

## **Supporting Statement A Formal Complaints (14 CFR § 13.5)**

### **1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The Federal Aviation Administration (FAA) set out procedural rules for its enforcement program in 14 CFR part 13, under the authority of the Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 737. The FAA amended those rules in 1979 and created § 13.5 for the processing of “formal complaints” (44 FR 63720, Nov. 5, 1979). The Federal Aviation Act of 1958 was revised and recodified in 1994, Pub. L. No. 103-272, 108 Stat. 745. The statutory authority for the collection of information in § 13.5 is currently codified at 49 U.S.C. § 46101. Section 46101(a)(1) allows any person to file a complaint in writing with the Administrator of the FAA alleging that a person is violating title 49, subtitle VII, part A (Air Commerce and Safety), of the U.S. Code—or a requirement prescribed under that part—with respect to aviation safety duties and powers designated to be carried out by the Administrator. If a reasonable ground for investigating appears from the complaint, the Administrator must investigate it. § 46101(a)(1). If the complaint does not state facts that warrant an investigation or action, the Administrator may dismiss the complaint without a hearing. 49 U.S.C. § 46101(a)(3).

On December 18, 2018, the FAA issued a Notice of Proposed Rulemaking (NPRM) to revise 14 CFR part 13, including § 13.5 (84 FR 3614, Feb. 12, 2019). The NPRM proposed to update statutory and regulatory references, update agency organizational structure, eliminate inconsistencies, clarify ambiguity, increase efficiency, and improve readability. While the NPRM contained a Paperwork Reduction Act statement regarding the collection in § 13.5, the FAA did not submit this information collection assessment to the Office of Management and Budget (OMB) for review. Additionally, while § 13.5 was last revised by Amdt. 13-19 (54 FR 39290, Sept. 25, 1989) there is currently no valid OMB control number.

### **2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

Formal complaints are voluntary submissions and can be filed by any person at any time. They are typically submitted by either an individual or an organization. Formal complaints must meet the following requirements in 14 CFR § 13.5(b) (as revised in the NPRM):

- (1) Be submitted in writing and identified as a complaint seeking an appropriate order or other enforcement action;

- (2) Be submitted to the Federal Aviation Administration, Office of the Chief Counsel;
- (3) Set forth the name and address, if known, of each person who is the subject of the complaint, with the specific statute, rule, regulation, or order violated;
- (4) Contain a concise but complete statement of the facts relied upon to substantiate each allegation;
- (5) State the name, address, telephone number, and email of the person filing the complaint; and
- (6) Be signed by the person filing the complaint or an authorized representative.

Personnel in the FAA Office of the Chief Counsel, Enforcement Division (“FAA Enforcement Division”) receive and review each submission to determine if it complies with § 13.5(b). If it complies, the FAA Enforcement Division sends a copy of the complaint to all the subjects identified in the complaint. The subject of a complaint may file a written answer. The complaint and answer will often include supporting evidence (e.g., log book pages, pictures, emails). FAA reviews the complaint and answer provided. If FAA determines that reasonable grounds exist to support an investigation, it initiates an investigation and notifies the complainant and alleged violators of FAA’s determination in writing. The FAA Enforcement Division may initiate legal action if warranted by the investigation. If, however, FAA determines an investigation is not warranted, it dismisses the complaint, providing its rationale in writing to the complainant and alleged violators.

The FAA Enforcement Division maintains the formal complaint docket and gives each complaint a unique docket number. The docket consists of the formal complaint, an 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.

While the formal complaint docket is accessible to the public through a FOIA request, it is not accessible via the Internet. AGC-300 retains control over the information in the formal complaint docket and safeguards it from improper access, modification, and destruction, consistent with confidentiality, privacy, and electronic information requirements. The PII stored in the formal complaint docket is not disseminated to the public. 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 law.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.**

Although § 13.5 does not provide for electronic submission, as a matter of practice, the FAA has accepted formal complaints and answers submitted by email.

There are no forms involved in this collection, and the FAA has no plans to use a form. The agency does not want to limit the kinds of evidence a complainant might submit by proposing or requiring a form.

The results of the information collection will not be available to the public over the internet because the public docket is not accessible online. However, if requested, docket materials could be sent to a requester by email.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

A formal complaint may involve information previously sent to the FAA, e.g., a Hotline complaint, congressional inquiry, or even a telephone tip to an FAA Flight Standards District Office. When the FAA considers whether a formal complaint warrants investigation, it considers these prior submissions and any resulting investigations. These submissions often cannot be turned into a formal complaint because they lack the substantive information required by § 13.5.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

A small business or other small entities may submit a formal complaint or be the subject of a complaint and submit a written answer. This collection would not have a significant impact on small entities. A formal complaint and a written answer to a formal complaint are voluntary, do not require a specific format, and do not require complex or overly detailed information.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The FAA has a statutory duty to investigate any possible violations of matters within its jurisdiction and to take appropriate enforcement or other action to provide for aviation safety and the public interest. Not conducting the collection would partially frustrate the FAA's ability to carry out that statutory duty.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- *requiring respondents to report information to the agency more often than quarterly;*
- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document; requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;*
- *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

Although § 13.5(e) as proposed in the NPRM requires that any answer by persons accused of violations be filed within 20 days of when the complaint is served, the filing of an answer is not required. Persons accused of violations may choose to not file an answer at all. In addition, the FAA has granted extensions of this deadline as appropriate.

**8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions**

**taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

In accordance with the Paperwork Reduction Act of 1995, the FAA published a 60-day Federal Register Notice on August 4, 2020, inviting public comments about its intention to request approval from the Office of Management and Budget (OMB) for an existing information collection. The deadline for public comment was October 5, 2020. The FAA did not receive any comments.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

N/A

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

FAA's information collection under the formal complaint process in 14 C.F.R. § 13.5 was coordinated with the FAA Privacy Office. The result is that FAA is drafting a privacy impact assessment (PIA) for the Pt. 13 rule (Update to Investigative and Enforcement Procedures, NPRM, 84 FR 3614, Feb. 12, 2019). That PIA will address the privacy implications of 14 C.F.R. § 13.5.

Additionally, the Privacy Act of 1974 (Pub. L. No. 93-579, 88 Stat. 1896) applies to the materials in the formal complaint docket. Further, FAA Order 1370.121 provides for information security of the FAA's information systems and information the FAA maintains to insure proper operation and protect against unauthorized access.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

N/A

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices. \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under item 13.

The FAA estimates that it would take an individual about 4 hours to write a formal complaint acceptable under § 13.5. Most of this time would be the research required to determine which laws the subject of the complaint allegedly violated. The second largest amount of time would be devoted to writing the “concise but complete” statement of facts substantiating the complaint.

The FAA estimates there would be 7 complaints filed per year by 7 respondents. The annual hourly burden would be 28 hours for the public to submit formal complaints (7 complaints x 4 hours = 28 hours).

**Complaint Burden Table**

Summary (Annual numbers)	Reporting	Recordkeeping	Disclosure
<b># of Respondents</b>	7		
<b># of Responses per respondent</b>	1		
<b>Time per Response</b>	4		
<b>Total # of responses</b>	7		
<b>Total burden (hours)</b>	28		

After the FAA reviews the complaint and confirms it meets the requirements, each subject of the complaint would have an opportunity to submit a written answer. The FAA estimates this would take the subject 4 hours. The annual hourly burden to the public

would be another 28 hours for the subject of the complaint to provide a written answer (7 written answers x 4 hours = 28 hours).<sup>1</sup>

**Response (Written Answer) Burden Table**

Summary (Annual numbers)	Reporting	Recordkeeping	Disclosure
<b># of Respondents</b>	7		
<b># of Responses per respondent</b>	1		
<b>Time per Response</b>	4		
<b>Total # of responses</b>	7		
<b>Total burden (hours)</b>	28		

The total annual hourly burden to the public would be 56 hours.

Since a complainant and a subject of a complaint could be employed in any occupation, the FAA selected a mean hourly wage rate for all occupations in the U.S. The U.S. Bureau of Labor Statistics' estimate of the mean hourly wage rate of all occupations was \$24.98 in May 2018.<sup>2</sup> The FAA estimates the total burdened hourly wage rate is \$36.36 when including full employee benefits.<sup>3</sup> The total annual cost burden to the public would be about \$2,036 (\$36.36 x 56 hours).

**13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.**

Complaints average around 5 pages (including attachments). Most complaints are against a single person or entity, and are sent by mail. The FAA mails a complete copy of the complaint plus a one-page cover letter by certified mail (return receipt requested) and first-class mail to the person or entity who is the subject of the complaint. Subjects' answers tend to be shorter than complaints, averaging closer to 3 pages (including attachments), and only need to be mailed to the FAA. The complaint, answer, and a summary memo are sent, typically by email, to the FAA program office with expertise in

<sup>1</sup> Assumes each formal complaint would meet the requirements as laid out in 14 CFR 13.5(b), so the FAA can send a copy of the complaint to the subjects of the complaint to give them an opportunity to submit a written answer.

<sup>2</sup> Source: U.S. Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates, see Occupational Code #00-0000, All Occupations ([https://www.bls.gov/oes/2018/may/oes\\_nat.htm](https://www.bls.gov/oes/2018/may/oes_nat.htm)).

<sup>3</sup> Derived from the U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation—June 2019 ([https://www.bls.gov/news.release/archives/ecec\\_09172019.htm](https://www.bls.gov/news.release/archives/ecec_09172019.htm), September 17, 2019 release), which indicates that wages and salaries were 68.6% of total employee compensation (salary and benefits) providing a fringe benefit factor of about 1.4577 (=1 ÷ 0.686). The FAA uses this factor to estimate the total “burdened” employee compensation (salary and benefits) hourly wage rate of \$36.36 (= \$24.98 x 1.4557).

the kinds of violations alleged in the complaint for review. After the FAA determines whether an investigation is warranted, it mails a letter (typically 1-2 pages; again by both certified and first-class mail) to the complainant and subject(s) of the complaint informing them of the agency's determination.

The FAA assumes that printing or copying one page is 10 cents<sup>4</sup> and the cost of first-class certified mail with paper return receipt is \$6.95 (\$3.55 for certified mail, \$.55 for first-class stamp, and \$2.85 for paper return receipt).<sup>5</sup>

The FAA estimates the annual cost burden to 7 complainants would be \$52.15 [7 complaints x ((\$.10/page x 5 pages) + \$6.95) first-class certified mail with return receipt].

The annual cost burden to 7 subjects of complaints would be \$50.75 [7 responses to complaints x ((\$.10/page x 3 pages) + \$6.95) first-class certified mail with return receipt].

The annual cost burden to the FAA would be \$152.95, or the total of \$52.85 [7 complaints x ((6 pages x \$.10) + \$6.95)] for mailing complaints to the subjects of complaints and, \$100.10 [2 x 7 complaints x ((\$.10/page x 2 pages) + \$6.95 first-class mail certified mail with return receipt)] subsequently printing/copying and mailing the agency's determination to both complainants and subjects of complaints.

The FAA estimates the total annual cost burden to the respondents and the FAA at \$255.85 (\$52.15 to complainants, \$50.75 to subjects of complaints, and \$152.95 to the agency).

**14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.**

The total annual burden would be 56 hours for the FAA. The complaint would take an FAA attorney no more than 4 hours to review to confirm it meets the requirements as laid out in 14 CFR 13.5(b), which is an annual time burden of 28 hours (7 complaints x 4 hours = 28 hours). The FAA would take an additional hour to send a copy of the complaint to the subjects of that complaint, which would add 7 hours (7 complaints x 1 hour = 7 hours). The FAA would then take another estimated 3 hours to determine if an investigation would be necessary, adding 21 hours to the FAA annual burden (7 complaints x 3 hours = 21 hours). This totals 56 hours (28 + 7 + 21 = 56).

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<sup>4</sup> [https://www.gpo.gov/docs/default-source/gpoexpress-pdf-files/gpo\\_express\\_pricelist.pdf](https://www.gpo.gov/docs/default-source/gpoexpress-pdf-files/gpo_express_pricelist.pdf)

<sup>5</sup> <https://www.usps.com/ship/insurance-extra-services.htm>

The FAA assumes an FAA hourly wage rate of \$63.51.<sup>6</sup> The FAA estimates the total burdened FAA hourly wage rate to be \$86.54 when including full civilian employee benefits.<sup>7</sup> The total annual cost burden to the FAA to review and process the complaint would be \$4,846 ( $\$86.54 \times 56 = \$4,846$ ).

**15. Explain the reasons for any program changes or adjustments.**

This is a new approval request for an existing collection process. As it currently exists, § 13.5 contains nearly the same information collection process as that proposed in the NPRM. The information collection, as proposed in the NPRM, updates the FAA's address for receiving formal complaints and requires the email address of the person(s) submitting a formal complaint. However, current § 13.5 does not have a valid OMB control number.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

N/A

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

N/A

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

N/A

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<sup>6</sup> The FAA assumes that 75% of the work would be performed by an FAA attorney at a grade level 14 step 5 hourly wage of \$60.83 and 25% by an FAA attorney at a grade level 15 step 5 hourly wage of \$71.56 (wages based on U.S. Office of Personnel Management General Schedule Salary Data).

<sup>7</sup> The FAA uses a civilian fringe benefit cost factor of 36.25% (or 1.3625) to estimate the total "burdened" FAA employee compensation (salary and benefits) hourly wage rate of \$86.54 ( $=\$63.51 \times 1.3625$ ). The civilian fringe benefit cost factor is based on guidance from the U.S. Office of Management and Budget (<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2008/m08-13.pdf>).