

performance standards would be changed as new data became available, and that the Agency would periodically repeat its baseline surveys to obtain updated data. FSIS intends to use the new *Salmonella* performance standard for young chickens that it is announcing in this Notice in the place of the performance standard codified at 9 CFR 381.94.

In that regulation, FSIS stated that an establishment that failed to meet the standard in three consecutive sample sets would be considered to have failed to maintain sanitary conditions and to maintain an adequate HACCP plan. The Agency said the failure would cause it to suspend inspection at the establishment. In December 2001, the U.S. Court of Appeals for the Fifth Circuit (*Supreme Beef Processors, Inc. v. USDA*, 275 F.3d 432) affirmed a ruling by the U.S. District Court for the Northern District of Texas (*Supreme Beef Processors, Inc. v. USDA*, 113 F. Supp. 2d 1048) that USDA did not have the authority to suspend inspection at an establishment solely on the basis of *Salmonella* test results for the raw meat product produced at the establishment. FSIS had suspended inspection at Supreme Beef Processors, Inc., for failing the standard in three consecutive Agency sample sets. The District Court held that 21 U.S.C. 604(m)(4) focused on a processor's plant and not on the condition of its meat. The Court further held that the presence of *Salmonella* in the finished product did not render the product "injurious to health" within the meaning of § 601(m)(4). The Appellate Court agreed, and further held that 21 U.S.C. 601(m)(4), and hence the *Salmonella* performance standards, cannot be used to regulate the characteristics of incoming raw materials used in the raw ground beef.

Since the *Supreme Beef* case, FSIS has used results from its verification testing program as a measure of establishment process control for reducing exposure of the public to pathogens. FSIS expects establishments to control their processes to ensure that public exposure to pathogens is minimized. The Agency has found that using pathogen reduction performance standards in this way is effective in encouraging improved establishment control of pathogens.

After our review and evaluation of the testing results for several years, in which the frequency with which *Salmonella* was found in testing at young chicken establishments rose, FSIS published a **Federal Register** Notice on February 27, 2006 (71 FR 9772–9777; *Docket 04–026N*). This notice, among other things, announced a new Agency policy for reporting the results from the Agency's *Salmonella* testing program and established three performance categories for establishments. Performance Category 1 was set at an upper limit of no more than half the standard. Category 2 was set at more than half but not exceeding the standard. Category 3 was for establishments exceeding the standard. Thus, for young chickens, Category 1 performance for a set was defined as no more than six positive samples out of a 51-sample set, Category 2 as more than six but no more than 12 positives, and Category 3 as more than 12 positives in a set. For turkeys, Category 1 was defined as no more than six

positive samples out of a 56-sample set, Category 2 as more than six but no more than 13 positives, and Category 3 as more than 13 positives in a set.

In the 2006 **Federal Register** Notice, FSIS stated that it intended to track establishment performance with respect to the different product classes sampled for *Salmonella* over the next year and, after that time, publish the names of establishments in Categories 2 and 3 for any product class that did not have 90 percent of its establishments in Category 1. After the 2006 **Federal Register** notice, the Agency added a second feature to its *Salmonella* testing and reporting program. In addition to having 90 percent of eligible establishments in Category 1, in order to be exempt from having any of its establishments published, a product class must not have any establishment in Category 3.

In 2008, FSIS published a notice in the **Federal Register** (73 FR 4767–4774; Jan. 28, 2008) explaining certain policy decisions relating to the *Salmonella* program and announcing that the Agency would begin publishing monthly results of completed FSIS verification sets for establishments in Categories 2 and 3, beginning with young chicken slaughter establishments. In that notice, the Agency clarified that Category 1 status requires two successive sets at no more than half the standard, but that Categories 2 and 3 are determined by the most recent set. Since publishing that notice, the Agency has created a Category 2T for establishments whose most recent set was at Category 1 level but whose prior set was above half the standard. Such establishments are counted in aggregate statistics but are not published individually. Publication of Category 2 and 3 young chicken establishments began in March 2008, and FSIS continues to publish the names of these establishments on or about the 15th of each month. The production class of whole young turkey carcasses has had more than 90 percent of establishments in Category 1 and no establishments in Category 3 and thus has not had Category 2 establishments published. The Agency believes that publishing Category 2 and 3 establishments has provided an effective incentive for improving performance.

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## DEPARTMENT OF COMMERCE

[Docket No. 100427198–2060–01]

### Privacy Act System of Records

**AGENCY:** U.S. Census Bureau, Department of Commerce.

**ACTION:** Notice of amended Privacy Act System of Records: COMMERCE/CENSUS–10 and 5.

**SUMMARY:** The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled COMMERCE/CENSUS–5, Decennial Census Program.

**DATES:** The system of records becomes effective on May 14, 2010.

**ADDRESSES:** For a copy of the system of records please mail requests to: Chief Privacy Officer, Privacy Office, Room HQ–8H168, U.S. Census Bureau, Washington, DC 20233–3700.

**FOR FURTHER INFORMATION CONTACT:** Chief Privacy Officer, Privacy Office, Room HQ–8H168, U.S. Census Bureau, Washington, DC 20233–3700, 301–763–6560.

**SUPPLEMENTARY INFORMATION:** On March 18, 2010, the Department of Commerce published and requested comments on a proposed amended Privacy Act System of Records notice entitled COMMERCE/CENSUS–5, Decennial Census Program (75 FR 13076). That notice proposed to combine the American Community Survey, and the Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census, into the COMMERCE/CENSUS–5, Decennial Census Program. No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed amended system as final without changes effective May 14, 2010.

Dated: May 7, 2010.

**Brenda Dolan,**

*U.S. Department of Commerce, Freedom of Information/Privacy Act Officer.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Marine Mammal Stranding Report/Marine Mammal Rehabilitation Disposition Report

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before July 13, 2010.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625,