



## FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 151654]

### Privacy Act of 1974; System of Records.

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The Federal Communications Commission (FCC, Commission, or Agency) has modified an existing system of records, FCC/EB-5, Enforcement Bureau Activity Tracking System (EBATS), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the Federal Register notice of the existence and character of records maintained by the agency. The FCC's Enforcement Bureau (EB) uses EBATS to track its investigations into possible violations of Federal communications laws and regulations. This modification updates the applicable records retention and disposal schedule; updates the language, including section headers, in this SORN to be consistent with the general language currently used in FCC SORNs as well as recommendations by current OMB guidance and administrative changes; makes minor clerical corrections; adds two routine uses; deletes two routine uses; and updates seven routine uses.

**DATES:** This action will become effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The routine uses in this action will become effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** unless comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Katherine C. Clark, Attorney-Advisor, Office of General Counsel, Room 10.306, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, or to [Privacy@fcc.gov](mailto:Privacy@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Katherine C. Clark, (202) 418-1773 or [Privacy@fcc.gov](mailto:Privacy@fcc.gov) (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the proposed alterations to this system of records).

**SUPPLEMENTARY INFORMATION:** This notice serves to update and modify FCC/EB-5, as a result of various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/EB-5 system of records include:

1. Updating the language in the Security Classification to follow OMB guidance;
2. Updating the System Location to note that records are maintained primarily at FCC Headquarters in Washington, DC, and only on an ad hoc, temporary basis at FCC field offices when needed to resolve enforcement cases in their jurisdictions;
3. Updating the language in the Purposes section to be consistent with the language and phrasing currently used generally in the FCC's SORNs and to include maintaining documents and tracking the status of formal complaints, including, but not limited to those that involve market disputes as an additional purpose for the system;
4. Modifying the language in the Categories of Individuals and Categories of Records to be consistent with the language and phrasing currently used in the FCC's SORNs;
5. Updating and/or revising language in seven routine uses (listed by current routine use number): (1) Public Access; (3) FCC Enforcement Actions; (4/5) Adjudication and Litigation (now two separate routine uses); (6) Law Enforcement and Investigation; (7) Congressional Inquiries; (8) Government-wide Program Management and Oversight; and (9) Breach Notification, the revision of which is as required by OMB Memorandum No. M-17-12;
6. Deleting the following routine uses (listed by former routine use number): (2) Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the Agency; and (3) Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by an Entity other than the Agency;

7. Adding two new routine uses (listed by current routine use number): (10) Assistance to Federal Agencies and Entities Related to Breaches, which is required by OMB Memorandum No. M-17-12; and (11) Non-Federal Personnel to allow contractors, grantees, or volunteers performing or working on a contract, grant, or cooperative agreement for the Federal Government to have access to needed information;
8. Updating the existing records retention and disposal schedule with a new records schedule, Records Disposition Authority, DAA-0173-2014-0002, which was approved by NARA in September 2015;
9. Updating the reference to the exemptions claimed under subsection (k) of the Privacy Act; and
10. Updating the notice to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

**SYSTEM NAME AND NUMBER:** FCC/EB-5, Enforcement Bureau Activity Tracking System (EBATS).

**SECURITY CLASSIFICATION:** No information in the system is classified.

**SYSTEM LOCATION:** Enforcement Bureau (EB), FCC, 45 L Street, NE, Washington, DC 20554; and FCC Field Offices that may maintain paper documents on an ad hoc, temporary basis when needed to resolve enforcement cases in their jurisdictions.

**SYSTEM MANAGER(S):** Enforcement Bureau (EB), FCC, 45 L Street, NE, Washington, DC 20554.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** 47 U.S.C. 101, 102, 104, 301, 303, 309(e), 312, 315, 318, 362, 364, 386, 501, 502, 503, 507, and 510.

**PURPOSE(S) OF THE SYSTEM:** The Enforcement Bureau uses the information in this system for purposes that include, but are not limited to:

1. Maintaining documents and tracking the status of enforcement investigations of entities (including individuals) that have been identified as possible violators of the Communications Act of 1934, as amended, FCC regulations, other FCC requirements or orders, other statutes and regulations subject to the FCC's jurisdiction, and/or international treaties (collectively referred to hereafter as FCC Rules and Regulations);
2. Maintaining documents and tracking the status of formal complaints, including, but not limited to those that involve market disputes;
3. Determining the levels of compliance among FCC licensees and other regulatees;
4. Documenting the Commission's monitoring, overseeing, auditing, inspecting, and investigating for compliance and enforcement purposes;
5. Providing a basis for the various administrative and civil or criminal actions against violators by EB, other appropriate Commission bureaus or offices, and/or other government agencies;
6. Gathering background information for reference materials from various external sources that include, but are not limited to, databases, documents, files, and other related resources, to ensure that the information that is being compiled is accurate and up-to-date (cross-checking) in the course of investigating consumer complaints and/or enforcement investigations;
7. Maintaining archival information (paper documents and files) for reference in enforcement investigations and other actions; and
8. Preventing duplication of FCC's enforcement actions, e.g., for cross-reference purposes, etc.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The records in this system include, but are not limited to:

1. Individuals, including FCC employees, who have filed complaints alleging violations of FCC Rules and Regulations; or individuals who have filed such complaints on behalf of other entities and who may have included their personally identifiable information (PII) in the complaint;
2. Individuals who are or have been the subjects of FCC enforcement actions, including field monitoring, inspection, and investigation, for possible violations of FCC Rules and Regulations;
3. Licensees, applicants, regulatees, and unlicensed individuals about whom there are questions of compliance with FCC Rules and Regulations; and
4. FCC employees, contractors, and interns who perform work on behalf of EB.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

The categories of records in this system include, but are not limited to:

1. Information that is associated with those individuals who file complaints or who are being investigated for possible enforcement actions. The information may include:
  - (a) An individual's name, Social Security Number (SSN) or Taxpayer Identification Number (TIN), gender, race/ethnicity, birth date/age, place of birth, biometric data (photograph(s)), marital status, spousal data, miscellaneous family data, home address, home address history, home telephone number(s), personal cell phone number(s), personal fax number(s), personal e-mail address(es), personal criminal background report(s), credit card number(s), driver license number(s), bank account data, financial data, law enforcement data, background investigatory data, national security data, employment and/or employer data, and other miscellaneous materials, documents, files, and records used for background information, data verification, and other purposes.

(b) Inspection reports, audit reports, complaints, referrals, monitoring reports, inspection cases, referral memos, correspondence, audio and sound recordings, photographs, discrepancy notifications, warning notices, forfeiture actions, and other related materials.

(c) Miscellaneous materials, documents, files, and records that are used for background information and data verification concerning individuals who may have been alleged to or have violated the Commission's Rules and Regulations.

2. Information that is associated with the same or similar current enforcement investigations and historic records and other archival, background, and research data and materials that are stored for reference in enforcement actions, including inspection reports, complaints, monitoring reports, investigative cases, referral memos, correspondence, discrepancy notifications, warning notices, and forfeiture actions; and
3. Other, miscellaneous information that complainants may have included on informal consumer complaint forms, interference reports, as well as any additional FCC forms and complaint data intake systems that may be used from time to time to report possible violations of FCC Rules and Regulations to the FCC or associated with case files.

**RECORD SOURCE CATEGORIES:** Sources of records include individuals submitting complaints, relevant law enforcement databases, publicly available electronic information and data, and individuals who have been contacted during investigations to be sources of information.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Public Access—Names and other information about individuals subject to investigations or similar actions may be disclosed to the public in Commission releases, including Notices of Apparent Liability, Forfeiture Orders, Consent Agreements, Notice Letters, or all other actions released by EB or the Commission as part of their duties to enforce FCC Rules and Regulations.
2. Due Diligence Inquiries—Where there is an indication of a violation or potential violation of FCC Rules and Regulations, records from this system may be shared with a requesting individual, or representative thereof, for purposes of obtaining such information so long as the information is relevant to a pending transaction of an FCC-issued license.
3. FCC Enforcement Actions—When a record in this system involves an informal complaint filed alleging a violation of FCC Rules and Regulations by an applicant, licensee, certified or regulated entity, or an unlicensed person or entity, the complaint may be provided to the alleged violator for a response. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission’s ability to investigate and/or resolve the complaint.
4. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC 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 FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.
5. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United

States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

6. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation, to disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal agency, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

7. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

8. Government-wide Program Management and Oversight—To the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

9. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (e.g., identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Information in this information system consists of:

1. Electronic records, files, and data are stored in the FCC's computer network databases, at headquarters; and
2. Paper records, documents, and files are stored in filing cabinets in the EB office suites at headquarters and in field offices (on an ad hoc, temporary basis when needed to resolve enforcement cases in their jurisdictions as needed for limited periods).

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

1. Information in the electronic database information can be retrieved by the name(s) of the individual(s) who filed the complaint(s), the individual who is subject of the complaint, and by a unique file number assigned to each type of activity conducted by the Bureau, e.g., internal initiative investigations, complaint investigations, cases, market dispute mediations, formal adjudications, hearings, due diligence requests, etc.

2. Information in the central files, which includes, but is not limited to, paper documents, records, and files, includes all the other information pertaining to these internal initiative investigations, complainant investigations, and/or cases. This information may include, but is not limited to, name, address, and telephone number, and is maintained for reference and archival purposes. This information is retrieved by a unique identification file number assigned to each internal initiative investigation, complainant investigation, and/or case.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The information in this electronic system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule No. DAA-0173-2014-0002-0002.

#### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

The electronic records, data, and files are maintained in the FCC computer network databases at headquarters, which are protected by the FCC's IT privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the National Institute of Standard and Technology (NIST) and the Federal Information Security Modernization Act of 2014 (FISMA). The paper documents and files are maintained in file cabinets in "non-public" rooms in the EB office suite at headquarters and in field offices. The file cabinets are locked at the end of the business day. Access to the EB offices at both headquarters and field offices is via a key and card-coded door.

Authorized EB supervisors and staff have access to the information in both the electronic files databases and paper document files, and IT contractors, who maintain these electronic files databases, also have access to them. Other FCC employees, interns, and contractors may be granted access to the information in the electronic and paper formats only on a "need-to-know" basis.

**RECORD ACCESS PROCEDURES:**

Under the authority granted to heads of agencies by 5 U.S.C. 552a (k), the FCC has determined that this system of records is exempt from providing record access procedures for this system of records, 47 CFR 0.561.

**CONTESTING RECORD PROCEDURES:**

Under the authority granted to heads of agencies by 5 U.S.C. 552a (k), the FCC has determined that this system of records is exempt from providing contesting record procedures for this system of records, 47 CFR 0.561.

**NOTIFICATION PROCEDURES:**

Under the authority granted to heads of agencies by 5 U.S.C. 552a (k), the FCC has determined that this system of records is exempt from providing notification procedures for this system of records. 47 CFR 0.561.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

This system of records is exempt from sections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act of 1974, and from 47 CFR Sections 0.554 – 0.557 of the Commission's rules. These provisions concern the notification, record access, and contesting procedures described above, and also the publication of record sources. The system is exempt from these provisions because it contains investigative material compiled for law enforcement purposes as defined in Section (k) of the Privacy Act.

**HISTORY:**

(75 FR 77872) (December 14, 2010).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

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