

**BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

Pilots Records Database Notice of Proposed Rulemaking

Docket No. FAA-2020-0246

COMMENTS OF THE CARGO AIRLINE ASSOCIATION

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June 29, 2020

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I. INTRODUCTION

By publication in the *Federal Register*, the Federal Aviation Administration (“FAA” or “agency”) issued a Notice of Proposed Rulemaking (“NPRM” or “proposed rule”) to require the use of an electronic Pilots Records Database (PRD), consistent with the direction provided in section 203 of Public Law 111-216 (Aug. 1, 2010). 85 Fed. Reg. 17660 (March 30, 2020). Comments are due to be filed on or before June 29, 2020.

The Cargo Airline Association (“CAA” or “Association”) is the nationwide trade organization representing the all-cargo air carrier industry. These Comments are being filed on behalf of our Part 121 airline members.¹ On April 10, 2020, CAA submitted a Request for an Extension of Time to File Comments. We urged the agency for an additional 90-days to submit Comments.² The request was based on the extensive and complex nature of the proposed rule, coupled with the extraordinary challenges of dealing with the COVID-19 pandemic while continuing to operate and maintain global supply chains to ensure movement of critical medical

¹ ABX Air, Atlas Air Worldwide, FedEx Express, Kalitta Air and UPS Airlines. Individual Association members will also be submitting comments tailored to their individual circumstances.

² Several other industry associations filed requests for extension of time to file Comments varying from 60-120 additional days.

supplies and Personal Protective Equipment (PPE). On June 11, 2020, we received a letter from the FAA denying our request. On June 22, 2020, CAA sent a letter requesting the FAA reconsider its denial of an extension of time to file comments. The Association has received no response to this request and thus is submitting these necessarily abbreviated comments.

The Association strongly supports the establishment and maintenance of a robust Pilots Records Database. Our members' top priority is safety and the development of an enhanced electronic system that would be used to share pilot records among air carriers and other operators will enhance safety by providing more complete information in the hiring process. Such a system, managed by the federal government, is long overdue. At the same time, with respect specifically to the provisions of the NPRM, there are several matters that need clarification and several questions that still need to be answered. The rule should be implemented with all interested parties fully understanding their respective roles and responsibilities, without ambiguity. Any such ambiguity or unanswered questions could delay the very safety benefit to be gained from the enactment of a PRD.

The FAA also asks several questions and requests supporting data and information to help further assess the cost impact of the rule and evaluate alternatives. However, the 90-day time period to formulate comments coincided with the height of the COVID-19 pandemic, a period which dramatically changed the aviation industry and stretched our resources to meet the demands pressed upon the air cargo industry. Therefore, we urge the agency to thoughtfully consider the comments herein, as well as those submitted by other associations and individual carriers.³ As many issues may require further clarification, we request FAA consider re-opening

³ Specifically, we support any legal or economic analysis on the agency's Regulatory Impact Analysis submitted by A4A.

the comment period for a short time after comments are reviewed and host a meeting with all interested parties to have the opportunity to further discuss the issues.

II. DISCUSSION

As required by section 203 of Public Law 111-216, the Pilot Records Database is expected to replace the existing obligations associated with pilot recordkeeping, reporting, and review pursuant to 49 U.S.C. §44703(h). Airline Safety and Federal Aviation Administration Extension Act of 2010, Pub. L. No 111-216, §203, 124 Stat. 2352 (2010) (codified as amended §44703). Until issuance of a final rule that affords sufficient time to build, pilot, and develop the PRD, it is expected that carriers will continue to compliance with 49 U.S.C. §44703(h).

As detailed below, we respectfully urge the FAA to consider an alternative approach to the time period to begin requiring historical records to be entered into the PRD; additional consideration for the input of varied training curriculum approved by the FAA; additional time to account for the several users seeking accounts to access the PRD; and a reassessment or further clarification of the proposed user fee; and a delay in implementing a user fee until data is collected on the actual number of times the system is accessed to understand the operating and maintenance costs associated with the PRD.

A. HISTORICAL RECORDS

The agency states, “The proposal does not impose new substantive recordkeeping requirements on air carriers or operators.” 85 Fed. Reg. at 17661. However, the FAA is requiring all Part 121 air carriers to provide specific records kept in accordance with the Pilot Records Improvement Act (“PRIA”) on or after August 1, 2005, through one year after the publication of the final rule and input all of its own historical records into the PRD. A *Historical Record* is

defined as, “a record generated by the Administrator, an air carrier, or other operator in response to a request from another air carrier or operator that must be maintained by the person that generated it in accordance with the Pilots Records Improvement Act (“PRIA”), 49 U.S.C. §44703 (h)(4) and maintained in accordance with 49 U.S.C. §44703 (i)(15)(C)(iii).” 85 Fed. Reg. at 17712. Proposed section 111.420 would require “[a] ir carriers [sic] report to the PRD all historical records kept in accordance with 49 U.S.C. §44703 (h)(4), dating from August 1, 2005, up to [DATE 1 YEAR AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER] in the form and manner prescribed by the Administrator. 85 Fed. Reg. at 17720. Even though each air carrier would not be required to input historical records on any employee it received from another air carrier, we believe the form and manner proposed by the agency is overly vague and does not take into account the recommendations of the Pilot Records Database Aviation Rulemaking Committee (“PRD ARC”), and could lead to confusion and risk duplicative records being entered into PRD.

CAA recognizes that section 203 requires air carriers to report “records that the air carrier or other person is maintaining, on such date of enactment.” Airline Safety and Federal Aviation Administration Extension Act of 2010, Pub. L. No 111-216, §203(b)(2), 124 Stat. 2352 (2010) (codified as amended §44703). Although the Information for Operators (InFOs) issued in 2011 and 2014 advised carriers of the request, the agency failed to provide any notice of the scope, format, and manner in which these records should be required to be kept.⁴ The only guidance available to carriers was the continued compliance with the existing requirements of PRIA, as acknowledged in paragraph (a) of section 203, which requires carriers to continue to comply with PRIA until such time as a final rule implementing PRD is issued and becomes effective,

⁴ FAA Information for Operators (InFOs) No 11014 (Aug. 15, 2011) and No.14005 (March 13, 2014).

including the 5-year rolling period for the maintenance of historical records. §203, 124 Stat. 2352. It is unreasonable to expect air carriers and other individuals to anticipate the form and manner of records the agency may require input, especially given the time that has lapsed since the rulemaking was first mandated. Rather, the recordkeeping requirements in section 203 should be read in conjunction with and consistent with the carriers' continued obligation to comply with paragraph (a) of section 203, allowing for a continuing rolling 5 year look-back period until such time as the PRD final rule is implemented, consistent with the agency's proposed alternative four, as outlined in the proposed rule.

Such an interpretation is further supported by the PRD ARC. As outlined in the report of the PRD ARC, "Until the passage of the PRD statute, the FAA had no need to require air carriers, operators, and other persons to use a standardized, universal format for recording and storing pilot records. As long as the air carrier or operator's records contained all the key items of information required under PRIA and the respective FARs, the air carrier or operator could record events and store data in whatever manner best suited their internal needs at a particular point in time. Consequently, 'historical' records of air carriers and operators vary widely in their content, scope, and size, as well as in the medium in which they have been stored." Pilot Records Database Aviation Rulemaking Committee, Report from the PRD ARC, page 69 (July 29, 2011).⁵ Now, the agency is mandating air carriers to input summaries of records for all pilots dating back to 2005, even if they are no longer employed with the company. The PRD ARC Report further states that, "the ARC members believe the 5-year rolling timeframe was appropriate and fully adequate to ensure all relevant pilot data would be provided. The ARC cannot identify any legitimate justification for the maintenance of lifetime pilot records." *Id.* at 8.

⁵ Individual CAA members may be submitting sample historical records.

CAA respectfully urges the FAA to require a 5-year look back period from the date of enactment of a Final Rule for all pilots currently employed with an air carrier and, for any former employee, a rolling 5-year time frame from the time a pilot left an air carrier.

This requirement would be in line with the intent of PRIA and would reduce the burden on an air carrier to go back through multiple systems, databases and paperwork just to include information on a pilot that would likely be employed by another carrier or no longer be eligible for employment as a pilot. As a safeguard, for any period of time where the PRD does not contain 5 years of pilot data, carriers should have to conduct a PRD inquiry for the years in which PRD has data and a PRIA check for any additional years. For example, when the PRD has 4 years of data, a carrier would run a PRD inquiry for 4 years of data and follow the PRIA process for the remaining one year of pilot data.

With respect to employees who have left the employment of an air carrier, it is unclear how the FAA intends to eliminate duplicative entries for those individuals. By not addressing safeguards to ensure those pilot's records are not submitted more than once by multiple employers going back to 2005, the agency risks overloading the system with unnecessary and information that would not be useful. Further, the agency proposes to require only the submission of summary entries rather than the actual records retained, with the opportunity to add in comment notes limited by 256 characters. The submission of summaries without the underlying records would run contrary to the current requirements of PRIA and lead to less informative and accurate information being provided to carriers for use in its hiring process, contrary to the intent of the legislation. Carriers will be forced to review and redact records long after the actual event has passed, which could lead to re-adjudication of the event. This approach would only serve to frustrate the intent in mandating this new database.

CAA respectfully requests that the FAA limit the information to be required to *current* employees dating back 5-years from the enactment of the Final Rule and *former* employees 5-years from the time they left employment. The agency readily admits it does not have data on the exact number of historical records expected for pilots who are not currently employed. 85 Fed. Reg. at 17678. CAA submits that the number of records, while important, must be balanced against the utility of the information and the burden on the air carrier industry. Moreover, by capturing all currently employed pilots within a 5-year rolling period and any former pilots employed 5-years back from the time they left employment, a Final Rule will continue to provide significant safety benefits, remain in line with PRIA and not overload the PRD with information that is not significantly helpful or simply irrelevant by going back decades.

B. PILOT PERFORMANCE AND TRAINING

CAA and our member companies support the inclusion of training records as a significant enhancement to safety. However, the FAA should further explore the impact on those air carriers that conduct training under an Advanced Qualification Program or “AQP”. As FAA notes, “AQP allows for an alternative method for training and evaluating pilots based on instructional systems design, advanced simulation equipment, and comprehensive data analysis to continuously validate curriculums.” 85 Fed. Red. at 17680-81 fn 86. Proposed section 111.220 outlines the specific records to be entered by the air carriers. We seek additional clarification on how recurrent/continuing qualification training under AQP should be accounted for in PRD.

Many AQPs have a cycle of reviewing all required task elements typically within 24 or 36-month increments where pilots will attend several simulator training sessions which conclude in either a Maneuvers Validation (MV) or a Line Operational Evaluation (LOE). While we

believe the intent of the PRD rule is to record all required recurrent and continuing qualification training events that conclude with a determination of a pilot's proficiency, there is a conflict when FAA states, "that neither validation events (in an Advanced Qualification Program, or AQP) nor instructor comments should be included in the PRD". 85 Fed. Reg at 17680-81. CAA requests clarification from the agency regarding continuing qualification MV under subpart Y and the training session associated with §121.441(a)(1)(ii)(B) "simulator course of training" which should be uploaded to the PRD.

Furthermore, FAA should consider specifically naming the events that must be uploaded to the PRD and CAA recommends that additional guidance material be provided to ensure standardization of all training records. FAA should also consider an additional element that would allow the carrier to report the reason the pilot did not complete the course. By providing a prospective employer information on why a course was not completed could provide valuable data for those pilots who received incompletes for failure to meet technical course requirements.

In summary, the issues regarding training records and the complexity of various training curriculum deserves further review and we therefore recommend FAA immediately create a PRD working group to help standardize the form and manner of the records to be recorded in PRD, and develop, pilot, and implement the PRD.

C. USER ACCOUNTS

The agency proposes a complex system by which user accounts will be distributed, controlled, and maintained. However, the proposed implementation dates do not take into account the time it will take for potential users to obtain user accounts, nor the manner in which these records are used by carriers to evaluate applicants. Many air carriers have established

hiring committees assigned to review these records and rank applications for future progression. It is unclear how these committees will be able to access these records and conduct reviews if only one to three individuals are able to access and review records, especially considering the proposed user fee that will be charged to the air carrier each time the record is accessed. In addition, all pilots will need access to ensure the accuracy of records as they are reported, so the agency should expect demand to be very high. The FAA does not outline the time it expects for it to approve access to users that request an account, the training that will be required of all users, and the parameters that will be established to ensure that privacy concerns are addressed. The agency should issue a privacy impact assessment for review and comment so these issues can be addressed.

D. USER FEE

The proposed \$110 user fee per request is calculated by dividing the expected annual Operating and Maintenance Costs (“O&M”) by expected annual PRD requests. While the agency provides a “Pilot Records Database Fee Methodology Report” (“PRD User Fee Report”) in the docket, we request further clarification on how FAA determined the annual PRD requests figure. How can the agency know to such certainty how many inquiries it will receive in one year? Also, wouldn’t the number change if a carrier has to go in several times for the same potential hire? What if multiple people within the air carrier are accessing the PRD records, will a user fee be imposed each time? In addition, we expect that all pilots will access their records to confirm the accuracy of the report once entered. Some carriers have estimated that up to 40 records could be entered for a pilot in a given year. This will increase the operating and maintenance costs associated with the PRD, which will be born fully by the air carriers conducting the pre-employment checks. In addition, concerning the impact of the current pandemic, it is likely that

the user fee will be dynamic, rising in cost during periods of low hiring yet increased record reporting, resulting in hiring carriers bearing more of the burden during a challenging economic recovery period. A full assessment needs to be done to understand the true operating and maintenance costs once the form and manner of the records needing reporting is determined, as well as the frequency of access by all users is more accurately assessed.

CAA respectfully urges the agency to consider conducting another review of the methodology for the user fee and to consider the questions posed herein. Moreover, the Office of Management and Budget has published guidance for regulatory agencies to consider when assessing user fees and it is unclear if FAA has followed the guidance. Specifically, OMB Circular A-25, provides detailed information for agencies to calculate when assessing a user charge.⁶ In the alternative, if FAA is not persuaded to amend or reconstruct a more detailed user fee report, we urge it to reconsider imposing a fee until it can have an appropriate sample set of at least one year's worth of data. We would further recommend an audit and review process for the operating and maintenance costs and subsequent user fee calculation to be stipulated in the rule.

III. CONCLUSION

The transition to a Pilot Records Database managed and maintained by the federal government will certainly add transparency and efficiency into an air carrier's hiring process and will provide safety benefits. At the same time, ensuring a smooth transition and safeguarding all the necessary steps follow in line before fully launching the system is essential. Considering the broad reach of the rule and the many issues that will require further clarification, we request

⁶ OMB Circular A-25, Transmittal Memorandum #1, User Charges (07/08/1993)

FAA consider hosting a meeting with all interested parties to have the opportunity to further discuss the issues. This would be a useful exercise to hear the various points of view from both the pilot and air carrier/employer perspective.

Finally, as part of the docket, FAA included a draft Advisory Circular that would ultimately be used for guidance and would provide further detail and background information that would be useful for all parties, including FAA safety inspectors. Advisory Circulars are often used as the backdrop for FAA Inspector Handbook changes and are used by the agency as one, but not the only, method of compliance with regulations. Given the lack of clarity in the NPRM regarding the form and manner of records to be reported, and inconsistencies in the NPRM and draft advisory circular regarding the proposed requirements, we request the agency re-publish the Advisory Circular after the Final Rule is issued and give the public the opportunity to provide red-line comments.

We look forward to moving to a federal Pilot Records Database and working with the agency and our pilot community to ensure a smooth transition to a much-needed system. Deploying the PRD at a deliberate and focused pace to safeguard that the intent of the rule is properly executed is essential and we remain committed to shifting our processes and hiring practices to be more efficient and to improve safety.