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RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

4 CFR Part 200

RIN 0430–AA03

Privacy Act Regulations

AGENCY: Recovery Accountability and Transparency Board

ACTION: Final rule.

SUMMARY: The Recovery Accountability and Transparency Board (Board) amends its regulations implementing the Privacy Act of 1974 (Privacy Act), Public Law 93–579, 5 U.S.C. 552a. This final rule adds 4 CFR 200.17 to exempt certain systems of records from certain sections of the Privacy Act (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j) and (k). These exemptions will help ensure that the Board may efficiently and effectively compile investigatory material to prevent and detect fraud, waste, and abuse and perform its other authorized duties and activities relating to oversight of funds awarded pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (Feb. 17, 2009) (Recovery Act).

DATES: Effective June 29, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Dure, General Counsel, (703) 487–5439.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on April 19, 2010 (75 FR 20298) for a public comment period to end on June 18, 2010. This rule amends the Board's Privacy Act regulations, 4 CFR part 200, to exempt system of records "RATB–11–RATB Investigative Files" and "RATB–12–RATB Fraud Hotline Program Files" from certain provisions of the Privacy Act which require, among other things, that the Board provide notice when collecting information, account for certain disclosures, permit individuals access to their records, and allow them to request that the records be amended. These provisions would interfere with the Board's oversight functions if applied to the Board's maintenance of these systems of records.

Accordingly, these systems of records are exempt from specified provisions of the Privacy Act, pursuant to sections 552a(j)(2), (k)(2), and (k)(5):

Public Comments

The Board received one comment expressing an individual's opinion that the Board's amendment to its Privacy Act regulations "would allow investigators to really come through and fully investigate in many fraud cases."

List of Subjects in 4 CFR Part 200

Privacy Act of 1974.

■ For the reasons set forth in the preamble, the Board amends Chapter II of Title 4, Code of Federal Regulations, as follows:

CHAPTER II—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

PART 200—PRIVACY ACT OF 1974

■ 1. The authority citation for Part 200 continues to read as follows:

Authority: 5 U.S.C. 552a(f)

■ 2. Part 200 is amended by adding § 200.17 as follows:

§ 200.17 Exemptions.

(a) *General policy.* The Privacy Act permits an agency to exempt certain types of systems of records from some of the Privacy Act's requirements. It is the policy of the Board to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted under (j)(2) and (k)(2).* The Board exempts the RATB Investigative Files (RATB–11) system of records from the following provisions of 5 U.S.C. 552a:

(1) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Board's criminal law enforcement duties.

(2) From subsection (c)(4) and (d) because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(3) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to the Board's close working relationship with other Federal, state and local law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(4) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(5) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(6) From subsection (e)(4)(G)–(I) because this system of records is exempt from the access provisions of subsection (d).

(7) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(8) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(9) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual, which might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(10) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary, and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(c) *Specific systems of records exempted under (k)(2) and (k)(5).* The Board exempts the RATB Fraud Hotline Program Files (RATB–12) system of records from the following provisions of 5 U.S.C. 552a:

(1) From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(2) From subsection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(3) From subsection (e)(1) because the nature of the investigatory function creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close working relationships with other Federal, state and local law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(4) From subsection (e)(4)(G)–(H) because this system of records is exempt from the access provisions of subsection (d).

(5) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

Ivan J. Flores,

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AO–FV–08–0174; AMS–FV–08–0085; FV08–920–3]

Kiwifruit Grown in California; Order Amending Marketing Order No. 920

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends Marketing Order No. 920 (order), which regulates the handling of kiwifruit grown in California. The amendments are based on proposals by the Kiwifruit Administrative Committee (committee), which is responsible for local administration of the order. The amendments will redefine the grower districts into which the production area is divided and reallocate committee membership among the districts, revise the deadline for committee nominations, and revise committee meeting and voting procedures. The amendments were approved by kiwifruit growers in a referendum conducted from March 12 through March 26, 2010. The amendments are intended to improve the operation and administration of the California kiwifruit marketing order program. Proposed amendments that failed in referendum and are not effectuated in this final order include revising committee member terms of office, authorizing the Secretary to fill committee vacancies based upon committee recommendations, authorizing research and promotion programs and accepting voluntary contributions for such programs, and allowing substitute alternates to represent absent members at committee meetings.

DATES: This rule is effective July 29, 2010, except for §§ 920.12 and 920.20, which are effective August 1, 2010.

FOR FURTHER INFORMATION CONTACT: Laurel May or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Laurel.May@ams.usda.gov* or *Kathy.Finn@ams.usda.gov.*

Small businesses may request information on this proceeding by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Anotoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include a Notice of Hearing issued on November 13, 2008, and published in the November 19, 2008, issue of the **Federal Register** (73 FR 69588); a Recommended Decision issued on November 5, 2009, and published in the November 12, 2009, issue of the **Federal Register** (74 FR 58216); and a Secretary's Decision and Referendum Order issued on February 17, 2010, and published in the February 23, 2010, issue of the **Federal Register** (75 FR 7981).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.