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LEGISLATIVE ANALYSIS

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Bill No. OMB draft bill Report No. \_\_\_\_\_ Companion No. \_\_\_\_\_

Title: "Confidentiality of Federal Statistical Records Act"

Subject: \_\_\_\_\_

Amends. various statues including Paperwork Reduction, Internal Revenue Code and Laws governing Census information

STAT contacts: [ ] DDI

Conclusion:  No Agency objection  
 Agency objection and/or needs amendment

Analysis: I reviewed the captioned legislation. This is the same complicated piece of legislation which OMB has been attempting to introduce for the last several years; I don't think that it has been ever introduced.

The bill would provide increased protection to information obtained by federal agencies in the business of compiling statistics such as the Census Bureau, the Department of Commerce, the Internal Revenue Service the National Science Foundation and the Department of Agriculture. In addition, it would permit those agencies to share among themselves information otherwise protected.

The Agency is not involved in this area. To the extent that there is any involvement at all, however, it would be in two areas: obtaining information from protected files and providing information to such agencies. In regard to the former, I confirmed with [ ] of the DDI that, as with last year's bill, this bill would not present any obstacles to the Agency obtaining the types of information it may need. STAT

In regard to the latter, we had recommended to OMB in regard to last year's bill that they strengthen the disclosure section (see copy of our letter to OMB-attached). This year, however, the bill has been changed substantially in this area. The protections afforded to any intelligence information which might, by some wild stretch of the imagination, creep into such files, have been strengthened under Sections 7-11 of the bill. In particular, I believe that the provisions of Section 10 (b) will meet the concerns we raised last year, albeit that this is a different bill in this regard.

Accordingly, I conclude that there are no Agency objections to this bill and we should so inform OMB.

STAT

3/18/83

(name)

CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505

General Counsel

OGC 82-04012  
22 April 1982

Mr. James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Frey:

This letter will supplement our telephonic response to your request for comments on the draft legislation "Confidentiality of Federal Statistical Records Act."

The Central Intelligence Agency has no objection to this legislation insofar as it embodies the concept of increased protection for individually identifiable statistical information gathered by federal statistical agencies, and insofar as it permits federal statistical agencies to share such information among themselves more freely as needed. Our concern is to avoid any adverse impact which the legislation could have on the national intelligence mission or the agencies in the Intelligence Community. In its present form, the proposed legislation does not appear to address or affect that mission or those agencies. Accordingly, we wish to withdraw the objections to sections 109(e) and 112 of the legislation which were noted in our initial telephonic response.

We are concerned, however, that the proposed legislation could have an unintended inimical effect on intelligence information in the files of a federal statistical agency. In order to prevent such a result and to clarify the protection which the proposal accords intelligence and foreign policy information, we suggest that section 110(f) be amended as follows:

Should the originating agency refuse to disclose the requested individually identifiable records, the requesting agency may appeal to the Chief Statistician for a determination of the need for the requested records. The Chief Statistician may

\* \* \*

(6) -the disclosure is prohibited by statute in the interest of national security or foreign policy.

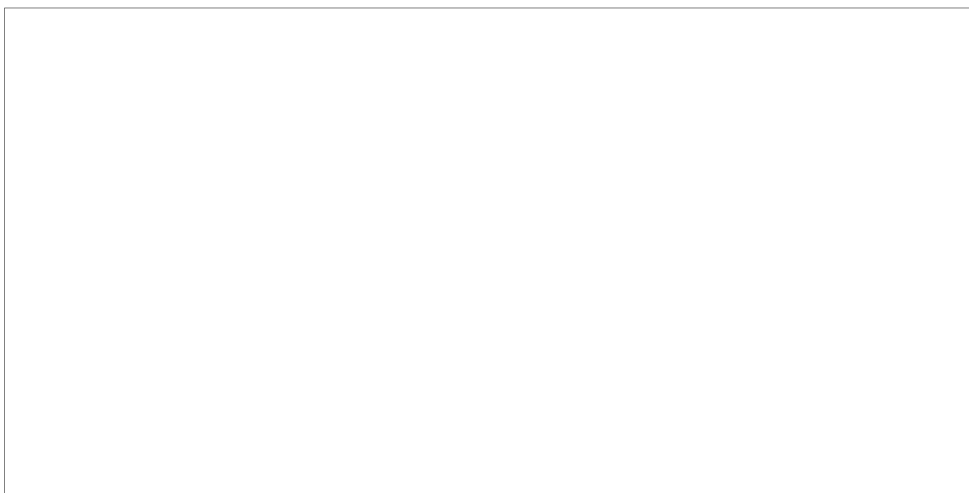
the head of the originating agency or his designee certifies that the information is protected from disclosure by statute or is classified pursuant to Executive order in the interest of national security or foreign policy.

We appreciate the opportunity to comment on this legislative proposal, and we would like to be kept informed as it proceeds through the revision process.

Sincerely,

SIGNED

Stanley Sporkin



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DIST



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

83-02043

March 11, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

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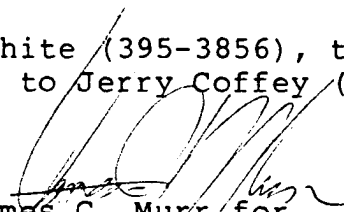
SUBJECT: Proposed OMB draft entitled, "The Confidentiality of Federal Statistical Record Act"

Note: (This is a revised version of a draft bill which was circulated last spring.)

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than Thursday, March 24, 1983. THIS IS A FIRM DEADLINE.

Direct your questions to Maurice E. White (395-3856), the legislative analyst in this office or to Jerry Coffey (395-3087).

  
James C. Murr for  
Assistant Director for  
Legislative Reference

Enclosure

cc: B. Martin	R. Adkins	J. Walker	J. Tozzi
P. DuSault	D. Crabill	D. Kleinberg	K. Newman
C. Wirtz	H. Loweth	D. Sitrin	

Distribution:

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Interstate Commerce Commission



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Dear Mr. Speaker/Dear Mr. President:

I am transmitting, for referral to the appropriate Committee, a legislative proposal entitled the "Confidentiality of Federal Statistical Records Act."

This legislative proposal responds to two major impediments to the effectiveness and efficiency of the Federal Government in collecting and compiling statistical information to meet public policy needs. The first is the lack of an enforceable guarantee of the confidentiality of information collected--a problem which can and does affect the quality of the data supplied, especially when reporting is voluntary. Increasingly, the right of statistical agencies to deny access to individually identifiable information for non-statistical purposes is subject to challenge in the courts.

Second, existing statutes restricting sharing of data among agencies create substantial inefficiencies in the development of Federal statistics. For example, agencies are forced to duplicate the collection of certain data previously collected by another agency, because the information cannot be shared. Similarly, the utility of statistical studies by one agency is inherently limited because it cannot obtain certain records from another agency which would provide additional relevant information to policymakers and program administrators.

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The objectives of this legislative proposal, therefore, are two fold. The first is to ensure that information collected or compiled by the Federal Government for exclusively statistical purposes will in fact be used only for those purposes. The second objective is to lessen the reporting burden on and expense to the public by allowing interagency exchange of individually identifiable data for statistical purposes under strong and enforceable confidentiality safeguards.

A section-by-section analysis and a fact sheet are also enclosed for your information.

The legislative proposal is directly supportive of the President's goals of reducing governmental intrusion into the affairs of citizens and improving the efficiency of Executive Branch programs.

Sincerely,

David A. Stockman  
Director

Enclosures

FACT SHEET

SUMMARY INFORMATION FOR PROPOSED LEGISLATION  
"CONFIDENTIALITY OF FEDERAL STATISTICAL RECORDS"

The proposed legislation:

- Provides a statutory basis for traditional promise of confidentiality long given respondents to statistical collections.
- Provides for restricted sharing of individually identifiable records for exclusively statistical purposes with named statistical agencies whose confidential records are provided statutory protection under this legislation.

The proposed legislation:

- Will not expand the types of records provided confidentiality protection.
- Will not affect the control which program agencies have over the use of their own administrative data files.
- Will not change the limited degree of access which non-statistical agencies have to statistical records.
- Will not provide a hiding place for non-statistical records.



Background

This legislation incorporates into a single proposal the provisions of several previous legislative proposals relating to the confidentiality and disclosures for statistical purposes of Federal statistical records.

- Recommendations of the Privacy Protection Study Commission for "functional separation" of statistical records relating to individuals.
- Recommendations on confidentiality and privacy of the Commission on Federal Paperwork.
- Similar recommendations by a 1971 Presidential Commission and a 1980 Reorganization Study on the Federal Statistical System which cover individual and business records collected or compiled for statistical purposes.
- Specific conditions developed by the Department of Commerce in a legislative proposal to make the directory of business establishments developed and maintained by the Census Bureau available to agencies and States under strong safeguards to prevent the use of this information for non-statistical purposes.
- Provisions of individual agency proposals to provide a statutory basis for the traditional promise to protect the confidentiality of individually identifiable records collected or maintained for statistical purposes.

The proposed legislation is intended to be consistent with and to achieve the objectives of all of these separate initiatives, and to avoid the problems of duplication, monopoly behavior, and

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incompatible restrictions that are created when each statistical agency operates under different statutory provisions for confidentiality.

Why is legislation needed?

Two major problems seriously threaten the effectiveness and efficiency of the Federal Government in collecting and compiling statistical information to meet public policy needs:

1. Federal statistics have long been collected under a promise to those providing data that individually identifiable records would be confidential. A few statistical agencies, notably the Census Bureau and the National Center for Health Statistics, have strong confidentiality statutes that ensure that the use of their individually identifiable records is restricted to statistical purposes. Many other agencies collect information for statistical purposes but do not have statutory authority making it possible to guarantee similar confidentiality protection to persons (individuals and businesses) supplying information. Lack of such a guarantee can affect the completeness and quality of the data volunteered, particularly in an environment where the right of statistical agencies to deny access to individually identifiable information for non-statistical purposes has been subject to challenge.
2. The collection, preparation, and analysis of federal data necessary for the formulation of public and private economic and social policy occurs in statistical units scattered among the executive departments. Although each unit has its own specific mission, many of the items collected and the respondents surveyed by the various units are duplicated. Additional duplication of effort occurs in the processing and classification of

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the data. Many of these inefficiencies derive from existing legislation and confidentiality policies that prohibit data exchange even when it would further the statistical missions of the affected agencies. Any such sharing of data needs to be restricted to statistical agencies under conditions which guarantee that the data will be used by the recipients solely to develop or report statistics--i.e., aggregates or anonymous information. Removing statutory impediments and establishing uniform policies for such exchange should result in significant cost savings for the government and for the general public; similarly, it should result in an improvement in the comparability and reliability of the data produced.

### Objectives

The objectives of this legislation are:

- To ensure that sensitive information about persons (individuals and businesses) collected or compiled by the Federal Government for statistical purposes will be used only for those purposes. This is the current and long followed practice, but frequently lacks a statutory basis.
  
- To improve the efficiency of operation of Federal statistical programs by permitting the exchange of individually identifiable data among named agencies for exclusively statistical purposes under strong uniform confidentiality safeguards. This will reduce the costs of duplicative data collection and processing and the resulting costs and paperwork burdens on the public.

These two objectives are potentially in conflict. The legislation tries to balance them in a reasonable way.

Main provisions of the legislation

1. Establishment of protected statistical centers:

- The following agencies and units are designated as protected statistical centers:

Bureau of the Census, DOC

Bureau of Economic Analysis, DOC

Bureau of Labor Statistics, DOL

National Center for Health Statistics, HHS

Office of Research and Statistics, SSA, HHS

Statistical Reporting Service, USDA

Division of Science Resources Studies, NSF

- The bill provides for future designation of additional protected statistical centers by the President, subject to tests in the legislation to ensure that candidate organizations can provide the same level of statistical confidentiality protection as the designated centers listed above.

2. Establishment of protected statistical files:

- All files created or maintained by a protected statistical center for exclusively statistical purposes, and where confidentiality protection is clearly warranted either because of an explicit or implied agreement with the respondent or a duty imposed on an agency or other custodian from whom the records are received, become protected statistical files.

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- Statistical files created or maintained by other agencies or units may, on their initiative, and with the concurrence of the Director of OMB, be designated as protected statistical files by the agency head once specific conditions of the legislation are satisfied.
  - Identifiable records in protected statistical files may only be used for the limited nonstatistical purposes specified in the draft legislation, and disclosures for exclusively statistical purposes may only be made when the specific conditions of the legislation are satisfied. In both cases, disclosures must be authorized by the agency head.
  - Records in protected statistical files are immune from mandatory disclosure under Federal, State and local law and their disclosure cannot be compelled for any administrative, regulatory, legislative, judicial or other proceeding.
3. Rules for statistical use of records not in protected statistical files:
- Disclosure to protected statistical centers of identifiable information not in protected statistical files is permitted under controls which maintain existing agency protection or assign stronger protection. However, other uses of such files retained by the releasing agency are not restricted in any way.
4. Sanctions:
- All intentional violators of the limitations on disclosure under this Bill are subject to penalties

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of fine and imprisonment, and are also subject to applicable sanctions under Title 13, Title 26 and other law.

#### Cost impact

The expected impact of this legislation will be a reduction in the net cost to the Federal Government of collecting and compiling the data needed by policymakers and other users of Federal statistics.

Additional costs to Federal agencies will be incurred primarily by the protected statistical centers. Small professional and support staffs will be needed to prepare, monitor and update regulations for compliance with the provisions of the legislation, and to assist the Director of OMB in carrying out the functions assigned to him or her by the Bill.

The costs of compliance by agencies will be incurred mostly by agencies that are named in the bill or later become protected statistical centers. Staff requirements for compliance can be met largely by existing staff responsible for dealing with privacy, confidentiality and freedom of information matters. For the most part physical security of records and other safeguards in these agencies are already in place or are being met in response to the Privacy Act of 1974 and other statutory requirements.

Immediate savings under this legislation will result primarily from the provision which permits interagency sharing of lists of businesses for statistical purposes. Costs of direct collection of data are substantially reduced when the collecting agency has access to a complete and accurate list of the universe to be studied. Cost savings result not only from avoiding the substantial expenses of developing a new list, but also from the ability to select and use more efficient and hence smaller

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samples. We believe that the additional costs will be more than offset by these savings. In fact, the savings that can be realized by permitting the Census Bureau and the Statistical Research Service of the Department of Agriculture to use the same farm lists for the censuses of agriculture and for periodic sample surveys would by themselves likely exceed the compliance costs associated with this legislation.

It is not expected that this legislation will in itself produce significant change in the amount of information collected directly from individuals or businesses for statistical purposes. The volume of such data collections, which is quite small in comparison to data collections carried out for regulatory and administrative purposes, is determined almost entirely by other considerations, including the statutory requirements placed on agencies to collect such information, the budget appropriations to statistical agencies, and the effectiveness of the reports management and statistical policy activities carried out by OMB.

The legislation does create a potential means of reducing duplicative elements in statistical programs, by permitting limited sharing of data collected for statistical purposes, better access to regulatory and administrative information for statistical purposes, and enhanced capabilities in statistical agencies to use existing data to meet new requirements. As these procedures are developed and refined, they are expected to fill many needs which would otherwise be met by special purpose data collections.

A BILL

To provide safeguards for the confidentiality of records maintained by the federal statistical system, and to improve the efficiency of Federal statistical programs by permitting limited sharing of records for statistical purposes under strong safeguards.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SHORT TITLE

Sec. 1. This Title may be cited as the **"Confidentiality of Federal Statistical Records Act"**.

FINDINGS AND STATEMENT OF PURPOSES

Sec. 2. The Congress finds that--

(a) Strong and effective statistical programs are necessary for sound governmental and private decisionmaking;

(b) Accurate, consistent and timely data are essential to the conduct of statistical programs;

(c) Information collected or compiled by Federal agencies for statistical purposes should not be used in individually identifiable form to make decisions affecting the person to whom the information pertains;

(d) There is a need to permit the sharing of individually identifiable data for statistical purposes among the Federal agencies, and those performing statistical activities for them,



in order to reduce paperwork burden and improve the quality of Federal statistical data; and

(e) Such sharing should be limited to statistical purposes that are of sufficient importance to justify interagency exchange of identifiable data.

Sec. 3. The purposes of this Act are --

(a) To provide that individually identifiable information furnished to the Federal Government by persons about themselves for statistical purposes shall be used only for such purposes and shall not be used or disclosed for any other purpose without their consent;

(b) To prohibit the use, in individually identifiable form, of any information collected, compiled or maintained solely for statistical purposes under Federal authority, or with Federal funds, to make any decision or take any action directly affecting the rights, benefits, and privileges of the person to whom the information pertains, except with the person's consent;

(c) To reduce the reporting burden and expenses on the public and reduce the costs of statistical programs by establishing safe conditions for inter-agency exchange, solely for statistical purposes, of individually identifiable information;

(d) To reduce the risk of unauthorized disclosure of statistical information by designating organizational units to maintain individually identifiable statistical information, and by prescribing the conditions under which they may make disclosures;

(e) To establish the basis for exempting a defined class of statistical information from compulsory disclosure in response to Freedom of Information Act requests, and for providing immunity from certain other compulsory disclosures that would conflict with the statistical purposes for obtaining the information; and

(f) To establish consistent procedural standards for safeguards and disclosures of statistical records maintained by a statistical unit or transferred to another statistical user.

#### DEFINITIONS \*

Sec. 4. For purposes of this Act, the term--

(a) "Director" means the Director of the Office of Management and Budget or any officer of that agency to whom authority to administer certain functions has been lawfully delegated.

(b) "**Agency**" means any executive department, military department, government corporation, government controlled corporation, or other **establishment in the executive branch** of the government (including the Executive Office of the President), or any independent regulatory agency.

(c) "Employee" means any employee or officer of an agency, as defined in 5 U.S.C. 2104 and 2105, and any other personnel retained by the agency under contract or otherwise, including employees of agency contractors and employees of agencies or units of State government participating in cooperative statistical agreements with an agency.

(d) "**Person**" means an individual, family, household, corporation, company, association, firm, partnership, proprietorship, business, institution, establishment, religious body, or organization of any nature whatsoever but not including

agencies, the governments of the States, the District of Columbia, the territories and possessions of the United States, and their various subdivisions, and local governments.

(e) "Record" means any item, collection, grouping of information or data or any portion thereof, about a person.

(f) **"Individually identifiable record"** means a record about a person, obtained from any source, that could reasonably be uniquely associated with the identity of the person to whom it pertains.

(g) "Individual form" means a mode of maintaining or disclosing a file in which the grouping of information into records is preserved, regardless of whether explicit identifiers or other elements of information have been suppressed or modified.

(h) "Federal files" means collections or groupings of individually identifiable records in the possession of an agency, as well as those maintained for the agency under Federal contract (including contracts with State or local governments) or pursuant to a cooperative statistical agreement.

(i) **"Statistical purpose"** means an **analytical, informational, or reporting objective for which the identity of specific persons is not material** to the intended uses of the data and the results are reported in such a way that the identity of specific persons is **not discernible.**

(j) "Statistical file" means a Federal file created or used for statistical purposes.

(k) **"Protected statistical file"** means a file used exclusively for statistical purposes and designated for protection under the provisions of this Act.

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(l) **"Protected statistical center"** means an **agency** or organizational unit within an agency **designated for protection under** the provisions of **this Act**

(m) **"Cooperative statistical agreement"** means an agreement under which an agency or a State government, or unit thereof, (exclusive of State universities) participates with an agency, or unit thereof, in the collection, compilation, or analysis of statistics. A cooperative statistical agreement is undertaken for the mutual benefit of the participants and for statistical purposes only.

#### PROTECTED STATISTICAL FILES

Sec. 5. A **Federal file shall acquire** and, regardless of subsequent disclosure, shall retain the **status of a protected statistical file when**

(a) the file is **created or maintained by a protected statistical center for statistical purposes only**, and the information that constitutes the file was or will be obtained:

(1) **from or on behalf of a person** to whom such record or information pertains, **and such person requires or expects assurance of confidentiality** as a condition of furnishing such information; or

(2) from a federal or state agency that has a duty imposed by law to protect the confidentiality of such record or information;

(b) the file combines information in a protected statistical file with information in individual form from any other source; **or**

(c) ~~the file is designated as a protected statistical file~~ by the head of the agency (other than a protected statistical center) collecting or maintaining the information, after notification of the proposed designation has been published in the Federal Register with an opportunity for public comment. In the case of a planned information collection such notification and designation shall occur prior to the collection of the information. In all cases such designation shall be made **only**, when the agency head has, ~~with~~ **the concurrence of the Director**, determined that:

(1) the file consists of information that was or will be obtained for statistical purposes only under the conditions of paragraph (a)(1) or (a)(2) of this section;

(2) the file was not or will not be created under the authority of a statute that requires disclosures that conflict with the provisions of this Act; and

(3) the agency has established and maintains appropriate administrative, technical, and physical safeguards to ensure the integrity, confidentiality, and security of the records in the file.

#### **PROTECTED STATISTICAL CENTERS**

##### Sec. 6.

(a) The Bureau of the ~~Census~~ and the Bureau of ~~Economic Analysis within~~ the Department of ~~Commerce~~; the Bureau of ~~Labor Statistics~~ within the Department of Labor; the ~~National Center for Health Statistics and~~ the ~~Office of Research and Statistics of the Social Security Administration~~ within the Department of Health and Human Services; the ~~Statistical Reporting Service~~.

within the Department of **Agriculture**; and the Division of Science Resources Studies within the **National Science Foundation** are hereby designated as protected statistical centers.

(b) The President may designate an agency or organizational unit within an agency as a protected statistical center upon the written request of the head of the agency, if the President determines that:

(1) the **primary activity** of the agency or organizational unit is to perform a **statistical purpose**, and its **Federal files** are **predominantly protected statistical files**;

(2) the agency or organizational unit keeps its protected statistical files separated from files required for internal administrative purposes or for purposes not exclusively statistical;

(3) the particular agency or organizational unit is not expressly required by its substantive law to operate under disclosure rules that conflict with provisions of this Act; and

(4) the agency or organizational unit has established and maintains adequate administrative, technical and physical safeguards to ensure the integrity, confidentiality, and security of the protected statistical files and to assure that such files will be used and disclosed exclusively for statistical purposes, and that no data from a protected statistical file will be placed in a file that is not a protected statistical file.

(c) Upon its designation as a protected statistical center, an agency or organizational unit must preserve the status of any protected statistical file that it receives, and must assign the status of a protected statistical file to any file that satisfies the conditions of subsection 5(a).

(d) The President may suspend or revoke the designation of a protected statistical center, including those designated in subsection 6(a), whenever he determines that the standards in section 6(b) are no longer being met.

(1) Such suspension or revocation shall not affect the status of the protected statistical files being maintained by the agency or organizational unit.

(2) Whenever necessary to ensure public confidence in the protection of confidential statistical files the Director of the Office of Management and Budget may suspend the designation of a protected statistical center pending review by the President.

(e) The President shall publish all designations of a protected statistical center in the Federal Register, in accordance with 5 U.S.C. 553. All revocations of such designations shall be published in the Federal Register.

**CONFIDENTIALITY OF RECORDS CONTAINED  
IN PROTECTED STATISTICAL FILES**

Sec. 7.

(a) **Except as provided in sections 8, 9, and 11 of this Act, no agency, employee of an agency, or any other person shall:**

(1) **Disclose** in an individually identifiable form **any record contained in a protected statistical file;**

(2) **Publish or otherwise disclose** any **information** compiled or obtained from a protected statistical file unless in a manner or statistical form that could not reasonably be expected to reveal, in an individually identifiable form, any information contained in that file; or

(3) **Use** the individually identifiable information contained in a protected statistical file **for any purpose other than a statistical purpose.**

(b) Any employee who will have access to records or information in a protected statistical file shall be fully informed of his responsibilities under this Act and shall swear (or affirm) or certify in writing that he understands and accepts these responsibilities and is aware of the sanctions which may be imposed for violations of this Act.

DISCLOSURES FROM PROTECTED STATISTICAL FILES  
FOR STATISTICAL PURPOSES

Sec. 8. **Records** contained in protected statistical files may be disclosed in individually identifiable form exclusively for statistical purposes under one or more of the following conditions. Such disclosures may be made:

(a) **To a protected statistical center** provided that:

(1) the protected statistical center requests in writing the disclosure of the protected statistical file or relevant portions thereof, certifies that the protected statistical file will be used only for a statistical purpose that cannot be achieved efficiently without individually identifiable information, and provides reimbursement for appropriate costs;

(2) the receiving center shall remove the individual identifier or identifiers associated with the records at the earliest time such removal can reasonably be accomplished consistent with the purpose of the statistical project;



(3) having removed the identifiers from the file, the receiving center shall also destroy those identifiers at the earliest time at which such destruction can reasonably be accomplished consistent with the purpose of the statistical project;

(4) the receiving center shall not make any further use or disclosure of records in individual form without the written authorization of the originating agency; and,

(5) the receiving center shall obtain the concurrence of the originating agency in any plan to publish in summary form information based in substantial part on records disclosed by the originating agency under this subsection.

(b) To a protected statistical center and its employees who have a need for the records in the performance of their statistical duties, **under the terms of a reimbursement agreement** wherein a protected statistical center collects, processes, analyses, or maintains information for the specific and exclusively statistical purposes of another protected statistical center;

(c) To those employees who have a need for the records in the performance of their statistical duties within an agency, or unit thereof, or protected statistical center, that establishes or maintains the records. If under this provision, disclosure is to persons performing work for an agency under a contract or cooperative statistical agreement, use of the records disclosed must be restricted to the statistical purposes specified in the contract or cooperative statistical agreement;

(d) To an agency or to a unit of a State government under a cooperative statistical agreement, provided that the person to whom the record pertains was informed, prior to the collection of the information, that the information was to be given on a

voluntary basis and that the information would be used jointly by the collecting agency and the agency or unit to which it is to be disclosed; or

(e) To an agency, a unit of a State government, or any person provided that:

(1) the information to be disclosed was obtained from a unit of State government that collected the data under its own legal authority; and

(2) the State official who has legal custody of the original records gives written consent to the disclosure.

DISCLOSURES FROM PROTECTED STATISTICAL FILES  
FOR NONSTATISTICAL PURPOSES

Sec. 9. ~~Records~~ contained in a protected statistical file may be ~~released~~ in an individually identifiable form ~~for~~ a nonstatistical purpose ~~only~~ by or with the concurrence of the head of the agency under whose authority such records were originally collected, and under one or more of the conditions that follow. Such disclosure may be made:

(a) To the person to whom the record pertains or to that person's heir, successor, or authorized agent pursuant to a written request from or on behalf of that person;

(b) To the National Archives of the United States, as authorized by 44 U.S.C. 2103 and 2104;

(c) To authorized and properly identified persons for the purpose of conducting a program evaluation or audit relating to the collection, compilation, processing and use of information in protected statistical files, provided that:

(1) the use of individually identifiable records is indispensable for this purpose;

(2) the audit or evaluation is authorized by federal statute to be conducted by an Inspector General;

(3) no information so disclosed shall be used as evidence in any administrative, regulatory, legislative, judicial, or other proceeding against anyone other than the agency or protected statistical center maintaining the files, or its employees;

(4) no information so disclosed shall be used as evidence or redisclosed in a manner that would reasonably be expected to reveal the information contained in individually identifiable records; and

(5) no recontact of persons to whom the records in the protected statistical file pertain will be made unless the auditor or evaluator with the concurrence of the head of the agency or protected statistical center maintaining the files determines that:

(A) recontact is necessary to accomplish the audit or evaluation; and

(B) the recontact will be made in a manner that minimizes both the risk of harm or embarrassment to the person and the risk of adverse consequences to the statistical activity being audited or evaluated;

(d) In compliance with an administrative **summons** or subpoena or with a judicial order, including a search warrant or grand jury subpoena, where the purpose of the disclosure is to assist investigation or prosecution of **violations of the provisions of this Act** by an agency maintaining protected

statistical files or by an employee or other person responsible for the violation, or to the attorneys representing the Government in such investigation or proceedings, provided that:

(1) no information so disclosed shall be used as evidence in any administrative, regulatory, legislative, judicial, or other proceeding against anyone other than the agency or protected statistical center maintaining the files, or its employees or other persons responsible for the violation; and,

(2) no information so disclosed shall be used as evidence or redisclosed in a manner that would reasonably be expected to reveal the information contained in individually identifiable records; or

(e) **By a federal agency that collects information for statistical purposes under a federal statute mandating truthful response and imposing sanctions for refusing to respond or making false response, where the purpose of the disclosure is to assist investigation or prosecution of violations of such mandatory collection authority, provided that:**

(1) no information so disclosed shall be used as evidence in any administrative, regulatory, legislative, judicial or other proceeding against anyone other than the person charged with refusing to respond or making false response; and

(2) no information so disclosed shall be used as evidence or redisclosed in a manner that would reasonably be expected to reveal the information contained in individually identifiable records.

DISCLOSURE OF FILES OTHER THAN PROTECTED STATISTICAL FILES  
TO PROTECTED STATISTICAL CENTERS

Sec. 10.

(a) Notwithstanding any other provision of law, except a federal law restricting disclosure to protect the national security, an agency is authorized to release a file, or any part or copy of such file, that is not a protected statistical file to a protected statistical center for a statistical purpose, provided that such disclosure shall not restrict the disclosing agency from any lawful use or disclosure of the file or information that it retains.

(b) When an agency releases to a protected statistical center a file that is not a protected statistical file, and such file is not required by section 5 to acquire the status of a protected statistical file, the agency that releases the file is authorized to prescribe procedures for the use of such file, and to limit any further disclosure of information from it in accordance with the releasing agency's rules.

(c) When an agency releases to a protected statistical center a file that is not a protected statistical file, and such file is required by section 5 to acquire the status of a protected statistical file, the receiving protected statistical center shall consult the releasing agency prior to any subsequent disclosure permitted under section 8 or 9 of this Act.

(d) When a protected statistical center proposes to enter into a contract with an organization other than an agency to obtain individually identifiable data which that organization collects for its own purposes, any proposed limitations on disclosures otherwise permitted under this Act will be reviewed and approved by the Director before incorporation of these limitations into the contract. If approved by the Director, such

limitations will become binding on the Director and the protected statistical center.

STANDARD STATISTICAL ESTABLISHMENT LIST AND  
LIMITED ESTABLISHMENT LIST

Sec. 11. A Standard Statistical Establishment List (hereinafter referred to as SSEL) and a Limited Establishment List (hereinafter referred to as LEL) shall be **compiled and maintained by the Secretary of Commerce** through the Bureau of the Census from information collected by that Bureau and by other Federal and State agencies.

(a) The **SSEL** will include **information on all types of economic units**, within the scope of the Standard Industrial Classification and Enterprise Standard Industrial Classification and may contain the following types of information for each enterprise (corporation, partnership, sole proprietor, cooperative, non-profit, government entity, etc.) and its constituent establishments: name, physical location, establishment and tax identification numbers; parent company affiliation, standard industrial classification and other product and activity designations; legal form of organization; and employment and business receipts and other data needed for statistical purposes.

The Standard Statistical Establishment List is a protected statistical file of the Bureau of the Census. SSEL information shall be made available to protected statistical centers and employees under their direct supervision and control and their contractors who provide secure data processing and telecommunications services provided that:

(1) the protected statistical center requests in writing the disclosure of the SSEL or relevant portions thereof, certifies that the SSEL will be used only for a statistical purpose that cannot be achieved efficiently without individually

identifiable information, and provides reimbursement for appropriate costs;

(2) only those items of SSEL information that are necessary for protected statistical centers to carry out their statistical purposes will be made available;

(3) the receiving center shall not make any further use or disclosure of records from the SSEL without the written consent of the Secretary of Commerce;

(4) SSEL information based on returns and return information as defined in 26 USC 6103(b) shall not be disclosed to employees who are personnel retained by a protected statistical center under contract or in a cooperative statistical agreement if such employees may have access to such returns or return information under any provision of 26 USC 6103 other than subsection 6103(j);

(5) at the determination of the Secretary of Commerce, SSEL information based on information either collected or maintained by the Bureau of Census under authority of Title 13, United States Code, may be disclosed to any employees of a protected statistical center who have a need for the information in the performance of their statistical duties; and

(6) a protected statistical center's use for any purposes--statistical, nonstatistical, or joint--of individually identifiable data derived from other sources will not be construed as incompatible with that protected statistical center's access to SSEL information for statistical purposes.

(b) The Limited Establishment List will include information on all types of economic units within the scope of the Standard Industrial Classification and Enterprise Standard Industrial Classification and may contain the following types of information

for each enterprise (corporation, partnership, sole proprietor, cooperative, non-profit, government entity, etc.) and its constituent establishments: name, physical location, standard industrial classification codes and enterprise standard industrial classification codes and other product and activity codes, employment and business receipts size codes.

The Limited Establishment List is a protected statistical file of the Bureau of Census that has exceptional status. The disclosures of the LEL are governed by the conditions of this section and not section 8. At the determination of the Secretary of Commerce, the LEL may be made available to an agency, or unit thereof, or to a State or unit thereof and to their employees who have a need for the records in the performance of their statistical duties, provided that:

(1) the written request for disclosure of the LEL, or relevant portions thereof, must be approved in writing by the Secretary of Commerce;

(2) the LEL information will be used solely for a statistical purpose and is necessary for the compilation or collection of statistical data;

(3) in the case of a State or unit thereof,

(A) the LEL information must be necessary to fulfill a cooperative statistical agreement with that State, and

(B) the names of the employees to whom the material will be disclosed must be included in the written request;



(4) the Secretary of Commerce is satisfied that the recipient unit has established appropriate administrative, technical, and physical safeguards to ensure the integrity, confidentiality, and security of the records to be released to it;

(5) any further use or disclosure of the LEL information is prohibited without written consent of the Secretary of Commerce;

(6) LEL information based on returns and return information as defined in 26 USC 6103(b) shall not be disclosed to employees who are personnel retained by an agency or unit thereof, or state, or unit thereof, under contract or in a cooperative statistical agreement if such employees may have access to such returns or return information under any provision of 26 USC 6103 other than subsection 6103(j); and

(7) use of individually identifiable data derived from other sources for any purposes--statistical, nonstatistical, or joint--will not be construed as incompatible with access to LEL information for statistical purposes.

#### STATISTICAL ADVISORY COUNCIL

##### Sec. 12.

(a) There is hereby established a Statistical Advisory Council. The members of this Council shall be the heads of all protected statistical centers and the Director, who shall chair the Council. The Council shall review all proposals to designate protected statistical centers, shall review all proposed rules, policies, or procedures for implementing this Act, and shall advise the Director on these and other matters relating to federal statistical activities as the Director may prescribe. The Council shall meet at the call of the chairperson but not less than once every six months.

(b) Such administrative support and such funds as may be determined necessary by the Council to support the functions of the Statistical Advisory Council shall be provided by the member organizations.

### **RELATIONSHIP TO OTHER LAWS**

#### Sec. 13.

##### (a) Relationship to **Title 13** census

Records or information collected or maintained by the Bureau of the **Census** under the authority of Title 13, United States Code that are protected from disclosure by the provisions of 13 U.S.C. 9(a) shall be deemed to constitute protected statistical files. Except as provided in section 11 of this Act such records or information may be disclosed only to the extent and in the manner provided in sections 7, 8, 9, and 10 of this Act, provided further that:

(1) the information was not collected under the authority of Title 13 prior to the effective date of this Act under any pledge of confidentiality that is inconsistent with provisions of this Act; and

(2) when such disclosure is to be made under subsection 8(a) of this Act, the Secretary of Commerce, after consultation with the Director and any affected agency head, shall impose as many of the following additional limitations on the protected statistical center requesting the information as he determines necessary:

(A) prohibit disclosure to any person other than individuals identified by name and approved in advance,

(B) prohibit disclosure to a contractor or class of contractors acting as employees of the protected statistical center requesting the information,

(C) prohibit disclosure to any party to a Cooperative Statistical Agreement, and

(D) require an opportunity to review and agree to the procedures and safeguards to be used in handling such information;

(3) when after consultation with the Director and any affected agency head, the Secretary of Commerce determines one or more of the specific limitations in paragraph (2) of this section to be necessary to discharge his responsibility to protect the confidentiality of information collected under the authority of Title 13, such limitation shall be binding on the Protected Statistical Center receiving the information and any disclosure that violates such limitation shall be deemed inconsistent with and a violation of this Act.

(b) Relationship to **Title 26** Tax

**Returns or return information as defined in 26 USC 6103(b)** that are disclosed to a protected statistical center for exclusively statistical use as provided in 26 USC 6103(j) shall be deemed to constitute protected statistical files. Except as provided in section 11 of this Act, returns or return information may be disclosed for exclusively statistical purposes only to the extent and in the manner provided in sections 7, 8, 9, and 10 of this Act, provided further that:

(1) when such disclosure is subject to the conditions of subsection 10(c) of this Act, the **Secretary of the Treasury**, after consultation with the Director and any affected agency head, shall impose as many of the following additional limitations on redisclosures by the protected statistical center

to which such returns or return information have been disclosed as he determines necessary:

(A) prohibit redisclosure to any person in another agency or unit other than individuals identified by name and approved in advance,

(B) prohibit redisclosure to any contractor or class of contractors acting as employees of another protected statistical center requesting the information,

(C) prohibit redisclosure to any party to a Cooperative Statistical Agreement acting as an employee of another Protected Statistical Center requesting the information,

(D) require an opportunity to review and agree to the procedures and safeguards to be used in handling the information subsequent to a lawful redisclosure;

(2) when after consultation with the Director and any affected agency head, the Secretary of the Treasury determines one or more of the specific limitations in paragraph (1) of this section to be necessary to discharge his responsibility to protect the confidentiality of returns or return information, such limitation shall be binding on the protected statistical center receiving the information and any disclosure that violates such limitation shall be deemed inconsistent with and a violation of this Act.

(c) Relationship to the **Paperwork Reduction Act**,

**The Director, in exercising his authority under section 3510 of Title 44 (The Paperwork Reduction Act of 1980) shall not be bound by any determination made by a Federal employee under discretionary authority conferred on that employee by sections 8, 9, 10 or 11 of this Act. The Director may independently**

determine that a **disclosure permitted under those sections is not inconsistent with this Act unless!**

*this one is Paperwork Reduction*

(1) the data were collected solely for statistical purposes prior to the effective date of this Act and with an express guarantee of confidentiality that precludes such disclosures;

(2) the data do not satisfy the condition of paragraph (a) (1) of this section;

(3) the data were collected or obtained under contracts, or cooperative statistical agreements executed prior to the date of enactment of this Act, the terms of which prohibit such disclosures;

(4) the disclosure is prohibited under the terms of a contract approved by the Director as provided in section 10(d);

(5) the data were obtained from State agencies and such disclosures are prohibited by State law or regulation;

(6) **the information is protected from disclosure in the interest of national security or foreign policy by statute or by security classification pursuant to Executive Order; or**

(7) such determination would conflict with discretionary authorities specifically reserved to the Secretary of Commerce or the Secretary of the Treasury by this section.

IMMUNITY FROM LEGAL PROCESS OF RECORDS IN  
PROTECTED STATISTICAL FILES

Sec. 14.

(a) Except as provided by this Act, **all records in protected statistical files** and all individually identifiable records extracted or derived from such files:

(1) shall be **immune from legal process** and **shall not be admitted as evidence** or used for any purpose in any Federal, State, or local action, suit, or any judicial, administrative, regulatory, legislative, or any other proceeding; and

(2) **shall not be disclosed pursuant to any Federal, State, or local law, including the Freedom of Information Act (5 U.S.C. 552).**

(b) The provisions of section 14(a) shall also apply to records not in protected statistical files that:

(1) are in the possession of the person to whom they pertain; and

(2) are file copies of a Federal, State, or local statistical report form, the sole purpose of which is to obtain information for inclusion in a protected statistical file, except that persons in possession of such copies are not restricted from disclosing them voluntarily.

### SANCTIONS AND PENALTIES

Sec. 15.

(a) Wrongful disclosure of information, misuse of information.

In addition to any other penalties imposed by law--

(1) Whoever, being in possession or control of statistical files or portions thereof, willfully publishes or communicates any information the disclosure of which is known or should be known by such person to be prohibited under the provisions of this Act shall be found guilty of an offense against the United States. Any act set forth in this provision shall be punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years or both.

(2) Whoever--

(A) intentionally procures by fraud, misrepresentation, or other unlawful act, access to or information from protected statistical files, or portions thereof; or

(B) knowingly uses or attempts to use the authority of this Act to establish files for non-statistical purposes; or

(C) knowingly places, causes to be placed, or attempts to have placed in a protected statistical file any information, records or materials other than statistical files in order to avoid an otherwise lawful disclosure or a prohibition on maintaining such information; shall be guilty of an offense

against the United States. Any act set forth in these provisions shall be punishable by a fine of not more than \$10,000 or imprisonment of not more than 1 year or both.

(3) Whoever, other than a unit of State government, being a contractor under a contract with an agency to carry out a statistical purpose for such agency, violates any provision of this Act shall be found guilty of an offense against the United States. Any act set forth in this provision shall be punishable with a fine not more than \$50,000 or the value of the contract whichever is less.

(b) **Right of redress** †

In addition to any other penalties imposed by law--

(1) **any person aggrieved by a violation** of this Act with respect to information that pertains to that person may maintain a civil action for specified damages and for equitable relief against the United States or against a person responsible for the violation other than a person who at the time of the violation was an employee of an agency acting in the scope and course of employment. The agency or the person responsible for the action shall be liable for all actual specified damages sustained by the aggrieved person as a result of the violation.

(2) In addition to any damages awarded under paragraph (1), any agency, any employee acting outside the scope and course of employment, or any other person who violates a provision of this Act shall be liable to the aggrieved person for such general compensatory damages as the court may allow, but not more than \$10,000. In determining the amount of general compensatory damages to be awarded, the court shall consider, among other relevant factors, losses including future lost income sustained as a consequence of the violation.



(3) Upon application by an aggrieved person, the appropriate United States district court may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under the Act.

(4) In a successful action brought under paragraph (1), (2), or (3), the costs of the action, together with reasonable attorney's fees as determined by the court, may be awarded in addition to any damages.

(5) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy.

(c) **Administrative Sanctions**

(1) A contractor under contract with an agency to carry out a statistical purpose for such agency who knowingly violates the provisions of this Act shall be subject to debarment from participation in any contract with the Federal government for a period of time commensurate with the seriousness of the cause, generally not to exceed three years. The determination to debar and the terms of the debarment shall be made by the debarring official, who shall be either the agency head or his designee. Such determination shall be made under debarment procedures established by the agency; the procedures shall be as informal as practicable, consistent with due process and the principles of fundamental fairness.

(2) A State government of its unit whose official or employee knowingly violates the provisions of this Act shall be subject to termination of any agreement covered by this Act and such other sanctions as the Director may deem necessary.

(3) An agency that maintains protected statistical files shall establish and inform its employees about rules and requirements for safeguard, use and disclosure of those files, and shall instruct each employee with respect to such rules and requirements, and the penalties for noncompliance.

(d) Government contractors

Any contractor, or a subcontractor thereof, who performs any function on behalf of a Federal agency that requires the contractor to collect, maintain or have access to information contained or to be contained in protected statistical files shall be subject to the sanctions and penalties of this Act, and for any such contract agreed to on or after the effective date of this Act--

(1) any such contractor or any employee of such contractor shall, for purposes of the criminal penalties of this section be considered to be an employee of the agency;

(2) any such contractor shall, for purposes of the civil remedies of subsection (b) of this section be considered to be an agency, except that the damages, attorney fees, and litigation costs under subsection (b) shall be assessed against the contractor instead of against the United States; and

(3) no official or employee of any agency shall include, or authorize to be included, in any such contract any provision indemnifying the contractor from the civil remedies of subsection (b).

## REGULATIONS

## Sec. 16.

(a) The **head of each agency**, other than an independent regulatory agency (as defined in the Paperwork Reduction Act), **that is to contain one or more protected statistical centers or that is to maintain one or more protected statistical files shall** obtain the concurrence of the Director in any regulations necessary to carry out the provisions of this Act. The heads of independent regulatory agencies shall consult the Director prior to promulgating such regulations. All such regulations shall be promulgated in accordance with the requirements of the Administrative Procedures Act. The heads of agencies containing protected statistical centers designated in section 6(a) shall promulgate regulations to become effective on the effective date of this Act.

(b) Not later than 180 days following enactment of this Act the Director shall publish guidelines for agency regulations to implement the Act.

(c) Not later than the effective date of this Act the Director shall promulgate general regulations for carrying out the provisions of this Act in all agencies that shall not have promulgated regulations to implement the Act.

EFFECTIVE DATE

Sec. 17. The provisions of section 12 and section 16 shall take effect immediately upon enactment. All other provisions of this Act shall take effect three hundred and sixty five days from the date of enactment.

CONFORMING AMENDMENTS

Sec. 18.

(a) Conforming amendment to the Privacy Act of 1974.

Section 552a of Title 5, United States Code, is amended--

(1) by deleting the word "and" at the end of subsection (a)(6), deleting the period at the end of subsection (a)(7) and adding a semicolon, followed by the word "and," and adding the following:

"(8) the term 'protected statistical file' means a statistical file designated for protection under the provisions of the Confidentiality of Federal Statistical Records Act".

(2) by deleting the word "or" at the end of subsection (b)(11), deleting the period at the end of subsection (b)(12) and adding a semicolon, followed by the word "or", and adding the following:

"(b)(13) to a protected statistical center for a statistical purpose, as provided in section 10 of the Confidentiality of Federal Statistical Records Act."

(3) by adding after subsection (q) the following new subsection:

"(r) RECORDS IN PROTECTED STATISTICAL FILES

(1) Records in protected statistical files shall be exempt from the provisions of this section, except subsections (b) (4), (b) (6), (e) (3) (A), (B), and (D), (e) (4) (A), (B), (C), (E), (F) and (I), (e) (9), and (e) (10), (l), and (o).

(2) Records in protected statistical file shall be governed by the provisions of the Confidentiality of Federal Statistical Records Act."

(b) Conforming amendments to statutes governing confidentiality of statistical files maintained by or for agencies or units named as protected statistical centers in sections 7(a) of this Act.

(1) Conforming amendment of Title 13, United States Code--Census

Section 9(a) (3) of Subchapter I of Chapter 1 of Title 13, United States Code is amended by deleting the period at the end thereof and adding:

"except to the extent and in the manner permitted by the Confidentiality of Federal Statistical Records Act."

(2) Conforming amendment to Title 15, United States Code

Section 176a, Title 15, United States Code is amended to read as follows:

"The confidentiality of information furnished to the Bureau of Economic Analysis under the provisions of this title shall be governed by the provisions of the Confidentiality of Federal Statistical Records Act"

(3) Conforming amendment to the Public Health Service Act Code

Section 308(d) of the Public Health Service Act, as amended (42 USC 242m(d)) is amended by renumbering the existing subsection (d) as paragraph (d)(1) and adding the following paragraph:

"(2) Notwithstanding any other provision of this section, protected statistical files as defined in the Confidentiality of Federal Statistical Records Act shall be governed by the provisions of that Act."

(4) Conforming amendment to the Social Security Act.

Section 1106 of the Social Security Act is amended by adding after subsection (e) the following new subsection

"(f) Notwithstanding any other provisions of law, the confidentiality of individually identifiable records in protected statistical files maintained by or for the Office of Research and Statistics of the Social Security Administration, Department of Health and Human Services will be governed by the provisions of the Confidentiality of Federal Statistical Records Act."

(c) Conforming amendment to section 6103 of the Internal Revenue Code

Section 6103 of Title 26--Internal Revenue Code is amended--

(1) by amending that part of subsection (j)(1) which follows (j)(1)(B) to read as follows:

"as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts, the maintenance of the Standard Statistical Establishment List, and conducting related statistical activities authorized by law."

(2) by amending subsection (j)(4), replacing the period at the end of the amended subsection with a comma, and adding the words "except as provided by the Confidentiality of Federal Statistical Records Act."

(d) Conforming amendments to allow the designation of protected statistical files by statistical units of the Department of Energy and the Department of the Treasury.

(1) Section 205 of the Department of Energy Organization Act (42 U.S.C. Section 7135) is amended by --

(a) striking the period at the end of subsection (f) and inserting in its place: "except that the Administrator is not required to disclose to such administration, commission, or office any energy information that was obtained solely for statistical purposes under subsection (i) of the section."

(b) inserting after subsection (h) the following new subsection (i):

"(i)(1) Before starting a data collection effort and after consultation with affected organizations within the Department, the Administrator shall determine whether the information to be collected qualifies for designation as a protected statistical file under the terms of section 5 of the Confidentiality of Federal Statistical Records Act, and shall make appropriate recommendation to the Secretary.

(2) Notwithstanding any other law, the disclosure of information from a protected statistical file, designated in accordance with the provisions of section 5 of the Confidentiality of Federal Statistical Records Act, by employees (as defined in that Act) of the Energy Information Administration shall be completely governed by the provisions of that Act."

(2) Section 7214 of Title 26--Internal Revenue Code is amended by striking paragraph (8) of subsection (a) and inserting in its place:

"(8) who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law (except knowledge or information gained by virtue of having access to records in or from a protected statistical file--as defined in the Confidentiality of Federal Statistical Records Act--), fails to report, in writing, such knowledge or information to the Secretary or his delegate; or"



## Section by Section Analysis

### Title I. Confidentiality of Federal Statistical Records

#### SHORT TITLE

Section 1 gives the short title for the proposed legislation: "Confidentiality of Federal Statistical Records Act".

#### FINDINGS AND STATEMENT OF PURPOSES

Sections 2 and 3 outline the objectives of the bill.

#### DEFINITIONS

Section 4 provides definitions that set the scope of the bill. The bill is designed to protect the confidentiality of information about a "person" obtained by the Federal Government for statistical purposes from any source. The term "person" includes both legal and natural persons as well as any institution, business organization, family, household, or other association, but does not include any units of government.

The concept of confidentiality protection requires that information which is protected under this bill be used only for a "statistical purpose." A statistical purpose is defined as an objective to develop or report aggregate or anonymous information, where the end use of the information does not require the specific identity of any person, and the information may not be used in making any determination about an identifiable person.

The bill is concerned with the disclosure of "individually identifiable records", i.e., "records" which directly or indirectly can reasonably be related to information supplied by

or associated with a particular person. Whenever a record is collected for a statistical purpose and is contained in a file designated as a "protected statistical file," its disclosure in individually identifiable form is severely limited.

Individually identifiable records are of two kinds. Some records include obvious identifiers such as name, address, telephone number, social security number, or employer's identification number. Others do not, but because of their detailed information content might be recognized as referring to a particular person. Both kinds are considered to be individually identifiable and are covered by this bill.

Release of information in "individual form" does not necessarily constitute a disclosure in individually identifiable form. A public use file is a type of statistical release that is in individual form, but where explicit identifiers have been removed and other steps have been taken to prevent the linkage of the information released with the identify of the persons to whom it pertains. Because of the special problems in this type of release, limitations on release in this form are contained in the bill.

Another concept central to the bill is that of a "protected statistical center." Such a center is either an entire agency (as defined in 5 USC 552(e)) or an organizational unit of an agency. Subsequent sections of the bill establish that the data holdings of such a center must be predominantly "protected statistical files" and require that such protected statistical files be kept separate from other statistical and nonstatistical files. Particularly stringent safeguards of confidentiality must exist within such centers since subsequent sections of the bill provide privileged access by such centers to virtually all protected statistical files on a need to know basis, and broad access to information not in protected files.

Units of agencies may enter into "cooperative statistical agreements" with other units of agencies or units of State governments in order to collect, compile, or analyze statistics for the mutual benefit of the two organizations.

All provisions of the bill relate to records in a "Federal file" where this term is defined to include files in the possession of agencies as well as those maintained for agencies (1) by a State or local government agency under a Federal contract or pursuant to a "cooperative statistical agreement" or (2) by the private sector under Federal contract.

Files created and maintained for their own use by units of State and local government or private organizations, under contracts or cooperative statistical agreements with agencies, are not considered to be Federal files, even though the cooperating agency may also make use of information from these files in individually identifiable form. Therefore such files cannot be designated as protected statistical files in the hands of State, local, or private organizations. In particular, files held by grantees would not be included as "Federal files" unless they are covered by cooperative statistical agreements, since otherwise Federal agencies tend to have little control over files created by grantees. However, any records in individually identifiable form disclosed from such files to the sponsoring agency may be designated as "protected statistical files" and must be so designated if they are disclosed to a protected statistical center for statistical purposes only and they qualify for protection.

Under the terms of a cooperative statistical agreement several organizations can then share the protected statistical files involved in the project, provided that they are able to meet the bill's requirements in terms of ability to protect the

confidentiality of individually identifiable data in the files. The prerequisites for disclosure vary depending on the purposes of the agreement.

The term "employee" is broadly defined to include not only agency employees but also contractors and their employees, employees of agencies or State units participating in cooperative statistical agreements with an agency, and any person retained by an agency under any arrangement to perform a function of the agency, whether or not such persons are remunerated. The intention is to extend all provisions of the bill, including its sanctions, to any person to whom the agency may properly grant access to identifiable records contained in a protected statistical file.

"Director" refers to the Director of the Office of Management and Budget or his lawful designee. While references to the Director throughout the Act relate to authorities for which he is ultimately responsible, these may be and in some instances are required by other law to be delegated to another official in OMB.

#### PROTECTED STATISTICAL FILES

Section 5 establishes the conditions under which a statistical file acquires the status of a protected statistical file. They involve either the nondiscretionary designation of statistical files in protected statistical centers (subsection (a)) and merged files containing a protected component (subsection (b)), or the special designation of files maintained by agencies outside of protected statistical centers (subsection (c)).

Any statistical file must meet two tests to become a protected statistical file. First, the purposes of creating or maintaining the file must be exclusively statistical. Second, the confidentiality protection must be clearly warranted, either because of an explicit or implied agreement with the respondent or a duty imposed on an agency or other custodian from whom the

records are received. Two aspects of the implied agreement are unusual and dictate that the test include expectations of confidentiality as well as any explicit condition required by the person to whom the information pertains.

In many cases the information may be reported on behalf of rather than by the person to whom it pertains--for example a member of a household may report on all other members of that household. Another more difficult problem arises if a substantial number of respondents are willing to let the information pertaining to them be disclosed. Disclosure of a substantial number of individually identifiable responses may make it difficult or impossible to protect the confidentiality of other responses reported in summary or unidentifiable form. In these cases the expectation of confidentiality rather than any explicit request governs whether confidentiality protection is warranted.

This qualification test for protection is necessary to prevent abuses of the system created by this Act. Since the protections of this Act foreclose non-statistical governmental uses as well as private access through the Freedom of Information Act, they must not be applied without due consideration of the need for protection.

Existing or planned files in a protected statistical center that meet these tests automatically acquire the status of protected statistical files (subsection 5(a)). This includes previously unprotected files that qualify for protection and have been released to a protected statistical center under the terms of section 10. Likewise files that contain protected components are automatically protected (subsection 5(b)). In some cases when protected and unprotected files are merged a copy of the unprotected file may need to be retained to meet legitimate requests for disclosures. This is particularly true when the unprotected file is not available from other sources, since the merged file may only be disclosed as provided in this Act.

A free standing protected statistical file (either existing or planned) may be created by action of an agency head responsible for the file (subsection 5(c)). In addition to meeting the two tests in subsection 5(a) such a file must be free of any statutory disclosure encumbrance that conflicts with this Act and the protection must be supported by adequate physical and administrative safeguards (these two conditions are always met by protected statistical centers).

Since this designation is discretionary two other conditions are imposed on the agency head to guard against arbitrary action--the proposed designation must be subject to public notice with an opportunity to comment and must be concurred in by the Director of the Office of Management and Budget or his designee. It is also intended that status of a protected statistical file will be indicated in any Privacy Act notice pertaining to records in such file.

#### PROTECTED STATISTICAL CENTERS

Section 6 establishes how an agency or organizational unit of an agency can be designated as a protected statistical center. There are two methods of designation:

(a) Explicit designation in the bill. The agencies explicitly designated in the bill are the Bureau of the Census and the Bureau of Economic Analysis of the Department of Commerce; the Bureau of Labor Statistics of the Department of Labor; the Statistical Reporting Service of the Department of Agriculture; the National Center for Health Statistics and the Office of Research and Statistics of the Social Security Administration within the Department of Health and Human Services; and the Division of Science Resource Studies of the National Science Foundation.

(b) After the passage of the bill the President may, by Executive Order, designate additional protected statistical centers when the head of the agency submits a written request for the designation and the President is satisfied that:

(1) the agency or agency unit is truly primarily a statistical organization, as most of its activities are to perform statistical purposes and most of its files qualify as protected statistical files;

(2) the agency or unit carefully keeps its protected statistical files separated from other types of files;

(3) the agency or unit does not operate under a law that specifically requires it to disclose information from its files in a manner that conflicts with the provisions of this Act; and

(4) the agency or unit has established and maintains reasonable administrative, technical, and physical safeguards to ensure the protection of the confidentiality of all records, and to assure that the files will be used only for statistical purposes, and that no data from a protected statistical file will be placed in another file that is not safeguarded as a protected statistical file.

The organizational units designated in subsection 6(a) as protected statistical centers are all major statistical units that collect and compile substantial amounts of general or multiple-purpose statistical data. Their programs are well known and their roles as statistical organizations and as integral parts of the Federal Statistical System have been firmly established and accepted.

Some other agencies and units have already expressed an interest in being designated as protected statistical centers. Because the statistical activities of these organizations are more closely tied to specific programs or are subject to laws that may be inconsistent with this Act, it was considered desirable to make the designation of these agencies and units as protected statistical centers conditional on passage of the legislation, establishment of guidelines, and a careful review to determine that the standards for protected statistical centers are met. The designation is reserved to the President to ensure that the full authority of the Executive branch stands behind the designation. Unlike the designation of protected statistical files, which simply limits discretionary disclosure authority, the designation of a protected statistical center confers the privilege of access within the limitations of this bill to any protected statistical file. To assure full public faith and confidence in the protections provided in this bill, the designation decision should be made at the highest level. Condition (3), however, is designed to ensure that the President is not able to override Congressional intent by making a designation that conflicts with the substantive law of that agency.

Subsection 6(c) provides that each protected statistical center must treat any protected statistical file it receives as a protected statistical file, and must assign the status of protected statistical file to any file it maintains that satisfies the conditions of subsection 5(a).

Subsection 6(d) provides authority to the President to suspend or revoke the designation of a protected statistical center whenever the standards required for such designation are no longer being met. This authority applies both to protected statistical centers named in subsection 6(a) and to any named subsequent to the effective date of this legislation, as provided in subsection 6(b). Even though the designation of an agency or unit of an



agency as a protected statistical center can be revoked, the protected statistical files of that center remain protected. The protection of the confidentiality of individually identifiable records cannot be withdrawn since that would jeopardize the interests of persons who may well have provided the data initially on the understanding that it will be held confidential. However, once an organizational unit has had its designation as a protected statistical center suspended or revoked, it can no longer have access to individually identifiable records maintained by other agencies as provided in sections 8, 10 and 11, nor will the new statistical files that it creates have protected statistical file status until the President determines that the appropriate standards are being met. The safeguards each protected statistical center provides must include a contingency plan for protecting files in its custody if its status is revoked (or suspended).

Whenever the Director of the Office of Management and Budget deems it necessary to assure public confidence in the protection of confidential statistical files, the Director of OMB may suspend the designation of any protected statistical center pending review by the President. This provision assures that quick action can be taken to isolate this system from violations or poor judgment in a single protected statistical center.

The President must publish all designations and all revocations of designations of protected statistical centers in the Federal Register. Publication of designations and revocations will be made in accordance with the requirements of the Administrative Procedures Act.

CONFIDENTIALITY OF RECORDS CONTAINED  
IN PROTECTED STATISTICAL FILES

Section 7 establishes the nature of protection of individually identifiable records in protected statistical files.

Subsection 7(a) specifies that, except for the provisions of sections 8, 9, and 11 of the bill, no agency, employee of an agency, or any other person may disclose to anyone or to any entity any information from a protected statistical file in any manner that would reasonably be expected to reveal individually identifiable information about a person. Paragraph 7(a)(1) prohibits disclosure of an individually identifiable record. This would also preclude any disclosures of individually identifiable data in the file in response to a Freedom of Information Act request, except for the disclosures explicitly permitted in sections 8, 9, and 11.

Paragraph 7(a)(2) prohibits, in addition, the publication or other release of any information compiled or obtained from a protected statistical file in a manner or statistical form that could reasonably be expected to reveal identifiable information derived from the file. The intent of paragraph 7(a)(2) is to prohibit the publication or release of statistical aggregates, averages, distributions, or other measures, or releases in individual form (such as public use data tapes), unless such release is accomplished in a manner or statistical form that effectively guards against linkage with other available information leading to likely identification of records in a protected statistical file. Since current methodology cannot with absolute certainty eliminate all possibility of such indirect disclosure, the prohibition applies to those cases where there is a reasonable expectation of disclosure.

Paragraph 7(a)(3) also prohibits agencies, their employees, or any other person from using the individually identifiable information contained in a protected statistical file for any purpose that is not statistical. The intent is to prohibit use of the information contained in such records in any administrative, regulatory, legislative, judicial, or other action undertaken against or in relation to a particular individually identifiable person. It also prohibits the use of

information from the file in an individually identifiable form by an employee of an agency for private gain.

Representatives of the Treasury and Justice Departments have expressed concern that the strong protections granted to data in statistical files not be extended to the point where the health and safety of individuals is unnecessarily endangered. It is not intended that the prohibition on disclosure in section 7 apply to information about individually identifiable persons that is obtained incidentally by an employee of an agency in connection with the collection or compilation of information for a protected statistical file, but has no relation to the information intended for that file, and the employee made no pretense that it did. Thus, an interviewer in an employment survey who learned, in the process of collecting survey information, that the individual being interviewed was planning to commit a violent crime, might feel compelled by conscience to report this to law enforcement authorities. Indeed, in some cases the interviewer might be legally or morally obligated to report such information. However, under no circumstances might the interviewer disclose information collected for the survey or in any way related to the content of the survey, or unrelated information whose disclosure would not serve to protect the health and safety of individuals.

Subsection 7(b) establishes a uniform requirement for informing all agency employees who are to have access to a protected statistical file of the confidential nature of the file information, the restrictions on use and disclosures of information contained in the file, and the sanctions imposed for violations of the Act. Each employee with such access would be required to swear or certify in writing that he understands and accepts these responsibilities and is aware of the sanctions imposed for violations of this Act.

## DISCLOSURES FROM PROTECTED STATISTICAL FILES

The necessary but strictly limited disclosures to be permitted or required from protected statistical files are set forth in sections 8, 9, 11, and 13. Section 8 provides for the disclosures that may be made from protected statistical files for statistical purposes only; section 9 provides for the few legally necessary incidental disclosures for nonstatistical purposes; section 11 deals with the special provisions relating to disclosures from two particular protected statistical files, the "Standard Statistical Establishment List" and the "Limited Establishment List;" and section 13 defines specific additional authorities and limitations needed to preserve confidentiality rights and expectations conferred on the public by current law, and defines the oversight role of the Director of OMB with respect to discretionary provisions of the Act.

DISCLOSURES FROM PROTECTED STATISTICAL FILES  
FOR STATISTICAL PURPOSES

Section 8 details the very limited conditions under which individually identifiable information may be disclosed, even for strictly statistical purposes. Subsection 8(a) provides for the most common types of disclosure anticipated in the Federal Statistical System--the disclosure of a protected statistical file, or a part thereof, made voluntarily by the agency or center maintaining the file to a protected statistical center. In order for such a disclosure to take place, all of the following conditions must be met:

(1) The protected statistical center requesting the file must do so in writing, certifying that the statistical purpose for which the data will be used cannot be realized without individually identified data and that the receiving center will reimburse the providing unit for appropriate costs, as mutually agreed upon.

(2) The receiving center agrees to remove identifiers associated with records as soon as this can be done without interfering with the purpose of the statistical project. It is recognized that some projects may require that identifiers be retained in the file for a period of years in order to accomplish the project, but with many projects the identifiers can be disposed of quickly.

(3) In some instances it may be necessary to retain the identifiers in a separate file from the remaining information, so that they may be matched with data occasionally to meet special processing needs, such as in statistical editing. The receiving center agrees that the identifiers will also be destroyed as soon as practicable.

(4) The receiving center is forbidden any subsequent use or disclosure of records from the file in "individual form" without the written authorization of the originating agency. Thus, the receiving center is precluded even from releasing unidentifiable individual data from the file--such as in the form of a public use data file--without the express authorization of the originating agency.

(5) The originating agency's concurrence in any publication plan utilizing the disclosed data must be obtained by the receiving agency. This is intended to enable the originating agency to make sure that the various publications planned for data in the file do not, in combination, result in inadvertent statistical disclosures of identifiable data.

In paragraphs 8(a)(4) and 8(a)(5) the "originating agency" for a protected statistical file means the agency or unit that originally designated the file as a protected statistical file pursuant to subsection 5(c), or the agency, unit, or protected statistical center under whose authority the file initially

acquired the status of a protected statistical file pursuant to subsection 5(a) or 5(b). A file that combines information from several protected sources may have several originating agencies, each bearing responsibility for preserving the confidentiality of information to which it originally assigned protection.

Subsection 8(b) provides that when one protected statistical center enters into a reimbursement agreement with another protected statistical center to have statistical work, such as data collecting, processing, analysis, or maintenance, performed on a protected statistical file, both centers and their employees may share access to individually identifiable information to the extent necessary to accomplish that work.

Subsection 8(c) provides for disclosures to an employee of the agency maintaining the file, but only on a "need to know" basis having to do with the statistical purpose of the file. If a protected statistical center is part of an agency (as opposed to being an entire agency), disclosure is only permitted by this subsection to employees of the center. Disclosure may be made under this provision to personnel of a contractor or of an agency or a unit of another agency or State government that is a party to a cooperative statistical agreement with an agency or a protected statistical center, but only for the specific statistical purposes provided for in the contract or cooperative statistical agreement with the agency or protected statistical center that maintains the protected statistical file from which the disclosure is made.

Subsection 8(d) permits disclosure to an agency or a unit of State government under a cooperative statistical agreement, provided that the information to be disclosed was collected without a requirement of mandatory response and that the person from whom the information was obtained was informed of the intended disclosures before the data were collected. The intent of this subsection is to reduce reporting burden where this can

be achieved through the collection of data to be used for statistical purposes by more than one agency, but only under the control of the person providing the information. Since the original response was voluntary, this control can be exercised by the person through refusal to provide the information. (This provision governs cases where the statistical purposes of a cooperating party are not subsumed in the purposes of the responsible agency or center and thus that party cannot be deemed to be performing work for that agency as required in 8(c)).

Subsection 8(e) permits disclosure to an agency, a unit of State or local government, or any person, provided that the agency or protected statistical center maintaining the file obtained the information from a unit of State government that collected the information under its own legal authority. Written approval for such disclosures must be obtained from the State official having legal custody of the original records.

Unlike other disclosure provisions in this section, subsection 8(e) permits disclosure of information (obtained from a unit of State government) for statistical use to persons who have no direct link to the Federal Government through a contract or cooperative statistical agreement. The primary purpose of this provision is to ensure wide access for legitimate statistical purposes to such files as vital records information maintained by the National Center for Health Statistics (NCHS) and based entirely on vital records obtained from the States. Access to these files through NCHS will substantially facilitate and reduce the cost of studies relating to mortality, fetal mortality, and natality. Such disclosures are permitted under existing law governing the confidentiality of information furnished to NCHS (42 U.S.C. 242m).

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DISCLOSURES FROM PROTECTED STATISTICAL FILES  
FOR NONSTATISTICAL PURPOSES

Section 9 details the specific instances in which the head of an agency or a protected statistical center may disclose individually identifiable information from protected statistical files for nonstatistical purposes. Such purposes must be incidental to an agency or center's purposes for establishing or maintaining the file, otherwise the criteria for designating a protected statistical file would be violated. The head of the agency that originally collected the information serves as the single point of control for these disclosures. This prevents the protected statistical centers from becoming conduits for nonstatistical disclosures that cannot be made by the agency which collected the data. Individually identifiable information may be disclosed:

(a) to the person to whom the particular record to be disclosed pertains, or to his legal representative (the person's heir, successor, or authorized agent) in response to a written request from that person or his legal representative.

(b) to the National Archives pursuant to the provisions of the National Archives Act. This provisions permits disclosure to the National Archives of individually identifiable records that have sufficient historical or other value to warrant their continued preservation by the United States Government. Confidentiality of records so disclosed will be governed by the National Archives Act and by any agreements reached, under the provisions of that Act, with the agencies or protected statistical centers that collected the data. This provision permits disclosure to the Administrator of the General Services Administration or his or her designee to determine whether records meet the criteria for preservation in the National Archives, but is not intended to modify existing law.



(c) to qualified and properly identified persons for evaluating or auditing activities of agencies and their employees relating to the development and maintenance of protected statistical files, but only in those cases where the use of individually identifiable records is clearly necessary to accomplish the audit or evaluation. The audit or evaluation must be authorized by statute to be performed by an Inspector General. Such disclosure is subject to the condition that the information so obtained cannot be used as evidence in any administrative, regulatory, legislative, judicial, or other proceeding against anyone other than the agency or protected statistical center maintaining the file, or its employees. Furthermore, it is explicitly forbidden to use the information as evidence or otherwise redisclose it in a manner that would reasonably be expected to reveal the information contained in an individually identifiable record. Recontact of persons to whom the records refer is permitted only when essential to the purpose of the audit or evaluation, with the concurrence of the head of the agency or protected statistical center maintaining the file. Recontacts must be made in a manner that minimizes the risk of adverse consequences to the person and to the statistical activity that is being audited or evaluated.

(d) in compliance with an administrative summons or subpoena or with a judicial order, including a search warrant or grand jury subpoena, where legal action is being brought against an agency maintaining protected statistical files or an employee or some other person for violation of the provisions of this bill, or in connection with investigation of possible violations. To protect the person to whom the information in the record pertains, the information shall be used as evidence only under a protective order and shall not be made public. This section also permits disclosure, where necessary, to departmental or agency general counsel or to Justice Department attorneys representing the government in such investigations or proceedings;

(e) where a federal agency collects information for statistical purposes under a federal statute mandating truthful response and imposing sanctions for refusing to respond or making false response, to officers of the court in relation to an investigation or prosecution of suspected violations of such statute. Disclosures in such cases are limited to the records relating to the person being investigated or prosecuted and other directly relevant records. Records so disclosed must be protected from public disclosure in the same manner as in subsection (d).

DISCLOSURE OF FILES OTHER THAN PROTECTED STATISTICAL FILES  
TO PROTECTED STATISTICAL CENTERS

The purpose of section 10 is to eliminate existing barriers to the reduction of response burden by ensuring full access to administrative, regulatory, and program records by protected statistical centers for statistical purposes.

Subsection 10(a) provides that any agency may release all or any part of any file, or a copy thereof, other than files precluded from release by a federal law to protect the national security, to a protected statistical center for a specified statistical purpose. The releasing agency may retain a copy of the file and use or disclose it for any lawful purposes; indeed, if the law requires that the agency use the file for particular nonstatistical purposes, then the agency must retain a copy of the file for such uses.

If an agency releases to a protected statistical center a file that is not already a protected statistical file, the file may or may not become a protected statistical file in the center, depending upon whether it meets the qualifications set forth in section 5. If it meets these qualifications, the file must be

treated as a protected statistical file in the protected statistical center; if it does not meet these qualifications, it may not be given the status of a protected statistical file. If files qualify as protected statistical files, they will be fully protected from disclosure by provisions of this Act, and their subsequent use by the recipient for any nonstatistical purpose will be prohibited.

If the file released to the protected statistical center does not qualify to become a protected statistical file, then the originating agency may, in accordance with its own rules, prescribe the uses and any redisclosures that the protected statistical center may make from the file (Subsection 10(b)). But if the file does qualify and becomes a protected statistical file in the protected statistical center, then the receiving center must consult with the releasing agency prior to any subsequent disclosure from the file (Subsection 10(c)). The receiving center determines what subsequent disclosure may be made consistent with the provisions of this Act since that determination often requires statistical expertise. The consultation requirement assures that the center responsible for provisions of this Act is fully informed of other uses and disclosures made by the releasing agency.

When a protected statistical center needs to use a statistical file maintained by an organization outside the Federal Government and offers to purchase the file under contract, it sometimes finds that it cannot obtain the data unless it can guarantee the contractor that no further uses or disclosures of the data will be made by the center. Subsection 10(d) provides that in such an instance the protected statistical center may write a contract with the outside organization, stipulating to the use limitations demanded by that organization, even though these limitations prevent certain uses or disclosures otherwise permitted by this Act, but only with the approval in advance of the contract by the Director or his designee. An example of this is a professional organization that will release its file of characteristics of

practitioners to a center for statistical purposes, but only if the center can guarantee that it will not redisclose the file to other centers or agencies.

It is anticipated that the Director or his designee will work closely with the protected statistical centers to develop standard contractual language consistent with the objectives of this Act. Only exceptional situations would require review and approval of an individual contract.

#### STANDARD STATISTICAL ESTABLISHMENT LIST AND LIMITED ESTABLISHMENT LIST

Section 11 describes two forms of list information for establishments--the Standard Statistical Establishment List (SSEL) and the Limited Establishment List (LEL). These two lists both differ in some important aspects from the list described in past proposals of the Department of Commerce. This section assigns the responsibility for the compilation and maintenance of the SSEL and the LEL to the Secretary of Commerce through the Bureau of the Census. The sources of information will be substantially the records of the Bureau of the Census, supplemented by information from the IRS and Social Security Administration tax systems, from the Bureau of Labor Statistics and its cooperative state agencies and from specialized federal statistical agencies.

#### Subsection 11(a) STANDARD STATISTICAL ESTABLISHMENT LIST

This subsection describes the information that is contained in the Standard Statistical Establishment List for each enterprise and its constituent establishments. These items correspond to the items specified in the list proposed to be released by the Department of Commerce with the distinction that the quantitative items on the SSEL would not necessarily have to be coded as was previously proposed.

The SSEL is a protected statistical file of the Bureau of the Census, and the Bureau of the Census is considered to be the originating agency. At the determination of the Secretary of Commerce that conditions (a)(1) through (a)(6) are satisfied, the SSEL information shall be made available exclusively to protected statistical centers and employees under their direct supervision and control and contractors who provide secure data processing and telecommunications services. Conditions (a)(1) through (a)(6) are tailored to the specifics of the content and use of the SSEL. Where applicable, these conditions are consistent with, and in addition to, the conditions of section 8(a) that govern the permissive disclosures of protected statistical files to protected statistical centers.

Paragraph (a)(1) is identical with condition (8)(a)(1) with "SSEL" inserted in the place of "protected statistical file."

Paragraph (a)(2) requires that only the specific records and elements of records necessary to achieve the specified statistical purpose will be made available.

Paragraph (a)(3) prohibits the protected statistical center receiving the file from making any further use or subsequent disclosure of the information (other than that specified in the original request) without the written consent of the Secretary of Commerce. This condition is analogous to 8(a)(4) with the "SSEL" inserted in the place of "protected statistical file", and "Secretary of Commerce" inserted in the place of the "originating agency."

Paragraph (a)(4) limits the use of SSEL information based on returns and return information by employees of a protected statistical center who are personnel retained by a protected statistical center under contract or in a cooperative statistical agreement. If such personnel have access to returns or return information under any provision of 26 USC 6103 other than

subsection 6103(j) they will not be permitted access to any SSEL information based on returns and return information. This limitation ensures that taxpayer privacy will not be compromised through potential matching of a file containing tax return data released by Treasury to assist States in their tax collections and for other purposes (some of which are required by law) with SSEL information obtained under a contract or cooperative statistical agreement with a State.

Paragraph (a) (5) permits the Secretary of Commerce to determine when SSEL information collected or maintained by the Secretary of Commerce under authority of Title 13 may be disclosed to personnel retained by a protected statistical center who do not meet the test for required disclosure specified above. This provision gives the Secretary additional control over disclosures of Title 13 information within the protected statistical centers.

Paragraph (a) (6) assures that protected statistical centers may maintain their own individually identifiable files for any purposes without sacrificing their access to the SSEL.

#### Subsection 11(b) LIMITED ESTABLISHMENT LIST

This section describes the information that is contained in the Limited Establishment List for each enterprise and its constituent establishments. The content of LEL records is more restricted than corresponding SSEL records--all information with the exception of name and physical location would be coded.

The LEL is a protected statistical file of the Bureau of the Census, and the Bureau of the Census is considered to be the originating agency. Disclosures from the LEL will be made for limited statistical purposes only at the discretion of the Secretary of Commerce. The LEL has an exceptional status as a protected statistical file in that it may be disclosed to agencies or units thereof that are not protected statistical

centers or to States or units thereof, and to the employees of those organizations who have a need for the records in the performance of their statistical duties. Also, the LEL is exceptional in that the disclosures of the LEL are governed by the conditions of this section without regard for consistency with section 8.

Paragraph (b)(1) states that any agency or State or unit thereof desiring the LEL must make a written request for disclosure of the LEL and this request must be approved in writing by the Secretary of Commerce.

Paragraph (b)(2) states that the LEL information may only be used for statistical purposes involving compilation or collection of statistical data. This test is more restrictive than the "exclusively statistical purposes" condition employed elsewhere in this Act.

Paragraph (b)(3) indicates that use of the LEL by a state agency or unit thereof must be necessary to fulfill a cooperative statistical agreement with that state. In addition, the written request must include the names of employees to whom disclosures will be made.

Paragraph (b)(4) states that the Secretary of Commerce must be satisfied with the safeguards that the recipient agency has established to ensure the integrity, confidentiality, and security of the records to be released to it.

Paragraph (b)(5) for the LEL is similar to paragraph (a)(3) for the SSEL in that it prohibits any further use or subsequent disclosure (other than that specified in the original request) without the written consent of the Secretary of Commerce.

Paragraph (b)(6) for the LEL is analogous to Paragraph (a)(4) with "LEL" inserted in place of "SSEL", and "agency, or unit thereof, or state, or unit thereof" inserted in place of "protected statistical center".

Paragraph (b)(7) assures that any agency, or unit thereof, or state, or unit thereof, may maintain their own individually identifiable files for any purposes without sacrificing their access to the LEL. This ensures that maintenance by that organization of individually identifiable information from other sources for regulatory and other programs is not construed as incompatible with access to LEL information for the limited statistical purposes permitted in paragraph (b)(2).

#### STATISTICAL ADVISORY COUNCIL

Section 12 provides for the establishment of a Statistical Advisory Council to be made up of the heads of all the protected statistical centers and the Director of OMB or his designee who is to be its chairperson. Representatives of other agencies of the federal statistical system are expected to be invited to participate in the Council's deliberations, to assure that it is broadly representative of federal statistical programs. The Council will meet as often as the Director or his designee determines necessary, but at least once every six months.

The Council would be specifically charged to review all proposals to designate protected statistical centers and all proposed rules, policies, and procedures for implementing this Act, and to advise the Director of OMB on these matters. But the Director or his designee may also prescribe that the Council look into any and all other important matters relating to federal statistical activities. It is anticipated that the Council will become a high-level forum for the discussion of all serious statistical concerns of federal agencies and for making recommendations to



resolve them. The Council would also be expected to resolve disputes that may arise among statistical units respecting the implementation of this and related acts.

Subsection 12(b) provides that the direct costs and staffing of the Council, which should be nominal, would be met by the respective protected statistical centers, with the amounts and allocations to be determined by the Council as a group.

#### RELATIONSHIP TO OTHER LAWS

Section 13 allows the protections and disclosure rules of this Act to be applied in a manner consistent with the objectives of three existing statutes. Two of these statutes, Title 13 (the Census Code) and Title 26 (the Internal Revenue Code), have provided long standing confidentiality protection for the comprehensive files of information collected in support of the missions authorized by these titles. Both titles employ "statistical use tests" in determining allowable disclosures but each title also contains "eyes only" restrictions which are not consistent with the objectives of this Act. These restrictions further limit disclosures that meet the "statistical use test" to named organizations within the Federal establishment. This Act employs a similar principle in designating organizations by name as protected statistical centers, but the named organizations do not coincide with those in Title 13 and Title 26.

The practical effect of such restrictions is to assure the uniform administration of confidentiality procedures and safeguards and to limit the total number of individuals given access to confidential information. Uniform administration and limited access contribute significantly to public confidence that the protections guaranteed in law can be realized in practice.

Subsections 13(a) and 13(b) assign to the Secretary of Commerce and the Secretary of the Treasury responsibility to preserve the confidentiality privileges enjoyed by individuals and

organizations under current law, and provide the means consistent with the objectives of this Act to mitigate the effects of differences between this Act and current law.

Subsection 13(a) requires the Secretary of Commerce to extend the protections of this Act to all information protected by section 9(a) of Title 13. Paragraph 13(a)(1) prohibits the disclosure of such information (other than that contained in the SSEL and the LEL) that was collected prior to enactment of this Act under a confidentiality pledge inconsistent with disclosures permitted by this Act. Paragraph 13(a)(2) requires the Secretary to impose any of four specific limitations on disclosures of protected statistical files containing Title 13 information (other than the SSEL) requested by a protected statistical center under section 8(a), whenever he determines that such limitations are necessary to discharge his responsibilities under Title 13.

The first three limitations allow the Secretary when necessary to limit specific forms of access permitted in this Act that are not permitted under Title 13. Taken together they have an effect similar to the current Title 13 authority to disclose information to "specially sworn employees" (13 USC 23) except that the disclosure may be for any legitimate statistical purpose of a protected statistical center rather than the specific purposes of Title 13.

The fourth limitation guarantees the Secretary of Commerce an opportunity to review the specific procedures and safeguards to be used in handling the confidential information and to consult either directly with a protected statistical center or with the corresponding agency head concerning disclosure risks such procedures and safeguards might entail. If the consultation process does not produce agreement, however, the Secretary of Commerce may not impose his views on a protected statistical center in another agency (since each protected statistical center is individually accountable through its agency head to the President for the adequacy of such safeguards and procedures).

In such case the Secretary's responsibilities under this Act and Title 13 may oblige him to report the alleged inadequacies to the Director of OMB or the President for possible action under section 6.

None of these additional obligations and authorities apply to the SSEL and LEL, which are completely governed by section 11, nor to future work by the Bureau of the Census under reimbursement agreements governed by subsection 8(b).

Subsection 13(b) imposes obligations on the Secretary of the Treasury similar to those imposed on the Secretary of Commerce by subsection 13(a). The differences are due to the fact that initial disclosures of returns and return information are governed by section 10 rather than section 8 of this Act.

Under current tax law, returns and return information may not be designated protected statistical files while in the custody of the Treasury Department. (Section 7214 of the Internal Revenue Code requires disclosures inconsistent with this Act and thus the conditions of section 5 cannot be satisfied.) Once such information is disclosed to a protected statistical center for exclusively statistical purposes it must acquire the status of a protected statistical file pursuant to subsection 5(a) of this Act. (Return information disclosed to a protected statistical center for statistical and other purposes may not be protected under subsection 5(a) but initially retains the protection afforded by Treasury regulations as provided in subsection 10(b) of this Act and may also become subsequently protected pursuant to subsection 5(b).)

If the general provisions of subsection 10(c) were applied to protected statistical files of return information they would have the effect of relieving the Secretary of the Treasury of any responsibility for the confidentiality of return information transferred among protected statistical centers. While each such

center is fully accountable for maintaining the confidentiality of information disclosed to it under this Act, the number and variety of disclosures made by the Treasury Department under provisions of the Internal Revenue Code make it difficult to assess the risk of indirect disclosure without the direct participation of the Treasury Department.

For these reasons subsection 13(b) reaffirms the responsibility of the Secretary of the Treasury for redisclosures of tax return information and provides specific means to discharge that responsibility consistent with the objectives of this Act. The limitations that may be unilaterally imposed on redisclosures are also intended to provide an incentive for protected statistical centers to deal directly with the Treasury Department whenever possible.

Subsection 13(c) clarifies the authorities of the Director of the Office of Management and Budget under section 3510 of Title 44 (as amended by the Paperwork Reduction Act of 1980) in relation to disclosures permitted by this Act. Under section 3510, the Director may order an agency to disclose information to another agency when the disclosure is not inconsistent with any applicable law. This subsection asserts the intent of this Act that discretionary decisions or determinations not to make permitted disclosures do not bind the Director to find such disclosures inconsistent with this Act except under certain specified conditions--(c)(1) through (c)(7).

The exceptions cover seven specific situations. The first three cover cases where disclosure would violate contracts or confidentiality pledges made in good faith prior to this Act. The fourth, fifth and sixth cover respectively, contract terms agreed to by the Director, disclosures prohibited by State law or regulation, and disclosures prohibited in the interest of national security and foreign policy. The final exception

excludes from OMB oversight those specific authorities reserved to the Secretary of Commerce and the Secretary of the Treasury in this section (paragraphs 13(a)(3) and 13(b)(2)) as a means of preserving protections expected by the public under current law.

IMMUNITY FROM LEGAL PROCESS OF RECORDS  
IN PROTECTED STATISTICAL FILES

Subsection 14(a) establishes the legal immunity of records in protected statistical files. All such records and all individually identifiable records extracted or derived from protected statistical files are immune from mandatory disclosure under any Federal, State, or local law, including the Freedom of Information Act. No agency, protected statistical center or their employees can be compelled to disclose individually identifiable records in protected statistical files in any Federal, State, local or other civil, criminal, administrative, regulatory, legislative or other proceeding, except as provided in subsection 9(d) in connection with alleged violations of the provisions of this Act, and in subsection 9(e) in connection with enforcing a requirement for truthful response.

Subsection 14(b) extends the same immunity to file copies of statistical reports when these copies are in the possession of the persons to whom the reports pertain. It is not intended, however, that such protection be extended to administrative or program records or reports, whether in the possession of an agency or a person, even though identifiable information from such records or reports may be incorporated into a protected statistical file. Therefore, the immunity provided by subsection 14(b) applies only to copies of reports whose sole purpose is to obtain information for inclusion in a protected statistical file.

Since file copies in the possession of the persons to whom the reports pertain are not records in a protected statistical file, there is no reason to prohibit voluntary disclosure of these

copies by such persons. Such disclosure is permitted under subsection 14(b).

#### SANCTIONS AND PENALTIES

Section 15 provides for sanctions and penalties for violations of the provisions of the bill.

(a) Wrongful disclosure of information, misuse of information. This provision deals with criminal violations, and sets the fine at not more than \$10,000 for violation of the nondisclosure provisions of the bill, for unlawful access, or for improper use of protected statistical files to accomplish nonstatistical purposes or to conceal nonstatistical information. A longer term of imprisonment is provided for unlawful disclosure than for the other prohibited acts to reflect the greater potential harm to persons whose information is in files. The penalties may be applied to any person who violates the provisions regardless of whether the access to protected statistical files is lawful or unlawful. A larger fine may be applied to a government contractor, not more than \$50,000 or the value of the contract.

(b) Civil Liabilities - Right of redress. This subsection provides a civil right of action for a person aggrieved by any violation of the Act. Agencies having access to individually identifiable records from protected statistical files must be made accountable to the persons to whom the records pertain. It is anticipated that private enforcement action will be a powerful tool in ensuring compliance with the Act's requirements by agencies.

Paragraph (1) gives a right to recover any specified damages sustained by a person resulting from a violation of the Act. The agency is held accountable for injury resulting from the actions

of its employees in the course of their duties. Other persons are individually liable for damages resulting from their actions.

Paragraph (2) gives the right to recover general compensatory damages in addition to any award for specified damages. General damages may be based on the nature and seriousness of harm suffered by the person.

(c) Administrative sanctions. This subsection provides for agency action against contractors who violate the bill. A knowing violation would be a matter for an agency to consider in evaluating the qualifications of a contractor before making a new award. Repeated violations make the contractor liable to debarment from participation in Federal contracts for the collection, compilation or use of individually identifiable records for or from protected statistical files for up to three years. Adjudication proceedings would be held in accordance with the Administrative Procedure Act.

#### REGULATIONS

Section 16 sets forth the requirements for development of regulations to implement this Act. Each agency with one or more protected statistical centers and/or one or more protected statistical files, is required to promulgate regulations for implementing the Act (subsection 16(a)). For agencies with one or more protected statistical centers these regulations are to be developed in time so that they become effective on the effective date of the Act, 365 days after the bill is signed by the President. Independent regulatory agencies are to consult with the Director or his designee on their regulations; other agencies are required to obtain the approval of the Director or his designee for their regulations. Regulations must, of course, be promulgated in accordance with the Administrative Procedure Act.

The task of developing regulations and conforming them across government (through OMB review) will be difficult and time consuming. Thus OMB is required to publish guidelines to assist the agencies by 180 days after enactment (subsection 16(b)), and OMB staff are expected to advise and assist the agencies in regulation development throughout that process.

OMB is also required to publish regulations by the effective date of the Act to cover all agencies that will not have promulgated regulations to implement the Act by that date (subsection 16(c)). Agencies will still be able to publish (with the concurrence of the Director or his designee) regulations relating to implementing the Act in those agencies at later dates, and when they do these specific regulations will supersede the general OMB regulations.

#### EFFECTIVE DATE

Sec. 17. This section allows the immediate establishment of the Statistical Advisory Council and commencement of the process of developing implementing regulations so that this process can be completed when other provisions of the Act become effective one year after the bill is signed by the President.

#### CONFORMING AMENDMENTS

Sec. 18.

(a) Conforming amendment to the Privacy Act of 1974.

Some, but not all records in protected statistical files will be "records" as defined in the Privacy Act of 1974. In particular, records for living individuals that are part of a "system of records" as defined by the Privacy Act will be covered by that Act. On the other hand, records for deceased individuals and for legal persons are not covered by the Privacy Act.



For those records in protected statistical files that are also Privacy Act records, it is important that the generally more restrictive use and disclosure limitations of this bill apply. This is the primary objective of the proposed conforming amendment to the Privacy Act. In addition, the amendment permits certain disclosures for statistical purposes that are not provided for in the Privacy Act and exempts records in protected statistical files from certain provisions that are appropriate only for records used to make decisions about or take actions affecting specific individuals.

Subsection 18(a)(1) adds the definition of "protected statistical file" used in this bill to the definitions in the Privacy Act.

Subsection 18(a)(2) adds a new condition for disclosure of Privacy Act records to the list of conditions in 552a(b). This new condition, (b)(13), permits disclosure of records to protected statistical centers, for statistical purposes, as provided in section 10 of this bill. It applies only to records not in protected statistical files. The disclosure of records that are in protected statistical files will be governed by the provisions of this bill.

Subsection 18(a)(3) adds protected statistical files containing Privacy Act records to the categories of systems of records which agency heads may exempt from certain provisions of the Privacy Act.

Subsection 18(a)(4) provides that Privacy Act records in protected statistical files will be subject to the provisions of this bill, and will be exempt from provisions of the Privacy Act, except for the following:

(b) (4) Disclosure to the Bureau of the Census, to carry out the provisions of Title 13;

(b) (6) Disclosure to the National Archives, when historical value warrants;

(e) (3) (A), (B), and (D) Notice to the individual at the time of collection (except notice of routine uses);

(e) (4) (A), (B), (C), (E), (F), and (I) Publication of system notice for establishment of revision of a system of records (excluding access procedures and notice of routine uses);

(e) (9) Employee rules of conduct;

(e) (10) Safeguards;

(l) Archival records; and

(o) Report to Congress and OMB of new and revised systems.

Records in protected statistical files would be exempt from Privacy Act requirements that would negate the strong protections of this bill or would burden agencies or units maintaining statistical files with procedures that are appropriate only for records used to make decisions about or take actions affecting individuals.

Thus, identifiable records in protected statistical files would be exempt from all of the disclosures in 552a(b) except for (b) (4), to the Census Bureau and (b) (6), to the National Archives. Other disclosures permitted under this bill are more limited than those permitted by the Privacy Act. Disclosures without consent must be for statistical purposes or for audits or

law enforcement purposes directly related to the development and maintenance of protected statistical files and to compliance with the provisions of this bill.

For example, intra-agency disclosures are permitted (section 8(c) of this bill), but only for statistical purposes, and if the protected statistical file is held by a protected statistical center, such disclosures are limited to employees of that center. Disclosures for audits and evaluations are permitted (section 9(c) of this bill) but only where the audit or evaluation relates to the collection, compilation, processing and use of information in protected statistical files. Disclosures for law enforcement purposes are permitted only in connection with alleged violations of this Act or a statute mandating truthful response to a statistical inquiry, and any use of information as evidence must be made under a protective order prohibiting disclosure to the public.

Other provisions of the Privacy Act from which records in protected statistical files are exempted are:

(c) Accounting of Certain Disclosures: The purpose of requiring an accounting of disclosures from Privacy Act systems of records is twofold: to allow individuals to know who has had access to information about them and why, and to facilitate the propagation of corrections or amendments to the record. The former purpose is obviated by the strict limits in the bill on who can have access to records in protected statistical files and for what purpose. The propagation of corrections, which is vital when information is used to take actions affecting individuals, is not important to an individual in the statistical context, where no decisions are made on the basis of the records.

(d) Access to records: The purpose of access is to allow individuals to see and correct information that is used or disclosed to make decisions or take actions affecting them.

Since records in protected statistical files, by definition, are not used to make decisions about individuals, access is of little or no benefit to the subject. The Privacy Act already exempts records that are "required by statute to be maintained and used solely as statistical records" from individual access; this bill extends that exemption to statutorily-protected records in protected statistical files. (Of course, agencies would not be precluded from allowing individuals to have access to their own records.)

(e) (1) Maintain only relevant and necessary information: A standard of "relevant and necessary" is important when information is used to make decisions. However, in a statistical context, the usual standard of relevance is meaningless since there are no individual decisions by which to judge relevance or necessity.

(e) (2) Collection from individuals for determinations: No "determinations about an individual's rights, benefits, and privileges" are made on the basis of research records, so this provision of the Privacy Act would not be applicable to records in protected statistical files.

(e) (3) (c) and (e) (4) (d) require notice to be provided of routine uses that may be made of information (at the discretion of an agency) in addition to the principal purposes for which information was collected: In the case of a protected statistical file, all routine uses that are compatible with the exclusively statistical purposes of the file are completely specified in section 9 of this bill. Since agencies have no discretion to define any other routine uses, there will be no occasion to provide notice of such action.

(e) (4) (G) and (H) System notice concerning access procedures: Because this bill does not provide for access to records in protected statistical files, the requirement for a notice of access procedures would not apply.

(e)(5) Accurate records for determinations: No determinations are made based on records in protected statistical files, so this provision of the Privacy Act would not apply.

(e)(6) Dissemination of only accurate information outside the Federal Government: Decisions affecting individuals are not based on information from protected statistical files, so there is no need to require greater accuracy than the design of the statistical data system will already assure.

(e)(7) No First Amendment collection without consent or statutory authorization: This prohibition is important when information is used to make individual decisions, because individuals must not feel that their rights, benefits, or privileges can be affected by the exercise of their First Amendment rights. However, the strict protections that this bill provides for such information will allow statistical studies to be conducted without having a "chilling effect" on an individual's exercise of his First Amendment rights. Statistical studies which preserve the anonymity of respondents should be the preferred method of addressing any question concerning the exercise of First Amendment rights.

(e)(8) Notice before disclosure under legal process: Information so disclosed can only be used as evidence under a protective order, and cannot be disclosed to the public, so the interests of the individual are protected.

(e)(11) Publication of notice of change in routine uses: All routine uses of records in protected statistical files are completely specified in section 9 of this bill. Any change in these routine uses would require an act of Congress.

(f) Agency rules for access and contest: Access and contest are not required for records in protected statistical files, so the provision that agencies establish procedures is not applicable.

(g), (i) Civil remedies, criminal penalties: These sanctions which are geared to violations of the Privacy Act, apply only to agencies and a few contractors and include only fines, actual damages, and attorney fees. Section 15 of this bill provides for higher fines, actual and general damages, injunctive relief, and attorney fees, and apply to any agency, contractor, or other person that violates the Act. Such strict penalties are necessary to provide a strong deterrent to the disclosure of sensitive information in protected statistical files.

(h) Rights of legal guardians: The Privacy Act does not cover the records of deceased individuals, who can only exercise their rights through their wills. Section 9(a) of this bill details who can consent to disclosure of records including those of a decedent.

(j), (k) General exemptions, specific exemptions: Records in protected statistical files would have a separate exemption under this bill, so they would not be subject to the provisions of the other types of exemptions.

(m) Government contractors: This bill specifically subjects Federal contractors to all of its provisions instead of the limited application of this subsection of the Privacy Act.

(n) Mailing lists: The Privacy Act only prohibits the unlawful disclosure of names and addresses for mailing lists. This bill would absolutely prohibit the use of records in protected statistical files for any non-statistical purpose.

(q) Effect of other laws: This section of the Privacy Act prohibits an agency from using another part of 5 U.S.C. section 552 to deny an individual access to his own records if the Privacy Act permits such access. Since this bill would eliminate the requirement to grant access under the Privacy Act, this Privacy Act provision would not be applicable.

(b) Conforming amendments to statutes governing confidentiality for named protected statistical centers.

Seven agencies or organizational units are named as protected statistical centers in section 6 of the bill.

For three of these units--the Bureau of Labor Statistics, Department of Labor; the Statistical Reporting Service, Department of Agriculture; and the Division of Science Resources Studies, National Science Foundation--specific statutory requirements for confidentiality are either non-existent or less restrictive than those contained in this bill. No conforming amendments were considered necessary for these three units.

Three other units--the Bureau of the Census and the Bureau of Economic Analysis, Department of Commerce; and the National Center for Health Statistics, Department of Health and Human Services--have existing statutory confidentiality provisions which would in some degree prohibit the disclosure of individually identifiable information to other protected statistical centers, as provided in section 8 of this bill. In addition, the disclosure of establishment lists for statistical purposes, as provided in section 11 of this bill, would not be possible where the lists originated with these agencies. Within the Executive branch, considerable work has already been done on the drafting of legislation to make possible the disclosure for statistical purposes of one particular kind of list--the Standard Statistical Establishment List--access to which is urgently needed by statistical agencies to reduce the cost of conducting business surveys and to improve the quality and comparability of

economic data compiled by different agencies. The provisions of that draft legislation have been incorporated into this bill.

Conforming amendments for these three units provide that the confidentiality of information furnished to them for statistical purposes shall be governed by the provisions of this bill.

A conforming amendment to section 1106 of the Social Security Act is included to permit the Office of Research and Statistics of the Social Security Administration, Department of Health and Human Services to function as a protected statistical center. In addition to making the statistical files maintained by the Office of Research and Statistics subject to the provisions of this bill, this amendment protects individually identifiable information in those files from disclosure for use in connection with the Child Support Enforcement Program, as is now required by section 1106.

(c) Conforming amendment to section 6103 of the Internal Revenue Code.

The Tax Reform Act of 1976 substantially revised the conditions under which "return information" can be disclosed to other agencies and persons. Disclosure is prohibited except where permitted under one of the specific provisions of section 6103 of the Internal Revenue Code. These provisions specify what kinds of return information shall or may be disclosed, to whom, and for what purposes. Subsection 6103(j) permits disclosure of certain kinds of return information for statistical use to four agencies or organizational units--the Bureau of the Census and the Bureau of Economic Analysis in the Commerce Department (6103(j)(1)), the Division of Financial Statistics in the Bureau of Economics of the Federal Trade Commission (6103(j)(2)), and to units within the Department of Treasury (6103(j)(3)) such as the Office of Tax Analysis. All such disclosures must be requested in writing stating the specific kinds of return information needed and the statistical uses to be made of the information.



The benefits to be derived from the disclosure of IRS return information, even for statistical purposes, must be carefully weighed against the overriding importance of being able to assure taxpayers that extraordinary precautions will be taken to prevent misuse of the information they are obliged to provide to IRS.

Disclosure of some return information for statistical purposes to agencies and organizational units other than those presently named in subsection 6103(j) of the Internal Revenue Code could lead to substantial benefits in terms of improving the quality and lowering the cost of statistical data needed for public policy purposes. Although direct collection of data for statistical purposes accounts for only a small part of the total paperwork burden, there is a potential for further reduction of the burden from this source.

The most important example of such potential benefits occurs in connection with the Standard Statistical Establishment List (SSEL). The SSEL is an up-to-date directory of business establishments maintained by the Bureau of the Census. Because it includes some return information, it cannot be made available to other agencies for statistical purposes, as was originally intended while it was being developed. Consequently, business surveys conducted by other agencies cost more than they otherwise would and the results lack comparability with census data.

This bill provides for the disclosure of SSEL information from the Census Bureau to other Federal agencies for statistical purposes only. This would be accomplished by amending 26 U.S.C. 6103(j)(1) to permit IRS to disclose returns and return information to the Census Bureau for the purpose of maintaining the SSEL. Amending 26 U.S.C. 6103(j)(4) permits redisclosure of SSEL information to other Federal agencies for statistical purposes only and gives effect to the special protections for tax return information provided in sections 11 and 13 of this bill.

(d) Conforming amendments to allow the designation of protected statistical files by statistical units of the Department of Energy and the Department of the Treasury.

The amendment to section 205 of the Department of Energy Organization Act relieves of the EIA Administrator of disclosure requirements which conflict with the creation and use of protected statistical files. The first paragraph of the new subsection (i) provides a procedure consistent with the mission of the Energy Information Administration for designating protected statistical files. (Under subsection 5(c) of this bill, the necessary determinations must be made by the Secretary with the concurrence of the Director of OMB).

The second paragraph relieves employees of the Energy Information Administration of any disclosure obligation with respect to protected statistical files which would otherwise conflict with the provisions of this bill. It also allows EIA to lawfully enter into cooperative statistical agreements with other agencies or units that create or maintain protected statistical files.

The amendment to section 7214 of Title 26 allows statistical employees of the Department of the Treasury to preserve the confidentiality of information in protected statistical files without violating the provisions of that section. In the case of a protected statistical file derived from return information, this change would have little effect on the objective of section 7214 since the same information would be available to other Treasury employees from the original administrative files for the detection of tax violations and fraud. The amendment would however allow statistical units of the Department to participate in cooperative statistical projects with other statistical units which might entail some access to protected statistical files of another agency. In this case Treasury statistical employees would be required to abide by the provisions of this bill and could do so without violating section 7214 of the Internal Revenue Code.