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Part VIII

**Office of
Management and
Budget**

**Order Providing for the Confidentiality of
Statistical Information and Extending the
Coverage of Energy Statistical Programs
Under the Federal Statistical
Confidentiality Order; Notice**

OFFICE OF MANAGEMENT AND BUDGET

Order Providing for the Confidentiality of Statistical Information

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Final Order.

SUMMARY: The Office of Management and Budget is issuing an order to clarify, and make consistent, government policy protecting the privacy and confidentiality interests of individuals or organizations who furnish data for Federal statistical programs. It is intended to assure respondents who supply statistical information needed to develop or evaluate Federal policy that their responses will be held in confidence and will not be used against them in any government action. In effect, it clarifies and amplifies the privileged status afforded "confidential statistical data" about businesses and organizations as set forth in the Trade Secrets Act, 18 U.S.C. 1905, as well as the principles of the Privacy Act, 5 U.S.C. 552a, concerning information about individuals. It establishes policies to assure "fair information practices" (as advocated by the Privacy Protection Study Commission and the Commission on Federal Paperwork) for respondents and subjects of statistical inquiries, based on the concept of "functional separation" developed by the Privacy Protection Study Commission. The order permits functional separation to be achieved by two means—(1) identifying an agency or unit that is purely statistical, or (2) distinguishing statistical from non-statistical functions within a single agency or unit. In a separate notice in this issue of the **Federal Register**, we are inviting further public comment on a proposal to amend Appendix A to extend the coverage of this order to additional energy statistics programs.

EFFECTIVE DATE: July 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry L. Coffey, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. Inquiries may be submitted via facsimile to 202/395-7245. Electronic mail inquiries may be submitted via SMTP to Coffey_J@a1.eop.gov or via X.400 to G=Jerry, S=Coffey, PRMD=gov+eop, ADMD+telemail, C=us. Electronic mail inquiries should include the commenter's name, affiliation, postal address, and E-mail address in the text of the message.

SUPPLEMENTARY INFORMATION:

A. Background

Statistical policy authority within the executive branch was established explicitly in section 103 of the Budget and Accounting Procedures Act of 1950, which stated, in its original language:

The President, through the Director of the Bureau of the Budget, is authorized and directed to develop programs and to issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Government. Such regulations and orders shall be adhered to by such agencies.

64 Stat. 834 (codified at 31 U.S.C. 18b). In 1982, this provision was recodified, without substantive change, at 31 U.S.C. 1104(d):

The President shall develop programs and prescribe regulations to improve the compilation, analysis, publication, and dissemination of statistical information by executive agencies. The President shall carry out this subsection through the Administrator for the Office of Information and Regulatory Affairs in the Office of Management and Budget.

See also Section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825) and Executive Order No. 10253 (31 U.S.C. 1104 note, and Codification of Presidential Proclamations and Executive Orders (1945–89), p. 687). Previous orders issued pursuant to this authority have been in the form of OMB Circulars, Transmittals and attached Exhibits (prior to 1977), Statistical Policy Directives (1978–1980), and Statistical Standards (since 1980).

The Paperwork Reduction Act of 1980 (as amended in 1986 and 1995) also requires OIRA to develop policies, principles, standards, and guidelines for privacy and confidentiality generally; the integrity of confidentiality pledges; and the confidentiality of information collected for statistical purposes (subsections 3504(e)(1), 3504(e)(5), and 3504(g)(1) of title 44). In addition the Act tasks OIRA to oversee agency compliance with related requirements of the Act and with the policies referenced above (subsections 3506(b)(1)(C), 3506(e) (2)–(4), and 3506(g)(1)). For example subsection 3506(e)(2) requires agencies to "inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies".

The diverse Federal statistical system consists of more than seventy agencies and units, including a dozen agencies that have statistical activities as their principal function. While this decentralized structure provides

substantial benefits in making statistical units responsive to specific program needs, public confidence in nondisclosure pledges made by statistical agencies or units is sometimes affected by perceptions of the programs those statistics support.

By establishing a uniform policy for the principal statistical agencies, this order will reduce public confusion, uncertainty, and concern about the treatment of confidential statistical information by different agencies. By establishing consistent rational principles and processes to buttress confidentiality pledges, the order will eliminate unsupportable confidentiality claims and agency decision processes that have created uncertainties. Such consistent protection of confidential statistical information will, in turn, reduce the perceived risks of more efficient working relationships among statistical agencies, relationships that can reduce both the cost and reporting burden imposed by statistical programs.

B. Summary of Comments Received on the Proposed Order

On January 29, 1996, OMB issued for public comment a proposed statistical order regarding the confidentiality of statistical information (61 FR 2876). In response to the proposed order, OMB received numerous inquiries and 22 comments. Each comment has been considered in preparing this final order. In developing this order, OMB has also relied upon its four decades of experience in administering the Statistical Policy authority and its 16 years of experience jointly administering that authority and the Paperwork Reduction Act.

Many inquiries and some comments sought clarification. In particular, agency commenters requested further elaboration or explanation of how the processes defined by the order will work administratively. OMB staff have met with and are continuing to meet with agency staff in order to answer this type of question. It is OMB's intention to consult with agencies immediately affected by the order and to provide appropriate guidance for implementing the order. Issues pertinent to information security and disclosure avoidance practices will be considered during these consultations.

Seventeen of the twenty two comments received endorsed the objectives of the order, including an endorsement by the Board of Directors of the Council of Survey Research Organizations, whose members represent the vast majority of survey research activity in the United States. One of these comments also noted that

uniform confidentiality standards could potentially reduce reporting burden by encouraging and facilitating coordination between statistical agencies. Of the other five comments, two were silent on the general principles and three questioned the functional separation principle.

There were no objections to seven of the ten definitions in Section 1, though several comments interpreted definitions in terms of particular programs and practices. With few exceptions, these interpretations reflected a clear understanding of the definitions. The exceptions are discussed in part C below. No comment took exception to any of the procedures or rules of construction with respect to other laws in proposed Sections 4, 5, and 6, nor to the policies in proposed Sections 7, 8, 9, and 10. One comment questioned the designations in Appendix A and several comments discussed inclusion of other agencies. Several comments raised questions about or suggested changes to proposed Sections 2 and/or 3 and Appendix B.

Significant comments received in response to the proposed order and significant changes to the order are discussed below. Among the changes to the order is the addition of a new subsection (c) at the end of Section 2.

C. Significant Comments or Changes

1. Proposed Section 1 ("Definitions"). One comment proposed that the term "non-statistical" used in proposed Section 3 of the order be given an explicit definition. We have instead eliminated that term since it was contributing to confusion concerning the relationship between proposed Section 2 and Section 3.

2. Proposed Section 1 ("Definitions") paragraph (c) ("identifiable form"). Several comments raised the issue of whether the release of "anonymous" information would ensure confidentiality. Simple anonymity (nondisclosure of names, addresses, etc.) is necessary but not sufficient to prevent disclosures in "identifiable form." Release of an extremely detailed set of "anonymous" data coupled with knowledge of the identities of the actual respondents substantially increases the risk that data can be associated with a small group or even an individual respondent. This is a particular problem when a large detailed data base can be matched against a list of respondents. For this reason, steps to prevent disclosures in identifiable form almost always include withholding the list of respondents to a statistical data collection. In order to prevent the disclosure of information in

"identifiable form," an agency must withhold other particulars that are unusual and any list of the identities of actual respondents.

3. Proposed Section 1 ("Definitions") paragraph (d) ("information"). One comment suggested that this definition include reference to samples of physical materials. Physical materials are not themselves "information", though information derived from such materials is already within the scope of the phrase "information of any kind" in the present definition.

4. Proposed Section 1 ("Definitions") paragraph (f) ("respondent"). One comment noted that the definition of respondent might be interpreted to include employees of a Federal agency providing information within the scope of their employment. We did not intend the order to cover such routine administrative collections, just as the Paperwork Reduction Act does not cover them. Compare, for example, 5 C.F.R. 1320.3(c)(4) and 1320.3(c)(3). The definition has been revised to clarify this point.

5. Proposed Section 1 ("Definitions") paragraph (i) ("statistical purpose"). The preamble to the proposed order explained the definition of "statistical purpose" as distinguishing "Federal activities that produce statistical information in anonymous form from all other Federal activities." Two commenters noted that statistical agencies also have a responsibility to preserve and maintain the integrity of statistical materials. It was not our intent in the proposal to exclude such maintenance and preservation activities from the definition of "statistical purposes," which definition acknowledges the "maintenance of * * * information resources" as a class of activities that serve statistical purposes. In order to clarify that preservation is a valid statistical purpose, the language of the definition has been expanded to incorporate an example of maintenance and preservation of statistical materials as authorized by statutory records management and archival policies of title 44, U.S. Code. These policies provide for the confidentiality of retained records for a minimum of 30 years. One comment suggested including the term "research" in the definition of statistical purpose. We have not made this change. While many forms of research fall comfortably within the proposed definition, the term research also includes many activities (clinical research, research in the physical or mathematical sciences) that are beyond the scope of this order and is thus inappropriate in this definition.

6. Proposed Section 1 ("Definitions") paragraph (j) ("Use"). The definition of "use" was intended to distinguish internal activities of a statistical agency or unit (that often require access to individually identifiable information to produce statistical products) from external "disclosures" of information to anyone outside the statistical agency or unit (in whatever form such disclosures might be made); "disclosures" would include, for example, releases of information to the public, to State agencies, or to others in the Federal government. The definition of "use" covers officers, employees, and agents of a statistical agency or unit. Several commenters noted that the description of "agents" differed from corresponding language in the proposed "Statistical Confidentiality Act" (H.R. 3924, 104th Cong.), and questioned whether the language was intended to restrict "use" to actual employees. As reflected in the proposed legislation, we are aware that statistical agencies employ agents who are not employees (e.g., contractors, or experts who are employees of other agencies) to perform functions that might otherwise be performed by employees, and that such agents operate under controls designed to assure information security and proper stewardship of confidential information. We did not intend in the proposal to suggest that such uses of confidential information are improper. The language has been revised to match the terms defined in the proposed Statistical Confidentiality Act. One other comment requested clarification that State administrative agencies working with a statistical agency are not subject to the provisions that apply to that statistical agency. This is generally true. An exception occurs if the State agency has agreed that certain State officers or employees will use statistical information as "agents" of a (Federal) statistical agency or unit as defined in the order—in this case the designated officers or employees of the State agency would be accountable for the responsibilities imposed on such agents. The interaction of Federal and State agencies is also discussed below, with respect to Section 2.

7. Proposed Section 2 ("Prohibitions regarding the disclosure and use of information collected for exclusively statistical purposes.")

(a) One Federal and two State agencies objected to the restriction that (unless otherwise compelled by law) information acquired by a statistical agency or unit for exclusively statistical purposes may be used only for statistical purposes, and shall not be disclosed, or used, in identifiable form

for any other purpose. This is the common principle of the strong confidentiality statutes that govern many statistical agencies. The commenters proposed access to such information for multiple uses under conditions where functional separation could not be guaranteed. This situation may arise when State agencies collect information for *administrative* purposes and provide that information to a Federal agency for *exclusively statistical* purposes. In Federal hands this information is processed and combined with other (confidential) information gathered for *exclusively statistical* purposes. The commenters argued that this order should permit access to the enhanced (statistical) data base by the original State administrative agencies.

We have not adopted this suggestion. To understand our reasons for not doing so, several points need to be kept in mind. First, the proposed (and final) order does not regulate the collection, and subsequent *direct* use, of information by agencies or units which are not listed in Appendix A, except when that collection is done in conjunction with a listed "statistical agency or unit." Thus, for example, this order does not prohibit a non-listed agency or unit from itself collecting information for administrative purposes, and does not prohibit that agency or unit from using or disclosing the collected information for administrative or any other purposes. Second, while the proposed (and final) order does *regulate* the collection and use of information by "statistical agencies and units," the order does not *prohibit* "statistical agencies or units" from collecting and using information for administrative purposes. Under the order, "statistical agencies and units" can decide to collect some types of information for *exclusively statistical* purposes and, to the extent authorized by statute, to collect other types of information (perhaps in conjunction with an administrative agency) for *other* purposes. However, to protect the confidentiality of information that is collected for exclusively statistical purposes and to ensure that confidentiality pledges are fully honored, the order imposes different sets of requirements, depending on whether the particular collection is for exclusively statistical purposes or for other purposes. Thus, for example, when a "statistical agency or unit" (perhaps in conjunction with an administrative agency) collects information that is for an administrative purpose, the order provides that respondents may not be given a

confidentiality pledge that includes "any language that might reasonably be confused with the language" in the confidentiality pledge that is set forth in Appendix B (which is to be used with collections that are for exclusively statistical purposes).

In the situation raised by the commenters, the proposed (and final) order does not regulate the collection of information by a State agency for administrative purposes (except insofar as State employees collect or use information acting as "agents" of a "statistical agency or unit" as described in paragraph 6 above). In addition, the order does not regulate the State agency's *direct* use of the collected information for other administrative purposes. However, if the collected information is subsequently acquired by a "statistical agency or unit" for exclusively statistical purposes, then the order applies to the information that is in the possession of the "statistical agency or unit." Once the data have been combined, classified, or otherwise processed by the "statistical agency or unit," using confidential data from other sources, then Section 2 of the order would prohibit the "statistical agency or unit" from disclosing the enhanced information to the State agency, because such disclosure would entail an unacceptable risk of indirect disclosures of confidential information in identifiable form. This prohibition on the disclosure by the "statistical agency or unit" of the information in its enhanced form does not preclude a State agency from being able to continue to make administrative use of the original (non-enhanced) information that the State agency possesses.

(b) Three commenters endorsed the policy of (1) informing affected respondents of any disclosures in a form or manner that may permit uses other than statistical uses by other agencies or persons, and (2) soliciting the respondent's consent to publish or release information in a form that might entail such risks. This situation may arise, for example, when publications include tabular breakdowns by both industry and relatively small geographic areas. When there are few respondents represented by a particular geographic total, that total might reveal significant information about a dominant company known to operate in that area. In this case, disclosure avoidance policies usually require suppression of such totals to address the risk of indirect disclosures. The policy advocated by these comments would permit an agency to seek the consent of the affected respondents to deviate from this suppression rule. Since policies

concerning this matter have varied from agency to agency, we are persuaded that this issue should be addressed in this order.

In response to these comments, a new subsection (c) has been added to Section 2. This new subsection permits agencies, within statutory constraints, to apply an informed consent policy to the relaxation of disclosure standards. It requires agencies to fully inform the affected respondents of the facts regarding such disclosure whenever there is the possibility that such disclosure may result in a respondent's information being discerned and used by others in identifiable form for purposes other than statistical purposes. The new subsection has been added to Section 2, as proposed by one commenter, since it is intended to apply only to information that a statistical agency or unit proposes to disclose as described above but which otherwise satisfies the conditions of Section 2. OMB will work with statistical agencies to ensure that such policies minimize the risks to respondents. These changes have no effect on statistical programs that are governed by a confidentiality statute that reflects the principle enunciated in subsection (a); instead, the changes clarify how the order applies to some statistical collections not covered by subsections (a) and (b).

8. Proposed Section 3 ("Prohibition on collecting information to be disclosed, or used, in identifiable form for non-statistical purposes.")

(a) Three comments questioned whether the phrase "specifically authorized by statute" might be construed to prohibit multiple use data collections that are not explicitly authorized in statutes. OMB is aware that some organic statutes for statistical agencies are stated in broad general terms. Therefore the word "specifically" has been omitted. The prohibition in proposed Section 3 is intended to prevent a statistical agency or unit from abusing a broad statistical mandate to conduct non-statistical collections. OMB will review proposed collections of information under the Paperwork Reduction Act to identify any such abuses.

(b) Several commenters noted that the emphasis on "non-statistical" purposes in Section 3 did not deal adequately with information collected for *multiple* purposes. Two changes have been made to clarify the full scope of the order. First, the descriptive term "non-statistical purposes" has been stricken wherever it appears in the body of proposed Section 3, and replaced with the phrase "purposes other than statistical purposes" or references to

such purposes. Second, the titles of Sections 2 and 3 have been revised to clarify their relationship to each other. Conforming changes have also been made in Appendix B.

9. Proposed Appendix A ("Designated Statistical Agencies or Units"). Appendix A of the proposed order contained a list of the "statistical agencies and units" that are subject to this order. Comment was particularly solicited on the list of agencies proposed for inclusion or on other agencies or units that should be considered for inclusion.

Several comments mentioned other agencies that might be included in Appendix A, specifically the Environmental Protection Agency (EPA), the Social Security Administration (SSA), and the Health Care Financing Administration (HCFA). One general comment recommended that the order be extended in the future to as many agencies as possible in order to provide more protection for the rights and privileges of citizens. In addition, several informal inquiries and one written comment questioned whether all of the "statistical agencies or units" listed in Appendix A could meaningfully comply with the terms of the order under current law.

In the final order, we have not added any agencies or units to the list. The order permits further designations, and we will review the situation in other agencies to determine if additional designations are in the public interest. We originally proposed the Energy End Use and Integrated Statistics Division of the Energy Information Administration for inclusion in Appendix A. However, it is not clear that this is the only unit in EIA that might operate some exclusively statistical programs. Therefore, while retaining that Division in Appendix A (as proposed) in this final order, we are inviting further public comment on a proposal to amend Appendix A to include all of EIA (i.e., to determine, through the analyses prescribed in the order, which other EIA programs may conform to the confidentiality standards of this order). That proposal is in an accompanying notice in today's **Federal Register**.

10. Proposed Appendix B ("Confidentiality pledges"). One commenter inquired how, in the case of an agency not covered by a strong confidentiality statute, the proposed pledge could assert that "by law" certain disclosures may not be made by such agency. The order derives its binding effect from its structure and the authority under which it is issued. This order is issued under Section 103 of the Budget and Accounting Procedures Act

of 1950 and the Paperwork Reduction Act. Section 103 in its original language directed the President, through his budget office, to "issue regulations and orders for the improved gathering, compiling, analyzing, publishing, and disseminating of statistical information for any purpose by the various agencies in the executive branch of the Government" and it further required that "such regulations and orders shall be adhered to by such agencies." Subsequent codification of this provision (in current 31 U.S.C. 1104(d)) did not alter the original Congressional intent. Therefore agencies are required by law to comply with this statistical order. This order also implements the confidentiality provisions of the Paperwork Reduction Act. Finally, the order is structured to avoid any conflict with other law that might preclude its application. Under Section 5 of the order, statistical agencies and units are to review applicable statutes to identify any that would preclude full implementation of the order.

Accordingly, the Office of Management and Budget adopts and issues the Federal Statistical Confidentiality Order, which is set forth below.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

Federal Statistical Confidentiality Order

Consistent government policy protecting the privacy and confidentiality interests of persons who provide information for Federal statistical programs serves both the interests of the public and the needs of the government and society. The integrity and credibility of confidentiality pledges provides assurance to the public that information about persons or provided by persons for exclusively statistical purposes will be held in confidence and will not be used against them in any government action. Public confidence and willingness to cooperate in statistical programs substantially affects both the accuracy and completeness of statistical information and the efficiency of statistical programs. Fair information practices and functional separation of purely statistical activities from other government activities are both essential to continued public cooperation in statistical programs.

Therefore, pursuant to 31 U.S.C. 1104(d), section 3(a) of the Paperwork Reduction Act of 1980 (94 Stat. 2825), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and Executive Order 10253 (as amended), and in order

to improve the compilation, analysis, publication, dissemination, and confidentiality of statistical information, it is hereby ordered as follows:

Section 1. Definitions. For the purposes of this order:

(a) "Disclose" means, unless otherwise indicated, to release information to anyone outside of a statistical agency or unit other than the respondent who provided, or is the subject of, such information (or the agent of such respondent);

(b) "Executive agency" is defined as in 31 U.S.C. 102;

(c) "Identifiable form" means any representation of information that permits information concerning a specific respondent to be reasonably inferred by either direct or indirect means;

(d) "Information" means information of any kind that is not generally available to the public, and includes data;

(e) "Person" means individuals, organized groups of individuals, societies, associations, firms, partnerships, business trusts, legal representatives, companies, joint stock companies, and corporations, and refers to both the singular and the plural;

(f) "Respondent" means a person (other than a Federal employee responding to inquiries within the scope of his employment, see 5 CFR 1320.3(c)(4)) who is requested to provide information, or is the subject of that information, or who provides that information;

(g) "Rule" means the whole or part of a statement by an Executive agency of general or particular applicability and future effect, and includes regulations, directives, orders, guidance, and policy statements;

(h) "Statistical agency or unit" means an agency or organizational unit of the Executive Branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes (Appendix A contains a list of "statistical agencies or units" as defined herein, which have been determined by the Office of Management and Budget to be subject to this order);

(i) "Statistical purpose" means the description, estimation, or analysis by the Federal Government of information concerning persons, the economy, society, or the natural environment (or relevant groups or components thereof) without regard to the identities of specific persons, as well as the development, implementation, or maintenance of methods, procedures, or information resources that support such purposes; "statistical purpose"

specifically includes records management and archival functions authorized in chapters 21, 29, and 33 of title 44 conducted under information security and confidentiality restrictions consistent with sections 2 and 3 of this order; "statistical purpose" specifically excludes many other activities or functions for which information is used in identifiable form, such as determining whether a person is eligible for a license, privilege, right, grant, or benefit (including whether such should be revoked) or whether a person's conduct was or is in accordance with law (including whether a fine, other punishment, monetary damages, or equitable relief should be imposed);

(j) "Use" of information means, unless otherwise indicated, use by a statistical agency or unit, by officers or employees of that agency or unit, or by its agents ("agents" are persons designated by a statistical agency or unit to perform, either in the capacity of a Federal employee or otherwise, exclusively statistical activities authorized by law under the supervision or control of an officer or employee of that statistical agency or unit, and who have agreed in writing to comply with all provisions of law that affect information acquired by that statistical agency or unit).

Section 2. Standards regarding the disclosure and use of information acquired for exclusively statistical purposes.

(a) Information that a statistical agency or unit acquires for exclusively statistical purposes may be used only for statistical purposes, and shall not be disclosed, or used, in identifiable form for any other purpose unless otherwise compelled by law.

(b) When a statistical agency or unit is collecting information for exclusively statistical purposes, it shall, at the time of collection, inform the respondents from whom the information is collected that such information may be used only for statistical purposes and may not be disclosed, or used, in identifiable form for any other purpose, unless otherwise compelled by law. If the statistical agency or unit has determined that it is not otherwise compelled by law, the confidentiality pledge shall be in accordance with Appendix B.

(c) A statistical agency or unit that collects information to be used exclusively for statistical purposes and proposes to disclose such information in an aggregate form or another manner that may permit other agencies or persons to discern and use such information in identifiable form for purposes other than statistical purposes shall, prior to such disclosure, fully inform the affected respondents of the

facts regarding such disclosure and the possibility that such disclosure may result in a respondent's information being discerned by others in identifiable form, and shall not make such disclosure without the prior written consent of all of the affected respondents. This informed consent procedure shall be acknowledged wherever feasible in any confidentiality pledge offered for information that may be disclosed under this procedure.

Section 3. Standards regarding information acquired for the purpose of being disclosed, or used, in identifiable form for purposes other than statistical purposes.

(a) Unless a statistical agency or unit is authorized by statute to acquire information to be disclosed, or used, in identifiable form for purposes other than statistical purposes, such agency or unit shall not collect information for any such purposes.

(b) If a statistical agency or unit is authorized by statute to acquire information to be disclosed, or used, in identifiable form for purposes other than statistical purposes, and is collecting information for such purposes, such agency or unit shall clearly identify such purposes in both the **Federal Register** notices and submissions to the Office of Management and Budget required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). In such cases, a statistical agency or unit may not make a confidentiality pledge that includes any language that might reasonably be confused with the language contained in confidentiality pledges for information that is collected for exclusively statistical purposes (see Section 2(b) and Appendix B).

Section 4. The provisions of this order shall be applied to the maximum extent legally permissible. Accordingly, with respect to matters involving statistical information and activities of statistical agencies or units, Executive agencies shall, to the maximum extent legally permissible, construe and apply pertinent statutes (including, but not limited to, statutes regarding the collection, use, disclosure, and confidentiality of information) in a manner that enables full compliance with this order (or, where a statute precludes full compliance, in a manner that enables compliance with this order to the maximum extent not precluded by statute).

Section 5. Each statistical agency or unit subject to this order shall conduct a review of its activities to ensure that they are in full compliance with this order (or, if full compliance is precluded by statute, that they comply

to the maximum extent not precluded by statute). The agency or unit shall complete the review no later than 60 days after this order takes effect for that agency or unit. The review shall include, among other things:

(a) an identification of any statutes that, the agency or unit believes, preclude full compliance with this order,

(b) an identification of any rules that, the agency or unit believes, are inconsistent with any provisions of this order (including an identification of which such rules are compelled by statute and, conversely, which ones may be revised without a statutory amendment), and

(c) the development of a plan for ensuring that the activities of the agency or unit fully comply with this order (or, if full compliance is precluded by statute, that such activities comply with this order to the maximum extent not precluded by statute).

The results of this review shall be submitted in a report to the Administrator of the Office of Information and Regulatory Affairs no later than 90 days after this order takes effect for that agency or unit. The Office of Management and Budget shall review such reports and, after consultation with the statistical agencies or units in question, may request that the Department of Justice review and provide its opinion regarding any statutes identified as precluding full compliance with this order, or any rules that have been identified as being inconsistent with any provisions of this order and as being compelled by statute.

Section 6. Statistical agencies or units shall implement this order through issuance of appropriate rules, in accordance with applicable procedures. To the extent that it is determined that there are any existing rules which are inconsistent with any provisions of this order and which an Executive agency may revise to be consistent (without statutory amendment), such Executive agency shall promptly undertake to revise such rules, in accordance with applicable procedures, so that they are consistent. OMB and affected statistical agencies or units shall consider, in accordance with the legislative clearance process under OMB Circular A-19, the appropriateness of any statutory amendments that would enable full compliance with this order.

Section 7. The disclosure of information to a statistical agency or unit shall in no way alter obligations under statutes, including the Freedom of Information Act and the Privacy Act, for the same or similar information that was retained.

Section 8. This order is intended to supplement, and not to restrict or diminish, any confidentiality protections that otherwise apply to statistical information.

Section 9. The Office of Information and Regulatory Affairs of the Office of Management and Budget will provide appropriate guidance regarding this order.

Section 10. This order is effective 30 days after final publication in the **Federal Register**.

Appendix A—Designated Statistical Agencies or Units

The following agencies or units have been determined by the Office of Management and Budget to be "statistical agencies or units" for purposes of this order (this list may be revised from time to time):

Department of Agriculture
Economic Research Service
National Agricultural Statistics Service
Department of Commerce
Bureau of the Census
Bureau of Economic Analysis
Department of Education
National Center for Education Statistics
Department of Energy
Energy End Use and Integrated Statistics
Division of the Energy Information Administration
Department of Health and Human Services
National Center for Health Statistics
Department of Justice
Bureau of Justice Statistics
Department of Labor
Bureau of Labor Statistics
Department of Transportation
Bureau of Transportation Statistics
Department of the Treasury
Statistics of Income Division of the Internal Revenue Service
National Science Foundation
Division of Science Resources Studies

Appendix B—Confidentiality Pledges

Statistical agencies or units subject to this order shall, whenever they collect information for exclusively statistical purposes and have determined that they may fully comply with the disclosure and use standards of subsections 2(a) and 2(b) of this order, incorporate the following or equivalent language into confidentiality pledges made to respondents:

"This information collection complies with the Federal Statistical Confidentiality Order. Therefore, by law, your responses may be used only for statistical purposes and may not be disclosed, or used, in identifiable form for any other purpose."

When a confidentiality pledge is made by a statistical agency or unit for any information collection that does not satisfy the disclosure and use standards of subsections 2(a) and 2(b) of this order [e.g., when the purposes of the collection are not exclusively statistical (see Section 3) or when the data may be disclosed in a form or manner that may permit use of the data in identifiable form by other agencies or persons for purposes other than statistical purposes

(see subsection 2(c)), such pledge may not include any language that might reasonably be confused with the language specified above.

[FR Doc. 97-16934 Filed 6-26-97; 8:45 am]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

Extending the Coverage of Energy Statistical Programs under the Federal Statistical Confidentiality Order

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed amendment to appendix A of the Federal Statistical Confidentiality Order.

SUMMARY: The final Federal Statistical Confidentiality Order announced in this issue of the **Federal Register** lists the Energy End Use and Integrated Statistics Division of the Energy Information Administration (EIA) as a unit determined by the Office of Management and Budget to be subject to the coverage of the order. While retaining that Division in Appendix A (as proposed) in the final order, we are today inviting further public comment on a proposal to amend Appendix A to include all of EIA (i.e., to determine, through the analyses prescribed in the order, which other EIA programs may conform to the confidentiality standards of that order).

DATES: Comments must be received on or before August 26, 1997.

ADDRESSES: Please address all written comments to Katherine K. Wallman, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. Comments may be submitted via facsimile to 202/395-7245. Electronic mail comments may be submitted via SMTP to Wallman_K@a1.eop.gov or via X.400 to G=Katherine, S=Wallman, PRMD=gov+eop, ADMD+telemail, C=us. Comments submitted via electronic mail should include the commenter's name, affiliation, postal address, and email address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Jerry L. Coffey, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. Inquiries may be submitted via facsimile to 202/395-7245. Electronic mail inquiries may be submitted via SMTP to Coffey_J@a1.eop.gov or via X.400 to G=Jerry, S=Coffey, PRMD=gov+eop, ADMD+telemail, C=us. Electronic mail inquiries should include the commenter's name, affiliation, postal

address, and email address in the text of the message.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Statistical Confidentiality Order issued by the Office of Management and Budget (OMB) establishes policies to assure "fair information practices" (as advocated by the Privacy Protection Study Commission and the Commission on Federal Paperwork) for respondents and subjects of statistical inquiries, based on the concept of "functional separation" developed by the Privacy Protection Study Commission. The order permits functional separation to be achieved by two means—1) identifying an agency or unit that is purely statistical, or 2) distinguishing statistical from nonstatistical functions within a single agency or unit.

By establishing a uniform policy for the principal statistical agencies, this order will reduce public confusion, uncertainty, and concern about the treatment of confidential statistical information by different agencies. By establishing consistent rational principles and processes to buttress confidentiality pledges, the order will eliminate unsupportable confidentiality claims and ambiguous decision processes that have created uncertainties under FOIA. Such consistent protection of confidential statistical information will, in turn, reduce the perceived risks of more efficient working relationships among statistical agencies, relationships that can reduce both the cost and reporting burden imposed by statistical programs.

B. Proposed Amendment to Appendix A

Appendix A of the Federal Statistical Confidentiality Order contains a list of "statistical agencies and units" determined by OMB to be principally subject to that order and includes a unit of EIA whose functions are widely considered to be predominantly statistical, specifically, the Energy End Use and Integrated Statistics (EEUIS) Division. During review of comments on the proposed order, consideration was given to other agencies or units that should be included. In the case of EIA, other units within the agency collect statistics on petroleum supply and marketing, natural gas, reserves, coal, electric and renewable energy, and general information about energy markets. It is not clear that the EEUIS Division is the only unit in EIA that might operate some exclusively statistical programs.

Many data collection programs within EIA were originally authorized to support energy regulation as well as EIA's statistical mission. However as regulatory programs were terminated, these data collections were restructured to support statistical priorities alone. While many of the original statutes were crafted to authorize regulatory data collections, Congress has repeatedly reauthorized and funded the restructured (statistical) programs that describe segments of the energy economy that are no longer regulated.

Amending Appendix A of the Federal Statistical Confidentiality Order to

include all of EIA will set in motion the analyses required by the order to determine which multiple uses of such programs still remain and conversely which programs are now justified by statistical priorities only.

These analyses under Sections 6 and 7 of the order may also identify statutory provisions that are no longer needed or appropriate, and clarify the standards of review (e.g., the administrative or statistical test of practical utility) that should be applied to these programs under the Paperwork Reduction Act (see, for example, 5 C.F.R. 1320.3(l)).

Accordingly, OMB proposes to amend Appendix A of the Federal Statistical Confidentiality Order by inserting "Energy Information Administration" in lieu of "Energy End Use and Integrated Statistics Division of the Energy Information Administration" under the heading "Department of Energy".

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

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