

Union Calendar No. 239

106TH CONGRESS
1ST SESSION

H. R. 2885

[Report No. 106-413]

A BILL

To provide uniform safeguards for the confidentiality of information acquired for exclusively statistical purposes, and to improve the efficiency and quality of Federal statistics and Federal statistical programs by permitting limited sharing of records among designated agencies for statistical purposes under strong safeguards.

OCTOBER 25, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1999

Mr. HORN (for himself, Mr. WAXMAN, Mr. WALDEN, Mr. TURNER, Mrs. BIGGERT, and Mr. DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Government Reform

OCTOBER 25, 1999

Additional sponsor: Mrs. MALONEY of New York

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on September 21, 1999]

A BILL

To provide uniform safeguards for the confidentiality of information acquired for exclusively statistical purposes, and to improve the efficiency and quality of Federal statistics and Federal statistical programs by permitting

limited sharing of records among designated agencies for statistical purposes under strong safeguards.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Statistical Efficiency*
5 *Act of 1999”.*

6 **SEC. 2. DEFINITIONS.**

7 *As used in this Act:*

8 (1) *The term “agency” means any entity that*
9 *falls within the definition of the term “executive agen-*
10 *cy” as defined in section 102 of title 31, United*
11 *States Code, or “agency”, as defined in section 3502*
12 *of title 44, United States Code.*

13 (2) *The term “agent” means a person who—*

14 (A) *is designated by a Statistical Data Cen-*
15 *ter (as designated in section 3) to perform exclu-*
16 *sively statistical activities authorized by law*
17 *under the supervision or control of an officer or*
18 *employee of that Statistical Data Center; and*

19 (B) *has agreed in writing to comply with*
20 *all provisions of law that affect information ac-*
21 *quired by that Statistical Data Center.*

22 (3) *The term “identifiable form” means any rep-*
23 *resentation of information that permits information*

1 *concerning individual subjects to be reasonably in-*
2 *ferred by either direct or indirect means.*

3 (4) *The term “nonstatistical purpose” means*
4 *any purpose that is not a statistical purpose, and in-*
5 *cludes any administrative, regulatory, law enforce-*
6 *ment, adjudicatory, or other purpose that affects the*
7 *rights, privileges, or benefits of a particular identifi-*
8 *able respondent.*

9 (5) *The term “respondent” means a person who,*
10 *or organization that, is requested or required to sup-*
11 *ply information to an agency, is the subject of infor-*
12 *mation requested or required to be supplied to an*
13 *agency, or who provides that information to an agen-*
14 *cy.*

15 (6) *The term “statistical activities”—*

16 (A) *means the collection, compilation, proc-*
17 *essing, or analysis of data for the purpose of de-*
18 *scribing or making estimates concerning the*
19 *whole, or relevant groups or components within,*
20 *the economy, society, or natural environment;*
21 *and*

22 (B) *includes the development of methods or*
23 *resources that support those activities, such as*
24 *measurement methods, models, statistical classi-*
25 *fications, or sampling frames.*

1 (7) *The term “statistical purpose”—*

2 (A) *means the description, estimation, or*
3 *analysis of the characteristics of groups without*
4 *regard to the identities of individuals or organi-*
5 *zations that comprise such groups; and*

6 (B) *includes the development, implementa-*
7 *tion, or maintenance of methods, technical or ad-*
8 *ministrative procedures, or information resources*
9 *that support such purposes.*

10 **SEC. 3. DESIGNATION OF STATISTICAL DATA CENTERS.**

11 (a) *IN GENERAL.—Each of the following is hereby des-*
12 *ignated as a Statistical Data Center:*

13 (1) *The Bureau of Economic Analysis in the De-*
14 *partment of Commerce.*

15 (2) *The Bureau of the Census in the Department*
16 *of Commerce.*

17 (3) *The Bureau of Labor Statistics in the De-*
18 *partment of Labor.*

19 (4) *The National Agricultural Statistics Service*
20 *in the Department of Agriculture.*

21 (5) *The National Center for Education Statistics*
22 *in the Department of Education.*

23 (6) *The National Center for Health Statistics in*
24 *the Department of Health and Human Services.*

1 (7) *The Energy Consumption Division of the*
2 *Energy Information Administration in the Depart-*
3 *ment of Energy.*

4 (8) *The Division of Science Resources Studies in*
5 *the National Science Foundation.*

6 (b) *DESIGNATION.*—*In the case of a reorganization*
7 *that eliminates, or substantially alters the mission or func-*
8 *tions of, an agency or agency component listed in subsection*
9 *(a), the Director of the Office of Management and Budget,*
10 *after consultation with the head of the agency proposing*
11 *the reorganization, may designate an agency or agency*
12 *component that shall serve as a successor Statistical Data*
13 *Center under the terms of this Act, if the Director deter-*
14 *mines that—*

15 (1) *the primary activities of the proposed Statis-*
16 *tical Data Center are statistical activities specifically*
17 *authorized by law;*

18 (2) *the proposed Statistical Data Center would*
19 *participate in data sharing activities that signifi-*
20 *cantly improve Federal statistical programs or prod-*
21 *ucts;*

22 (3) *the proposed Statistical Data Center has*
23 *demonstrated its capability to protect the individual*
24 *confidentiality of any shared data; and*

1 (4) *the laws that apply to the proposed Statis-*
2 *tical Data Center are not inconsistent with this Act.*

3 (c) *NOTICE AND COMMENT.—The head of an agency*
4 *seeking designation as a successor Statistical Data Center*
5 *under this section shall, after consultation with the Director*
6 *of the Office of Management and Budget, provide public no-*
7 *tice and an opportunity to comment on the consequences*
8 *of such designation and on those determinations upon*
9 *which the designation is proposed to be based.*

10 (d) *PROHIBITION AGAINST INCREASE IN NUMBER OF*
11 *CENTERS.—No action taken under this section shall in-*
12 *crease the number of Statistical Data Centers authorized*
13 *by this Act.*

14 **SEC. 4. STATISTICAL DATA CENTER RESPONSIBILITIES.**

15 *The Statistical Data Centers designated in section 3*
16 *shall—*

17 (1) *identify opportunities to eliminate duplica-*
18 *tion and otherwise reduce reporting burden and cost*
19 *imposed on the public by sharing information for ex-*
20 *clusively statistical purposes;*

21 (2) *enter into joint statistical projects to improve*
22 *the quality and reduce the cost of statistical pro-*
23 *grams;*

24 (3) *safeguard the confidentiality of individually*
25 *identifiable information acquired for statistical pur-*

1 *poses by assuring its physical security and by con-*
2 *trolling access to, and uses made of, such information;*
3 *and*

4 *(4) respect the rights and privileges of the public*
5 *by observing and promoting fair information prac-*
6 *tices.*

7 **SEC. 5. LIMITATIONS ON USE AND DISCLOSURE OF DATA**
8 **AND INFORMATION BY STATISTICAL DATA**
9 **CENTERS.**

10 *(a) USE OF STATISTICAL DATA OR INFORMATION.—*
11 *Data or information acquired by a Statistical Data Center*
12 *for exclusively statistical purposes shall be used by the Cen-*
13 *ter only for statistical purposes.*

14 *(b) DISCLOSURE OF STATISTICAL DATA OR INFORMA-*
15 *TION.—Data or information acquired for exclusively statis-*
16 *tical purposes shall not be disclosed in identifiable form,*
17 *for any purpose other than a statistical purpose, without*
18 *the informed consent of the respondent.*

19 *(c) RULE FOR USE OF DATA OR INFORMATION FOR*
20 *NONSTATISTICAL PURPOSES.—A Statistical Data Center*
21 *shall clearly distinguish any data or information collected*
22 *for nonstatistical purposes (as authorized by law) by the*
23 *Statistical Data Center by a rule that provides that the re-*
24 *spondent supplying the data or information is fully in-*

1 *formed, before the data or information is collected, that the*
2 *data or information will be used for nonstatistical purposes.*

3 **SEC. 6. DISCLOSURE OF DATA OR INFORMATION BY AGEN-**
4 **CIES TO STATISTICAL DATA CENTERS.**

5 *(a) AGENCIES THAT MAY DISCLOSE DATA OR INFOR-*
6 *MATION TO A STATISTICAL DATA CENTER.—Subject to sub-*
7 *section (b), any Federal agency may disclose data or infor-*
8 *mation to one or more Statistical Data Centers for exclu-*
9 *sively statistical purposes.*

10 *(b) LIMITATIONS ON DISCLOSURE.—Data or informa-*
11 *tion may be disclosed by an agency to one or more Statis-*
12 *tical Data Centers under subsection (a) only if—*

13 *(1) the data or information are to be used exclu-*
14 *sively for statistical purposes by the Statistical Data*
15 *Center or Centers;*

16 *(2) the disclosure of, and proposed use of, the*
17 *data or information by the Statistical Data Center is*
18 *not inconsistent with any provisions of law or Execu-*
19 *tive order that explicitly limit the statistical purposes*
20 *for which such data or information may be used;*

21 *(3) the disclosure is not prohibited by law or Ex-*
22 *ecutive order in the interest of national security;*

23 *(4) the disclosure is made under the terms of a*
24 *written agreement between the Statistical Data Cen-*

1 *ter or Centers and the agency supplying the data or*
2 *information that specifies—*

3 *(A) the data or information to be disclosed;*

4 *(B) the purposes for which the data or in-*
5 *formation are to be used; and*

6 *(C) appropriate security procedures to safe-*
7 *guard the confidentiality of the data or informa-*
8 *tion; and*

9 *(5) the data or information is not disclosed by*
10 *that Center in identifiable form (except in a case in*
11 *which the data or information was collected directly*
12 *by a party to the agreement referred to in subsection*
13 *(b)(4), and the agreement specifies that the data or*
14 *information may be so disclosed to another party to*
15 *the agreement for exclusively statistical purposes).*

16 *(c) NOTICE.—Whenever a written agreement author-*
17 *ized under subsection (b)(4) concerns data that respondents*
18 *were required by law to report and the agreement contains*
19 *terms that could not reasonably have been anticipated by*
20 *respondents who provided the data that will be disclosed,*
21 *or upon the initiative of any party to such an agreement,*
22 *or whenever ordered by the Director of the Office of Manage-*
23 *ment and Budget, the terms of such agreement shall be de-*
24 *scribed in a public notice issued by the agency that intends*
25 *to disclose the data. Such notice shall allow a minimum*

1 of 60 days for public comment before such agreement shall
2 take effect. The Director shall be fully apprised of any issues
3 raised by the public and may suspend the effect of such an
4 agreement to permit modifications responsive to public
5 comments.

6 (d) *APPLICABILITY OF OTHER LAWS.*—(1) The disclo-
7 sure of data or information by an agency to a Statistical
8 Data Center under this section shall in no way alter the
9 responsibility of that agency under other statutes (including
10 the Freedom of Information Act and the Privacy Act) with
11 respect to the disclosure or withholding of such information
12 by that agency.

13 (2) If data or information obtained by an agency is
14 disclosed to another agency pursuant to this section, all pro-
15 visions of law (including penalties) that relate to the unlaw-
16 ful disclosure of the data or information apply to the offi-
17 cers, employees, or agents of the agency to which the data
18 or information is disclosed to the same extent and in the
19 same manner as the provisions apply to the officers and
20 employees of the agency which originally obtained the infor-
21 mation.

22 (3) The officers, employees, and agents of the agency
23 to which the data or information is disclosed, in addition,
24 shall be subject to the same provisions of law, including
25 penalties, relating to the unlawful disclosure of information

1 *that would apply to officers and employees of that agency,*
2 *if the information had been collected directly by that agen-*
3 *cy.*

4 **SEC. 7. COORDINATION AND OVERSIGHT BY OFFICE OF**
5 **MANAGEMENT AND BUDGET.**

6 (a) *IN GENERAL.*—*The Director of the Office of Man-*
7 *agement and Budget shall coordinate and oversee the con-*
8 *fidentiality and disclosure policies established by this Act.*

9 (b) *REPORT OF DISCLOSURE AGREEMENTS.*—(1) *The*
10 *head of a Statistical Data Center shall report to the Office*
11 *of Management and Budget—*

12 (A) *each disclosure agreement entered into pur-*
13 *suant to section 6(b)(4);*

14 (B) *the results of any review of information se-*
15 *curity undertaken at the request of the Office of Man-*
16 *agement and Budget; and*

17 (C) *the results of any similar review undertaken*
18 *on the initiative of the Statistical Data Center or an*
19 *agency disclosing data or information to a Statistical*
20 *Data Center.*

21 (2) *The Director of the Office of Management and*
22 *Budget shall include a summary of all reports submitted*
23 *to the Director under this subsection and any actions taken*
24 *by the Director to advance the purposes of this Act in the*
25 *annual report to the Congress on statistical programs sub-*

1 mitted in accordance with section 3504(e)(2) of title 44,
2 United States Code.

3 (c) *REVIEW AND APPROVAL OF RULES.*—The Director
4 of the Office of Management and Budget shall review and
5 approve any rules proposed pursuant to this Act for consist-
6 ency with this Act and chapter 35 of title 44, United States
7 Code.

8 **SEC. 8. IMPLEMENTING REGULATIONS.**

9 (a) *IN GENERAL.*—Subject to subsections (b) and (c),
10 the Director of the Office of Management and Budget, or
11 the head of a Statistical Data Center or of an agency pro-
12 viding information to a Center, may promulgate such rules
13 as may be necessary to implement this Act.

14 (b) *CONSISTENCY.*—The Director of the Office of Man-
15 agement and Budget shall promulgate rules or provide such
16 other guidance as may be needed to ensure consistent inter-
17 pretation of this Act by the affected agencies.

18 (c) *AGENCY RULES.*—Rules governing disclosures of
19 information authorized by this Act shall be promulgated by
20 the agency that originally collected the information, subject
21 to the review and approval required under this Act.

22 **SEC. 9. EFFECT ON OTHER LAWS.**

23 (a) *TITLE 44 U.S.C.*—This Act, including the amend-
24 ments made by this Act, does not diminish the authority
25 under section 3510 of title 44, United States Code, of the

1 *Director of the Office of Management and Budget to direct,*
2 *and of an agency to make, disclosures that are not incon-*
3 *sistent with any applicable law.*

4 (b) *EXEMPTION FROM FREEDOM OF INFORMATION*
5 *ACT.—Data or information acquired for exclusively statis-*
6 *tical purposes as provided in section 5 is exempt from man-*
7 *datory disclosure under section 552 of title 5, United States*
8 *Code, pursuant to section 552(b)(3) of such title.*

9 (c) *PREEMPTION OF STATE LAW.—Nothing in this Act*
10 *shall preempt applicable State law regarding the confiden-*
11 *tiality of data collected by the States.*

12 **SEC. 10. CONFORMING AND PROPOSED CHANGES IN LAW.**

13 (a) *DEPARTMENT OF COMMERCE.—(1) Section 1 of the*
14 *Act of January 27, 1938 (15 U.S.C 176a) is amended by*
15 *striking “The” and inserting “Except as provided in the*
16 *Statistical Efficiency Act of 1999, the”.*

17 (2)(A) *Chapter 10 of title 13, United States Code, is*
18 *amended by adding after section 401 the following:*

19 **“§402. Exchange of census information with Statis-**
20 **tical Data Centers**

21 *“The Bureau of the Census is authorized to provide*
22 *data collected under this title to Statistical Data Centers*
23 *named in the Statistical Efficiency Act of 1999, or their*
24 *successors designated under the terms of that Act.”.*

1 (B) *The table of sections for chapter 10 of title 13,*
2 *United States Code, is amended by adding after the item*
3 *relating to section 401 the following:*

“402. Exchange of census information with Statistical Data Centers.”.

4 (b) *DEPARTMENT OF ENERGY.—(1) Section 205 of the*
5 *Department of Energy Organization Act (Public Law 95–*
6 *91; 42 U.S.C. 7135) is amended by adding after subsection*
7 *(l) the following new subsection:*

8 “(m)(1)(A) *The Administrator shall designate an orga-*
9 *nizational unit to conduct statistical activities pertaining*
10 *to energy end use consumption information. Using proce-*
11 *dures authorized by the Statistical Efficiency Act of 1999,*
12 *the Administrator shall ensure the security, integrity, and*
13 *confidentiality of the information that has been submitted*
14 *in identifiable form and supplied exclusively for statistical*
15 *purposes either directly to the Energy Information Admin-*
16 *istration or by other Government agencies.*

17 “(B) *To carry out this section, the Administrator shall*
18 *establish procedures for the disclosure of these data to Sta-*
19 *tistical Data Centers for statistical purposes only consistent*
20 *with chapter 35 of title 44, United States Code (commonly*
21 *referred to as the ‘Paperwork Reduction Act’), and the Sta-*
22 *tistical Efficiency Act of 1999.*

23 “(2)(A) *A person may not publish, cause to be pub-*
24 *lished, or otherwise communicate, statistical information*

1 *designated in paragraph (1) in a manner that identifies*
2 *any respondent.*

3 “(B) *A person may not use statistical information des-*
4 *ignated in paragraph (1) for a nonstatistical purpose.*

5 “(C) *The identity of a respondent who supplies, or is*
6 *the subject of, information collected for statistical*
7 *purposes—*

8 “(i) *may not be disclosed through any process,*
9 *including disclosure through legal process, unless the*
10 *respondent consents in writing;*

11 “(ii) *may not be disclosed to the public, unless*
12 *information has been transformed into a statistical or*
13 *aggregate form that does not allow the identification*
14 *of the respondent who supplied the information or*
15 *who is the subject of that information; and*

16 “(iii) *may not, without the written consent of*
17 *the respondent, be admitted as evidence or used for*
18 *any purpose in an action, suit, or other judicial or*
19 *administrative proceeding.*

20 “(D) *Any person who violates subparagraphs (A), (B),*
21 *or (C), upon conviction, shall be fined under title 18,*
22 *United States Code, imprisoned not more than 1 year, or*
23 *both.*

24 “(E) *For purposes of this subsection:*

1 “(i) The term ‘person’ has the meaning given the
2 term in section 1 of title 1, United States Code, but
3 also includes a local, State, or Federal entity or offi-
4 cer or employee of a local, State, or Federal entity.

5 “(ii) The terms ‘statistical activities’, ‘identifi-
6 able form’, ‘statistical purpose’, ‘nonstatistical pur-
7 pose’, and ‘respondent’ have the meaning given those
8 terms in section 2 of the Statistical Efficiency Act of
9 1999.

10 “(3) Statistical information designated in paragraph
11 (1) is exempt from disclosure under sections 205(f) and 407
12 of this Act and sections 12, 20, and 59 of the Federal En-
13 ergy Administration Act of 1974, or any other law which
14 requires disclosure of that information.”.

15 (2) Section 205(f) of the Department of Energy Orga-
16 nization Act (42 U.S.C. 7135) is amended by inserting “,
17 excluding information designated solely for statistical pur-
18 poses under subsection (m)(1),” after “analysis”.

19 (3) Section 407(a) of the Department of Energy Orga-
20 nization Act (42 U.S.C. 7177(a)) is amended by inserting
21 “, excluding information designated solely for statistical
22 purposes under section 205(m)(1),” after “information”.

23 (4) The Federal Energy Administration Act of 1974
24 (Public Law 93–275) is amended—

1 (A) in section 12 (15 U.S.C. 771), by adding
2 after subsection (f) the following new subsection:

3 “(g) This section does not apply to information des-
4 ignated solely for statistical purposes under section
5 205(m)(1) of the Department of Energy Organization Act
6 (Public Law 95–91).”;

7 (B) in section 20(a)(3) (15 U.S.C. 779(a)(3)), by
8 inserting “, excluding information designated solely
9 for statistical purposes under section 205(m)(1) of the
10 Department of Energy Organization Act (42 U.S.C.
11 7135)” after “information”; and

12 (C) in the first sentence of section 59 (15 U.S.C.
13 790h), by inserting “, excluding information des-
14 ignated solely for statistical purposes under section
15 205(m)(1) of the Department of Energy Organization
16 Act (42 U.S.C. 7135)” after “information”.

17 (c) DEPARTMENT OF HEALTH AND HUMAN SERV-
18 ICES.—Section 306 of the Public Health Service Act (42
19 U.S.C. 242k) is amended by adding at the end the following
20 new subsection:

21 “(o) SHARING OF IDENTIFYING INFORMATION FOR
22 STATISTICAL PURPOSES.—

23 “(1) IN GENERAL.—The Director may, subject to
24 the provisions of paragraph (2), designate as an agent

1 of the Center (within the meaning of section 2 of the
2 Statistical Efficiency Act of 1999) an individual—

3 “(A) who is not otherwise an employee, offi-
4 cial, or agent of the Center; and

5 “(B) who enters into a written agreement
6 with the Director specifying terms and condi-
7 tions for sharing of statistical information.

8 “(2) *EFFECT OF DESIGNATION.*—An individual
9 designated as an agent of the Center pursuant to
10 paragraph (1) shall be subject to all restrictions on
11 the use and disclosure of statistical information ob-
12 tained by the individual under the agreement speci-
13 fied in paragraph (1)(B), and to all civil and crimi-
14 nal penalties applicable to violations of such restric-
15 tions, including penalties under section 1905 of title
16 18, United States Code, that would apply to the indi-
17 vidual if an employee of the Center.”.

18 (d) *DEPARTMENT OF LABOR.*—The Commissioner of
19 Labor Statistics is authorized to designate agents, as de-
20 fined in section 2.

21 (e) *NATIONAL SCIENCE FOUNDATION.*—Section 14 of
22 the National Science Foundation Act of 1950 (42 U.S.C.
23 1873) is amended—

24 (1) by amending subsection (i) to read as fol-
25 lows:

1 “(i) Information supplied to the Foundation or its
2 contractor in survey forms, questionnaires, or similar in-
3 struments for purposes of section 3(a) (5) or (6) by an indi-
4 vidual, by an industrial or commercial organization, or by
5 an educational or academic institution that has received
6 a pledge of confidentiality from the Foundation, may not
7 be disclosed to the public unless the information has been
8 transformed into statistical or abstract formats that do not
9 allow the identification of the supplier. Such information
10 shall be used in identifiable form only for statistical pur-
11 poses as defined in the Statistical Efficiency Act of 1999.
12 The names of individuals and organizations supplying such
13 information may not be disclosed to the public.”;

14 (2) by adding the following new subsection after
15 subsection (i):

16 “(j) In support of functions authorized by section 3(a)
17 (5) or (6), the Foundation may designate, at its discretion,
18 authorized persons, including employees of Federal, State,
19 or local agencies (including local educational agencies) and
20 employees of private organizations who may have access,
21 for exclusively statistical purposes as defined in the Statis-
22 tical Efficiency Act of 1999, to identifiable information col-
23 lected pursuant to section 3(a) (5) or (6). No such person
24 may—

1 “(1) *publish information collected under section*
2 *3(a) (5) or (6) in such a manner that either an indi-*
3 *vidual, an industrial or commercial organization, or*
4 *an educational or academic institution that has re-*
5 *ceived a pledge of confidentiality from the Founda-*
6 *tion, can be specifically identified;*

7 “(2) *permit anyone other than individuals au-*
8 *thorized by the Foundation to examine in identifiable*
9 *form data relating to an individual, to an industrial*
10 *or commercial organization, or to an educational or*
11 *academic institution that has received a pledge of*
12 *confidentiality from the Foundation; or*

13 “(3) *knowingly and willfully request or obtain*
14 *any confidential information described in subsection*
15 *(i) from the Foundation under false pretenses.*

16 *Any person who violates these restrictions shall be fined not*
17 *more than \$10,000, or imprisoned not more than five years,*
18 *or both.”.*

19 (f) *DISCLOSURE PENALTIES.*—*Section 1905 of title 18,*
20 *United States Code, is amended by inserting “, or agent*
21 *of a Statistical Data Center as defined in the Statistical*
22 *Efficiency Act of 1999” after “thereof” in the first two*
23 *places such term appears.*

24 (g) *PROPOSED CHANGES IN LAW.*—*Not later than the*
25 *date that is 90 days after the date of the enactment of this*

1 *Act, the President shall submit to Congress a description*
2 *of any additional conforming changes in law necessary to*
3 *carry out the provisions of this Act.*