9/21/1983.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Dicerandra frutescens (scrub mint).	Roxanna Hinzman, *scrubmint_5-yearreview@fws.gov,* 772–469–4328.	Endangered	Florida	50 FR 12587; 11/1/1985.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Geum radiatum (spreading avens).	Rebekkah Reid, *fw4esasheville@fws.gov,* 828–258–3939.	Endangered	North Carolina, Tennessee.	55 FR 12793; 4/5/1990.	USFWS, 160 Zillicoa St., Asheville, NC 28801.
Gymnoderma lineare (rock gnome lichen).	Rebekkah Reid, *fw4esasheville@fws.gov,* 828–258–3939.	Endangered	Georgia, North Carolina, South Carolina, Tennessee, Virginia.	60 FR 3557; 1/18/1995.	USFWS, 160 Zillicoa St., Asheville, NC 28801.
Hypericum cumulicola (Highlands scrub hypericum).	Roxanna Hinzman, *Highlands scrubhypericum_5-yearreview@fws.gov,* 772–469–4308.	Endangered	Florida	52 FR 2227; 1/21/1987.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Warea carteri (Carter's mustard)	Roxanna Hinzman, *cartersmustard_5-earreview@fws.gov,* 772–469–4312.	Endangered	Florida	52 FR 2227; 1/21/1987.	USFWS, 1339 20th St., Vero Beach, FL 32960.
Ziziphus celata (Florida ziziphus).	Roxanna Hinzman, *ziziphus_5-yearreview@fws.gov,* 772–469–4302.	Endangered	Florida	54 FR 31190; 7/27/1989.	USFWS, 1339 20th St., Vero Beach, FL 32960.

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see the five factors under How Do We Determine Whether a Species is Endangered or Threatened?); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

We request any new information concerning the status of any of these 36 species. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

We may conduct a species status assessment (SSA) for some of these species. An SSA is a biological risk assessment to aid decision makers who must use the best available scientific information to make policy decisions or recommendations under the ESA. The SSA provides decisionmakers with a scientifically rigorous characterization of a species' status, and of the likelihood that the species will sustain populations, along with key uncertainties in that characterization. It presents a compilation of the best available information on a species, as well as its ecological needs, based on environmental factors. An SSA also describes the current condition of the species' habitat and demographics, and probable explanations for past and ongoing changes in abundance and distribution within the species' range. Finally, it forecasts the species' response to probable future scenarios of environmental conditions and conservation efforts. Overall, an SSA uses the conservation biology principles of resiliency, redundancy, and representation (collectively known as the ''3 Rs'') to evaluate the current and future condition of the species. As a result, the SSA characterizes a species' ability to sustain populations in the wild over time based on the best scientific understanding of current and future abundance and distribution within the species' ecological settings.

Definitions

A. *Species* means any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Request for New Information

To do any of the following, contact the person associated with the species you are interested in under the table in **SUPPLEMENTARY INFORMATION**:

A. To get more information on a species;

B. To submit information on a species; or

C. To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the listed addresses.

Public Availability of Comments

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted. Comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Availability of Status Reviews

All completed status reviews under the ESA are available via the Service website, at *https://www.fws.gov/endangered/species/us-species.html.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 20, 2019.

Mike Oetker,

Acting Regional Director, Southeast Region.

[FR Doc. 2019–07175 Filed 4–10–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000.L10200000.DF0000.19XL1109AF.LXSSH1070000.HAG 19–00XX]

Notice of Public Meeting for the John Day—Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day—Snake Resource Advisory Council (JDSRAC) will meet as indicated below.

DATES: The JDSRAC will hold a public meeting on Thursday and Friday, June 20–21, 2019. The meeting will run from 11:00 a.m. PST to 5:30 p.m. on June 20, and from 8:00–2:00 p.m. PST on June 21. A public comment period will be available from 1:00 p.m. until 1:30 p.m. PST on June 21. The JDSRAC will hold a meeting on October 17–18, 2019. The meeting will run from 12:00 p.m. to 5:00 p.m. PST on October 17, and from 8:00–12:30 p.m. PST on October 18. A public comment period will be available from 11:30 a.m. until 12:00 p.m. PST on October 18.

ADDRESSES: The June JDSRAC meeting will be held at the Memorial Hall, 120 S. Main St., Condon, OR. This meeting will start with a field trip to the John Day River down Armstrong Canyon Road on June 20. The public is welcome to attend this field trip; however, they must provide their own transportation and a high-clearance vehicle is needed. The meeting will reconvene at Memorial Hall at 3:00 p.m. On June 21, the meeting will begin at Memorial Hall and then the group will travel to Cottonwood Canyon State Park for the remainder of the day. The October JDSRAC meeting will be held at the Umatilla National Forest Office at 72510 Coyote Rd., Pendleton, OR.

FOR FURTHER INFORMATION CONTACT: Lisa Clark, Public Affairs Officer, 3050 NE 3rd Street, Prineville, OR 97754; 541–416–6864; *lmclark@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member JDSRAC was chartered to provide information and advice regarding the use and development of the lands administered by the BLM and Forest Service in central and eastern Oregon. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide.

All meetings are open to the public in their entirety. The JDSRAC meeting agenda for June includes a continuing discussion on wilderness permits and sustainable recreation on the Deschutes National Forest, a presentation on the issue of illegal occupancy and impacts to public land in Central Oregon, a visit to Cottonwood Canyon State Park, and an introduction to a fee revison proposal for the National Historic Oregon Trail Interpretive Center (NHOTIC). The October meeting agenda includes an update on the Deschutes Wilderness Permit process, an update on the public outreach for the Lower Deschutes River fee change proposals, an update on the Thirtymile Management Plan, an overview of the Virtue Flat OHV area, and a continuation of the NHOTIC fee proposal discussion. Final agendas will be posted online at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac*.

Each meeting will offer a 30-minute public comment period; depending on the number of persons wishing to comment, the length of comments may be limited. The public may also send written comments to the John Day—Snake RAC at BLM Prineville District, Attn. Lisa Clark, 3050 NE 3rd Street, Prineville, OR 97754. Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from

public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4–2.

Jeff Kitchens,

Deschutes District Manager.

[FR Doc. 2019–07134 Filed 4–10–19; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1127]

Certain Microperforated Packaging Containing Fresh Produce (II); Commission Determination Not To Review an Initial Determination Granting a Motion To Terminate the Investigation With Respect to Respondent Growers Express, LLC.; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) of the presiding administrative law judge (''ALJ''), granting complainant's motion to terminate the investigation as to respondent Growers Express, LLC (''Growers Express'') based on a settlement and license agreement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 16, 2018, based on a complaint filed on behalf of Windham Packaging, LLC (''Windham'') of Windham, New Hampshire. 83 FR 40787 (Aug. 16, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microperforated packaging containing fresh produce by reason of infringement of certain claims of U.S. Patent No. 7,083,837. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondents C.H. Robinson Worldwide, Inc. (''C.H. Robinson'') of Eden Prairie, Minnesota and Growers Express of Salinas, California. *Id.* at 40788.

Respondent C.H. Robinson has been terminated from the investigation based on Windham's withdrawal of the allegations of the complaint pursuant to Commission Rule 210.21(a) (19 CFR 210.21(a)). *See* Order No. 6 at 1 (Feb. 25, 2019), Comm'n Notice (Mar. 11, 2019).

On February 19, 2019, Windham filed an unopposed motion to terminate the investigation as to Growers Express based on a settlement and license agreement between Windham and Growers Express.

On March 14, 2019, the ALJ issued the subject ID granting the motion pursuant to Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)). Order No. 7 at 2 (Mar. 14, 2019). The ALJ found that the motion complies with the Commission's rules, and there is no evidence that terminating this investigation as to Growers Express based on a settlement and license agreement would be contrary to the public interest. *Id.* at 1–2. The subject ID indicates that Growers Express is the last remaining respondent. *Id.* at 2 n.1. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 8, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–07190 Filed 4–10–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1435–1440 (Preliminary)]

Acetone From Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of acetone from Belgium, Korea, Singapore, South Africa, and Spain, provided for in subheading 2914.11.10 and 2914.11.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2] In addition, the Commission terminates the antidumping duty investigation on acetone from Saudi Arabia.

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acetone from Belgium, the Republic of Korea, the Kingdom of Saudi Arabia, Singapore, the Republic of South Africa, and Spain: Initiation of Less-Than-Fair-Value Investigations, 84 FR 9755 (March 18, 2019).

of all persons, or their representatives, who are parties to the investigations.

Background

On February 19, 2019, AdvanSix Inc., Parsippany, New Jersey, Altivia Petrochemicals, LLC, Haverhill, Ohio, and Olin Corporation, Clayton, Missouri filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured by reason of LTFV imports of acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain. Accordingly, effective February 19, 2019, the Commission, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), instituted antidumping duty Investigation Nos. 731–TA–1435–1440 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 28, 2019 (84 FR 6819). The conference was held in Washington, DC, on March 12, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determinations in these investigations on April 5, 2019. The views of the Commission are contained in USITC Publication 4884 (April 2019), entitled *Acetone from Belgium, Korea, Saudi Arabia, Singapore, South Africa, and Spain: Investigation Nos. 731–TA–1435–1440 (Preliminary).*

By order of the Commission.

Issued: April 5, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–07153 Filed 4–10–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1129]

Certain Lithography Machines and Systems and Components Thereof (II); Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 17) issued by the presiding administrative law judge (''ALJ'') that terminates the above-captioned investigation based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 21, 2018, based on a complaint filed by Carl Zeiss SMT GmbH of Oberkochen, Germany (''Zeiss''). 83 FR 42316–17. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithography machines and systems and components thereof that infringe certain claims of U.S. Patent Nos. 7,929,115, 8,441,613, and 9,052,609. *Id.* The Commission's notice of investigation named as respondents Nikon Corporation of Tokyo, Japan; Nikon Research Corporation of America of Belmont, California; and Nikon Precision Inc. of Belmont, California (collectively, ''Nikon''). *Id.* at 42317. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On February 22, 2019, Zeiss and Nikon filed a joint motion to terminate the investigation based on a settlement agreement. The parties supplied the settlement agreement and indicated that there are no other agreements related to the subject matter of the investigation.

On March 18, 2019, the ALJ granted the motion pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)). The ALJ found that the motion complied with Rule 210.21(b) and that there is no evidence that the settlement has any adverse effect on the public interest. No petitions for review of the ID were received.

The Commission has determined not to review the subject ID. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 5, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–07145 Filed 4–10–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–011]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 19, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 701–TA–620 and 731–TA–1445 (Preliminary) (Wooden Cabinets and Vanities from China). The Commission is currently scheduled to complete and file its determinations on April 22, 2019; views of the Commission are currently scheduled to be completed and filed on April 29, 2019.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 9, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–07329 Filed 4–9–19; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System; Response to Public Comment

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that one comment was received concerning the proposed Final Judgment in this case, and that comment together with the Response of the United States to Public Comment have been filed with the United States District Court for the Western District of North Carolina in *United States and State of North Carolina.* v. *The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas HealthCare System,* Civil Action No. 3:16–cv–00311–RJC–DCK. Copies of the comment and the United States' Response are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Western District of North Carolina. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Patricia A. Brink,

Director of Civil, Enforcement.

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

United States of America and the *State of North Carolina*, Plaintiffs, v. *The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System,* Defendant.

Case No. 3:16–cv–00311–RJC–DCK

Judge Robert J. Conrad, Jr.

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENT ON THE PROPOSED FINAL JUDGMENT

As required by the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. §§ 16(b)–(h), the United States hereby responds to the one public comment received by the United States about the proposed Final Judgment in this case. After careful consideration of the comment submitted, the United States continues to believe that the proposed remedy will address the harm alleged in the Complaint and is therefore in the public interest. The proposed Final Judgment will prevent Atrium from impeding insurers' steered plans and transparency initiatives and restore competition among healthcare providers in the Charlotte area. The United States will move the Court for entry of a modified proposed Final Judgment [1] after this response and the public comment have been published in the *Federal Register*, pursuant to 15 U.S.C. § 16(d).

I. Procedural History

On June 9, 2016, the United States and the State of North Carolina filed a civil antitrust lawsuit against The Charlotte-Mecklenburg Hospital Authority, formerly known as Carolinas HealthCare System and now doing business as Atrium Health (''Atrium''), to enjoin it from using steering restrictions in its agreements with health insurers in the Charlotte, North Carolina area. The Complaint alleges that Atrium's steering restrictions are anticompetitive and violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

After over two years of litigation, on November 15, 2018, the United States filed a proposed Final Judgment and a Stipulation signed by the parties that consents to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. (Dkt. No. 87-1.) On December 4, 2018, the United States filed a Competitive Impact Statement describing the proposed Final Judgment. (Dkt. No. 89.) The United States caused the Complaint, the proposed Final Judgment, and the Competitive Impact Statement to be published in the *Federal Register* on December 11, 2018, *see* 83 Fed. Reg. 63,674, and caused notice regarding the same, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in *The Charlotte Observer* and *The Washington Post* for seven days beginning on December 7, 2018, and ending on December 13, 2018. The 60-day period for public comment ended on February 11, 2019. The United States received only one comment, which is described below in Section IV, and attached as Exhibit A hereto.

II. Standard of Judicial Review

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States v. Charleston Area Med. Ctr.,* No. 2:16-3664, 2016 WL 6156172, at *2 (S.D. W. Va. Oct. 21, 2016) (noting that in evaluating whether the proposed final judgment is in the public interest, the inquiry is ''a narrow one'' and only requires the court to determine if the remedy effectively addresses the harm identified in the complaint); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's

[1] During the December 13, 2018 hearing in this matter, the Court raised concerns regarding certain aspects of Paragraph IX(B) of the proposed Final Judgment. The United States and Atrium have agreed to modify the proposed Final Judgment to address the Court's concerns. The modifications do not alter the structure or substance of the remedy and will not materially affect Atrium's obligations and therefore do not require an additional notice and comment period under the Tunney Act, 15 U.S.C. § 16. The United States will describe in detail the parties' agreed-upon modifications and discuss how those modifications address the Court's concerns regarding Paragraph IX(B) in its forthcoming motion for entry of the modified proposed Final Judgment.

determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60.

In its 2004 amendments to the APPA [3], Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns*, 489 F. Supp. 2d at 11. A court can make its public-interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76; *see also United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

III. The Investigation, the Harm Alleged in the Complaint, and the Proposed Final Judgment

The proposed Final Judgment is the culmination of a thorough, comprehensive investigation conducted by the Antitrust Division of the U.S. Department of Justice and the North Carolina Department of Justice and over two years of litigation regarding Atrium's use of steering restrictions in its contracts with health insurers in the Charlotte, North Carolina area. These steering restrictions either expressly prohibited the insurers from steering their members away from Atrium or impeded steering through other means, such as by imposing a financial penalty on any steering by the insurer away from Atrium or by allowing Atrium to promptly terminate the insurer's contract if the insurer steered members

[2] *See also BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States v. Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

away from Atrium. Based on the evidence gathered during the investigation and litigation, the United States concluded that Atrium's steering restrictions were anticompetitive and violated Section 1 of the Sherman Act, 15 U.S.C. § 1, because the restrictions had detrimental effects on competition among healthcare providers in the Charlotte area. Specifically, the United States concluded that Atrium, in order to protect its dominant share and high prices and to insulate itself from competition, used its market power to require every major insurer in the Charlotte area to accept contract terms that restrict the insurers from steering their members to Atrium's lower-cost competitors. Atrium's steering restrictions reduced hospital competition in the Charlotte area; prevented transparency in the communication of price, cost, quality, or patient experience information to a member; and prevented consumers from benefitting from lower prices. The proposed Final Judgment provides an effective and appropriate remedy for this competitive harm by enjoining Atrium from (1) enforcing provisions in its current insurer contracts that restrict steering and transparency; (2) seeking or obtaining contract provisions with an insurer that would prohibit, prevent, or penalize the insurer from using popular steering methods or providing transparency; and (3) penalizing, or threatening to penalize, any insurer for its use of these popular steering methods and transparency.

The proposed Final Judgment has several components, which Atrium agreed to abide by during the pendency of the Tunney Act proceedings and which the Court ordered in the Stipulation and Order of December 14, 2018 (Dkt. No. 92).

First, the proposed Final Judgment eliminates the anti-steering language in Atrium's agreements with health insurers. The proposed Final Judgment voids contract provisions (listed in Exhibit A to the proposed Final Judgment) that expressly prevent steering. The proposed Final Judgment also prohibits Atrium from using certain contract provisions that would require an insurer to include Atrium in all of its benefit plans (listed in Exhibit B to the proposed Final Judgment) to prevent, prohibit, or penalize steered plans and transparency. Finally, the proposed Final Judgment prevents Atrium from enforcing a ''material impact'' provision in its contract with Blue Cross and Blue Shield of North Carolina (''BCBS-NC'') in a manner that reduces BCBS-NC's incentives to steer to more efficient providers.

Second, the proposed Final Judgment prevents Atrium from seeking or obtaining new contract provisions that would prohibit, prevent, or penalize steering through steered plans or transparency in the Charlotte area. The proposed Final Judgment prohibits Atrium from: (1) expressly prohibiting steered plans or transparency; (2) requiring prior approval of new benefit plans; or (3) demanding to be included in the most-preferred tier of benefit plans regardless of price.

Third, the proposed Final Judgment prohibits Atrium from seeking or obtaining any contract provision, or taking any other action, that would penalize an insurer for steering away from Atrium through steered plans or transparency.

Finally, the proposed Final Judgment includes robust mechanisms that will allow the United States and the Court to monitor the effectiveness of the relief and to enforce compliance.

- The proposed Final Judgment requires Atrium to provide certain health insurers with a copy of the Final Judgment and notify those insurers in writing of the Court's entry of the proposed Final Judgment and its requirements. Atrium is also required to provide a copy of the proposed Final Judgment to each of its commissioners and officers as well as each employee who has responsibility for negotiating or approving contracts with insurers.
- The proposed Final Judgment also requires Atrium to develop and implement procedures necessary to ensure compliance with the proposed Final Judgment, including procedures to answer questions from Atrium's commissioners and employees about abiding by the terms of the proposed Final Judgment. Atrium must submit to the United States and the State of North Carolina a written report setting forth its actions to comply with the proposed Final Judgment and a copy of any new or revised agreement or amendment to any agreement with any insurer that is executed during the term of the proposed Final Judgment. Atrium must also notify the United States and the State of North Carolina of when a provider which Atrium controls has a contract with any insurer with a provision that prohibits, prevents, or penalizes transparency or any steered plan.
- The proposed Final Judgment provides the United States with the ability to investigate Atrium's compliance with the Final Judgment and enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from this Court.

IV. Summary of Public Comments and the United States' Response

The United States received only one comment concerning the proposed Final Judgment. The comment was submitted by the North Carolina State Health Plan for Teachers and State Employees [4] and the State Treasurer of North Carolina, Dale R. Folwell (collectively, the ''State Health Plan''). Importantly, the State Health Plan agrees with the purpose of the proposed Final Judgment and does not criticize the central components of the relief obtained by the United States. Rather, the State Health Plan suggests limited changes to the proposed Final Judgment relating to (1) the monitoring of Atrium's compliance with the proposed Final Judgment, (2) the extent of price transparency that the proposed Final Judgment requires of Atrium, and (3) the possible preclusion of monetary relief and penalties. As explained below, however, the proposed Final Judgment provides strong mechanisms for monitoring Atrium's conduct and ensuring its compliance with the proposed Final Judgment, allows effective transparency that patients can use to compare quality and out-of-pocket costs, and does not preclude the State Health Plan or any other party from pursuing an action to recover monetary damages or other relief against Atrium.

Although the State Health Plan contends that the compliance mechanisms in the proposed Final Judgment are insufficient and recommends an independent auditor, the proposed Final Judgment provides strong mechanisms to monitor Atrium and ensure its compliance with the judgment. Paragraph VI of the proposed Final Judgment requires Atrium to provide a copy of the Final Judgment to all of the major insurers in the Charlotte area and to notify those insurers that (1) the Final Judgment prohibits Atrium from entering into or enforcing any agreement provision that violates the Final Judgment and (2) Atrium may not enforce the steering restrictions in its current contracts with those insurers. Those insurers will have ample incentive to alert the United States and North Carolina should Atrium take any action that may be deemed a violation of the Final Judgment. Paragraph VII of the proposed Final Judgment requires

[4] The State Health Plan is a Division of the North Carolina Department of State Treasurer. The Treasurer and the State Health Plan's Executive Administrator and Board of Trustees are responsible for administering the plan. *See* Exhibit A at p. 1.

Atrium to (1) provide a copy of the Final Judgment to each of its commissioners, officers, and employees responsible for negotiating or approving contracts with health insurers; (2) develop and implement procedures to ensure compliance with the Final Judgment; (3) submit to the United States and North Carolina a written report setting forth all actions taken by Atrium to comply with the Final Judgment, including a description of the status of all contract negotiations between Atrium and insurers relating to healthcare services rendered in the Charlotte area; and (4) provide to the United States and North Carolina a copy of each contract or contract amendment with insurers that covers healthcare services in the Charlotte area within 30 days of execution. Further, Paragraph VII(B) provides that during the term of the Final Judgment, the United States and North Carolina may demand access to Atrium's books and records; interview Atrium's officers, employees, or agents; and require Atrium to submit written reports or responses to interrogatories on matters related to the Final Judgment.

The State Health Plan also recommends that Atrium be required to (1) begin implementation of procedures to comply with the Final Judgment as soon as possible, rather than the 60 days specified in Paragraph VII(A)(3) of the proposed Final Judgment [5] and (2) submit its plan to comply with the Final Judgment in 90 days, rather than the 270 days specified in Paragraph VII(C) of the proposed Final Judgment.[6] In the Division's experience, however, the deadlines provided for in the proposed Final Judgment are reasonable to ensure compliance.[7] Given Atrium's size, and the time and effort that will be required to develop and approve a compliance plan that will be applicable throughout a large and diverse health system, 60 days is a reasonable period for developing such a plan. Further, allowing Atrium an additional 210 days to submit a written report will provide Atrium time to describe the status of its negotiations with insurers as required by Paragraph VII(C). Finally, this timing does not postpone Atrium's obligations to abide by the Final Judgment. In the Joint Stipulation that the parties filed with the Court on November 15, 2018, Atrium agreed to abide by the terms of the proposed Final Judgment during the pendency of the Tunney Act process. *See* Joint Stipulation (Dkt. No. 87), at ¶ 3. The Court entered the Joint Stipulation as an order of the Court on December 14, 2018.

See Stipulation and Order, dated December 14, 2018 (Dkt. No. 92), at ¶ 3. Thus, consumers are already receiving the benefits of the proposed Final Judgment.

Concerning pricing transparency, the United States agrees with the State Health Plan that price information enables consumers to make informed healthcare decisions. The proposed Final Judgment enables insurers to make pricing and quality information transparent to their members and to employers. Specifically, the proposed Final Judgment prohibits Atrium from implementing contract provisions or actions that restrict health insurers' ability to provide their members with information about the price, quality, patient experience, and anticipated out-of-pocket costs of Atrium's healthcare services compared to Atrium's competitors. This information will help insurers to make steered plans more effective by providing consumers with information that enables them to choose more cost-effective, high-quality providers, thereby encouraging competition among healthcare providers.

The State Health Plan, however, incorrectly argues that the Final Judgment should not allow Atrium to place any limitations on health insurers' ability to disseminate Atrium's prices.[8] Limitless sharing of pricing information, which contains competitively sensitive negotiated pricing, is not needed to redress the harm alleged in this case. Allowing insurers to provide information about price and quality to their members and their employers is sufficient to facilitate steering. Indeed, the proposed Final Judgment enables insurers to disclose to enrollees insurer-calculated estimates of their out-of-pocket costs at alternative providers, which accounts for negotiated provider prices and enrollees' insurance coverage. This information gives consumers the ability to make informed healthcare decisions. For this reason, the proposed Final Judgment does not need to require Atrium to disclose competitively sensitive price information to Atrium's competitors and the general public.

Finally, the State Health Plan expresses concern that the proposed Final Judgment may preclude the State Health Plan from pursuing an action for damages against Atrium. As stated in the Competitive Impact Statement, Section 4 of the Clayton Act, 15 U.S.C. § 15, however, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist any private antitrust damage action. Therefore, the State Health Plan remains free to pursue an action for monetary damages or other remedies.

V. Conclusion

[5] Paragraph VII(A)(3) provides: It shall be the responsibility of the Defendant's designated counsel to undertake the following: . . . within sixty (60) calendar days of entry of this Final Judgment, develop and implement procedures necessary to ensure Defendant's compliance with the Final Judgment. Such procedures shall ensure that questions from any of Defendant's commissioners, officers, or employees about this Final Judgment can be answered by counsel (which may be outside counsel) as the need arises. Paragraph 21.1. of the Amended Protective Order Regarding Confidentiality shall not be interpreted to prohibit outside counsel from answering such questions.

[6] Paragraph VII(C) provides: Within 270 calendar days of entry of this Final Judgment, Defendant must submit to the United States and the State of North Carolina a written report setting forth its actions to comply with this Final Judgment, specifically describing (1) the status of all negotiations between Managed Health Resources (or any successor organization) and an Insurer relating to contracts that cover Healthcare Services rendered in the Charlotte Area since the entry of the Final Judgment, and (2) the compliance procedures adopted under Paragraph VII(A)(3) of this Final Judgment.

[7] *See United States v. United Reg'l Healthcare Sys.,* No. 7:11–cv–ws0030–O (N.D. Tex. Sept. 29, 2011) (entering Final Judgment enjoining hospital from entering into contracts with insurers that prevent insurers from contracting with hospital's competitors and providing hospital 60 days to implement compliance procedures and 270 days to submit written report regarding compliance) available at *https://www.justice.gov/atr/case-document/file/514136/download.*

[8] Paragraph V(C) of the proposed Final Judgment provides:

[F]or an Insurer's dissemination of price or cost information (other than communication of an individual consumer's or member's actual or estimated out-of-pocket expense), nothing in the Final Judgment will prevent or impair Defendant from enforcing current or future provisions, including but not limited to confidentiality provisions, that (i) prohibit an Insurer from disseminating price or cost information to Defendant's competitors, other Insurers, or the general public; and/or (ii) require an Insurer to obtain a covenant from any third party that receives such price or cost information that such third party will not disclose that information to Defendant's competitors, another Insurer, the general public, or any other third party lacking a reasonable need to obtain such competitively sensitive information.

After careful consideration of the State Health Plan's comment, the United States continues to believe that the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. The United States will move this Court to enter the modified proposed Final Judgment after the comment and this response are published as required by 15 U.S.C. § 16(d).

Respectfully submitted,

Dated: April 1, 2019

FOR PLAINTIFF UNITED STATES OF AMERICA:

Catherine R. Reilly, Karl D. Knutsen, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW, Suite 4100, Washington, D.C. 20530, (p) 202/598-2744, Catherine.Reilly@usdoj.gov

EXHIBIT A

North Carolina, Department of State Treasurer, Office of the Treasurer

Dale R. Folwell, CPA, State Treasurer of North Carolina

February 8, 2019

Mr. Peter J. Mucchetti, Chief, Healthcare and Consumer Products Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 4100, Washington, DC 20530

The Honorable Josh Stein, N.C. Attorney General, North Carolina Department of Justice, P.O. Box 629 Raleigh, NC 27602

Chief Mucchetti and Attorney General Stein,

The North Carolina State Health Plan for Teachers and State Employees, a Division of the North Carolina Department of State Treasurer (State Health Plan or the Plan), and I, submit these comments in response to the Notice of Proposed Final Judgment, Stipulation, and Competitive Impact Statement (Proposed Final Judgment) published on December 11, 2018, in the case of United States et al. v. The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System (Defendant Atrium). We believe that the Proposed Final Judgment does not promote and protect consumers sufficiently and does not correct the past harm inflicted on the State Health Plan and its members. We request that you set aside the Proposed Final Judgment as contemplated and incorporate, at a minimum, the comprehensive relief we recommend.

The North Carolina General Assembly created the State Health Plan to provide comprehensive health coverage to over 720,000 teachers, state employees, current and former lawmakers, state university and community college personnel, local government employees, retirees, and their dependents. The State Health Plan spends over $3.3 billion annually to provide these benefits. The Plan's mission is to improve the health and health care of North Carolina teachers, state employees, retirees, and their dependents, in a financially sustainable manner, thereby serving as a model to the people of North Carolina for improving their health and well-being. The Executive Administrator of the Plan, the Plan's Board of Trustees and I are responsible for administering the Plan and for carrying out these duties as fiduciaries of the Plan and its members. With such expansive coverage and responsibility, the State Health Plan is significantly affected by the Proposed Final Judgment.

While we agree with the purpose of the Proposed Final Judgment to promote transparency and prevent Defendant Atrium from impeding insurers' steered plans, we have concerns with how

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Defendant Atrium will be monitored to comply with the Proposed Final Judgment, the level of transparency that is being asked of Defendant Atrium, and the possible preclusion of monetary relief and penalties.

Compliance:

The Proposed Final Judgment requires that, within 60 calendar days of entry of the Final Judgment, Defendant Atrium must develop and implement procedures that comply with the terms of the Final Judgment. Defendant Atrium must submit its plan in writing within 270 calendar days of entry of the Final Judgment to the United States and the State of North Carolina. The Proposed Final Judgment also states that the United States and State of North Carolina, upon written request and reasonable notice, can access and review materials pertaining to the implementation of the Proposed Final Judgment, to ensure that the Defendant Atrium is in compliance.

The compliance mechanisms contained in the Proposed Final Judgment are insufficient. To ensure Defendant Atrium is not utilizing contracts that prevent, prohibit, or penalize steering, we recommend that Defendant Atrium submit its compliance plan in writing within 90 days, rather than 270 days, and begin implementation of these compliance measurers as soon as possible. We also recommend the appointment of an independent auditor to monitor compliance on a quarterly basis, at the expense of Defendant Atrium.

Transparency:

There should be no exceptions to the transparency requirement. The public must be able to evaluate price, cost, and quality to prevent future Sherman Act violations. We object specifically to the quoted language below, found within the Permitted Conduct Section of the Proposed Final Judgment:

Nothing in the Final Judgment will prevent or impair Defendant from enforcing current or future provisions, including but not limited to confidentiality provisions, that (i) prohibit an Insurer from disseminating price or cost information to Defendant's competitors, other Insurers, or the general public; and/or (ii) require an Insurer to obtain a covenant from any third party that receives such price or cost information that such third party will not disclose that information to Defendant's competitors, another Insurer, the general public, or any other third party lacking a reasonable need to obtain such competitively sensitive information.

United States et al. v. The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Healthcare System, 83 Fed. Reg. 63674 (published Dec. 11, 2018).

Consumers need price information to make informed decisions about their health care and to prevent future similar restrictions that would create barriers to competition.

Damages:

We are concerned that the Proposed Final Judgment may preclude the State Health Plan and its 720,000 members from pursuing damages to both remedy the harm they have incurred and to discourage future anti-competitive behavior. Over the past two decades, the Plan and its members have paid Defendant Atrium over $1.8 billion for health care services. Even if, as a result of Defendant Atrium's anti-competitive actions, the Plan and its members overpaid Defendant Atrium by only 5% over this time period, it would have cost North Carolina taxpayers over $90 million. Not only should Defendant Atrium not be allowed to retain such amounts obtained through illegal behavior, penalties to discourage future activities make sense in this case. Thus, we ask that the Proposed Final Judgment be modified to make clear that the State Health Plan or any of its members are not precluded from

pursuing damages, including those intended to penalize the Defendant.

Conclusion:

Just recently, President Donald J. Trump addressed the current State of the Union. In his remarks, President Trump asked Congress to pass legislation that finally delivers fairness and price transparency for American patients. He remarked that drug companies, insurance companies, and hospitals should disclose real prices to foster competition and bring costs down.

The Proposed Final Judgment does not promote or protect consumers sufficiently and does not correct the past harm inflicted on the State Health Plan and its over 720,000 members. We are opposed vehemently to anti-competitive policies and activities such as those employed by Defendant Atrium, and believe that strict compliance standards, full transparency, and payment of damages to the fullest extent possible are vital to promoting and protecting consumerism in the North Carolina health care market and to remedying past harm. We trust that you will take our feedback into consideration, and set aside the Proposed Final Judgment, or modify it as we have suggested.

Dale R. Folwell, CPA
North Carolina State Treasurer

[FR Doc. 2019–07195 Filed 4–10–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0302]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, Without Change, of a Previously Approved Collection for Which Approval has Expired: 2019 Supplemental Victimization Survey (SVS) to the National Crime Victimization Survey (NCVS)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until May 13, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer Truman or Rachel Morgan, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *jennifer.truman@usdoj.gov;* telephone: 202–514–5083; email: *rachel.morgan@usdoj.gov;* telephone: 202–616–1707).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
— Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
— Minimize the burden of the 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of the Supplemental Victimization Survey (SVS), without changes, a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* 2019 Supplemental Victimization Survey (SVS) to the National Crime Victimization Survey (NCVS).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is SVS–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be persons 16 years or older living in households located throughout the United States sampled for the National Crime Victimization Survey (NCVS). The SVS will be conducted as a supplement to the NCVS in all sample households for a six (6) month period from July through December 2019. The SVS is primarily an effort to measure the prevalence of stalking victimization among persons, the types of stalking victimization experienced, the characteristics of stalking victims, the nature and consequences of stalking victimization, and patterns of reporting to the police. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 119,526 persons age 16 or older. About 98.6% (117,879) will have no stalking victimization and will complete the SVS screener only with an average burden of three (3) minutes. Among the 1.4% of respondents (1,647) who experience stalking victimization, the time to ask the screener plus the detailed questions regarding the aspects of their stalking victimization is estimated to take an average of 18 minutes. Respondents will be asked to respond to this survey only once during the six month period from July through December 2019. The burden estimates are based on data from the prior administration of the SVS.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,388 annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: April 8, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–07166 Filed 4–10–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: Annual Survey of Jails in Indian Country

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 84, Number 23, pages 1510 and 1511, on February 4, 2019, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received no comments.

DATES: Comments are encouraged and will be accepted for 30 days until May 13, 2019.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Todd.Minton@usdoj.gov;* telephone: 202–305–9630).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
— Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
— Minimize the burden of the 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.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *Title of the Form/Collection:* Annual Survey of Jails in Indian Country (SJIC).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–5B: *Survey of Jails in Indian Country (SJIC).* This form is sent to approximately 84 confinement facilities, detention centers, and other correctional facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA). The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

The Bureau of Justice Statistics (BJS) requests clearance to conduct the Survey of Jails in Indian Country (SJIC) for a three-year period and also requests a new unique clearance number for the SJIC data collection. The SJIC is currently approved through 1/31/2019 under OMB Control Number 1121–0094 along with the Annual Survey of Jails (ASJ), and until recently, the jail portion of the Mortality in Correctional Institutions (MCI-formerly the Deaths in Custody Reporting Program). Considering these data collections are unique in substance, collection period, and respondents, each collection has required enhancements at different periods of time. Consequently, BJS has revised the combined clearance multiple times over the past several years, and in some cases, BJS delayed enhancing a unique survey until all data collections could be addressed with a single revision. This process does not allow BJS to address the critical needs of a single collection in a timely manner. As a solution, BJS proposes to separate these collections and obtained a unique OMB clearance for each. The ASJ, when it is next fielded in 2020, will retain the OMB Control Number 1121–0094. The MCI-Jails collection will be combined with the MCI-Prison collection under OMB Control Number 1121–0249. The SJIC will obtain a new OMB Control Number through this application.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

The affected public that will be asked to respond to CJ–5B includes jail administrators from approximately 84 confinement facilities, detention centers, and other correctional facilities operated by tribal authorities or the Bureau of Indian Affairs. The respondents will be asked to provide information for the following categories:

(a) At midyear (last weekday in the month of June), the number of inmates confined in jail facilities including: Male and female adult and juvenile inmates; persons under age 18 held as adults; convicted and unconvicted males and females; persons held for a felony and a misdemeanor; the inmates most serious offense (*i.e.,* domestic violence offense, aggravated or simple assault, rape, other violent, burglary, larceny-theft, drug law violation, DWI/DUI of alcohol or drugs, public intoxication, and other unspecified offenses);

(b) The average daily population during the 30-day period in June;

(c) The date and count for the greatest number of confined inmates during the 30-day period in June;

(d) The number of new admissions into jail, and final discharges from jail during the month of June;

(e) From July 1 of the previous year to June 30 of the current collection year: The number of inmate deaths while confined, the number of deaths attributed to suicide, and the number of confined inmates that attempted suicide;

(f) At midyear, the number of correctional staff employed by the facility and their occupation (*e.g.,* administration, jail operations, educational staff, etc.);

(g) At midyear, the number of jail operations employees who had received the basic detention officer certification and how many had received 40 hours of in-service training; and

(h) At midyear, the total rated capacity of jail facilities.

This collection is the only national effort devoted to describing and understanding annual changes in the tribal jail population. The collection enables BJS, tribal correctional authorities and administrators, legislators, researchers, and jail planners to track growth in the number of jails and their capacities nationally, as well as to track changes in the demographics and supervision status of the tribal jail population and the prevalence of crowding.

5. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond:

Reporting mode	Purpose of contact	Number of responses	Average reporting time (min)	Total burden hours
Mail, Fax, Email, telephone	Data collection	84	75	105
Email and telephone	Verify facility operational status and point-of-contact.	84	2	3
Email and telephone	Data quality follow-up validation	84	7	10
Total		84	84	118

The questionnaire will be sent to 84 Indian country correctional facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA). Based on prior years' reporting, we estimate a reporting time of 75 minutes for the SJIC questionnaire. If needed, jail respondents will also be contacted by email or telephone to verify data quality issues. Thus, we expect that in any data collection year 84 SJIC respondents will have an average reporting time of 2 minutes to verify facility operational status and point-of-contact, 75 minutes for the data collection, and an additional 7 minutes for data quality follow-up validation, for a total burden 84 minutes per facility. Annually, this results in a total burden estimate for SJIC of 118 hours.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 8, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–07167 Filed 4–10–19; 8:45 a.m.]

BILLING CODE 4410–18–P

OFFICE OF MANAGEMENT AND BUDGET

Statistical Policy Directive No. 3: Compilation, Release, and Evaluation of Principal Federal Economic Indicators. Timing of Public Comments by Employees of the Executive Branch

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments.

SUMMARY: Under the Budget and Accounting Procedures Act of 1950 and the Paperwork Reduction Act of 1995 (''the PRA''), the Office of Management and Budget (OMB) issues a request for comments on the continued relevance of one provision within *Statistical Policy Directive No. 3: Compilation, Release, and Evaluation of Principal Federal Economic Indicators* (50 FR 38932, Sep. 25, 1985) (''Directive No. 3''). Directive No. 3 remains a robust, comprehensive source of guidance for statistical series produced by Federal statistical agencies and recognized statistical units. The government and private sector widely watch and heavily rely upon those statistical series as indicators of the current condition and direction of the economy. The procedures in Directive No. 3, published in 1985, were designed to ensure equitable, policy-neutral, and timely release and dissemination of Principal Federal Economic Indicators (''PFEIs''). The goals of Directive No. 3 remain sound, and changing those overall goals is not the subject of this notice; however, advances in information dissemination technology lead OMB to seek comment on the continued relevance of the provision that prohibits employees of the Executive Branch from commenting publicly about the release of PFEIs until at least one hour following their release. For example, in addition to more traditional means of dissemination (*e.g.,* newspaper or radio), agencies now disseminate their data releases to the public through the internet, including on their own websites, allowing instantaneous and equitable access to the releases. In particular, OMB seeks comment on whether advances in information dissemination technology since Directive No. 3's issuance in 1985 could provide for meeting the goals of Directive No. 3 to ensure equitable, policy-neutral, and timely release and dissemination of PFEIs under a shorter time delay, including no time delay at all.

Additional discussion of the request for public comment may be found in the **SUPPLEMENTARY INFORMATION** section below.

Electronic Availability: This notice is available on the internet on the OMB website at *https://www.whitehouse.gov/omb/*. **Federal Register** notices are also available electronically at *https://www.federalregister.gov/.*

DATES: To ensure consideration of comments on this Notice, they must be received no later than 60 days from the publication date of this notice. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to send comments electronically (see **ADDRESSES**, below).

ADDRESSES: Comments may be addressed to: Nancy Potok, Chief Statistician, Office of Management and Budget, fax number (202) 395–7245. Email comments may be sent to *Statistical_Directives@omb.eop.gov,* with the subject ''Directive No. 3.'' Alternatively, comments may be sent via *www.regulations.gov*—a Federal E-Government website that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''OMB–2019–0001'' (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to

the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For information about this request for comments, contact Kerrie Leslie, Office of Management and Budget, 9215 New Executive Office Building, Washington, DC 20503, telephone (202) 395–1093, *email Statistical_Directives@omb.eop.gov* with the subject ''More Info: Directive No. 3.''

SUPPLEMENTARY INFORMATION:

Background: The Nation relies on the flow of relevant, accurate, timely, reliable, and objective statistics to support the decisions of governments, businesses, individuals, households, and other organizations. Federal statistical agencies release many of the statistics available about the United States' economy, population, natural resources, environment, and public and private institutions. It is the responsibility of Federal agencies engaging in statistical work to support the quality and accessibility of the Federal statistical information our Nation uses to monitor and assess performance, progress, and needs. In its role as coordinator of the Federal statistical system under the PRA, OMB, among other responsibilities, is required to ensure the efficiency and effectiveness of the system. A key method OMB uses to achieve this responsibility is the promulgation, maintenance, and oversight of Government-wide principles, policies, standards, and guidelines concerning the development, presentation, and dissemination of statistical products.

OMB's Statistical Policy Directive Nos. 3 and 4 are designed to preserve and enhance the objectivity and transparency, in fact and in perception, of the processes used to release and disseminate the statistical products of Federal statistical agencies. The procedures in these directives are intended to ensure that statistical data releases adhere to data quality standards through equitable, policy-neutral, and timely release of information to the general public.

The preamble to Statistical Policy Directive No. 4 (''Directive No. 4'') summarizes the history of Directive No. 3 as well as the long-standing concern about the need to maintain public confidence in the objectivity of Federal statistics. For example, in 1962, the President's Committee to Appraise Employment and Unemployment Statistics, stated: [1]

> The need to publish the information in a nonpolitical context cannot be overemphasized. * * * a sharper line should be drawn between the release of the statistics and their accompanying explanation and analysis, on the one hand, and the more general type of policy-oriented comment which is a function of the official responsible for policy making, on the other.

In 1971, the Administration was widely criticized for the way it publicly characterized some Bureau of Labor Statistics unemployment data at the time of their release. In response, the Congress instituted the monthly Joint Economic Committee hearings on the unemployment rate, and OMB issued Directive No. 3 to provide guidance to Executive branch agencies on the compilation and release of PFEIs. Directive No. 3 provides for the designation of statistical series that provide timely measures of economic activity as Principal Economic Indicators, and requires prompt but orderly release of such indicators. The stated purposes of Directive No. 3 are to preserve the time value of the economic indicators, strike a balance between timeliness and accuracy, provide for periodic evaluation of each indicator, prevent early access to information that may affect financial and commodity markets, and preserve the distinction between the policy-neutral release of data by statistical agencies and their interpretation by policy officials. Thus, Directive No. 3 is designed to promote public confidence in Federal statistics and in the system responsible for their production, as well as trust in the purely statistical basis of PFEIs used in the Federal Government's policy decisions.

Since OMB's publication of Directive No. 3, this theme and the importance of OMB's role in implementation has been reinforced. In 1995, the Congress reauthorized the PRA, including OMB's responsibility for coordination of the Federal statistical system to ensure the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes. In December 2000, the Congress passed and the President signed into law what has come to be known as the Information Quality Act (44 U.S.C. 3516 note), which directed OMB to issue Government-wide information quality guidelines to ensure the ''quality, objectivity, utility, and integrity'' of all information, including statistical information, disseminated by Federal agencies.

In 2005, the National Research Council (''NRC'') of the National Academy of Sciences [2] stated that for Federal Statistical Agencies to demonstrate their credibility, they:

> * * * must be, and must be perceived to be, free of political interference and policy advocacy. * * * Without the credibility that comes from a strong degree of independence, users may lose trust in the accuracy and objectivity of the agency's data, and data providers may become less willing to cooperate with agency requests. * * * [A statistical agency] must be impartial and avoid even the appearance that its collection, analysis, and reporting processes might be manipulated for political purposes. * * *

In 2014, consistent with these comments by the NRC, as well as those of the Government Accountability Office's report entitled *Data Quality: Expanded Use of Key Dissemination Practices Would Further Safeguard the Integrity of Federal Statistical Data* (GAO–06–607), OMB issued *Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units* (79 FR 71610, Dec. 2, 2014). Further, in January 2019, Congress passed the Foundations for Evidence-Based Policymaking Act of 2018, which in section 3563 of title 44 codified the responsibilities of statistical agencies and units subject to section 3563 to:

> * * * ''(A) produce and disseminate relevant and timely statistical information;
> ''(B) conduct credible and accurate statistical activities;
> ''(C) conduct objective statistical activities; and
> ''(D) protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses. * * *

Dissemination of PFEIs must continue to adhere to these statutory requirements. However, advances in information dissemination technology may provide for meeting these requirements and the goals outlined in Directive No. 3 in different procedural ways than when Directive No. 3 was issued in 1985. In particular, the internet has, for decades, provided broader, timelier dissemination of information to the public than more historic means of dissemination (*e.g.,* newspaper or radio), as well as provided for attribution of the information to particular entities. Federal Statistical Agencies [3] have long had their own

[1] ''Measuring Employment and Unemployment.'' U.S. President's Committee to Appraise Employment and Unemployment Statistics. Transmitted September 27, 1962. p20.

[2] National Research Council. 2005. Principles and Practices for a Federal Statistical Agency: Third Edition. Washington, DC: The National Academies Press. *https://doi.org/10.17226/11252.*

[3] A Federal Statistical Agency is an agency or organizational unit of the Executive Branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes. *See* 44 U.S.C. 3561(11).

websites, providing a platform on which to disseminate their data releases and policy-neutral analysis, and, in many cases, also have other ways on the internet, such as social media accounts, to disseminate their data releases and policy-neutral analysis. In short, modern forms of dissemination, being more speedy and comprehensive, may reduce the need for such a long time period between the release of PFEIs, and policy comment on them by employees of the Executive Branch.

Request for Comments: The full text of Directive No. 3, as issued in 1985, is available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/inforeg/statpolicy/dir_3_fr_09251985.pdf.* This notice requests comment on the continued relevance of the provision of Directive No. 3 that prohibits public comment by employees of the Executive Branch from speaking about the release until *at least one hour* following the release of PFEIs. In particular, OMB seeks comment on whether advances in information dissemination technology since Directive No. 3's issuance in 1985 could provide for meeting the goals of Directive No. 3 to ensure equitable, policy-neutral, and timely release and dissemination of PFEIs under a shorter time delay, including no time delay at all.

The text relevant to the specified provision for comment appears within the last paragraph of Section 5. For ease of review, the abbreviated text of Section 5 is provided below, and the text describing the current limitation on Executive Branch employees is provided in bolded text.

*5. Release Procedure. * * * Except for the authorized distribution described in this section, agencies shall ensure that no information or data estimates are released before the official release time.*

The agency will provide prerelease information to the President, through the Chairman of the Council of Economic Advisers, as soon as it is available. The agency may grant others prerelease access only under the following conditions:

(a) The agency head must establish whatever security arrangements are necessary and impose whatever conditions on the granting of access are necessary to ensure that there is no unauthorized dissemination or use.

(b) The agency head shall ensure that any person granted access has been fully informed of and agreed to these conditions.

(c) Any prerelease of information under an embargo shall not precede the official release time by more than 30 minutes.

(d) In all cases, prerelease access shall precede the official release time only to the extent necessary for an orderly review of the data.

All employees of the Executive Branch who receive prerelease distribution of information and data estimates as authorized above are responsible for assuring that there is no release prior to the official release time. Except for members of the staff of the agency issuing the principal economic indicator who have been designated by the agency head to provide technical explanations of the data, employees of the Executive Branch shall not comment publicly on the data until ***at least one hour after the official release time.***

Any changes to the text from Section 5 would neither affect nor replace any of the other standards and guidelines articulated in Directive No. 3.

OMB seeks comments from all interested parties, including data users, businesses, and the media, on the continued relevance of the one-hour delay identified in the provision that ''employees of the Executive Branch shall not comment publicly on the data until at least one hour after the official release time.'' In particular, OMB seeks comment about maintaining the one-hour delay, as well as reducing the time duration of the delay to some amount less than one hour, including consideration of the option of eliminating the delay entirely.

Dominic Mancini,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2019–07172 Filed 4–10–19; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

Date and Time: May 2, 2019; 9:00 a.m. to 5:00 p.m., May 3, 2019; 9:00 a.m. to 12:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Room E2020, Alexandria, VA 22314.

Type of Meeting: Open.

Contact Person: Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8700.

Summary of Minutes: Posted on SBE advisory committee website at: *https://www.nsf.gov/sbe/advisory.jsp.*

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

Agenda

- SBE Directorate Update
- To Secure Knowledge
- NSF Distinguished Lecture in the Social, Behavioral, and Economic Sciences: Science Comprehension Without Curiosity is No Virtue, and Curiosity Without Comprehension No Vice, Dr. Dan Kahan, Yale University
- SBE research to address Office of Management and Budget/Office of Scientific and Technology Policy Scientific Priorities
- Pursuing effective SBE partnerships
- Contributions of the SBE Sciences to National Security
- Committee on Equal Opportunities in Science and Engineering (CEOSE) Update
- Advisory Committee for Environmental Research and Education (AC–ERE) Update
- SBE Sciences and NSF's Big Ideas
- Wrap-up, Assignments, Planning for Next SBE AC Meeting

Dated: April 8, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–07203 Filed 4–10–19; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–116 and CP2019–125; MC2019–117 and CP2019–126; MC2019–118 and CP2019–127]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 15, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–116 and CP2019–125; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 90 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 5, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* April 15, 2019.

2. *Docket No(s).:* MC2019–117 and CP2019–126; *Filing Title:* USPS Request to Add Priority Mail Contract 519 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 5, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* April 15, 2019.

3. *Docket No(s).:* MC2019–118 and CP2019–127; *Filing Title:* USPS Request to Add Priority Mail Contract 520 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 5, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* April 15, 2019.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2019–07206 Filed 4–10–19; 8:45 am]
BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 19d–1, SEC File No. 270–242, OMB Control No. 3235–0206

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19d–1 (17 CFR 240.19d–1) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget) (''OMB'') for extension and approval.

Rule 19d–1 prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary actions with respect to any person; (2) denial, bar, prohibition, or limitation of membership, participation or association with a member or of access to services offered by an SRO or member thereof; (3) summarily suspending a member, participant, or person associated with a member, or summarily limiting or prohibiting any persons with respect to access to or services offered by the SRO or a member thereof; and (4) delisting a security.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to delist a security, discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that approximately eighteen respondents will utilize this application procedure annually, and will file approximately 1,350 submissions, based upon recent data. The Commission estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 1 hour. The total annual burden for all respondents is thus 1,350 hours. The Commission estimates that the internal compliance cost per respondent is approximately $298 per response. The annual internal cost of compliance for all respondents is thus approximately $402,300 (18 respondents × 75 responses × $298 per response).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_ *Mailbox@sec.gov.*

Dated: April 8, 2019.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85519; File No. SR–Phlx–2019–07]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend and Relocate the Qualified Contingent Cross Orders Rules

April 5, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to relocate Qualified Contingent Cross (''QCC'') Orders which are submitted electronically (''Electronic QCC Orders'') [3] and QCC Orders which are transacted on the Floor (''Floor QCC Orders'') [4] (collectively ''QCC Orders''). The Electronic QCC Orders would be relocated from Phlx Rule 1080(o) to new Phlx Rule 1088. The Floor QCC Orders are located at Rule 1064(e). Also, the Exchange proposes to amend the current rule text at Phlx Rule 1080(o) as well as the current rule text in Phlx Rule 1064(e) to more accurately reflect the manner in which contingency orders are handled with regard to stop orders and revise the Exchange's functionality with regard to how QCC Orders are handled with regard to All-or-None Orders. Finally, the Exchange proposes to update cross-references to Rule 1080(o) to reflect proposed Rule 1088.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Relocate Electronic QCC Orders, currently located at Phlx Rule 1080(o), to new Phlx Rule 1088; (ii) amend the current rule text at Phlx Rule 1080(o) and Phlx Rule 1064 to more accurately reflect the manner in which contingency orders are handled with regard to stop orders and revise the Exchange's functionality with regard to how QCC Orders are handled with regard to All-or-None Orders; and (iii) update cross-references to Rule 1080(o) to reflect proposed Rule 1088. The Exchange also proposes to delete ''(p)'' within Rule 1080, which is currently reserved.[5]

Background

In 2011, Phlx adopted an Electronic QCC Order type [6] for execution of orders within the System.[7] The QCC order type facilitates the execution of stock/option Qualified Contingent Trades that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS (''QCT Trade Exemption'').[8] Specifically, Phlx Rule 1080(o) provides that a Phlx Order Entry Firm effectuating a trade in the System pursuant to the Regulation NMS QCT Trade Exemption to Rule 611(a) can cross the options leg of the trade on Phlx as a QCC Order immediately upon entry and without order exposure if no Customer orders [9] exist on the Exchange's order book at the same price. As set forth in Rule 1080(o), the Electronic QCC Order must: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Trade Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price.[10] Separately, the Exchange received approval to permit market participants to effectuate Floor QCC Orders.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. *See* Rule 1080(o).

[4] A Floor Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Rule 1064(e).

[5] The Exchange is removing Rule 1080(o) and therefore proposes to remove (p) which is simply reserved.

[6] *See* Securities and Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773, 20774 (April 13, 2011) (SR–Phlx–2011–47).

[7] System is defined at Phlx Rule 1000(b)(45).

[8] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006); Securities Exchange Act Release No. 57620 (April 4, 2008) 73 FR 19271 (April 9, 2008).

[9] Phlx will reject a QCC Order that attempts to execute when any Customer orders are resting on the Exchange limit order book at the same price. The Exchange proposes to amend the term ''customer'' to ''public customer.'' For purposes of this rule change the term ''public customer'' shall mean a person or entity that is not a broker or dealer in securities and is not a professional as defined within *Phlx* Rule 1000(b)(14).

[10] While the Electronic QCC Order would not provide exposure for price improvement for the options leg of a stock-option order, the options leg must be executed at the NBBO or better.

[11] *See* Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR–Phlx–2011–56) (a rule change to establish a qualified contingent cross order for execution on the floor of the Exchange). A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Trade Exemption, (iii) be executed at a price at or between the NBBO and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. *See* Phlx Rule 1064(e).

Relocation

The Exchange is proposing to relocate the text relating to Electronic QCC Orders, currently located at Phlx Rule 1080(o), to new Phlx Rule 1088. The Exchange believes that this relocation will aid market participants in locating Phlx's Rule regarding Electronic QCC Orders which is currently within a much larger rule.

Amendments

The Exchange proposes to amend the rule text related to Electronic QCC Orders, currently contained in Rule 1080(o), which text is being relocated to Rule 1088, as well as the rule text related to Floor QCC Orders in Rule 1064(e) as noted below. Specifically, with respect to the current text of Rule 1080(o), which applies to Electronic QCC Orders, the Exchange proposes to amend the rule text which is being relocated to Rule 1088 to specifically note that an Electronic QCC Order is comprised of an originating *electronic* order. This will serve to further distinguish proposed Rule 1088, which applies to Electronic QCC Orders, from Rule 1064(e), which applies to Floor QCC Orders. Also, the Exchange proposes to remove the word ''PHLX'' from the current rule text in Rule 1080(o) before the word ''System'' when relocating the text to proposed Rule 1088(a)(2). The Exchange uses the defined term ''System'' elsewhere in the rule.[12]

The Exchange proposes to add new rule text, which is currently not contained in Rule 1080(o) or Rule 1064(e), to make clear the handling of contingency orders with respect to QCC Orders. The Exchange proposes to add a new Commentary .01 to proposed Rule 1088, which contains the relocated text from Rule 1080(o) and also proposes to add a new Commentary .03 to Rule 1064 to provide for the interaction of certain contingency orders as they relate to QCC Orders. The new commentary seeks to address: (i) Certain order types on Phlx, which unlike other order types, are not displayed as part of Phlx's best bid or offer (''PBBO''); and (ii) repricing on the order book.

Non-Displayed Contingency Orders

The Phlx contingency orders, which are non-displayed are exclusively: (i) All-or-None Orders[13] and (ii) stop orders[14] (collectively ''Non-Displayed Contingency Orders''). These Non-Displayed Contingency Orders are not protected orders generally. An All-or-None Order would not be protected, unless the size of the contingency may be satisfied.[15] Similar to other markets, a stop order would be unprotected until such order is triggered by either the occurrence of a transaction or posting on the order book.[16] The Exchange notes that these Non-Displayed Contingency Orders are distinct from other order types. As provided for in current Rule 1080(o)(1), QCC Orders are immediately executed upon entry into the System by an Order Entry Firm provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the better of the NBBO. The ''NBBO'' is the best Protected Bid and Protected Offer as defined in the Options Order Protection and Locked/Crossed Markets Plan; Protected Bids and Protected Offers that are displayed at a price but available on the Exchange at a better non-displayed price shall be included in the NBBO at their better non-displayed price for purposes of this rule.[17] Rule 1083(o) defines a ''Protected Bid'' or ''Protected Offer'' as a Bid or Offer in an options series, respectively, that: (i) Is disseminated pursuant to the OPRA Plan;[18] and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. Non-Displayed Contingency Orders are not disseminated to OPRA and not part of the displayed PBBO. The Exchange notes that a Non-Displayed Contingency Order would never trade with the paired QCC Order. A stop order would not impact the execution of a QCC Order until the stop order is elected[19] by either the occurrence of a transaction or posting on the order book, at which point it would become a protected order and cause a rejection of the QCC Order provided it is a public customer order at the same price as the QCC Order and the price is at or between the NBBO. Today, an All-or-None Order would not cause a paired QCC Order to be automatically cancelled. The Exchange proposes to amend its current operation with respect to All-or-None Orders such that an All-or-None Order would cause a QCC Order to be automatically cancelled provided that the size of a QCC Order is greater than or equal to the size of the public customer All-or-None Order on the Exchange's limit order book and provided that the price of the public customer All-or-None Order locks or crosses the QCC Order. Below are some examples:

Example 1: QCC cancels back when QCC size is greater than public customer all-or-none (represented as ''AON'' for purposes of the below examples)

The PBBO used in QCC entry price validation does include resting AON orders when they could be satisfied by size of the incoming QCC

Minimum Price Variation (''MPV''): Penny

PBBO: $1.00 (10) × $1.20 (10)

Enter AON public customer Order to Sell 5 @$1.18

PBBO remains: $1.00 (10) × $1.20 (10)

PBBO (with AON): $1.00 (10) × $1.18 (5)

Enter single QCC for 1000 @$1.19

QCC cancels back to participant due to public customer AON @$1.18

Example 2: QCC trades through AON when QCC size is less than AON

[12] *See* footnote 7 above.

[13] An All-or None Order may only be submitted by a public customer. All-or-None Orders are non-displayed and non-routable. All-or-None Orders are executed in price-time priority among all public customer orders if the size contingency can be met. The Acceptable Trade Range protection in Rule 1099(a) is not applied to All-Or-None Orders. *See* Phlx Rule 1078.

[14] A stop order is a limit or market order to buy or sell at a limit price when a trade or quote on the Exchange for a particular option contract reaches a specified price. A stop-market or stop-limit order shall not be triggered by a trade that is reported late or out of sequence or by a complex order trading with another complex order.

[15] A ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (i) Is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. *See* Phlx Rule 1083(o). Phlx Rule 1083 defines a ''Protected Bid'' or ''Protected Offer'' as a Bid or Offer in an options series, respectively, that: (i) Is disseminated pursuant to the Options Price Reporting Authority (''OPRA'') Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. Once triggered, stop orders are treated as any other disseminated orders and would be displayed on OPRA.

[16] *See* NYSE Arca, Inc. Rule 6.62–O. Stop Orders (including Stop Limit Orders) shall not have standing in any Order Process in the Consolidated Book and shall not be displayed. A QCC Order could trigger a Stop Order.

[17] *See* Reg. NMS Rule 600(a)(42). National best bid and national best offer means, with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time).

[18] ''OPRA Plan'' means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Exchange Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended.

[19] Stop orders are inactive until they are ''elected.'' Stop orders are elected when either the bid (offer) is updated to a price equal to or greater (less) than the stop price of a Buy (Sell) Stop order or an execution on the Exchange occurs at a price equal to or greater (less) than the stop price of a Buy (Sell) stop order. Stop order election takes place at the end of the transaction that caused the election and at that time the stop order enters the book as a new market or limit order depending on the participant instructions. Note: stop orders that are ''electable'' upon entry are rejected.

The PBBO used in QCC entry price validation does include resting AON orders when they could be satisfied by size of the incoming QCC
MPV: Penny
PBBO: $1.00 (10) × $1.20 (10)
Enter AON public customer order to Sell 5000 @$1.18
PBBO remains: $1.00 (10) × $1.20 (10)
PBBO (with AON): $1.00 (10) × $1.18 (5000)
Enter single QCC for 1000 @$1.19
QCC prints @$1.19 (Note, the 5000 lot public customer AON cannot be satisfied by the 1000 lot QCC)
Example 3: QCC blocked by public customer order behind AON that could not be satisfied by QCC
The PBBO used in QCC entry price validation does include resting AON orders when they could be satisfied by size of the incoming QCC
MPV: Penny
PBBO: $1.00 (10) × $1.20 (10)
Enter AON public customer order to Sell 5000 @$1.18
Enter public customer Order to sell 1 @$1.19
PBBO adjusts: $1.00 (10) × $1.19 (1)
PBBO (with AON): $1.00 (10) × $1.18 (5000)
Enter single QCC for 1000 @$1.19
QCC cancels back to participant due to public customer order @$1.19 (Note, the 5000 lot public customer AON cannot be satisfied by the 1000 lot QCC and therefore this does not cause the cancel)
Example 4: QCC cancels back due to AON that could be satisfied by QCC
The PBBO used in QCC entry price validation does include resting AON orders when they could be satisfied by size of the incoming QCC
MPV: Penny
PBBO: $1.00 (10) × $1.20 (10)
Enter AON public customer order to Sell 5@ $1.18
Enter public customer order to sell 1 @$1.19
PBBO adjusts: $1.00 (10) × $1.19 (1)
PBBO (with AON): $1.00 (10) × $1.18 (5)
Enter single QCC for 1000 @$1.19
QCC cancels back to participant due to public customer AON @$1.18
Example 5: Stop Order triggered by incoming QCC
MPV: Penny
PBBO: $1.00 (10) × $1.20 (10)
Enter Stop-Limit order to sell 10 contracts with a Stop price of $1.18 and a limit price of $1.19
Enter single QCC for 1000 @$1.18

QCC prints @$1.18 since the QCC price is better than the NBBO. The $1.18 execution of the QCC causes the sell stop order to be elected. Election of the stop order causes the order to be entered onto the book offered at $1.19. PBBO updates to be $1.00 (10) × $1.19 (10).

With respect to stop orders, the Exchange's proposal does not expand how Non-Displayed Contingency Orders are handled by the System, rather the Exchange is proposing to add transparency to its rules with respect to these non-protected order types. With the Exchange's proposal to amend the current handling of All-or-None Orders, if the size of a QCC Order is greater than or equal to the size of the resting public customer All-or-None Order, the QCC Order would be automatically cancelled [20] provided that the price of the public customer All-or-None Order is the same as, or better than, the price of the QCC Order. A market participant that elects to enter an All-or-None Order is choosing to request that the order be executed only if a certain contingency is met. The Exchange provides market participants the opportunity to enter limit orders, which unlike All-or-None Orders, are protected and displayed. Market participants electing to utilize the All-or-None Order type will have no standing on the order book in relation to an incoming QCC Order because All-or-None Orders are not protected, unless the size of a public customer All-or-None Order could be satisfied by the size of the QCC Order, and provided that the price of the public customer All-or-None Order is the same as, or better than, the price of the QCC Order. The Exchange believes that it provides market participants with an array of order types and allows market participants to determine the manner in which they would like to be executed.

Repricing

Certain orders are repriced on Phlx because the order locks or crosses the ABBO.[21] With respect to Do-Not-Route or ''DNR'' Orders, where the best away market is at an inferior price level to the PBBO, the System will automatically re-price that order from its one minimum price variation inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price, and expose such orders at the NBBO to Phlx XL II participants and other market participants only if the re-priced order locks or crosses the ABBO.[22] With respect to the automatic re-pricing from its one minimum price variation inferior to the original away best bid/offer price the Exchange notes that other markets also re-price orders to avoid locked and/or crossed markets,[23] and such repricing impacts the execution price of a QCC Order. The Exchange may have a quote or order that will not be displayed at its actual better price. For example, an order limit price may lock an away market, in which case the order is displayed one minimum increment away from the away market price but remains part of the Exchange's internal BBO [24] at the locking price. The Exchange is proposing to add newly proposed Rule 1088(a)(1) and current Rule 1064(e)(1) to make clear that the price of the QCC Order must be at or between not just the NBBO, but the better of the PBBO and the NBBO to immediately execute. The Exchange notes that it protects re-priced orders that are part of the Exchange's internal BBO at the locked pricing with an away market. This preserves the priority of interest which may be available at an internal price, internal BBO, which is better than the displayed PBBO and NBBO and permits executions only at prices which are at or better than the best price available. Repricing does not expand how QCC Orders are handled by the System, rather the Exchange is proposing to add transparency to its rules with respect to how QCC Orders are handled when there are re-priced orders on the book which are available at a price better than the displayed PBBO and NBBO.

Public Customer

Specifying the term ''public customer'' in place of the term ''customer'' within the rule text will make clear the meaning of that term. For purposes of this rule change the term ''public customer'' shall mean a person

[20] The System would technically accept the order upon entry and then upon a review of the Order Book send a message to the market participant automatically cancelling an order because of the resting public customer All-or-None Order.

[21] ABBO shall mean the away best bid or offer.

[22] *See* Phlx Rule 1080(m)(iv)(A). Further, with respect to routable orders, the same repricing takes place for FIND and SRCH Orders.

A FIND Order received during open trading that is marketable against the PBBO when the ABBO is inferior to the PBBO will be traded at the PBBO price. If the FIND Order has size remaining after exhausting the PBBO, it may: (1) Trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, or (2) be entered into the Phlx XL II book at its limit price, or one MPV away from the ABBO if locking or crossing the ABBO. *See* Phlx Rule 1080(m)(iv)(B).

A SRCH Order is a customer order that is routable at any time. A SRCH Order may trade at the Phlx price if that price is equal to or better than the ABBO or, if the ABBO is better than the Phlx price, orders have been routed to better priced markets for their full size; or (2) be routed to better priced markets if the ABBO price is the best price, and/or (3) be placed on the Phlx XL II book at its limit price if not participating in the Phlx opening at the opening price and not locking or crossing the ABBO. Once on the order book, the SRCH Order is eligible for routing if it is locked or crossed by an away market. *See* Phlx Rule 1080(m)(iv)(C).

[23] *See* Miami International Securities Exchange LLC (''MIAX'') Rule 515(h)(2) which provides that if trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529 when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order.

[24] The words ''internal BBO'' refer to the actual better price of an order resting on Phlx's order book which is not displayed, but available for execution.

or entity that is not a broker or dealer in securities and is not a professional as defined within Phlx Rule 1000(b)(14).

Cross-References

The Exchange proposes to update cross-references to Electronic QCC Orders within Rule 1080(o) within other Exchange rules to cite the new electronic rule.[25]

Implementation

The Exchange would implement the changes proposed herein prior to May 31, 2019. The Exchange would issue an Options Trader Alert announcing the exact date of implementation in advance.[26]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5) of the Act,[28] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending the rule text relating to QCC Orders to correct and make clear the current rule text.

The Exchange believes that the amendments to add the word ''electronic'' in proposed Rule 1088(a) and the deletion of the word ''PHLX'' in proposed Rule 1088(a)(2) are non-substantive amendments which simply add specificity and conform the rule text, respectively. Further, the proposals to update the cross-references to Rule 1080(o) to proposed Rule 1088 will correct the citations within the Rulebook for accuracy.

The Exchange's proposal to add new Commentary .01 to Rule 1088 and new Commentary .03 to Rule 1064 for QCC Orders is consistent with the Act because the proposed functionalities are consistent with the public customer protection provisions Phlx provides when a QCC order is submitted to the System. The Exchange notes that Non-Displayed Contingency Order Types are distinct from other order types. The Exchange offers an array of order types which do not have similar limitations and would be protected orders and are displayed. Other markets have stop orders which require a triggering (or ''electing'') event prior to being protected.[29]

With respect to stop orders, the Exchange's proposal does not expand how Non-Displayed Contingency Orders are handled by the System, rather the Exchange is proposing to add transparency to its rules with respect to these non-protected order types. The proposal would clarify that stop orders which have not been elected are not protected orders and are thus not considered for the acceptance or execution of QCC Orders. With respect to All-or-None Orders, the Exchange's proposal to automatically cancel a QCC Order, provided the size of a QCC Order is greater than or equal to the size of the resting public customer All-or-None Order and the price of the public customer All-or-None Order is the same as, or better than, the price of the QCC Order, is consistent with Act. Today, QCC Orders are immediately executed upon entry into the System by an Order Entry Firm provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the better of the NBBO for all other order types, with the exception of All-or-None Orders. The Exchange is extending the same level of protection to public customer All-or-None Orders in the case of QCC Orders that today is provided to all other order types submitted by public customers.[30] By automatically cancelling a QCC Order with a size greater than or equal to the size of a resting public customer All-or-None Order, provided the QCC price locks or crosses the All-or-None Order, will cause those public customer All-or-None orders to be prioritized.

The Exchange's proposal to add rule text to make clear that with respect to Non-Displayed Contingency Orders, the price of the QCC Order must be at or between not just the NBBO, but the better of the internal PBBO and the NBBO to immediately execute adds more transparency to the Exchange's Rules. The Exchange notes that other markets also re-price orders to avoid locked and/or crossed markets,[31] and such repricing impacts the execution price of a QCC Order. The Exchange protects re-priced orders at their ''actual'' price rather than their displayed price which preserves the priority of interest which may be available at an internal price, internal BBO, which is better than the displayed PBBO and NBBO and permits executions only at prices which are at or better than the best price available and continues to facilitate the execution of qualified contingent trades, thereby benefitting the market as a whole. Repricing does not expand how QCC Orders are handled by the System. The proposed text adds transparency with respect to how QCC Orders are handled when there are re-priced orders on the book which are available at a price better than the displayed PBBO and NBBO.

Finally, specifying the term ''public customer'' in place of the term ''customer'' within the rule text will make clear the meaning of that term.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposals to add the word ''electronic'' in proposed Rule 1088(a) and delete the word ''PHLX'' in proposed Rule 1088(a)(2) are non-substantive amendments which simply add specificity and conforms the rule text. The Exchange's proposal to amend cross-references will bring greater clarity to the Exchange's rules.

The Exchange's proposal to describe how Non-Displayed Contingency Orders are handled by the System does not impose an undue burden on competition, rather the rule text adds transparency to the rules because it describes how these non-protected order types are handled. The Exchange's proposal to automatically cancel a QCC Order, provided the size of a QCC Order is greater than or equal to the size of the resting public customer All-or-None Order and the price of the public customer All-or-None Order is the same as, or better than, the price of the QCC Order, does not impose an undue burden on competition because the Exchange will uniformly cancel all QCC Orders if there is a public customer All-or-None Order resting on the order book with eligible size. The Exchange is extending the same level of protection to public customer All-or-None Orders in the case of QCC Orders that today is provided to all other order types submitted by public customers and therefore uniformly prioritizing all public customer orders.

The Exchange's proposal to add rule text to make clear that with respect to Non-Displayed Contingency Orders, the price of the QCC Order must be at or between not just the NBBO, but the better of the internal PBBO and the NBBO to immediately execute does not impose an undue burden on competition. This rule text adds more transparency to the Exchange's Rules. The Exchange notes that other markets also re-price orders to avoid locked and/

[25] *See* Phlx's Pricing Schedule at Options 7, Section 1, B. and Section 4 and Phlx Rule 1064.

[26] *See* Options Trader Alert 2018–47.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* note 16 above.

[30] *See* note 6 above. Public customer priority existed at the adoption of Phlx's QCC Order functionality.

[31] *See* note 23 above.

or crossed markets,[32] and such repricing impacts the execution price of a QCC Order. Repricing does not expand how QCC Orders are handled by the System. The Exchange's proposal would add transparency to its rules with respect to how QCC Orders are handled when there are re-priced orders on the order book which are available at a price better than the displayed PBBO and NBBO. The Exchange uniformly reprices orders within the System. Specifying the term ''public customer'' in place of the term ''customer'' within the rule text will make clear the meaning of that term.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[33] and subparagraph (f)(6) of Rule 19b–4 thereunder.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–07, and should be submitted on or before May 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07147 Filed 4–10–19; 8:45 am]

BILLING CODE 8011–01–P

[32] *See* note 23 above.

[33] 15 U.S.C. 78s(b)(3)(A)(iii).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33440; 812–14405]

Precidian ETFs Trust, et al.; Notice of Application

April 8, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for exemptive relief.

SUMMARY OF APPLICATION: Applicants request an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. If granted, the requested order would permit registered open-end investment companies that are exchange-traded funds (each, an ''ETF'') and are actively managed to operate without being subject to the current daily portfolio transparency condition in actively managed ETF orders.

APPLICANTS: Precidian Funds LLC (the ''Initial Adviser''); Precidian ETFs Trust and Precidian ETF Trust II (each, a ''Trust'' and, together the ''Trusts''); and Foreside Fund Services, LLC.

FILING DATES: The application was filed on December 22, 2014, and amended on August 11, 2015, September 21, 2015, May 3, 2017, October 2, 2017, December 4, 2017, May 30, 2018, and April 4, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 3, 2019, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE,

Washington, DC 20549–1090; Applicants: Precidian ETFs Trust, Precidian ETF Trust II and Precidian Funds LLC, 350 Main St., Suite 9, Bedminster, NJ 07921, and Foreside Fund Services, LLC, Three Canal Plaza, Suite 100, Portland, ME 04101.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel; Deepak T. Pai, Senior Counsel; Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

I. Introduction

1. Applicants seek to introduce a novel type of actively managed ETF that would not be required to disclose its portfolio holdings on a daily basis (each, an ''ActiveShares ETF''). Due to their characteristics, ETFs (including those proposed by Applicants) are only permitted to operate in reliance on Commission exemptive relief from certain provisions of the Act and rules thereunder.[1] Accordingly, Applicants seek an order: Under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 thereunder; under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act; and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act. The requested order would permit: (a) ActiveShares ETFs to issue shares (''Shares'') redeemable in large aggregations only (''creation units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain affiliated persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units; and (d) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the ActiveShares ETFs (''Acquiring Funds'') to acquire Shares of the ActiveShares ETFs.

2. Section 6(c) allows the Commission to exempt any person, security, or transaction, or any class thereof, only ''if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].'' As discussed below, the Commission believes that ActiveShares ETFs meet the standard for exemptive relief under section 6(c) of the Act.[2] Accordingly, the Commission intends to grant the requested relief.

II. Background

A. Open-End Investment Companies and Net Asset Value

3. The Act defines an investment company as an ''issuer'' of ''any security'' which ''is or holds itself out as being engaged primarily . . . in the business of investing . . . in securities.''[3] Shares in an investment company represent proportionate interests in its investment portfolio, and their value fluctuates in relation to the changes in the value of that portfolio.

4. The most common form of investment company, the ''open-end'' investment company or mutual fund, is required by law to redeem its securities on demand at a price approximating the securities' proportionate share of the fund's NAV at the time of redemption.[4] These funds also continuously issue and sell new shares, thereby replenishing their investment capital.

5. Because open-end investment companies are required by law to redeem their shares based on investors' demands, shares of the funds have historically not traded on exchanges or in other secondary markets.[5]

B. Exemptions Under the Act for Actively Managed ETFs

6. ETFs, including those proposed by Applicants, are a type of open-end fund. But unlike traditional open-end funds, ETFs are made available to investors primarily through secondary market transactions on exchanges.

7. In order for this to take place, ETFs require various exemptions from the provisions of the Act and the rules thereunder. Critically, in granting such exemptions to date, the Commission has required that a mechanism exist to ensure that ETF shares would trade at a price that is at or close to the NAV per share of the ETF.[6]

8. Such a mechanism is essential for ETFs to operate because ETFs do not sell or redeem their individual shares at NAV per share as required by the Act. Instead, large broker-dealers that have contractual arrangements with an ETF (each, an ''Authorized Participant'') purchase and redeem ETF shares directly from the ETF, but only in large blocks called ''creation units.'' Traditionally, an Authorized Participant that purchases a creation unit of ETF shares first deposits with the ETF a ''basket'' of securities and other assets (*e.g.,* cash) identified by the ETF that day, and then receives the creation unit of ETF shares in return for those assets. The basket is generally representative of the ETF's portfolio and is equal in value to the aggregate NAV of ETF shares in the creation unit. After purchasing a creation unit, the Authorized Participant may sell the component ETF shares in secondary market transactions. Investors then purchase individual shares in the secondary market. The redemption process is the reverse of the purchase process: The Authorized Participant acquires a creation unit of ETF shares and redeems it for a basket of securities and other assets.

9. The combination of the creation and redemption process with the secondary market trading in ETF shares provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF.[7] For example, if ETF shares begin trading on national securities exchanges at a ''discount'' (a price below the estimated intraday NAV per share of the ETF), an Authorized Participant can purchase ETF shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit, redeem them from the ETF in exchange for the more valuable securities and other assets in the ETF's redemption basket. In addition to purchasing ETF shares,

[1] The Commission first granted exemptive relief to operate ETFs in the early 1990s when the first index-based ETFs were developed. *See* SPDR Trust Series I, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order). *See generally* Exchange Traded Funds, Investment Company Act Release No. 33140 (Jun. 28, 2018) (''ETF Rule Proposing Release''), at section I. The Commission has also granted ETFs exemptive relief from Sections 12(d)(1)(A) and (B) of the Act. *See generally* Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018).

[2] *See infra* section IV for a discussion of all the relief requested by Applicants, including relief under sections 17(b) and 12(d)(1)(J) of the Act.

[3] 15 U.S.C. 80a–3(a); 80a–3(a)(1).

[4] *See* section 22(d) and rule 22c–1; *see also infra* section IV.A (discussing section 22(d) and rule 22c–1).

[5] This stems from section 22(d) of the Act, which in effect fixes the prices at which redeemable securities, including open-end shares, are sold. The result is a system that precludes dealers from making a secondary market in open-end shares.

[6] This has been a required representation in all ETF orders since the Commission issued the first order. *See supra* note 1.

[7] *See* Investment Company Institute, *2018 Investment Company Fact Book* (2018) (''ICI Fact Book''), at 93; ETF Rule Proposing Release, *supra* note 1, at note 28 and accompanying text.

Authorized Participants also are likely to hedge their intraday risk. Thus, for example, when ETF shares are trading at a discount to the estimated intraday NAV per share of the ETF, an Authorized Participant may also simultaneously short the securities in the ETF's redemption basket. At the end of the day, the Authorized Participant will return the creation unit of ETF shares to the ETF in exchange for the ETF's basket assets, and use such assets to cover its short positions. Those purchases reduce the supply of ETF shares in the market, and thus tend to drive up the market price of the shares to a level closer to the NAV per share of the ETF.[8]

10. Conversely, if the market price for ETF shares reflects a ''premium'' (a price above the estimated intraday NAV per share of the ETF), an Authorized Participant can deposit a basket of securities and other assets in exchange for the more valuable creation unit of ETF shares, and then sell the individual shares in the market to realize its profit.[9] An Authorized Participant also is likely to hedge its intraday risk when ETF shares are trading at a premium. Thus, for example, when the shares of an ETF are trading at a premium, an Authorized Participant may buy the securities in the ETF's purchase basket in the secondary market and sell short the ETF shares. At the end of the day, the Authorized Participant will deposit the basket assets in exchange for a creation unit of ETF shares, which it will then use to cover its short positions. The Authorized Participant will receive a profit from having paid less for the ETF shares than it received for the assets in the purchase basket. These transactions would increase the supply of ETF shares in the secondary market, and thus tend to drive down the price of ETF shares to a level closer to the NAV per share of the ETF.

11. Market participants can also engage in arbitrage activity without using the creation or redemption processes described above. For example, if a market participant believes that an ETF is overvalued relative to its underlying or reference assets (*i.e.,* trading at a premium), the market participant may sell ETF shares short and buy the underlying or reference assets, wait for the trading prices to move toward parity, and then close out the positions in both the ETF shares and the underlying or reference assets to realize a profit from the relative movement of their trading prices. Similarly, a market participant could buy ETF shares and sell the underlying or reference assets short in an attempt to profit when an ETF's shares are trading at a discount to the ETF's underlying or reference assets. As discussed above, this type of trading of an ETF's shares and the ETF's underlying or reference assets may bring the prices of the ETF's shares and its portfolio assets closer together through market pressure.

12. In assessing whether to grant exemptive relief to actively managed ETFs in the past, the Commission has required a mechanism that would keep the market prices of ETF shares at or close to the NAV per share of the ETF. To date, this mechanism has been dependent on daily portfolio transparency.[10] This transparency provides market participants with an important tool to value the ETF portfolio on an intraday basis, which, in turn, enables market participants to effectively assess whether an arbitrage opportunity exists. It is the exercise of such arbitrage opportunities that keeps the market price of ETF shares at or close to the NAV per share of the ETF. This close tie between market price and NAV per share of the ETF is the foundation for why the prices at which retail investors buy and sell ETF shares are similar to the prices at which Authorized Participants are able to buy and redeem shares directly from the ETF at NAV. In granting relief from section 22(d) of the Act and rule 22c–1 under the Act, the Commission relies on this close tie between what retail investors pay and what Authorized Participants pay to make the finding that the ETF's shareholders are being treated equitably when buying and selling shares.[11] The Commission therefore has granted such exemptive relief to date only to those actively managed ETFs that have provided daily transparency of their portfolio holdings.

C. Prior Commission Action

13. The Applicants requested the same relief in a prior application based on a different proposal for ETFs that would not disclose their portfolio holdings on a daily basis.[12] In 2014, the Commission issued a notice preliminarily taking the position that the prior proposal did not provide an adequate substitute for full portfolio transparency in facilitating effective arbitrage.[13] The Commission stated that prospectus disclosure, quarterly portfolio holdings disclosure and the proposed indicative intraday value did not provide sufficient information to allow market makers to effectively assess whether real-time arbitrage opportunities in ETF shares exist. In particular, the Commission stated that an ETF's typical intraday indicative value, which is calculated every 15 seconds, is not reliable as the primary pricing signal for an ETF's portfolio, especially during stressed or volatile market conditions, because: (i) It provides stale data, given the 15-second intervals; (ii) it is not subject to meaningful standards, given that there are no uniform methodology requirements for its calculation and no one takes responsibility for its accuracy; and (iii) it is of limited value for asset classes that cannot be easily and accurately priced.[14]

III. The Application

A. The Applicants

14. The Trusts are each a statutory trust organized under the laws of Delaware and registered under the Act as an open-end management investment company with multiple series. The Initial Adviser, a limited liability corporation organized under the laws of Delaware, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and would serve as the investment adviser to the initial ActiveShares ETFs. Foreside Fund Services, LLC, a Delaware limited liability company, is a registered broker-dealer under the Securities Exchange Act of 1934, as amended (''Exchange Act'').

[8] The Authorized Participant's purchase of the ETF shares in the secondary market, combined with the sale of the redemption basket securities, may also create upward pressure on the price of ETF shares and/or downward pressure on the price of redemption basket securities, driving the market price of ETF shares and the value of the ETF's portfolio holdings closer together.

[9] The Authorized Participant's purchase of the basket assets, combined with the sale of ETF shares, may also create downward pressure on the price of ETF shares, upward pressure on the price of purchase basket securities, or both, bringing the market price of ETF shares and the value of the ETF's portfolio holdings closer together.

[10] The condition for daily portfolio transparency has consistently been one of the conditions to the exemptive relief issued to actively managed ETFs by the Commission. *See* PowerShares Capital Management LLC, et al., Investment Company Act Release Nos. 28140 (Feb. 1, 2008) (notice) and 28171 (Feb. 27, 2008) (order). *See also,* generally, ETF Rule Proposing Release, *supra* note 1, at section II.C.4.

[11] *See supra* note 3 and accompanying text.

[12] *See* Precidian ETFs Trust, et al., File No. 812–14116, Second Amendment, filed July 23, 2013 (the prior application also included a request for relief from section 22(e) of the Act).

[13] Precidian ETFs Trust, et al., Investment Company Act Release No. 31300 (October 21, 2014).

[14] *Id.* at section IV.A. *See also,* ETF Rule Proposing Release, *supra* note 1, at section II.C.3.

B. Applicants' Proposal

15. Applicants seek exemptive relief under section 6(c) to allow them to introduce several actively-managed ActiveShares ETFs that would not disclose their portfolio holdings on a daily basis.[15] Applicants maintain that operating the same ETFs as fully-transparent actively-managed ETFs would make the ETFs susceptible to ''front running'' and ''free riding'' by other investors and/or managers, which can harm, and result in substantial costs to, the ETFs and their shareholders.[16]

16. Applicants assert that the ActiveShares ETFs would allow investors to access active investment strategies offered by certain investment advisers that are currently only available via mutual funds, while also taking advantage of the traditional benefits of ETFs (*i.e.,* tax efficiency, lower cash drag and lower operational expenses) and without raising investor protection concerns that are not otherwise addressed by the terms and conditions of the requested relief.

17. Applicants state that the relief in the Application is similar to the relief granted in exemptive orders issued to existing actively managed ETFs, except for certain differences permitting the ActiveShares ETFs to operate on a non-transparent basis. These material differences are discussed below.

a. *AP Representatives.* To protect the identity and weightings of their portfolio holdings, the ActiveShares ETFs would sell and redeem their Shares in creation units to Authorized Participants only through an unaffiliated broker-dealer acting on an agency basis (''AP Representative'').[17] Applicants state that each day, an ActiveShares ETF would disclose to the AP Representative the basket of securities that the ActiveShares ETF would exchange for its Shares. In the case of creations, an Authorized Participant would deliver to the AP Representative the cash necessary to purchase the basket of securities to be exchanged for the Shares of the ActiveShares ETF. In the case of redemptions, the ActiveShares ETF would deliver a basket of securities to the AP Representative, who, in turn, would sell them in exchange for cash on behalf of the Authorized Participant. The AP Representative would know, but keep confidential, the identity and weightings of the basket securities it exchanges for the Shares on behalf of the Authorized Participants.[18] Applicants assert that an Authorized Participant would be able to effectively close a long (or short) position in a creation unit of Shares as soon as it enters an order to redeem (or create) the Shares and the AP Representative acquires or sells the basket securities to be exchanged with the ActiveShares ETF at the end of the day.[19]

b. *Verified Intraday Indicative Value and ETF portfolio holdings.* To facilitate arbitrage, each ActiveShares ETF would disseminate a ''verified intraday indicative value,'' or ''VIIV,'' reflecting the value of its portfolio holdings, calculated every second during the trading day, rather than every 15 seconds like existing ETFs.[20] Applicants have addressed the concerns noted by the Commission in 2014[21] with respect to reliance on the typical 15-second intraday indicative value for arbitrage purposes, by creating a VIIV that: (i) Would be calculated and disseminated every second;[22] and (ii) has precise and uniform parameters for calculation across all ActiveShares ETFs, including that the ActiveShares ETFs and their Adviser take responsibility for its calculation.[23] To further facilitate arbitrage and address those concerns, each ActiveShares ETF also will only invest in certain securities that trade on a U.S. exchange, contemporaneously with the ETF's Shares.[24] Because the securities are exchange traded, Applicants assert that the AP Representative would be able to promptly buy or sell the basket securities that it exchanges with the ActiveShares ETF on behalf of an Authorized Participant upon receiving an order to enter into a creation or redemption transaction. The portfolio

[15] Applicants request that the order apply to the series of the Trusts identified and described in the Application as well as to additional series of the Trusts and any other open-end management investment company or series thereof that seek to rely on the relief requested in the Application, each of which will operate as an actively-managed ETF. Any ActiveShares ETF will: (a) Be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term ''Adviser''); and (b) comply with the terms and conditions of the application. The Adviser may retain one or more sub-advisers (each a ''Sub-Adviser'') for the ActiveShares ETFs. Any Sub-Adviser will be registered under the Advisers Act. For purposes of the requested Order, the term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[16] *See* Application at 6.

[17] The AP Representative will have entered into an agreement with the Authorized Participants and the ActiveShares ETF. *See* Application at 5. No AP Representative would be an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the ActiveShares ETF, the ActiveShares ETF's Adviser, or the ActiveShares ETF's Authorized Participants.

[18] The ActiveShares ETFs will sell and redeem Shares in creation units and generally on an in-kind basis. Each AP Representative will be contractually restricted from disclosing the portfolio information of an ActiveShares ETF and will undertake to use the information only to execute creations and redemptions for the ActiveShares ETF. The ActiveShares ETFs will also obtain representations from the AP Representatives as to the confidentiality of the portfolio information, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, section 15(g) of the Exchange Act will require an AP Representative, as a registered broker, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative. *See* Application at note 21.

[19] *See* Application at page 18. Except where purchases or redemptions will include cash under certain limited circumstances, the names and quantities of basket securities will correspond *pro rata* to the portfolio holdings used to calculate an ActiveShares ETF's NAV for that day. *See* Application at 13–14. As market participants will be able to effectively close positions in Shares intraday, they will be able to keep any risk associated with their positions in Shares to a minimum. *See infra* notes 27–31 and accompanying discussion.

[20] For purposes of the VIIV, all portfolio securities will be valued at the mid-point between the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor (''National Best Bid and Offer''). *See* Application at 23.

[21] *See supra* note 13 and accompanying text.

[22] In particular, Applicants assert that such a relatively high frequency disclosure of the VIIV would permit market participants to assess whether an ActiveShares ETF is trading at a premium or discount to NAV and therefore provide a level of current information that will facilitate intraday arbitrage. *See* Application at 27.

[23] *See* Application at 22–23 and 28. In particular, Applicants assert that each ActiveShares ETF would employ a primary and a secondary calculation engine to provide two independently calculated sources of intraday indicative values. Each ActiveShares ETF would also employ a pricing verification agent to continuously compare the two data streams from the calculation engines on a real time basis. Each ActiveShares ETF would adopt procedures governing the calculation and dissemination of the VIIV and its Adviser would bear responsibility for the oversight of that process. Each Adviser would also, as part of that oversight process, periodically, but no less than annually, review the VIIV Procedures. Any changes to the procedures would be submitted to the ActiveShares ETF's board of directors for review. *Id.*

[24] Each ActiveShares ETF would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on an U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which an ActiveShares ETF may invest would be assets that the ActiveShares ETF could invest in directly, or in the case of an index future, based on an index of a type of asset that the ActiveShares ETF could invest in directly. An ActiveShares ETF may also invest in cash and cash equivalents. No ActiveShares ETF would buy securities that are illiquid investments (as defined in rule 22e–4(a)(8) under the Act) at the time of purchase, borrow for investment purposes or hold short positions. *See* Application at 8. An ActiveShares ETF may, however, hold an illiquid investment if it becomes illiquid after purchase. *See* Application at 28; *see also* rule 22e–4 under the Act (requiring, among other things, that a fund develop a plan to decrease its illiquid investments should they exceed 15% of the fund's net assets).

holdings' secondary market, moreover, would provide reliable price inputs for the VIIV calculation.[25]

c. *Arbitrage transactions in the ActiveShares ETFs.* Applicants assert that an accurate VIIV on a per-second basis (together with prospectus and quarterly portfolio disclosure),[26] and the ability to create and redeem ETF Shares in exchange for a basket that is a pro rata slice of the ActiveShares ETF's portfolio holdings, is sufficient to facilitate effective arbitrage.[27] Market participants would be able to identify potential arbitrage opportunities when an ActiveShares ETF's VIIV and secondary market price diverge and could then take advantage of those opportunities by entering into arbitrage transactions. For example, similar to traditional ETFs, if an ActiveShares ETF's Shares begin trading at a discount, an Authorized Participant can purchase the Shares in secondary market transactions and, after accumulating enough Shares to comprise a creation unit, redeem them from the ActiveShares ETF (through an AP Representative) in exchange for the more valuable securities in the ETF's redemption basket.[28] The purchases of the ActiveShares ETF's Shares would reduce the supply of the Shares in the market, and thus tend to drive up the Shares' market price to a level closer to the ETF's NAV.[29] Alternatively, if an ActiveShares ETF's Shares are trading at a premium, the transactions in the arbitrage process would be reversed.[30] Applicants further state that, like with traditional ETFs, market participants will also be able to engage in arbitrage without necessarily using the creation or redemption processes.[31] For example, if a market participant believes that an ActiveShares ETF is trading at a discount, the market participant may buy ETF Shares and take a short position in instruments whose returns the market participant believes are correlated to those of the ETF Shares. The market participant would wait for the trading prices to move toward parity, and then close out the positions in both the ETF Shares and those instruments, to realize a profit from the relative movement of their trading prices.[32] As a result, Applicants expect that ETF Shares will trade at a market price at or close to the NAV per Share.[33]

d. *Protective conditions.* Because the ActiveShares ETFs and the alternative arbitrage mechanism will be new to the market, Applicants have agreed to comply with certain conditions in addition to those included in prior ETF exemptive orders. First, the ActiveShares ETFs will provide certain public disclosures to explain to investors how they differ from traditional ETFs and inform investors that the ActiveShares ETFs' bid-ask spreads and premiums/discounts may be larger than those for traditional ETFs due to the lack of transparency, thus making trading in the ActiveShares ETFs' Shares more expensive. The ActiveShares ETFs will also disclose that market participants may attempt to reverse engineer an ActiveShares ETF's trading strategy, which, if successful, could increase opportunities for trading practices that may disadvantage the ActiveShares ETF and its shareholders.[34] In addition, each ActiveShares ETF will include a legend (the ''Legend'') in a prominent location on the outside cover page of its prospectus, as well as on its website and any marketing materials, that will highlight for investors the differences between the ActiveShares ETFs and fully transparent actively managed ETFs and the above costs and risk.[35] Unless otherwise requested by the staff of the Commission, the Legend will read as follows:

This ETF is different from traditional ETFs.

Traditional ETFs tell the public what assets they hold each day. This ETF will not. This may create additional risks for your investment. For example:

- You may have to pay more money to trade the ETF's shares. This ETF will provide less information to traders, who tend to charge more for trades when they have less information.
- The price you pay to buy ETF shares on an exchange may not match the value of the ETF's portfolio. The same is true when you sell shares. These price differences may be greater for this ETF compared to other ETFs because it provides less information to traders.
- These additional risks may be even greater in bad or uncertain market conditions.

The differences between this ETF and other ETFs may also have advantages. By keeping certain information about the ETF secret, this ETF may face less risk that other traders can predict or copy its investment strategy. This may improve the ETF's performance. If other traders are able to copy or predict the ETF's investment strategy, however, this may hurt the ETF's performance.

For additional information regarding the unique attributes and risks of the ETF, see section [ ] below.

18. Second, Applicants will comply with the requirements of Regulation Fair Disclosure (''Reg. FD'') as if it applied to them, thus prohibiting the ActiveShares ETF's selective disclosure of any material nonpublic information.[36] Because the ActiveShares ETFs will not publicly disclose their portfolio holdings daily, the selective disclosure of material nonpublic information, including information other than portfolio information, would be more likely to provide an unfair advantage to the recipient than in other ETFs.

19. Third, the ActiveShares ETFs and their Adviser will take remedial actions as necessary if the ActiveShares ETFs

[25] To the extent a portfolio holding does not have a readily available market quotation, the ActiveShares ETF would make public the identity of the holding and its weight in the VIIV, thus making the holding fully transparent. *See* Application at 24 and 28. In addition, at any time that portfolio holdings representing 10% or more of an ActiveShares ETF's portfolio become subject to a trading halt or otherwise do not have readily available market quotations, Applicants would request that the exchange halt the ETF's trading. *See* Application at 29.

[26] Like all other registered management investment companies, the ActiveShares ETFs would also disclose their investment strategy in their prospectus and publicly disclose portfolio holdings information on a quarterly basis, with a 60-day lag. *See* rule 30e–1; rule 30d–1; and rule 30b1–5 under the Act.

[27] *See* Application at 29.

[28] Applicants note that since the size of the creation and redemption baskets will be relatively small, normally between $100,000 and $300,000, positions in ETF Shares can be closed throughout the day, resulting in minimal risk for a market participant. *See* Application at 17. *See also supra* paragraph 17.a.

[29] The purchase of the ETF Shares in the secondary market, combined with the sale of the redemption basket securities, may also drive the market price of ETF Shares and the value of the ActiveShares ETF's portfolio holdings closer together. *See supra* section II.B herein.

[30] *See supra* section II.B herein.

[31] *See supra* section II.B herein.

[32] At any time during trading hours, a market participant has the ability to eliminate all risk by closing its positions, including positions in the Shares, by placing a creation or redemption order, where the AP Representative would buy or sell on behalf of the market participant the basket securities to be exchanged with the ActiveShares ETF at the end of the day. *See* Application at 18; *supra* note 18 and accompanying text.

[33] *See* Application at 5.

[34] *See* Application at 21.

[35] *See* Application at 20–21.

[36] *See* 17 CFR 243. ETFs are not otherwise subject to Reg. FD. The federal securities laws and an investment adviser's fiduciary duties permit the disclosure of an ETF's nonpublic portfolio information to selected third parties only when the ETF has legitimate business purposes for doing so and the recipients are subject to a duty of confidentiality, including a duty not to trade on the nonpublic information. *See* ETF Rule Proposing Release, *supra* note 1, at text accompanying notes 225–226. Reg. FD's Rule 100(b)(2)(iii) exempts from Reg. FD certain communications made in connection with a securities offering registered under the Securities Act. Applicants would not rely on this exemption; as the ActiveShares ETFs will be continuously offered, this exemption would likely make the condition requiring Applicants to comply with Reg. FD meaningless.

do not function as anticipated. Prior to launch, the ActiveShares ETFs will establish certain thresholds for their levels of premiums/discounts and spreads, so that, upon an ActiveShares ETF's crossing a threshold, the Adviser will promptly call a meeting of the ActiveShares ETF's board of directors, and will present the board with recommendations for appropriate remedial measures.[37] The board would then consider the continuing viability of the ActiveShares ETF, whether shareholders are being harmed, and what, if any, action would be appropriate.[38] In addition, Applicants have agreed to provide to Commission staff on a periodic basis certain metrics and other such information as the staff may request in order to facilitate the staff's ongoing monitoring of the ActiveShares ETFs.[39]

IV. Requested Exemptive Relief

20. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

21. Applicants' request for relief is novel only under section 22(d) and rule 22c–1 due to the proposed alternative arbitrage mechanism. In all other respects, Applicants are seeking relief that the Commission has previously granted to existing ETFs.[40] As discussed above, the requested relief would be available to any open-end investment company that is an actively-managed ETF operating in compliance with the terms and conditions of the order and that is advised by an Adviser.[41]

22. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

A. Novel Relief Under Section 22(d) and Rule 22c–1

23. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter other than at a current public offering price described in the fund's prospectus. Rule 22c–1 under the Act requires open-end funds, their principal underwriters, and dealers in fund shares (and certain others) to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem.

24. Together, section 22(d) and rule 22c–1 are designed to: (i) Prevent dilution caused by certain riskless trading practices of principal underwriters and dealers; (ii) prevent unjust discrimination or preferential treatment among investors purchasing and redeeming fund shares; and (iii) preserve an orderly distribution of investment company shares.[42]

25. Applicants believe that none of these concerns will be raised by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market trading in Shares does not involve the ActiveShares ETFs as parties and cannot result in dilution of an investment in Shares, and to the extent different prices for Shares exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, Applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, Applicants contend that the proposed distribution system will be orderly because anyone will be able to sell or acquire Shares on an exchange and arbitrage activity should ensure that secondary market transactions occur at prices at or close to the ActiveShares ETF's NAV.

26. In considering relief from section 22(d) and rule 22c–1 for ETFs, the Commission has focused on whether the ETFs' arbitrage mechanism addresses the concerns underlying those provisions. As noted earlier, the Commission has only granted relief from section 22(d) and rule 22c–1 to actively managed ETFs that provide daily transparency of their portfolio holdings.[43] The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV.[44] The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable,

[37] *See* Application at 25. For the first three years after launch of an ActiveShares ETF, its board would promptly meet if, for 30 or more days in any quarter or 15 days in a row, the absolute difference between either the market closing price or Bid/Ask Price, on one hand, and NAV, on the other, exceeds 1%, or the bid/ask spread exceeds 1%. An ActiveShares ETF may adopt additional or lower (*i.e.,* less than 1%) thresholds to the extent approved by the ETF's board.

[38] For at least three years after launch of each ActiveShares ETF, the Board will also undertake these considerations on an annual basis, regardless of whether the ActiveShares ETF's preset thresholds have been crossed. Potential actions may include, but are not limited to, changing lead market makers, listing the ActiveShares ETF on a different exchange, changing the size of creations units, changing the ActiveShares ETF's investment objective or strategy, and liquidating the ActiveShares ETF. *See* Application at 25.

[39] *See* Application at 45, condition 7.

[40] Applicants are not seeking the customary relief from section 22(e) of the Act, which permits ETFs that invest in foreign instruments to delay the satisfaction of in-kind redemption requests beyond seven days. *See generally* ETF Rule Proposing Release, *supra* note 1, at section II.B.4. Given that the ActiveShares ETFs will not invest in foreign markets, the relief is not necessary.

[41] Applicants anticipate that the Initial Adviser or an affiliate thereof would enter into license agreements with other registered investment advisers advising an open-end management investment company that intends to launch new series operating as the Applicants' ETFs (such licensed adviser and trust together, the ''Future Applicants''). Applicants further expect that Future Applicants would apply for a separate exemptive order that incorporates by reference all the terms and conditions of the requested order and any amendments thereto. *See* Application at 6. *See also* in re Eaton Vance Management, et al., File No. 812–14139, Fourth Amendment, filed Sept. 25, 2014; Investment Company Act Rel. No. 31333 (Nov. 6, 2014) (notice), Investment Company Act Rel. No. 31361 (Dec. 2, 2014) (order). *See also, e.g.,* in re American Beacon Nextshares Trust, et al., File No. 812–14417, First Amendment, filed Feb. 23, 2015; Investment Company Act Rel. No. 31498 (Mar. 6, 2015) (notice); Investment Company Act Rel. No. 31542 (Apr. 1, 2015) (order).

[42] *See* ETF Rule Proposing Release, *supra* note 1, at text accompanying note 111.

[43] An effective arbitrage mechanism that maintains a close tie between market price and NAV is the foundation for why the prices at which retail investors buy and sell ETF shares are similar to the price at which Authorized Participants are able to buy and redeem shares directly from the ETF at NAV. *See* discussion following *supra* note 9; *see also* ETF Rule Proposing Release, *supra* note 1, at section II.B.2.

[44] *See supra* section III.B.c.

fully transparent ETFs.[45] Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.[46]

B. Other Relief

27. The additional exemptive relief Applicants seek is relief routinely granted to ETFs, and does not raise novel issues on account of the lack of daily portfolio transparency.

28. *Sections 5(a)(1) and 2(a)(32) of the Act.* First, because the Shares will not be individually redeemable, Applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the ActiveShares ETFs to register as open-end management investment companies and issue Shares that are redeemable in creation units only.

29. *Sections 17(a)(1) and (2) of the Act.* Second, Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the ActiveShares ETFs, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of creation units and the redemption procedures for in-kind redemptions of creation units will be the same for all purchases and redemptions and basket securities will be valued in the same manner as those portfolio securities currently held by the ActiveShares ETFs. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit an ActiveShares ETF to sell its Shares to and redeem its Shares from an Acquiring Fund, and to engage in the accompanying in-kind transactions with the Acquiring Fund.[47] The purchase of creation units by an Acquiring Fund directly from an ActiveShares ETF will be accomplished in accordance with the policies of the Acquiring Fund and will be based on the NAVs of the ActiveShares ETFs.

30. *Section 12(d)(1) of the Act.* Third, Applicants request an exemption to permit Acquiring Funds to acquire ETF Shares beyond the limits of section 12(d)(1)(A) of the Act and permit the ActiveShares ETFs, and any principal underwriter for the ActiveShares ETFs, and/or any broker or dealer registered under the Exchange Act, to sell ETF Shares to Acquiring Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an ETF through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

C. Consideration of Possible Concerns Relating to the Requested Relief

31. As part of our review, we have considered possible concerns regarding the requested relief, including, among others, concerns related to the proposed arbitrage mechanism, and the risk of selective disclosure and reverse engineering, as discussed below. We believe, however, that the Applicants' proposed terms and conditions sufficiently address such concerns.

32. *Proposed Arbitrage Mechanism.* One possible concern is that the proposed arbitrage mechanism may not facilitate effective arbitrage, which could result in significant deviations between the market price and NAV per share of an ActiveShares ETF. We believe that the proposed arbitrage mechanism can work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV while providing investors with the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.[48] In addition, to the extent that the ActiveShares ETFs do not function as anticipated, Applicants have undertaken to take remedial actions as appropriate.[49]

33. *Selective Disclosure.* Another possible concern is that the proposed AP Representative structure could create informational asymmetries that raise legal and policy concerns regarding selective disclosure of material non-public information. As discussed above, to address this concern Applicants have undertaken to implement a number of safeguards, including a condition requiring Applicants to comply with Reg. FD as if it applied to ETFs.[50]

34. *Reverse Engineering.* A third possible concern is that other market participants may be able to reverse engineer an ActiveShares ETF's portfolio holdings and use such information to the disadvantage of the ActiveShares ETF, Authorized Participants and shareholders. Applicants have represented that they will operate the ActiveShares ETFs in a manner designed to minimize the risk of reverse engineering and the Commission anticipates that the ActiveShares ETFs will have the ability to minimize such risk.[51] Indeed, we note that the Applicants have a significant incentive to minimize this risk, considering that the purpose of their proposed arbitrage

[45] While the VIIV will provide an approximate value of an ActiveShares ETF's portfolio holdings, market participants will only be able to estimate, not to observe, the spreads at which those holdings trade, given that the VIIV would be based on the mid-point between the current National Best Bid and Offer. *See supra* note 19. For the same reason, market participants also will not know the exact price at which the AP Representative buys or sells the ActiveShares ETF's portfolio holdings as part of a creation or redemption transaction with the ActiveShares ETF. To account for the lack of this information, market participants may require wider spreads than for other ETFs when they trade the ActiveShares ETF Shares.

[46] Investors will have the information necessary to compare the costs associated with investing in the ActiveShares ETFs with the costs of investing in other ETFs and mutual funds. *See* Item 3 of Form N–1A; condition 2. *Cf.* ETF Rule Proposing Release, *supra* note 1, at text following note 130 (noting that for fully transparent ETFs, ''under certain circumstances, including during periods of market stress, the arbitrage mechanism may work less effectively for a period of time,'' but that ''on balance, . . . investors are more likely to weigh the potential benefits of ETFs (*e.g.,* low cost and intraday trading) against any potential for market price deviations when deciding whether to utilize ETFs.''

[47] The requested relief would apply to direct sales of shares in creation units by an ActiveShares ETF to an Acquiring Fund and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ActiveShares ETF could be deemed an affiliated person, or a second-tier affiliate, of an Acquiring Fund because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Acquiring Fund.

[48] *See supra* paragraphs 17.c. and 26.

[49] *See supra* paragraph 19.

[50] *See supra* paragraph 18. In addition, the AP Representative would contractually agree to use the identity and weighting of the securities in the creation basket for no purpose other than executing creations and redemptions for an ActiveShares ETF, and to maintain such identities and weightings confidential. *See* Application at 10. Further, the AP Representative, as a broker registered under the Exchange Act, is required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative. *See* Application at note 21.

[51] Our Division of Economic Research and Analysis (''DERA'') conducted an analysis of whether the ActiveShares ETFs' portfolios could be reverse engineered, finding that the answer depends on the specifics of each ActiveShares ETF, including the size of the ActiveShares ETF's universe of potential portfolio selections. *See* Memorandum from DERA, Inferring Non-Transparent ETF Portfolio Holdings (Nov. 16, 2017), *available at https://www.sec.gov/comments/sr-nysearca-2017-36/nysearca201736-2695453-161510.pdf.* The ActiveShares ETFs would disclose this risk to investors, even though Applicants believe that such reverse engineering would be ''highly unlikely.'' *See* Application at 24 and *supra* note 34 and accompanying text.

mechanism is to facilitate the operation of ETFs that limit the ETFs' susceptibility to predatory trading practices, like ''front running'' and ''free riding.''

V. Applicants' Conditions [52]

Applicants agree that any order of the Commission granting the requested ETF relief will be subject to the following conditions:

A. ETF Relief

1. As long as an ETF operates in reliance on the requested order, the Shares of such ETF will be listed on an exchange.

2. The website for the Trust, which will be publicly accessible at no charge, will contain, on a per Share basis for each ETF, the prior business day's NAV and market closing price or Bid/Ask Price of the Shares, a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV, and any other information regarding premiums and discounts as may be required for other ETFs registered under the Act. The website will also disclose the median bid-ask spread for each ETF's most recent fiscal year based on the National Best Bid and Offer at the time of calculation of NAV (or such other spread measurement as may be required for other ETFs registered under the Act).

3. Each ETF will include the Legend in a prominent location on the outside cover page of its prospectus, as well as on its website and any marketing materials.

4. No Adviser or Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the ETF) to acquire any deposit instrument for an ETF through a transaction in which the ETF could not engage directly.

5. On each Business day the VIIV for an ETF on a per-Share basis will be provided to the market in one second intervals during regular trading hours.

6. Each ETF will maintain and preserve, for a period of not less than five years, in an easily accessible place, all written agreements (or copies thereof) between (i) the ETF and each AP Representative related to the AP Representative's role as such and (ii) an Authorized Participant and the ETF or one of its service providers that allows the Authorized Participant to place orders for the purchase or redemption of creation units.

7. Each ETF will provide Commission staff with periodic reports (for which confidential treatment may be requested) containing such information as the Commission staff may request.

8. Each ETF and each person acting on behalf of an ETF will comply with and agree to be subject to the requirements of Regulation Fair Disclosure as if it applied to them (except that the exemptions provided in Rule 100(b)(2)(iii) therein shall not apply).

9. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed funds that create and redeem their Shares exclusively through an AP Representative or similar agent without daily public basket or portfolio disclosure.

B. Section 12(d)(1) Relief

10. The members of the Acquiring Fund's Advisory Group will not control (individually or in the aggregate) an ETF within the meaning of section 2(a)(9) of the Act. The members of the Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) an ETF within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an ETF, an Acquiring Fund's Advisory Group or the Acquiring Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of an ETF, it will vote its Shares of the ETF in the same proportion as the vote of all other holders of the ETF's Shares. This condition does not apply to the Acquiring Fund's Sub-Advisory Group with respect to an ETF for which the Acquiring Fund Sub-Adviser or a person controlling, controlled by or under common control with the Acquiring Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

11. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in an ETF to influence the terms of any services or transactions between the Acquiring Fund or Acquiring Fund Affiliate and the ETF or ETF Affiliate.

12. The board of directors or trustees of an Acquiring Management Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Acquiring Fund Adviser and any Acquiring Fund Sub-Adviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from an ETF or a Fund Affiliate in connection with any services or transactions.

13. Once an investment by an Acquiring Fund in the securities of an ETF exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board, including a majority of the Independent Trustees, will determine that any consideration paid by an ETF to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the ETF; (ii) is within the range of consideration that the ETF would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an ETF and its Adviser, or any person controlling, controlled by or under common control with such Adviser.

14. An Acquiring Fund Adviser, or a trustee or Sponsor of an Acquiring Trust, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including any fees received pursuant to any plan adopted by an ETF pursuant to rule 12b–1 under the Act) received from an ETF by the Acquiring Fund Adviser, or trustee or Sponsor of an Acquiring Trust, or an affiliated person of the Acquiring Fund Adviser, or trustee or Sponsor of the Acquiring Trust, other than any advisory fees paid to the Acquiring Fund Adviser, or trustee or Sponsor of an Acquiring Trust, or its affiliated person by the ETF, in connection with the investment by the Acquiring Fund in the ETF. Any Acquiring Fund Sub-Adviser will waive fees otherwise payable to the Acquiring Fund Sub-Adviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from an ETF by the Acquiring Fund Sub-Adviser, or an affiliated person of the Acquiring Fund Sub-Adviser, other than any advisory fees paid to the Acquiring Fund Sub-Adviser or its affiliated person by the ETF, in connection with the investment by the Acquiring Management Company in the ETF made at the direction of the Acquiring Fund Sub-Adviser. In the event that the Acquiring Fund Sub-Adviser waives fees, the benefit of the

[52] Unless the context otherwise requires, references to ''ETFs'' in the conditions below refer to ActiveShares ETFs. Capitalized terms not otherwise defined herein shall have the same meaning as in the Application.

waiver will be passed through to the Acquiring Management Company.

15. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an ETF) will cause an ETF to purchase a security in an Affiliated Underwriting.

16. The Board of an ETF, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by an ETF in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the ETF exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in an ETF. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the ETF; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the ETF in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the ETF.

17. Each ETF will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Acquiring Fund in the securities of the ETF exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

18. Before investing in an ETF in excess of the limits in section 12(d)(1)(A), an Acquiring Fund will execute an Acquiring Fund Agreement with the ETF stating that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an ETF in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the ETF of the investment. At such time, the Acquiring Fund will also transmit to the ETF a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the ETF of any changes to the list as soon as reasonably practicable after a change occurs. The ETF and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

19. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the Independent Trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any ETF in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

20. Any sales charges (other than customary brokerage fees) and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in FINRA Rule 2341.

21. No ETF will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent an ETF acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the ETF to acquire securities of one or more investment companies for short-term cash management purposes.

By the Commission,

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–07207 Filed 4–10–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–5219]

Notice of Intention To Cancel Registration Pursuant to Section 203(h) of the Investment Advisers Act of 1940

April 5, 2019.

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of NeoCap, LLC [File No. 801–110419], hereinafter referred to as the ''*registrant*''. Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall, by order, cancel the registration of such person.

The registrant indicated on its most recent Form ADV filing that it is a large advisory firm that has regulatory assets under management of $100 million or more.[1] The Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filing, and does not currently, maintain the required assets under management to remain registered with the Commission, nor does it appear eligible to register pursuant to any other provision of the Advisers Act. In addition, the registrant has not filed an annual updating amendment for fiscal years 2017 and 2018, and appears to be no longer in business as an investment adviser.

Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer in existence, are not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, and that its registration should be cancelled pursuant to section 203(h) of the Act.

[1] Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. *See* Advisers Act section 203A(a); 17 CFR 275.203A–2.

Any interested person may, by May 1 2019, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and the writer may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed to the SEC's Secretary at the address below.

At any time after May 1 2019 the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Olawale Oriola, Senior Counsel, at 202–551–6541; SEC, Division of Investment Management, Office of Investment Adviser Regulation, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07128 Filed 4–10–19; 8:45 am]

BILLING CODE 8011–01–P

[2] 17 CFR 200.30–5(e)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85521; File No. SR–CboeEDGA–2019–004]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Handling of Orders That Contain Both a Post Only Instruction and Certain Other Order Handling Instructions Maintained To Facilitate Compliance with Rule 610(d) of Regulation NMS

April 5, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2019, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend EDGA rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS. The text of the proposed rule change is attached as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend EDGA rules to clarify the handling of orders that contain both a Post Only instruction and certain other order handling instructions maintained to facilitate compliance with Rule 610(d) of Regulation NMS (the ''Locked and Crossed Markets Rule''). An order entered with a Post Only instruction does not remove liquidity, except when the order is an order to buy or sell a security priced below $1.00, or when executing as the taker of liquidity would be economically beneficial to the firm entering the order—*i.e.,* if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.[5] Today, the Exchange's rules state that this handling applies to Post Only orders entered with Price Adjust[6] or Display-Price Sliding[7] instruction, which are re-pricing instructions used for compliance with the Locked and Crossed Markets Rule. Thus, an executable order entered with a Post Only instruction is eligible to remove

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* EDGA Rule 11.6(n)(4). To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

[6] ''Price Adjust'' is an order instruction requiring that where an order would be a Locking Quotation of an external market or Crossing Quotation if displayed by the System on the EDGA Book at the time of entry, the order will be displayed and ranked at a price that is one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell). *See* EDGA Rule 11.6(l)(1)(A).

[7] ''Display-Price Sliding'' is an order instruction requiring that where an order would be a Locking Quotation or Crossing Quotation of an external market if displayed by the System on the EDGA Book at the time of entry, will be ranked at the Locking Price in the EDGA Book and displayed by the System at one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell). *See* EDGA Rule 11.6(l)(1)(B).

liquidity in the circumstances described in EDGA Rule 11.6(n)(4) instead of having its ranked price or display price adjusted pursuant to those order handling instructions.

However, the Exchange also offers a ''Cancel Back'' instruction that is not covered by EDGA Rule 11.6(n)(4). An order entered with a Cancel Back instruction is immediately cancelled instead of re-priced when displaying the order at its limit price would create a violation of the Locked and Crossed Markets Rule.[8] All orders must include a Price Adjust, Display-Price Sliding, or Cancel Back instruction,[9] and orders entered with a Post Only instruction are handled in the same manner regardless of which of these three additional instructions is applied. The Exchange therefore proposes to amend EDGA Rule 11.6(n)(4) to eliminate references to Display-Price Sliding and Price Adjust, similar to the current rules in place on its affiliated equities exchanges, Cboe BZX Exchange, Inc. (''BZX'') and Cboe BYX Exchange, Inc. (''BYX'').[10] The Exchange believes that removing the references to these two instructions in the rule would reduce potential confusion as the order handling described in the rule today applies to all orders entered with a Post Only instruction, and not a specific subset of those orders. No changes to the Exchange's trading or other systems are contemplated by this proposed change, which is instead designed to increase transparency around the Exchange's current operation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change is consistent with the public interest and the protection of investors as it would avoid potential confusion about how an order is handled if entered with both a Post Only and Cancel Back instruction. Today, the Exchange's rules provide that an order entered into the EDGA Book with a Post Only instruction would remove liquidity in certain circumstances, such as when economically beneficial for the order. In addition, the rules specify that this handling applies to orders entered with a Price Adjust or Display-Price Sliding instruction. The rules, however, are silent as to the handling applied if an order with a Post Only instruction contains a Cancel Back instruction. The Exchange's order handling is, in fact, the same regardless of which of these instructions are chosen by the member. As such, the Exchange believes that it is appropriate to amend EDGA Rule 11.6(n)(4) to eliminate references to the Price Adjust or Display-Price Sliding instruction, thereby making clear that this handling applies to all orders entered with a Post Only instruction and not only those that also contain Price Adjust or Display-Price Sliding instructions.

The Exchange believes that this order handling, which mirrors that in place on the Exchange's affiliated equities markets (*i.e.,* BZX and BYX) is appropriate regardless of whether an order entered with a Post Only instruction also contains a Display-Price Sliding, Price Adjust, or Cancel Back instruction. Specifically, the Exchange believes that it is consistent with just and equitable principles of trade to permit an order entered with a Post Only instruction to remove liquidity when the order is an order to buy or sell a security priced below $1.00, or when executing as the taker of liquidity would be economically beneficial to the firm entering the order. This handling is designed to ensure that orders entered with a Post Only instruction are eligible to trade in certain circumstances where the entering firm may have an interest in securing an execution on entry—*i.e.,* as the taker of liquidity—notwithstanding the member's use of the Post Only instruction. Although the Exchange's rules currently mention order handling for the Display-Price Sliding and Price Adjust instructions specifically, this functionality should be applied equally to any order entered with a Post Only instruction. Thus, amending the rule as proposed would provide additional transparency into a feature offered by the Exchange that is potentially beneficial to members that utilize the Post Only instruction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change would remove ambiguity in the EDGA rules describing the Post Only instruction by amending those rules consistent with rules currently in place for the Exchange's affiliates, BZX and BYX. No change to the Exchange's order handling is contemplated by this proposed rule change, which would merely clarify the current handling for certain orders entered with a Post Only instruction. The Exchange therefore believes that the proposed rule change would increase transparency around the operation of the Exchange to the benefit of members and investors, without imposing any significant burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[8] ''Cancel Back'' is an instruction the User may attach to an order instructing the System to immediately cancel the order when, if displayed by the System on the EDGA Book at the time of entry, or upon return to the System after being routed away, would create a violation of Rule 610(d) of Regulation NMS or Rule 201 of Regulation SHO, or the order cannot otherwise be executed or posted by the System to the EDGA Book at its limit price. *See* EDGA Rule 11.6(b).

[9] Display-Price Sliding is applied as the default handling unless Price Adjust or Cancel Back is elected [sic] *See* EDGA Rule 11.8(b)(10).

[10] *See* BZX Rule 11.9(c)(6) and BYX Rule 11.9(c)(6).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2019–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2019–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2019–004, and should be submitted on or before May 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07154 Filed 4–10–19; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85533; File No. SR–NYSECHX–2019–04]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Article 20, Rule 10, Handling of Clearly Erroneous Transactions

April 5, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 3, 2019, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Article 20, Rule 10, Handling of Clearly Erroneous Executions, to the close of business on October 18, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Article 20, Rule 10, Handling of Clearly Erroneous Executions, to the close of business on October 18, 2019. This change is being proposed in connection with proposed amendments to the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan'') that would allow the Plan to continue to operate on a permanent basis.[4]

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 10 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[5] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[6] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (File No. 4–631) (''Eighteenth Amendment'').

[5] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–CHX–2010–13).

[6] *See* Securities Exchange Act Release No. 68802 (Feb. 1, 2013), 78 FR 9092 (Feb. 7, 2013) (SR–CHX–2013–04).

ended according to the primary listing market.[7] These changes are currently scheduled to operate for a pilot period that coincides with the pilot period for the Limit Up-Limit Down Plan,[8] including any extensions to the pilot period for the Plan.[9]

The Commission recently published the proposed Eighteenth Amendment to the Plan to allow the Plan to operate on a permanent, rather than pilot, basis. The Exchange proposes to amend Rule 10 to untie the pilot program's effectiveness from that of the Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019—*i.e.,* six months after the expiration of the current pilot period for the Plan. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[10] In such an event, the remaining sections of Rule 10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 10.

The Exchange does not propose any additional changes to Rule 10. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after Commission approves the Plan to operate on a permanent basis. Assuming the Plan is approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 10 for an additional six months should provide the Exchange and other national securities exchanges additional time to consider further amendments to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other national securities exchanges consider further amendments to these rules in light of the proposed Eighteenth Amendment to the Plan. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[17]

[7] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–CHX–2014–06).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71782 (March 24, 2014), 79 FR 17630 (March 28, 2014) (SR–CHX–2014–04).

[10] *See* supra notes 6–8. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission also has

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml.*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–2019–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2019–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2019–04 and should be submitted on or before May 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

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considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85531; File No. SR–NYSEAMER–2018–39]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Allow Flexible Exchange Equity Options To Be Cash Settled Where the Underlying Security Is a Specified Exchange-Traded Fund

April 5, 2019.

On September 20, 2018, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the rules related to Flexible Exchange (''FLEX'') Options to allow cash settlement for certain FLEX Equity Options. The proposal, as modified by Amendment No. 2, would allow FLEX Equity Options to be cash settled where the underlying security is one of 25 specified Exchange-Traded Funds.

The proposed rule change was published for comment in the **Federal Register** on October 11, 2018.[3] On November 19, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received one comment letter on the proposed rule change.[6]

On December 19, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8] On March 11, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. On March 25, 2019, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety.

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on October 11, 2018.[10] The 180th day after publication of the Notice is April 9, 2019. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates June 8, 2019, as the date by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84364 (October 4, 2018), 83 FR 51535 (October 11, 2018) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 84616 (November 19, 2018), 83 FR 60519 (November 26, 2018). The Commission designated January 9, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Letter to Brent J. Fields, Secretary, Commission, from Samara Cohen, Head of ETF Global Markets, BlackRock, dated November 27, 2018 (''BlackRock Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 84870 (December 19, 2018), 83 FR 66779 (December 27, 2018) (''Order Instituting Proceedings'').

[9] 15 U.S.C. 78s(b)(2).

[10] *See supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

which the Commission should either approve or disapprove the proposed rule change (File No. SR–NYSEAMER–2018–39), as modified by Amendment No. 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07144 Filed 4–10–19; 8:45 am]

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[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85522; File No. SR–NYSENAT–2019–07]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10, Clearly Erroneous Executions

April 5, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 3, 2019, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10, Clearly Erroneous Executions, to the close of business on October 18, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10, Clearly Erroneous Executions, to the close of business on October 18, 2019. This change is being proposed in connection with proposed amendments to the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan'') that would allow the Plan to continue to operate on a permanent basis.[4]

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[5] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[6] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[7] These changes are currently scheduled to operate for a pilot period that coincides with the pilot period for the Limit Up-Limit Down Plan,[8] including any extensions to the pilot period for the Plan.[9]

The Commission recently published the proposed Eighteenth Amendment to the Plan to allow the Plan to operate on a permanent, rather than pilot, basis. The Exchange proposes to amend Rule 7.10 to untie the pilot program's effectiveness from that of the Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019—*i.e.,* six months after the expiration of the current pilot period for the Plan. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[10] In such an event, the remaining sections of Rule 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after Commission approves the Plan to operate on a permanent basis. Assuming the Plan is approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 7.10 for an additional six months should provide the Exchange and other national securities exchanges additional time to consider further amendments to the clearly erroneous execution rules in

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (File No. 4–631) (''Eighteenth Amendment'').

[5] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NSX–2010–07).

[6] *See* Securities Exchange Act Release No. 68803 (Feb. 1, 2013), 78 FR 9078 (Feb. 7, 2013) (SR–NSX–2013–06).

[7] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NSX–2014–08).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71797 (March 25, 2014), 79 FR 18108 (March 31, 2014) (SR–NSX–2014–07).

[10] *See* supra notes 6—8. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

light of the proposed Eighteenth Amendment to the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other national securities exchanges consider further amendments to these rules in light of the proposed Eighteenth Amendment to the Plan. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–07 and should be submitted on or before May 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07148 Filed 4–10–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85523; File No. SR–NYSE–2019–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10, Clearly Erroneous Executions, and Rule 128, Clearly Erroneous Executions for NYSE Equities

April 5, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 3, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10, Clearly Erroneous Executions, and Rule 128, Clearly Erroneous Executions for NYSE Equities, to the close of business on October 18, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10, Clearly Erroneous Executions, and Rule 128, Clearly Erroneous Executions for NYSE Equities, to the close of business on October 18, 2019. This change is being proposed in connection with proposed amendments to the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan'') that would allow the Plan to continue to operate on a permanent basis.[4]

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128 that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[5] In 2013, the Exchange adopted a provision to Rule 128 designed to address the operation of the Plan.[6] Finally, in 2014, the Exchange adopted two additional provisions to Rule 128 providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[7] These changes are currently scheduled to operate for a pilot period that coincides with the pilot period for the Limit Up-Limit Down Plan,[8] including any extensions to the pilot period for the Plan.[9] In March 2018, the Exchange adopted Rule 7.10, Clearly Erroneous Executions, governing executions on its Pillar Trading Platform.[10]

The Commission recently published the proposed Eighteenth Amendment to the Plan to allow the Plan to operate on a permanent, rather than pilot, basis. The Exchange proposes to amend Rules 7.10 and 128 to untie the pilot program's effectiveness from that of the Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019—*i.e.,* six months after the expiration of the current pilot period for the Plan. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[11] In such an event, the remaining sections of Rules 7.10 and 128 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot

[4] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (File No. 4–631) (''Eighteenth Amendment'').

[5] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSE–2010–47).

[6] *See* Securities Exchange Act Release No. 68804 (Feb. 1, 2013), 78 FR 8677 (Feb. 6, 2013) (SR–NYSE–2013–11).

[7] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSE–2014–22).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71821 (March 27, 2014), 79 FR 18592 (April 2, 2014) (SR–NYSE–2014–17).

[10] *See* Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR–NYSE–2017–36).

[11] *See* supra notes 6–8. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

programs, the substance of which are identical to Rules 7.10 and 128.

The Exchange does not propose any additional changes to Rules 7.10 and 128. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after Commission approves the Plan to operate on a permanent basis. Assuming the Plan is approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rules 7.10 and 128 for an additional six months should provide the Exchange and other national securities exchanges additional time to consider further amendments to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rules 7.10 and 128 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other national securities exchanges consider further amendments to these rules in light of the proposed Eighteenth Amendment to the Plan. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–17 and should be submitted on or before May 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07152 Filed 4–10–19; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 19d–3, SEC File No. 270–245, OMB Control No. 3235–0204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19d–3 (17 CFR 240.19d–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19d–3 prescribes the form and content of applications to the Commission by persons seeking Commission review of final disciplinary actions against them taken by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Final disciplinary sanctions; (2) denial or conditioning of membership, participation or association; and (3) prohibitions or limitations of access to services offered by a SRO or member thereof.

It is estimated that approximately 40 respondents will utilize this application procedure annually. This figure is based upon past submissions. It is estimated that each respondent will submit approximately one response. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3 will be approximately eighteen hours. We estimate that approximately 25 firms or natural persons would draft the applications themselves for an aggregate annual hourly burden of 450 (25×18), and that 15 would hire outside counsel, at a cost of $7,218 per submission, for an aggregate annual dollar cost burden of $108,270 ($15 \times \$7,218$).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 8, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–07202 Filed 4–10–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85532; File No. SR–NYSEArca–2019–21]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10–E, Clearly Erroneous Executions

April 5, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 3, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the current pilot program related to Rule 7.10–E, Clearly Erroneous Executions, to the close of business on October 18, 2019. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10–E, Clearly Erroneous Executions, to the close of business on October 18, 2019. This change is being proposed in connection with proposed amendments to the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or the ''Plan'') that would allow the Plan to continue to operate on a permanent basis.[4]

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 7.10–E that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[5] In 2013, the Exchange adopted a provision designed to address the operation of the Plan.[6] Finally, in 2014, the Exchange adopted two additional provisions providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[7] These changes are currently scheduled to operate for a pilot period that coincides with the pilot period for the Limit Up-Limit Down Plan,[8] including any extensions to the pilot period for the Plan.[9]

The Commission recently published the proposed Eighteenth Amendment to the Plan to allow the Plan to operate on a permanent, rather than pilot, basis. The Exchange proposes to amend Rule 7.10–E to untie the pilot program's effectiveness from that of the Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019—*i.e.,* six months after the expiration of the current pilot period for the Plan. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[10] In such an event, the remaining sections of Rule 7.10–E would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10–E.

The Exchange does not propose any additional changes to Rule 7.10–E. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited six month pilot basis after Commission approves the Plan to operate on a permanent basis. Assuming the Plan is approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of Rule 7.10–E for an additional six months should provide the Exchange and other national securities exchanges additional time to consider further amendments to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10–E for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other national securities exchanges consider further amendments to these rules in light of the proposed Eighteenth Amendment to the Plan. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

[4] *See* Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (File No. 4–631) (''Eighteenth Amendment'').

[5] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSEArca–2010–58).

[6] *See* Securities Exchange Act Release No. 68809 (Feb. 1, 2013), 78 FR 9081 (Feb. 7, 2013) (SR–NYSEArca–2013–12).

[7] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSEArca–2014–48).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71807 (March 26, 2014), 79 FR 18087 (March 31, 2014) (SR–NYSEArca–2014–32).

[10] *See* supra notes 6–8. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider and develop a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2019–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–21 and should be submitted on or before May 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–07146 Filed 4–10–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15925 and #15926; MICHIGAN Disaster Number MI–00070]

Administrative Declaration of a Disaster for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Michigan, dated 04/04/2019.

Incident: Severe Weather and Flooding.

Incident Period: 03/14/2019.

DATES: Issued on 04/04/2019.

Physical Loan Application Deadline Date: 06/03/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Newaygo

Contiguous Counties:

Michigan: Kent, Lake, Mason, Mecosta, Montcalm, Muskegon, Oceana, Osceola.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15925 6 and for economic injury is 15926 0.

The State which received an EIDL Declaration # is Michigan.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: April 4, 2019.

Linda E. McMahon,

Administrator.

[FR Doc. 2019–07127 Filed 4–10–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15923 and #15924; KENTUCKY Disaster Number KY–00072]

Administrative Declaration of a Disaster for the Commonwealth of Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Kentucky, dated 04/03/2019.

Incident: Severe Storms and Flooding.

Incident Period: 02/06/2019 through 03/10/2019.

DATES: Issued on 04/03/2019.

Physical Loan Application Deadline Date: 06/03/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Johnson, Magoffin.

Contiguous Counties:

Kentucky: Breathitt, Floyd, Knott, Lawrence, Martin, Morgan, Wolfe.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15923 B and for economic injury is 15924 0.

The State which received an EIDL Declaration # is Kentucky.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: April 3, 2019.

Linda E. McMahon,

Administrator.

[FR Doc. 2019–07129 Filed 4–10–19; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36285]

York Railway Company—Joint Relocation Project Exemption—in Hanover, Pa.

On March 26, 2019, York Railway Company (YRC) filed a verified notice of exemption under 49 CFR 1180.2(d)(5) to enter into a joint project with CSX Transportation, Inc. (CSXT), involving the relocation of a segment of YRC's rail line in Hanover, York County, Pa.

The purpose of the joint relocation project is to ''simplify rail operations and maintenance by elimination of a crossing diamond and YRC track that will no longer be used, and to allow for the improvement of adjacent CSXT and YRC at-grade crossings by elimination of the YRC crossing.'' (Verified Notice 4.) The proposed joint relocation project notice covers the following actions:

(1) The installation of a switch and switch lead (connecting track) by CSXT within its right of way, and the realignment of YRC's main line track to connect with the switch lead;

(2) The abandonment by YRC of approximately 0.32 miles of track between milepost 31.35 and milepost 31.67 (including removal of a CSXT–YRC diamond and a YRC at-grade crossing); and

(3) The grant of permanent trackage rights by CSXT to YRC over the CXST line between the proposed future connection of CSXT and YRC at the west end of the Hanover Storage Track at approximate CSXT milepost BAS 53.98 and the connection of CSXT and YRC track near South Railroad Street at approximate CSXT milepost BAS 54.33.

YRC states that it does not serve any customers on the segment of track to be abandoned and that existing service to shippers and potential shippers at the west end of YRC's line will be preserved by trackage rights. According to YRC, because the trackage rights are overhead only, YRC will not gain access to any additional shippers. Thus, YRC states that no shippers will be affected by the relocation or lose access to any rail service provided by YRC.

The Board will exercise jurisdiction over the abandonment, construction, or sale components of a joint relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory, or a change in existing competitive situations. *See City of Detroit* v. *Canadian Nat'l Ry.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne Cty. Port Auth.* v. *ICC,* 59 F.3d 1314 (DC Cir. 1995); *Ind. Rail Road—Joint Relocation Project—Terre Haute, Ind.,* FD 36123 (STB served Aug. 4, 2017). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See Detroit, Toledo & Ironton R.R.—Trackage Rights—Between Wash. Court House & Greggs, Ohio—Exemption,* 363 I.C.C. 878 (1981).

Under these standards, the incidental abandonment, trackage rights, and construction components require no separate approval or exemption when

the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

The transaction may be consummated on or after April 25, 2019, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions to stay must be filed by April 18, 2019 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36285, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on YRC's representative, Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available at *www.stb.gov.*

Decided: April 8, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2019–07201 Filed 4–10–19; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on May 9, 2019, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the **SUPPLEMENTARY INFORMATION** section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for June 14, 2019, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects. The deadline for the submission of written comments is May 20, 2019.

DATES: The public hearing will convene on May 9, 2019, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is May 20, 2019.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, East Wing, Room 8EB, Harrisburg, Pa.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423; fax: (717) 238–2436. Information concerning the applications for these projects is available at the Commission's Water Application and Approval Viewer at *https://mdw.srbc.net/waav.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Project Sponsor and Facility: ARD Operating, LLC (Pine Creek), McHenry Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20150601).

2. Project Sponsor and Facility: BKV Operating, LLC (Meshoppen Creek), Washington Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 2.160 mgd (peak day) (Docket No. 20150602).

3. Project Sponsor and Facility: BKV Operating, LLC (Susquehanna River), Washington Township, Wyoming County, Pa. Application for surface water withdrawal of up to 2.914 mgd (peak day).

4. Project Sponsor and Facility: BKV Operating, LLC (Unnamed Tributary to Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.648 mgd (peak day) (Docket No. 20150603).

5. Project Sponsor and Facility: Town of Chenango, Broome County, N.Y. Application for renewal of groundwater withdrawal of up to 0.600 mgd (30-day average) from Well 12A (Docket No. 19871103).

6. Project Sponsor and Facility: Epsilon Energy USA, Inc. (East Branch Wyalusing Creek), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.715 mgd (peak day).

7. Project Sponsor and Facility: Hydro Recovery, LP, Blossburg Borough, Tioga County, Pa. Application for renewal of groundwater withdrawal of up to 0.216 mgd (30-day average) from Well HR–1 (Docket No. 20150608).

8. Project Sponsor and Facility: Hydro Recovery, LP, Blossburg Borough, Tioga County, Pa. Application for renewal of consumptive use of up to 0.316 mgd (peak day) (Docket No. 20150608).

9. Project Sponsor: Project Sponsor and Facility: Keystone Clearwater Solutions, LLC (Lycoming Creek), Lewis Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.250 mgd (peak day) (Docket No. 20150610).

10. Project Sponsor: Ski Roundtop Operating Corporation. Project Facility: Roundtop Mountain Resort (Unnamed Tributary to Beaver Creek), Warrington Township, York County, Pa. Modification to change from peak day to 30-day average for surface water withdrawal and consumptive use limits (Docket No. 20031209).

11. Project Sponsor and Facility: Stewartstown Borough Authority, Hopewell Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.019 mgd (30-day average) from Well 5A4 (Docket No. 19890703).

12. Project Sponsor and Facility: Stewartstown Borough Authority, Hopewell Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.033 mgd (30-day average) from Well 5J2 (Docket No. 19890703).

13. Project Sponsor and Facility: Stewartstown Borough Authority, Hopewell Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.051 mgd (30-day average) from Well 5R2 (Docket No. 19890703).

14. Project Sponsor: SUEZ Water Pennsylvania Inc. Project Facility: Newberry Operation, Newberry Township, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.072 mgd (30-day average) from the Dupont Well (Docket No. 19880401).

15. Project Sponsor and Facility: Sunset Golf Course, Londonderry Township, Dauphin County, Pa. Application for groundwater

withdrawal of up to 0.059 mgd (30-day average) from Well 7.

16. Project Sponsor and Facility: Sunset Golf Course, Londonderry Township, Dauphin County, Pa. Minor modification to add a new source (Well 7) to existing consumptive use approval (no increase requested in consumptive use quantity) (Docket No. 19990506).

17. Project Sponsor and Facility: Warwick Township Municipal Authority, Warwick Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.288 mgd (30-day average) from Well 1 (Docket No. 19890103).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any business listed above required to be subject of a public hearing. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/public-hearing.html.* Comments mailed or electronically submitted must be received by the Commission on or before May 20, 2019, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: April 5, 2019.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2019–07120 Filed 4–10–19; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–08]

Petition for Exemption; Summary of Petition Received; General Atomics Aeronautical Systems, Incorporated

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 1, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0091 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brittany Newton (202) 267–6691, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 28, 2019.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2019–0091.

Petitioner: General Atomics Aeronautical Systems, Incorporated.

Section(s) of 14 CFR Affected: 21.185 (b).

Description of Relief Sought: Request for exemption from the military surplus regulatory provision of Title 14 Code of Federal Regulations § 21.185(b) to allow the restricted category type certification of a General Atomics Aeronautical Systems, Inc. owned MQ–9A Reaper Unmanned Aircraft Systems (V AS) that have not previously been accepted or used by an Armed Force of the United States.

[FR Doc. 2019–07143 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–14]

Petition for Exemption; Summary of Petition Received; Near Earth Autonomy, Inc

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 1, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–1057 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 28, 2019.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–1057.

Petitioner: Near Earth Autonomy, Inc.

Section(s) of 14 CFR Affected: Part 21; part 27; §§ 45.23(b); 45.29; 61.113(a) & (b); 91.7(a); 91.9(b)(2); 91.103; 91.109; 91.119; 91.121; 91.151(b); 91.203(a) & (b); 91.405(a); 91.407(a)(1); 91.409(a)(2); 91.417(a) & (b); & 91.150.

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner to operate the Malloy Aeronautics TRV–50 and TRV–80 unmanned aircraft systems (UAS), with maximum takeoff weights of 126 and 254 pounds, respectively, to conduct demonstrations of safety products and services, as well as to conduct surveying, mapping, industrial-site inspection and monitoring, cargo delivery, and other commercial services. Such operations would be in visual line of sight and over private property with restricted public access.

[FR Doc. 2019–07141 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–15]

Petition for Exemption; Summary of Petition Received; DroneSeed Co

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 1, 2019.

ADDRESSES: Send comments identified by docket number FAA–2017–1157 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 28, 2019.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2017–1157.

Petitioner: DroneSeed Co.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i); 91.7(a); 91.113(b); 91.119(c); 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) & (2); 91.417(a) & (b); 137.19(c) & (d); 137.19(e)(2)(ii), (e)(2)(iii) & (e)(2)(v); 137.31; 137.33; 137.41(c); & 137.42.

Description of Relief Sought: The proposed amendment to exemption No. 17936A, if granted, would allow DroneSeed's remote Pilot in Command to simultaneously operate up to five unmanned aircraft systems (UAS), which weigh more than 55 pounds, for aerial agricultural operations, including post-wildfire reforestation efforts in remote operating environments. The proposed operation would utilize Visual Line of Sight and Beyond Visual Line of Sight UAS operations.

[FR Doc. 2019–07142 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0011]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on December 19, 2018, the Union Pacific Railroad (UPRR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 229.21, *Daily inspection,* which requires that each locomotive in use be inspected

once each calendar day. FRA assigned the petition Docket Number FRA–2019–0011.

Specifically, UPRR seeks the ability to forgo daily inspections on Distributed Power (DPU) locomotives that are en route. Daily inspections on DPU locomotives would still be performed before departing the originating terminal and before the locomotive's next usage after arrival at the train destination. UPRR states that many trains operating along the UPRR network typically arrive at their destination within 48 to 72 hours; with the longest routes operating in an 84- to 96-hour time range. Daily inspections of DPU locomotives performed en route often take place on the main line and in close proximity to other main line live tracks. Train delay created by conducting these inspections can at times result in blocked crossings. These situations can pose an unnecessary safety risk to both the general public and crew members as well.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 28, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Deputy Associate Administrator Office of Railroad Safety.

[FR Doc. 2019–07137 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0047]

Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding, River Scour, and River Channel Migration

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to remind all owners and operators of gas and hazardous liquid pipelines of the potential for damage to pipeline facilities caused by severe flooding and actions that operators should consider taking to ensure the integrity of pipelines in the event of flooding, river scour, and river channel migration.

FOR FURTHER INFORMATION CONTACT: Operators of pipelines subject to regulation by PHMSA should contact the appropriate PHMSA Region Office. The PHMSA Region Offices and their contact information are as follows:

- *Eastern Region:* 609–771–7800 Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia
- *Southern Region:* 404–832–1147 Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee
- *Central Region:* 816–329–3800 Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin
- *Southwest Region:* 713–272–2859 Arkansas, Louisiana, New Mexico, Oklahoma, and Texas
- *Western Region:* 720–963–3160 Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming

Intrastate pipeline operators should contact the appropriate state pipeline safety authority. A list of state pipeline safety authorities is available at *www.napsr.org*.

SUPPLEMENTARY INFORMATION:

I. Background

Severe flooding, river scour, and river channel migration are the types of unusual operating conditions that can adversely affect the safe operation of a pipeline and require corrective action under the Federal pipeline safety regulations.

Section 192.613(a) of the pipeline safety regulations (49 CFR parts 190–199) states that ''[e]ach operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.'' Section 192.613(b) further states that ''[i]f a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with § 192.619(a) and (b).''

Likewise, § 195.401(b)(1) states that ''[w]henever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may

not operate the affected part of the system until it has corrected the unsafe condition.'' Section 195.401(b)(2) further states that ''[w]hen an operator discovers a condition on a pipeline covered under [the integrity management requirements in] § 195.452, the operator must correct the condition as prescribed in § 195.452(h).''

Operators should be aware that severe flooding, river scour, and river channel migration may create unusual operating conditions that can adversely affect the safe operation of a pipeline, and may require corrective action under §§ 192.613(a) and (b) and 195.401(b).

In addition, § 194.107(a) requires operators of onshore oil pipelines to create response plans that ''include procedures and a list of resources for responding, to the maximum extent practicable, to a worst-case discharge and to a substantial threat of such a discharge.'' Section 194.115 further states that ''[e]ach operator shall identify, and ensure, by contract or other approved means, the resources necessary to remove, to the maximum extent practicable, a worst-case discharge and to mitigate or prevent a substantial threat of a worst-case discharge.''

Furthermore, §§ 192.935, 194.107, and 195.452(i) require an operator to take additional preventative and mitigative measures to prevent a pipeline failure and to mitigate the consequences of a pipeline failure. An operator must base the additional measures on the threats the operator has identified for each pipeline segment. If an operator determines outside force damage (*e.g.,* earth movement, floods) is a threat to the pipeline, the operator must take steps to minimize the probability of damage and the consequences of a release under these regulations.

In December of 2017, the American Petroleum Institute (API) issued the second edition of Recommended Practice (RP) 1133, ''Managing Hydrotechnical Hazards for Pipelines Located Onshore or Within Coastal Areas.'' This RP applies to new and existing hydrocarbon pipelines that transport gas and hazardous liquids. It is intended to apply to onshore waterways and coastal zones that may be susceptible to hydro technical hazards. The RP provides guidelines and recommendations for identifying, assessing and managing risks to pipeline integrity associated with these hazards through the life-cycle of a pipeline.

PHMSA has released several advisory bulletins on this subject, with the earliest issued July 29, 1993, (ADB–93–03), and the most recent on January 19, 2016, (ADB–16–01; 81 FR 2944). These advisory bulletins are consistent with API RP 1133. Each of these advisory bulletins followed an event that involved severe flooding that affected pipelines in the areas of rising or fast moving waters. As shown in these events, river bottom scour, channel migration, and some cases soil subsidence, may occur due to seasonal flooding, increased stream velocities, and man-made and natural river bank restrictions. River scour and channel migration may damage a pipeline as a result of additional stresses imposed on the pipe by undermining underlying support soils, exposing the pipeline to lateral water forces, and impact from waterborne debris. Soil subsidence, particularly in variable, steep, and rugged terrain, can pose a threat to the integrity of a pipeline if those threats are not mitigated. Lateral water forces may cause excessive bending loads that lead to pipeline failures, and possible impact forces from debris in the river or harmonic vibrations from water rapidly passing over pipelines can also increase the potential for pipeline failures.

Additionally, the safety of valves, regulators, relief sets, pressure sensors, and other facilities normally above ground or above water can be jeopardized when covered by water. Not only can these facilities become inoperable when submerged, but they are also at a greater risk of damage by outside forces, floating debris, river currents, and craft operating on the water. Boaters involved in rescue operations, emergency support functions, sightseeing, and other activities are generally not aware of the seriousness of an incident that could result from their craft damaging a pipeline facility that is unseen beneath the surface of the water. Depending on the size of the craft and the pipeline facility struck, significant pipeline damage may result.

Although accidents at river crossings account for less than one percent of the total number of pipeline accidents, the consequences of a release in water can be much more severe because of the threats to drinking water supplies and the environment. Unlike hazardous liquid releases on land where it can be easier to respond to and contain spills, swift-moving river currents will carry hazardous liquids further downstream, potentially impacting much larger geographical areas and more communities. Product releases in rivers can create difficult, costly, and lengthy spill response and remediation scenarios and activities for operators, communities, and local, state, and federal responders.

II. Advisory Bulletin (ADB–2019–01)

To: Owners and Operators of Gas and Hazardous Liquid Pipeline Systems.

Subject: Potential for Damage to Pipeline Facilities Caused by Severe Flooding.

Advisory: Severe flooding can adversely affect the safe operation of a pipeline. Operators should direct their resources in a manner that will enable them to determine and mitigate the potential effects of flooding on their pipeline systems in accordance with applicable regulations. Operators are suggested to take the following actions to prevent and mitigate damage to pipeline facilities and ensure public and environmental safety in areas affected by flooding:

1. Utilize experts in river flow, such as hydrologists or fluvial geomorphologists, to evaluate a river's potential for scour or channel migration at each pipeline river crossing.

2. Evaluate each pipeline crossing a river to determine the pipeline's installation method and determine if that method (and the pipeline's current condition) is sufficient to withstand the risks posed by anticipated flood conditions, river scour, or river channel migration. In areas prone to these conditions and risks, consider installing pipelines using horizontal directional drilling to help place pipelines below elevations of maximum scour and outside the limits of lateral channel migration.

3. Determine the maximum flow or flooding conditions at rivers where pipeline integrity is at risk in the event of flooding (*e.g.,* where scour can occur) and have contingency plans to shut down and isolate those pipelines when those conditions occur.

4. Ensure that pipeline controllers are aware of which pipeline sections are experiencing flooding or high flow conditions, and are familiar with the contingency plans to safely and quickly shut down and isolate the affected sections.

5. Evaluate the accessibility of pipeline facilities and components that may be in jeopardy, such as valve settings, which are needed to isolate water crossings or other sections of pipelines.

6. Extend regulator vents and relief stacks above the level of anticipated flooding as appropriate.

7. Coordinate with emergency and spill responders on pipeline locations, crossing conditions, and the commodities transported. Provide maps and other relevant information to such responders so they can develop appropriate response strategies.

8. Coordinate with other pipeline operators in flood areas and establish emergency response centers to act as a liaison for pipeline problems and solutions.

9. Deploy personnel so that they will be in position to shut down, isolate, contain, or perform any other emergency action on an affected pipeline.

10. Determine if facilities that are normally above ground (*e.g.,* valves, regulators, relief sets, etc.) have become submerged and are in danger of being struck by vessels or debris and, if possible, mark such facilities with U.S. Coast Guard approval and an appropriate buoy.

11. Perform frequent patrols, including appropriate overflights, to evaluate right-of-way conditions at water crossings during flooding and after waters subside. Report any flooding, either localized or systemic, to integrity staff to determine if pipeline crossings may have been damaged or would be in imminent jeopardy from future flooding.

12. Have open communications with local and state officials to address their concerns regarding observed pipeline exposures, localized flooding, ice dams, debris dams, and extensive bank erosion that may affect the integrity of pipeline crossings.

13. Following flooding, and when safe river access is first available, determine if flooding has exposed or undermined pipelines because of new river channel profiles. This is best done by a depth of cover survey.

14. Where appropriate, surveys of underwater pipe should include the use of visual inspection by divers or instrumented detection. Pipelines in recently flooded lands adjacent to rivers should also be evaluated to determine the remaining depth of cover. You should share information gathered by these surveys with affected landowners. Agricultural agencies may help to inform farmers of potential hazards from reduced cover over pipelines.

15. Ensure that line markers are still in place or are replaced in a timely manner. Notify contractors, highway departments, and others involved in post-flood restoration activities of the presence of pipelines and the risks posed by reduced cover.

If a pipeline has suffered damage or is shut-in as a precautionary measure due to flooding, the operator should advise the appropriate PHMSA regional office or state pipeline safety authority before returning the line to service, increasing its operating pressure, or otherwise changing its operating status. Furthermore, reporting a safety-related condition as prescribed in §§ 191.23 and 195.55 may also be required.

Issued in Washington, DC, on April 5, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–07132 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0092]

Pipeline Safety: Request for Revision of a Previously Approved Information Collection: National Pipeline Mapping System Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), PHMSA announces that the information collection request detailed below will be forwarded to the Office of Management and Budget (OMB) for review. On June 22, 2016, PHMSA published a notice and requested comments on proposed revisions to the National Pipeline Mapping System (NPMS) Program.'' During the comment period, PHMSA received several comments on ways to improve this data collection and to consider a phased timeline to collect data. PHMSA is publishing this notice to address the comments received, to notify the public of proposed revisions to this information collection, and to announce that PHMSA is requesting a 3-year approval of this information collection from OMB.

DATES: Written comments on this information collection should be submitted by May 13, 2019.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number PHMSA–2014–0092 at the beginning of your comments. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of PHMSA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2014–0092.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to possible delays in the delivery of U.S. mail to federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Amy Nelson, Geospatial Information Systems Manager, Outreach and Engagement Division, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, or by phone at 202–493–0591.

SUPPLEMENTARY INFORMATION:

I. Background
II. Attribute Changes
III. Retained Attributes
A. Pipe Diameter
B. Wall Thickness
C. Commodity Detail
D. Pipe Material
E. Pipe Grade
F. Pipe Join Method
G. Seam Type
H. Decade of Installation
I. Coated (yes/no)
J. Onshore/Offshore
K. In-line Inspection (yes/no)

L. Most Recent Assessment Method(s) and Year
M. Class Location
N. Gas High Consequence Area (HCA) segment
O. Segment Could Affect an HCA
P. Facility Response Plan Sequence Number
Q. Abandoned Pipelines
R. Breakout Tanks
S. Additional Liquefied Natural Gas Plant Attributes and Features
IV. General Comments
A. Reporting
B. Burden
C. Legality
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E. Definitions
V. Phased Timeline to Collect New Data Elements
A. Phase 1 data elements
B. Phase 2 data elements
C. Phase 3 data elements
VI. Mandates and Recommendations
VII. Summary of Impacted Collection

I. Background

On July 30, 2014, PHMSA published a notice and a request for comments in the **Federal Register** titled: ''Request for Revision of a Previously Approved Information Collection: National Pipeline Mapping System Program'' (79 FR 44246) (OMB Control No. 2137–0596) seeking comments on proposed changes to the NPMS data collection. Within this notice, PHMSA proposed to revise the currently approved NPMS data collection to expand the data attributes collected and to improve the positional accuracy of pipeline operators' NPMS submissions. On November 17, 2014, PHMSA held a public meeting to bring stakeholders together to discuss the NPMS information collection and to seek stakeholder input. Details about the meeting, including copies of the meeting's presentation files, can be found at: *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=101*. PHMSA encouraged participants of the meeting to submit comments on the proposed attributes to the docket. During the 60-day comment period, PHMSA received input from 28 different commenters comprised of pipeline operators, industry trade associations, public safety advocacy groups, and the public.

On August 27, 2015, PHMSA published another notice in the **Federal Register** (80 FR 52084) to address the comments received and to request additional comments on the proposed revisions to the July 2014 notice. During this subsequent comment period, PHMSA received feedback and several suggestions on how to improve the quality and efficiency of this information collection. PHMSA followed this comment period with another public meeting on September 10, 2015 and a technical workshop on November 25, 2015.

On June 22, 2016, PHMSA published a 30-day Notice in the **Federal Register** (81 FR 40757) to respond to comments from the August 27, 2015, notice and to present the version of the information collection that would be sent to OMB for final approval. Comments were submitted by: American Gas Association (AGA), American Petroleum Institute/Association of Oil Pipelines (API/AOPL), Interstate Natural Gas Association of America (INGAA), American Fuel and Petrochemical Manufacturers, TransCanada Corporation, Spectra Energy Partners, Texas Oil and Gas Association, and Pipeline Safety Trust (PST).

In January 2017, PHMSA sought input from the new Administration before proceeding with the proposed plans for the information collection. On May 18, 2018, PHMSA received the approval of the Secretary of Transportation (the Secretary) to resubmit the information collection to OMB. PHMSA is now publishing this notice respond to the comments received in response to the June 22, 2016 Notice. Please note that technical details pertaining to the new data elements, such as domains and reporting requirements for each attribute, can be found in the draft NPMS Operator Standards Manual which can be viewed at *www.regulations.gov* in Docket No. PHMSA–2014–0092.

The requested data is the first substantial update to NPMS submission requirements since the NPMS standards were developed in 1998. The NPMS is PHMSA's only dataset which tracks the locations of pipe characteristics, instead of how much/how many of those characteristics are in PHMSA's regulated pipelines. PHMSA seeks to reduce submission duplications and will consider the impact on the tabular data submitted through the Annual Reports once the data elements described in this notice are collected. Section 11 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 states that PHMSA may collect ''any other geospatial or technical data, including design and material specifications, that the Secretary determines are necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested.'' [1] The National Transportation Safety Board (NTSB) Safety Recommendation P–11–8 states that PHMSA should ''require operators of natural gas transmission and distribution pipelines and hazardous liquid pipelines to provide system-specific information about their pipeline systems to the emergency response agencies of the communities and jurisdictions in which those pipelines are located. This information should include pipe diameter, operating pressure, product transported, and potential impact radius.'' Other NTSB Safety Recommendations are noted in Section IV.E, including the attributes they address.

Specifically, the new data elements will:

- Aid all levels of government, from federal to municipal, in promoting public awareness of hazardous liquid and gas pipelines and in improving emergency responder outreach. Approximately 1,000 federal officials, 1,500 state officials and 5,500 county officials have access to the online mapping application. Providing these officials with an improved NPMS containing system-specific information about local pipeline facilities can help ensure emergency response agencies and communities are better prepared and can effectively execute response operations during incidents.
- Aid the industry in promoting public awareness and educating first responders about their pipelines. The NPMS applications are referenced by industry as a source for information about the location and characteristics of their pipelines.
- Permit more meaningful and accurate tabular and geospatial analysis, which will strengthen PHMSA's ability to evaluate existing and proposed regulations as well as operator programs and/or procedures.
- Strengthen the effectiveness of PHMSA's risk rankings and evaluations, which are used as a factor in determining pipeline inspection priority and frequency.
- Provide more accurate pipeline locations and additional pipeline-related geospatial data to assist with inspection planning and accident investigations by PHMSA pipeline inspectors.
- Support PHMSA's research and development programs by helping to predict the impact of new technology and other environmental factors on regulated pipelines.

II. Attribute Changes

PHMSA carefully reviewed appropriate security levels for each proposed new attribute. After discussions with the Transportation Security Administration (TSA), PHMSA

[1] 49 U.S.C. 60132(a).

identified six proposed attributes which, if collected, would receive Sensitive Security Information (SSI) status. These attributes are: Maximum Allowable Operating Pressure (MAOP)/ Maximum Operating Pressure (MOP), percent Specified Minimum Yield Strength (SMYS), segment could affect a drinking water Unusually Sensitive Area, pump and compressor station locations, mainline block valve locations, and gas storage fields. PHMSA determined that further research is needed to develop the necessary safeguards and procedures for collecting this data. As a result, the data elements listed above have been removed from this information collection. PHMSA reserves the right to reconsider these data elements in the future. Complete details on the remaining data elements (such as format, categories, and whether an attribute is a required attribute) are in Appendix A of the draft NPMS Operator Standards Manual, which can be found at *www.regulations.gov* in Docket No. PHMSA–2018–0092.

III. Retained Attributes

After careful consideration of the comments received, along with the agency's pipeline safety goals, PHMSA has decided to move forward with the proposal to collect geospatial data on the following pipeline attributes (Sections III.A–III.Q), breakout tank attributes (Section III.R) and liquefied natural gas plants (Section III.S) with no substantial modifications from the **Federal Register** Notice issued on June 22, 2016, (81 FR 40757). As stated in the June 2016 Notice, by Phase 3 (2024), hazardous liquid pipeline operators must submit data with a positional accuracy of +/− 50 feet (for more information about the three phases referenced, see Section V). Gas transmission operators must submit data at +/− 50 feet accuracy for all segments which are in a Class 2, Class 3, or Class 4 area; are within an HCA or have one or more buildings intended for human occupancy or an identified site within its potential impact radius. Identified sites and HCAs are defined in § 192.903. All other gas pipeline segments must be mapped to a positional accuracy of +/− 100 feet.

A. Pipe Diameter

PHMSA originally proposed requiring operators to submit data on the nominal diameter, also called the nominal pipe size (NPS) of a pipe segment. Knowing the diameter of a pipeline can help emergency responders determine the potential impact area of a pipeline in the event of a release. This attribute also gives PHMSA the ability to know the sizes of pipelines operated in any given geographic region, and to further assess potential impacts to public safety and the environment. It is reasonable to assume that a large diameter pipeline may pose a greater hazard during a rupture. Knowing the location of large diameter pipelines in relation to populated areas will help PHMSA effectively prioritize inspections and emergency response planning. PHMSA received no comments on the June 22, 2016, 30-day Notice pertaining to pipe diameter.

PHMSA will move forward with this attribute as originally proposed. To be consistent with other reporting methods, diameter will be reported as NPS of the pipeline segment, which identifies the diameter with a dimensionless value (*e.g.,* 8.625'' outside diameter pipe is reported as NPS 8, 5'' outside diameter is NPS 4.5). This attribute will be collected in Phase 1.

B. Wall Thickness

PHMSA originally proposed to collect data on the wall thickness of a pipe in decimal inches and collected in Phase 1.

AGA commented that this data element has no independent value when calculating risk and does not relate to the risk of corrosion. AGA asked whether it would apply to pre-1970 pipe and requested that it be moved to Phase 3. API and AOPL also asked whether it would apply to pre-1970 pipe and requested that it be moved to Phase 2. PHMSA has identified nominal wall thickness as a fundamental piece of information for determining pipeline risk. This information is especially critical for determining the relative risk of corrosion. Loss of wall thickness can occur for different reasons including corrosion, arc burns, and gouges due to excavation damage or improper back-fill. Prior excavation damage and corrosion are time-dependent threats. This data element will provide PHMSA the means to assess the adequacy of wall thickness requirements and remaining strength projections over time. Wall thickness can also be used to determine if existing pipe design is adequate for the present class location. Additionally, a lower wall thickness value, in the presence of inadequate cathodic protection, indicates a greater chance that an anomaly will grow to a level that requires intervention per 49 CFR part 192 or 195. The importance of collecting wall thickness data increased after PHMSA decided to remove SMYS from the list of required attributes.

In response to API's and AOPL's inquiry about pre-1970 pipe, PHMSA notes §§ 192.13, 192.359(b), 192.455, and 192.457 contain clauses that apply to the construction and maintenance of pipelines. However, the data points proposed in this information collection do not deal with the construction or maintenance of pipelines—only with the characteristics of the pipeline. Therefore, the requirements for this data element would apply to pre-1970 pipeline. This attribute will be collected in Phase 2.

C. Commodity Detail

PHMSA proposed operators submit additional commodity information for pipelines if the transported commodity is crude oil, product, or natural gas, and subcategories of each. The list of commodity categories is available in the NPMS Operator Standards Manual (Appendix A). Other categories may be added as needed. PHMSA received no comments in the June 22, 2016, 30-day Notice pertaining to commodity detail.

PHMSA will move forward with this data collection. This data attribute is required because of potential differences in leak characteristics, rupture-impacted hazardous areas, and a pipeline's internal integrity. Emergency responders can better respond to pipeline incidents if they are aware of the commodity transported. This attribute will be collected in Phase 1.

D. Pipe Material

PHMSA originally proposed that operators submit data on pipe material. Knowing the pipe material helps PHMSA determine the level of potential risk from excavation damage and external environmental loads. This data can also help in emergency response planning. Operators will be required to submit data on whether a segment was constructed out of cast iron, wrought iron, plastic, steel, composite, or other material. The only related comment in the June 22, 2016, 30-day Notice pertained to the list of material categories and is discussed below. PHMSA will move forward with this data collection. PHMSA has aligned the material categories to match the Annual Report categories. This attribute will be collected in Phase 1.

E. Pipe Grade

PHMSA originally proposed that operators submit information on the predominant pipe grade of a pipeline segment to be collected in Phase 1. AGA commented that this data element has no independent value when calculating risk. They asked whether it would apply to pre-1970 pipe and requested that it be moved to Phase 3. API and AOPL

requested that this data element be moved to Phase 2.

In response to API's and AOPL's inquiry about pre-1970 pipe, PHMSA notes §§ 192.13, 192.359(b), 192.455, and 192.457 contain clauses that apply to the construction and maintenance of pipelines. However, the data elements proposed do not deal with the construction or maintenance of pipelines—only with the characteristics of the pipeline. Therefore, the requirements for this data element would apply to pre-1970 pipeline.

This information is essential in assessing pipeline integrity, and is a necessary component in determining the allowable operating pressure of a pipeline. The list of pipe grades is available in the NPMS Operator Standards (Appendix A). Operators may submit either actual or predominant (90% of pipe segment) values. This attribute will be collected in Phase 2.

F. Pipe Join Method

PHMSA proposed operators submit data on the pipe join method. PHMSA would use this information to identify high-risk joining methods and as inputs for PHMSA's risk rankings and evaluations. These models are used to determine pipeline inspection priority and frequency.

AGA requested that operators have a ''predominant'' option or that ''flanged'' be removed as a category to avoid heavy segmentation (since a very common scenario is to have a flanged valve attached to a pipe segment which has a welded join method). PHMSA will move forward with this collection and accept predominant values where the value reported represents the characteristics of 90% or more of the pipe segment. This attribute will be collected in Phase 1.

G. Seam Type

PHMSA proposed operators submit data on the seam type of each pipe segment to be collected in Phase 1. PHMSA requires seam type to evaluate the risk of Low Frequency Electric Resistance Weld seam failures in all areas. Seam type is also needed to properly determine MAOP.

API and AOPL asked whether this element would be required for pre-1970 pipe and requested that it be moved to Phase 2. They asked whether it would be required for segments where a yield test has been performed to verify MAOP/MOP. AGA also asked whether it would apply to pre-1970 pipe and requested that it be moved to Phase 3. AGA stated that operators are not required to have this information. INGAA requested that this data element be collected only for Class 3, Class 4 and ''could affect'' HCA segments, which would match the requirements of the NPRM titled ''Safety of Gas Transmission and Gathering Pipelines'' published on April 8, 2016, (81 FR 20722).

In response to API's and AOPL's inquiry about pre-1970 pipe, PHMSA notes §§ 192.13, 192.359(b), 192.455, and 192.457 contain clauses that apply to the construction and maintenance of pipelines. However, the data points proposed in this information collection do not deal with the construction or maintenance of pipelines—only with the characteristics of the pipeline. Therefore, the requirements for this data element would apply to pre-1970 pipelines.

This data is needed to evaluate the risk of Low Frequency Electric Resistance Weld seam failures in all areas. This attribute will be collected in Phase 2.

H. Decade of Installation

PHMSA proposed operators submit the ''predominant'' decade of installation on a pipeline segment, signifying 90% or more of the physical pipe represented by the segment. The list of decade categories is available in the NPMS Operator Standards Manual (Appendix A), and aligns with the categories in the Annual Report. The only related comment in the June 22, 2016 30-day Notice pertained to the list of decade categories and is discussed below. PHMSA will move forward with this data collection and has aligned the decade categories to match the Annual Report categories. This attribute will be collected in Phase 2.

I. Coated (yes/no)

PHMSA proposed operators designate whether a pipe segment is effectively coated or not. PHMSA will move forward with this attribute as originally proposed. PHMSA received no comments on the June 22, 2016, 30-day Notice pertaining to this attribute. PHMSA will move forward with this data collection. This attribute will be collected in Phase 1.

J. Onshore/Offshore

PHMSA proposed operators designate whether a pipeline segment is located onshore or offshore. PHMSA directs operators to the definition of an offshore pipeline found in §§ 191.3 and 195.2, which states: ''Offshore means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.'' This data collection will allow PHMSA to have accurate pipeline location statistics for regulatory purposes.

PHMSA received no comments on the June 22, 2016, 30-day Notice pertaining to this attribute. PHMSA will move forward with this attribute as originally proposed. This attribute will be collected in Phase 1.

K. In-Line Inspection (yes/no)

Federal pipeline safety regulations require that new and replaced pipelines be capable of In-line Inspection (ILI) in §§ 192.150(a) and 195.120(a). PHMSA proposed operators report whether their pipelines are capable of ILI or not.

AGA commented that collecting this data as simply ''yes or no'' would not satisfy NTSB Safety Recommendations P–15–18 [2] and P–15–20.[3] AGA also asked that this data element be moved to Phase 3.

INGAA requested that ILI be defined as: ''[a]n instrumented in-line inspection segment means a length of pipeline through which a free-swimming commercially available in-line inspection tool can travel without the need for any permanent physical modifications to the pipeline and (1) is capable of assessing the identified threat(s), (2) can inspect the entire circumference of the pipe, and (3) can record or transmit relevant, interpretable inspection data.'' PHMSA recognizes the definition of ILI could be further clarified. Noting that INGAA's definition of a pipe capable of accepting an ILI excludes tethered pipe, PHMSA proposes changes to the ILI data element as follows: ''whether a line is capable of accepting an ILI (defined as an internal passage device that can assess the geometry and pipe wall conditions on a continuous basis for the pipeline segment transited) with currently available technology.''

PHMSA will move forward to collect the revised data attribute in Phase 1. This data will be used by PHMSA for risk evaluation, inspection prioritization, integrity management plan evaluation and decisions on future regulations, including cost/benefit analysis. It will also address in part two

[2] That all natural gas transmission pipelines be capable of being in-line inspected by either reconfiguring the pipeline to accommodate in-line inspection tools or by the use of new technology that permits the inspection of previously uninspectable pipelines; priority should be given to the highest risk transmission pipeline that considers age, internal pressure, pipe diameter, and class location.

[3] Operators identify all operational complications that limit the use of in-line inspection tools in piggable pipelines, develop methods to eliminate the operational complications, and require operators to use these methods to increase the use of in-line inspection tools.

NTSB Safety Recommendations, P–15–4 and P–15–22.

L. Most Recent Assessment Method(s) and Year

PHMSA proposed operators submit the most recent assessment method and the year of that assessment for every pipeline segment required to be assessed per part 192, subpart O or part 195, subpart F. If the operator performed more than one type of assessment on that date, a secondary or tertiary assessment method can be submitted. The list of assessment methods is available in the NPMS Operator Standards Manual (Appendix A). The year is collected as a 4-digit integer. PHMSA received no comments on the June 22, 2016, 30-day Notice pertaining to this attribute. PHMSA will move forward with this attribute as originally proposed. This attribute will be collected in Phase 2.

M. Class Location

PHMSA proposed operators of gas transmission pipeline segments submit information on the predominant class location of a gas transmission pipeline segment. PHMSA received no comments on the June 22, 2016, 30-day Notice pertaining to this attribute.

PHMSA will move forward with the collection of this attribute as originally proposed. This information is a critical measure of population risk and is necessary to ensure that integrity management rules are properly applied to high-risk areas. This data is valuable to PHMSA for prioritizing, planning, and conducting safety inspections. This attribute will be collected in Phase 1.

N. Gas HCA Segment

PHMSA proposed gas transmission operators identify HCA pipe segments as defined by § 192.903. PHMSA received no comments on the June 22, 2016, 30-day Notice pertaining to this attribute.

PHMSA will move forward with the Gas HCA segment attribute as originally proposed. This information will help emergency responders identify pipelines with greater potential for significant damage. Additionally, these attributes identify pipelines subject to integrity management programs. PHMSA has explicit statutory authority to map high consequence areas under 49 U.S.C. 60132(d). Gas operators are only expected to submit information on whether a segment is an HCA segment as defined in § 192.903. This attribute will be collected in Phase 1.

O. Segment Could Affect an HCA

PHMSA proposed hazardous liquid operators identify pipe segments which could affect HCAs as defined by § 195.450. Pipeline segments can be classified as affecting or not affecting the following: ''Highly Populated Areas,'' ''Other Populated Areas,'' ''Ecological Unusually Sensitive Areas,'' ''Drinking Water Unusually Sensitive Areas (DW USA),'' (not included in this information collection), and ''Commercially Navigable Waterways.''

API and AOPL requested that PHMSA provide a definition for ''could affect.'' As API and AOPL noted, Appendix C of § 195.452 already provides guidance on determining if a segment could affect an HCA. Additional guidance on when a segment ''could affect'' an HCA can be found in the Final Orders issued by PHMSA in CPF No. 1–2002–5007 [4] and CPF No. 5–2004–5025,[5] and pages 21–22 of PHMSA's Hazardous Liquid Integrity Management Enforcement Guidance (Dec. 7, 2015).[6] PHMSA believes these sources provide adequate guidance as to when a segment ''could affect'' an HCA.

TransCanada opposed collection of this attribute due to concerns over PHMSA's ability to keep the data secure. However, due to the very high sensitivity of the DW USA, PHMSA's proposal will not include data on pipeline segments affecting DW USA. PHMSA has safeguarded the sensitive ecological data collected since 2001 with no data breaches and PHMSA is committed to safeguarding this data.

PHMSA will move forward with the ''could affect HCA'' attributes as originally proposed, excluding DW USA. This proposed attribute will help emergency response planners identify pipelines with greater potential for significant environmental damage to surrounding areas. Further, the ''could affect HCA'' attributes identify pipelines subject to integrity management programs. PHMSA has explicit statutory authority to map high-consequence assets under 49 U.S.C. 60132(d). Access to this information will be limited to government employees who need this data to perform their official duties. This attribute will be collected in Phase 2.

P. Facility Response Plan Sequence Number

PHMSA proposed operators submit the Facility Response Plan (FRP) Sequence Number for certain liquid pipeline segments according to Part 194. This is a 4-digit integer (*i.e.,* 0003) assigned by PHMSA and provided to the operator in the ''Letter of Approval'' for the submitted FRP. PHMSA received no comments in the June 22, 2016, 30-day Notice pertaining to this attribute.

PHMSA will move forward with this attribute as originally proposed. Access to the relevant FRP Sequence Number through NPMS would be beneficial to first responders in an emergency, especially in areas with multiple pipeline facilities. Since applicable liquid operators are required to have this information, PHMSA believes it should be minimally burdensome to submit. This attribute will be collected in Phase 2.

Q. Abandoned Pipelines

PHMSA proposed that all gas transmission and hazardous liquid pipelines abandoned after the effective date of this information collection be submitted to the NPMS. Abandoned pipelines are defined in §§ 192.3 and 195.2 as those that are ''permanently removed from service.'' Abandoned lines are not currently required to be submitted to the NPMS unless they are offshore or cross a ''Commercially Navigable Waterway.'' Operators would only need to submit this data in the calendar year after the pipeline abandonment occurs. This attribute will be collected in Phase 1.

This information is important for PHMSA to determine whether proper pipeline abandonment procedures are followed. PHMSA inspectors have identified past incidents involving lines which had been mischaracterized as abandoned (*i.e.,* still containing a commodity or not permanently abandoned in accordance with federal regulations). Since operators are already required to map their lines and indicate the proper status, PHMSA believes that identifying recently abandoned segments is not burdensome.

R. Breakout Tanks

PHMSA proposed to require the submission of breakout tank data, which is currently optional to report. This proposal will make breakout tank data submission mandatory. API and AOPL requested this data element be accessible only by password protected Pipeline Information Management and Mapping Application (PIMMA) users, and not to the general public via the

[4] *https://primis.phmsa.dot.gov/comm/reports/enforce/documents/120025007/120025007_final%20order_06232003_text.pdf.*

[5] *https://primis.phmsa.dot.gov/comm/reports/enforce/documents/520045025/520045025_FinalOrder_04172009_text.pdf.*

[6] *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/Hazardous_Liquid_IM_Enforcement_Guidance_12_7_2015.pdf.*

Public Viewer. TransCanada commented that the burden to prepare this information is high and PHMSA has not demonstrated sufficient need for the data.

PHMSA will retain this data element in the information collection. This data is needed by PHMSA inspectors to locate individual tanks within a tank farm and determine the types of tanks in a farm. Information that was previously collected in optional breakout tank submissions has been removed from this data element, as it is already collected in the operator's transmittal letter which accompanies its submission. Also, the commodity codes and revision codes have been updated to match Annual Report codes and existing NPMS codes. A clarifying note has been added to the TANKSIZE attribute.

Approximately 45% of breakout tanks have been submitted to the NPMS on an optional basis and are currently viewable in the Public Viewer. The locations of breakout tanks are also shown on commercially available imagery. PHMSA will continue to display this element on the Public Viewer. This attribute will be collected in Phase 1.

S. Additional Liquefied Natural Gas Plant Attributes and Features

PHMSA proposed to collect additional data attributes and features for liquefied natural gas (LNG) plants under PHMSA's jurisdiction. The new attributes include type of plant, year constructed, and capacity. The new features are impoundments and exclusion zones. Appendices A2–A4 of the NPMS Operator Standards Manual contain technical details on submitting this data. API and AOPL requested that this data element be viewable only to users of the password-protected application PIMMA, and not to the general public via the Public Viewer. MidAmerican commented that emergency responders should be working directly with operators during an emergency to obtain this data and should not be getting it through the NPMS.

PHMSA intends to proceed with this information collection as originally proposed. However, PHMSA will restrict the additional LNG plant attributes to PIMMA, and will advise emergency responders that their first line of communication about LNG plant information in an emergency should be with the operator, not PIMMA. Geospatial information on the location and characteristics of LNG plants helps PHMSA and emergency responders better understand potential safety risks on a national and local level, respectively, and provides location data which is not submitted on the PHMSA Annual Report. This attribute will be collected in Phase 1.

IV. General Comments

A. Reporting

Spectra requested the ability to submit a full replacement NPMS submission each year and to eliminate the Revision Code field (REVIS_CD) for individual attributes.

Full Replacement submissions are always accepted by the NPMS. To simplify the submission process, operators may also only submit an attribute addition, removal, or edit, or notify NPMS that no changes are necessary. Because PHMSA uses change tracking to create pipeline ''history,'' submitting a revision code to explain why a segment is new or the type of change that has occurred on that segment, if any, is necessary. This allows PHMSA to differentiate operator performance from pipeline performance and view the history of a pipe segment as it changes operators. The revision code is already a required attribute in the NPMS Operator Standards. Operators that have difficulty in determining asset changes since their previous NPMS submission are asked to contact the NPMS processing department (*npms@dot.gov*) to request a GIS file format copy of their previous data submission to support comparison efforts. There is no revision code required for individual attributes on a pipe segment; the revision code is only required once for each pipe segment. (Refer to the NPMS Operator Standards Manual for further details.) [7]

Spectra also asked that PHMSA train emergency responders in NPMS usage. PHMSA already conducts numerous outreach efforts each year to educate emergency responders about the NPMS.

The Pipeline Safety Trust asked for more data elements to be added to the Public Viewer instead of being kept only on password-protected PIMMA. PHMSA has reviewed all data elements individually and determined the appropriate security level for each attribute based on, among other things, discussions with TSA.

American Fuel Petrochemical and Texas Oil and Gas asked that PHMSA convene a working group including industry stakeholders before finalizing the information collection. The information collection has had three comment periods prior to this notice, two of which have been extended to allow all interested parties to submit comments, as well as two public meetings in 2014 and 2015 and a technical workshop in 2015. Therefore, it is not necessary to convene a working group.

INGAA asked for changes to the values collected in Appendix A of the NPMS Operator Standards Manual to better align with Annual Reports. Specifically, INGAA asked that:

- An ''unknown'' option be added to the Percent SMYS attribute, to match the options available in Part K of the PHMSA Annual Report. Because this attribute is no longer part of this information collection, this comment is no longer applicable.
- The diameter (reported as nominal pipe size) includes a category of ''NPS 4 or less'' to match the PHMSA Annual Report categories instead of allowing the operator to enter NPS values, as proposed by PHMSA in the Operator Standards Manual. PHMSA's decision to collect NPS as a numeric value aligns with PHMSA's accident and incident reporting requirements and preserves the numeric field type for statistical analysis. To add a ''NPS 4 or less'' category would apply to less than 0.5% of the pipe submitted to the NPMS. PHMSA will retain this attribute collection as a numeric NPS value, in line with PHMSA's accident and incident reports.
- For ''Decade of Installation'', remove the 1920–1929 and 1930–1939 categories and change the pre-1920 category to pre-1940 to align with PHMSA's Annual Report categories. PHMSA will make this change.
- ''Wrought Iron'' be added as an option for ''Pipe Material'', to align with PHMSA's Annual Report categories. PHMSA will make this change.

PHMSA acknowledges that a number of the proposed attributes are also collected on the Annual Report forms. There are often discrepancies between the data submitted to the NPMS and the data that is recorded in the Annual Reports. Data quality is a top priority to PHMSA and its stakeholders. PHMSA plans to use the NPMS data to corroborate and to fill in any gaps that exist in the data collected via the Annual Reports.

B. Burden

AGA, Texas Oil and Gas, and Spectra commented that the burden has been underestimated. INGAA asked that the filing deadline for NPMS submissions for gas transmission operators be moved to March 30 annually, instead of the current March 15 deadline. PHMSA responds that a deadline change would require a rulemaking, as the March 15

[7] *https://www.npms.phmsa.dot.gov/Documents/Operator_Standards.pdf.*

deadline is specified in § 191.29. However, any operator that needs additional time to prepare its NPMS submission is welcome to contact PHMSA's NPMS staff (*npms@dot.gov*) to request an extension.

C. Legality

AGA commented that operators are not required to have GIS capabilities and many of the attributes in this information collection are not required in parts 191 and 195. NPMS submission is required in §§ 191.29 and 195.61. If an operator does not have a GIS, the operator may submit NPMS data in an alternate format as specified in the NPMS Operator Standards Manual, available at *https://www.npms.phmsa.dot.gov/Documents/Operator_Standards.pdf.*

INGAA asked that the following language be added: ''Except where stricter quality or accuracy requirements are defined in this document, operators should use their best readily available data and engineering judgment to determine attribute values.'' PHMSA acknowledges INGAA's comments and will accept NPMS data based on sound engineering judgment. Attributes in this information collection must accurately reflect pipeline, LNG, and breakout tank characteristics based on exact data or sound engineering judgement, not based solely on the best readily available data.

NTSB Safety Recommendation P–15–4 includes improving the accuracy of attribute details relevant to safety, §§ 191.29 and 195.61 require that operator submittals to the NPMS reflect assets as of December 31 of the previous year, and comments to date support improving the accuracy and completeness of the NPMS. Also, Safety Recommendation P–15–22 (to develop and implement a plan to improve data integration for integrity management) is supported by this information collection. In support of these recommendations, regulations, and pipeline safety needs, operators should use exact data or sound engineering judgement to submit accurate information to the NPMS.

D. Data Security

API and AOPL commented that PHMSA needs to provide more details on how SSI data elements will be protected. TransCanada, Texas Oil and Gas, and American Fuel Petrochemical also expressed doubt about PHMSA's ability to protect SSI data elements. As mentioned in Section II above, SSI data elements have been removed from this information collection. PHMSA has discussed the appropriate security categorization for the new data elements with TSA and has reviewed all comments regarding security submitted during the two 60-day Notice comment periods.

The elements in the list below are proposed to be restricted to government officials by inclusion in PIMMA, which is accessible at *www.npms.phmsa.dot.gov*. PIMMA is password protected and available only to government officials (who may view the data for their jurisdiction). All PIMMA users are vetted to confirm their identity and employment before a password is issued. Pipeline operators may gain access to PIMMA but they can only view information for the pipelines they operate. The elements below may also be provided in shapefile or geodatabase format to requesting government officials upon verification of identity and employment, and receipt of a signed letter consenting to PHMSA's data security policy.

Elements restricted to government officials:

- Pipe diameter
- Commodity detail
- Pipe grade
- Seam type
- Decade of installation
- Wall thickness
- In-line inspection (yes/no)
- Class location
- Gas HCA segment
- Segment ''could affect'' an HCA
- Assessment method
- Assessment year
- Coated (yes/no)
- FRP sequence number
- Proposed new LNG plant attributes (type of plant, total capacity, year constructed, impoundments, and exclusion zones)
- Breakout tank capacity

The following elements are proposed to be displayed on the NPMS Public Viewer. The current extent (one county per session) and zoom level (no closer than 1:24,000) restrictions will remain in place.

Public Viewer elements:

- Pipe material
- Pipe join method
- Onshore/offshore
- Abandoned lines
- LNG plant locations and attributes not listed under the ''elements restricted to government officials'' section
- Breakout tank locations and attributes (excluding capacity)

E. Definitions

Several commenters, as well as attendees of the November 2015 Operator Workshop, expressed serious concerns about the use of the word ''predominant.'' These concerns centered on how the usage of predominant attributes is poorly defined, difficult to verify compliance with, and risks improper categorization of pipeline risk. From a technical standpoint, operators indicated it was more difficult for them to generalize values into a ''predominant'' value than to submit actual values. For these reasons, submitting a ''predominant'' value will always be optional. Appendix A of the NPMS Operator Standards details the data elements for which ''predominant'' is an option.

V. Phased Timeline To Collect New Data Elements

PHMSA acknowledges operators' concerns regarding the amount of time needed to compile, research, and/or prepare the data required for this information collection. PHMSA will collect the new data elements in three phases. Phase 1 data will be collected the first submission year after the effective date, Phase 2 data will be collected the second submission year after the effective date, and Phase 3 data will be collected in 2024. The data elements in each phase are listed below.

Phase 1

- Pipe diameter
- Commodity detail
- Pipe material
- Pipe join method
- Onshore/offshore
- In-line inspection (yes/no)
- Class location
- Gas HCA segment
- Abandoned pipelines
- Breakout tanks
- LNG plants
- Coated (yes/no)

Phase 2

- Seam type
- Pipe grade
- Wall thickness
- FRP Sequence Number
- Decade of installation
- Segment could affect an HCA
- Assessment method
- Assessment year

Phase 3

- Positional accuracy conforms with new standards

VI. Mandates and Recommendations

This proposed information collection will gather geospatial information which will be used to fulfill Congressional mandates and NTSB safety recommendations. These mandates and recommendations include:

- Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011,

Section 11: Any other geospatial or technical data, including design and material specifications, that the Secretary determines are necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested.

• NTSB P–11–8: Require operators of natural gas transmission and distribution pipelines and hazardous liquid pipelines to provide system-specific information about their pipeline systems to the emergency response agencies of the communities and jurisdictions in which those pipelines are located. This information should include pipe diameter, operating pressure, product transported, and potential impact radius.

• NTSB P–15–4: Increase the positional accuracy of pipeline centerlines and pipeline attribute details relevant to safety in the National Pipeline Mapping System.

• NTSB P–15–5: Revise the submission requirement to include high consequence area identification as an attribute data element to the National Pipeline Mapping System.

• NTSB P–15–8: Work with the appropriate federal, state, and local agencies to develop a national repository of geospatial data resources for the process for High Consequence Area identification, and publicize the availability of the repository.

• NTSB P–15–22: Develop and implement a plan for all segments of the pipeline industry to improve data integration for integrity management through the use of geographic information systems.

The following table shows the applicable data elements.

Mandate or safety recommendation	Information collection data element(s)
Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Section 11.	Diameter, Pipe material, Seam type, Wall thickness, Pipe join method, In-line Inspection y/n.
NTSB P–11–8	Diameter, Commodity detail.
NTSB P–15–4	Positional accuracy, Diameter, Commodity detail, Seam type, Decade of installation, Wall thickness, Pipe join method, In-line Inspection y/n, Class location, Gas HCA segment, Segment ''could affect'' an HCA, Coated (yes/no).
NTSB P–15–5	Class location, Gas HCA segment, Segment ''could affect'' an HCA.
NTSB P–15–8	Class location, Gas HCA segment, Segment ''could affect'' an HCA.
NTSB P–15–22	Pipe material, Seam type, Wall thickness, Pipe join method, In-line Inspection y/n, Method of last assessment, Year of last assessment, Coated (yes/no).

VII. Summary of Impacted Collection

The following information is provided for this information collection: (1) Title of the information collection, (2) OMB control number, (3) Current expiration date, (4) Type of request, (5) Abstract of the information collection activity, (6) Description of affected public, (7) Frequency of collection, and (8) Estimate of total Annual Reporting and recordkeeping burden. PHMSA requests comments on the following information collection:

Title: National Pipeline Mapping System Program.

OMB Control Number: 2137–0596.

Expiration Date: 3/31/2020.

Type of Review: Revision of a Previously Approved Information Collection.

Abstract: Each operator of a pipeline facility (except distribution lines and gas gathering lines) must provide PHMSA geospatial data, attributes, metadata, contact information and a transmittal letter appropriate for use in the National Pipeline Mapping System. Operators submit this information each year on or before March 15 for gas transmission and LNG plant operators, or June 15 for hazardous liquid operators. PHMSA uses this data to maintain and improve the accuracy of the NPMS's information.

Respondents: Operators of natural gas, hazardous liquid, and liquefied natural gas plants.

Number of Respondents: 1,346.

Number of Responses: 1,346.

Frequency: Annual.

Estimate of Total Annual Burden: 162,208 hours.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: 44 U.S.C. 3501 *et seq.;* 49 U.S.C. 60101 *et seq.;* 49 CFR 1.48; and 49 CFR 1.97.

Issued in Washington, DC, on April 5, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–07133 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0136]

Pipeline Safety: Meeting of the Gas Pipeline Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Technical Pipeline Safety Standards Committee, also known as the Gas Pipeline Advisory Committee (GPAC). The GPAC will meet to discuss the gathering line component of the proposed rule titled ''Safety of Gas Transmission and Gathering Pipelines.''

DATES: The GPAC will meet on June 25, 2019, from 8:30 a.m. to 5:00 p.m., ET and on June 26, 2019, from 8:30 a.m. to noon, ET. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Tewabe Asebe by June 17, 2019.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, Media Center, West Building, 1200 New Jersey Ave SE, Washington, DC 20590. The agenda and any additional information for the meeting will be

published on the following meeting page at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143*.

The meeting will also be webcast. Information for accessing the webcast will be posted on the meeting page at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143*. Presentations will be available on the meeting page and posted on the E-Gov website at *https://www.regulations.gov/,* under docket number PHMSA–2016–0136 within 30 days following the meeting.

The meeting will be open to the public. Members of the public may join in-person in a designated space at the U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Washington, DC 20590, or by webcast. Please note that limited space is available for in-person attendance at DOT, and procedures governing security and entrance to federal buildings may change without notice. Therefore, members of the public seeking to participate in-person must register on the meeting page at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143*.

Note: Because this is a reschedule of a previous meeting, PHMSA is keeping the public registration for that meeting. Therefore, seating is already at capacity in the Media Center. We will place the onsite registrants in a satellite location within DOT. Participant in the satellite location will view the proceedings on video and will have the opportunity to provide comments to the committee in-person. We will escort those who would like to provide comments to the Media Center and will escort them back to the satellite location after they provide the comments.

FOR FURTHER INFORMATION CONTACT: For information about the meetings, contact Tewabe Asebe, at 202–366–5523, or *tewabe.asebe@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Meeting Detail and Agenda

The GPAC will be considering the gathering line component of the proposed rule titled ''Safety of Gas Transmission and Gathering Pipelines,'' which was published in the **Federal Register** on April 8, 2016, (81 FR 20722) and the associated regulatory analysis. The proposed rule for gathering lines proposes to (1) repeal the use of API Recommended Practice 80 for gathering lines; (2) apply Type B requirements along with emergency requirements to newly regulated greater than 8-inch Type A gathering lines in Class 1 locations; and (3) extend the reporting requirements to all gathering lines.

Prior to this meeting, PHMSA will finalize the agenda and will publish it on the PHMSA meeting page at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=143*.

II. Committee Background

The GPAC is a statutorily mandated advisory committee that advises PHMSA on proposed gas pipeline safety standards and their associated risk assessments. The committee is established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, as amended) and 49 U.S.C. 60115. The committee consists of 15 members with membership evenly divided among federal and state governments, the regulated industry, and the public. The committee advises PHMSA on the technical feasibility, reasonableness, cost-effectiveness, and practicability of each proposed gas pipeline safety standard.

III. Public Participation

Members of the public will be provided an opportunity to make a statement during the meeting. The proceeding will be recorded and a record of the proceeding will be made available to the public at *https://www.regulations.gov*.

Written Comments: Persons who wish to submit written comments on the meeting may submit them to the docket in the following ways:

E-Gov Website: https://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0136 at the beginning of your comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477), or view the Privacy Notice at *https://www.regulations.gov* before submitting comments.

Docket: For docket access or to read background documents or comments, go to *https://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2016–0136.'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement

DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy*.

Services for Individuals With Disabilities

The public meetings will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Tewabe Asebe at *tewabe.asebe@dot.gov*.

Issued in Washington, DC, on April 5, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–07131 Filed 4–10–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Comments in Aid of Analyses of the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Request for comments.

SUMMARY: The Terrorism Risk Insurance Act of 2002 (TRIA) created the Terrorism Risk Insurance Program (Program) to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future

losses for terrorism events. Treasury requests comments from interested parties concerning the issues that Treasury will be analyzing in connection with its next report concerning the participation of small insurers in the Program, including any competitive challenges such insurers face in the terrorism risk insurance marketplace.

DATES: Submit comments on or before May 13, 2019.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail to the Federal Insurance Office, Attn: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments should be captioned with ''2019 TRIA Small Insurer Study Comments.'' Please include your name, group affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–2922 (not a toll-free number), or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, at (202) 622–3220 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act) [1] directs the Secretary, beginning in calendar year 2016, to ''require insurers participating in the Program to submit to the Secretary such information regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program[.]'' This information and data includes information regarding: (1) Lines of insurance with exposure to such losses; (2) premiums earned on such coverage; (3) geographical location of exposures; (4) pricing of such coverage; (5) the take-up rate for such coverage; (6) the amount of private reinsurance for acts of terrorism purchased; and (7) such other matters as the Secretary considers appropriate.

In addition, Section 112 of the Reauthorization Act requires the Secretary to conduct, by June 30, 2017 and every other year thereafter, a study of small insurers (to be defined by the Secretary, as has been done under 31 CFR 50.4(z)) participating in the Program to identify any competitive challenges that small insurers face in the terrorism risk insurance marketplace. Section 112 also identifies specific matters that Treasury is to analyze in the small insurers study. In addition to the data that it has and will be collecting, Treasury seeks comments for use in the study that Treasury must conduct concerning the participation of small insurers in the Program.

II. Solicitation for Comments on Small Insurer Participation in the Program

As discussed above, Treasury will be collecting certain data from small insurers as part of its 2019 TRIP Data Call, which Treasury will use (along with data collected by Treasury during prior TRIP Data Calls) in connection with the study. Treasury welcomes comments concerning small insurer participation in the Program generally, and invites responses to the following particular issues specified in Section 112 of the 2015 Reauthorization Act:

(1) Changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers.

(2) How the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils.

(3) The impact of the Program's mandatory availability requirement under Section 103(c) of TRIA [2] on small insurers.

(4) The effect of increasing the trigger amount for the Program under Section 103(e)(1)(B) of TRIA for small insurers.

(5) The availability and cost of private reinsurance for small insurers.

(6) The impact that state workers' compensation laws have on small insurers and workers' compensation carriers in the terrorism risk insurance marketplace.

In addition, Treasury welcomes qualitative comments on the following specific topics that may be relevant to the competitiveness of small insurers in the terrorism risk insurance marketplace.

(1) Any potential constraints on the ability of small insurers to provide coverage for nuclear, chemical, biological, and radiological (NBCR) risks.

(2) Any risk management strategies and challenges faced by small insurers in maintaining the ability to pay losses associated with insured claims that are not subject to claims for the federal share of compensation (*e.g.,* losses below the Program Trigger, within the insurer deductible, and within the insurer co-pay share).

(3) Role of small insurers in covering cyber-related acts of terrorism under the Program.

Treasury issued its first study of small insurers under the 2015 Reauthorization Act in June 2017.[3] In that study, Treasury addressed the statutory issues identified above, with reference to data collected by Treasury in the 2017 TRIP Data Call, as well as other available sources. Treasury requests further comment on these issues from interested parties, particularly with respect to any issue that an interested party believes may not be fully understood solely by reference to the aggregated data collected by Treasury.

Dated: April 3, 2019.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2019–07216 Filed 4–10–19; 8:45 am]

BILLING CODE 4810–25–P

[1] Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3 (2015).

[2] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. As the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[3] U.S. Treasury, Study of Small Insurer Competitiveness in the Terrorism Risk Insurance Marketplace (June 2017), *https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/Study_of_Small_Insurer_Competitiveness_in_the_Terrorism_Risk_Insurance_Marketplace_(June_2017).pdf.*

FEDERAL REGISTER

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Part II

Department of Defense

32 CFR Part 310

Department of Defense Privacy Program; Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0008]

RIN 0790–AJ20

32 CFR Part 310

Department of Defense Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is revising its Privacy regulation to implement the Privacy Act of 1974, as amended. The rule conforms to the requirements of the Office of Management and Budget Circular A–108, December 23, 2016. This part establishes and promotes uniformity in the DoD Privacy Program, creating a single privacy rule for the Department, while incorporating other administrative changes. It takes precedence over all DoD component publications that supplement and implement the DoD Privacy program. Subsequently, DoD plans to remove individual component Privacy Program rulemakings, given that the individual component exemption rules have been incorporated into this rule.

DATES: This final rule is effective on May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Cindy Allard, (703) 571–0086.

SUPPLEMENTARY INFORMATION: The DoD is revising 32 CFR part 310 to implement section 552a of Title 5, United States Code, thus establishing procedures for access and other Privacy Act protections. It supersedes the current parts 310 through 329 and parts 505, 701, and 806b to promote uniformity in the DoD Privacy program and streamline the existing rules. The existing system of records exemption rules that have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in parts 310 through 329 and parts 505, 701, and 806b remain effective; however, for streamlining and ease of use for the reader we are moving the existing exemption rules from parts 311 through 329 and parts 505, 701, and 806b into part 310 without amendment. Repeal of the individual DoD Component Privacy rules will be published in the **Federal Register** after this rule is effective.

This rule conforms to the requirements of the Office of Management and Budget Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016, which can be found at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A108/omb_circular_a-108.pdf,* and Office of Management and Budget Circular A–130, ''Managing Information as a Strategic Resource,'' dated July 28, 2016, which can be found at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A130/a130revised.pdf.*

This rule promotes uniformity in the DoD Privacy Program across the entire Department and provides notice of DoD's privacy procedures as well as other privacy protections to the public with no increase in costs on the public. This streamlined rule addresses Department procedures concerning notification of, access to, and amendment of records covered by the Privacy Act, as well as requests for accounting of disclosures of such records. It also addresses exemptions from provisions of the Privacy Act and incorporates all Department exemption rules. The following sections of the previous rule have also been removed: Subpart A: § 310.1 Reissuance, § 310.3 Applicability and scope, § 310.5 Policy, § 310.6 Responsibilities, § 310.8 Rules of Conduct, and § 310.9 Privacy boards and office, composition and responsibilities; Subpart B—System of Records; Subpart C—Collecting Personal Information; Subpart E—Disclosure of Personal Information to Other Agencies and Third Parties; Subpart G—Publication Requirements; Subpart H—Training Requirements; Subpart I—Reports; Subpart J—Inspections; Subpart K—Privacy Act Violations (portions of this section can now be found in the current § 310.8);, Subpart L—Computer Matching Program Procedures; and all of Appendices A–H. These sections largely consist of internal policy guidance to DoD personnel and are more appropriately addressed in DoD 5400.11–R, ''Department of Defense Privacy Program,'' available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf.* To the extent that existing provisions of DoD 5400.11–R conflict with current OMB guidance or this updated Part 310, OMB guidance and this Part shall control. This rule also incorporates into § 310.13 the final version of the exemption rule first published on October 17, 2018 (83 FR 52317; docket DOD–2018–OS–0075–0001) as an interim final rule, claiming certain Privacy Act exemptions for the Personnel Vetting Records System (83 FR 52420)

Authority: The Privacy Act, 5 U.S.C. 552a, requires each agency that maintains a system of records to promulgate rules, pursuant to notice and public comment according to 5 U.S.C. 552a(f) ''Agency Rules.''

Expected Cost Savings

DoD currently has 20 other separate component-level privacy rules. Following publication of this final rule, DoD will repeal all component-level privacy rules. This rulemaking will reduce costs and time for the public by consolidating the requirements for requests for access to and amendment of DoD information.

Privacy requesters are a diverse community, including lawyers, industry professionals, reporters, and members of the public. Costs for these requestors can include the time required to research the current Privacy rule for each component and the time and preparation required to submit a request/appeal. DoD Privacy subject matter experts estimate that 40% of Privacy requests to DoD may involve consultation of the Code of Federal Regulations and the department's several privacy regulations. DoD estimates the consolidation to one privacy regulation will save those referring to the CFR for Privacy guidance approximately 30 minutes of research, review, and compliance time.

For purposes of estimating opportunity costs, DoD subject matter experts deemed it reasonable to use the average of a lawyer's/judicial law clerk's mean hourly wage ($66.44/hour), as informed by the Bureau of Labor and Statistics, and the 2016 federal minimum wage ($9/hour) to approximate an hourly wage for an average requester. That rate is $37.72/hour. Through this consolidation, DoD expects to save the requester community at least $63,686 annually, as reflected in the chart below using FY 2016 data (annualized costs over perpetuity at a 7 percent discount rate is −$63,686; present value costs is −$909,800). The cost savings anticipated by the repeal of the DoD Component rules are accounted for in this rulemaking and will not be separately noted in the individual repeal actions.

Rule	Component	# 2016 access & amdmt requests	×	40% of privacy requests	×	Time per request (minutes)	×	Hourly wage of requester	=	Projected cost savings to public
311	OSD/JS	2,530	×	40	×	30	×	$37.72	=	$19,086.32
312	DoDIG	196	×	40	×	30	×	37.72	=	1,478.62
313	CJCS/JS	0	×	40	×	30	×	37.72	=	0.00
314	DARPA	0	×	40	×	30	×	37.72	=	0.00
315	USUHS	0	×	40	×	30	×	37.72	=	0.00
316	DISA	65	×	40	×	30	×	37.72	=	490.36
317	DCAA	10	×	40	×	30	×	37.72	=	75.44
318	DTRA	9	×	40	×	30	×	37.72	=	67.90
319	DIA	99	×	40	×	30	×	37.72	=	746.86
320	NGA	11	×	40	×	30	×	37.72	=	82.98
321	DSS	34	×	40	×	30	×	37.72	=	256.50
322	NSA/CSA	206	×	40	×	30	×	37.72	=	1,554.06
323	DLA	431	×	40	×	30	×	37.72	=	3,251.46
324	DFAS	261	×	40	×	30	×	37.72	=	1,968.98
326	NRO	18	×	40	×	30	×	37.72	=	135.79
327	DeCA	16	×	40	×	30	×	37.72	=	120.70
329	NGB	126	×	40	×	30	×	37.72	=	950.54
505	Army	2834	×	40	×	30	×	37.72	=	21,379.70
701	DON	1055	×	40	×	30	×	37.72	=	7,958.92
806b	AF	541	×	40	×	30	×	37.72	=	4,081.30
Total										63,686.45

Changes Made in the DOD Privacy Program Final Rule

After publishing the proposed rule, ''Department of Defense Privacy Program,'' on September 13, 2018 (83 FR 46542), DoD published on October 17, 2018 a new system of records notice for the Personnel Vetting Records System, DUSDI 02–DoD (83 FR 52420), and a corresponding interim final rule (83 FR 52317; docket DOD–2018–OS–0075–0001) that claimed certain Privacy Act exemptions for the Personnel Vetting Records System. The Personnel Vetting Records System contains records that support DoD in conducting end-to-end personnel security, suitability, fitness, and credentialing processes, including submission of applications and questionnaires, investigations, adjudications, and continuous vetting activities. DoD developed the information technology capabilities that contribute to the Personnel Vetting Records System to support background investigation processes pursuant to Executive Order 13467, as amended, and Section 925 of the National Defense Authorization Act for Fiscal Year 2018.

The interim final exemption rule for this records system resulted in amendment to and some slight restructuring of § 310.30 (addressing DoD-wide exemptions) of the previous DoD Privacy Program regulation. DoD is incorporating the final version of the exemption rule into this DoD Privacy Program final rule in Section 310.13, which corresponds to § 310.30 of the previous DoD Privacy Program regulation. Additionally, DoD is correcting a clerical error that appeared in § 310.13 of the interim final rule publication concerning the DUSDI 01-DoD, ''Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System. Section 310.13(a)(1)(ii) inaccurately listed authority pursuant to 5 U.S.C. 552a(k)(3) rather than 5 U.S.C. 552a(k)(4). This final rule accurately reflects the (k)(4) exemption in § 310.13(e)(1)(ii).

During further internal review, it was also discovered that three existing exemption rules were inadvertently omitted from the proposed rule's Subpart C, ''Exemption Rules.'' These exemption rules have been included in the final revision of part 310, without amendment, in order to consolidate and streamline existing DoD regulations, and are as follows:

Section 310.15: (35) System identifier and name: Army A0600–20–SAMR, Soldiers Equal Opportunity Investigative Files; § 310.16: (24) System identifier and name: N05800–2, Professional Responsibility Files and (25) System identifier and name: NM03800–1, Naval Global Maritime, Foreign Counterterrorism and Counter Intelligence Operation Records. These exemption rules were previously promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in parts 505 and 701.

Finally, minor edits were also made to § 310.3 to clarify that individuals may also request to be notified whether a system of records contains records pertaining to them and—consistent with the aforementioned restructuring concerning DoD-wide exemptions—to § 310.13(b)(1) to clarify the scope and applicability of an exemption when information is provided by confidential sources.

Public Comments

Public Comments Received on the DoD Privacy Program Rule

As previously referenced, on Thursday, September 13, 2018 (83 FR 46542), the DoD published the proposed rule titled, ''Department of Defense Privacy Program,'' with a 60-day public comment period. Two comments were received which commended the streamlining effort and expressed an interest in more detail of the proposed changes. The Department appreciates the comments and has provided additional description of the revisions to the Department of Defense Privacy Program rule above in the **SUPPLEMENTARY INFORMATION**. No changes were made to the regulatory text as a result of these comments.

Public Comments Received on the Personnel Vetting Interim Final Exemption Rule

As stated above, DoD is incorporating the final version of the Personnel Vetting Records System exemption rule published on October 17, 2018 into this DoD Privacy Program final rule in § 310.13. Two commenters submitted public comments in response to the interim final rule, neither of which required changes to § 310.13 of this final

rule. One comment was not specific to the exemptions claimed for the Personnel Vetting Records System, but called attention generally to the importance of safeguarding and managing records. DoD agrees and has previously explained in its notice of the Personnel Vetting Records System, DUSDI 02–DoD (83 FR 52420, 52425), the extensive physical, administrative, and technical safeguards that apply, as well as the records retention and disposal policies and practices.

The other commenter submitted a single set of comments for both the Personnel Vetting system of records notice (83 FR 52420) and the interim final rule for the corresponding records system exemptions (83 FR 52317). DoD will respond separately to the comments pertaining specifically to the system of records notice in the electronic docket visible on *Regulations.gov*. While most of the commenter's comments were directed at the system of records notice, one comment was specific to the exemptions, criticizing the breadth of exemptions and expressing concerns about accountability for DoD's information collection activities. The Department appreciates these concerns. In response, we note that the exemptions published for the Personnel Vetting Records System, DUSDI 02–DoD, are designed to ensure that the personnel vetting process functions in a manner conducive to authorized, efficient, fair, and effective identification, investigation, and adjudication of information about record subjects as required for determinations about access to classified information, assignment to positions with sensitive duties, suitability for government employment, and eligibility for military service or government contractor positions and access to government information systems. Notwithstanding the potential availability of exemptions that DoD may need to assert for certain records in the system when circumstances warrant, exemption rules do not require the assertion of exemptions in every instance. In fact, DoD anticipates asserting exemptions in limited circumstances on a case-by-case basis. Notably, the exemptions claimed pursuant to (k)(1) through (3) and (5) through (7) apply only to certain records and may not be asserted unless the pertinent statutory descriptions are met. For example, to assert an exemption pursuant to (k)(1), the records must contain properly classified information; to assert an exemption pursuant to (k)(2), the records must contain investigatory material compiled for law enforcement purposes; and to assert an exemption pursuant to (k)(5), the records must contain investigatory material compiled for certain suitability, eligibility, qualifications, or access determinations and only to the extent disclosure would reveal the identity of a source expressly promised confidentiality. As explained in § 310.13(d) of this rule, ''records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent that such provisions have been identified and an exemption claimed for the record and the purposes underlying the exemption for the record pertain to the record.''

With respect to access rights in particular, the DoD anticipates generally providing access rights and exercising exemptions as the exception rather than the norm. Concerning the published exemption for 5 U.S.C. 552a(e)(1), in the context of vetting and background investigations, it is not always possible to determine the relevance and necessity of particular information in the early stages of investigations or adjudications, as noted in the exemption rationale. Notwithstanding the exemption from 5 U.S.C. 552a(e)(4)(G) and (H) concerning published notification and access procedures, DoD's notice for the Personnel Vetting Records System actually includes such notification and access procedures. (83 FR 52420, 52425–26). Finally, it should be noted that the Department provides established administrative due process to record subjects prior to final adverse determinations with respect to a denial or revocation for eligibility to access classified information or eligibility to occupy a national security position.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 also emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under E.O. 12866.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

This final rule is an E.O. 13771 deregulatory action. Details on the estimated cost savings of this rule are discussed in the ''expected cost savings'' section of the preamble.

2 U.S.C. Ch. 25, ''Unfunded Mandates Reform Act''

This final rule is not subject to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532) because it does not contain a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100M or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Ch. 6)

It has been certified that 32 CFR part 310 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601), because it would not have a significant economic impact on a substantial number of small entities. The rule primarily implements the procedures for requesting access to and amendment of records covered by the Privacy Act and maintained by the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 310 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 310

Privacy, Privacy Act, Records maintained on individuals.

■ Accordingly, 32 CFR part 310 is revised to read as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDEMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

Subpart A—General Provisions

Sec.

310.1 Purpose.
310.2 Definitions.

Subpart B—Requests for Access and Amendment to Records

310.3 Requesting access to records.
310.4 Access exemptions.
310.5 Responses to requests for access to records.
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Authority: 5 U.S.C. 552a.

Subpart A—General Provisions

§ 310.1 Purpose.

This part contains the rules that the Department of Defense (Department or DoD) follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act. The rules in this part apply to all records in Privacy Act systems of records maintained by the Department. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Department to other entities outside the Department. In addition, the Department processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, following the rules contained in 32 CFR part 286, giving individuals the benefit of both statutes.

§ 310.2 Definitions.

DoD Components means the Office the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence, as defined in the Privacy Act.

Maintain includes maintain, collect, use or disseminate, as defined in the Privacy Act.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, or symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph, as defined in the Privacy Act.

Request for access to a record means a request made under subsection (d)(1) of the Privacy Act.

Request for amendment or correction of a record means a request made under subsection (d)(2) of the Privacy Act.

Request for an accounting means a request made under subsection (c)(3) of the Privacy Act.

Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

System of records means any group of records under the control of the Department of Defense from which information is retrieved by the name of the individual or by some other identifying number, symbol, or other identifying particular assigned to the individual as defined in the Privacy Act.

Subpart B—Requests for Access and Amendment to Records

§ 310.3 Requesting access to records.

(a) Individuals may request access to records in a system of records or request to be notified if a system of records contains records pertaining to them by writing to or appearing in person before the DoD Component that maintains the record. Written requests should be sent to the address listed in the record access procedures of the system of records notice (SORN) containing the record requested. If the name of the system of records or the address for the DoD Component that has the record is unknown, the individual may look up the SORN or the contact information for the DoD Component Privacy Office at *http://www.defense.gov/privacy.*

(b) For access to the Official Personnel Files of federal civilian employees, which are maintained in the custody of the Department under the authority of the Office of Personnel Management (OPM) SORN OPM/GOVT–1, individuals must contact their DoD Component FOIA Requester Service Center. Contact information for DoD Component FOIA Requester Service Centers can be found at *https://www.foia.gov/report-makerequest.html.*

(c) Requesters should provide their full name, current address and email address, and when requested in the access procedures of the applicable SORN, date of birth, place of birth, and telephone number, to assist the DoD Component in responding to the request and providing released records to the requester. The requester must sign the request and have it notarized or submit the request under 28 U.S.C. 1746, a law that permits unsworn statements to be made under penalty of perjury as a substitute for notarization. To assist with the identification and location of requested records, when requested in the access procedures of the applicable SORN, the requester may also, at his or her option, include his or her DoD Identification Number (DoD ID Number) or Social Security Number (SSN). Providing a DoD ID Number or SSN should be appropriate for the type of record being sought.

(d) When making a request for access to records as the parent or guardian for an individual who is a minor or for an individual who is determined by a court to be incompetent, the parent/guardian must establish:

(1) The identity of the individual who is the subject of the record;

(2) The parent/guardian's own identity;

(3) That the requester is the parent or guardian of that individual, which may be proven by providing a copy of the individual's birth certificate showing parentage or a court order establishing the guardianship; and

(4) That the parent or guardian is acting on behalf of the individual in making the request.

(e) Members of the Military Services and married persons are not considered minors, regardless of age.

§ 310.4 Access exemptions.

DoD may deny an individual access to certain information about the individual that resides in a DoD Component's system of records when an exemption from the Privacy Act is claimed for the system of records and codified in the Code of Federal Regulations as described in § 310.12. When an exemption pursuant to subsection (j) or (k) of the Privacy Act exists, it will be listed in the SORN for the particular system in which the individual's information is located. Records compiled in reasonable anticipation of a civil action or proceeding may be withheld pursuant to subsection (d)(5) of the Privacy Act.

§ 310.5 Responses to requests for access to records.

(a) Upon receipt of a request, a component will send an acknowledgment letter to the requester within 10 days (excluding Saturdays, Sundays, and legal public holidays) which shall confirm the requester's agreement to pay duplication fees, if any, and provide an assigned case file number for reference purposes.

(b) In some cases, the DoD Component initially receiving the request may refer the request to another DoD Component or agency. The DoD Component that initially received the request will send the requester a notice of referral that will identify each DoD Component or agency to which the request has been referred, as well as which part of the request has been referred.

(c) Access to protected health information, including medical records, is governed by the Privacy Act and DoD 6025.18–R, ''DoD Health Information Privacy Regulation'' (available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/602518r.pdf*).

(d) When a DoD Component makes a determination to grant a request for access in whole or in part, the DoD Component shall notify the requester in writing or simply provide the requested record. The response to the request may be made in lieu of the acknowledgment of receipt provided the response will be made within 10 days (excluding Saturdays, Sundays, and legal public holidays). The DoD Component shall inform the requester of any fee charged for duplication of the record(s). If the request is made in person, the individual may receive the records directly in a manner not unreasonably disruptive of the DoD Component's operations, upon payment of any applicable fee. If the individual is accompanied by another person, the individual may be required to authorize in writing any discussion of the records in the presence of the other person.

(e) A DoD Component denying a request for access in any respect shall notify the requester of that determination in writing.

(1) The notice of denial consists of:

(i) A determination to withhold any requested record in whole or in part;

(ii) A determination that a requested record does not exist or cannot be located; or

(iii) A determination that what has been requested is not a record subject to the Privacy Act.

(2) The denial notification letter shall be signed by the head of the DoD Component, or the DoD Component head's designee, and shall include:

(i) The date of the denial;

(ii) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the DoD Component in denying the request; and

(iii) A statement that the denial can be appealed within 60 calendar days in accordance with § 310.6. The statement will include the position title and the address of the appellate authority.

§ 310.6 Appeals from denials of requests for access to records.

(a) If the requester is dissatisfied with a DoD Component's response, the requester can appeal an adverse determination denying the request to the appellate authority listed in the notification of denial letter. The appeal must be made in writing, and it must be postmarked within 60 calendar days of the date of the letter denying the initial request for records. The letter of appeal should include a copy of the DoD Component's determination (including the assigned request number, if known). For the quickest possible handling, the appeal letter and the envelope should be marked: ''Privacy Act Appeal.''

(b) The appellant will be notified of the decision on his or her appeal in writing. If the decision affirms the adverse determination in whole or in part, the notification will include a brief statement of the reason(s) for the affirmation, including any exemptions applied, and will inform the appellant of the Privacy Act provisions for judicial review of the appellate authority's decision. If the adverse determination is reversed or modified, in whole or in part, the appellant will be notified in writing of this decision and the request will be reprocessed in accordance with that appeal decision.

(c) In order to seek a judicial review of a denial of a request for access to records, a requester must first file an appeal under this section.

(d) An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

§ 310.7 Requests for amendment or correction of records.

(a) If the record is not subject to amendment and correction as stated in paragraph (b) of this section, an individual may make a request for amendment or correction of a DoD Component's record about that individual by writing directly to the DoD Component that maintains the record as identified in the published SORN applicable to the record. The request should identify each particular record in question, state the amendment or correction that is sought, and state why the record is not accurate, relevant, timely, or complete without the correction. The individual will also need to verify identity in the same manner as described in §§ 310.3(c) through (d). Factual documentation that is helpful to the DoD Component privacy officials should be submitted with the request. If it is believed that the same record exists in more than one system of records, this should be stated in the request, and the request should be addressed to each DoD Component that maintains a system of records containing the record as noted in this paragraph.

(b) Certain records are not subject to amendment or correction under the Privacy Act:

(1) Proceedings and determinations of courts-martial, military tribunal, or Military Boards of Correction are not generally subject to amendment or correction under the Privacy Act.

(2) Records in systems of records that have been exempted from amendment and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k) are not subject to amendment or correction.

(3) The amendment process is not intended to permit the alteration of records presented in the course of judicial or quasi-judicial proceedings such as the adjudication process for personnel security clearances or contesting grades in academic records. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(4) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination under this part, he or she may challenge the accuracy of the recording of that action.

(c) An individual requesting amendment or correction of records will receive a written acknowledgment of receipt of the request within 10 days (excluding Saturdays, Sundays, and legal public holidays), as required by the Privacy Act. The response to the request may be made in lieu of the acknowledgment of receipt provided the response is made within 10 days (excluding Saturdays, Sundays, and legal public holidays). The response to the request must be made promptly and indicate whether the request is granted or denied.

(d) If the request for amendment or correction is granted in whole or in part, the response to the individual will receive a description or copy of the amendment or correction made and, if a copy of the amended or corrected record is not included in the response, notification of the right to obtain a copy of the corrected or amended record in disclosable form.

(e) If the request for amendment or correction is denied in whole or in part, the response to the individual will include a signed letter stating:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (f) of this section, including the name, position title and business address of the official who will act on the appeal.

(f) An individual may appeal the denial of a request for amendment or correction to the individual's record to the appellate authority at the address listed in the notification of denial letter, in the same manner as for a denial of a request for access to records (see § 310.6). The appeal determination shall be made within 30 working days (excluding Saturdays, Sundays, and legal public holidays) from the date of the appeal, unless the period is extended for good cause. If the appeal is denied in whole or in part, the individual will be advised of the right to file a Statement of Disagreement as described in paragraph (g) of this section, and of the right under the Privacy Act for judicial review of the decision.

(g) If an appeal under this section is denied in whole or in part, the individual has the right to file a Statement of Disagreement that states the reason(s) for disagreeing with the DoD Component's denial of the request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should generally be no longer than one typed page. The Statement of Disagreement must be sent to the DoD Component holding the respective record. The Statement of Disagreement will be filed or notated in the system of records, and an annotation to the record itself will indicate the existence and location of the Statement of Disagreement.

(h) Notifications of amendment/correction or statements of disagreement will be made to all persons, organizations, and agencies to which the record was previously disclosed if an accounting of that disclosure was made in accordance with subsection (c) of the Privacy Act and § 310.9. If an individual has filed a Statement of Disagreement, a copy of the statement will be appended to the disputed record whenever the record is disclosed, and a concise statement of the reason(s) for denying the request to amend or correct the record may also be appended.

§ 310.8 Civil remedies.

In addition to the right to judicial review after a denied appeal for access to or amendment of a record, the requester has the right to bring a civil action against the Department if the Department:

(a) Fails to maintain a record concerning the individual with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(b) Fails to comply with any other provision of the Privacy Act or this rule, in such a way as to have an adverse effect on the individual.

§ 310.9 Requests for an accounting of record disclosures.

(a) An individual may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about the individual maintained in a system of records.

(b) This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Records of disclosure accountings are maintained for five years after the disclosure or for the life of the record, whichever is longer.

(c) The request for an accounting should identify each particular record in question and should be made by writing directly to the DoD Component that maintains the record, following the procedures in § 310.3.

(d) DoD Components are not required to provide disclosure accountings when related to:

(1) Disclosures for which accountings are not required to be kept—in other words, disclosures that are made to employees within the Department who have a need for the record in the performance of their duties and disclosures that are made under the Freedom of Information Act;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written request from the head of the agency or instrumentality of those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from systems of records that have been exempted from accounting requirements.

(e) An individual may appeal a denial of a request for a disclosure accounting to the address listed in the notification of denial letter, in the same manner as a denial of a request for access to records, following the procedures in § 310.6.

§ 310.10 Fees.

(a) When an individual makes a Privacy Act request for a copy of a record in a system of records, the request shall be considered an agreement to pay all applicable fees.

(b) There is no minimum fee for duplication, and there is no automatic charge for processing a request. Fees for duplication of records will be charged in the same manner as requests for records under the Freedom of Information Act.

(c) Normally, fees are waived automatically if the direct costs of a given request are less than the cost of processing the fee. Decisions to waive or reduce fees that exceed the waiver threshold are made on a case-by-case basis.

§ 310.11 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Subpart C—Exemption Rules

§ 310.12 Types of exemptions.

(a) *Exemptions.* There are three types of exemptions permitted by the Privacy Act:

(1) An access exemption that exempts records complied in reasonable anticipation of a civil action or proceeding from the access provisions of the Act, pursuant to subsection (d)(5) of the Privacy Act;

(2) General exemptions that authorize the exemption of a system of records from all but certain specifically identified provisions of the Act, pursuant to subsection (j) of the Privacy Act; and

(3) Specific exemptions that allow a system of records to be exempted only from certain designated provisions of the Act, pursuant to subsection (k) of the Privacy Act. Nothing in the Privacy Act permits exemption of any system of records from all provisions of the Act.

(b) *Civil Action or Proceeding.* In accordance with 5 U.S.C. 552a(d)(5), an individual is not entitled to access information that is compiled in reasonable anticipation of a civil action or proceeding. The term ''civil action or proceeding'' is intended to include court proceedings, preliminary judicial steps, and quasi-judicial administrative hearings or proceedings (*i.e.,* adversarial proceedings that are subject to rules of evidence). Any information prepared in anticipation of such actions or proceedings, including information prepared to advise DoD officials of the possible legal or other consequences of a given course of action, is protected. The exemption is similar to the attorney work-product privilege except that it applies even when the information is prepared by non-attorneys. The exemption does not apply to information compiled in anticipation of criminal actions or proceedings.

(c) *Exempt Records Systems.* Pursuant to 5 U.S.C. 552a(k)(1), all systems of records maintained by DoD will be exempt from the access provisions of 5 U.S.C. 552a(d) and the notification of access procedures of 5 U.S.C. 522a(e)(4)(H) to the extent that the system contains any information properly classified under Executive Order 13526, and is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all DoD systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

(d) *Exempt records in non-exempt systems.* Exempt records temporarily in the custody of another DoD Component are considered the property of the originating DoD Component. Access to these records is controlled by the system notices and rules of the originating DoD Component. Exempt records that have been incorporated into a nonexempt system of records are still exempt but only to the extent to which the provisions of the Act for which an exemption has been claimed are identified. An exemption claimed for the system of records from which the record is obtained remains in effect when the purposes underlying the exemption for the record are still valid and necessary to protect the contents of the record. If a record is accidentally misfiled into a system of records, the system notice and rules for the system in which it should actually be filed shall govern.

§ 310.13 Exemptions for DoD-wide systems.

(a) *Use of DoD-wide exemptions.* DoD-wide exemptions for DoD-wide systems of records are established pursuant to 5 U.S.C. 552a(j) and (k) of the Privacy Act.

(b) *Promises of confidentiality.* (1) Only the identity of and information furnished by sources that have been given an express promise of confidentiality may be protected from disclosure under this section, consistent with (k)(2), (k)(5), and (k)(7) of the Privacy Act, as applicable. However, the identity of sources who were given implied promises of confidentiality in inquiries conducted before September 27, 1975, also may be protected from disclosure.

(2) Ensure promises of confidentiality are not automatically given but are used sparingly. Establish appropriate procedures and identify fully categories of individuals who may make such promises. Promises of confidentiality shall be made only when they are essential to obtain the information sought (see 5 CFR part 736).

(c) *Access to records for which DOD-wide exemptions are claimed.* Deny the individual access only to those portions of the records for which the claimed exemption applies.

(d) *Exempt records.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent that such provisions have been identified and an exemption claimed for the record and the purposes underlying the exemption for the record pertain to the record.

(e) *DoD-wide exemptions.* The following exemptions are applicable to all components of the Department of Defense for the following system(s) of records:

(1) *System identifier and name.* DUSDI 01–DoD ''Department of Defense (DoD) Insider Threat Management and Analysis Center (DITMAC) and DoD Component Insider Threat Records System.''

(i) *Exemption.* This system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G)(H) and (I), (5) and (8); and (g) of the Privacy Act.

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(1), (2), (4), (5), (6), and (7).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsection (c)(3).* To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures. Access to the accounting of disclosures could also interfere with a civil or administrative action or investigation which may impede those actions or investigations. Access also could reveal the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations.

(B) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(C) *Subsection (d)(1).* Disclosure of records in the system could reveal the identity of confidential sources and result in an unwarranted invasion of the privacy of others. Disclosure may also reveal information relating to actual or potential criminal investigations. Disclosure of classified national security information would cause damage to the national security of the United States. Disclosure could also interfere with a civil or administrative action or investigation; reveal the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; and reveal the confidentiality and integrity of Federal testing materials and evaluation materials used for military promotions when furnished by a confidential source.

(D) *Subsection (d)(2).* Amendment of the records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(E) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2).

(F) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of

effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(G) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(H) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(I) *Subsection (e)(4)(G), (H), and (I).* These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2).

(J) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(K) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(L) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(iv) *Exempt records from other systems.* In addition, in the course of carrying out analysis for insider threats, exempt records from other systems of records may in turn become part of the case records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained into this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

(2) *System identifier and name.* DUSDI 02–DoD ''Personnel Vetting Records System.''

(i) *Exemption.* This system of records is exempted from subsections 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(1) of the Privacy Act.

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5), (k)(6), and (k)(7).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsections (c)(3), (d)(1), and (d)(2)*—

(*1*) *Exemption (k)(1).* Personnel investigations and vetting records may contain information properly classified pursuant to Executive Order. Application of exemption (k)(1) for such records may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could disclose classified information that could be detrimental to national security.

(*2*) *Exemption (k)(2).* Personnel investigations and vetting records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) for such records may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could: Inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures; interfere with a civil or administrative action or investigation which may impede those actions or investigations; and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*3*) *Exemption (k)(3).* Personnel investigations and vetting records may contain information pertaining to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) for such records may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could compromise the safety of the individuals protected pursuant to 18 U.S.C. 3056 and compromise protective services provided to the President and other individuals. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*4*) *Exemption (k)(5).* Personnel investigations and vetting records may contain investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. In some cases, such records may contain information pertaining to the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Privacy Act, under an implied promise). Application of exemption (k)(5) for such records may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could identify these confidential sources who might not have otherwise come forward to assist the Government, could hinder the Government's ability to obtain information from future confidential sources, and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*5*) *Exemption (k)(6).* Personnel investigations and vetting records may contain information relating to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service. Application of exemption (k)(6) for such records may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could compromise the objectivity and fairness of the testing or examination process. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*6*) *Exemption (k)(7).* Personnel investigations and vetting records may contain evaluation material used to determine potential for promotion in the armed services. In some cases, such records may contain information pertaining to the identity of a source who furnished information to the Government under an express promise that the source's identity would be held in confidence (or prior to the effective date of the Privacy Act, under an implied promise). Application of exemption (k)(7) for such records may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could identify these confidential sources who might not have otherwise come forward to assist the Government, hinder the Government's ability to obtain information from future confidential sources, and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(B) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent an exemption is claimed from (d)(1) and (2). Moreover, applying the

amendment appeal procedures toward background investigation and vetting records could impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(C) *Subsection (e)(1).* In the collection of information for authorized vetting purposes, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required suitability, eligibility, fitness, and credentialing determinations. Accordingly, application of exemptions (k)(1), (k)(2),(k)(3), (k)(5), (k)(6), and (k)(7) may be necessary.

(iv) *Exempt records from other systems.* In addition, in the course of carrying out personnel vetting, including records checks for continuous vetting, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained into this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary system of which they are a part.

§ 310.14 Department of the Air Force exemptions.

(a) All systems of records maintained by the Department of the Air Force shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(b) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(c) No system of records within Department of the Air Force shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption rule for the system of records has been published as a final rule in the **Federal Register**.

(d) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to non-exempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on *a case-by-case basis.*

(e) *General exemptions.* The following systems of records claim an exemption under 5 U.S.C. 552a(j)(2), with the exception of F090 AF IG B, Inspector General Records and F051 AF JA F, Courts-Martial and Article 15 Records. They claim both the (j)(2) and (k)(2) exemption, and are listed under this part:

(1) *System identifier and name.* F071 AF OSI A, Counter Intelligence Operations and Collection Records.

(2) *System identifier and name.* F071 AF OSI C, Criminal Records.

(3) *System identifier and name.* F071 AF OSI D, Investigative Support Records.

(4) *System identifier and name.* F031 AF SP E, Security Forces Management Information System (SFMIS).

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) To protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(B) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(C) From subsection (c)(4) because an exemption is being claimed for subsection this subsection will not be applicable.

(D) From subsection (d) because access the records contained in this system would inform the subject of an investigation of existence of that investigation, provide subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement.

(E) From subsection (e)(4)(H) because system of records is exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(F) From subsection (f) because this system of records has been exempted from access provisions of subsection (d).

(5) *System identifier and name.* F031 AF SF A, Correction and Rehabilitation Records.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence

of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(6) *System identifier and name.* F090 AF IG B, Inspector General Records.

(i) *Exemption.* (A) Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (e)(6)(i)(B). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Air Force IG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d) and (f).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(7) *System identifier and name.* F051 AF JA F, Courts-Martial and Article 15 Records.

(i) *Exemption.* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsection of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (e)(7)(i)(B). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(8) *System identifier and name.* F071 JTF A, Computer Network Crime Case System.

(i) *Exemption.* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (e)(8)(i)(B). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(f) *Specific exemptions.* The following systems of records are subject to the specific exemptions shown:

(1) *System identifier and name.* F036 USAFA K, Admissions Records.

(i) *Exemption.* Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records (Liaison Officer Evaluation and Selection Panel Candidate Evaluation) may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To ensure the frankness of information used to determine whether cadets are qualified for graduation and commissioning as officers in the Air Force.

(2) *System identifier and name.* F036 AFPC N, Air Force Personnel Test 851, Test Answer Sheets.

(i) *Exemption.* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(6) from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(6).

(iii) *Reasons.* To protect the objectivity of the promotion testing system by keeping the test questions and answers in confidence.

(3) *System identifier and name.* F036 USAFA A, Cadet Personnel Management System.

(i) *Exemption.* Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To maintain the candor and integrity of comments needed to evaluate an Air Force Academy cadet for commissioning in the Air Force.

(4) *System identifier and name.* F036 AETC I, Cadet Records.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) (Detachment Professional Officer Course Selection Rating Sheets; Air Force Reserve Officer Training Corps Form 0–24—Disenrollment Review; Memoranda for Record and Staff Papers with Staff Advice, Opinions, or Suggestions) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G) and (H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of a confidential source who furnishes information necessary to make determinations about the qualifications, eligibility, and suitability of cadets for graduation and commissioning in the Air Force.

(5) *System identifier and name.* F044 AF SG Q, Family Advocacy Program Records.

(i) *Exemption.* (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (f)(5)(i)(A). When claimed, this exemption allows limited

protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3) and (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* From subsections (c)(3) and (d) because the exemption is needed to encourage those who know of exceptional medical or educational conditions or family maltreatments to come forward by protecting their identities and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(6) *System identifier and name.* F036 AF PC A, Effectiveness/Performance Reporting System.

(i) *Exemption.* Evaluation material used to determine potential for promotion in the Military Services (Brigadier General Selectee Effectiveness Reports and Colonel and Lieutenant Colonel Promotion Recommendations with close out dates on or before January 31, 1991) may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* (A) From subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

(B) From subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

(C) From subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(D) From subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(7) *System identifier and name.* F036 AFDP A, Files on General Officers and Colonels Assigned to General Officer Positions.

(i) *Exemption.* Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To protect the integrity of information used in the Reserve Initial Brigadier General Screening Board, the release of which would compromise the selection process.

(8) *System identification and name.* F036 AF PC O, General Officer Personnel Data System.

(i) *Exemption.* Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records (Air Force General Officer Promotion and Effectiveness Reports with close out dates on or before January 31, 1991) may be exempt pursuant to 5 U.S.C. 552a(k)(7) may be exempt from following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* (A) From subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

(B) From subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

(C) From subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(D) From subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(9) *System identifier and name.* F036 AFPC K, Historical Airman Promotion Master Test File.

(i) *Exemption.* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(6) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(6).

(iii) *Reasons.* To protect the integrity, objectivity, and equity of the promotion testing system by keeping test questions and answers in confidence.

(iv) [Reserved]

(10) *System identifier and name.* F071 AF OSI F, Investigative Applicant Processing Records.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following

subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect those who gave information in confidence during Air Force Office of Special Investigations applicant inquiries. Fear of harassment could cause sources not to make frank and open responses about applicant qualifications. This could compromise the integrity of the Air Force Office of Special Investigations personnel program that relies on selecting only qualified people.

(11) *System identifier and name.* F036 USAFA B, Master Cadet Personnel Record (Active/Historical).

(i) *Exemption.* Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(7).

(iii) *Reasons.* To maintain the candor and integrity of comments needed to evaluate a cadet for commissioning in the Air Force.

(12) *System identifier and name.* F031 497IG A, Sensitive Compartmented Information Personnel Records.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (f)(12)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* To protect the identity of sources to which proper promises of confidentiality have been made during investigations. Without these promises, sources will often be unwilling to provide information essential in adjudicating access in a fair and impartial manner.

(13) *System identifier and name.* F071 AF OSI B, Security and Related Investigative Records.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause sources to refuse to give this information in the frank and open way needed to pinpoint those areas in an investigation that should be expanded to resolve charges of questionable conduct.

(14) *System identifier and name.* F031 497IG B, Special Security Case Files.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause sources to refuse to give this information in the frank and open way needed to pinpoint those areas in an investigation that should be expanded to resolve charges of questionable conduct.

(15) *System identifier and name.* F031 AF SP N, Special Security Files.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause them to refuse to give this information in the frank and open way needed to pinpoint areas in an investigation that should be expanded to resolve charges of questionable conduct.

(16) *System identifier and name.* F036 AF PC P, Applications for Appointment and Extended Active Duty Files.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsection of 5 U.S.C. 552a(d).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* To protect the identity of confidential sources who furnish information necessary to make determinations about the qualifications, eligibility, and suitability of health care professionals who apply for Reserve of the Air Force appointment or inter-service transfer to the Air Force.

(17) *System identifier and name.* F036 AF DPG, Military Equal Opportunity and Treatment.

(i) *Exemption.* Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance

of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (f)(17)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 522a(k)(2) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement. In addition, granting individuals access to information collected while an Equal Opportunity and Treatment clarification/investigation is in progress conflicts with the just, thorough, and timely completion of the complaint, and could possibly enable individuals to interfere, obstruct, or mislead those clarifying/investigating the complaint.

(B) From subsection (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (k) of the Privacy Act of 1974.

(C) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(18) *System identifier and name.* F051 AF JA I, Commander Directed Inquiries.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (f)(18)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(19) [Reserved]

(20) *System identifier and name.* F033 AF A, Information Requests—Freedom of Information Act.

(i) *Exemption.* During the processing of a Freedom of Information Act request, exempt materials from 'other' systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(21) *System identifier and name.* F033 AF B, Privacy Act Request Files.

(i) *Exemption.* During the processing of a Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this

system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(22) *System identifier and name.* F051 AFJA E, Judge Advocate General's Professional Conduct Files.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (f)(22)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(23) *System identifier and name.* F033 USSC A, Information Technology and Control Records.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (f)(23)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(24) *System identifier and name.* F036 AETC X, College Scholarship Program.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability but only to the extent that disclosure would reveal the

identity of a confidential source. Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) and (d) and when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(25) *System identifier and name.* F032 AFCESA C, Civil Engineer System-Explosive Ordnance Records.

(i) *Exemption.* Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3056, may be exempt pursuant to 5 U.S.C. 552a(k)(3) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(3).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(26) *System identifier and name.* F051 AF JAA, Freedom of Information Appeal Records.

(i) *Exemption.* During the processing of a Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

§ 310.15 Department of the Army exemptions.

(a) *Special exemption.* 5 U.S.C. 552a(d)(5)—Denies individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) *General and specific exemptions.* The Secretary of the Army may exempt Army systems of records from certain requirements of the Privacy Act of 1974. The two kinds of exemptions that require Secretary of the Army enactment are general and specific exemptions. The general exemption authorizes the exemption of a system of records from most requirements of the Act; the specific exemptions authorize the exemption of a system of record from only a few.

(c) *General exemptions.* Only Army activities actually engaged in the enforcement of criminal laws as their principal function may claim the general exemption. See 5 U.S.C. 552a(j)(2). To qualify for this exemption, a system must consist of:

(1) Information compiled to identify individual criminal offenders and alleged offenders, which consists only of identifying data and arrest records; type and disposition of charges; sentencing, confinement, and release records; and parole and probation status;

(2) Information compiled for the purpose of criminal investigation including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual, compiled at any stage of the process of enforcement of the criminal laws, from arrest or indictment through release from supervision.

(d) *Specific exemptions.* The Secretary of the Army has exempted all properly classified information and systems of records that have the following kinds of information listed in this section, from certain parts of the Privacy Act. The Privacy Act exemption reference appears in parentheses after each category.

(1) Classified information in every Army system of records. Before denying any individual access to classified information, the Access and Amendment Refusal Authority must make sure that it was properly classified under the standards of Executive Orders 11652, 12065, or 12958 and that it must remain so in the interest of national defense of foreign policy (5 U.S.C. 552a(k)(1)).

(2) Investigatory material compiled for law enforcement purposes (other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if this information has been used to deny someone a right, privilege or benefit to which the individual is entitled by Federal law, or for which an individual would otherwise be eligible as a result of the maintenance of the information, it must be released, unless doing so would reveal the identity of a confidential source.

Note 1 to paragraph (d)(2). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to Title 18 U.S.C., section 3056 (5 U.S.C. 552a(k)(3)).

(4) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlements of individuals, except for census records which may be disclosed under Title 13 U.S.C., section 8 (5 U.S.C. 552a(k)(4)).

(5) Investigatory material compiled solely to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only to the extent that disclosure would reveal the identity of a confidential source (5 U.S.C. 552a(k)(5)).

(6) Testing or examination material used solely to determine if a person is qualified for appointment or promotion in the Federal service. This information may be withheld only if disclosure would compromise the objectivity or fairness of the examination process (5 U.S.C. 552a(k)(6)).

(7) Evaluation material used solely to determine promotion potential in the Armed Forces. Information may be withheld, but only to the extent that disclosure would reveal the identity of a confidential source (5 U.S.C. 552a(k)(7)).

(e) *Procedures.* When a system manager seeks an exemption for a system of records, the following information will be furnished to the Chief Information Officer, 107 Army Pentagon, Room 3E608, Washington, DC 20310–0107; applicable system notice, exemptions sought, and justification. After appropriate staffing and approval by the Secretary of the Army, a proposed rule will be published in the **Federal Register**, followed by a final rule 60 days later. No exemption may be invoked until these steps have been completed.

(f) The Army system of records notices for a particular type of record will state whether the Secretary of the Army has authorized a particular general and specific exemption to a certain type of record. The Army system of records notices are published on the Defense Privacy and Civil Liberties Division's website: *http://dpcld.defense.gov/Privacy/DODComponentArticleList/tabid/6799/Category/278/department-of-the-army.aspx.*

(g) *Exempt Army records.* The following records may be exempt from certain parts of the Privacy Act:

(1) *System identifier and name.* A0020–1 SAIG, Inspector General Records.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to such records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(2) *System identifier and name.* A0 025–400–2 0AA, Army Records Information Management System (ARIMS).

(i) *Exemption.* During the course of records management, declassification and claims research, exempt materials from other systems of records may in turn become part of the case record in

this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Department of the Army hereby claims the same exemptions for the records from those ''other'' systems.

(ii) *Authority.* 5 U.S.C. 552a (j)(2) and (k)(1) through (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided to the President and others are not compromised, to protect records used solely as statistical records, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records may be exempt from specific provisions of 5 U.S.C. 552a.

(3) *System identifier and name.* A0025–55 OAA, Freedom of Information Act Program Files.

(i) *Exemption.* During the processing of Freedom of Information Act (FOIA) requests, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Department of the Army claims the same exemptions for the records from those ''other'' systems.

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(1) through (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided to the President and others are not compromised, to protect records used solely as statistical records, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records may be exempt from specific provisions of 5 U.S.C. 552a.

(4) *System identifier and name.* A0027–1 DAJA, General Legal Files.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(E) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(F) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(1) through (k)(7) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to such records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(5) *System identifier and name.* A0027–10a DAJA, Military Justice Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2),

(e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(6) *System identifier and name.* A0027–10b DAJA, Courts-Martial Records and Reviews.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time,

seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(7) *System identifier and name.* A0040–5b DASG, Army Public Health Data Repository (APHDR).

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and (k)(4) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(4).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(8) *System identifier and name.* A0190–5 OPMG, Vehicle Registration System.

(i) *Exemption.* Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its primary function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d) making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d) making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law

enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(9) *System identifier and name.* A0190–9 OPMG, Absentee Case Files.

(i) *Exemption.* Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(10) *System identifier and name.* A0190–14 OPMG, Registration and Permit Files.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), is exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violations of laws or

civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(11) *System identifier and name.* A0190–45 OPMG, Military Police Reporting Program Records (MPRP).

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(12) *System identifier and name.* A0190–45a OPMG, Local Criminal Intelligence Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other

agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(13) *System identifier and name.* A0190–45b OPMG, Serious Incident Reporting Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(14) *System identifier and name.* A0190–47 DAPM–ACC, Army

Corrections System and Parole Board Records.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent possible from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because an exemption is being claimed for subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(15) *System identifier and name.* A0195–2a USACIDC, Source Register.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of

criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(16) *System identifier and name.* A0195–2b USACIDC, Criminal Investigation and Crime Laboratory Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsections (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent possible from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d), making these subsections not applicable.

(H) From subsections (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(J) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(17) *System identifier and name.* A0195–2c USACIDC DoD, DoD Criminal Investigation Task Force (CITF) Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil

obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent possible from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(J) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(18) *System identifier and name.* A0195–2d USACIDC DoD, Defense Criminal Investigation DNA Database and Sample Repository; CODIS Records.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(19) *System identifier and name.* A0195–6 USACIDC, Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2), (k)(5), or (k)(7) from subsections 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(5), and (k)(7).

(iii) *Reasons.* (A) From subsections (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(20) *System identifier and name.* A02107 DAMO, Expelled or Barred Person Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principal function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(8), (f) and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(J) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(K) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(21) *System identifier and name.* A0340–21 OAA, Privacy Case Files.

(i) *Exemption.* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for

initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Army hereby claims the same exemptions.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), and (k)(1) through (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided to the President and others are not compromised, to protect records used solely as statistical records, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records may be exempt from specific provisions of 5 U.S.C. 552a.

(22) *System identifier and name.* A0351–12 DAPE, Applicants/Students, U.S. Military Academy Prep School.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(C) It is imperative that the confidential nature of evaluation material on individuals, furnished to the U.S. Military Academy Preparatory School under an express promise of confidentiality, be maintained to ensure the candid presentation of information necessary in determinations involving admission to or retention at the United States Military Academy and suitability for commissioned military service.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) and (k)(7) subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5) and (k)(7).

(iii) *Reasons.* (A) From subsections (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(23) *System identifier and name.* A0351–17a USMA, U.S. Military Academy Candidate Files.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(C) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5), (k)(6) or (k)(7) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5), (k)(6) and (k)(7).

(iii) *Reasons.* (A) From subsections (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further

necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(24) *System identifier and name.* A0351–17b USMA, U.S. Military Academy Management System Records.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(C) It is imperative that the confidential nature of evaluation and investigatory material on candidates, cadets, and graduates, furnished to the United States Military Academy under a promise of confidentiality be maintained to ensure the candid presentation of information necessary in determinations involving admissions to the Military Academy and suitability for commissioned service and future promotion.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) or (k)(7) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5) and (k)(7).

(iii) *Reasons.* (A) From subsections (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(25) *System identifier and name.* A0380–67 DAMI, Personnel Security Clearance Information Files.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(26) *System identifier and name.* A0381–20b DAMI, Foreign Intelligence/Counterintelligence/Information Operations/Security Files.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance

of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(E) To the extent that copies of exempt records from external systems of records are entered into A0381–10b DAMI, the Army hereby claims the same exemptions for those records as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), and (k)(1) through (k)(7).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(G) For records that are copies of exempt records from external systems of records, such records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided to the President and others are not compromised, to protect records used solely as statistical records, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(27) *System identifier and name.* A0381–100a DAMI, Intelligence/Counterintelligence Source Files.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(28) *System identifier and name.* A0381–100b DAMI, Technical Surveillance Index.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2) or (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(29) *System identifier and name.* A0600–20 DCSG–1, Sexual Assault (SADMS) and Sexual Harassment (SHARP) Program Records.

(i) *Exemption.* This system of records is a compilation of information from other Department of Defense/Army systems of records. To the extent that copies of exempt records from those other systems of records are entered into this system of records, the Army G–1 hereby claims the same exemptions for the records from those other systems.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), and (k)(1) through (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided to the President and others are not compromised, to protect records used solely as statistical records, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records may be exempt from specific provisions of 5 U.S.C. 552a.

(30) *System identifier and name.* A0601–141 DASG, Applications for Appointment to Army Medical Department.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552(a)(k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have

been exempted from the access provisions of subsection (d).

(31) *System identifier and name.* A0601–210a USAREC, Enlisted Eligibility Files.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(32) *System identifier and name.* A0608–18 DASG, Army Family Advocacy Program Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) or (k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because the requirements in those subsections are inapplicable to the extent that portions of this system of records may be exempt from subsection (d), concerning individual access.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(33) *System identifier and name.* A0614–115 DAMI, Department of the Army Operational Support Activities.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d), because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations, information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because portions of this system of records have been exempted from the access provisions of subsection (d), making these subsections not applicable.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(34) *System identifier and name.* A0025–2 PMG (DFBA) DoD, Defense Biometrics Identification Records System.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Exempt materials from other sources listed above may become part of the case records in this system of records. To the extent that copies of exempt records from other sources listed above are entered into these case records, the Department of the Army hereby claims the same exemptions, (j)(2) and (k)(2), for the records as claimed by the source systems, specifically to the extent that copies of exempt records may become part of these records from JUSTICE/FBI–019 Terrorist Screening Records System, the Department of the Army hereby claims the same exemptions for the records as claimed at their source (JUSTICE/FBI–019, Terrorist Screening Records System).

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) from subsections 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), making this subsection not applicable.

(C) From subsection (d) because access to such records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(E) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (e)(4)(H) because the requirements in those subsections are inapplicable to the extent that portions of this system of records may be exempt from subsection (d), concerning individual access.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsection (d).

(L) From subsection (g) because portions of this system of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(35) *System identifier and name.* A0600–20 SAMR, Soldiers Equal Opportunity Investigative Files.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), is exempt

pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, such material shall be provided to the individual, except to the extent that disclosure would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from subsections 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of a criminal investigation or other investigation conducted for law enforcement purposes to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to such records contained in this system would inform the subject of a criminal investigation or other investigation conducted for law enforcement purposes, of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsection (e)(1) because in the course of criminal investigations or other law enforcement investigations, information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained because it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(D) From subsections (e)(4)(G) and (e)(4)(H) because the requirements in those subsections are inapplicable to the extent that portions of this system of records may be exempted from subsection (d), concerning individual access.

(E) From subsection (e)(4)(I) because the identity of specific sources must be withheld to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) From subsection (f) because portions of this system of records have been exempted from the access provisions of subsections (d).

(G) For records that are copies of exempt records from external systems of records, such records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record that is now contained in this system of records. In general, the exemptions were claimed to properly protect classified information relating to national defense and foreign policy; to avoid interference during the conduct of criminal, civil, or administrative actions or investigations; to ensure protective services provided to the President and others are not compromised; to protect records used solely as statistical records; to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; to preserve the confidentiality and integrity of Federal testing materials; and to safeguard evaluation materials used for military promotions when provided by a confidential source. The exemption rule for the original records will identify the specific reasons the records are exempt from specific provisions of 5 U.S.C. 552a.

(h) *Exempt OPM records.* Three Office of Personnel Management systems of records apply to Army employees, except for non-appropriated fund employees. These systems, the specific exemptions determined to be necessary and proper, the records exempted, provisions of the Privacy Act from which exempt, and justification are set forth below:

(1) Personnel Investigations Records (OPM/CENTRAL–9).

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Records maintained in connection with providing protective services to the President of the United States or other individuals pursuant to Title 18 U.S.C. 3056 may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(D) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(E) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(F) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(G) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5), (k)(6), or (k)(7) from subsections 5 U.S.C. 552a(c)(3) and (d).

(ii) *Reasons.* (A) Personnel investigations may obtain from another Federal agency, properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to an amendment of such classified information under 5 U.S.C. 552a(d) in order to protect such information.

(B) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), *e.g.* investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records, under 552a(c)(3) and (d) because otherwise, it would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) Personnel investigations may obtain from another Federal agency, information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. Application of exemption (k)(3) may be necessary to preclude the data subject's access to or amendment of such records

under 5 U.S.C. 552a(d) to ensure protective services provided to the President and others are not compromised.

(D) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d) in order to protect the identity of confidential sources incident to determinations of suitability, eligibility, or qualifications for Federal employment, military service, contract, and security clearance determinations.

(E) All material and information in the records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject in order to preserve the confidentiality and integrity of Federal testing materials.

(F) All material and information in the records that meets the criteria stated in 5 U.S.C. 552a(k)(7) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject in order to safeguard evaluation materials used for military promotions when furnished by a confidential source.

(2) Recruiting, Examining, and Placement Records (OPM/GOVT–5).

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5), or (k)(6) from subsections 5 U.S.C. 552a(c)(3) and (d).

(ii) *Reasons.* (A) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d) in order to protect the identity of confidential sources incident to determinations of suitability, eligibility, or qualifications for Federal employment, military service, contract, and security clearance determinations. These exemptions are also claimed because this system contains investigative material compiled solely for the purpose of determining the appropriateness of a request for approval of an objection to an eligible individual's qualification for employment in the Federal service.

(B) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access and amendment of records by the subject, in order to preserve the confidentiality and integrity of Federal testing materials.

(3) Personnel Research Test Validation Records (OPM/GOVT–6).

(i) *Exemption.* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(6) from subsections 5 U.S.C. 552a(d).

(ii) *Reasons.* All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to an amendment of the records by the data subject, in order to preserve the confidentiality and integrity of Federal testing materials.

(iii) Twelve Exceptions to the ''No Disclosure without Consent'' rule of the Privacy Act.

(A) 5 U.S.C. 552a(b)(1)—To DoD officers and employees who have a need for the record in the performance of their official duties. This is the ''official need to know'' concept.

(B) 5 U.S.C. 552a(b)(2)—FOIA requires release of the information pursuant to 5 U.S.C. 552.

(C) 5 U.S.C. 552a(b)(3)—For an authorized Routine Use, *i.e.* the ''Routine Use Exception.'' The Routine Use must be listed in the applicable system of records notice published in the **Federal Register** and the purpose of the disclosure must be compatible with the purpose for the published Routine Use.

(D) 5 U.S.C. 552a(b)(4)—To the Bureau of the Census to plan or carry out a census or survey, or related activity pursuant to Title 13 of the U.S. Code.

(E) 5 U.S.C. 552a(b)(5)—To a recipient who has provided the Department of the Army or DoD with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable.

(F) 5 U.S.C. 552a(b)(6)—To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value.

Note 1 to paragraph (h)(3)(iii)(F). Records transferred to the Federal Records Centers for storage remain under the control of the Department of the Army and no accounting for disclosure is required under the Privacy Act.

(G) 5 U.S.C. 552a(b)(7)—To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department of the Army or DoD specifying the particular portion desired and the law enforcement activity for which the record is sought.

(H) 5 U.S.C. 552a(b)(8)—To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure, notification is transmitted to the last known address of such individual.

(I) 5 U.S.C. 552a(b)(9)—To either House of Congress, or, to the extent the matter is within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee. Requests from a Congressional member acting on behalf of a constituent are not included in this exception, but may be covered by a routine use exception to the Privacy Act (See applicable Army system of records notice).

(J) 5 U.S.C. 552a(b)(10)—To the Comptroller General or authorized representatives, in the course of the performance of the duties of the Government Accountability Office.

(K) 5 U.S.C. 552a(b)(11)—Pursuant to the order of a court of competent jurisdiction. The order must be signed by a judge.

(L) 5 U.S.C. 552a(b)(12)—To a consumer reporting agency in accordance with section 3711(e) of Title 31 of the U.S. Code. The name, address, SSN, and other information identifying the individual; amount, status, and history of the claim; and the agency or program under which the case arose may be disclosed. However, before doing so, agencies must complete a series of steps designed to validate the

debt and to offer the individual an opportunity to repay it.

§ 310.16 Department of the Navy exemptions.

(a) All systems of records maintained by the DON shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein that contain isolated items of properly classified information.

(1) *System identifier and name.* N01070–9, White House Support Program.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(D) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(E) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

(iii) *Reasons.* Exempted portions of this system contain information that has been properly classified under E.O. 12958, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(2) *System identifier and name.* N01131–1, Officer Selection and Appointment System.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(D) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(E) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(3) *System identifier and name.* N01133–2, Recruiting Enlisted Selection System.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(D) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(E) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(4) *System identifier and name.* N01640–1, Individual Correctional Records.

(i) *Exemption.* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reason.* (A) Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(B) [Reserved]

(5) *System identifier and name.* N01754–3, Navy Child Development Services Program.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(B) [Reserved]

(6) *System identifier and name.* N03834–1, Special Intelligence Personnel Access File.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1) and (k)(5).

(iii) *Reasons.* (A) Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

(B) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(7) *System identifier and name.* N04060–1, Navy and Marine Corps Exchange Sales and Security Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(8) [Reserved]

(9) *System identifier and name.* N05041–1, Inspector General (IG) Records.

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1) and (k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would permit individuals to obtain valuable information concerning the nature of the investigation and would present a serious impediment to the orderly conduct of any investigative activities. Such accounting could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(B) From subsections (d) and (f) because access to the records would inform individuals of the existence and nature of the investigation; provide

information that might result in the concealment, destruction, or fabrication of evidence; possibly jeopardize the safety and well-being of informants, witnesses and their families; likely reveal and render ineffectual investigatory techniques and methods and sources of information; and possibly result in the invasion of the personal privacy of third parties. Access could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with the ongoing investigation and impose an impossible administrative burden by requiring investigations to be continually reinvestigated.

(C) From subsection (e)(1) because in the course of the investigation it is not always possible, at least in the early stages of the inquiry, to determine relevance and or necessity as such determinations may only occur after the information has been evaluated. Information may be obtained concerning the actual or potential violation of laws or regulations other than those relating to the ongoing investigation. Such information should be retained as it can aid in establishing patterns of improper activity and can provide valuable leads in the conduct of other investigations.

(D) From subsection (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(1) and (k)(2) of the Privacy Act of 1974.

(E) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources and to protect the privacy and physical safety of witnesses. Although the system is exempt from this requirement, the DON has published a notice in broad, generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires.

(10) *System identifier and name.* N05300–3, Faculty Professional Files.

(i) *Exemptions.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(11) *System identifier and name.* N05354–1, Equal Opportunity Information Management System.

(i) *Exemptions.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1) and (k)(5).

(iii) *Reasons.* Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(12) *System identifier and name.* N05520–1, Personnel Security Eligibility Information System.

(i) *Exemptions.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(E) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(7).

(iii) *Reasons.* Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the Government under an express or implied promise of confidentiality.

(13) *System identifier and name.* N05520–4, NCIS Investigative Files System.

(i) *Exemptions.* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in

the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefore, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(B) [Reserved]

(iv) *Exemptions.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(C) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(D) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(E) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(F) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(v) *Authority.* 5 U.S.C. 552a(k)(1), (k)(3), (k)(4), (k)(5) and (k)(6).

(vi) *Reasons.* (A) The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record.

(B) Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(C) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(D) The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

(E) The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(F) This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

(G) Exempt portions of this system containing screening board reports.

(H) Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standards of the Special Agent Corps., *i.e.,* those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

(14) *System identifier and name.* N05520–5, Personnel Security Program Management Records System.

(i) *Exemptions.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

(ii) *Authority.* 5 U.S.C. 552a(k)(1) and (k)(5).

(iii) *Reasons.* (A) Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(B) [Reserved]

(15) *System identifier and name.* N05580–1, Security Incident System.

(i) *Exemption.* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication

of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(B) [Reserved]

(16) [Reserved]

(17) *System identifier and name.* N05800–1, Legal Office Litigation/Correspondence Files.

(i) *Exemptions.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(E) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(F) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* (A) Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the ''ex parte'' correction of such materials.

(B) Subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

(C) Subsections (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(18) *System identifier and name.* N01000–5, Naval Clemency and Parole Board Files.

(i) *Exemption.* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflecting items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

(B) The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(19) *System identifier and name.* N01752–1, Family Advocacy Program System.

(i) *Exemptions.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well-being of parents and their children.

(B) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(20) *System identifier and name.* N12930–1, Human Resources Group Personnel Records.

(i) *Exemptions.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(C) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5) and (k)(6).

(iii) *Reasons.* (A) Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(B) Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

(21) *System identifier and name.* N05813–4, Trial/Government Counsel Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C. 552a(j)(2) are (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(4)(G), (H), and (I), (e)(8), (f), and (g).

(ii) *Exemption.* Information specifically authorized to be classified under E.O. 12958, as implemented by DOD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(iii) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to subsections 5 U.S.C. 552a(k)(1) and (k)(2) are (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(iv) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(v) *Reasons.* (A) From subsection (c)(3) because release of accounting of disclosure could place the subject of an investigation on notice that he/she is under investigation and provide him/her with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement investigations.

(B) From subsections (c)(4), (d), (e)(4)(G), and (e)(4)(H) because granting individuals access to information collected and maintained for purposes relating to the enforcement of laws could interfere with proper investigations and orderly administration of justice. Granting individuals access to information relating to the preparation and conduct of criminal prosecution would impair the development and implementation of legal strategy. Amendment is inappropriate because the trial/Government counsel files contain official records including transcripts, court orders, and investigatory materials such as exhibits, decisional memorandum and other case-related papers. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render in effective investigation techniques, sources, and methods used by law enforcement personnel, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

(C) From subsection (e)(1) because it is not always possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. Information collected during criminal investigations and prosecutions and not used during the subject case is often retained to provide leads in other cases.

(D) From subsection (e)(2) because in criminal or other law enforcement investigations, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of an investigation, presenting a serious impediment to law enforcement investigations.

(E) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because compliance would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

(I) From subsection (f) and (g) because this record system is exempt from the individual access provisions of subsection (d).

(J) Consistent with the legislative purpose of the Privacy Act of 1974, the

DON will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the DON's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(22) *System identifier and name.* NM05211–1, Privacy Act Request Files and Tracking System.

(i) *Exemption.* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the DON hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reason.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(23) *System identifier and name.* NM05720–1, FOIA Request/Appeal Files and Tracking System.

(i) *Exemption.* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the DON hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reason.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(24) *System identifier and name.* N05800–2, Professional Responsibility Files.

(i) *Exemptions.* Investigatory material compiled for law enforcement purposes, may be exempt pursuant to 5 U.S.C. 552(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or which he would otherwise be eligible, as a result of maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C 552a: (c)(3), (d)(1) through (5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I).

(ii) *Authority.* 5 U.S.C. 552a(k)(2)

(ii) *Reason.* The reason for asserting this exemption (k)(2) is to ensure the integrity of the litigation process.

(25) *System identifier and name.* NM03800–1, Naval Global Maritime, Foreign, Counterterrorism and Counter Intelligence Operation Records.

(i) *Exemptions.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5) but only to the extent that such material would reveal the identity of a confidential source. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and is published as 32 CFR part 701.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reason.* The reason for asserting this exemption is ensure the integrity of the security and investigative material compiled for law enforcement purposes by the Department of the Navy and the Department of Defense.

§ 310.17 Exemptions for specific Marine Corps record systems.

(a) [Reserved]

(1) *System identifier and name.* MIN00001, Personnel and Security Eligibility and Access Information System.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material

would reveal the identity of a confidential source.

(D) Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.

(iii) *Reasons.* (A) Exempt portions of this system contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(B) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(C) Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

§ 310.18 Defense Contract Audit Agency (DCAA) exemptions.

(a) *General information.* There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Privacy Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If a new system of records originates for which an exemption is proposed, or an additional or new exemption for an existing system of records is proposed, the exemption shall be submitted with the system of records notice. No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve significant and legitimate Government purposes.

(b) *Specific exemptions.* (1) *System identifier and name.* RDCAA 900.1, DCAA Internal Review Case Files.

(i) *Exemption.* Any portions of this system of records which fall under the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(B) From subsection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(C) From subsection (e)(1) because the nature of the investigation functions creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close liaison and working relationships with other Federal, state, local, foreign country law enforcement agencies, and other governmental agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(4)(G) through (H) because this system of records is exempt from the access provisions of subsection (d).

(E) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(2) [Reserved]

§ 310.19 Defense Information Systems Agency (DISA) exemptions.

(a) Section 5 U.S.C. 552a(3)(j) and (3)(k) authorize an agency head to exempt certain systems of records or parts of certain systems of records from some of the requirements of the act. This part reserves to the Director, DISA, as head of an agency, the right to create exemptions pursuant to the exemption provisions of the act. All systems of records maintained by DISA shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652, ''Classification and Declassification of National Security Information and Material,'' dated March 8, 1972 (37 FR 10053, May 19, 1972) and which is required by the executive order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified.

(1) *System identifier and name.* K890.23, DISA Inspector General Investigative Tracker (DIGit).

(i) *Exemption.* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(j)(2), (k)(2)and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I).

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(2), and (k)(5).

(iii) *Reasons.* To ensure the integrity of the privacy and civil liberties process. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough, and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying, or fabricating evidence or documents. In addition, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through privacy and civil liberties channels for fear of retribution or harassment.

(2) [Reserved]

§ 310.20 Defense Intelligence Agency (DIA) exemptions.

(a) All systems of records maintained by the Director Intelligence Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive order to be kept secret in the interest of national

defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not specifically designated for exemption may contain isolated information which has been properly classified.

(b) The Director, Defense Intelligence Agency, designated the systems of records listed below for exemptions under the specified provisions of the Privacy Act of 1974, as amended (Pub. L. 93–579).

(1) *System identification and name:* LDIA 0271, Investigations and Complaints.

(i) *Exemption.* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) and (5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(ii) *Authority.* 5 U.S.C. 552a(k) (2) and (5).

(iii) *Reasons.* The reasons for asserting these exemptions are to ensure the integrity of the Inspector General process within the Agency. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Also, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through Inspector General channels for fear of retribution or harassment.

(2) *System identifier and name.* LDIA 13–0001, Conflict Management Programs.

(i) *Exemption.* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I)

(ii) *Authority.* 5 U.S.C. 552a (k)(2) and (k)(5)

(iii) *Reasons.* Claiming these exemptions ensures the integrity of the conflict management process. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough, and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying, or fabricating evidence or documents. In addition, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals to not seek redress for wrongs through available channels for fear of retribution or harassment.

(3) *System identifier and name.* LDIA 0660, Security and Counterintelligence Files.

(i) *Exemption.* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2), (k)(5) and (k)(6) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(5) and (k)(6).

(iii) *Reasons.* The reasons for asserting these exemptions are to ensure the integrity of the adjudication process used by the Agency to determine the suitability, eligibility or qualification for Federal service with the Agency and to make determinations concerning the questions of access to classified materials and activities. The proper execution of this function requires that the Agency have the ability to obtain candid and necessary information in order to fully develop or resolve pertinent information developed in the process. Potential sources, out of fear or retaliation, exposure or other action, may be unwilling to provide needed information or may not be sufficiently frank to be a value in personnel screening, thereby seriously interfering with the proper conduct and adjudication of such matters; and protects information used for medical, psychological evaluations, security questionnaires and polygraph testing.

(4) [Reserved]

(5) *System identifier and name.* LDIA 10–0001, Equal Opportunity, Diversity and Alternate Dispute Resolution Records.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (b)(5)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a (c)(3) and (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prospective interest by DIA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (c)(4), (d), and (f) because providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise). In addition, this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to the individual and record amendment procedures for this record system.

(I) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(6) *System identifier and name.* LDIA 10–0002, Foreign Intelligence and Counterintelligence Operation Records.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (b)(6)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a (c)(3) and (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prospective interest by DIA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (c)(4), (d), and (f) because providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise). In addition, this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful

investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to the individual and record amendment procedures for this record system.

(I) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(7) *System identifier and name.* LDIA 0900, Accounts Receivable, Indebtedness and Claims.

(i) *Exemption.* During the course of accounts receivable, indebtedness or claims actions, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the DIA hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(k)(2) through (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(8) *System identifier and name.* LDIA 0010, Information Requests-Freedom of Information Act (FOIA) and Privacy Act.

(i) *Exemption.* During the course of information requests-FOIA and Privacy Act actions, exempt records/material from other systems of records may become part of this system of records. For such records/material, DIA hereby claims the same exemptions as is claimed for the systems from which such records/material are derived.

(ii) *Authority.* 5 U.S.C. 552a(k)(2) through (k)(7).

(iii) *Reasons.* Records in a system of records are only exempted from pertinent provisions of 5 U.S.C. 552a to the extent such provisions are identified and an exemption claimed. In general, exemptions claimed protect properly classified information relating to national defense and foreign policy; avoid interference during the conduct of criminal, civil, or administrative actions or investigations; ensure protective services provided the President and others are not compromised; protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; preserve the confidentiality and integrity of Federal testing materials; and safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule(s) for the systems of records from which the records/materials was derived will identify the specific reasons why the records/materials are exempt from provisions of 5 U.S.C. 552a.

(9) *System identifier and name.* LDIA 12–0002, Privacy and Civil Liberties Case Management System.

(i) *Exemption.* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I).

(ii) *Authority.* 5 U.S.C. 552a(k)(2)and (k)(5).

(iii) *Reasons.* The reasons for asserting these exemptions is to ensure the integrity of the privacy and civil liberties process. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough, and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying, or fabricating evidence or documents. In addition, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through privacy and civil liberties channels for fear of retribution or harassment.

(10) *System identifier and name.* LDIA 0209, Litigation Case Files.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or which he would otherwise be eligible, as a result of maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This exemption provides limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d)(1)(2)(3)(4)(5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I). Exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this case record, the Defense Intelligence Agency hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records, which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* The reason for asserting these exemptions (k)(2) and (k)(5) is to ensure the integrity of the litigation process.

(11) *System identifier and name.* LDIA 10–0004 Occupational, Safety, Health, and Environmental Management Records.

(i) *Exemption.* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a(k)(2) (k)(4) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d)(1), (d)(2), (d)(3), (d)(4), (d)(5); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); (f)(1), (f)(2), (f)(2), (f)(3), (f)(4), (f)(5).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* The reasons for asserting these exemptions are to ensure the integrity of an investigative or administrative process and to protect

statistical records. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough, and timely resolution during an investigation or administrative action. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying, or fabricating evidence or documents. In addition, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals to not to seek redress for concerns about occupational safety, health, environmental issues and accident reporting. Information is used to comply regulatory reporting requirements.

§ 310.21 Defense Logistics Agency (DLA) exemptions.

(a) The Director, DLA or designee may claim an exemption from any provision of the Privacy Act from which an exemption is allowed.

(b) An individual is not entitled to access information that is compiled in reasonable anticipation of a civil action or proceeding. The term ''civil action or proceeding'' is intended to include court proceedings, preliminary judicial steps, and quasi-judicial administrative hearings or proceedings (*i.e.,* adversarial proceedings that are subject to rules of evidence). Any information prepared in anticipation of such actions or proceedings, to include information prepared to advise DLA officials of the possible legal or other consequences of a given course of action, is protected. The exemption is similar to the attorney work-product privilege except that it applies even when the information is prepared by non-attorneys. The exemption does not apply to information compiled in anticipation of criminal actions or proceedings.

(c) *Exempt Records Systems.* All systems of records maintained by the Defense Logistics Agency will be exempt from the access provisions of 5 U.S.C. 552a(d) and the notification of access procedures of 5 U.S.C. 522a(e)(4)(H) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 13526 and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all DLA systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

(1) *System identifier and name.* S170.04 (Specific exemption), Debarment and Suspension Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(1)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From 5 U.S.C. 552a(c)(3), as granting access to the accounting for each disclosure, as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of an investigation or prosecutive interest by DLA or other agencies. This seriously could compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or making witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From 5 U.S.C. 552a(d)(1) through (4) and (f), as providing access to records of a civil investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would seriously interfere with and thwart the orderly and unbiased conduct of an investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would: Allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(C) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From 5 U.S.C. 552a(e)(4)(G) and (H), as there is no necessity for such publication since the system of records would be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments and corrections to the information in the system.

(E) From 5 U.S.C. 552a(e)(4)(I), as to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA, nevertheless, will continue to publish such a notice in broad generic terms as is its current practice.

(2) *System identifier and name.* S500.10 (Specific exemption), Personnel Security Files.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From 5 U.S.C. 552a(c)(3) and (d), when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it would impair the Department's future ability to compile investigatory material

for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources may be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From 5 U.S.C. 552a(e)(1), as in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision making by the Department when making required suitability, eligibility, and qualification determinations.

(3) *System identifier and name.* S500.20 (Specific exemption), Defense Logistics Agency (DLA) Criminal Incident Reporting System (DCIRS).

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(3)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3), as to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by: Prematurely revealing its existence and nature; compromising or interfering with witnesses or making witnesses reluctant to cooperate; and leading to suppression, alteration, or destruction of evidence.

(B) From 5 U.S.C. 552a(d) and (f), as providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and wellbeing of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information also could reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

(C) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From 5 U.S.C. 552a(e)(4)(G), (H), and (I), as it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the ongoing investigation, reveal investigatory techniques, and place in jeopardy confidential informants who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(4) *System identifier and name.* S500.30 (Specific exemption), Incident Investigation/Police Inquiry Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information, except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(4)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From 5 U.S.C. 552a(c)(3), because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by: Prematurely revealing its existence and nature; compromising or interfering with witnesses or making witnesses reluctant to cooperate; and leading to suppression, alteration, or destruction of evidence.

(B) From 5 U.S.C. 552a(d)(1) through (d)(4), and (f), as providing access to records of a civil or administrative investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would: Provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal wrongdoing or mislead the course of the investigation; and result in the secreting

of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(C) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From 5 U.S.C. 552a(e)(4)(G) and (H), as this system of records is compiled for law enforcement purposes and is exempt from the access provisions of 5 U.S.C. 552a(d) and (f).

(E) From 5 U.S.C. 552a(e)(4)(I), because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA, nevertheless, will continue to publish such a notice in broad generic terms as is its current practice.

(5) *System identifier and name.* S500.60 (Specific exemption), Defense Logistics Agency Enterprise Hotline Program Records.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). If an individual, however, is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information, except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(5)(i)(A): When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) The specific sections of 5 U.S.C. 552a from which the system is exempt are 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (H), (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3), as to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or making witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From 5 U.S.C. 552a(d)(1) through (4) and (f), as providing access to records of a civil or administrative investigation, and the right to contest the contents of those records and force changes to be made to the information contained therein, would interfere seriously with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow: Interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach to satisfy any Government claim arising from the investigation or proceeding.

(C) From 5 U.S.C. 552a(e)(1), as it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From 5 U.S.C. 552a(e)(4)(G) and (H), as this system of records is compiled for law enforcement purposes and is exempt from the access provisions of 5 U.S.C. 552a(d) and (f).

(E) From 5 U.S.C. 552a(e)(4)(I), as to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(6) *System identifier and name.* S510.30 (Specific/General Exemption), Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.

(i) *Exemption.* During the processing of a Freedom of Information Act/Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may, in turn, become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Defense Logistics Agency claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1) through (7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy; to avoid interference during the conduct of criminal, civil, or administrative actions or investigations; to ensure protective services provided the President and others are not compromised; to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; to preserve the confidentiality and integrity of Federal testing materials; and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(7) *System identifier and name.* S240.28 DoD (Specific exemption), Case Adjudication Tracking System (CATS).

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d)(1)(2)(3)(4), and (e)(1).

(i) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From 5 U.S.C. 552a(c)(3) and (d)(1)(2)(3)(4), when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the confidential source's identity not only will result in the Department breaching the express promise of confidentiality made to the source but it would impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources may be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From 5 U.S.C. 552a(e)(1), as in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision making by the Department when making required suitability, eligibility, and qualification determinations.

§ 310.22 Defense Security Service (DSS) exemptions.

(a) *General.* The Director of the Defense Security Service establishes the following exemptions of records systems (or portions thereof) from the provisions of these rules, and other indicated portions of Public Law 93–579, in this section. They may be exercised only by the Director, Defense Security Service and the Chief of the Office of FOI and Privacy. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of a records system, and not simply because they are authorized by statute. Personal records releasable under the provisions of 5 U.S.C. 552 will not be withheld from subject individuals based on these exemptions.

(b) All systems of records maintained by DSS shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(1) *System identifier and name.* V1–01, Privacy and Freedom of Information Request Records.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be, exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(3), (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(B) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(C) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(2) *System identifier and name.* V5–01, Investigative Files System.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5) may be

exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(3) *System identifier and name.* V5–02, Defense Clearance and Investigations Index (DCII).

(i) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(4) *System identifier and name.* V5–03, Case Control Management System (CCMS).

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the

subject, and record amendment procedures.

(5) *System identifier and name.* V5–04, Counterintelligence Issues Database (CII–DB).

(i) *Exemption.* (A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(D) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(E) Any portion of this system that falls within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5) may be exempt from the following subsections (c)(3); (d)(1) through (d)(5); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because giving the individual access to the disclosure accounting could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This would seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication, or destruction of evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

(B) From subsection (d) because the application of these provisions could impede or compromise an investigation or prosecution if the subject of an investigation had access to the records or were able to use such rules to learn of the existence of an investigation before it would be completed. In addition, the mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(C) From subsection (e)(1) because during an investigation it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation. In addition, during the course of an investigation, the investigator may obtain information that related primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, DSS investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(D) From subsections (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) because this system is exempt from subsection (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that these records will be exempt from these subsections. However, DSS has published information concerning its notification and access procedures, and the records source categories because under certain circumstances, DSS could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(6) [Reserved]

§ 310.23 Defense Threat Reduction Agency (DTRA) exemptions.

(a) *Exemption for classified material.* All systems of records maintained by the Defense Threat Reduction Agency shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12598 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(1) *System identifier and name.* HDTRA 007, Security Operations.

(i) *Exemption.* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable DTRA to safeguard certain investigations and relay law enforcement information without compromise of the information, and protect the identities of confidential sources who might not otherwise come forward and who have furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(B) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with, and thwart the orderly and unbiased conduct of security investigations. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1), (e)(4)(G), (H), (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information; under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(2) *System identifier and name.* HDTRA 011, Inspector General Investigation Files.

(i) *Exemption.* Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable DTRA to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(B) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(3) *System identifier and name.* HDTRA 021, Freedom of Information Act and Privacy Act Request Case Files.

(i) *Exemption.* During the processing of a Freedom of Information Act or Privacy Act request exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Defense Threat Reduction Agency claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6) and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

§ 310.24 National Geospatial-Intelligence Agency (NGA) exemptions.

(a) *Exempt systems of record.* All systems of records maintained by the NGA and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be withheld in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records, including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(1) *System identifier and name.* B0210–07, Inspector General Investigative and Complaint Files.

(i) *Exemption.* (A) Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NGA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that

would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NGA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, NGA will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NGA's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(2) *System identifier and name.* NGA–004, NGA Threat Mitigation Records.

(i) *Exemption.* (A) Exempt materials from JUSTICE/FBI—019 Terrorist Screening Records System may become part of the case records in this system of records. To the extent that copies of exempt records from JUSTICE/FBI—019, Terrorist Screening Records System are entered into these Threat Mitigation case records, NGA hereby claims the same exemptions (j)(2) and (k)(2), for the records as claimed in JUSTICE/FBI—019, Terrorist Screening Records system of records of which they are a part.

(B) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(C) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2) and (k)(5).

(iii) *Reasons.* (A) Pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(5) NGA is claiming the following exemptions for certain records within the Threat Mitigation Records system: 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f), and (g). Additionally, pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), NGA has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made.

(B) In addition to records under the control of NGA, the Threat Mitigation system of records may include records originating from systems of records of other law enforcement and intelligence agencies which may be exempt from certain provisions of the Privacy Act. However, NGA does not assert exemption to any provisions of the Privacy Act with respect to information submitted by or on behalf of individuals.

(C) To the extent the Threat Mitigation system contains records originating from other systems of records, NGA will rely on the exemptions claimed for those records in the originating system of records. Exemptions for certain records within the Threat Mitigation system from particular subsections of the Privacy Act are justified for the following reasons:

(*1*) From subsection (c)(3) (Accounting for Disclosures) because giving a record subject access to the accounting of disclosures from records concerning him or her could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency because the individual who is the subject of the record would learn of third agency investigative interests and could take steps to evade detection or apprehension. Disclosure of the accounting also could reveal the details of watch list matching measures under the Threat Mitigation system, as well as capabilities and vulnerabilities of the watch list matching process, the release of which could permit an individual to evade future detection and thereby impede efforts to ensure security.

(*2*) From subsection (c)(4) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(*3*) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of Department of Homeland Security or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security sensitive information that could be detrimental to national security.

(*4*) From subsection (e)(1) because it is not always possible for NGA or other agencies to know in advance what information is both relevant and necessary for it to complete an identity comparison between individuals and a known or suspected terrorist. In addition, because NGA and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(*5*) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede

that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations, it is not feasible to rely upon information furnished by the individual concerning his own activities.

(*6*) From subsection (e)(3), to the extent that this subsection is interpreted to require NGA to provide notice to an individual if NGA or another agency receives or collects information about that individual during an investigation or from a third party. Should the subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by putting the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that activity.

(*7*) From subsections (e)(4)(G) and (H) and (I) (Agency Requirements) and (f) (Agency Rules), because this system is exempt from the access provisions of 5 U.S.C. 552a(d).

(*8*) From subsection (e)(5) because many of the records in this system coming from other system of records are derived from other agency record systems and therefore it is not possible for NGA to ensure their compliance with this provision, however, NGA has implemented internal quality assurance procedures to ensure that data used in the matching process is as thorough, accurate, and current as possible. In addition, in the collection of information for law enforcement, counterterrorism, and intelligence purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. However, NGA has implemented internal quality assurance procedures to ensure that the data used in the matching process is as thorough, accurate, and current as possible.

(*9*) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on NGA and other agencies and could alert the subjects of counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known.

(*10*) From subsection (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(*11*) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(3) *System identifier and name.* NGA–003, National Geospatial-Intelligence Agency Enterprise Workforce System.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (a)(3)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) *Authority.* 5 U.S.C. 552a (k)(2).

(iii) *Reasons.* Pursuant to 5 U.S.C. 552a(k)(2), the Director of NGA has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(A) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(B) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(C) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(D) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(E) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(F) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore NGA is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the

system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(G) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude NGA personnel from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(H) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with NGA's ability to cooperate with law enforcement who would obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(I) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(4) *System identifier and name.* NGA–008, National Geospatial-Intelligence Agency Polygraph Records System.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (a)(4)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* Pursuant to 5 U.S.C. 552a(k)(2), the Director of NGA has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(A) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(B) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(C) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(D) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(E) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(F) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore NGA is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(G) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude NGA personnel from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(H) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with NGA's ability to cooperate with law enforcement who would obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(I) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(5) *System identifier and name.* NGA–010, National Geospatial-Intelligence Agency Security Financial Disclosure Reporting Records System.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a

confidential source. When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* Pursuant to 5 U.S.C. 552a(k)(2), and (k)(5) the Director of NGA has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(A) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. Analyst case notes will be kept separate from the individual's data submission. Those case notes will contain investigative case leads and summaries, sensitive processes, evidence gathered from external sources and potential referrals to law enforcement agencies.

(B) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(C) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(D) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore NGA is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

§ 310.25 National Guard Bureau (NGB) exemptions.

(a) *General information.* There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a SOR from all but a few requirements of 5 U.S.C. 552a. The specific exemption authorizes exemption of a SOR or portion thereof, from only a few specific requirements. If a new SOR originates for which an exemption is proposed, or an additional or new exemption for an existing SOR is proposed, the exemption shall be submitted with the SORN. No exemption of a SOR shall be considered automatic for all records in the system. The System Manager shall review each requested records and apply the exemptions only when this will serve significant and legitimate purpose of the Federal Government.

(b) *Exemption for classified material.* All SOR maintained by the NGB shall be exempt under section (k)(1) of 5 U.S.C. 552a to the extent that the systems contain any information properly classified under Executive Order 13526 and that is required by that Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(c) *Exemption for anticipation of a civil action or proceeding.* All systems of records maintained by the NGB shall be exempt under section (d)(5) of 5 U.S.C. 552a, to the extent that the record is compiled in reasonable anticipation of a civil action or proceeding.

(d) *General exemptions.* No SOR within the NGB shall be considered exempt under subsection (j) or (k) of 5 U.S.C. 552a until the exemption rule for the SOR has been published as a final rule in the FR.

(e) *Specific exemptions.*

(1) *System identifier and name.* INGB 001, Freedom of Information Act (5 U.S.C.) and Privacy Act (5 U.S.C. 552a) Case Files.

(i) *Exemption.* During the course of a 5 U.S.C. 552 or 5 U.S.C. 552a action, exempt materials from other systems of records may, in turn, become part of the case records in this system. To the extent that copies of exempt records from those other systems of records are entered into this 5 U.S.C. 552 or 5 U.S.C. 552a case record, the NGB hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary SOR which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this SOR. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of

Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(2) *System identifier and name.* INGB 005, Special Investigation Reports and Files.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (e)(2)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a SOR used in personnel or administrative actions. Any portion of this SOR which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) of 5 U.S.C. 552a because to grant access to the accounting for each disclosure as required by 5 U.S.C. 552a, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) of 5 U.S.C. 552a because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under 5 U.S.C. 552a would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) of 5 U.S.C. 552a because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) of 5 U.S.C. 552a because this SOR is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) of 5 U.S.C. 552a because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

§ 310.26 National Reconnaissance Office (NRO) exemptions.

(a) All systems of records maintained by the NRO shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(b) No system of records within the NRO shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption and the exemption rule for the system of records has been published as a final rule in the **Federal Register**.

(c) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(d) Proposals to exempt a system of records will be forwarded to the Defense Privacy Office, consistent with the requirements of this part, for review and action.

(1) *System identifier and name.* QNRO–23, Counterintelligence Issue Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant

to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(2) *System identifier and name.* QNRO–10, Inspector General Investigative Files.

(i) *Exemption.* This system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the NRO IG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to NRO IG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity, which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(iv) *Exemption.* (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5),

but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(v) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(vi) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(4) *System identifier and name.* QNRO–15, Facility Security Files.

(i) *Exemption.* (A) Investigative material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d)(1) through (d)(4), and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(5) *System identifier and name.* QNRO–19, Customer Security Services Personnel Security Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d)(1) through (d)(4), and (f) because providing access to investigatory records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigatory purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(6) *System identifier and name.* NRO–21, Personnel Security Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by the NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(F) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(7) *System identifier and name.* QNRO–4, Freedom of Information Act and Privacy Act Files.

(i) *Exemption.* During the processing of a Freedom of Information Act/Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the NRO hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(8) *System identifier and name.* QNRO–27, Legal Records.

(i) *Exemption.* Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a (k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

§ 310.27 National Security Agency (NSA) exemptions.

(a) *General exemption.* The general exemption established by 5 U.S.C. 552a(j)(2) may be claimed to protect investigative records created and maintained by law enforcement activities of the NSA.

(b) *Specific exemptions.* The specific exemptions permit certain categories of records to be exempt from certain specific provisions of the Privacy Act.

(1) *Exemption (k)(1).* Information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy.

(2) *Exemption (k)(2).* Investigatory information compiled for law-enforcement purposes by non-law enforcement activities and which is not within the scope of § 310.51(a). If an individual is denied any right, privilege or benefit that he or she is otherwise entitled by federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This subsection when claimed allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(3) *Exemption (k)(3).* Records maintained in connection with providing protective services to the President and other individuals identified under 18 U.S.C. 3506.

(4) *Exemption (k)(4).* Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(5) *Exemption (k)(5).* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(6) *Exemption (k)(6).* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(7) *Exemption (k)(7).* Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(c) All systems of records maintained by the NSA/CSS and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(1) *System identifier and name.* GNSA 01, Access, Authority and Release of Information File.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(2) *System identifier and name.* GNSA 02, Applicants.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(3) *System identifier and name.* GNSA 03, Correspondence, Cases, Complaints, Visitors, Requests.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled

by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(3)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(4) *System identifier and name.* GNSA 04, Military Reserve Personnel Data Base.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(5) *System identifier and name.* GNSA 05, Equal Employment Opportunity Data.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(5)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(C) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) and (k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(4).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(6) *System identifier and name.* GNSA 06, Health, Medical and Safety Files.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(C) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5) and (k)(6).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(7) *System identifier and name.* GNSA 08, Payroll and Claims.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(7)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or

impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(8) *System identifier and name.* GNSA 09, Personnel File.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(C) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5) and (k)(6).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(9) *System identifier and name.* GNSA 10, Personnel Security File.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(9)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(D) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(5), and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(5), and (k)(6).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy

any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(10) *System identifier and name.* GNSA 12, Training.

(i) *Exemption.* (A) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(C) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(6) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(5), and (k)(6).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(11) *System identifier and name.* GNSA 29 (General Exemption), NSA/CSS Office of Inspector General Investigations and Complaints.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if any individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(11)(i). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(2) through (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations

(12) *System identifier and name.* GNSA 14, Library Patron File Control System.

(i) *Exemption.* (A) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(B) All portions of this system of records which fall within the scope of

5 U.S.C. 552a(k)(4) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(4).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(13) *System identifier and name.* GNSA 15, Computer Users Control System.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(13)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(14) *System identifier and name.* GNSA 17, Employee Assistance Service (EAS) Case Record System.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(14)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) All portions of this system of records which fall within the scope of

5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(15) *System identifier and name.* GNSA 18, Operations Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(15)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments and corrections to the information in the system.

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NSA will, nevertheless, continue to publish such a notice in broad generic terms, as is its current practice.

(16) *System identifier and name.* GNSA 20, NSA Police Operational Files.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(16)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(17) [Reserved]

(18) *System identifier and name.* GNSA 25, NSA/CSS Operations Travel Records.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(18)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) (k)(4).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(19) *System identifier and name.* GNSA 26, NSA/CSS Accounts Receivable, Indebtedness and Claims.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note 1 to paragraph (c)(19)(i)(A). When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) (k)(4).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that

they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(B) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(20) *System identifier and name.* GNSA 28 (General Exemption), Freedom of Information Act, Privacy Act and Mandatory Declassification Review Records.

(i) *Exemption.* During the processing of letters and other correspondence to the National Security Agency/Central Security Service, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the National Security Agency/Central Security Service hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(k)(2) through (k)(7).

(iii) *Reasons.* During the course of a FOIA/Privacy Act and/or MDR action, exempt materials from other system of records may become part of the case records in this system of records. To the extent that copies of exempt records from those other systems of records are entered into these case records, NSA/CSS hereby claims the same exemptions for the records as claimed in the original primary system of records of which they are a part. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

§ 310.28 Office of the Inspector General (OIG) exemptions.

(a) *Exemption for classified records.* Any record in a system of records maintained by the Office of the Inspector General which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12958 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Inspector General under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information.

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)–(k)(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case-by-case basis by the Deputy Inspector General for Investigations or the Director, Communications and Congressional Liaison Office, and the Chief, Freedom of Information/Privacy Act Office, which serve as the Systems Program Managers. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of the records system.

(c) No personal records releasable under the provisions of The Freedom of Information Act (5 U.S.C. 552) will be withheld from the subject individual based on these exemptions.

(1) *System identifier and name.* CIG–04, Case Control System.

(i) *Exemption.* Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede OIG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to OIG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(2) *System identifier and name.* CIG–06, Investigative Files.

(i) *Exemption.* Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H), (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede OIG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to OIG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(3) *System identifier and name.* CIG–15, Departmental Inquiries Case System.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portions of this system which fall under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsection of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the compliant or inquiry, and possibly

enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(B) From subsection (d) because disclosures from this system could interfere with the just thorough and timely resolution of the compliant or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(C) From subsection (e)(1) because the nature of the investigation function creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(4) (G) through (H) because this system of records is exempt from the access provisions of subsection (d).

(E) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(4) *System identifier and name.* CIG–16, DOD Hotline Program Case Files.

(i) *Exemption.* Any portions of this system of records which fall under the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(B) From subsection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(C) From subsection (e)(1) because the nature of the investigation functions creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close liaison and working relationships with other Federal, state, local, and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(4)(G) through (H) because this system of records is exempt from the access provisions of subsection (d).

(E) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(5) *System identifier and name.* CIG 01, Privacy Act and Freedom of Information Act Case Files.

(i) *Exemption.* During the processing of a Freedom of Information Act (FOIA) and Privacy Act (PA) request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(6) *System identifier and name.* CIG–21, Congressional Correspondence Tracking System.

(i) *Exemption.* During the processing of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(ii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information

relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(7) *System identifier and name.* CIG 23, Public Affairs Files.

(i) *Exemption.* During the course of processing a General Counsel action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into the Public Affairs Files, the Office of the Inspector General hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent (A) such provisions have been identified and an exemption claimed for the original record and (B) the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(8) *System identifier and name.* CIG–29, Privacy and Civil Liberties Complaint Reporting System.

(i) *Exemption.* Any portion of this record system which falls within the provisions of 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I).

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(2), and (k)(5).

(iii) *Reasons.* To ensure the integrity of the privacy and civil liberties process. The execution requires that information be provided in a free and open manner without fear of retribution or harassment in order to facilitate a just, thorough, and timely resolution of the complaint or inquiry. Disclosures from this system can enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying, or fabricating evidence or documents. In addition, disclosures can subject sources and witnesses to harassment or intimidation which may cause individuals not to seek redress for wrongs through privacy and civil liberties channels for fear of retribution or harassment. There is a clear need to protect national security information from inadvertent disclosure.

§ 310.29 Office of the Secretary of Defense (OSD) exemptions.

(a) *General information.* The Secretary of Defense designates those Office of the Secretary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in § 311.6. No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve significant and legitimate Government purpose.

(b) *General exemptions.* The general exemption provided by 5 U.S.C. 552a(j)(2) may be invoked for protection of systems of records maintained by law enforcement activities. Certain functional records of such activities are not subject to access provisions of the Privacy Act of 1974. Records identifying criminal offenders and alleged offenders consisting of identifying data and notations of arrests, the type and disposition of criminal charges, sentencing, confinement, release, parole, and probation status of individuals are protected from disclosure. Other records and reports compiled during criminal investigations, as well as any other records developed at any stage of the criminal law enforcement process from arrest to indictment through the final release from parole supervision are excluded from release.

(1) *System identifier and name.* DWHS P42.0, DPS Incident Reporting and Investigations Case Files.

(i) *Exemption.* Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, Sections (c)(3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5); and (h) of the Act.

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* The Defense Protective Service is the law enforcement body for the jurisdiction of the Pentagon and immediate environs. The nature of certain records created and maintained by the DPS requires exemption from access provisions of the Privacy Act of 1974. The general exemption, 5 U.S.C. 552a(j)(2), is invoked to protect ongoing investigations and to protect from access, criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(2) *System identifier and name.* JS006.CND, Department of Defense Counternarcotics C4I System.

(i) *Exemption.* Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(4)(G) and (e)(4)(H); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5) of the Act.

(ii) *Authority.* 5 U.S.C. 552a(j)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies.

This would greatly impede USSOUTHCOM's criminal law enforcement.

(B) For subsections (c)(4) and (d) because notification would alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(C) From subsections (e)(4)(G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsection (j).

(D) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(E) For compatibility with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness and completeness cannot apply to this record system. Information gathered in criminal investigations is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(F) From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to USSOUTHCOM's close liaison and working relationships with the other Federal, as well as state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(G) From subsection (e)(2) because collecting information to the greatest extent possible directly from the subject individual may or may not be practicable in a criminal investigation. The individual may choose not to provide information and the law enforcement process will rely upon significant information about the subject from witnesses and informants.

(H) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat inimical to established investigative methods and techniques.

(I) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the criminal investigative process. It is the nature of criminal law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significant as further investigation brings new details to light.

(J) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(3)–(15) [Reserved]

(16) *System identifier and name.* DWHS E06, Enterprise Correspondence Control System (ECCS).

(i) *Exemption.* During the staffing and coordination of actions to, from, and within components in conduct of daily business, exempt materials from other systems of records may in turn become part of the case record in this document control system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a (j)(2) and (k)(1) through (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(c) *Specific exemptions:* All systems of records maintained by any OSD Component shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under Executive Order 11265, 'National Security Information,' dated June 28, 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under E.O. 11265, 'National Security Information,' dated June 28, 1979, as amended, and required by the Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified. The Secretary of Defense has designated the following OSD system of records described below specifically exempted from the appropriate provisions of the Privacy Act pursuant to the designated authority contained therein:

(1) *System identifier and name.* DGC 16, Political Appointment Vetting Files.

(i) *Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source

would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source.

(2) *System identifier and name.* DWHS P28, The Office of the Secretary of Defense Clearance File.

(i) *Exemption.* This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning the specific information which would reveal the identity of the source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* This exemption is required to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(3) *System identifier and name.* DGC 04, Industrial Personnel Security Clearance Case Files.

(i) *Exemption.* All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of title 5 U.S.C. 552a: (c)(3); (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* This system of records is exempt from subsections (c)(3) and (d) of section 552a of 5 U.S.C. which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(4) *System identifier and name.* DWHS P32, Standards of Conduct Inquiry File.

(i) *Exemption.* This system of records is exempted from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of: Investigatory material compiled for law enforcement purposes; or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of investigatory material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(ii) *Authority.* 5 U.S.C. 552a(k)(2) and (5).

(iii) *Reasons.* These exemptions are necessary to protect the confidentiality of the records compiled for the purpose of: Enforcement of the conflict of interest statutes by the Department of Defense Standards of Conduct Counselor, General Counsel, or their designees; and determining suitability eligibility or qualifications for Federal civilian employment, military service or Federal contracts of those alleged to have violated or caused others to violate the Standards of Conduct regulations of the Department of Defense.

(5) *System identifier and name.* DUSDP 02, Special Personnel Security Cases.

(i) *Exemption.* All portions of this system which fall under 5 U.S.C. 552a(k)(5) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(6) *System identifier and name.* DODDS 02.0, Educator Application Files.

(i) *Exemption.* All portions of this system which fall within 5 U.S.C. 552a(k)(5) may be exempt from the following provisions of 5 U.S.C. 552a: (c)(3); (d).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* It is imperative that the confidential nature of evaluation and investigatory material on teacher application files furnished the Department of Defense Dependent Schools (DoDDS) under promises of confidentiality be exempt from disclosure to the individual to insure the candid presentation of information necessary to make determinations involving applicants suitability for DoDDS teaching positions.

(7) *System identifier and name.* DGC 20, DoD Presidential Appointee Vetting File.

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Portions of this system of records that

may be exempt pursuant to 5 U.S.C. 552a(k)(5) are subsections (d)(1) through (d)(5).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(8) *System identifier and name.* DWHS P29, Personnel Security Adjudications File.

(i) *Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(5) may be exempt from the following subsections (d)(1) through (d)(5).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(9) *System identifier and name.* JS004SECDIV, Joint Staff Security Clearance Files.

(i) *Exemption.* Portions of this system of records are exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(d)(1) through (d)(5).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

(10) *System identifier and name.* DFMP 26, Vietnamese Commando Compensation Files.

(i) *Exemption.* Information classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Reasons.* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1–R, may cause damage to the national security.

(11) *System identifier and name.* DUSP 11, POW/Missing Personnel Office Files.

(i) *Exemption.* Information classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Reasons.* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1–R, may cause damage to the national security.

(12) *System identifier and name.* DFOISR 05, Freedom of Information Act Case Files.

(i) *Exemption.* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Office of the Secretary of Defense claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(13) *System identifier and name.* DFOISR 10, Privacy Act Case Files.

(i) *Exemption.* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Office of the Secretary of Defense hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(14) *System identifier and name.* DHRA 02, PERSEREC Research Files.

(i) *Exemption.* (A) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(B) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source, but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision making by the Department when making required suitability, eligibility, and qualification determinations.

(15) *System identifier and name.* DCIFA 01, CIFA Operational and Analytical Records.

(i) *Exemption.* This system of records is a compilation of information from other Department of Defense and U.S. Government systems of records. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, OSD hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent (A) such provisions have been identified and an exemption claimed for the original record and (B) the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions are claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(16) *System identifier and name.* DMDC 15 DoD, Armed Services Military Accession Testing.

(i) *Exemption.* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service or military service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

(ii) *Authority.* 5 U.S.C. 552a(k)(6).

(iii) *Reasons.* (A) An exemption is required for those portions of the Skill Qualification Test system pertaining to individual item responses and scoring keys to preclude compromise of the test and to ensure fairness and objectivity of the evaluation system.

(B) From subsection (d)(1) when access to those portions of the Skill Qualification Test records would reveal the individual item responses and scoring keys. Disclosure of the individual item responses and scoring keys will compromise the objectivity and fairness of the test as well as the validity of future tests resulting in the Department being unable to use the testing battery as an individual assessment tool.

(17) *System identifier and name.* DMDC 11, Investigative Records Repository.

(i) *Exemption.* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(C) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(D) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable the Department to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4), (G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the source's identity would be held in confidence (or prior to the effective

date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(18) *System identifier and name.* DMDC 12 DoD, Joint Personnel Adjudication System (JPAS).

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsections (c)(3) and (d) when access to accounting disclosure and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From subsection (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. It is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(19) *System identifier and name.* DA&M 01, Civil Liberties Program Case Management System.

(i) *Exemption.* Records contained in this System of Records may be exempted from the requirements of subsections (c)(3); (d)(1), (2), (3), and (4); (e)(1) and (e)(4)(G), (H), and (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). Records may be exempted from these subsections or, additionally, from the requirements of subsections (c)(4); (e)(2), (3), and (8) of the Privacy Act of 1974 consistent with any exemptions claimed under 5 U.S.C. 552a (j)(2) or (k)(1), (k)(2), or (k)(5) by the originator of the record, provided the reason for the exemption remains valid and necessary. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and is published at 32 CFR part 311.

(ii) *Authority.* 5 U.S.C. 552a (j)(2), (k)(1), (k)(2), or (k)(5).

(iii) *Reasons.* (A) From subsections (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an intelligence or investigative interest on the part of the Department of Defense and could result in release of properly classified national security or foreign policy information.

(B) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(C) From subsection (e)(1) (maintain only relevant and necessary records) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. It is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. In the absence of a national security basis for exemption under subjection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subjection (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(D) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subject of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the Office of the Secretary of Defense has published notice concerning notification, access, and contest procedures because it may, in certain circumstances, determine it appropriate to provide subjects access to all or a portion of the records about them in this system of records.

(E) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement the Office of the Secretary of Defense identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in this system of records.

(F) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the Office of the Secretary of Defense has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the Office of the Secretary of Defense may determine it appropriate to satisfy a record subject's access request.

(20) *System identifier and name.* DMDC 13 DoD, Defense Clearance and Investigations Index.

(i) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is

denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subjections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I) and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsection (c)(3) because it will enable OSD components to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(B) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(C) From subsections (d) and (f) because requiring OSD to grant access to records and agency rules for access and amendment of records would unfairly impede the investigation of allegations of unlawful activities. To require OSD to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an ongoing investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(21) *System identifier and name.* DWHS E05, Mandatory Declassification Review Files.

(i) *Exemption.* Information classified under E.O. 13526, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Reasons.* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 13526, as implemented by DoD 5200.1–R, may cause damage to the national security.

(22) *System identifier and name.* DPFPA 05, Computer Aided Dispatch and Records Management System (CAD/RMS).

(i) *Exemption.* Portions of this system that fall within 5 U.S.C. 552a(j)(2) and/or (k)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3) and (4); (d); (e)(1) through (e)(3); (e)(4)(G) through (I); (e)(5); (e)(8); (f) and (g) of the Act, as applicable.

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) *Reasons.* (A) From subsections (c)(3) and (4) because making available to a record subject the accounting of disclosure from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected offender by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.* destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (d) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement and investigatory records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing law enforcement investigations and analysis activities and impose an excessive administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(C) From subsections (e)(1) through (e)(3) because it is not always possible to determine what information is relevant and necessary at an early stage in a given investigation. Also, because DoD and other agencies may not always know what information about a known or suspected offender may be relevant to law enforcement for the purpose of conducting an operational response.

(D) From subsections (e)(4)(G) through (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(E) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the criminal investigative process. It is the nature of criminal law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significant as further investigation brings new details to light.

(F) From subsection (e)(8) because the requirement to serve notice on an individual when a record is disclosed under compulsory legal process could unfairly hamper law enforcement processes. It is the nature of law enforcement that there are instances where compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses.

(G) From subsection (f) because requiring the Agency to grant access to records and establishing agency rules for amendment of records would compromise the existence of any criminal, civil, or administrative enforcement activity. To require the confirmation or denial of the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to the

existence of an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of the record, disclosure of the record to the subject, and record amendment procedures.

(H) From subsection (g) for compatibility with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness and completeness cannot apply to this record system. Information gathered in criminal investigations if often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(23) *System identifier and name.* DMDC 17 DoD, Continuous Evaluation Records for Personnel Security.

(i) *Exemption.* In the course of carrying out records checks for continuous evaluation, exempt records from other systems of records may in turn become part of the case records maintained in this system. To the extent that copies of exempt records from those 'other' systems of records are maintained into this system, OSD claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(5), (k)(6), and (k)(7).

(iii) *Reasons.* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent that such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now maintained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy; to avoid interference during the conduct of criminal, civil, or administrative actions or investigations; to ensure protective services provided the President and others are not compromised; to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; to preserve the confidentiality and integrity of Federal testing materials; and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(24) *System identifier and name.* DPFPA 06, Internal Affairs Records System.

(i) *Exemption.* Portions of this system that fall within 5 U.S.C. 552a(j)(2) and/or (k)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3) and (4); (d); (e)(1) through (e)(3); (e)(4)(G) through (I); (e)(5); (f) and (g) of the Act, as applicable.

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) *Reasons.* (A) From subsections (c)(3) and (4) because making available to a record subject the accounting of disclosure of investigations concerning him or her would specifically reveal an investigative interest in the individual. Revealing this information would reasonably be expected to compromise open or closed administrative or civil investigation efforts to a known or suspected offender by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.* destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (d) because these provisions concern individual access to and amendment of open or closed investigation records contained in this system, including law enforcement and investigatory records. Compliance with these provisions would provide the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of the Pentagon Force Protection Agency; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential informant or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of investigative records would interfere with open or closed administrative or civil law enforcement investigations and analysis activities and impose an excessive administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(C) From subsections (e)(1) through (e)(3) because it is not always possible to determine what information is relevant and necessary in open or closed investigations.

(D) From subsections (e)(4)(G) through (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(E) From subsection (e)(5) because the requirement that investigative records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the criminal, administrative, or civil investigative process. It is the nature of Internal Affairs investigations to uncover the commission of illegal acts and administrative violations. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significant as further investigation brings new details to light.

(F) From subsection (f) because requiring the Agency to grant access to records and establishing agency rules for amendment of records would compromise the existence of any criminal, civil, or administrative enforcement activity. To require the confirmation or denial of the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to the existence of an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of the record, disclosure of the record to the subject, and record amendment procedures.

(G) From subsection (g) for compatibility with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal, administrative and civil investigations, standards of accuracy, relevance, timeliness and completeness cannot apply to open or closed investigations in this record system. Information gathered in criminal investigations is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(25) *System identifier and name.* DPFPA 07, Counterintelligence Management Information System (CIMIS).

(i) *Exemption.* Portions of this system that fall within 5 U.S.C. 552a (k)(2) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3); (d); (e)(1); (e)(4)(G) through (I); and (f) of the Act, as applicable.

(ii) *Authority.* 5 U.S.C. 552a(k)(2).

(iii) *Reasons.* (A) From subsections (c)(3) because making available to a record subject the accounting of disclosure from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected offender by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.* destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (d) because these provisions concern individual access to and amendment of certain records contained in this system, including counterintelligence, law enforcement, and investigatory records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of agencies; compromise sensitive information related to national security; interfere with the overall counterintelligence and investigative process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigation or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterintelligence investigations and analysis activities and impose an excessive administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(C) From subsection (e)(1) because it is not always possible to determine what information is relevant and necessary at an early stage in a given investigation. Also, because Pentagon Force Protection Agency and other agencies may not always know what information about a known or suspected offender may be relevant to for the purpose of conducting an operational response.

(D) From subsections (e)(4)(G) through (I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(E) From subsection (f) because requiring the Agency to grant access to records and establishing agency rules for amendment of records would compromise the existence of any criminal, civil, or administrative enforcement activity. To require the confirmation or denial of the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to the existence of an on-going investigation. Counterintelligence investigations would be jeopardized by agency rules requiring verification of the record, disclosure of the record to the subject, and record amendment procedures.

(26) *System identifier and name.* DMDC 16 DoD, Identity Management Engine for Security and Analysis (IMESA).

(i) *Exemption.* To the extent that copies of exempt records from JUSTICE/FBI–001, National Crime Information Center (NCIC) are entered into the Interoperability Layer Service records, the OSD hereby claims the same exemptions, (j)(2) and (k)(3), for the records as claimed in JUSTICE/FBI–001, National Crime Information Center (NCIC). Pursuant to 5 U.S.C. 552a portions of this system that fall within (j)(2) and (k)(3) are exempt from the following provisions of 5 U.S.C. 552a, section (c)(3) and (4); (d); (e)(1) through (3); (e)(4)(G) through (I); (e)(5) and (8); (f); and (g) (as applicable) of the Act.

(ii) *Authority.* 5 U.S.C. 552a(j)(2) and (k)(3).

(iii) *Reasons.* (A) From subsection (c)(3) because making available to a record subject the accounting of disclosure from records concerning him or her would specifically reveal any investigative interest in the individual. Revealing this information could reasonably be expected to compromise ongoing efforts to investigate a known or suspected terrorist by notifying the record subject that he or she is under investigation. This information could also permit the record subject to take measures to impede the investigation, *e.g.* destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(B) From subsection (c)(4) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(C) From subsection (d) because these provisions concern individual access to and amendment of certain records contained in this system, including law enforcement, counterterrorism, investigatory, and intelligence records. Compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; could identify a confidential source or disclose information which would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses. Amendment of these records would interfere with ongoing counterterrorism, law enforcement, or intelligence investigations and analysis activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(D) From subsection (e)(1) because it is not always possible to determine what information is relevant and necessary to complete an identity comparison between the individual seeking access and a known or suspected terrorist. Also, because DoD and other agencies may not always know what information about an encounter with a known or suspected terrorist will be relevant to law enforcement for the purpose of conducting an operational response.

(E) From subsection (e)(2) because application of this provision could present a serious impediment to counterterrorism, law enforcement, or intelligence efforts in that it would put the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counterterrorism, law enforcement, or intelligence investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations, it is not feasible to rely upon information furnished by the individual concerning his own activities.

(F) From subsection (e)(3) to the extent that this subsection is interpreted to require DoD to provide notice to an individual if DoD or another agency receives or collects information about that individual during an investigation or from a third party. Should this subsection be so interpreted, exemption from this provision is necessary to avoid impeding counterterrorism, law enforcement, or intelligence efforts by

putting the subject of an investigation, study, or analysis on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede the activity.

(G) From subsection (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(H) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness could unfairly hamper law enforcement processes. It is the nature of law enforcement to uncover the commission of illegal acts at diverse stages. It is often impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further details are brought to light.

(I) From subsection (e)(8) because the requirement to serve notice on an individual when a record is disclosed under compulsory legal process could unfairly hamper law enforcement processes. It is the nature of law enforcement that there are instances where compliance with these provisions could alert the subject of an investigation of the fact and nature of the investigation, and/or the investigative interest of intelligence or law enforcement agencies; compromise sensitive information related to national security; interfere with the overall law enforcement process by leading to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal a sensitive investigative or intelligence technique; or constitute a potential danger to the health or safety of law enforcement personnel, confidential informants, and witnesses.

(J) From subsection (f) because requiring the Agency to grant access to records and establishing agency rules for amendment of records would unfairly impede the agency's law enforcement mission. To require the confirmation or denial of the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to the existence of an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of the record, disclosure of the record to the subject, and record amendment procedures.

(K) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(27) *System identifier and name.* DMDC 24 DoD, Defense Information System for Security (DISS).

(i) *Exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) *Authority.* 5 U.S.C. 552a(k)(5).

(iii) *Reasons.* (A) From subsections (c)(3) and (d) when access to accounting disclosure and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From subsection (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. It is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

Dated: February 28, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Part III

Federal Deposit Insurance Corporation

12 CFR Part 370

Recordkeeping for Timely Deposit Insurance Determination; Proposed Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AF03

Recordkeeping for Timely Deposit Insurance Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is seeking comment on a proposed rule that would to make certain substantive revisions to ''Recordkeeping for Timely Deposit Insurance Determination,'' to clarify the rule's requirements, better align the burdens of the rule with its benefits, and make technical corrections.

DATES: Comments must be received by May 13, 2019.

ADDRESSES: You may submit comments on the notice of proposed rulemaking, identified by RIN number, by any of the following methods:

- *Agency Website: http://www.FDIC.gov/regulations/laws/federal.* Follow instructions for submitting comments on the agency website.
- *Email: Comments@FDIC.gov.* Include RIN 3064–AF03 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received, including any personal information provided, will be posted without change to *http://www.fdic.gov/regulations/laws/federal/.*

FOR FURTHER INFORMATION CONTACT: Marc Steckel, Deputy Director, Division of Resolutions and Receiverships, (571) 858–8224; Teresa J. Franks, Associate Director, Division of Resolutions and Receiverships, (571) 858–8226; Shane Kiernan, Counsel, Legal Division, (703) 562–2632, *skiernan@fdic.gov;* Karen L. Main, Counsel, Legal Division, (703) 562–2079, *kamain@fdic.gov;* James P. Sheesley, Counsel, Legal Division, (703) 562–2047; Andrew J. Yu, Senior Attorney, (703) 562–2784.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the proposed rule is to reduce compliance burdens for insured depository institutions (IDIs) covered by the FDIC's rule entitled ''Recordkeeping for Timely Deposit Insurance Determination'' [1] (part 370 or the Rule) while continuing to support the FDIC's ability to promptly determine deposit insurance coverage in the event a covered institution fails. Part 370 requires each IDI with two million or more deposit accounts (each a covered institution) to (1) configure its information technology system (IT system) to be capable of calculating the insured and uninsured amount in each deposit account by right and capacity, for use by the FDIC in making deposit insurance determinations in the event of the institution's failure, and (2) maintain complete and accurate information needed by the FDIC to determine deposit insurance coverage with respect to each deposit account, except as otherwise provided. After the Rule was adopted and while covered institutions began preparing to implement it, the FDIC received feedback from covered institutions, industry consultants, information technology service providers, and agents placing deposits on behalf of others, who identified components of the Rule that are insufficiently clear or unduly burdensome. The proposed rule addresses these issues by: Establishing the option to extend the part 370 compliance date for certain institutions; simplifying the process for requesting exception from the Rule's requirements; amending the scope of certain provisions; and making technical amendments. The proposed amendments are likely to reduce compliance burdens for covered institutions while still ensuring that covered institutions implement the recordkeeping and IT system capabilities needed by the FDIC to make a timely deposit insurance determination for an IDI of such size and scale.

II. Background

In 2016, the FDIC adopted part 370 to facilitate prompt payments of FDIC-insured deposits when large IDIs fail. By reducing the difficulties that the FDIC would face in making a prompt deposit insurance determination at a failed covered institution, part 370 enhances the ability of the FDIC to meet its statutory obligation to pay deposit insurance ''as soon as possible'' following failure and to resolve the covered institution in the manner least costly to the Deposit Insurance Fund (DIF).[2] Fulfilling these statutory obligations is essential to the FDIC's mission. It also achieves significant policy objectives: Maintaining public confidence in the FDIC and the banking system; enabling depositors to meet their financial needs and obligations; preserving the franchise value of the failed covered institution and protecting the DIF by allowing a wider range of resolution options; and promoting long term stability in the banking system by reducing moral hazard. An earlier regulation, the FDIC's rule entitled ''Large-Bank Deposit Insurance Determination Modernization'' (§ 360.9), furthered these policy goals at IDIs having at least $2 billion in domestic deposits and either 250,000 deposit accounts, or $20 billion in total assets.[3] Part 370 provides the necessary additional measures required by the FDIC to ensure prompt and accurate payment of deposit insurance to depositors of the larger, more complex IDIs that qualify as covered institutions.

The FDIC is authorized to prescribe rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act (FDI Act).[4] To pay deposit insurance, the FDIC uses a failed IDI's records to aggregate the amounts of all deposits that are maintained by a depositor in the same right and capacity and then applies the standard maximum deposit insurance amount (SMDIA) of $250,000.[5] The FDIC generally relies on the failed institution's deposit account records to identify deposit owners and the right and capacity in which deposits are maintained.[6] Section 7(a)(9) of the FDI Act authorizes the FDIC to take action as necessary to ensure that each IDI maintains, and the FDIC receives on a regular basis from such IDI, information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution.[7] The requirements of part 370, obligating covered institutions to maintain complete and accurate records regarding the ownership and insurability of deposits and to have an IT system that can be used to calculate deposit insurance coverage in the event of failure, facilitate the FDIC's prompt payment of deposit insurance and enhance the ability to implement the least costly resolution of these institutions.

Part 370 became effective on April 1, 2017, with a compliance date of April 1, 2020, for IDIs that became covered

[1] 12 CFR part 370.

[2] 12 U.S.C. 1821(f)(1); 12 U.S.C. 1823(c)(4).

[3] 12 CFR 360.9. *See* 73 FR 41180 (July 17, 2008).

[4] 12 U.S.C. 1819(a) (Tenth), 1820(g), 1821(d)(4)(B)(iv).

[5] 12 U.S.C. 1821(a)(1)(C), 1821(a)(1)(E).

[6] 12 U.S.C. 1822(c), 12 CFR 330.5.

[7] 12 U.S.C. 1817(a)(9).

institutions on the effective date.[8] The FDIC has carried out a continuous outreach program to covered institutions, trade associations, and other interested parties since issuing part 370. The FDIC learned through its interactions with these parties about issues and challenges they face in implementing the capabilities required by part 370. These include: The need for additional time to complete this complex exercise; concerns regarding the nature of the compliance certification; the effect of mergers; the scope of the definition of ''transactional features''; and the covered institution's ability to certify performance by a third party with respect to submission of information to the FDIC within 24 hours for deposit accounts with transactional features that are insured on a pass-through basis.

The FDIC acknowledges that the burden of complying with some of the requirements of part 370 with regard to certain types of accounts is not commensurate with the benefit of improvements to prompt payment of deposit insurance and resolvability that such compliance achieves. Further, practical difficulties in implementation justify an extension of the initial compliance date for those covered institutions that became covered institutions on the initial effective date of the Rule. Accordingly, the FDIC is issuing this notice of proposed rulemaking (NPR) to amend part 370 (the proposal, proposed rule, or proposed amendments) to provide for elective extension of the compliance date, revise the treatment of deposits created by credit balances on debt accounts, modify the requirements relating to accounts with transactional features, change the procedures regarding exceptions, and clarify matters relating to certification requirements. The proposed amendments would also make certain technical changes to part 370 and correct typographical errors. These proposed amendments would better align the burdens imposed by part 370 upon covered institutions with the resultant benefits in terms of achievement of the FDIC's statutory obligations and policy objectives.

III. Discussion of Proposed Amendments and Request for Comment

A. Summary

The FDIC is undertaking this notice of proposed rulemaking to amend part 370 in advance of the compliance date for the first covered institutions. The FDIC is proposing to make extensive changes to part 370. Therefore, the FDIC is proposing to revise the text of part 370 in full rather than prepare fragmentary amendments. The proposal would, among other things:

- Include an optional one-year extension of the compliance date upon notification to the FDIC;
- provide clarifications regarding certification of compliance under § 370.10, and the effect of a change in law or a merger on compliance;
- provide for voluntary compliance with part 370;
- revise the actions that must be taken under § 370.5(a) with respect to deposit accounts with transactional features that are insured on a pass-through basis;
- amend the recordkeeping requirements set forth in § 370.4 for certain types of deposit relationships;
- clarify the process for exceptions requested pursuant to § 370.8(b), provide for published notice of the FDIC's responses, and provide that certain exceptions may be deemed granted; and
- make corrections and technical and conforming changes.

B. Elective Extension of the Compliance Date

Section 370.2(d) establishes the initial compliance date as the date that is three years following either the effective date of part 370 or the date on which an IDI becomes a covered institution, whichever is later. In order to comply with part 370, covered institutions must add a new set of capabilities in their IT systems and a new level of regularity in their recordkeeping. Part 370 became effective on April 1, 2017, so each insured depository institution that became a covered institution on that date has a compliance date of April 1, 2020. The FDIC recognizes that some of these covered institutions may need additional time to implement these new capabilities. The FDIC has determined that an extension of up to one year would help these covered institutions more efficiently focus their efforts on complying with part 370 rather than on seeking exceptions to compliance with part 370. Accordingly, the FDIC proposes to add a new paragraph (b)(2) to § 370.6 that would provide covered institutions that became covered institutions on the effective date with the option to extend their April 1, 2020, compliance date by up to one year (as late as April 1, 2021) upon notification to the FDIC. The notification would need to be provided to the FDIC prior to the original April 1, 2020, compliance date and state the total number of, and dollar amount of deposits in, deposit accounts for which the covered institution expects its IT system would not be able to calculate deposit insurance coverage as of the original April 1, 2020, compliance date. This information would help the FDIC understand the extent to which the covered institution's capabilities could be utilized prior to the extended compliance date should those capabilities be needed. In connection with this proposed amendment, the definition of compliance date in § 370.2(d) would also be revised to reference § 370.6(b).

Questions: The FDIC invites comment on its proposal to allow insured depository institutions that became covered institutions on April 1, 2017, to extend their compliance date by up to one year. What are the advantages or disadvantages of extending the compliance date? Is this one-year extension too long or too short? Why? Should this extension option be available to all current covered institutions? What alternatives, if any, should the FDIC consider?

C. Compliance

1. Part 370 Compliance Certification and Deposit Insurance Summary Report

The proposed amendments to § 370.10(a)(1) address the requirements for the certification of compliance that a covered institution must submit to the FDIC upon its initial compliance date and annually thereafter. The FDIC is proposing to clarify that the timeframe within which a covered institution must implement the capabilities needed to comply with part 370 and test its IT system is the ''preceding twelve months'' rather than during the ''preceding calendar year.'' Because a covered institution's compliance date might not coincide with the end of a calendar year, there was confusion over whether a covered institution's self-test must occur during the calendar year before a covered institution's compliance date even if the compliance date is in the next calendar year. This proposed amendment is intended to clarify that a covered institution must certify that it has implemented the capabilities required by part 370 and has tested those capabilities at least once during the preceding 12 months.

The FDIC proposes to revise the testing standard for the certification from confirmation that a covered institution has ''successfully tested'' its IT system to confirmation that ''testing indicates that the covered institution is in compliance . . .'' because

[8] 81 FR 87734, 87738 (December 5, 2016); 12 CFR 370.2(d).

''successful'' testing is a subjective standard. Some covered institutions have questioned whether testing can be considered ''successful'' if they identify deficiencies in compliance. The objective of part 370 is for a covered institution to implement the recordkeeping and IT system capabilities that would enable the FDIC to conduct a deposit insurance determination for all of a covered institution's deposit accounts. To do this, a covered institution's IT system must be capable of calculating deposit insurance coverage for accounts once all information needed to do so is available.

The FDIC also proposes to clarify the standard to which the § 370.10(a)(1) compliance certification is made by revising this paragraph to state that the certification must be made to the best of the executive's ''knowledge and belief after due inquiry.'' Covered institutions and their representatives have expressed concern that the current language could be viewed as creating a liability standard by which an executive could be held liable should the covered institution experience any deficiency in compliance. This proposed amendment would clarify that the executive's essential duty is to take reasonable steps to ensure and verify that the certification is accurate and complete to the best of his or her knowledge after due inquiry.

Questions: The FDIC invites comment on its proposed amendments to § 370.10(a)(1). What level of certainty should a covered institution's executive have that the requirements of part 370 are being met? Are the standards for the certification clear? Are they appropriate? If not, why not? What other changes to this certification requirement should the FDIC consider making, if any?

2. Effect of Changes to Law

The FDIC recognizes that future changes to law could impact a covered institution's compliance with the requirements of part 370 by, among other things, changing deposit insurance coverage and related recordkeeping and calculation requirements. These changes in law may be made with immediate effect, yet the covered institutions may reasonably require time to collect necessary records and reconfigure their IT systems to calculate deposit insurance under the changed laws. The FDIC is proposing to add a new paragraph (d) to § 370.10 to address the effect of changes to law that alter the availability or calculation of deposit insurance. This new paragraph (d) would provide that a covered institution would not be in violation of part 370 as a result of such change in law for such period as specified by the FDIC following the effective date of such change in law. The FDIC would publish notice of the specified period of time in the **Federal Register**.

Questions: The FDIC invites comment on its proposal to add a new paragraph (d) to § 370.10 to allow a covered institution time to consider and address changes in law that alter the availability, or calculation of, deposit insurance and thereby would impact a covered institution's compliance with part 370. Should a minimum period of time following a change in law be added? Why? What alternatives, if any, should the FDIC consider?

3. Effect of Merger Involving a Covered Institution

Part 370 does not expressly address mergers. Under the Rule, a covered institution is required to comply with the requirements of part 370 on and after its compliance date without regard for complications that could be caused by merger. The covered institution would need to ensure that it is in compliance with respect to its newly acquired deposit accounts and IT systems unless it had requested and been granted a time-limited exception by the FDIC.

The FDIC recognizes that covered institutions may need time after a merger to come into compliance with part 370 again. For that reason, the FDIC proposes to add a new paragraph (e) to § 370.10 to provide a covered institution with a one-year period following the effective date of its merger with another insured depository institution to ensure that new deposit accounts and IT systems comply with the requirements of part 370. This proposed one-year period would not extend a covered institution's preexisting compliance date; rather, it would provide a one-year grace period to remedy deficiencies in compliance resulting from the merger. In cases where this one-year period is not sufficient, a covered institution could request a time-limited exception for additional time to integrate deposit accounts or IT systems. To illustrate, if a covered institution merges with an insured depository institution that is not a covered institution, then the covered institution's compliance date would not change, but it would have a one-year period to bring the deposit accounts from the merged institution into compliance with the requirements of part 370. If two insured depository institutions, neither a covered institution, merge to become a covered institution, then the new covered institution would be required to comply with part 370 by its compliance date and the one-year grace period provided under this proposed paragraph would not be applicable. If two covered institutions merge, then the one-year grace period provided under this proposed paragraph would apply, but only with respect to instances of non-compliance occurring as the direct result of the merger.

Questions: The FDIC invites comment on its proposal to add a new paragraph (e) to § 370.10 to provide a one-year grace period for instances of non-compliance following merger. Is a one-year grace period sufficient? If not, how much time would be sufficient and why? Should a grace period be considered for deposit assumption transactions as well? What alternatives, if any, should the FDIC consider?

D. Voluntary Compliance With Part 370

The proposed amendments would provide a mechanism for voluntary compliance with part 370, which may be mutually beneficial to both the FDIC and certain insured depository institutions. Part 370 currently defines a ''covered institution'' as an insured depository institution that had two million or more deposit accounts during the two consecutive quarters preceding the Rule's effective date of April 1, 2017, or once it has two million or more deposit accounts for two consecutive quarters thereafter. The FDIC proposes to expand the definition to include any other insured depository institution that voluntarily opts into coverage. To do so, an IDI would deliver written notice to the FDIC stating that it will voluntarily comply with the requirements of part 370. Such an insured depository institution would be considered a covered institution as of the date on which the FDIC receives the notification.

The proposed amendments also designate a compliance date for insured depository institutions that voluntarily become covered institutions pursuant to the proposed § 370.2(c)(2). The proposed rule would add a new paragraph (d)(3) to § 370.2 providing that the compliance date for such an IDI would be the date on which the covered institution submits its first certification of compliance and deposit insurance coverage summary report pursuant to § 370.10(a). The FDIC recognizes that while an insured depository institution could voluntarily become a covered institution under the proposed amendments, the FDIC should not enforce the requirements of the Rule upon such a covered institution until after it submits a certification of

compliance and deposit insurance coverage report.

As a result of this proposed amendment, an IDI that is not covered under part 370 but is covered under § 360.9 (a 360.9 institution) could voluntarily comply with part 370 and be released from § 360.9, pursuant to § 370.8(d), upon submission of the compliance certification and deposit insurance summary report to the FDIC as required under § 370.10(a). A 360.9 institution must continue to comply with § 360.9 until it meets the conditions for release. A significant benefit of this proposed amendment would be that a banking organization with one part 370 covered institution and one 360.9 institution could develop a single unified deposit recordkeeping and IT system that would be compliant with part 370 and no longer have to maintain a separate, parallel system to satisfy the requirements of § 360.9.

Questions: The FDIC invites comment on its proposal to revise § 370.2(c) to allow an insured depository institution that does not have two million or more deposit accounts to voluntarily comply with part 370. Would insured depository institutions that are not covered institutions under part 370 elect to voluntarily comply? If your banking organization consists of both a part 370 covered institution and a 360.9 institution, would it consider voluntarily complying with part 370? What alternatives, if any, should the FDIC consider?

E. Transactional Features

1. Purpose for Identifying Deposit Accounts With ''Transactional Features''

In formulating part 370, the FDIC recognized that for certain types of deposit accounts, depositors need daily access to funds, but deposit insurance determinations regarding some of these accounts requires access to records that an IDI is not required to maintain under the existing regulatory framework. For example, deposits may be insured on a pass-through basis under part 330, with records maintained outside of the IDI by an agent or third party authorized to maintain such records. Creating appropriate recordkeeping requirements for those accounts for which the information need not reside at the covered institution, and providing for their timely delivery in a format that permits the FDIC to use a covered institution's IT system to calculate deposit insurance promptly in the event of a failure, was a central concern of the part 370 rulemaking process.

Originally, in the Advance Notice of Proposed Rulemaking (ANPR) relating to part 370,[9] the FDIC presented a potential solution that involved identifying a large subset of deposits as ''closing night deposits.'' Under this approach, the covered institution would be required to obtain and maintain data on all closing night deposits at the end of any business day sufficient to make deposit insurance determinations on closing night. Comments to the ANPR led the FDIC to conclude that there was no consensus among potential covered institutions and other interested parties as to what deposits should be considered ''closing night deposits.'' The FDIC proposed, in the Notice of Proposed Rulemaking for part 370,[10] requiring covered institutions to collect and maintain the necessary depositor information for all deposit accounts, with limited exceptions. Commenters raised concerns about the volume and nature of data that would be transmitted nightly under such approach.

In issuing the final rule, the FDIC adopted a bifurcated approach to recordkeeping requirements. The FDIC generally requires that a covered institution itself maintain the complete set of information required to allow the FDIC to promptly determine the deposit insurance coverage for each deposit account. But for certain accounts, including those that may meet the requirements of §§ 330.5 (Recognition of deposit ownership and fiduciary relationship) and 330.7 (Accounts held by agent, nominee, guardian, custodian or conservator) and certain trust accounts, this information may be maintained off-site and with third parties rather than at the covered institution. These accounts are ''alternative recordkeeping'' accounts under part 370. The FDIC recognized, however, that some alternative recordkeeping accounts may support depositors' routine financial needs and require a prompt deposit insurance determination to avoid delays in payment processing should the covered institution's deposit operations be continued by a successor institution.[11] The FDIC created a definition of ''transactional features'' to identify such accounts and required covered institutions to certify that, for alternative recordkeeping accounts with transactional features, the account holder will submit to the FDIC the information necessary to complete a deposit insurance calculation with regard to the account within 24 hours following the appointment of the FDIC as receiver. The FDIC provided a set of exceptions to this certification requirement as well.

The proposed amendments would retain the bifurcated approach to recordkeeping requirements but change the definition used to describe accounts with transactional features, as well as revise the actions of the covered institution required with respect to alternative recordkeeping accounts with transactional features; the set of exceptions to the requirements has been amended as well.

2. Proposed Amendments to the Definition of ''Transactional Features''

The proposed amendments would narrow the definition of transactional features to focus on accounts capable of making transfers directly from the covered institution to third parties by methods that would necessitate a prompt insurance determination to avoid disruptions to payment processing. Interested parties have expressed concerns that the current transactional features definition is over-inclusive, capturing accounts for which the FDIC would not need to make a deposit insurance determination within 24 hours to achieve its policy goals of preserving stability and avoiding disruption to depositors. Under the existing definition, an account has transactional features if it can be used ''to make payments or transfers to third persons or others (including another account of the depositor or account holder at the same institution or at a different institution)'' by use of any of a long list of methods. Examples of such deposit accounts include, but are not limited to: Deposits placed by third parties with associated sweep accounts, whether or not those sweep accounts are categorized as brokered deposits, and prepaid accounts.[12] The FDIC remains concerned that if the funds in these accounts are not accessible on the next business day after a covered institution's failure because the FDIC cannot complete the deposit insurance determination, then ''the inability to access their funds could result in returned checks and an inability to handle their day-to-day financial obligations.'' [13] This breadth of included

[9] 80 FR 23478 (April 28, 2015).

[10] 81 FR 10026 (February 26, 2016).

[11] 81 FR 87737, 87740. The successor institution may be an open institution that acquires these operations or accepts the transfer of the failed covered institution's insured deposit liabilities, or a bridge bank organized by the FDIC for such purposes. A failed covered institution's deposit operations will not be continued in all potential resolution scenarios.

[12] 81 FR 87734, 87751 (December 5, 2016).

[13] Id. at 87752.

transfer methods, together with the impression that the described set of transferees is all-inclusive, created the impression among some interested parties that the FDIC intended that all accounts other than some accounts comprised of time deposits fall into the transactional features definition.

The FDIC intends that the transactional features definition itself capture only the subset of alternative recordkeeping accounts for which an insurance determination within 24 hours following its appointment as receiver is essential to fulfillment of its policy objectives noted above. Accordingly, it proposes to amend the definition to narrow the set of accounts that are identified as having transactional features for purposes of part 370. The proposed amendments would define transactional features primarily by reference to the parties who can receive funds directly from the account by methods that may not be reflected in the close-of-business account balance on the day of initiation of such transfer. If the account can be used to make transfers to parties other than the account holder, the beneficial owner of the deposits, or the covered institution itself, by use of a method that results in the transfer not being reflected in the close-of-business ledger balance for the account on the day the transfer is initiated, it is an account with transactional features. Generally, under FDIC rules,[14] on the day of failure, transfers that are included in the close-of-business account balance for an account will be completed, with funds transferred out of the account not being included in the deposit insurance determination for the account. Therefore, such transfers will not be affected by the deposit insurance determination, and any delay in completing the deposit insurance determination for such account will not create delays in processing payments.

Application of this approach can be illustrated by two examples. In the first example, an account that can be used by the account holder or depositor to initiate transfers to other parties by check—a method that may not be reflected on the day of such transfer is initiated, even if prior to the cutoff time for that specific type of transaction—would be an account with transactional features under the proposed definition. This transfer may not be reflected in the close-of-business ledger balance for the account when initiated by delivery of the check to the payee. Under part 370, the FDIC should receive the information necessary to complete a deposit insurance determination with regard to such an account within 24 hours following its appointment as receiver, providing it the ability to minimize disruption to payment processing if the covered institution's deposit operations are continued following the resolution. In the second example, an account that can only be used to make transfers to others by wire transfer—a method that is reflected in the close-of-business balance for the account if initiated prior to the cutoff time—is not an account with transactional features solely as a result of this transfer capability. The funds transmitted by a timely initiated wire are not included in the close-of-business balance for the account, so no deposit insurance determination with regard to the account is required in connection with the processing of that payment.

The proposed definition of transactional features contains an additional provision, intended to include linked accounts that support accounts with transactional features. Under this provision, an account also has transactional features if preauthorized or automatic transfer instructions provide for transfers to an account with transactional features at the same institution. These automatic or preauthorized instructions indicate that the deposits in such account are integral to supporting payment processing in the account with transactional features, such that completing a deposit insurance determination in the account otherwise lacking transactional features is essential to ensuring continuing processing of payment instructions at the account with transactional features. It is therefore appropriate to subject such account to the same expectations regarding timely delivery of the information needed to conduct a deposit insurance determination should the covered institution fail.

Unlike under the current definition, the capability to make transfers to another account of the depositor or account holder at another institution does not itself result in an account having transactional features for purposes of part 370 under the proposed definition. The prior definition included such capabilities to capture accounts associated with brokered sweep accounts and prepaid account programs administered by a third party that places deposits at an IDI on behalf of the cardholders or other depositors, regardless of whether such accounts were traditional transactional accounts, such as demand deposit accounts, or money market deposit accounts (MMDA) or savings accounts not traditionally considered transactional in nature. By including these accounts, the FDIC sought to enable deposit insurance determinations within 24 hours following the FDIC's appointment based on its belief that such accounts were relied upon for transactions and material delay could undermine public confidence and be extremely disruptive.[15] In order to achieve this goal, the final rule required covered institutions to make certifications, described below, regarding future delivery of depositor information by third parties that are not under the control of the covered institution or subject to regulation by the FDIC. Engagement with deposit brokers, covered institutions and their representatives during implementation suggested that the benefit of these requirements might be less than expected, and the burdens of compliance greater given the wide variety of account types, third parties, and arrangements involved.

Many brokered sweep programs and prepaid card programs operate through arrangements involving one or more intermediate or clearing accounts located at institutions other than the covered institution. The day-to-day transactional activity in such programs can occur in accounts outside of the covered institution, with the account at the covered institution being accessed less frequently. The net activity of all of the customers in the program determines whether the periodic activity in the account at the covered institution is a deposit or withdrawal. Covered institutions noted that the other parties involved in the administration of such programs, such as the deposit brokers, broker dealers, program managers, and administrators, have ongoing business relationships with the brokered deposit sweep and prepaid card customers and with other third parties involved in processing customer transactions.

Where customer transactions originate with an instruction first presented to an account at an IDI other than the covered institution, the need to conduct a deposit insurance determination within 24 hours after the covered institution's failure may not exist. According to some of the covered institutions and other industry representatives, the net activity of customers or the schedule for accessing the account at the covered institution, may result in no draw on the account at the covered institution in the days following failure. Further, interested parties have stated that actions by the other parties involved in the program, such as advancing funds to

[14] See 12 CFR 360.8.

[15] 81 FR 87734, 87740 (December 5, 2016).

intermediate accounts during the pendency of a deposit insurance determination to preserve customer relationships, may further ameliorate any disruption to depositors resulting from the failure. As a result, requiring that information needed for deposit insurance determination be delivered in such timeframe may be less beneficial and more burdensome than anticipated. The proposed definition thus no longer captures accounts which transfer to other accounts of the depositors or account holders at IDIs other than the covered institution. It is possible that customers of broker dealers who have cash management accounts or certain prepaid cardholders may experience a delay in their ability to access the funds in their accounts or that underlie their cards if the settlement or processing of their transactions takes place at another IDI but are funded by deposits held in the covered institution.

Prepaid cardholders should, however, have access to the funds loaded on their cards on the next business day after a covered institution fails when prepaid card programs are structured so that the cardholders' transactions actually settle through a deposit account at the covered institution. Note that the proposed definition of accounts with ''transactional features'' includes linked accounts wholly within the covered institution, to the extent that those accounts support an account with transactional features. Accordingly, a savings account at the covered institution that supports, via automatic or preauthorized instructions, a demand deposit account at the covered institution that can be accessed by prepaid cards or checks—methods that may not be reflected in the close-of-business ledger balance of the account—is itself considered an account with transactional features for purposes of the proposed definition. Finally, when the covered institution issues the prepaid cards and acts as the program manager of the prepaid account program (and thus, maintains the requisite information regarding the prepaid cardholders), then the prepaid cardholders would have access to their funds on the next business day after the covered institution's failure.

Questions: The FDIC invites comment on the proposed definition of transactional features. Does the proposed definition improve the description of such accounts? Is the focus on whether or not transfers are reflected in the close-of-business ledger balance for the account a workable approach to defining the transfer capabilities of an account that do not result in it having transactional features? Should other transfers be included in that category? Is it reasonable for the FDIC to rely upon the covered institutions' and other industry representatives' representations regarding the necessity of funds availability in these accounts immediately after failure? Is it possible for the covered institutions to evaluate the potential hardship for broker dealer customers or prepaid cardholders when the programs are structured so that their transactions would settle at another IDI? Should the proposed rule simply remove the definition of transactional features and provide that any special requirements for certain types of deposit accounts be applicable without regard for whether the accounts do or do not have transactional features? What are the other advantages or disadvantages of this proposed amendment? What alternatives, if any, should the FDIC consider?

3. Actions Required for Certain Deposit Accounts With Transactional Features Under § 370.5(a)

As part 370 stands now, for those deposit accounts that a covered institution maintains its deposit account records in accordance with the alternative recordkeeping requirements set forth in § 370.4(b)(1) and that also have transactional features, the covered institution must certify to the FDIC that the account holder ''will provide to the FDIC the information needed . . . to calculate deposit insurance coverage . . . within 24 hours after'' failure. Covered institutions have expressed concern that this provision imposes a duty on a covered institution to control the actions that an account holder must take after failure, and that a covered institution employee who signs the certification could be liable to the FDIC if an account holder does not take those actions. The FDIC designed this provision with the expectation that covered institutions would work with account holders to create a mechanism by which account holders are able to provide, upon the covered institution's failure, the information necessary for the covered institution's IT system to calculate deposit insurance coverage.

It was not the FDIC's intent to make a covered institution or a covered institution's employees liable for the actions, or inactions, of an account holder. For this reason, the FDIC is proposing to revise paragraph (a) of § 370.5 by removing the certification requirement and instead requiring covered institutions to take ''steps reasonably calculated'' to ensure that the account holder would provide to the FDIC the information needed for the FDIC to use a covered institution's part 370-compliant IT system to accurately calculate deposit insurance available for the respective deposit accounts within 24 hours after the failure of the covered institution. This change should clarify that the covered institution would be expected to design and implement in its IT system the capability to use information provided by account holders after the covered institution's failure. This change should also clarify that neither the covered institution nor its employees would be responsible for the actions that an account holder does or does not actually take to supply such information after the covered institution's failure.

Covered institutions would have discretion to determine the methods by which this requirement may be accomplished, but at a minimum ''steps reasonably calculated'' would include having contractual arrangements in place with account holders that would obligate those account holders to deliver information needed for deposit insurance calculation to the FDIC in a format compatible with the covered institution's IT system immediately upon the covered institution's failure and a disclosure that informs account holders that their delay in delivery of information to the FDIC, or submission in a format that is not compatible with the covered institution's IT system, could result in delayed access to deposits should the covered institution fail and the FDIC need to conduct a deposit insurance determination. This requirement would apply to any deposit account for which the details of the deposit relationship and the interests of the underlying beneficial owners of the deposits are not in records maintained by the covered institution, but in records maintained by the account holder or by some person or entity that has undertaken to maintain such records for the account holder. There could be a delay in the availability of the deposits at the covered institution because the information needed to complete the deposit insurance determination must first be provided by the account holder. This situation would apply to any accounts eligible for pass-through deposit insurance coverage unless the underlying information regarding beneficial ownership of deposits is maintained at the covered institution.

As a result of the proposed amendment discussed above, a conforming amendment would need to be made to paragraph (c) of § 370.5, which provides that a covered institution will not be in violation of part 370 if the FDIC has granted the

covered institution relief from the certification requirement set forth in § 370.5(a). The proposed amendment to § 370.5(a) would remove the certification requirement and § 370.5(c) would no longer be relevant. Therefore, the FDIC is proposing to remove paragraph (c) from § 370.5.

Questions: The FDIC invites comment on its proposal to revise § 370.5(a) to clarify the actions a covered institution must take pursuant to that paragraph. Generally, would a contractual mechanism between a covered institution and an account holder that requires immediate submission of information needed for deposit insurance calculation help ensure that deposit insurance can be determined quickly for these accounts so that insured deposits can be made available as soon as possible? What are the advantages or disadvantages of adding this language? Does it provide greater clarity regarding the requirements and purpose therefor?

Should this requirement apply to all alternative recordkeeping accounts or should it be limited to only those accounts that meet the revised definition of transactional features? Is it more burdensome for covered institutions and account holders to draw a distinction between alternative recordkeeping accounts with transactional features and those without than it would be to simply apply the requirement to all alternative recordkeeping accounts?

What impediments, if any, prevent a covered institution from adding language to certain of its deposit account agreements to address means by which an account holder could submit information to the FDIC after failure of the covered institution so that the FDIC, using the capabilities of a covered institution's part 370 compliant IT system, could quickly and accurately calculate deposit insurance and provide access to the relevant deposit account(s)? Would account holders be more likely to supply information needed to calculate deposit insurance coverage in a format compatible with the covered institution's IT system immediately after the covered institution's failure if they are contractually obligated to?

What impediments, if any, prevent a covered institution from providing notice to certain account holders that the account holders' delay in providing information to the FDIC after the covered institution's failure may delay access to deposits? Are covered institutions or their account holders receptive to the idea of using technology to expedite the process by which the FDIC determines deposit insurance? What alternatives, if any, should the FDIC consider if this approach is unworkable?

4. Exceptions From the Requirements of § 370.5(a) for Certain Types of Deposit Accounts

Currently, § 370.5(b) provides an enumerated list of accounts that a covered institution need not address in order to make the certification required pursuant to § 370.5(a). The FDIC proposes to retain this list of excepted deposit account types to be clear that covered institutions would not be required to take the actions prescribed in revised § 370.5(a) for those types of accounts. Additionally, the FDIC proposes to make three revisions to this list. First, the FDIC is proposing to expand the exception for mortgage servicing accounts under § 370.5(b)(1) to include all deposits in such an account. Under the Rule, mortgage servicing accounts are excepted from the § 370.5(a) requirement only to the extent that those accounts are comprised of principal, interest, taxes, and insurance. Covered institutions have represented to the FDIC that deposits for other purposes, such as reserves, may also be held in mortgage servicing accounts. Removing this limitation clarifies that covered institutions need not take the actions required under § 370.5(a) with respect to those accounts.

Second, the FDIC is proposing a technical amendment to § 370.5(b)(4) to correct an incorrect cross reference. The applicable section of the FDIC's regulations governing deposit insurance coverage for deposit accounts held in connection with an employee benefit plan is 12 CFR 330.14, not 12 CFR 330.15(f)(2).

Third, the FDIC is proposing to add to this list deposit accounts maintained by an account holder for the benefit of others to the extent that the deposits in the custodial account are held for: A formal revocable trust that would be insured as described in 12 CFR 330.10; an irrevocable trust that would be insured as described in 12 CFR 330.12; or an irrevocable trust that would be insured as described in 12 CFR 330.13. The FDIC recognizes that an account holder that places deposits with a covered institution on behalf of such a trust may not be able to immediately provide to the FDIC all of the information needed to calculate the total amount of coverage available for deposits insured in any one of these three deposit insurance categories should the covered institution fail. It may take some time for an account holder to obtain such information from a trustee, who in turn may need time to review the relevant trust document and confirm the status of the trust's beneficiaries and the nature of those beneficiaries' interests in the assets of the trust at the time of the covered institution's failure. After the information is submitted by the account holder, the FDIC will need to review trust-specific documentation to verify eligibility for deposit insurance and calculate the amount of coverage available. Moreover, including custodial deposit accounts holding trust deposits among the list of exceptions set forth in § 370.5(b), to the extent that those accounts are comprised of trust deposits that would be insured in one of these three deposit insurance categories, would be more consistent with the recordkeeping requirements for trust accounts set forth in § 370.4(b)(2). This is the case because deposit accounts for which a covered institution maintains its deposit account records in accordance with § 370.4(b)(2) would be processed after the information needed for deposit insurance determination is provided by the account holder and the timing for that information submission is within the account holder's discretion and control.

Questions: The FDIC invites comment on its proposal to revise § 370.5(b) to add an exception for deposit accounts with transactional features that are insured on a pass-through basis, to the extent that the deposits in that deposit account are held for the benefit of a formal revocable trust that would be insured as described in 12 CFR 330.10, an irrevocable trust that would be insured as described in 12 CFR 330.12, or an irrevocable trust that would be insured as described in 12 CFR 330.13. In order to determine whether this exception would apply, are covered institutions able to identify the extent to which such an account is comprised of deposits that would be insured in one of the three deposit insurance categories that provide additional deposit insurance for trusts? What are the advantages or disadvantages of this proposed amendment? Generally, would delayed access to deposits in these accounts present hardship to the account holder or the beneficial owner(s) of the deposits? What alternatives, if any, should the FDIC consider?

Should other types of deposit accounts be included in the list of exceptions set forth in § 370.5(b)? Why should those types of deposit accounts be excepted? What would be the consequences of delayed access to the deposits in those types of deposit accounts if the account holder does not

supply information needed for deposit insurance calculation immediately upon a covered institution's failure?

F. Recordkeeping Requirements

1. Alternative Recordkeeping Requirements for Certain Trust Accounts

Part 370 currently provides covered institutions with the option of meeting the alternative recordkeeping requirements set forth in § 370.4(b)(2) rather than the general recordkeeping requirements set forth in § 370.4(a) for certain types of trust deposit accounts. Specifically, formal revocable trust deposit accounts that are insured as described in 12 CFR 330.10 (''REV accounts,'' for which the corresponding right and capacity code is ''REV'' as set forth in Appendix A) and irrevocable trust deposit accounts that are insured as described in 12 CFR 330.13 (''IRR accounts,'' for which the corresponding right and capacity code is ''IRR'' as set forth in Appendix A) are eligible for alternative recordkeeping under § 370.4(b)(2). Covered institutions must meet the general recordkeeping requirements set forth in § 370.4(a) with respect to irrevocable trust deposit accounts that are insured as described in 12 CFR 330.12 (''DIT accounts,'' for which the corresponding right and capacity code is ''DIT'' as set forth in Appendix A). It is the FDIC's expectation that, where a covered institution is the trustee for an irrevocable trust, the covered institution will have the information needed to calculate the amount of deposit insurance coverage for such trust's deposit account(s) at any given time. This information would be, among other things, the identities of trust beneficiaries and their respective interests. The FDIC recognizes that the covered institution as trustee would need to be able to monitor for changes in facts that impact deposit insurance coverage afforded to the trust and update its deposit account records when such changes occur in order for the covered institution's IT system to accurately calculate deposit insurance coverage within the first 24 hours after failure should the covered institution be placed in receivership.

Representatives of covered institutions have explained to FDIC staff that updating deposit account records continuously could be overly burdensome or impracticable in some cases, and that there may be a significant lag between the time at which a change occurs, the time at which the covered institution as trustee becomes aware of the change, and the time at which the covered institution can update its deposit account records accordingly for purposes of part 370. The FDIC acknowledges that covered institutions face challenges in meeting the general recordkeeping requirements for these accounts but seeks to gain a better understanding of the impediments a covered institution faces in its efforts to update deposit account records upon changes in facts affecting deposit insurance coverage for DIT accounts. The FDIC also seeks to gain a better understanding of the adverse impact of delay in the ability to access and use deposits in a DIT account while the deposit insurance determination is pending. The FDIC is proposing to revise § 370.4(b)(2) to include DIT accounts as another category of deposit accounts for which a covered institution may meet the alternative recordkeeping requirements rather than the general recordkeeping requirements should it find that such change is justified. For DIT accounts specifically, a covered institution would not need to maintain the unique identifier of the grantor(s), however, because DIT accounts are insured without regard to the rule for aggregation by grantor applicable in the IRR and REV categories for deposit insurance. To conform with this proposed amendment, § 370.4 would be revised by removing paragraph (a)(1)(iv), which currently requires a covered institution to maintain in its deposit account records for each DIT account the unique identifier for the trust's grantor and each trust beneficiary.

The FDIC is also proposing a technical amendment to § 370.4(b)(2)(iii) to replace the requirement that a covered institution maintain in its deposit account records for certain trust deposit accounts the corresponding ''pending reason'' code from data field 2 of the pending file format set forth in Appendix B. Instead, § 370.4(b)(2)(iii) of the proposed rule would require covered institutions to maintain in the respective deposit account records the corresponding ''right and capacity code'' from data field 4 of the pending file format set forth in Appendix B. Covered institutions should be able to identify which of the right and capacity codes apply for deposit accounts that fall into this recordkeeping category. This determination can be made based on the titling of the deposit account or documentation maintained in a covered institution's deposit account records concerning the relationship between the covered institution and the named account holder.

Questions: The FDIC invites comment on its proposal to revise § 370.4(b)(2) to include irrevocable trust deposit accounts that are insured as described in 12 CFR 330.12. What are the advantages or disadvantages of allowing a covered institution to maintain in its deposit account records less than all of the information needed to calculate deposit insurance coverage for such deposit accounts? What impediments does a covered institution face in its efforts to update deposit account records upon a change in facts and circumstances affecting deposit insurance coverage for DIT accounts? Will delayed access to deposits in DIT accounts present hardship to the respective trusts while the deposit insurance determination is pending? What alternatives, if any, should the FDIC consider?

Under § 370.4(b)(2)(ii), a covered institution is required to maintain the unique identifier of the grantor of a trust in its deposit account records for certain trust accounts. Covered institutions have represented that the identity of a trust's grantor is not typically maintained in an IDI's records. The FDIC invites comment on this requirement. What types of trust accounts is this the case for? Would it be difficult for covered institutions to obtain the grantor's identity in order to assign a unique identifier if identifying information is not maintained in the deposit account records for certain types of trust accounts?

2. Recordkeeping Requirements for Deposits Resulting From Credit Balances on an Account for Debt Owed to the Covered Institution

During the FDIC's outreach calls and meetings with many covered institutions, the covered institutions described many functional and operational impediments to their ability to comply with the various recordkeeping requirements of § 370.4. Generally, when the covered institution maintains the requisite depositor information in its own records to perform the deposit insurance calculation, the FDIC would expect the covered institution to comply with § 370.4(a) of the regulation. Other types of accounts, like agent or fiduciary accounts (based on pass-through deposit insurance principles), certain trust accounts, and official items, have already been addressed in §§ 370.4(b) and (c). However, another recordkeeping problem raised by the covered institutions occurs when a borrower of a covered institution has a credit balance on a debt owed to a covered institution. For example, if a

bank customer/credit cardholder has a positive balance on a credit card account after returning merchandise and receiving a credit to the account, then that credit amount would be recognized as the customer's ''deposit'' at the covered institution. In accordance with § 3(*l*)(3) of the FDI Act, such an overpayment on a debt owed to a covered institution would constitute a deposit.[16] The FDIC must include (and aggregate, if necessary) such a deposit in order to perform a deposit insurance determination in the event of a covered institution's failure.

Upon initial review, it would appear that a covered institution should be able to comply with the requirements of § 370.4(a) because the covered institution will presumably have in its IT system(s) all of the relevant information regarding the depositor (created by making an overpayment on his or her outstanding debt with the covered institution). The problem, as described to the FDIC by various covered institutions, is that the requisite information regarding the ownership of the deposit, the amount of the deposit as well as other relevant information such as a unique identifier, would be maintained on a covered institution's loan platform rather than on any of its deposit systems. Moreover, the deposit platforms are not necessarily linked or integrated in any way with a covered institution's various loan platforms. The covered institutions have informed the FDIC that it would be unduly expensive for them to integrate or link the various loan platforms with their deposit systems based on their assertions that not many of the credit balances are very high; *i.e.,* much lower than the SMDIA. Therefore, they question the need to incur the cost to integrate the loan platforms with the deposit systems.

The FDIC understands that for an individual loan account, the amount of a customer's credit balance may not seem significant. Nevertheless, if the FDIC were obligated to conduct a deposit insurance determination upon the failure of a covered institution, part of that process would require the FDIC to include and aggregate the credit balance/deposit with any other deposit accounts owned by that particular depositor held in the same right and capacity. For example, a depositor could have a deposit of $250,000 in the covered institution in the individual right and capacity as well as a credit balance of several thousand dollars. If the FDIC is unable to identify the credit balance and aggregate that amount with the other deposit funds held in the covered institution in the same right and capacity, then the FDIC will pay out uninsured deposits to that individual depositor. While several thousand dollars might not seem to be significant with respect to one depositor, the FDIC would risk overpaying a number of depositors if it were not possible for the FDIC to restrict access to the credit balances on all affected accounts until a full deposit insurance determination could be completed. In the aggregate, the amount of overpayment could be significant. Additionally, the covered institutions have asserted that this operational issue applies to all of their various loan platforms, including credit cards, home equity lines of credit (HELOCs), automobile loans, and mortgage loans. Again, in the aggregate, overpayments on a number of accounts across many different loan platforms could result in a significant pay out of uninsured funds to the failed covered institution's depositors. Such a result would be in contravention of the FDIC's statutory mandate to make payment of ''*insured deposits* . . . as soon as possible.''[17]

In order to address the covered institutions' concerns, the FDIC is proposing to add a new paragraph (d) to § 370.4. Covered institutions would not be required to comply with the recordkeeping requirements of § 370.4(a) even though they maintain the depositor information necessary to perform a deposit insurance determination on their internal IT systems—just not their deposit platforms. In lieu of integrating their various loan platforms with their deposit systems, the covered institutions would be required to address the issue of credit balances existing on their loan platforms in another manner.

Section 370.4(d)(1) would require that immediately upon a covered institution's failure, its IT system(s) must be capable of restricting access to (i) any credit balance reflected on a customer's account associated with a debt obligation to the covered institution or (ii) an equal amount in the customer's deposit account at the covered institution. The FDIC believes that it would be preferable for the covered institutions to be able to restrict access to the credit balances on the associated loan platform. Over the closing weekend, if access to the credit balance is not restricted, then the credit cardholder, for example, would be able to charge expenses to the credit card account which would, in effect, eliminate the credit balance. The elimination of the credit balance represents a payment of deposit insurance. If the credit cardholder's deposit account funds are also released ''as soon as possible,'' then the outflow of deposit insurance funds could result in a payment of uninsured funds to that depositor and credit cardholder.

Many of the covered institutions have asserted that it is not possible to restrict access to the credit balances associated with their customers' loan accounts. The alternative approach would be for the covered institution's IT system to be able to restrict access to an amount equal to the credit balance on the customer's deposit account at the covered institution. This second option raises a concern that the requisite information from the covered institution's loan platform regarding the identity of the customer/depositor, the amount of the credit balance, and the appropriate right and capacity will not be available in time to restrict access to an equivalent amount in the corresponding deposit account. The FDIC's objective is to make funds in transactional accounts available to a failed covered institution's depositors by the next business day. If the funds in deposit accounts are released before the amount of the credit balance is restricted, then the FDIC would again be faced with the possibility that uninsured funds would be paid to the failed covered institution's depositors. Nevertheless, § 370.4(d)(1)(ii) allows the covered institution to ensure that its IT system would be capable of restricting access to an amount equal to the overpayment in the customer's deposit account instead.

In order to complete the deposit insurance determination, a covered institution must be able to extract the requisite information from the data on its loan platforms to create a file listing the credit balances on the loan accounts as well as the other data fields as set forth in the file included as Appendix C to this regulation. The file included as Appendix C to this part 370 is derived from the ''Broker Input File Requirements'' set forth in Section V of the FDIC's *Deposit Broker's Processing Guide.* Additionally, a field to identify the ownership right and capacity code has been included. The FDIC determined that it would be appropriate to include the file as part of the regulation because its use in this context is somewhat different than its customary use for third parties that have deposited funds on behalf of others and who maintain the records identifying the underlying beneficial owners. In the situation where the covered institution's loan customer has a credit balance

[16] 12 U.S.C. 1813(*l*)(3).

[17] 12 U.S.C. 1821(f)(1) (Emphasis added).

which is recognized as a deposit, the covered institution actually maintains the necessary information to enable its IT system to perform the deposit insurance calculation; the requisite data is housed, however, on a different loan platform. The FDIC would expect the covered institution's IT system, which must be compliant with § 370.3(b), to be able to accept and process the file as formatted in Appendix C. In contrast, while the FDIC suggests that deposit brokers and other account holders acting as agents or fiduciaries submit their depositors' information in the format set forth in the *Deposit Broker's Processing Guide,* a third party deposit broker or agent for a beneficial owner is not required to provide the deposit ownership information in that format. Most of these third party deposit brokers are not subject to the FDIC's supervision or regulation.

Section 370.4(d)(2)(i) would require the covered institution to be able to generate a file in the format set forth in Appendix C within 24 hours of failure for all credit balances related to open-end loans (revolving credit lines) such as credit card accounts and HELOCs. In other words, the 24-hour requirement would apply to any type of consumer loan account where the customer or borrower has the ability to draw on the credit line without the prior approval or intervention of the covered institution. This time frame would be necessary to ensure that the FDIC would have sufficient time, after the covered institution's failure, to identify the loan customers with credit balances, match them to their corresponding deposit accounts, and restrict access to an amount equal to the overpayment in the customer's deposit account before the next business day. As mentioned previously, it is always the FDIC's goal to make insured funds available to all depositors of a failed insured depository institution as soon as possible, ideally on the next business day after failure. Nevertheless, if this process does not work as intended, then the FDIC will be unable to make deposit insurance payments without the potential for overpayment.

With respect to all other types of loan accounts with overpayments, § 370.4(d)(2)(ii) would require the covered institution to be able to generate a file in the format set forth in Appendix C promptly after the covered institution's failure. For closed-end loan accounts, where the borrower has paid more than the balance owed or the outstanding principal balance, the credit balances would not be available or accessible to the customer without the covered institution's authorization or initiation of the payment. Examples of such loan accounts would include a final payment on a mortgage loan or auto loan which exceeds the payoff amount. Because the credit balance would not be readily available to the customer prior to the final deposit insurance calculation, from the FDIC's perspective, there would not be as much urgency to receive and process the file as provided in Appendix C.

Questions: The FDIC requests comment on this proposal to allow recordkeeping for deposits reflected as credit balances on a debt account pursuant to a different procedure. Could covered institutions produce the file set forth in Appendix C to be used by the covered institution's IT system to calculate deposit insurance coverage within the first 24 hours after the covered institution's failure? Should this time frame apply to credit balances on both open-end and closed-end loan accounts? What are the approximate costs and IT challenges of developing the capabilities to restrict access to credit balances as reflected on the loan account platforms? Are there other examples of either closed-end or open-end loan products that should be explicitly recognized or mentioned?

G. Relief

1. Exception Requests Generally

The FDIC is proposing to revise § 370.8(b) to clarify the required elements of a covered institution's exception request. The FDIC also proposes to revise the Rule to expressly allow submission of a request by more than one covered institution for exception from one or more of the Rule's requirements. While part 370 currently does not preclude this, the FDIC is proposing this revision to expressly permit a joint submission because some scenarios under which a grant of exception would be appropriate would be common to multiple covered institutions. Submission of a joint exception request would allow covered institutions to better manage resources, and it would allow the FDIC to streamline exception determinations. Each covered institution would still be required to submit the institution-specific data required to substantiate the request as required under current § 370.8(b).

Questions: The FDIC invites comment on its proposal to revise § 370.8(b)(1). Would this proposed clarification reduce burden for covered institutions generally? Would covered institutions coordinate to submit joint exception requests?

2. Publication of FDIC's Response to Exception Requests

The FDIC also proposes to add a new paragraph (b)(2) to § 370.8 to provide that the FDIC will publish in the **Federal Register** a notice of its response to each exception request. This change would facilitate transparency and enable covered institutions to better understand the types of requests that the FDIC would grant or deny and the reasons therefor. The FDIC's notice of exception would not disclose the identity of the requesting covered institution(s), nor any confidential or material nonpublic information.

Questions: The FDIC invites comment on its proposal to revise § 370.8 by adding a new paragraph (b)(2). Should the FDIC publish notice of all exceptions requested? Should the FDIC publish only exceptions that are granted and not those that are denied? Is there a reason that the FDIC should not publish notice of its response to exceptions requested by covered institutions?

3. Certain Exceptions Deemed Granted

The FDIC is proposing a new paragraph (b)(3) to § 370.8 that would allow a covered institution to notify the FDIC that, based on substantially similar facts and the same circumstances as presented in the notice published by the FDIC pursuant to § 370.8(b)(2) in the proposed rule, the covered institution elects to use the same exception. Such exception would be considered granted subject to the same conditions stated in the FDIC's published notice unless the FDIC informs the covered institution to the contrary within 120 days after receipt of the covered institution's notification letter. Under this proposed amendment, the covered institution's notification letter would need to include the information required under § 370.8(b)(1), cite the applicable notice of exception published pursuant to § 370.8(b)(2), and demonstrate how the covered institution's exception is based upon substantially similar facts and the same circumstances as described in the applicable notice published by the FDIC. The FDIC believes that § 370.8(b)(3) of the proposed rule would provide covered institutions with more flexibility and clarity regarding exceptions to part 370's requirements. It would also minimize time spent by FDIC and covered institutions alike on processing this type of exception request.

Questions: The FDIC invites comment on its proposal to revise § 370.8 to add this new paragraph (b)(3). Is "substantially similar facts and the

same circumstances'' a reasonable basis for deeming an exception granted? Is the 120-day time frame for FDIC to notify a covered institution to the contrary sufficient? Is this time frame too long or too short? What alternatives, if any, should the FDIC consider?

H. Technical Modifications

1. Technical Amendment To Revise § 370.1 ''Purpose and Scope''

The FDIC is proposing a technical amendment to § 370.1 to correct a cross reference. The applicable paragraph in which the term ''covered institution'' is defined is § 370.2(c), not § 370.2(a).

2. Technical Amendment To Remove Definition of ''Brokered Deposit'' From § 370.2

The FDIC is proposing a technical amendment to § 370.2(b) to remove the definition of ''brokered deposit'' because that term is not used in the regulatory text of part 370. Paragraph (b) of § 370.2 references 12 CFR 337.6(a)(2), the source for the substantive definition of the term. This paragraph would be reserved for future use, if needed.

3. Technical Amendment To Revise Recordkeeping Requirements for Official Items

Under § 370.4(c), a covered institution is required to maintain in its deposit account records the information needed for its IT system to calculate deposit insurance coverage with respect to payment instruments drawn on an account of the covered institution such as a cashier's check, teller's check, certified check, personal money order, or foreign draft (commonly referred to as ''official items''). Such payment instruments represent deposit liabilities of the covered institution to the respective payees. To illustrate the types of payment instruments that could be used to draw on the account, this paragraph contains a non-exhaustive list of examples, concluding with ''or any similar payment instrument that the FDIC identifies in guidance issued to covered institutions in connection with this part.'' The FDIC recognizes that the inclusion of this language would incorporate guidance, which does not carry the force and effect of law, into a regulatory requirement and proposes that this reference to future guidance be removed. The FDIC seeks to minimize the confusion between rules duly issued through notice and comment rulemaking and agency guidance. Therefore, the FDIC proposes that this reference to future guidance be removed.

4. Technical Amendment To Revise IT System Requirements

The FDIC is proposing to amend § 370.3(a) by adding a reference to the proposed new paragraph (d) in § 370.4, which addresses recordkeeping treatment for deposits resulting from credit balances on an account for debt owed to a covered institution. For such deposits, a covered institution's IT system must be able to meet the requirements set forth in § 370.3(b), as modified by the proposed new paragraph (d) in § 370.4, after the covered institution's IT system generates an input file containing the data elements needed to calculate deposit insurance coverage factoring in those credit balances. Covered institutions that implement this mechanism would develop the capability for their IT systems to produce the necessary data. The data would not be supplied by the account holder (in this situation the debtor listed on the account for debt owed to a covered institution), but by a covered institution's IT system itself using information maintained in its records for the respective debt account. For this reason, the FDIC proposes to strike the reference to information collected ''from the account holders'' in the last sentence of § 370.3(a). Instead, the sentence would read ''. . . information collected after failure . . .'' because additional information needed to calculate deposit insurance for accounts for which the general recordkeeping requirements set forth in 370.4(a) are not met may be supplied by the respective account holders, but may also be supplied by an additional data production process developed by a covered institution.

5. Technical Amendment To Revise General Recordkeeping Requirements

The FDIC is proposing to add a new paragraph (d) in § 370.4, which addresses recordkeeping treatment for deposits resulting from credit balances on an account for debt owed to a covered institution. As a result, § 370.4(a) would need to be amended to include a reference to that new paragraph. To the extent that a covered institution elects to meet the recordkeeping requirements set forth in the proposed new § 370.4(d), it would not need to meet the general recordkeeping requirements set forth in § 370.4(a).

6. Technical Amendment To Revise 370.8(d) Regarding Release From 12 CFR 360.9

The FDIC is proposing a technical amendment to § 370.8(d) to clarify that a covered institution that is released from § 360.9 under § 370.8(d) remains released from § 360.9 only for so long as it is a covered institution as defined by part 370. If a part 370 covered institution released from § 360.9 ceases to be a part 370 covered institution, and would otherwise be a 360.9 institution, then it must comply with the requirements of § 360.9 (unless it has independent basis for exemption from § 360.9).

7. Technical Amendment To Revise § 370.10(b) ''FDIC Testing''

The FDIC is proposing a technical amendment to § 370.10(b)(1) to clarify that material changes to a covered institution's IT system, deposit-taking operations, or financial condition *occurring after the covered institution's compliance date* could result in more frequent testing. The FDIC does not expect to conduct compulsory testing on the basis of changes to a covered institution's IT system, deposit-taking operations, or financial condition *before* a covered institution's compliance date. A covered institution's compliance date may be accelerated, however, on the conditions specified in § 370.7 regarding accelerated implementation.

8. Technical Amendment To Revise § 370.7(a)(2)

In 2018, 12 CFR parts 324 and 325 were revised to consolidate the prompt corrective action capital category definitions into 12 CFR part 324. The FDIC is proposing a technical amendment to § 370.7(a)(2) to revise the cross reference by 12 CFR part 324 instead of 12 CFR part 325.

9. Technical Amendment To Revise ''Appendix B to Part 370—Output Files Structure''

Appendix B to part 370 provides basic templates for four information files that a covered institution's IT system must be able to produce during its process for calculating deposit insurance. These files must be retained afterward as a record of the calculation. Some of the data that would be included in these files is essential for deposit insurance calculation, while some is non-essential but nonetheless useful. The FDIC is proposing to revise these data file templates to indicate what data is non-essential and therefore may be omitted while the covered institution does not have the information needed to populate the field.

Questions: The FDIC invites comment on its proposal to revise these data file templates to indicate which data fields must be populated by the covered institution's IT system and which data fields should be populated if the covered institution has such data. Has the FDIC identified any fields for which a ''null value'' is not permissible, but for which a covered institution does not maintain the relevant data? If so, why doesn't the covered institution maintain that data?

IV. Expected Effects

The proposed rule is likely to benefit covered institutions by reducing compliance burdens associated with part 370. Additionally, the proposed rule is likely to benefit financial market participants by helping to support prompt determination of deposit insurance in the event a covered institution fails. The Rule requires all IDIs with two million or more deposit accounts to have complete deposit insurance information, by ownership right and capacity, except as otherwise permitted. As of December 31, 2018, there were 36 covered institutions. The compliance date for these covered institutions is April 1, 2020. Although the compliance date of April 1, 2020, has not yet been reached, we consider the effects of the proposed rule relative to a baseline that includes the cost to covered institutions estimated for compliance with the Rule. The FDIC estimates that part 370 will result in compliance costs of $362.4 million for 36 FDIC-insured institutions.[18] The proposed amendments will likely mitigate some of those costs.

A. Benefits

As discussed earlier, the proposed rule would offer covered institutions that became covered institutions on the effective date the option to extend their April 1, 2020, compliance date by up to one year. The option of extending the implementation period would grant covered institutions that elect to extend their compliance date greater flexibility to comply with part 370 in a manner that would be less burdensome. Feedback the FDIC has received from covered institutions suggests that they would benefit from this proposal. It is difficult to quantify how much covered institutions would benefit from this compliance date extension option because the FDIC does not know how many institutions will elect to use it or the progress they may have already made towards compliance.

Similarly, streamlining the exception request process is expected to reduce the costs to covered institutions for obtaining exceptions from the Rule's requirements. The FDIC does not know how many covered institutions will request such relief, so the benefits of this portion of the proposed rule are difficult to quantify.

As discussed previously, the part 370 does not provide for an adjustment period for a covered institution to comply with part 370 after a merger has occurred. The proposed rule amends part 370 to give covered institutions involved in a merger a one-year grace period for compliance violations. This additional relief for merger activity would grant covered institutions greater flexibility to comply with part 370 in a manner that is less burdensome, thereby potentially reducing compliance costs. It is difficult to estimate the benefits this proposed amendment would provide covered institutions because it is difficult to estimate the volume of future merger activity or the extent to which additional efforts would be needed to integrate deposit account recordkeeping or IT system capabilities.

The proposed amendments address recordkeeping concerns for several types of accounts and would reduce the associated recordkeeping burdens. These include accounts where electronic evidence of an account relationship exists, certain trust accounts, certain accounts with transactional features that are eligible for pass-through deposit insurance, mortgage servicing accounts, and others. These proposed amendments would likely benefit covered institutions by reducing their total compliance costs without unduly increasing the risk of untimely deposit insurance payments; however, it is difficult to quantify these benefits because the FDIC does not currently have access to data on the number of such accounts held by covered institutions.

The proposed rule also improves the clarity of certain part 370 provisions and makes corrections. This is expected to benefit covered institutions by reducing uncertainty regarding compliance with part 370. The benefits to covered institutions of these proposed amendments is difficult to quantify because the FDIC does not have access to data that would shed light on the extent to which compliance costs by covered institutions were increased as a result of uncertainty.

The reductions in recordkeeping requirements associated with the proposed rule would likely reduce the current estimated compliance burdens associated with part 370. It is difficult to estimate the benefits each covered institution is likely to incur as a result of the proposed rule because the estimation depends upon the progress each covered institution has already made toward compliance, and the likelihood that a covered institution would avail itself of the benefits offered by the proposed amendments, among other things. Additionally, it is difficult to estimate the benefits each covered institution would be likely to enjoy as a result of the proposed rule because the FDIC does not currently have access to data on the number of accounts held by covered institutions for which these benefits would accrue.

For all the reasons described in this section, quantitative estimates of the reduction in recordkeeping burden under the proposed rule are subject to uncertainty. That being said, an analysis of deposit account information at covered institutions suggested that the proposed rule could affect an estimated one to 20 percent of accounts on average for covered institutions.[19] The realized effect would vary depending upon the types of accounts that a covered institution holds. The more accounts a covered institution has, the greater the reduction in recordkeeping requirements these proposed amendments would likely provide. To conservatively estimate the expected benefits of the proposed rule, the FDIC assumed that the reduced recordkeeping requirements would affect between one and 20 percent of all deposit accounts at covered institutions. Therefore, the proposed rule is estimated to reduce the compliance burden of part 370 to between 41,738 and 836,028 hours for all covered institutions, which equates to an estimated reduction in compliance costs of between $2.0 million and $41.8 million.

[18] The 2016 Final Rule estimated total costs of $478 million, with $386 million of those costs to 38 covered financial institutions and the remainder borne by the FDIC and account holders. See 12 CFR part 370 RIN 3064–AE33, *Recordkeeping for Timely Deposit Insurance Determination,* **Federal Register**, Vol. 81, No. 233, Monday, December 5, 2016 for further discussion of the cost estimation model. For this proposed rule, the FDIC updated the list of covered institutions to 36 as of the effective date of the 2016 Final Rule. The FDIC also updated the data in the model to December 31, 2018.

[19] The FDIC analyzed the dollar volume of retirement, mortgage servicing, and trust accounts as reported on the December 31, 2018, Call Report for covered institutions. Additionally, the FDIC analyzed pre-paid card account data from The Nilson Report's, Top 50 U.S. Prepaid Card Issuers July 2015, Issue 1067 to determine an estimated range of deposit accounts at covered institutions that might be affected by the proposed rule.

B. Costs

The proposed rule is unlikely to impose any significant costs to covered institutions. The proposed rule would offer covered institutions that became covered institutions on the effective date the option to extend their April 1, 2020, compliance date by up to one year. Expanding the time to comply with part 370 would increase the risk that a covered institution might fail without having fully implemented the capabilities that part 370 calls for. An inability to make timely deposit insurance determinations for deposit accounts at a covered institution could increase the potential for disruptions to check clearing processes, direct debit arrangements, or other payment system functions. However, the FDIC does not believe that the incremental costs or risks of extending the initial compliance date for up to one additional year are large. Also, the FDIC presumes that covered institutions have made some progress toward compliance in the past two to three years, likely mitigating the issues that would be associated with recordkeeping deficiencies in the event that a covered institution were to fail. Finally, to the extent that covered institutions have made some progress toward compliance with part 370, the proposed rule may pose some small costs associated with requisite changes to part 370 compliance efforts. However, the FDIC believes that these costs are likely to be small. The FDIC estimates that covered institutions requesting exception from certain part 370 requirements will expend 60 labor hours doing so on average.

The FDIC invites comment on the information presented in this section. Are there any other costs or benefits the FDIC should consider?

V. Alternatives Considered

The FDIC considered several alternatives while developing this proposal. The FDIC first considered leaving part 370 unchanged. The FDIC rejected this alternative because the proposed rule would benefit covered institutions by reducing compliance burdens or clarifying some of the requirements while still supporting a prompt deposit insurance determination process in the event of failure. The FDIC considered providing a one-year extension to all covered institutions that were covered institutions as of the effective date of part 370, but opted instead for the elective extension as the burden of obtaining the extension is minimal and is outweighed by the value of earlier compliance and the information regarding compliance status to be gained by the proposed approach. The FDIC considered limiting the availability of the alternative recordkeeping requirements for deposits resulting from credit balances on accounts for debt owed to the covered institution to overpayments on credit card accounts, but rejected this approach as the same difficulties that justified this alternative could arise in connection with other debts to the covered institution. The FDIC considered not requiring covered institutions to deliver notification letters to the FDIC prior to relying on exceptions granted to other covered institutions, but rejected this approach due to the FDIC's need to be aware of which covered institutions are relying on previously granted exceptions.

The FDIC invites comment on these alternatives and any others not discussed in this section.

VI. Regulatory Analysis and Procedures

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The information collection related to this proposed rule is entitled ''Recordkeeping for Timely Deposit Insurance Determination'' and has been cleared by OMB under Control Number 3064–0202. This information collection will be extended for three years, with revision. The information collection requirements contained in this proposed rule have been submitted by the FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320).

Comments are invited on:

- *Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;*
- *The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;*
- *Ways to enhance the quality, utility, and clarity of the information to be collected;*
- *Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and*
- *Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.*

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, FDIC Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping for Timely Deposit Insurance Determination.

Frequency: On occasion.

Affected Public: Insured depository institutions having two million or more deposit accounts and their depositors.[20]

Current Action: The proposed rule is estimated to reduce recordkeeping and reporting requirements by 418,026 hours or $20.9 million dollars. The proposed rule would reduce compliance burdens for covered institutions associated with recordkeeping and reporting in the following ways:

- Removing the certification requirement covered institutions must make with respect to deposit accounts with transactional features that would be eligible for pass-through deposit insurance coverage;
- Enabling covered institutions to maintain deposit account records for certain trust accounts in accordance with the alternative recordkeeping requirements set forth in § 370.4(b)(2) rather than the general recordkeeping requirements set forth in § 370.4(a);
- Offering a different recordkeeping/reporting method for deposits created as a result of credit balances on accounts for debt owed to a covered institution;
- Enabling covered institutions to file joint requests for exception pursuant to § 370.8(b); and
- Deeming certain exceptions granted if based on substantially similar facts and the same circumstances as a request previously granted by the FDIC.

[20] Covered institutions will, as necessary, contact their depositors to obtain accurate and complete account information for deposit insurance determinations. For the purposes of this analysis, the FDIC assumes that depositors will voluntarily respond.

An analysis of deposit account information at covered institutions suggested that the proposed rule could affect an estimated one to 20 percent of accounts on average, for covered institutions.[21] The realized effect would vary depending upon the types of accounts that a covered institution offers. The more deposit accounts a covered institution has, the greater the reduction in recordkeeping requirements these proposed amendments would provide. To conservatively estimate the expected benefits of the proposed rule, the FDIC assumed that between one and 20 percent of all deposit accounts at covered institutions would be affected.

For the purposes of the Paperwork Reduction Act, the FDIC estimates that approximately 10 percent of non-retirement accounts consist of the type of accounts for which the FDIC has granted relief. The number of accounts affects only one of eight components of the burden model for the final rule for part 370 adopted in 2016 (the 2016 Final Rule): Legacy Data Clean-up. This component consists of two portions: (1) Automated clean-up, and (2) manual clean-up. The number of accounts affects only the manual portion associated with correcting bank records, and thus the proposed rule would affect only that estimate.

Using this adjusted burden as a baseline for the burden reduction of the proposed rule, we estimate that the proposed rule would reduce the implementation burden by 418,026 hours. This includes 418,058 of burden reduction but adds 32 hours of additional burden for requests for extensions and exemptions under the proposed rule. The proposed rule would not change the annual ongoing burden.

For the purpose of the 2016 Final Rule, the FDIC estimated that manual data clean-up would involve a 60 percent ratio of internal to external labor, and that this labor would cost $65 per hour and $85 per hour, respectively. The FDIC assumed that 5 percent of deposit accounts had erroneous account information and that manual labor would correct 10 accounts per hour of effort. The FDIC also assumed that for every hour of manual labor used by covered institutions, depositors would also exert one hour toward correcting account information at a national average wage rate of $27 per hour. From this, the FDIC estimated a total implementation cost of manual data clean-up of $207.4 million.

As with the burden hours, the FDIC adjusted the original burden model to account for updated data and included IDIs that were actually covered by the Rule as a new baseline. After this adjustment, the FDIC estimates that the cost of manual data clean-up fell to $188.1 million, a decrease of $20.9 million because of the proposed rule.

Methodology

In estimating the costs of part 370, the FDIC engaged the services of an independent consulting firm. Working with the FDIC, the consultant used its extensive knowledge and experience with IT systems at financial institutions to develop a model to provide cost estimates for the following activities:

- Implementing the deposit insurance calculation
- Legacy data clean-up
- Data extraction
- Data aggregation
- Data standardization
- Data quality control and compliance
- Data reporting
- Ongoing operations

Cost estimates for these activities were derived from a projection of the types of workers needed for each task, an estimate of the amount of labor hours required, an estimate of the industry average labor cost (including benefits) for each worker needed, and an estimate of worker productivity. The analysis assumed that manual data clean-up would be needed for 5 percent of deposit accounts, 10 accounts per hour would be resolved, and internal labor would be used for 60 percent of the clean-up. This analysis also projected higher costs for IDIs based on the following factors:

- Higher number of deposit accounts
- Higher number of distinct core servicing platforms
- Higher number of depository legal entities or separate organizational units
- Broader geographic dispersal of accounts and customers
- Use of sweep accounts
- Greater degree of complexity in business lines, accounts, and operations.

Approximately half of part 370's estimated total costs are attributable to legacy data clean-up. These legacy data clean-up cost estimates are sensitive to both the number of deposit accounts and the number of deposit IT systems. More than 90 percent of the legacy data clean-up costs are associated with manually collecting account information from customers and entering it into the covered institutions' IT systems. Data aggregation, which is sensitive to the number of deposit IT systems, makes up about 13 percent of the Rule's estimated costs.

The 2016 Final Rule estimated total costs of $478 million, with $386 million of those costs to 38 covered financial institutions and the remainder borne by the FDIC and account holders.[22] For this proposed rule, the FDIC updated the list of covered institutions to 36 as of the effective date of the 2016 Final Rule and the types of accounts covered. The FDIC also updated the data in the model to December 31, 2018.

	Number of respondents[24]	Estimated annual frequency	Estimated average hours per response[25]	Estimated total annual burden hours
Implementation Burden[23]				
2016 Final Rule:				
Lowest Complexity Institutions	12	1	31,054	372,648
Middle Complexity Institutions	13	1	46,342	602,446
Highest Complexity Institutions	13	1	325,494	4,231,422

[21] The FDIC analyzed the dollar volume of retirement, mortgage servicing, and trust accounts as reported on the December 31, 2018, Call Reports for covered institutions.

[22] See 81 FR 87734 (December 5, 2016) for further discussion of the cost estimation model.

[23] Implementation costs and hours are spread over a three-year period.

[24] None of the respondents required to comply with the Rule are small entities as defined by the Small Business Administration (*i.e.,* entities with less than $550 million in total assets).

[25] Weighted average rounded to the nearest hour. For PRA purposes, covered institutions are presented in roughly equal-sized low, medium and high complexity tranches ranked by their PRA implementation hours.

	Number of respondents [24]	Estimated annual frequency	Estimated average hours per response [25]	Estimated total annual burden hours
2016 Final Rule Total	*38*		*137,014*	*5,206,516*
Updated Data and Coverage: [26]				
Lowest Complexity Institutions	12	1	30,304	363,648
Middle Complexity Institutions	12	1	58,113	697,356
Highest Complexity Institutions	12	1	355,132	4,261,584
Updated Data and Coverage Total	*36*	*1*	*147,850*	*5,322,588*
Change from Updated Data	*−2*			*116,072*
Proposed Rule less Exceptions:				
Lowest Complexity Institutions	12	1	28,304	339,648
Middle Complexity Institutions	12	1	53,643	643,716
Highest Complexity Institutions	12	1	326,764	3,921,168
Proposed Rule Total less Exceptions	*36*	*1*	*136,237*	*4,904,532*
Exceptions or Release: [27]				
Requests for Release of Requirements	*1*	*1*	*5*	*5*
Requests for Exception	*1*	*1*	*60*	*60*
				4,904,608
Change from Proposed Rule	*0*			*(417,980)*
Ongoing Burden				
2016 Final Rule:				
Lowest Complexity Institutions	12	1	493.1	5,917
Middle Complexity Institutions	13	1	516.7	6,718
Highest Complexity Institutions	13	1	566.6	7,365
Proposed Rule Total	*38*		*526*	*20,000*
Updated Data and Coverage:				
Lowest Complexity Institutions	12	1	487	5,844
Middle Complexity Institutions	12	1	488	5,856
Highest Complexity Institutions	12	1	558	6,696
Updated Data and Coverage Total	*36*		*511*	*18,396*
Change	*−2*			*(1,604)*
Proposed Rule:				
Lowest Complexity Institutions	12	1	487	5,844
Middle Complexity Institutions	12	1	488	5,856
Highest Complexity Institutions	12	1	558	6,696
Updated Data and Coverage Total	*36*		*511*	*18,396*
Change from Proposed Rule	*0*			*0*

The implementation costs for all covered institutions are estimated to total $362.4 million and require approximately 4.9 million labor hours. This represents a decline of $20.9 million and 417,980 labor hours for covered institutions due to the proposed rule. The implementation costs cover (1) making the deposit insurance calculation, (2) legacy data cleanup, (3) data extraction, (4) data aggregation, (5) data standardization, (6) data quality control and compliance, and (7) data reporting.

In terms of initial implementation, the estimated PRA burden for individual covered institutions after enacting the proposed rule would require between 9,056 and 275,112 burden hours, and these burden hours would be monetized to range from $757,851 to $31.0 million. This represents a decline for covered institutions of 675 to 29,007 burden hours and $33,787 to $532,873 million, respectively.

The estimated ongoing burden on individual covered institutions for reporting, testing, maintenance, and other periodic items is estimated to

[26] This section incorporates changes to the baseline estimate of Rule burden based on changes in the number of covered institutions as well as changes to the data inputs for the burden model. The 2016 Final Rule estimated 38 IDIs would be covered. As of April 1, 2017, the effective date of the Rule, only 32 IDIs were covered by the Rule. Four additional IDIs became covered by the Rule in later quarters for a total of 36 covered institutions. This section uses bank-level data from December 31, 2018, updating the original burden estimate based on December 31, 2016, data.

[27] The proposed rule allows for covered institutions to request exceptions from Rule requirements or extensions of time to comply. The FDIC cannot estimate how many covered institutions will request such exceptions or extensions.

range between 481 and 666 labor hours, and these ongoing burden hours are monetized to be between $72,146 and $99,865 annually. The ongoing cost burdens remain the same.

ESTIMATED MONETIZED COSTS BY COMPONENT

Components	2016 final rule	Updated data and coverage	Proposed rule	Change in cost from proposed rule
	Component cost **	Component cost **	Component cost **	
Legacy Data Cleanup	$226,482,333	$227,449,750	$206,547,385	($20,902,365)
Data Aggregation	64,015,373	62,707,618	62,707,618	0
Data Standardization	36,573,894	35,811,558	35,811,558	0
Data Extraction	25,397,761	25,073,291	25,073,291	0
Quality Control & Compliance	18,403,006	18,024,478	18,024,478	0
Insurance Calculation	9,500,400	8,584,000	8,548,000	0
Reporting	5,971,800	5,661,000	5,661,000	0
Implementation Costs	$367,936,888	$383,311,695	$362,409,330	($20,902,365)
Ongoing Operations	2,999,963	2,758,899	2,758,899	0
Total Cost	$389,344,530	$386,070,594	$365,168,229	0
Change from Updating Data		($3,273,936)		
Change from Proposed Rule			($20,902,365)	

The estimated annual burden for the ''Recordkeeping for Timely Deposit Insurance Determination'' information collection (OMB Control Number 3064–0202) if the proposed rule is adopted would be as follows:

Implementation Burden:[28]

Estimated number of respondents: 36 covered institutions and their depositors.

Estimated time per response:[29] 136,237 hours (average).

Low complexity: 11,946–41,406 hours.

Medium complexity: 41,947–74,980 hours.

High complexity: 75,404–762,185 hours.

Estimated total implementation burden: 4.9 million hours.

Ongoing Burden:

Estimated number of respondents: 36 covered institutions and their depositors.

Estimated time per response: 511 hours (average) per year.

Low complexity: 433–530 hours.

Medium complexity: 434–530 hours.

High complexity: 435–661 hours.

Estimated total ongoing annual burden: 18,396 hours per year.

Description of Collection: Part 370 requires a covered institution to (1) maintain complete and accurate data on each depositor's ownership interest by right and capacity for all of the covered institution's deposit accounts, except as provided, and (2) configure its IT system to be capable of calculating the insured and uninsured amount in each deposit account by ownership right and capacity, which would be used by the FDIC to make deposit insurance determinations in the event of the covered institution's failure.

These requirements also must be supported by policies and procedures and will involve ongoing burden for testing, reporting to the FDIC, and general maintenance of recordkeeping and IT systems' functionality. Estimates of both initial implementation and ongoing burden are provided.

Compliance with part 370 would involve certain reporting requirements:

- Not later than ten business days after the effective date of the final rule or after becoming a covered institution, a covered institution shall designate a point of contact responsible for implementing the requirements of this rulemaking.
- Covered institutions would be required to certify annually that their IT systems can calculate deposit insurance coverage accurately and completely within the 24 hour time frame set forth in the final rule. If a covered institution experiences a significant change in its deposit taking operations, it may be required to demonstrate more frequently than annually that its IT system can calculate deposit insurance coverage accurately and completely.
- In connection with the certification, covered institutions shall complete a deposit insurance coverage summary report.
- Covered institutions may seek relief from any specific aspect of the final rule's requirements if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. When doing so, they must demonstrate the need for exception, describe the impact of an exception on the ability to quickly and accurately calculate deposit insurance for the related deposit accounts, and state the number of, and the dollar value of deposits in, the related deposit accounts.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[30] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million who are independently owned and operated or owned by a holding

[28] Implementation costs and hours are spread over a three-year period.

[29] For PRA purposes, covered institutions are presented in roughly equal-sized low, medium and high complexity tranches ranked by their PRA implementation hours.

[30] 5 U.S.C. 601 *et seq.*

company with less than $550 million in total assets.[31]

The FDIC insures 5,486 institutions, of which 4,047 are considered small entities for the purposes of RFA.[32]

This proposed rule will affect all insured depository institutions that have two million or more deposit accounts. The FDIC does not currently insure any institutions with two million or more deposit accounts that have $550 million or less in total consolidated assets.[33] Since this proposal does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposal have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner.

The FDIC invites your comments on how to make this revised proposal easier to understand. For example:

- *Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?*
- *Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?*
- *Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?*

D. Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 370

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

■ For the reasons set forth in the preamble, the Federal Insurance Deposit Corporation proposes to amend 12 CFR part 370 by revising it to read as follows:

PART 370—RECORDKEEPING FOR TIMELY DEPOSIT INSURANCE DETERMINATION

Sec.

370.1 Purpose and scope.
370.2 Definitions.
370.3 Information technology system requirements.
370.4 Recordkeeping requirements.
370.5 Actions required for certain deposit accounts with transactional features.
370.6 Implementation.
370.7 Accelerated implementation.
370.8 Relief.
370.9 Communication with the FDIC.
370.10 Compliance.
Appendix A to Part 370—Ownership Right and Capacity Codes
Appendix B to Part 370—Output Files Structure
Appendix C to Part 370—Credit Balance Processing File Structure

Authority: 12 U.S.C. 1817(a)(9), 1819 (Tenth), 1821(f)(1), 1822(c), 1823(c)(4).

§ 370.1 Purpose and scope.

Unless otherwise provided in this part, each ''covered institution'' (defined in § 370.2(c)) is required to implement the information technology system and recordkeeping capabilities needed to calculate the amount of deposit insurance coverage available for each deposit account in the event of its failure. Doing so will improve the FDIC's ability to fulfill its statutory mandates to pay deposit insurance as soon as possible after a covered institution's failure and to resolve a covered institution at the least cost to the Deposit Insurance Fund.

§ 370.2 Definitions.

For purposes of this part:

(a) *Account holder* means the person or entity who has opened a deposit account with a covered institution and with whom the covered institution has a direct legal and contractual relationship with respect to the deposit.

(b) *[Reserved.]*

(c) *Covered institution* means:

(1) An insured depository institution which, based on its Reports of Condition and Income filed with the appropriate federal banking agency, has 2 million or more deposit accounts during the two consecutive quarters preceding the effective date of this part or thereafter; or

(2) Any other insured depository institution that delivers written notice to the FDIC that it will voluntarily comply with the requirements set forth in this part.

(d) *Compliance date* means, except as otherwise provided in § 370.6(b):

(1) April 1, 2020, for any insured depository institution that was a covered institution as of April 1, 2017;

(2) The date that is three years after the date on which an insured depository institution becomes a covered institution; or

(3) The date on which an insured depository institution that elects to be a covered institution under § 370.2(c)(2) files its first certification of compliance and deposit insurance coverage summary report pursuant to § 370.10(a).

(e) *Deposit* has the same meaning as provided under section 3(*l*) of the Federal Deposit Insurance Act (12 U.S.C. 1813(*l*)).

(f) *Deposit account records* has the same meaning as provided in 12 CFR 330.1(e).

(g) *Ownership rights and capacities* are set forth in 12 CFR part 330.

(h) *Payment instrument* means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(i) *Standard maximum deposit insurance amount* (or SMDIA) has the same meaning as provided pursuant to section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) and 12 CFR 330.1(o).

(j) *Transactional features* with respect to a deposit account means that the account holder or the beneficial owner of deposits can make transfers from the deposit account to parties other than the account holder, beneficial owner of deposits, or the covered institution itself, by methods that may result in such transfers being reflected in the end-of-day ledger balance for such deposit account on a day that is later

[31] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered institution is ''small'' for the purposes of RFA.

[32] Call Report data, September 30, 2018, the latest date for which bank holding company data is available.

[33] FDIC Call Report data, December 31, 2018.

than the day that such transfer is initiated, even if initiated prior to the institution's normal cutoff time for such transaction. A deposit account also has transactional features if preauthorized or automatic instructions provide for transfer of deposits in the deposit account to another deposit account at the same institution, if such other deposit account itself has transactional features.

(k) *Unique identifier* means an alpha-numeric code associated with an individual or entity that is used consistently and continuously by a covered institution to monitor the covered institution's relationship with that individual or entity.

§ 370.3 Information technology system requirements.

(a) A covered institution must configure its information technology system to be capable of performing the functions set forth in paragraph (b) of this section within 24 hours after the appointment of the FDIC as receiver. To the extent that a covered institution does not maintain its deposit account records in the manner prescribed under § 370.4(a) but instead in the manner prescribed under § 370.4(b), (c) or (d), the covered institution's information technology system must be able to perform the functions set forth in paragraph (b) of this section upon input by the FDIC of additional information collected after failure of the covered institution.

(b) Each covered institution's information technology system must be capable of:

(1) Accurately calculating the deposit insurance coverage for each deposit account in accordance with 12 CFR part 330;

(2) Generating and retaining output records in the data format and layout specified in Appendix B;

(3) Restricting access to some or all of the deposits in a deposit account until the FDIC has made its deposit insurance determination for that deposit account using the covered institution's information technology system; and

(4) Debiting from each deposit account the amount that is uninsured as calculated pursuant to paragraph (b)(1) of this section.

§ 370.4 Recordkeeping requirements.

(a) *General recordkeeping requirements.* Except as otherwise provided in paragraphs (b), (c), and (d) of this section, a covered institution must maintain in its deposit account records for each account the information necessary for its information technology system to meet the requirements set forth in § 370.3. The information must include:

(1) The unique identifier of each:

(i) Account holder;

(ii) Beneficial owner of a deposit, if the account holder is not the beneficial owner; and

(iii) Grantor and each beneficiary, if the deposit account is held in connection with an informal revocable trust that is insured pursuant to 12 CFR 330.10 (*e.g.,* payable-on-death accounts, in-trust-for accounts, and *Totten* Trust accounts).

(2) The applicable ownership right and capacity code listed and described in Appendix A to this part.

(b) *Alternative recordkeeping requirements.* As permitted under this paragraph, a covered institution may maintain in its deposit account records less information than is required under paragraph (a) of this section.

(1) For each deposit account for which a covered institution's deposit account records disclose the existence of a relationship which might provide a basis for additional deposit insurance in accordance with 12 CFR 330.5 or 330.7 and for which the covered institution does not maintain information that would be needed for its information technology system to meet the requirements set forth in § 370.3, the covered institution must maintain, at a minimum, the following in its deposit account records:

(i) The unique identifier of the account holder; and

(ii) The corresponding ''pending reason'' code listed in data field 2 of the pending file format set forth in Appendix B (and need not maintain a ''right and capacity'' code).

(2) For each formal revocable trust account that is insured as described in 12 CFR 330.10 and for each irrevocable trust account that is insured as described in either 12 CFR 330.12 or 12 CFR 330.13, and for which the covered institution does not maintain the information that would be needed for its information technology system to meet the requirements set forth in § 370.3, the covered institution must, at a minimum, maintain in its deposit account records:

(i) The unique identifier of the account holder;

(ii) The unique identifier of the grantor if the deposit account has transactional features (unless the account is insured as described in 12 CFR 330.12, in which case the unique identifier of the grantor need not be maintained for purposes of this part); and

(iii) The corresponding ''right and capacity'' code listed in data field 4 of the pending file format set forth in Appendix B.

(c) *Recordkeeping requirements for official items.* A covered institution must maintain in its deposit account records the information needed for its information technology system to meet the requirements set forth in § 370.3 with respect to accounts held in the name of the covered institution from which withdrawals are made to honor a payment instrument issued by the covered institution, such as a certified check, loan disbursement check, interest check, traveler's check, expense check, official check, cashier's check, money order, or similar payment instrument. To the extent that the covered institution does not have such information, it need only maintain in its deposit account records for those accounts the corresponding ''pending reason'' code listed in data field 2 of the pending file format set forth in Appendix B (and need not maintain a ''right and capacity'' code).

(d) *Recordkeeping requirements for deposits resulting from credit balances on an account for debt owed to the covered institution.* A covered institution is not required to meet the recordkeeping requirements of paragraphs (a) or (b) of this section with respect to deposit liabilities reflected as credit balances on an account for debt owed to the covered institution if its information technology system is capable of:

(1) Immediately upon failure, restricting access to:

(i) Such credit balances on the account for debt owed to the covered institution, or

(ii) An equal amount in that borrower's deposit account(s) at the covered institution; and

(2) Producing:

(i) Within 24 hours after failure, a file listing credit balances on open-end credit accounts (revolving credit lines) such as credit card accounts and home equity lines of credit in the format provided in Appendix C to this part 370 that can be used by the covered institution's information technology system to meet the requirements set forth in § 370.3(b)(1), (2) and (4); and

(ii) Promptly after failure, a file listing the credit balances on closed-end loan accounts in the format provided in Appendix C to this part 370 that can be used by the covered institution's information technology system to meet the requirements set forth in § 370.3(b)(1), (2) and (4).

§ 370.5 Actions required for certain deposit accounts with transactional features.

(a) For each deposit account with transactional features for which the covered institution maintains its deposit account records in accordance with § 370.4(b)(1), a covered institution must take steps reasonably calculated to ensure that the account holder will provide to the FDIC the information needed for the covered institution's information technology system to calculate deposit insurance coverage as set forth in § 370.3(b) within 24 hours after the appointment of the FDIC as receiver. At a minimum, ''steps reasonably calculated'' shall include:

(1) Contractual arrangements with the account holder that obligate the account holder to deliver information needed for deposit insurance calculation to the FDIC in a format compatible with the covered institution's information technology system immediately upon the covered institution's failure; and

(2) A disclosure stating that the account holder's delay in delivery of such information, or the account holder's delivery of information in a format that is not compatible with the covered institution's information technology system, could result in delayed access to deposits should the covered institution fail.

(b) A covered institution need not take the steps required pursuant to paragraph (a) of this section with respect to:

(1) Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors;

(2) Accounts maintained by real estate brokers, real estate agents, or title companies in which funds from multiple clients are deposited and held for a short period of time in connection with a real estate transaction;

(3) Accounts established by an attorney or law firm on behalf of clients, commonly known as an *Interest on Lawyers Trust Accounts,* or functionally equivalent accounts;

(4) Accounts held in connection with an employee benefit plan (as defined in 12 CFR 330.14); and

(5) An account maintained by an account holder for the benefit of others, to the extent that the deposits in the account are held for the benefit of:

(i) A formal revocable trust that would be insured as described in 12 CFR 330.10;

(ii) An irrevocable trust that would be insured as described in 12 CFR 330.12; or

(iii) An irrevocable trust that would be insured as described in 12 CFR 330.13.

§ 370.6 Implementation.

(a) A covered institution must satisfy the information technology system and recordkeeping requirements set forth in this part before the compliance date.

(b) *Extension.*

(1) A covered institution may submit a request to the FDIC for an extension of its compliance date. The request shall state the amount of additional time needed to meet the requirements of this part, the reason(s) for which such additional time is needed, and the total number and dollar value of accounts for which deposit insurance coverage could not be calculated using the covered institution's information technology system were the covered institution to fail as of the date of the request. The FDIC's grant of a covered institution's request for extension may be conditional or time-limited.

(2) An insured depository institution that became a covered institution on April 1, 2017, may extend its compliance date for up to one year upon written notice to the FDIC prior to April 1, 2020. Such notice shall state the total number of, and dollar amount of deposits in, deposit accounts for which the covered institution's information technology system cannot calculate deposit insurance coverage as of April 1, 2020.

§ 370.7 Accelerated implementation.

(a) On a case-by-case basis, the FDIC may accelerate, upon notice, the implementation time frame for all or part of the requirements of this part for a covered institution that:

(1) Has a composite rating of 3, 4, or 5 under the Uniform Financial Institution's Rating System (*CAMELS* rating), or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is undercapitalized, as defined under the prompt corrective action provisions of 12 CFR part 324; or

(3) Is determined by the appropriate federal banking agency or the FDIC in consultation with the appropriate federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the covered institution by its appropriate federal banking agency in its most recent report of examination.

(b) In implementing this section, the FDIC must consult with the covered institution's appropriate federal banking agency and consider the complexity of the covered institution's deposit system and operations, extent of the covered institution's asset quality difficulties, volatility of the institution's funding sources, expected near-term changes in the covered institution's capital levels, and other relevant factors appropriate for the FDIC to consider in its role as insurer of the covered institution.

§ 370.8 Relief.

(a) *Exemption.* A covered institution may submit a request in the form of a letter to the FDIC for an exemption from this part if it demonstrates that it does not take deposits from any account holder which, when aggregated, would exceed the SMDIA for any owner of the funds on deposit and will not in the future.

(b) *Exception.* (1) One or more covered institutions may submit a request in the form of a letter to the FDIC for exception from one or more of the requirements set forth in this part if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. The request letter must:

(i) Identify the covered institution(s) requesting the exception;

(ii) Specify the requirement(s) of this part from which exception is sought;

(iii) Describe the deposit accounts the request concerns and state the number of, and dollar amount of deposits in, such deposit accounts for each covered institution requesting the exception;

(iv) Demonstrate the need for exception for each covered institution requesting the exception; and

(v) Explain the impact of the exception on the ability of each covered institution's information technology system to quickly and accurately calculate deposit insurance for the related deposit accounts.

(2) The FDIC shall publish a notice of its response to each exception request in the **Federal Register**.

(3) By following the procedure set forth in this paragraph, a covered institution may rely upon another covered institution's exception request which the FDIC has previously granted. The covered institution must notify the FDIC that it will invoke relief from certain part 370 requirements by submitting a notification letter to the FDIC demonstrating that the covered institution has substantially similar facts and the same circumstances as those of the covered institution that has already received the FDIC's approval. The covered institution's notification letter must also include the information required under paragraph (b)(1) of this section and cite the applicable notice published pursuant to paragraph (b)(2)

of this section. The covered institution's notification for exception shall be deemed granted subject to the same conditions set forth in the FDIC's published notice unless the FDIC informs the covered institution to the contrary within 120 days after receipt of a complete notification for exception.

(c) *Release from this part.* A covered institution may submit a request in the form of a letter to the FDIC for release from this part if, based on its Reports of Condition and Income filed with the appropriate federal banking agency, it has less than two million deposit accounts during any three consecutive quarters after becoming a covered institution.

(d) *Release from 12 CFR 360.9 requirements.* A covered institution is released from the provisional hold and standard data format requirements of 12 CFR 360.9 upon submitting to the FDIC the compliance certification required under § 370.10(a). A covered institution released from 12 CFR 360.9 under this paragraph (d) shall remain released for so long as it is a covered institution.

(e) *FDIC approval of a request.* The FDIC will consider all requests submitted in writing by a covered institution on a case-by-case basis in light of the objectives of this part, and the FDIC's grant of any request made by a covered institution pursuant to this section may be conditional or time-limited.

§ 370.9 Communication with the FDIC.

(a) *Point of contact.* Not later than ten business days after either the effective date of this part or becoming a covered institution, a covered institution must notify the FDIC of the person(s) responsible for implementing the recordkeeping and information technology system capabilities required by this part.

(b) *Address.* Point-of-contact information, reports and requests made under this part shall be submitted in writing to: Office of the Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429–0002.

§ 370.10 Compliance.

(a) *Certification and report. A* covered institution shall submit to the FDIC a certification of compliance and a deposit insurance coverage summary report on or before its compliance date and annually thereafter.

(1) The certification must:

(i) Confirm that the covered institution has implemented all required capabilities and tested its information technology system during the preceding twelve months;

(ii) Confirm that such testing indicates that the covered institution is in compliance with this part; and

(iii) Be signed by the covered institution's chief executive officer or chief operating officer and made to the best of his or her knowledge and belief after due inquiry.

(2) The deposit insurance coverage summary report must include:

(i) A description of any material change to the covered institution's information technology system or deposit taking operations since the prior annual certification;

(ii) The number of deposit accounts, number of different account holders, and dollar amount of deposits by ownership right and capacity code (as listed and described in Appendix A);

(iii) The total number of fully-insured deposit accounts and the total dollar amount of deposits in all such accounts;

(iv) The total number of deposit accounts with uninsured deposits and the total dollar amount of uninsured amounts in all of those accounts; and

(v) By deposit account type, the total number of, and dollar amount of deposits in, deposit accounts for which the covered institution's information technology system cannot calculate deposit insurance coverage using information currently maintained in the covered institution's deposit account records.

(3) If a covered institution experiences a significant change in its deposit taking operations, the FDIC may require that it submit a certification of compliance and a deposit insurance coverage summary report more frequently than annually.

(b) *FDIC Testing.*

(1) The FDIC will conduct periodic tests of a covered institution's compliance with this part. These tests will begin no sooner than the last day of the first calendar quarter following the compliance date and would occur no more frequently than on a three-year cycle thereafter, unless there is a material change to the covered institution's information technology system, deposit-taking operations, or financial condition following the compliance date, in which case the FDIC may conduct such tests at any time thereafter.

(2) A covered institution shall provide the appropriate assistance to the FDIC as the FDIC tests the covered institution's ability to satisfy the requirements set forth in this part.

(c) *Effect of pending requests.* A covered institution that has submitted a request pursuant to § 370.6(b) or § 370.8(a) through (c) will not be considered to be in violation of this part as to the requirements that are the subject of the request while awaiting the FDIC's response to such request.

(d) *Effect of changes to law.* A covered institution will not be considered to be in violation of this part as a result of a change in law that alters the availability or calculation of deposit insurance for such period as specified by the FDIC following the effective date of such change.

(e) *Effect of merger.* An instance of non-compliance occurring as the direct result of a merger between a covered institution and another insured depository institution shall be deemed not to constitute a violation of this part for a period of one year following the effective date of the merger.

Appendix A to Part 370: Ownership Right and Capacity Codes

A covered institution must use the codes defined below when assigning ownership right and capacity codes.

Code	Illustrative description
SGL	Single Account (12 CFR 330.6): An account owned by one person with no testamentary or ''payable-on-death'' beneficiaries. It includes individual accounts, sole proprietorship accounts, single-name accounts containing community property funds, and accounts of a decedent and accounts held by executors or administrators of a decedent's estate.
JNT	Joint Account (12 CFR 330.9): An account owned by two or more persons with no testamentary or ''payable-on-death'' beneficiaries (other than surviving co-owners) An account does not qualify as a joint account unless: (1) All co-owners are living persons; (2) each co-owner has personally signed a deposit account signature card (except that the signature requirement does not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained on behalf of the co-owners by an agent or custodian); and (3) each co-owner possesses withdrawal rights on the same basis.

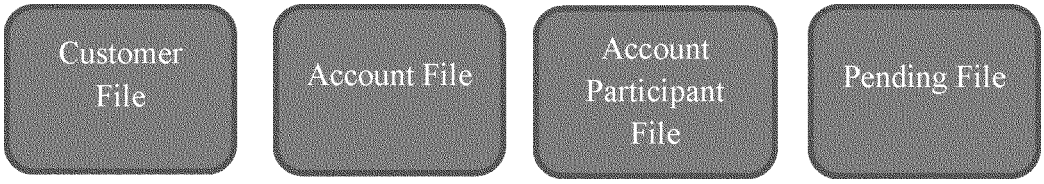
Code	Illustrative description
REV	Revocable Trust Account (12 CFR 330.10): An account owned by one or more persons that evidences an intention that, upon the death of the owner(s), the funds shall belong to one or more beneficiaries. There are two types of revocable trust accounts: (1) Payable-on-Death Account (Informal Revocable Trust Account): An account owned by one or more persons with one or more testamentary or ''payable-on-death'' beneficiaries. (2) Revocable Living Trust Account (Formal Revocable Trust Account): An account in the name of a formal revocable ''living trust'' with one or more grantors and one or more testamentary beneficiaries.
IRR	Irrevocable Trust Account (12 CFR 330.13): An account in the name of an irrevocable trust (unless the trustee is an insured depository institution, in which case the applicable code is DIT.
CRA	Certain Other Retirement Accounts (12 CFR 330.14 (b)–(c)) to the extent that participants under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan, including an individual retirement account described in section 408(a) of the Internal Revenue Code (26 U.S.C. 408(a)), an account of a deferred compensation plan described in section 457 of the Internal Revenue Code (26 U.S.C. 457), an account of an individual account plan as defined in section 3(34) of the Employee Retirement Income Security Act (29 U.S.C. 1002), a plan described in section 401(d) of the Internal Revenue Code (26 U.S.C. 401(d)).
EBP	Employee Benefit Plan Account (12 CFR 330.14): An account of an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act (29 U.S.C. 1002), including any plan described in section 401(d) of the Internal Revenue Code (26 U.S.C. 401(d)), but not including any account classified as a Certain Retirement Account.
BUS	Business/Organization Account (12 CFR 330.11): An account of an organization engaged in an 'independent activity' (as defined in § 330.1(g)), but not an account of a sole proprietorship. This category includes: a. Corporation Account: An account owned by a corporation. b. Partnership Account: An account owned by a partnership. c. Unincorporated Association Account: An account owned by an unincorporated association (*i.e.,* an account owned by an association of two or more persons formed for some religious, educational, charitable, social, or other noncommercial purpose).
GOV1–GOV2–GOV3	Government Account (12 CFR 330.15): An account of a governmental entity.
GOV1	All time and savings deposit accounts of the United States and all time and savings deposit accounts of a state, county, municipality, or political subdivision depositing funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state).
GOV2	All demand deposit accounts of the United States and all demand deposit accounts of a state, county, municipality, or political subdivision depositing funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state).
GOV3	All deposits, regardless of whether they are time, savings or demand deposit accounts of a state, county, municipality or political subdivision depositing funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located.
MSA	Mortgage Servicing Account (12 CFR 330.7(d)): An account held by a mortgage servicer, funded by payments by mortgagors of principal and interest.
PBA	Public Bond Accounts (12 CFR 330.15(c)): An account consisting of funds held by an officer, agent or employee of a public unit for the purpose of discharging a debt owed to the holders of notes or bonds issued by the public unit.
DIT	IDI as trustee of irrevocable trust accounts (12 CFR 330.12): ''Trust funds'' (as defined in § 330.1(q)) account held by an insured depository institution as trustee of an irrevocable trust.
ANC	Annuity Contract Accounts (12 CFR 330.8): Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts.
BIA	Custodian accounts for American Indians (12 CFR 330.7(e)): Funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the ''BIA'') on behalf of American Indians pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of American Indians pursuant to similar authority, in an insured depository institution.
DOE	IDI Accounts under Department of Energy Program: Funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy.

Appendix B to Part 370: Output Files Structure

These output files will include the data necessary for the FDIC to determine deposit insurance coverage in a resolution. A covered institution's information technology system must have the capability to prepare and maintain the files detailed below. These files must be prepared in successive iterations as the FDIC receives additional data from external sources necessary to complete the deposit insurance determinations, and, as it updates pending determinations. The files will be comprised of the following four tables. The unique identifier and government identification are required in all four tables so those tables can be linked where necessary.

A null value, as indicated in the table below, is allowed for fields that are not immediately needed to calculate deposit insurance. To ensure timely calculations for depositor liquidity purposes, the information with null-value designations can be obtained after the initial deposit insurance calculation. As due diligence for recordkeeping progresses throughout the years of ongoing compliance, the FDIC expects that the banks will continue efforts to the capture the null-value designations and populate the output file to alleviate the burden at failure. If a null value is allowed in a field, the record should not be placed in the pending file.

These files must be prepared in successive iterations as the covered institution receives additional data from external sources necessary to complete any pending deposit insurance calculations. The unique identifier is required in all four files to link the customer information. All files are pipe delimited. Do not pad leading and trailing spacing or zeros for the data fields.



Customer File. Customer File will be used by the FDIC to identify the customers. One record represents one unique customer.

The data elements will include:

Field name	Description	Format	Null value allowed?
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there shall not be duplicates.	Variable Character	No.
2. CS_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filing. Populate as follows: —For a United States individual—SSN or TIN —For a foreign national individual—where a SSN or TIN does not exist, a foreign passport or other legal identification number (*e.g.,* Alien Card) —For a Non-Individual—the Tax identification Number (TIN), or other register entity number	Variable Character	No.
3. CS_Govt_ID_Type	The valid customer identification types, are noted below: —SSN—Social Security Number —TIN—Tax Identification Number —DL—Driver's License, issued by a State or Territory of the United States —ML—Military ID —PPT—Valid Passport —AID—Alien Identification Card —OTH—Other	Character (3)	No.
4. CS_Type	The customer type field indicates the type of entity the customer is at the covered institution. The valid values are: —IND—Individual —BUS—Business —TRT—Trust —NFP—Non-Profit —GOV—Government —OTH—Other	Character (3)	Yes.
5. CS_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No.
6. CS_Middle_Name	Customer middle name. Use only for the name of individuals and the primary contact for entity.	Variable Character	Yes.
7. CS_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No.
8. CS_Name_Suffix	Customer suffix.	Variable Character	Yes.
9. CS_Entity_Name	The registered name of the entity. Do not use this field if the customer is an individual.	Variable Character	Yes.
10. CS_Street_Add_Ln1	Street address line 1. The current account statement mailing address of record.	Variable Character	Yes.
11. CS_Street_Add_Ln2	Street address line 2. If available, the second address line.	Variable Character	Yes.
12. CS_Street_Add_Ln3	Street address line 3. If available, the third address line.	Variable Character	Yes.
13. CS_City	The city associated with the mailing address.	Variable Character	Yes.
14. CS_State	The state for United States addresses or state/province/county for international addresses. —For United States addresses use a two-character state code (official United States Postal Service abbreviations) associated with the mailing address. —For international address follow that country state code.	Variable Character	Yes.
15. CS_ZIP	The Zip/Postal Code associated with the customer's mailing address. —For United States zip codes, use the United States Postal Service ZIP+4 standard —For international zip codes follow that standard format of that country	Variable Character	Yes.
16. CS_Country	The country associated with the mailing address. Provide the country name or the standard International Organization for Standardization (ISO) country code.	Variable Character	Yes.
17. CS_Telephone	Customer telephone number. The telephone number on record for the customer, including the country code if not within the United States.	Variable Character	Yes.
18. CS_Email	The email address on record for the customer.	Variable Character	Yes.
19. CS_Outstanding_Debt_Flag	This field indicates whether the customer has outstanding debt with covered institution. This field may be used by the FDIC to determine offsets. Enter "Y" if customer has outstanding debt with covered institutions, enter "N" otherwise.	Character (1)	Yes.

Field name	Description	Format	Null value allowed?
20. CS_Security_Pledge_Flag	This field shall only be used for Government customers. This field indicates whether the covered institution has pledged securities to the government entity, to cover any shortfall in deposit insurance. Enter ''Y'' if the government entity has outstanding security pledge with covered institutions, enter ''N'' otherwise.	Character (1)	No.

Account File. The Account File contains the deposit ownership rights and capacities information, allocated balances, insured amounts, and uninsured amounts. The balances are in U.S. dollars. The Account file is linked to the Customer File by the CS_Unique_ID.

The data elements will include:

Field name	Description	Format	Null value allowed?
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there cannot be duplicates.	Variable Character	No.
2. DP_Acct_Identifier	Deposit account identifier. The primary field used to identify a deposit account. The account identifier may be composed of more than one physical data element to uniquely identify a deposit account.	Variable Character	No.
3. DP_Right_Capacity	Account ownership categories. —SGL—Single accounts —JNT—Joint accounts —REV—Revocable trust accounts —IRR—Irrevocable trust accounts —CRA—Certain retirement accounts —EBP—Employee benefit plan accounts —BUS—Business/Organization accounts —GOV1, GOV2, GOV3—Government accounts (public unit accounts) —MSA—Mortgage servicing accounts for principal and interest payments —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust —ANC—Annuity contract accounts —PBA—Public bond accounts —BIA—Custodian accounts for American Indians —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy	Character (4)	No.
4. DP_Prod_Cat	Product category or classification. —DDA—Demand Deposit Accounts —NOW—Negotiable Order of Withdrawal —MMA—Money Market Deposit Accounts —SAV—Other savings accounts —CDS—Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.	Character (3)	Yes. For credit card accounts with a credit balance that create a deposit liability, use a NULL value for this field.
5. DP_Allocated_Amt	The current balance in the account at the end of business on the effective date of the file, allocated to a specific owner in that insurance category. For JNT accounts, this is a calculated field that represents the allocated amount to each owner in JNT category. For REV accounts, this is a calculated field that represents the allocated amount to each owner-beneficiary in REV category. For other accounts with only one owner, this is the account current balance. This balance shall not be reduced by float or holds. For CDs and time deposits, the balance shall reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest).	Decimal (14,2)	No.
6. DP_Acc_Int	Accrued interest allocated similarly as data field #5 DP_Allocated_Amt. The amount of interest that has been earned but not yet paid to the account as of the date of the file.	Decimal (14,2)	No.
7. DP_Total_PI	Total amount adding #5 DP_Allocated_Amt and #6 DP_Acc_Int.	Decimal (14,2)	No.
8. DP_Hold_Amount	Hold amount on the account. The available balance of the account is reduced by the hold amount. It has no effect on current balance (ledger balance).	Decimal (14,2)	No.
9. DP_Insured_Amount	The insured amount of the account.	Decimal (14,2)	No.
10. DP_Uninsured_Amount	The uninsured amount of the account.	Decimal (14,2)	No.
11. DP_Prepaid_Account_Flag	This field indicates a prepaid account with covered institution. Enter ''Y'' if account is a prepaid account with covered institutions, enter ''N'' otherwise.	Character (1)	No.
12. DP_PT_Account_Flag	This field indicates a pass-through account with covered institution. Enter ''Y'' if account is a pass-through with covered institutions, enter ''N'' otherwise.	Character (1)	No.

Field name	Description	Format	Null value allowed?
13. DP_PT_Trans_Flag	This field indicates whether the fiduciary account has sub-accounts that have transactional features. Enter ''Y'' if account has transactional features, enter ''N'' otherwise.	Character (1)	No.

Account Participant File. The Account Participant File will be used by the FDIC to identify account participants, to include the official custodian, beneficiary, bond holder, mortgagor, or employee benefit plan participant, for each account and account holder. One record represents one unique account participant. The Account Participant File is linked to the Account File by CS_Unique_ID and DP_Acct_Identifier.

The data elements will include:

Field name	Description	Format	Null value allowed?
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there shall not be duplicates.	Variable Character	No.
2. DP_Acct_Identifier	Deposit account identifier. The primary field used to identify a deposit account. The account identifier may be composed of more than one physical data element to uniquely identify a deposit account.	Variable Character	No.
3. DP_Right_Capacity	Account ownership categories. —SGL—Single accounts —JNT—Joint accounts —REV—Revocable trust accounts —IRR—Irrevocable trust accounts —CRA—Certain retirement accounts —EBP—Employee benefit plan accounts —BUS—Business/Organization accounts —GOV1, GOV2, GOV3—Government accounts (public unit accounts) —MSA—Mortgage servicing accounts for principal and interest payments —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust —ANC—Annuity contract accounts —PBA—Public bond accounts —BIA—Custodian accounts for American Indians —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy	Character (4)	No.
4. DP_Prod_Category	Product category or classification. —DDA—Demand Deposit Accounts —NOW—Negotiable Order of Withdrawal —MMA—Money Market Deposit Accounts —SAV—Other savings accounts —CDS—Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.	Character (3)	Yes.
5. AP_Allocated_Amount	Amount of funds attributable to the account participant as an account holder (e.g., Public account holder of a public bond account) or the amount of funds entitled to the beneficiary for the purpose of insurance determination (e.g., Revocable Trust)	Decimal (14,2)	No.
6. AP_Participant_ID	This field is the unique identifier for the Account Participant. It will be generated by the covered institution and there shall not be duplicates. If the account participant is an existing bank customer this field is the same as CS_Unique_ID field.	Variable Character	No.
7. AP_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filling. Populate as follows: —For a United States individual—Legal identification number (e.g., SSN, TIN, Driver's License, or Passport Number) —For a foreign national individual—where a SSN or TIN does not exist, a foreign passport or other legal identification number (e.g., Alien Card) —For a Non-Individual—the Tax identification Number (TIN), or other register entity number	Variable Character	No.
8. AP_Govt_ID_Type	The valid customer identification types, are: —SSN—Social Security Number —TIN—Tax Identification Number —DL—Driver's License, issued by a State or Territory of the United States —ML—Military ID —PPT—Valid Passport —AID—Alien Identification Card —OTH—Other	Character (3)	No.
9. AP_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No.
10. AP_Middle_Name	Customer middle name. Use only for the name of individuals and the primary contact for entity.	Variable Character	Yes.

Field name	Description	Format	Null value allowed?
11. AP_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No.
12. AP_Entity_Name	The registered name of the entity. Do not use this field if the participant is an individual.	Variable Character	Yes.
13. AP_Participant_Type	This field is used as the participant type identifier. The field will list the ''beneficial owner'' type: —OC—Official Custodian —BEN—Beneficiary —BHR—Bond Holder —MOR—Mortgagor —EPP—Employee Benefit Plan Participant	Character (3)	Yes.

Pending File. The Pending File contains the information needed for the FDIC to contact the owner or agent requesting additional information to complete the deposit insurance calculation. Each record represents a deposit account. The data elements will include:

Field name	Description	Format	Null value allowed?
1. CS_Unique_ID	This field is the unique identifier that is the primary key for the depositor data record. It will be generated by the covered institution and there cannot be duplicates.	Variable Character	No.
2. Pending_Reason	Reason code for the account to be included in Pending file. For deposit account records maintained by the bank, use the following codes. —A—agency or custodian —B—beneficiary —OI—official item —RAC—right and capacity code For alternative recordkeeping requirements, use the following codes. —ARB—depository organization for brokered deposits (Brokered deposit has the same meaning as provided in 12 CFR 337.6(a)(2)). —ARBN—non-depository organization for brokered deposits (Brokered deposit has the same meaning as provided in 12 CFR 337.6(a)(2)). —ARCRA—certain retirement accounts —AREBP—employee benefit plan accounts —ARM—mortgage servicing for principal and interest payments —ARO—other deposits —ARTR—trust accounts The FDIC needs these codes to initiate the collection of needed information.	Character (5)	No.
3. DP_Acct_Identifier	Deposit account identifier. The primary field used to identify a deposit account. The account identifier may be composed of more than one physical data element to uniquely identify a deposit account.	Variable Character	No.
4. DP_Right_Capacity	Account ownership categories. —SGL—Single accounts —JNT—Joint accounts —REV—Revocable trust accounts —IRR—Irrevocable trust accounts —CRA—Certain retirement accounts —EBP—Employee benefit plan accounts —BUS—Business/Organization accounts —GOV1, GOV2, GOV3—Government accounts (public unit accounts) —MSA—Mortgage servicing accounts for principal and interest payments —DIT—Accounts held by a depository institution as the trustee of an irrevocable trust —ANC—Annuity contract accounts —PBA—Public bond accounts —BIA—Custodian accounts for American Indians —DOE—Accounts of an IDI pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy	Character (4)	Yes.
5. DP_Prod_Category	Product category or classification. —DDA—Demand Deposit Accounts —NOW—Negotiable Order of Withdrawal —MMA—Money Market Deposit Accounts —SAV—Other savings accounts —CDS—Time Deposit accounts and Certificate of Deposit accounts, including any accounts with specified maturity dates that may or may not be renewable.	Character (3)	Yes.
6. DP_Cur_Bal	Current balance. The current balance in the account at the end of business on the effective date of the file.	Decimal (14,2)	No.

Field name	Description	Format	Null value allowed?
	This balance shall not be reduced by float or holds. For CDs and time deposits, the balance shall reflect the principal balance plus any interest paid and available for withdrawal not already included in the principal (do not include accrued interest).		
7. DP_Acc_Int	Accrued interest. The amount of interest that has been earned but not yet paid to the account as of the date of the file.	Decimal (14,2)	No.
8. DP_Total_PI	Total of principal and accrued interest.	Decimal (14,2)	No.
9. DP_Hold_Amount	Hold amount on the account. The available balance of the account is reduced by the hold amount. It has no impact on current balance (ledger balance)	Decimal (14,2)	No.
10. DP_Prepaid_Account_Flag	This field indicates a prepaid account with covered institution. Enter ''Y'' if account is a prepaid account, enter ''N'' otherwise.	Character (1)	No.
11. CS_Govt_ID	This field shall contain the ID number that identifies the entity based on a government issued ID or corporate filling. Populate as follows: —For a United States individual SSN or TIN —For a foreign national individual—where a SSN or TIN does not exist, a foreign passport or other legal identification number (e.g. Alien Card) —For a Non-Individual—the Tax identification Number (TIN), or other register entity number	Variable Character	No.
12. CS_Govt_ID_Type	The valid customer identification types: —SSN—Social Security Number —TIN—Tax Identification Number —DL—Driver's License, issued by a State or Territory of the United States —ML—Military ID —PPT—Valid Passport —AID—Alien Identification Card —OTH—Other	Character (3)	No.
13. CS_First_Name	Customer first name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No.
14. CS_Middle_Name	Customer middle name. Use only for the name of individuals and the primary contact for entity.	Variable Character	Yes.
15. CS_Last_Name	Customer last name. Use only for the name of individuals and the primary contact for entity.	Variable Character	No.
16. CS_Name_Suffix	Customer suffix.	Variable Character	Yes.
17. CS_Entity_Name	The registered name of the entity. Do not use this field if the customer is an individual.	Variable Character	Yes.
18. CS_Street_Add_Ln1	Street address line 1. The current account statement mailing address of record.	Variable Character	No.
19. CS_Street_Add_Ln2	Street address line 2. If available, the second address line.	Variable Character	Yes.
20. CS_Street_Add_Ln3	Street address line 3. If available, the third address line.	Variable Character	Yes.
21. CS_City	The city associated with the mailing address.	Variable Character	Yes.
22. CS_State	The state for United States addresses or state/province/county for international addresses. —For United States addresses use a two-character state code (official United States Postal Service abbreviations) associated with the mailing address. —For international address follow that country state code.	Variable Character	Yes.
23. CS_ZIP	The Zip/Postal Code associated with the customer's mailing address. —For United States zip codes, use the United States Postal Service ZIP+4 standard. —For international zip codes follow the standard format of that country.	Variable Character	Yes.
24. CS_Country	The country associated with the mailing address. Provide the country name or the standard International Organization for Standardization (ISO) country code.	Variable Character	Yes.
25. CS_Telephone	Customer telephone number. The telephone number on record for the customer, including the country code if not within the United States.	Variable Character	Yes.
26. CS_Email	The email address on record for the customer.	Variable Character	Yes.
27. CS_Outstanding_Debt_Flag	This field indicates whether the customer has outstanding debt with covered institution. This field may be used to determine offsets. Enter ''Y'' if customer has outstanding debt with covered institutions, enter ''N'' otherwise.	Character (1)	Yes.
28. CS_Security_Pledge_Flag	This field indicates whether the CI has pledged securities to the government entity, to cover any shortfall in deposit insurance. Enter ''Y'' if the government entity has outstanding security pledge with covered institutions, enter ''N'' otherwise. This field shall only be used for Government customers.	Character (1)	No.
29. DP_PT_Account_Flag	This field indicates a pass-through account with covered institution. Enter ''Y'' if account is a pass-through with covered institutions, enter ''N'' otherwise.	Character (1)	No.
30. PT_Parent_Customer_ID	This field contains the unique identifier of the parent customer ID who has the fiduciary responsibility at the covered institution.	Variable Character	No.

Field name	Description	Format	Null value allowed?
31. DP_PT_Trans_Flag	This field indicates whether the fiduciary account has sub-accounts that have transactional features. Enter ''Y'' if account has transactional features, enter ''N'' otherwise.	Character (1)	No.

Appendix C to Part 370: Credit Balance Processing File Structure

1. Data must be in an ASCII-flat, pipe delimited file.

2. All files must contain 29 columns, even if the field name is blank or a null value is present.

3. Do not include column headers or summary lines. The file must contain only credit balance records.

Col	Field name	Description	Null value allowed? (Y/N)
01			Y.
02	Account Number	Account number of account holding pending payments or other items for refunds of credit balances.	Y.
03	Customer Account Number	Assigned customer account number	N.
04			Y.
05	Tax ID	Taxpayer identification number of the account holder	N.
06	Tax ID Code	Code indicates corporate (TIN) or personal tax identification number (SSN).	N.
07	Name	Full name of credit balance owner	N.
08			Y.
09	Address 1	Address line 1 as it appears on the credit balance owner's statement.	N.
10	Address 2	Address line 2 as it appears on the credit balance owner's statement.	Y.
11	Address 3	Address line 3 as it appears on the credit balance owner's statement.	Y.
12	City	Address city as it appears on the credit balance owner's statement	N.
13	State	State postal abbreviation as it appears on the credit balance owner's statement.	Y. If Country, column 12, is ''USA'', value must be a valid 2-character US postal code (*e.g.*, FL for Florida, IA for Iowa, etc.). If Country, column 12, is not ''USA'', value must be null.
14	Zip/Postal	The Zip/Postal Code associated with the credit balance owner's address at it appears on the credit balance owner's statement—For United States zip codes, use the United States Postal Service ZIP+4 standard. For international zip codes follow that standard format of that country.	N.
15	Country	Country code as it appears on the credit balance owner's statement.	N.
16	Province	Province as it appears on the credit balance owner's statement	Y.
17			Y.
18	Credit Balance	Credit balance of the account as of the institution failure date	N.
19			Y.
20	Deposit Account Ownership Category.	Account ownership category	Y. Null value allowed ownership if account ownership category will be assigned by the covered institution's information technology system upon file processing.
21			Y.
22			Y.
23			Y.
24			Y.
25			Y.
26			Y.
27			Y.
28			Y.
29			Y

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 2, 2019.

Robert E. Feldman.

Executive Secretary.

[FR Doc. 2019–06713 Filed 4–10–19; 8:45 am]

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FEDERAL REGISTER

Vol. 84 Thursday,

No. 70 April 11, 2019

Part IV

The President

Notice of April 10, 2019—Continuation of the National Emergency With Respect to Somalia

Federal Register
Vol. 84, No. 70
Thursday, April 11, 2019

Presidential Documents

Title 3—

The President

Notice of April 10, 2019

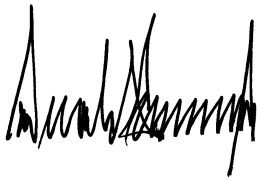
Continuation of the National Emergency With Respect to Somalia

On April 12, 2010, by Executive Order 13536, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the deterioration of the security situation and the persistence of violence in Somalia, and acts of piracy and armed robbery at sea off the coast of Somalia, which have been the subject of the United Nations Security Council resolutions, and violations of the arms embargo imposed by the United Nations Security Council.

On July 20, 2012, the President issued Executive Order 13620 to take additional steps to deal with the national emergency declared in Executive Order 13536 in view of United Nations Security Council Resolution 2036 of February 22, 2012, and Resolution 2002 of July 29, 2011, and to address: exports of charcoal from Somalia, which generate significant revenue for al-Shabaab; the misappropriation of Somali public assets; and certain acts of violence committed against civilians in Somalia, all of which contribute to the deterioration of the security situation and the persistence of violence in Somalia.

The situation with respect to Somalia continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 12, 2010, and the measures adopted on that date and on July 20, 2012, to deal with that emergency, must continue in effect beyond April 12, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13536.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
April 10, 2019.

[FR Doc. 2019–07414
Filed 4–10–19; 12:00 pm]
Billing code 3295–F9–P

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