



Billing Code: 3410-9R

U.S. DEPARTMENT OF AGRICULTURE (USDA)

Privacy Act of 1974; System of Records.

AGENCY: Office of the Assistant Secretary for Civil Rights (OASCR).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the U.S. Department of Agriculture (USDA) proposes to modify a system of records, USDA/OCRE-1, which will be renamed USDA/OASCR-1, Civil Rights Enterprise System (CRES). The Office of the Assistant Secretary for Civil Rights (OASCR) maintains CRES, which contains program discrimination complaints, alleging unlawful discrimination arising within programs or activities conducted or assisted by USDA. Records relating to Equal Employment Opportunity (EEO) complaints alleging unlawful discrimination against USDA employees or applications for employment are maintained in CRES also; however, those records are covered by EEOC/GOVT-1, EEO in the Federal Government Complaint and Appeal Records. The revised notice also conveys updates to the system location, categories of records, routine uses (one of which permits records to be provided to the National Archives and Records Administration), storage, safeguards, retention and disposal, system manager and address, notification procedures, records access, and contesting procedures.

DATES: This system of records will be effective without further notice on thirty (30) days after publication in the Federal Register, unless modified by a subsequent notice to incorporate comments received from the public. To ensure consideration, the contact

person listed below must receive written or electronic comments on or before thirty (30) days after publication in the Federal Register.

ADDRESSES: The public may submit any comments to: Kenneth J. Baisden, Director, Data and Records Management Division, OASCR, USDA, 1400 Independence Avenue SW, Washington, D.C., 20250, Mail Stop 0115 or at kenneth.baisden@ascr.usda.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Baisden, Director, Data and Records Management Division, OASCR, USDA, kenneth.baisden@ascr.usda.gov, 202-260-1897.

SUPPLEMENTARY INFORMATION

The Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), requires the Department to publish in the Federal Register this notice of a modified system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations in 7 CFR 1, Subpart G. The Department proposes to amend the existing system of records, USDA/OCRE-1 Program Discrimination Complaints, which was last published in the Federal Register in 60 FR 5618 (January 30, 1995). The proposed amendments to USDA/OCRE-1 pertain to program discrimination complaints contained in CRES. Equal employment complaint records in CRES remain covered by the system of records EEOC/GOVT-1, Equal Employment Opportunity (EEO) in the Federal Government Complaint and Appeal Records (last published 81 FR 81116, Nov. 17, 2016).

The CRES provides core support for the mission of Civil Rights (CR) offices, both at the department and sub-agency levels. The CRES serves management needs of agency heads who are, by law, charged with the responsibility for agency compliance

with civil rights laws and regulations. CRES is a Web-based enterprise-wide complaint tracking system, consisting of a suite of applications supporting USDA and all Department agencies by tracking complaints. Additionally, CRES adheres to the regulatory reporting requirements and provides data for Civil Rights Reporting. The program discrimination complaints process supports enforcement of Title VI of the Civil Rights Act of 1964, the Rehabilitation Act, the implementing regulations at 7 CFR Part 15, and any other applicable anti-discrimination statutes, rules, and regulations.

The proposed revisions to the system incorporate MicroPact as the commercial vendor for the system and the location of the CRES servers. MicroPact focuses on engineering Web-based commercial off-the-shelf solutions for the Federal Government. CRES facilitates improved management of discrimination complaints using separate modules: Program Complaints Management System (PCMS) and Entellitrak (an Alternative Dispute Resolution System).

The proposed revisions to the notice convey updates to the system location, categories of records, storage, safeguards, retention and disposal, system manager and address, notification procedures, records access, and contesting procedures. In addition, the Department proposes the following changes to the routine uses:

- The Department proposes to revise former Routine Use 1 and redesignate it as new Routine Uses A and H. Routine Use A permits disclosures to the U.S. Department of Justice (DOJ) for litigation purposes, and Routine Use H permits disclosures to a court or adjudicative body in a proceeding;

- The Department proposes to revise former Routine Use 2 and redesignate it as new Routine Use G for disclosure to Federal, State, local, foreign, Tribal, or other agencies to enforce, implement, investigate, or prosecute a violation of law;
- The Department proposes to revise former Routine Use 3 and redesignate it as new Routine Use B for disclosure to congressional offices at the written request of the constituent;
- The Department proposes to revise former Routine Use 4 and redesignate it as new Routine Use C for disclosure to the United States Civil Rights Commission;
- The Department proposes a new Routine Use D for disclosure for records management purposes;
- The Department proposes a new Routine Use E for disclosure to appropriate agencies, entities, and persons of information necessary to respond to a suspected or confirmed breach of the system of records in accordance with Office of Management and Budget (OMB) Memorandum M-17-12, Preparing for and Responding to a Breach of Personally Identifiable Information (Jan. 3, 2017);
- The Department proposes a new Routine Use F for disclosure to another Federal agency or entity of information reasonably necessary to assist in responding to a suspected or confirmed breach or to prevent, minimize, or remedy harm, in accordance with OMB Memorandum M-17-12; and
- The Department proposes a new Routine Use I for disclosure to contractors, grantees, experts, consultants, or others when necessary to accomplish an agency function.

In accordance with the Privacy Act, 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this revised system of records.

Stephen L. Censky

Deputy Secretary

SYSTEM NAME AND NUMBER:

USDA/OASCR-1, Civil Rights Enterprise System, (CRES).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

OASCR maintains the records in this system and stores a hard copy at the National Archives and Records Administration. The electronic record systems are maintained on servers physically located at the MicroPact Data Center, 12901 Worldgate Drive, Suite 800, Herndon, Virginia. In the future, USDA may transfer records within this system to a USDA-authorized cloud service provider, in which case records would reside at another location within the Continental United States. Additionally, USDA employees may maintain hard or electronic copies at USDA offices.

SYSTEM MANAGER(S):

Shawn McGruder, Director, Office of Adjudication, OASCR, USDA, 1400 Independence Avenue, SW, Washington, D.C. 20250, shawn.mcgruder@ascr.usda.gov; 202-720-5212.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. § 301, 42 U.S.C. § 2000d, *et seq.*, 42 U.S.C. § 3608(d); 42 U.S.C. § 12101, *et seq.*; 20 U.S.C. § 1681, *et seq.*; 29 U.S.C. § 794; 15 U.S.C. § 1691, *et seq.*; and 7 U.S.C. § 2011, *et seq.*

PURPOSE(S) OF THE SYSTEM:

This system is maintained for the purpose of effectively documenting and processing program discrimination complaints arising within USDA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records about individuals who have filed complaints of program discrimination by USDA, and the Department and sub-agencies generally access the records by that individual's name or an identifier unique to that individual's complaint. In addition, the system may capture information about individuals referenced or identified in records created or compiled as part of the process of documenting and processing program discrimination complaints. Individuals who may have information in the system include contractors, complainants, witnesses, investigators, third parties, Administrative Judges, legal representatives, applicants for employment who have filed informal or formal complaints alleging discrimination, customers, members of the public who have filed a complaint, and others who have participated or otherwise been involved in proceedings relating to a program discrimination complaint.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records created or compiled as part of the process of documenting and processing program discrimination complaints. Such records include the following: records created or compiled in response to complainants' statements of alleged discrimination; respondents' statements; witnesses' statements; names and addresses of complainants and respondents; personal, employment, or program participation information; medical records; conciliation and settlement agreements; related correspondence; initial and final determinations; and any other records related to the intake, investigation, or adjudication of discrimination complaints.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the covered individuals, members of the public, USDA employees, contractors, USDA applicants, and other individuals or entities participating in program complaint matters, or is taken from other program discrimination complaints.

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

Under the routine uses listed, USDA may disclose, without the consent of the individual, information contained in a record in this system, provided the disclosure is compatible with a purpose for which the record was collected.

- A. To the DOJ when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity; or (c) any employee or former employee of USDA in his/her individual capacity when the DOJ has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and by careful review, USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records.
- B. To a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the request of that individual.
- C. To the United States Civil Rights Commission in response to its request for information, per 42 U.S.C. § 1975a.

- D. To the National Archives and Records Administration (NARA) or General Services Administration, pursuant to records management inspections being conducted under the authority of 44 U.S.C. §§ 2904 and 2906.
- E. To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that there has been a breach of the system of records; (2) USDA has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure to such agencies, entities, and persons is reasonably necessary to assist with USDA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
- F. To another Federal agency or Federal entity, when USDA 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.
- G. To the appropriate Federal, State, local, foreign, Tribal, or other agency responsible for enforcing, implementing, investigating, or prosecuting a civil or criminal violation of law, or rule or order issued pursuant thereto, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, regulation, rule, or order, and when the information disclosed is

relevant to any enforcement, implementation, regulatory, investigative, or prosecutorial responsibility of the receiving entity.

- H. To a court or adjudicative body in a proceeding when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity; or (c) any employee of USDA in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and by careful review, USDA determines the records are both relevant and necessary to the litigation and the use of such records is, therefore, deemed by USDA to be for a purpose compatible with the purpose for which USDA collected the records.
- I. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for OASCR, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

OASCR, Records Management Services (RMS) is responsible for maintaining its program complaint records. These records are electronically stored in CRES and are under the custodial care of OASCR.

Records maintained by OASCR are accessioned to NARA, as permanent records, at the appropriate time. Electronic records are stored at the MicroPact Data Center. USDA employees also may maintain paper or electronic copies at USDA offices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic and paper records are indexed by name of complainant, agency, and address.

Paper records are retrieved from NARA. Electronic records are retrieved from MicroPact Data Center. Electronic and/or paper records are retrieved from USDA employees at USDA offices.

To retrieve an individual record, an employee (with approval) would access CRES for an individual complaint file and enter the complainant's last and first name or the case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with NARA's General Records Schedule 16 and USDA's General Records Schedule 2.3, but may be retained for a longer period as required by litigation, investigation, and/or audit. Electronic and/or paper records are retained with USDA employees at USDA offices.

USDA's General Records Schedule covers records-documenting activities related to managing relationships among the agency, its employees, and its unions and bargaining units.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are stored securely at the National Archives and Records Administration. This office is always locked when unoccupied. Access to and use of these records is limited to those persons whose official duties require such access. Electronic records are also stored at MicroPact or with the vendor who manages the system. All users are given

security awareness training that covers procedures for handling sensitive information, including personally identifiable information (PII). Annual refresher training is mandatory. All USDA employees and contractors with authorized access have undergone a thorough background security investigation.

RECORD ACCESS PROCEDURES:

Per the Privacy Act of 1974, individuals who have cause to believe that OASCR might have records pertaining to them may submit a written request to the System Manager, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250. The individual must specify that he/she wishes the records maintained by OASCR to be checked and put in an envelope marked "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

An individual desiring to contest or amend information maintained in the system should submit a written request to the System Manager. The written request should include, as appropriate, the reason for contesting it, and the proposed amendment to the information sought. The regulations governing the contesting of contents of records and appealing initial determinations of such requests are set forth at 7 C.F.R. §§ 1.110-1.123.

NOTIFICATION PROCEDURES:

Same as record access procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

60 FR 5618, Vol. 60, No. 19, (January 30, 1995).

United States Department of Agriculture (USDA)
Narrative Statement on a Modified System of Record under the Privacy Act of
1974: USDA/OCRE-1

The U.S. Department of Agriculture's (USDA) Office of the Assistant Secretary of Civil Rights (OASCR) is modifying the system of records for OCRE-1. The system will be renamed USDA/OASCR-1, Civil Rights Enterprise System (CRES). The proposed amendments to USDA/OCRE-1 pertain to program discrimination complaints contained in CRES. Equal employment complaint records in CRES remain covered by the system of records EEOC/GOVT-1, Equal Employment Opportunity (EEO) in the Federal Government Complaint and Appeal Records (last published 81 FR 8116, Nov 17, 2016.)

The authorities for maintaining this system are 5 U.S.C. § 301, 42 U.S.C. § 2000d, *et seq.*, 42 U.S.C. § 3608(d); 42 U.S.C. § 12101, *et seq.*; 20 U.S.C. § 1681, *et seq.*; 29 U.S.C. § 794; 15 U.S.C. § 1691, *et seq.*; and 7 U.S.C. § 2011, *et seq.*

CRES provides core support for the mission of Civil Rights (CR) offices both at the department and sub-agency levels. In this function, the system serves the needs of agency heads who by law are responsible for agency compliance with EEO and CR laws. CRES is implemented as a Web-based enterprise-wide complaint tracking system, consisting of a suite of applications supporting USDA and all Department agencies by tracking, processing, and managing employment and program complaints, as well as meeting regulatory reporting requirements. Currently, CRES facilitates improved management of discrimination complaints using separate modules. These modules also provide data used for various government and Federal Civil Rights reporting.

In the past, the system's servers were maintained in house, by USDA. However, due to the enormous volume, complexity, and most importantly, the sensitivity (personally identification information) of the data, it was determined that there was a need for an enterprise-wide solution for CRES. MicroPact was selected as the vendor-hosted company to manage the program and EEO data as well as maintain the servers for CRES. MicroPact Engineering provides system, network, development, and administrative security. Further, MicroPact is Federally accredited, and is a FedRAMP Compliant Cloud Service Provider, engineering Web-based focused company that provides commercial off-the-shelf solutions, and delivers domain expertise within the area of EEO.

USDA may disclose information contained in a record in this system of records under the routine uses listed, without the consent of the individual if the disclosure is compatible with a purpose for which the record was collected, as follows:

- To the U.S. Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when USDA, any component thereof, or any employee in his or her individual capacity where DOJ (or USDA where it is authorized to do so) has agreed to represent the employee, or the United States where USDA determines that the litigation is likely to affect directly the operations of USDA or any of its components, is a party to the litigation or has an interest in such litigation, and USDA determines that the use of such records by DOJ, the court, or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation; provided, however, that in each case, USDA determines that such

disclosure is compatible with the purpose for which the records were collected. In the event that materials in this system indicate a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

- To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. Disclosure may be made to the U.S. Civil Rights Commission in response to its request for information.
- To appropriate agencies, entities, and persons when (1) USDA suspects or has confirmed that there has been a breach of the system of records; (2) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (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 USDA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
- To another Federal agency or Federal entity, when USDA 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.

- To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for OASCR, when necessary to accomplish an agency function related to this system of records; provided however that these individuals are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.
- To the National Archives and Records Administration (NARA) or General Services Administration (GSA), pursuant to records management inspections being conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

Probable or potential effects on the privacy of individuals:

Although there is some risk to the privacy of individuals, that risk is outweighed by the benefit of a vendor-managed system. In addition, the safeguards in place by MicroPact protect against unauthorized disclosure. Records are accessible only to individuals who are authorized. Logical, physical, and electronic safeguards are employed to ensure security. CRES has successfully attained “the authority to operate,”

the security assessment, and authorization process, as well as successfully attained risk assessments, to include security scanning and patching.

OMB Control Number of Collection Request. OMB Control Number: 0508-0002, title: USDA Program Discrimination Complaint Form, expires: February 28, 2021.

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