

paperwork requirements contained in the proposed rule that would merely duplicate paperwork requirements imposed by other agencies, either Federal or State. If an operator has to give certain information to a State agency, the burden of also supplying that exact same information to BLM is relatively small. (Indeed, many of the same commenters noted that much of the proposed rule duplicated existing State requirements.)

Because of this possible misunderstanding, we are re-examining the information collection burden that would be imposed by the proposed rule. In the near future, we will release a revised paperwork burden estimate for public comment.

#### Other

The proposals described in this notice fall within the scope of the analyses prepared for the proposed rule. Please refer to the discussion of how BLM is meeting its procedural obligations contained in the proposed rule for further information (Feb. 9, 1999, 64 FR 6422, 6449).

#### List of Subjects in 43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: October 19, 1999.

**Sylvia V. Baca,**

*Acting Assistant Secretary, Land and Minerals Management.*

Accordingly, BLM proposes to amend its proposed rule published on February 9, 1999 (64 FR 6422) as set forth below:

#### PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

##### Subpart 3809—Surface Management

1. The authority citation for part 3800 continues to read as follows:

**Authority:** 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

2. In § 3809.552 as proposed at 64 FR 6463, revise paragraph (a) by adding a sentence at the end and add paragraph (d) to read as follows:

##### § 3809.552 What must my individual financial guarantee cover?

(a) \* \* \* The financial guarantee must also cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental

requirements while third-party contracts are developed and executed.

\* \* \* \* \*

(d) When BLM identifies a need for it, you must establish that portion of the financial guarantee used to conduct site stabilization and infrastructure maintenance in a funding mechanism that would be immediately redeemable by BLM. BLM would use the funds to maintain the area of operations in a safe and stable condition that complies with applicable environmental requirements during the period needed for bond forfeiture and reclamation contracting procedures.

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#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Office of the Secretary

##### Office of Inspector General

##### 45 CFR Part 5b

RIN 0991-AA99

##### Privacy Act; Exempt Record System

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would exempt the new system of records, the Healthcare Integrity and Protection Data Bank (HIPDB), from certain provisions of the Privacy Act (5 U.S.C. 552a). The establishment of the HIPDB is required by section 1128E of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 1128E of the Act directed the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners, and to maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. The new HIPDB system of records is being established by separate **Federal Register** notice. The proposed exemption being set forth in this rule would apply to investigative materials compiled for law enforcement purposes in anticipation of civil or criminal proceedings. This rule specifically seeks public comments on the proposed exemption.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on November 26, 1999.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Department of Health and Human Services, Office of Inspector General, 330 Independence Avenue, SW, Room 5246, Attention: OIG-60-P, Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG-60-P.

**FOR FURTHER INFORMATION CONTACT:** Rick Burguières, Investigative Policy and Information Management Staff, Office of Investigations, (202) 205-5200.

**SUPPLEMENTARY INFORMATION:** The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, requires the Secretary, acting through the Office of Inspector General (OIG) and the United States Attorney General, to establish a new health care fraud and abuse control program to combat health care fraud and abuse (see section 1128C of the Act, as enacted by section 201(a) of HIPAA). Among the major steps in this program is the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners (see section 1128C(a)(1)(E) of the Act). The establishment of the data bank is required by section 1128E of the Act (added by section 221(a) of HIPAA), which directs the Secretary to maintain a data base of such final adverse actions. Final adverse actions include: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulations. Settlements in which no findings or admissions of liability have been made will be excluded from reporting. However, any final adverse action that emanates from such settlements, and that would otherwise be reportable under the statute, is to be reported to the data bank. Final adverse actions are to be reported, regardless of whether such actions are being appealed by the subject of the report (see section 1128E(b)(2)(C) of the Act).

Groups that have access to this new data bank system include Federal and State government agencies; health plans; and self queries from health care suppliers, providers and practitioners. Reporting is limited to the same groups that have access to the information. One of the primary purposes of these data will be use of this information by a Federal or State government agency charged with the responsibility of investigating or prosecuting a case where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature. The information in this system may also be used in the preparation for a trial or hearing for such violation.

Specifically, this proposed rule would exempt this new records system from certain provisions of the Privacy Act.<sup>1</sup> This exemption is intended to protect, from release to the record subject, information on law enforcement queries to the data bank. It would also exempt the data bank from Privacy Act access and amendment procedures in order to establish access and amendment procedures in the HIPDB regulations.

While subjects will have access to information on all other queries to the data bank, disclosure of law enforcement queries could compromise ongoing investigation activities. The premature disclosure of the existence of a law enforcement activity to an outside party (who may also be the subject of the investigation) could lead to, among other things, the destruction or alteration of evidence and the tampering with witnesses.

Record subjects are guaranteed access to, and correction rights for, substantive information reported to the HIPDB. The procedures, set out in 45 CFR part 61, use the Privacy Act access and correction procedures as a basic framework while, at the same time, providing significant additional rights (such as automatic notification to the record subject of any report filed with the data bank). Data bank subjects also have broader rights on HIPDB correction procedures, including the right to file a statement of disagreement as soon as a report is filed with the data bank.

#### Regulatory Impact Statement

The Office of Management and Budget has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612), and has determined that it does not meet the criteria for a

significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health, safety distributive and equity effects. In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. The Secretary has reviewed this proposed exemption in accordance with the provisions of the SBEA, and certifies that this proposed exemption will not have a significant impact on a substantial number of small entities. Specifically, as indicated above, while the reports of adverse actions to the HIPDB will be known to the subjects of the records in the data bank, the access and use of such information by law enforcement agencies would not be known to the subjects of the records. As a result, we believe that disclosure of this information could compromise ongoing law enforcement activities.

#### Public Inspection of Comments and Response to Comments

Comments will be available for public inspection November 9, 1999, in Room 5518, Office of Counsel to the Inspector General, at 330 Independence Avenue, SW, Washington, DC on Monday through Friday of each week (Federal holidays excepted) between the hours of 9 a.m. and 4 p.m., (202) 619-0089.

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and will respond to the comments in the preamble of the final rule.

#### List of Subjects in 5 CFR Part 5b

Privacy.

Accordingly, the Department's Privacy Act regulations at 45 CFR part 5b would be amended follows:

#### PART 5b—[AMENDED]

Part 5b would be amended as follows:

1. The authority citation for part 5b would continue to read as follows:

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

2. Section 5b.11 would be amended by adding a new paragraph (b)(2)(ii)(F) to read as follows:

#### § 5b. 11 Exempt systems.

\* \* \* \* \*

(b) *Specific systems of records exempt.* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(F) The Healthcare Integrity and Protection Data Bank (HIPDB) of the Office of Inspector General. (See § 61.15 of this title for access and correction rights under the HIPDB by subjects of the Data Bank.)

\* \* \* \* \*

Dated: June 3, 1999.

**June Gibbs Brown,**  
*Inspector General.*

Approved: July 2, 1999.

**Donna E. Shalala,**  
*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition to List the Columbian Sharp-tailed Grouse as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** The Service announces a 90-day finding for a petition to list the Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial scientific and commercial information indicating that listing the Columbian sharp-tailed grouse may be warranted.

**DATES:** The finding announced in this document was made on October 14, 1999. Send comments and information to us on or before December 27, 1999, concerning this petition finding. We may not consider comments received after the above date in making a decision for the 12-month finding.

**ADDRESSES:** You may submit data, information, comments, or questions concerning this petition to the Field Supervisor, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206. The

<sup>1</sup>Subsections (c)(3), (d)(1)-(4), and (e)(4)(G) and (H) of the Privacy Act, in accordance with 5 U.S.C. 522a(k)(2) and 45 CFR 5b.11(b)(ii)(F).