DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service
[Docket No. AMS–FV–09–0034; FV–09–707]

Privacy Act of 1974: New System of Records

AGENCY: USDA, Agricultural Marketing Service.

ACTION: Notice of a new system of records for information collected pursuant to the operation and enforcement of Research and Promotion programs.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Agricultural Marketing Service (AMS) proposes to add a system of records to its inventory of records systems. The system of record will cover information collected under Research and Promotion programs in AMS. This notice is necessary to meet the requirements of the Privacy Act to publish in the Federal Register notice of the existence and character of record systems maintained by the agency. Although the Privacy Act requires only that the portion of the system that describes “routine uses” of the system be published for comment, we invite comment on all portions of this notice. AMS Research and Promotion branches and its components and offices have relied on preexisting Privacy Act system of records notices for the collection and maintenance of records that pertain to research and promotion program management.

DATES: The established system of records will be effective February 14, 2011 unless comments are received that would result in a contrary determination. Written comments must be submitted on or before January 14, 2011.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at http://www.regulations.gov or to Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free) or e-mail kimberly.coy@ams.usda.gov.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free) or e-mail kimberly.coy@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Agriculture (USDA), through AMS, helps the agricultural industries develop and expand domestic and international markets for their commodities through self-help programs that conduct research and promotion activities. There are currently 18 Research and Promotion programs in AMS. AMS exercises its authority and oversight of these Research and Promotion programs on specific domestic and imported agricultural commodities. As part of its authority and oversight role of various Research and Promotion programs, AMS requires information and data relating to the production and the importation of those products and commodities that fall within its authority. Part of this information is maintained by U.S. Customs and Border Protection (CBP) in the Automated Commercial Environment (ACE). In support of these requirements, CBP through ACE collects and transmits the identified information as it relates to the import of various agricultural commodities and products. AMS agrees that the information obtained from CBP will only be used for the purposes of implementing AMS laws and regulations, including using this data for regulatory enforcement actions brought in USDA administrative proceedings and/or Federal courts, preparing and releasing summary and statistical market news reports on agricultural commodities and related products, verification of payment of assessments, and referendum procedures. However, any further dissemination not expressly identified here will not occur without the express written permission of CBP. AMS further agrees that any request pursuant to the FOIA (5 U.S.C. 552) for CBP information transferred to AMS will be sent to CBP by secure connectivity for response. The information will be reviewed only by authorized AMS personnel on a roll base and a need-to-know basis and will be kept secure.

In regards to the information collected from domestic production, AMS and the commodity boards or councils maintain such confidential information as required under the specific statutes and government policies relating to confidential information.

While an order issued under the review and guidance of AMS is in effect with respect to an agricultural commodity, assessments shall be paid by producers, first handlers, or others in the marketing chain with respect to the agricultural commodity produced and marketed in the United States and paid by importers with respect to the agricultural commodity imported into the United States, if the imported agricultural commodity is covered by the order. Assessments required under an order shall be remitted to the board established under the order at the time and in the manner prescribed by the order. Late-payment and interest charges may be levied on each person subject to an order who fails to remit an assessment. The rate for the charges shall be specified by the Secretary. The board/council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments and possibly personally identifiable information in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the board/council for collection purposes. Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures. In order to verify that assessments are indeed required to be
paid, and if so, that assessments
required are considered late, the
Department must collect information
from the board/council as well as the
assessment payer.

Each order shall establish a board/
council to carry out a program of generic
promotion, research, and information
regarding the agricultural commodity
covered by the order. Each board shall
consist of the number of members as
established by the order for each
specific commodity. In addition to
members, the Secretary may also
provide for alternates on the board. The
Secretary shall appoint the members
and any alternates of a board from
among producers of the agricultural
commodity and first handlers and
others in the marketing chain as
appropriate. If imports of the
agricultural commodity covered by an
order are subject to assessment, the
Secretary shall also appoint importers as
members of the board and as alternates,
if alternates are included on the board.
The Secretary may appoint one or more
members of the general public to each
board. The Secretary may make
appointments from nominations made
pursuant to the method set forth in each
commodity’s respective order. In order
to nominate members to the board, the
department must collect information to
verify identity and eligibility to serve on
the boards/councils.

AMS Research and Promotion
branches and its components and offices
have relied on preexisting Privacy Act
system of records notices for the
collection and maintenance of records that
dissipate to research and promotion
program management.

As part of its efforts to streamline
and consolidate its Privacy Act record
systems, AMS is establishing a new
Research and Promotion program-wide
system of records under the Privacy Act
(5 U.S.C. 552a) for research and
promotion records management. This
will ensure that all AMS Research and
Promotion branches follow the same
privacy rules for collecting and
handling individuals’ security
management records.

II. Privacy Act

The Privacy Act of 1974, as amended
(5 U.S.C. 552a) requires agencies to
publish in the Federal Register any
notice of a new or revised system of
records maintained by the agency. A
system of records is a group of any
records under the control of any agency,
from which information is retrieved by
the name of an individual or by some
identifying number, symbol, or other
identifying particular assigned to an
individual. The Privacy Act embodies
fair information practice principles in a
statutory framework governing the
means by which the United States
Government collects, maintains, uses,
and disseminates personally identifiable
information. In the Privacy Act, an
individual is defined to encompass
United States citizens and legal
permanent residents. As a matter of
policy, AMS extends administrative
Privacy Act protections to all
individuals where systems of records
maintain information on U.S. citizens,
lawful permanent residents, and
visitors. Individuals may request their
own records that are maintained in a
system of records in the possession or
under the control of AMS by complying
with AMS Privacy Act regulations.

The Privacy Act requires each agency
to publish in the Federal Register a
description denoting the type and
character of each system of records that
the agency maintains, and the routine
uses that are contained in each system
in order to make agency recordkeeping
practices transparent, to notify
individuals regarding the uses to which
personally identifiable information is
put, and to assist individuals to more
easily find such files within the agency.

Below is a description of the USDA
Research and Promotion Programs
System of Records Notice.

SYSTEM NUMBER:

USDA/AMS–12

SYSTEM NAME:

USDA/Research and Promotion
Programs Information Retrieval (RPRIR)
(New)

SECURITY CLASSIFICATION:

Unclassified, sensitive, for official use
only, and classified.

SYSTEM LOCATION:

Records are maintained at several
USDA Headquarters locations and in
Research and Promotion Boards or
Councils offices in the USDA,
Agricultural Marketing Service, 1400
Independence Avenue, SW.,
Washington, DC 20250–0244, and in
field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE
SYSTEM:

Categories of individuals covered by
this system include: (1) All Research
and Promotion Board Council
nominees including, but not limited to:
Producers, handlers, importers, foreign
producers, and at-large members; (2)
importers that are self-proprietors and
maintain a valid Customs importer
number; (3) all individuals covered by
a Research and Promotion program
under AMS supervision; (4) individuals
who are regulated by the subject Acts
and Regulations who may be
investigated for possible violations;
including customers, producers,
handlers, importers, plant operators,
farmers, licensees, inspectors, graders,
weighers, classifiers, collaborators, agents,
appointees, samplers, and other non-
Federal employees; and (5) any other
individuals involved in a review or
investigation as an alleged violator.

CATEGORIES OF RECORDS IN THE SYSTEM:
The system consists of investigatory
material which may include intra- and
interdepartmental recommendations
pertaining to an alleged violation of the
subject Acts. It may include name,
social security number, tax
identification number, employment
history, performance ratings, criminal
history, financial information,
background information, biographical
data, customs operations, license files,
bond records, commodity information,
power of attorney, and case file
information. The case file contains
evidence gathered in the course of the
review or investigations. The system
will also contain the following records:

• Records relating to nominations to
the board/council including, but not
limited to:
  ○ Individual’s name;
  ○ Social Security number;
  ○ Date of birth;
  ○ Address;
  ○ Employment information;
  ○ Professional affiliation(s);
  ○ Education;
  ○ Tax Identification Number;
  ○ Income sources for amounts over
$10,000; and
  ○ Criminal history.

• Records relating to compliance
including, but not limited to:
  ○ The total quantity of commodity
acquired during the reporting period;
  ○ Total quantity handled during the
period;
  ○ The total quantity for sale from
the first handler’s own production;
  ○ The quantity purchased from a first
handler or importer responsible for
purchasing the assessment;
  ○ The date assessment payments
were made; and
  ○ The first handler’s tax
identification number.

For importers, the information may
include: The total quantity imported
during such reporting period;

• A record of each lot imported
during the reporting period including
quantity, date, country of origin, and
port of entry; and

The importer of record tax
identification number.

• Records relating to customs
include, but not limited to:

PURPOSE:
The purpose of this system is to maintain the information to verify the eligibility of persons nominated to positions to the commodity boards as well as to verify the eligibility of persons applying for exemptions or credit of assessments. The system also permits AMS to use CBP ACE DATA to ensure compliance with AMS laws and regulations, and publicly disseminate in aggregate form daily market information for various individual agricultural commodities and related products. This system also allows the collection of information related to all AMS Research and Promotion programs for referendum purposes and for compliance cases to ensure compliance with AMS laws and regulations.

**ROUTES USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Routine use for disclosure to the Department of Justice for use in litigation: To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; (c) any employee of the agency in his or her individual capacity where the agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. Routine use for disclosure to adjudicatory body in litigation: To a court or adjudicatory body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. Routine use for law enforcement purposes: When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate official of the Department of Justice, if necessary to obtain information relevant to an investigation concerning the nomination of a board or council member, retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

4. Routine use for disclosure to a Member of Congress at the request of a constituent: To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Routine use for disclosure to National Archives and Records Administration (NARA): Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Routine use for disclosure to contractors under section (m): To agency contractors, grantees, experts, consultants or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

7. Routine use to HHS parent locator system for finding parents who don’t pay child support: The name and current address of record of an individual may be disclosed from this system of records to the parent locator service of the Department of HHS or authorized persons defined by Public Law 93–647. 42 U.S.C. 653

8. Routine use for use in nominations, employment, clearances, licensing, contract, grant or other benefits decisions by the agency: Disclosure may be made to Federal, State, local or foreign agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the nomination of a board or council member, retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

9. For use in nominations, employment, clearances, licensing, contract, grant or other benefit decisions by other than the agency: Disclosure...
may be made to a Federal, State, local, foreign, or tribal or other public authority the fact that this system of records contains information relevant to the nomination of a board or council member, retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

10. MANDATORY Routine Use—information security breaches: To appropriate agencies, entities, and persons when: (a) [the agency] suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department’s efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. To comply with FFATA and similar statutory requirements for public disclosure in situations where records reflect loans, grants, or other payments to members of the public: USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101, et seq.); section 204 of the E-Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.), or similar statutes requiring agencies to make available publicly, information concerning Federal financial assistance, including grants, sub-grants, loan awards, cooperative agreements and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:
To a “consumer reporting agency” as defined in the Fair Credit Reporting Act (12 U.S.C. 1681a(f) or the Federal Claims Collection Reporting Act of 1966 (15 U.S.C. 3701(a)(3) in accordance with section 3711(f) of Title 31.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Records are stored in paper and electronic format.

RETRIEVABILITY:
Records are retrieved by individual’s name or other unique identifier.

SAFEGUARDS:
All records containing personal information are maintained in secured file cabinets or in restricted areas, in which access is limited to authorized personnel. Access to computerized data is password-protected and under the responsibility of the system manager and subordinates. The database administrator has the ability to review audit trails, thereby permitting regular ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:
Records are maintained for a period of 5 years, as required by 7 CFR part 6. The records are then destroyed in accordance with USDA procedures.

SYSTEM MANAGER AND ADDRESS:
A System Manager manages the system for each of the following AMS Programs: Cotton and Tobacco, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, Science and Technology, Transportation and Marketing, Compliance and Analysis Offices, and the Information Technology Services Program. For general information, you may contact Douglas Bailey, Chief, Information Technology, USDA/ST/IT/OCIO, Mail Stop 1742, 1400 Independence Avenue, SW., Washington, DC 20250–1064.

NOTIFICATION PROCEDURE:
Any individual may request information concerning himself/herself from this system of records or seeking records about yourself. Without complete information, the component(s) will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORDS ACCESS PROCEDURE:
See the “Notification Procedure” above.

CONTESTING RECORD PROCEDURES:
See the “Notification Procedure” above.

RECORD SOURCE CATEGORIES:
These records contain information obtained from the individual who is the subject of these records and from CBP and information the individual provided to CBP.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
Pursuant to 5 U.S.C. 552a(k)(2), material in this system of records is exempt from the requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (l), and (f) because it consists of investigatory material compiled for law enforcement purposes 7 CFR 1.123.
5 U.S.C. 552a(d) requires that an individual be given access to, and the right to, amend files pertaining to him or her. Individual access to these files could impair investigations in progress and alert subjects involved in the investigations that their actions are under scrutiny, which may allow them the opportunity to alter their actions or prevent detection of any illegal actions to escape prosecution. Release of these records would also disclose investigative techniques and procedures employed by AMS and other agencies, which would hamper law enforcement activities.

5 U.S.C. 552a(c)(3) requires that an accounting of disclosures be made available to an individual. This would impair investigations by alerting subjects of investigations to the existence of those investigations. Release of the information could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation. 5 U.S.C. 552a(e)(1) requires that only such information as is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order can be maintained. Exemption from this provision is required because relevance and necessity can be determined only after information is evaluated. Evaluation at the time of collection is too consuming for the efficient conduct of an investigation. Further, determining relevance or necessity of specific information in the early stages of an investigation is not possible.

5 U.S.C. 552a(e)(4)(G) and (H), and (f) provides for notification and access procedures. These requirements, if followed, would necessarily alert subjects of investigations to the existence of the investigation which could impair the investigation. Access to the records likewise could interfere with investigative and enforcement proceedings; disclose confidential informant and information; constitute an unwarranted invasion of personal privacy of others; and reveal confidential investigative techniques and procedures.

5 U.S.C. 552a(e)(4)(I), requires that categories of sources of records in each system be published. Application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity or confidentiality. This would compromise the ability to conduct investigations.

Dated: December 8, 2010.

Thomas J. Vilsack,
Secretary.

[FR Doc. 2010–31400 Filed 12–14–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0104]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Rambutan Fruit (Nephelium lappaceum) From Malaysia and Vietnam

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh rambutan fruit (Nephelium lappaceum) from Malaysia and Vietnam. Based on this analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh rambutan fruit from Malaysia and Vietnam. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before February 14, 2011.

ADDRESSES: You may submit comments by either of the following methods:
• Federal eRulemaking Portal: Go to http://www.regulations.gov/dmspublic/component/main/?main=DocketDetail&d=APHIS-2010–0104 to submit on view comments and to view supporting and related materials available electronically.
• Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS–2010–0104, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0104.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at http://www.aphis.usda.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Import Manuals, PPD, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest-risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:
• The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56–3;
• The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56–5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
• The fruits or vegetables are treated in accordance with 7 CFR part 305;
• The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk assessment as likely to follow the import pathway; and/or
• The fruits or vegetables are a commercial consignment.

APHIS received requests from the Governments of Malaysia and Vietnam to allow the importation of fresh rambutan fruit (Nephelium lappaceum)