



U.S. Department of Transportation
Privacy Impact Assessment
Federal Aviation Administration
(FAA)

Update to Investigative and Enforcement Procedures
Final Rule

Responsible Officials

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Executive Summary

The Federal Aviation Administration (FAA) published an [Update to Investigative and Enforcement Procedures notice of proposed rulemaking \(NPRM\)](#) in the Federal Register on February 12, 2019 (84 FR 3614). The NPRM proposed updates to subparts A through G of 14 Code of Federal Regulation part 13, which provide procedural rules governing investigations and enforcement actions taken by FAA. The majority of the rules in part 13 were last amended a decade or more ago. Since then, there have been statutory, organizational, and technological changes that necessitated the proposed updates.

In response to the NPRM, FAA received comments and changed the following part 13 sections in the final rule, 86 FR 54514 (Oct. 1, 2021), in response to these comments, with no privacy implications: 13.5(g), 13.63(a), 13.211(g), 13.45(b), 13.211(h), 13.39, and 13.218(f)(3)(ii). The final rule updates statutory and regulatory references, eliminates inconsistencies, clarifies ambiguity, increases efficiency, and improves readability. The rule also discontinues FAA's requirement of publication of all documents filed in a matter in the Federal Docket Management System (FDMS) website for subpart G adjudications, thus reducing publication of any personally identifiable information (PII) related to these matters. As required by the e-Government Act of 2002, and the Consolidated Appropriations Act, 2005, Pub. L. 108-447, FAA is publishing this Privacy Impact Assessment (PIA) to inform the public of the privacy risks and mitigation strategies associated with FAA's collection, use, dissemination, and retention of PII resulting from the final rule.

What is a Privacy Impact Assessment?

The Privacy Act of 1974 articulates concepts for how the federal government should treat individuals and their information and imposes duties upon federal agencies regarding the collection, use, dissemination, and maintenance of PII. The E-Government Act of 2002, Section 208, establishes the requirement for agencies to conduct PIAs for electronic information systems and collections. The assessment is a practical method for evaluating privacy in information systems and collections, and documented assurance that privacy issues have been identified and adequately addressed. The PIA is an analysis of how information is handled to—i) ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy; ii) determine the risks and effects of collecting, maintaining and disseminating information in identifiable form in an electronic information system; and iii) examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks.¹

¹Office of Management and Budget's (OMB) definition of the PIA taken from guidance on implementing the privacy provisions of the E-Government Act of 2002 (see OMB memo of M-03-22 dated September 26, 2003).



Conducting a PIA ensures compliance with laws and regulations governing privacy and demonstrates the DOT's commitment to protect the privacy of any personal information we collect, store, retrieve, use and share. It is a comprehensive analysis of how the DOT's electronic information systems and collections handle PII. The goals accomplished in completing a PIA include:

- *Making informed policy and system design or procurement decisions. These decisions must be based on an understanding of privacy risk, and of options available for mitigating that risk;*
- *Accountability for privacy issues;*
- *Analyzing both technical and legal compliance with applicable privacy law and regulations, as well as accepted privacy policy; and*
- *Providing documentation on the flow of personal information and information requirements within DOT systems.*

Upon reviewing the PIA, you should have a broad understanding of the risks and potential effects associated with the Department activities, processes, and systems described and approaches taken to mitigate any potential privacy risks.

Introduction & System Overview

Federal Aviation Administration (FAA) last amended the majority of the rules in 14 Code of Federal Regulation (CFR) part 13, Investigative and Enforcement Procedures, a decade or more ago. Numerous statutory, organizational, and technological changes have made the present rulemaking necessary. On February 12, 2019, FAA published an [Update to Investigative and Enforcement Procedures notice of proposed rulemaking \(NRPM\)](#), proposing amendments to FAA's investigative and enforcement procedures in subparts A through G of part 13. FAA's final rule, 86 FR 54514 (Oct. 1, 2021), implements these amendments with minor modifications based on public comments the agency received.

The final rule updates position (or job) title references and reflects organizational changes in the Office of the Chief Counsel, updates outdated statutory and regulatory references, updates outdated postal addresses, and provides clarity and uniformity across subparts for similar procedures and important definitions and terms. The final rule reduces the risk of inadvertent disclosures in subpart G matters by eliminating the requirement to publish in the Federal Docket Management System (FDMS) all documents filed in a matter. In light of this change, only final orders of the Administrator will be published online, thus reducing or eliminating publication of any personal information related to these matters. Retention of hearing docket files are governed by FAA records retention policy and retention schedule [N1-237-00-001 \(Civil Penalty Hearing Docket Records\)](#).

This PIA focuses on three components of FAA's final rule that involve the collection and use of PII: (1) reports of violations and formal complaints; (2) replies to Enforcement



Division notices, civil penalty letters, and other enforcement actions; and (3) requests for a hearing under subparts D and G and the ensuing litigation.

1. Reports of Violations and Formal Complaints

Any person may report alleged violations of 49 United States Code (U.S.C.) subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes, to FAA. When these reports meet the requirements below, FAA treats them as formal complaints under 14 CFR §13.5; otherwise, they are considered reports of violations under 14 CFR §13.2. The formal complaint process was created in 1979 (44 FR 63720 (Nov. 5, 1979)) and has never been substantively amended. Because the process has not been changed since the enactment of the E-Government Act of 2002, there is no existing PIA. The final rule adds a requirement for the complainant to provide an email address, but does not otherwise change any part of the process that affects privacy risk.

A formal complaint submission includes the following privacy impacting components:

- Set forth the name and address, if known, of each person who is the subject of the complaint;
- Contain a concise but complete statement of the facts relied upon to substantiate each allegation;
- State the name, address, telephone number, and email address of the person filing the complaint; and
- Be signed by the person filing the complaint or an authorized representative.

The FAA Office of the Chief Counsel, Enforcement Division (“FAA Enforcement Division” or “AGC-300”), reviews each complaint and sends a copy to all subjects identified in the complaint. The subject of a complaint may file a written answer to FAA. The complaint and answer usually contain PII such as the names, addresses, telephone numbers, and email addresses of complainants and subjects. The complaint and answer will often include supporting evidence (e.g., log book pages, pictures, emails), which may also contain PII. Because there are a wide variety of laws that could be the subject of a formal complaint, the type of PII that might be included is varied. Other possible PII include FAA airman certificate numbers and medical information.

The FAA Enforcement Division maintains the formal complaint docket and gives each complaint a unique docket number. The docket consists of the formal complaint, answer (if any), and a response from the program office to the parties (i.e. complainant and subjects). If the complaint warrants no investigation, the program office’s response would be a letter advising the parties that there are no grounds for an investigation, and that the complaint is dismissed. If the complaint warrants an investigation, the program office would provide the parties a notification of the investigation and a report of the investigation.



The FAA Enforcement Division maintains docket items submitted in hard copy in locked offices at FAA Headquarters. Electronic submissions and digital copies of the docket are maintained on the FAA-issued computer of the AGC-300 attorney assigned to review a formal complaint, or on shared drives accessible only by that attorney and headquarters AGC-300 management officials.

The PII stored in the formal complaint docket is not disseminated to the public or available on the internet. Upon a member of the public's request for materials from the docket, FAA would redact PII in accordance with the Privacy Act and other applicable laws. The retention and routine destruction of PII in the formal complaint docket is managed in accordance with FAA's record retention policies for all enforcement documents ([N1-237-92-004 \(Legal Enforcement Case Files\)](#) Items 1, 4, and 5; NN-163-163 Item 11; [NC1-237-77-3 \(Comprehensive Records Schedule\)](#) Item 87).

The FAA Enforcement Division may forward materials in the formal complaint docket to FAA program offices as part of determining if reasonable grounds exist to initiate an investigation of the complaint. The relevant FAA program office conducting the investigation may collect additional PII from the complainant and alleged violators. These offices have the same requirements to safeguard the information from improper access, modification, and destruction as does the FAA Enforcement Division (and the Office of the Chief Counsel generally).

If FAA takes legal enforcement action based on a formal complaint investigation, an appeal of that action may be governed by subpart D, E, or G of part 13 and PII collected in these enforcement actions is addressed separately in Section 2 below.

2. Replies to notices of enforcement action, civil penalty letters, and other enforcement action documents

FAA program offices refer matters for legal action to the FAA Enforcement Division through Enforcement Investigative Reports (EIRs). Except for emergency actions requiring the immediate issuance of an order, based on the documentation in the EIR, the FAA Enforcement Division first sends a notice to individuals believed to have violated an FAA-administered law or regulation. The notices contain an enclosed reply form listing options for how an individual may respond to the notice. These response options are long-standing, and the final rule has not changed them in any way that affects privacy. One of the options allows the individual to provide evidence showing that the violation did not occur or that the sanction is unwarranted. This evidence could contain a wide variety of PII because there are many laws that could be the subject of a legal enforcement action. Another option, applicable to civil monetary penalties, is to provide evidence of an inability to pay the proposed sanction. Financial documents (tax returns, balance sheets, asset and liability statements, etc.) with PII would very likely be part of a response under this option. Another option on the reply form allows for a written reply, with or without an informal conference



that could include submission of PII. Lastly, the reply form included with the notice asks for the name, home address, telephone number, and email address of the individual. It requests this information so that FAA counsel can communicate with the individual going forward. The reply form includes a Privacy Act Statement.

Part 13 also provides for administrative appeal of certain enforcement actions. An appeal from these enforcement actions could result in the collection of PII during the course of litigation, such as pre-litigation correspondence, discovery, a hearing, or settlement. These PII collections are not associated with any standard FAA forms, and they cover a wide variety of PII because there are many laws that could be the subject of a legal enforcement action.

Responses to all FAA enforcement action notices, orders, and civil penalty letters are mailed in hard copy or submitted electronically to the AGC-300 attorney assigned to the matter. The information collected from individuals while an enforcement action is open, including PII, is maintained in an Enforcement Division electronic case file. Case files are maintained on a restricted access FAA shared drive accessible only by Enforcement Division personnel. Retention of enforcement matter files are governed by FAA records retention policy and applicable retention schedules (N1-237-92-004 Items 1, 4, and 5; NN-163-163 Item 11; NC1-237-77-003 Item 87).

In addition, information about FAA enforcement matters, including PII such as individuals' names, is stored in the Enforcement Information System (EIS)², which is addressed in FAA Order 2150.3C. The records maintained in this system comply with the respective privacy compliance requirements for notice, retention, etc. EIS is FAA's primary database for recording and tracking information about FAA enforcement actions. It is a web-based system that allows for data input and retrieval at the FAA investigating (field) office, reviewing office, and headquarters levels. EIS is available through the FAA Intranet and supports FAA users with authorized access to the system. All EIS users are required to have an active directory identification (ID). The Flight Standards Service Aviation Data Systems Branch confirms all EIS use by the user's active directory ID, security level, and office code. Enforcement actions are closed in EIS by making an entry of the final disposition of the case in EIS and closing the EIS record.

3. Request For A Hearing Under Either Subparts D or G And Ensuing Litigation

PII collected for the enforcement processes discussed above in Section 2 can also be used for related informal hearings under Subpart D or formal hearings under Subpart G. The hearing processes under these subparts begin when an interested, non-FAA party files a request for a hearing in an enforcement matter. The rules stated in these subparts do not

² Enforcement Information System PIA available at: <https://www.transportation.gov/individuals/privacy/pia-enforcement-information-system-eis-modernization>.



expressly require the submission of additional PII other than requiring each representative to file a notice of appearance (sections 13.33 and 13.204), which must include the representative's name, address, and telephone number. The final rule requires the party's representative to submit a fax number and email address, if available, on their notice of appearance. Sections 13.43 and 13.211 will continue to require participants in a proceeding to include the same kind of information in certificates of service to describe how documents filed in the matter were delivered to other participants in the proceedings.

Aside from the information required for notices of appearance and service of documents, other documents in the record of a proceeding might contain PII. Such PII will vary on a case-by-case, document-by-document basis. The nature of the facts in dispute and issues involved dictate the kind of additional PII that the parties will submit in each matter. The PII could include, for example, information contained in a respondent's business records regarding its employees, such as date of birth, home addresses, telephone number, or even records relating to alcohol and drug testing results.

The final rule features procedures intended to protect PII. Sections 13.49(f) and 13.226 provide for protective orders when disclosure would be detrimental to aviation safety, disclosure would not be in the public interest, or the information is not otherwise required to be made available to the public. In addition, the rule reduces the risk of inadvertent disclosure in subpart G matters by eliminating the requirement to publish in FDMS all documents filed in a matter. In light of the change, only final orders of the Administrator will be published online. Retention of hearing docket files are governed by FAA records retention policy and retention schedule N1-237-00-001.

Fair Information Practice Principles (FIPPs) Analysis

The DOT PIA template is based on the fair information practice principles (FIPPs). The FIPPs, rooted in the tenets of the Privacy Act, are mirrored in the laws of many U.S. states, as well as many foreign nations and international organizations. The FIPPs provide a framework that will support DOT efforts to appropriately identify and mitigate privacy risk. The FIPPs-based analysis conducted by DOT is predicated on the privacy control families articulated in the Federal Enterprise Architecture Security and Privacy Profile (FEA-SPP) v3³, sponsored by the National Institute of Standards and Technology (NIST), the Office of Management and Budget (OMB), and the Federal Chief Information Officers Council and the Privacy Controls articulated in Appendix J of the NIST Special Publication 800-53 Security and Privacy Controls for Federal Information Systems and Organizations⁴.

³ <http://www.cio.gov/documents/FEA-Security-Privacy-Profile-v3-09-30-2010.pdf>

⁴ http://csrc.nist.gov/publications/drafts/800-53-Appendix-J/IPDraft_800-53-privacy-appendix-J.pdf



Transparency

Sections 522a(e)(3) and (e)(4) of the Privacy Act and Section 208 of the E-Government Act require public notice of an organization's information practices and the privacy impact of government programs and activities. Accordingly, DOT is open and transparent about policies, procedures, and technologies that directly affect individuals and/or their PII. Additionally, the Department should not maintain any system of records the existence of which is not known to the public.

FAA has been transparent with the investigative and enforcement procedures described in this document: (1) reports of violations and formal complaints; (2) replies to FAA Enforcement Division notices, civil penalty letters, and other enforcement actions; and (3) requests for a hearing under subparts D and G and the ensuing litigation. The publication of the [Update to Investigative and Enforcement Procedures NPRM](#) in February 2019, the final rule, 86 FR 54514 (Oct. 1, 2021), the Privacy Act Statement on the various enforcement action reply forms, and this PIA are a testament to FAA's transparency and notice regarding part 13 processes. The PIA and Privacy Act Statement included with the enforcement action reply forms provide information on the PII collected and retained, the authorities and purpose to do so, any external sharing of data, and retention timeframes, among other details. In addition, [DOT/FAA System of Records Notice \(SORN\) 847, Aviation Records on Individuals \(75 FR 68849 \(Nov. 9, 2010\)\)](#), applies to reports of violations, formal complaints, and all FAA enforcement actions described in this document. The routine uses outlined in this SORN are referenced in the Privacy Act Statements in the various reply forms utilized by the FAA Enforcement Division.

Individual Participation and Redress

DOT provides a reasonable opportunity and capability for individuals to make informed decisions about the collection, use, and disclosure of their PII. As required by the Privacy Act, individuals should be active participants in the decision-making process regarding the collection and use of their PII and they are provided reasonable access to their PII and the opportunity to have their PII corrected, amended, or deleted, as appropriate.

The PII collected under part 13 is provided voluntarily with the exception of contact information on complainants and subjects. Individuals voluntarily submitting formal complaints and subjects of alleged violations are able to work with FAA personnel during investigations, when advised of FAA's proposed enforcement actions, and on appeal of enforcement actions to both provide information about themselves directly and to amend their information during the investigative/litigation process, as needed.



Under the provisions of the Privacy Act, individuals may request searches to determine if any records are maintained in the system that may pertain to them. Individuals wishing to know if their records appear in a system may inquire in person or in writing to:

Federal Aviation Administration
Privacy Office
800 Independence Ave. SW
Washington, DC 20591

The request must include the following information:

- Name
- Mailing address
- Phone number and/or email address
- A description of the records sought, and if possible, the location of the records

Applicants wanting to contest their information (after the fact) that is contained in the systems described in this PIA should make their requests in writing, detailing the reasons for why the records should be corrected, to the following address:

Federal Aviation Administration
Privacy Office
800 Independence Ave. SW
Washington DC, 20591

Purpose Specification

DOT should (i) identify the legal bases that authorize a particular PII collection, activity, or technology that impacts privacy; and (ii) specify the purpose(s) for which it collects, uses, maintains, or disseminates PII.

FAA's use of information will be managed in accordance with the Privacy Act. FAA uses PII collected under part 13 procedures to: contact complainants, potential witnesses of alleged violations, and alleged violators; assess whether legal enforcement action is appropriate; litigate FAA legal enforcement actions that are appealed; and adjudicate cases arising from FAA legal enforcement actions. The agency is required to enforce the Federal Aviation Regulations in the interest of safety, and can only do so with the use of information collected under part 13. The Privacy Act Statement on the enforcement action reply forms advise the recipients that follow up from FAA will be delayed if they do not provide the necessary contact information on the forms. As required and authorized by the Freedom of Information Act, the agency publishes the precedential final orders of the Administrator.



The authorities for FAA’s collection and maintenance of PII in connection with the activities implemented under the final rule are outlined below:

- 5 U.S.C. 551 et seq. “Administrative Procedure”
- 49 U.S.C. 106(g) “Duties and Powers of Administrator”
- 49 U.S.C. 5121 “Administrative”
- 49 U.S.C. 5123 “Civil Penalty”
- 49 U.S.C. 40113 “Administrative”
- 49 U.S.C. 44702-44703, 44709-44710, 44724, and 46111, 45102(c) “Certificate Actions”
- 49 U.S.C. 46101 “Complaints and investigations”
- 49 U.S.C. 46102 “Proceedings”
- 49 U.S.C. 46104 “Evidence”
- 49 U.S.C. 46105 “Regulations and orders”
- 49 U.S.C. 46301 “Civil Penalties”
- 49 CFR 1.83 “Delegations to Federal Aviation Administrator”

Data Minimization & Retention

DOT should collect, use, and retain only PII that is relevant and necessary for the specified purpose for which it was originally collected.

FAA collects the minimum amount of information necessary to carry out the legal enforcement actions and adjudications provided for in part 13. FAA retains and disposes of information in accordance with the applicable records retention schedules as required by the National Archives and Records Administration (NARA). The records schedules are as follows: N1-237-92-004 Items 1, 4, and 5; NN-163-163 Item 11; NC1-237-77-003 Item 87; and N1-237-00-001.

Use Limitation

DOT shall limit the scope of its PII use to ensure that the Department does not use PII in any manner that is not specified in notices, incompatible with the specified purposes for which the information was collected, or for any purpose not otherwise permitted by law.

FAA provides requisite notice and due process to alleged violators of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes. FAA additionally provides a Privacy Act Statement on the enforcement action reply forms sent to alleged violators in non-emergency legal enforcement actions providing additional information on use of data collected by the agency. FAA uses PII collected under part 13 procedures to: contact complainants and alleged violators; assess whether legal enforcement action is appropriate; litigate FAA legal enforcement actions that are appealed; and adjudicate cases arising from FAA legal enforcement actions.



The sharing of information collected under part 13 that is covered under the Privacy Act is conducted under DOT/FAA System of Records Notice (SORN) 847, Aviation Records on Individuals, 75 FR 68849 (Nov. 9, 2010). In addition to other 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 outside of DOT as a routine use pursuant to 5 U.S.C. § 552a(b)(3), in accordance with the routine uses listed in SORN 847.

Data Quality and Integrity

In accordance with Section 552a(e)(2) of the Privacy Act of 1974, DOT should ensure that any PII collected and maintained by the organization is accurate, relevant, timely, and complete for the purpose for which it is to be used, as specified in the Department's public notice(s).

Individuals providing information to FAA are responsible for ensuring the accuracy of their own data. Both complainants and subjects have respective opportunities during their dealings with FAA to directly submit and amend their personal and sensitive information provided to the agency. The integrity of all data is protected in accordance with the standards discussed in the Security section of this PIA. Individuals may access and update their PII as discussed in the Individual Participation and Redress section of this PIA.

Security

DOT shall implement administrative, technical, and physical measures to protect PII collected or maintained by the Department against loss, unauthorized access, or disclosure, as required by the Privacy Act, and to ensure that organizational planning and responses to privacy incidents comply with OMB policies and guidance.

The PII collected under part 13 is stored in hard copy in locked offices at FAA Headquarters and electronically in FAA case files on restricted access FAA shared drives. Only AGC personnel with appropriate permissions and need-to-know have access to the shared electronic folders and/or locked cabinets. Additionally, the final rule reduces the risk of inadvertent disclosure in subpart G matters by eliminating the requirement to publish in FDMS all documents filed in a matter. In light of the change, only final orders of the Administrator will be published online, thus reducing or eliminating publication of any personal information related to these matters. FAA protects PII with reasonable security safeguards against loss, unauthorized access, destruction, usage, modification, or disclosure. Users receive the least privileges necessary to perform their job duties.



Accountability and Auditing

DOT shall implement effective governance controls, monitoring controls, risk management, and assessment controls to demonstrate that the Department is complying with all applicable privacy protection requirements and minimizing the privacy risk to individuals.

The FAA's Office of the Chief Information Officer, Office of Information Systems Security, Privacy Division is responsible for governance and administration of FAA Order 1370.121, FAA Information Security and Privacy Program Policy. FAA Order 1370.121 implements the various privacy requirements based on the Privacy Act of 1974 (the Privacy Act), the E-Government Act of 2002 (Public Law 107-347), the Federal Information Security Management Act (FISMA), DOT privacy regulations, Office of Management and Budget (OMB) mandates, and other applicable procedures and guidance.

In addition to these practices, additional policies and procedures are consistently applied, especially as they relate to protection, retention, and destruction of records. Federal and contract employees are given clear guidance regarding their duties as they relate to collecting, using, processing, and securing privacy data. Guidance is provided in the form of mandatory annual security and privacy awareness training, as well as FAA Privacy Rules of Behavior.

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