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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8702-01-OMS]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of General Counsel, Environmental Protection Agency

**ACTION:** Notice of a Modified System of Records

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**SUMMARY:** The U.S. Environmental Protection Agency's (EPA) Office of General Counsel/External Civil Rights Compliance Office (OGC/ECRCO) is giving notice that it proposes to modify a system of records pursuant to the provisions of the Privacy Act of 1974 . External Compliance Case Tracking System (EXCATS) is being modified to accurately notify the public about the change of administrative location of the EXCATS from its former administrative location, the Office of the Administrator, to the Office of the General Counsel, effective, December 2016. EXCATS is also being modified to support and enhance the discrimination complaint process, including the investigation and resolution of complaints, and to provide for a discrimination complaint form to enable the public to file electronically discrimination complaints directly to the EXCATS. The purpose of EXCATS is to assist OGC/ECRCO in collecting and maintaining case-related information and provide the EPA OGC/ECRCO with the ability to more effectively manage program information needs and integrate the office's various business processes. The EXCATS assists OGC/ECRCO in the collection and maintenance of compliance-related data and other information needed by the OGC/ECRCO to complete case investigation and resolution activities and issue civil rights-related determinations.

**DATES:** Persons wishing to comment on this system of records notice must do so by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. New or

modified routine uses for this modified system of records will be effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2018-0537, by one of the following methods:

*Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Email:* [docket\\_oms@epa.gov](mailto:docket_oms@epa.gov). Include the Docket ID number in the subject line of the message.

*Fax:* 202-566-1752.

*Mail:* OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460.

*Hand Delivery:* OMS Docket, EPA/D.C., WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OEI-2018-0537. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through <https://www.regulations.gov>. The <https://www.regulations.gov> website is an "anonymous access" system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not

be able to consider your comment. If you send an e-mail comment directly to the EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

*Docket:* All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <https://www.regulations.gov> or in hard copy at the OMS Docket, EPA/D.C., WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OMS Docket is (202) 566-1752.

### **Temporary Hours During COVID-19**

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via [https://www.regulations.gov/](https://www.regulations.gov) or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Dale Rhines, Deputy Director,

OGC/ECRCO, rhines.dale@epa.gov, (202) 564-4174 or by mail at

1200 Pennsylvania Avenue, N.W., Mail Code 2310A, Washington, D.C. 20460.

**SUPPLEMENTARY INFORMATION:** EXCATS was developed to allow OGC/ECRCO to more effectively manage its program information needs and to integrate its various business processes. Among other things, EXCATS assists OGC/ECRCO in the collection and maintenance of compliance-related data and other information needed by the OGC/ECRCO to complete case investigation and resolution activities and to issue determinations under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and other federal statutes that prohibit discrimination by programs or entities that apply for or receive financial assistance from EPA.

**SYSTEM NAME AND NUMBER:** External Compliance Case Tracking System (EXCATS), EPA-21

**SECURITY CLASSIFICATION:** Unclassified

**SYSTEM LOCATION:** The EXCATS Web-based application is currently hosted under a contract with MicroPact, Inc. Hosting facility located at Equinix, 44470 Chillum Place DC3 Bldg. 1, Ashburn, Virginia 20147.

**SYSTEM MANAGERS(S):** Dale Rhines, Deputy Director, OGC/ECRCO, Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Mail Code 2310A, Washington, D.C. 20460 or by email at rhines.dale@epa.gov, or at (202) 564-4174.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** The EXCATS assists ECRCO in carrying out its responsibilities under the following authorities: Title VI of the Civil Rights Act of 1964, 42 United U.S.C. §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-

500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*; 40 C.F.R. Parts 5 and 7; Executive Order 12250 (Nov. 2, 1980).

**PURPOSE(S) OF THE SYSTEM:** To support and enhance the discrimination complaint process, including the investigation and resolution of complaints. EXCATS assists OGC/ECRCO in collecting and maintaining case-related information and provides OGC/ECRCO with the ability to more effectively manage program information needs and integrate the office's various business processes.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** Individuals who have filed, or had filed on their behalf, discrimination complaints regarding applicants or recipients of federal financial assistance on the basis of race, color, national origin, age, sex, or disability. Witnesses.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Letters or other documents initiating discrimination complaints including complainant's name and address, telephone numbers, e-mail addresses, correspondence, internal memoranda and notes pertaining to the complaints; recipient staff interviews and interviews with members of the public; investigative plans; resolution agreements and other resolution documents; findings on the complaints; and related information regarding the complaints and investigations; civil rights compliance reviews of applicants for or recipients of federal financial assistance; medical information and records of physical or mental impairments; eligibility determinations impacting complainants, witnesses or other parties; administrative subpoena files; self-evaluation plans; racial/ethnic analyses of workforce and program enrollees; notice of violations; language assistance plans; training programs; civil enforcement files; environmental policies and program files.

**RECORD SOURCE CATEGORIES:** Complaints, applicants and recipients of federal financial assistance, witnesses, EPA Investigators and/or contract investigators, other EPA personnel with a connection to the case, and other persons with information relevant to the case.

## **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING**

**CATEGORIES OF USERS AND PURPOSES OF SUCH USES:** The routine uses below are both related to and compatible with the original purpose for which the information was collected.

The following general routine uses apply to this system (73 FR 2245):

*A. Disclosure for Law Enforcement Purposes.* Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

*B. Disclosure Incident to Requesting Information.* Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

*C. Disclosure to Requesting Agency.* Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the 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.

*D. Disclosure to Office of Management and Budget.* Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

*E. Disclosure to Congressional Offices.* Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

*F. Disclosure to Department of Justice.* Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;
2. Any employee of the Agency in his or her official capacity;
3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or
4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

*G. Disclosure to the National Archives.* Information may be disclosed to the National Archives and Records Administration in records management inspections.

*H. Disclosure to Contractors, Grantees, and Others.* Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When

appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

*I. Disclosures for Administrative Claims, Complaints and Appeals.* Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

*J. Disclosure to the Office of Personnel Management.* Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

*K. Disclosure in Connection with Litigation.* Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

The two routine uses below (L and M) are required by OMB Memorandum M-17-12.

*L. Disclosure to Persons or Entities in Response to a Compromise or Breach of Personally Identifiable Information.* To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the



Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

*M. Disclosure to Assist Another Agency in its Efforts to Respond to a Breach.* To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Additional routine uses that apply to this system are:

*1. The Department of Justice or other Federal and State Agencies.* When necessary to complete an investigation, enforce the nondiscrimination statutes set forth in the Authority section of this notice, or assure proper coordination between Federal agencies.

*2. Persons Named as Alleged Discriminators.* To allow such persons the opportunity to respond to the allegations made against them during the course of the discrimination complaint process.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:** All electronic data are stored on servers maintained in locked facilities with computerized access control and all printed materials are filed in secure cabinets in secure federal facilities with access based on need.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:** Records are retrieved by complaint number, name, address, email address or telephone number.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:** Records stored in this system are subject to EPA's records schedule 1044, Item c: Routine compliance and enforcement records (DAA 0412-2013-0017-0003).

Includes:

- External discrimination complaints related to civil rights violations filed by individuals or groups alleging that their civil rights have been violated by EPA-funded entities, complaints, correspondence, reports, exhibits, notices, depositions transcripts, and other related records.
- Compliance review files.

Disposition:

- Close when activity, project, or case is completed.
- Destroy 10 years after file closure.

**ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:** Security controls used to protect personal sensitive data in EXCATS are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800-53, “Security and Privacy Controls for Information Systems and Organizations,” Revision 5.

*1. Administrative Safeguards.* EPA personnel are required to complete annual agency Information Security and Privacy training. EPA personnel are instructed to lock their computers when they leave their desks. EXCATS system administrators have appropriate security clearance.

*2. Technical Safeguards.* Only authorized OGC/ECRCO users whose official duties require the use of such information have access to the information in the system. No users outside of OGC/ECRCO have access to the system. Specific access is structured around need and is determined by the person’s role in the organization. Access is managed through the use of electronic access control lists, which regulate the ability to read, change and delete information in the system. Each OGC/ECRCO user has read access to designated information in the system, with the ability to modify only their own submissions or those of others within their region or group. Data identified as confidential are so designated in the system and only specified individuals are granted access. The system maintains an audit trail of all actions against the data

base. All electronic data are stored on servers maintained in locked facilities with computerized access control allowing access to only those support personnel with a demonstrated need for access. A database is kept of all individuals granted security card access to the room, and all visitors are escorted while in the room. The server facility has appropriate environmental security controls, including measures to mitigate damage to automated information system resources caused by fire, electricity, water and inadequate climate controls. Access control to servers, individual computers and databases includes a required user log-on with a password, inactivity lockout to systems based on a specified period of time, legal notices and security warnings at log-on, and remote access security that allows user access for remote users (e.g., while on government travel) under the same terms and conditions as for users within the office.

3. *Physical Safeguards.* Printed materials are filed in secure cabinets in secure federal facilities with access based on need as described above for the automated component of the system.

**RECORD ACCESS PROCEDURES:** Individuals seeking access to their own personal information in this system of records will be required to provide adequate identification (e.g., driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required as warranted. Requests must meet the requirements of EPA's Privacy Act regulations at 40 C.F.R. Part 16.

**CONTESTING RECORD PROCEDURES:** Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR Part 16.

**NOTIFICATION PROCEDURE:** Any individual who wants to know whether the system of records contains a record about him or her should submit a written request to the EPA, Attn: Agency Privacy Officer, WJC West, MC2831T, 1301 Constitution Avenue, N.W., Washington, D.C. 20460, [privacy@epa.gov](mailto:privacy@epa.gov).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), and (e)(1).

**HISTORY:** 79 FR 63622 (October 24, 2014) - Notice of a Modified System of Records. The purpose of that notice was to inform the public that the OGC/ECRCO (formerly known as the Title VI External Compliance Program) was amending the External Compliance Program Discrimination Complaint Files system of records. The system was amended to change the (1) system name; (2) the addresses of system locations and system managers; (3) categories of individuals covered by the system; (4) routine uses; and (5) storage, retrievability and safeguard requirements.

**Vaughn Noga,**

*Senior Agency Official for Privacy.*

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