

# EIA and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA)

Jay Casselberry, Statistics and Methods Group/EIA

## Background

The E-Government Act of 2002 (Public Law 107-347) was signed into law on December 17, 2002. Title V of the E-Government Act is the [Confidential Information Protection and Statistical Efficiency Act](#) (CIPSEA). CIPSEA's primary purposes<sup>1</sup> are to protect information collected for statistical purposes<sup>2</sup> from improper disclosure and to ensure that the information is not used for nonstatistical purposes<sup>3</sup>.

To achieve its purposes, CIPSEA establishes limitations on the use and disclosure of statistical data or information. As stated in CIPSEA section 512, data or information acquired under a pledge of confidentiality and for exclusively statistical purposes shall be used for exclusively statistical purposes and shall not be disclosed for a nonstatistical purpose, except with the informed consent of the respondent.

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<sup>1</sup> CIPSEA Section 511 states as its purposes:

“(1) To ensure that information supplied by individuals or organizations to an agency for statistical purposes under a pledge of confidentiality is used exclusively for statistical purposes.

(2) To ensure that individuals or organizations who supply information under a pledge of confidentiality to agencies for statistical purposes will neither have that information disclosed in identifiable form to anyone not authorized by this title nor have that information used for any purpose other than a statistical purpose.

(3) To safeguard the confidentiality of individually identifiable information acquired under a pledge of confidentiality for statistical purposes by controlling access to, and uses made of, such information.”

<sup>2</sup> As defined in CIPSEA, the term “statistical purpose” - (A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and (B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A).

<sup>3</sup> As defined in CIPSEA, the term “nonstatistical purpose” - (A) means the use of data in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent; and (B) includes the disclosure under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act) of data that are acquired for exclusively statistical purposes under a pledge of confidentiality.

While CIPSEA applies to all Federal agencies, CIPSEA section 512 goes on to place additional requirements on statistical agencies or units. If a statistical agency or unit collects any data or information that may be used for nonstatistical purpose, the agency must provide notice to the public of the possible nonstatistical uses before collecting the data or information. (A question for the Committee focuses on this requirement to notify the public of possible nonstatistical uses of survey information.)

CIPSEA does create a process for agencies to share information to be used for exclusively statistical purposes. Under CIPSEA, a statistical agency or unit may designate agents, by contract or by entering into a special agreement containing the provisions required under section 502(2), who may perform exclusively statistical activities, subject to the limitations and penalties described in CIPSEA.<sup>4</sup>

CIPSEA Section 513 sets forth severe fines and penalties for improper disclosure of covered data and information. These include the possibility of imprisonment and/or monetary fines.<sup>5</sup>

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<sup>4</sup> As defined in CIPSEA, the term “agent” means an individual -

(A)(i) who is an employee of a private organization or a researcher affiliated with an institution of higher learning (including a person granted special sworn status by the Bureau of the Census under section 23(c) of title 13, United States Code), and with whom a contract or other agreement is executed, on a temporary basis, by an executive agency to perform exclusively statistical activities under the control and supervision of an officer or employee of that agency;

(ii) who is working under the authority of a government entity with which a contract or other agreement is executed by an executive agency to perform exclusively statistical activities under the control of an officer or employee of that agency;

(iii) who is a self-employed researcher, a consultant, a contractor, or an employee of a contractor, and with whom a contract or other agreement is executed by an executive agency to perform a statistical activity under the control of an officer or employee of that agency; or

(iv) who is a contractor or an employee of a contractor, and who is engaged by the agency to design or maintain the systems for handling or storage of data received under this title; and

(B) who agrees in writing to comply with all provisions of law that affect information acquired by that agency.

<sup>5</sup> Whoever, being an officer, employee, or agent of an agency acquiring information for exclusively statistical purposes, having taken and subscribed the oath of office, or having sworn to observe the limitations imposed by section 512, comes into possession of such information by reason of his or her being an officer, employee, or agent and, knowing that the disclosure of the specific information is prohibited under the provisions of this title, willfully discloses the information in any manner to a person or agency not entitled to receive it, shall be guilty of a class E felony and imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

CIPSEA was discussed at the Spring 2003 meeting of the ASA Committee on Energy Statistics. At that time, EIA was just beginning the process to determine what actions should be taken in response to CIPSEA's passage.

## Process

With enactment of CIPSEA, EIA began a project to determine what survey information will be collected under CIPSEA in 2004. The project included:

- Determining what confidentiality options could be used for EIA survey information, including identifying key issues related to EIA's surveys.
- Enumerating reasons why CIPSEA should (and should not be) used for specific EIA surveys in 2004.

## Confidentiality Options

CIPSEA added a new confidentiality option for EIA survey information and did not eliminate any existing options. With regard to confidentiality, EIA now has the following options:

- (1) Confidential - the information is not publicly released with direct identifiers.
  - a. CIPSEA – Information is confidential and limited to use for exclusively statistical purposes
  - b. Existing EIA Provisions – Survey information includes trade secrets and commercial or financial information obtained from a person, considered as privileged or confidential, and public release may cause substantial competitive harm to a company that reported information to EIA. Under these conditions, EIA may, by law, withhold identifiable information from public release. However, the Federal Energy Administration Act<sup>6</sup> requires that EIA share the identifiable confidential information for official uses which may include nonstatistical purposes.
- (2) Not confidential – Information may be publicly released with direct identifiers. Once released, the identifiable information may be used for both statistical and nonstatistical uses

Confidentiality provisions may vary within a survey. For example, some elements may be treated as confidential while other elements are not confidential. Also, within a survey, some elements may be CIPSEA confidential and limited to exclusively statistical uses, while other elements are confidential under existing EIA provisions and may be

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<sup>6</sup> Section 12(f) of the FEA Act ([15 U.S.C. 771](#)) states: “. . . that such information shall be disclosed by the Comptroller General or the Administrator, in a manner designed to preserve its confidentiality –

- (1) to other Federal Government departments, agencies, and officials for official use upon request;
- (2) to committees of Congress upon request; and
- (3) to a court in any judicial proceeding under court order.

used for nonstatistical purposes including sharing with other Federal agencies for official purposes.

### **Reasons for Choosing (and for not choosing) CIPSEA for 2004**

Major benefits to EIA of collecting information under CIPSEA include:

- Upon written agreement, EIA may share confidential identifiable information with Federal and non-Federal organizations to be used for exclusively statistical purposes. Existing laws create barriers to EIA sharing with non-Federal organizations.
- Information collected under CIPSEA is protected from possible release in response to requests under Freedom of Information Act (CIPSEA Section 502(5)(B)). This reduces workload for EIA staff in responding to FOIA requests and for justifying how release may cause substantial competitive harm to a company that reported information to EIA.
- Response rates may increase because of stronger EIA assurance that confidentiality can be maintained and use is limited to exclusively statistical purposes. Without additional research and testing, it is difficult to determine if collecting survey information under CIPSEA would significantly affect response rates.

Major drawbacks to EIA of collecting information under CIPSEA include:

- Limits on EIA's ability to share confidential identifiable information in a timely manner to support official nonstatistical uses by DOE and other Federal agencies. Examples of nonstatistical uses of EIA information may include planning for and responding to major energy supply emergencies (e.g., blackouts, pipeline outages, refinery shutdowns, and other supply chain disruptions). EIA would be unable to share confidential identifiable information for any nonstatistical uses (e.g., sharing with DOE Secretarial Staff and Policy, Homeland Security, other Federal agencies, Congress, etc.) unless respondents provide informed consent. (One question for the Committee deals with informed consent.)
- Related to the first point, there is uncertainty regarding whether EIA's existing sharing commitments would satisfy the criteria for "statistical purposes." EIA has a history of providing identifiable information on an on-going basis to support other Federal organizations in fulfilling their missions. EIA needs to ensure that the on-going uses are deemed statistical. (A question for the Committee deals with existing sharing agreements and whether the uses are statistical.)
- Required disclosure limitation methods and suppression of sensitive cells to ensure confidentiality would negatively impact EIA. Sizable resources would be required to implement disclosure limitation methods in survey systems that currently do not use disclosure limitation and, if implemented, may result in significant reductions in the level of detail in information products (particularly for geographic data below the national level).
- Additional burdens and penalties would be placed on Federal staff to ensure nondisclosure of identifiable data collected under CIPSEA. EIA staff would need additional time to monitor their work, the work of EIA's contractors, and information products to fully ensure nondisclosure and appropriate uses.

- Confidentiality decisions affect both survey respondents and information users. Because of the controversial nature of these decisions, it may be better to present the topic and solicit public comments as part of the process to obtain OMB approval for the surveys. The timing of the OMB approval process is staggered across three-year periods for EIA's surveys and is handled by program area (e.g., petroleum supply, coal, electricity, etc.)

## **EIA Surveys that Will be Collected Under CIPSEA in 2004**

After considering the pros and cons of CIPSEA with respect to the 58 EIA surveys that collect confidential information, it was agreed that 10 surveys would begin collecting information under CIPSEA in 2004. These surveys are:

- 2003 Commercial Buildings Energy Consumption Survey (EIA-871)
- Financial Reporting System (EIA-28)
- Annual Survey of Domestic Oil and Gas Reserves (reserves information; production is not confidential) (EIA-23)
- Petroleum Product Sales Identification Survey (EIA-863)
- Motor Gasoline Price Survey (EIA-878)
- On-Highway Diesel Fuel Price Survey (EIA-888)
- Domestic Uranium Production Report – Annual (EIA-851A) (majority of items)
- Domestic Uranium Production Report – Quarterly (EIA-851Q) (majority of items)
- Uranium Industry Annual Survey (EIA-858) (majority of items )
- Residential Energy Consumption Survey (EIA-457 in 2005)

## **Upcoming Work**

EIA is continuing work related to CIPSEA. Tasks include:

- Creating the text of provisions for confidentiality for all EIA surveys (this will include coordination with both OMB and the DOE Office of General Counsel).
- Determining any additional safeguards/security EIA should implement for CIPSEA information.
- Developing training for EIA/contractor staff who will be working with CIPSEA information (will consider if electronic training is appropriate and can be done with available resources/capabilities).
- Creating informed consent forms for EIA use to allow CIPSEA information to be utilized for specific nonstatistical uses (depending on legal issues, EIA may use electronic signatures).
- Prepare agreements and procedures for sharing CIPSEA information with agents (including the safeguards/security for CIPSEA information shared; what organizations EIA will share with; etc.).

## **Questions for the Committee**

1. EIA has drafted an informed consent agreement (Attachment A) that survey respondents would be asked to sign so that EIA could share CIPSEA information

with approved government organizations for nonstatistical uses (e.g., preparing for and/or responding to emergency situations). EIA is requesting the Committee's advice on the proposed informed consent agreement as well as any experience the members have with informed consent processes.

2. CIPSEA requires that when a statistical agency collects information that may be used for nonstatistical purposes the agency must notify the public of the possible nonstatistical uses. Legislation requires EIA to share non-CIPSEA information for official purposes. At the time of collection, EIA can not be sure of all the possible nonstatistical official uses that may be made of non-CIPSEA information. Does the Committee have any suggestions on how EIA can effectively communicate the possibility of nonstatistical uses while not unduly raising concerns by EIA's survey respondents?
3. EIA will not use CIPSEA for some surveys because it currently has sharing agreements with other Federal agencies and is unsure at this time if the uses would be classified as for "statistical purposes." (Attachment B has examples of two sharing agreements in which EIA is uncertain if the uses would satisfy the CIPSEA requirement for exclusively statistical purposes.) The Committee is asked for their views on whether the uses described in the examples are consistent with "statistical purpose" as described in CIPSEA.

Attachment A

AGREEMENT FOR OFFICIAL USE OF INFORMATION REPORTED ON FORM  
EIA-XXX

The information reported on Form EIA-xxx, "name," is considered confidential and is collected for exclusively statistical purposes in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (Title 5 of Public Law 107-347). The Energy Information Administration (EIA) utilizes the information to prepare statistical reports and analyses used by public and private analysts and policymakers.

EIA collects information on Form EIA-xxx in accordance with CIPSEA to provide a high level of confidentiality protection and to preclude the information being used for nonstatistical purposes including administrative, regulatory, law enforcement, adjudicatory, or other purpose that could affect the rights, privileges, or benefits of a particular identifiable respondent.

Given the integral part of energy in the United States economy as well as historical precedents, the potential exists for major energy supply emergencies requiring understanding and swift actions by the Federal government. In order to ensure an effective response to an emergency, EIA may be requested to expeditiously share information reported on Form EIA-xxx with other components of the Federal government. Without access to the information reported on Form EIA-xxx, other Federal government components may issue information requests that could duplicate each other as well as information previously reported on Form EIA-xxx. In addition to duplicating information already on file with EIA, requests for information at the time of an emergency could jeopardize a timely Federal response.

EIA is requesting your agreement to share Form EIA-xxx information with other components of the Federal government for official uses in planning responses to and/or actually responding to an emergency situation. The information would not be used for any action against a particular respondent. Any information would continue to be treated as confidential and would not be publicly released.

Please complete and return this form to EIA indicating your agreement with EIA sharing information reported on Form EIA-xxx with other components of the Federal government for official uses in the event of a major energy supply emergency as designated by the EIA Administrator. Agreeing to this is strictly voluntary and refusal will involve no penalty to the company. The company may discontinue this agreement at any time without penalty by sending a written notification to EIA.

On behalf of \_\_\_\_\_ (company name), I hereby authorize EIA to share information reported on Form EIA-xxx with other components of the Federal government for official uses in planning for and/or responding to a major

energy supply emergency as designated by the EIA Administrator. The information will be treated as confidential and will not be publicly released. The information shall not be used for any action against this company. Release of the information for any other purpose, or in any other manner, is neither given nor implied.

\_\_\_\_\_ (Signature) \_\_\_\_\_

(Date)

\_\_\_\_\_ (Printed Name) \_\_\_\_\_

(Title)



## Attachment B

### Examples of Existing Agreements Used by EIA to Share Confidential Identifiable Information

Strategic Petroleum Reserve (SPR) Office, Department of Energy, is provided with petroleum marketing and supply survey information to perform assessments and analysis of SPR capabilities in the event of an oil supply disruption. Studies include crude oil disruption impacts, crude oil required by refiners, assessments and projections of distribution capabilities, studies of regional product reserves.

Joint Program Office for Special Technology Countermeasures, Department of Navy is provided with petroleum supply data to study the U.S. petroleum industry's reliability to produce military grade distillate fuels.