

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 91, 111, 121, 125, and 135**

[Docket No.: FAA-2020-0246; Notice No. 20-05]

RIN 2120-AK31

**Pilot Records Database**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA is proposing to require the use of an electronic Pilot Records Database (PRD) and implement statutory requirements. The PRD would be used to facilitate the sharing of pilot records among air carriers and other operators in an electronic data system managed by the FAA. Air carriers, specific operators holding out to the public, entities conducting public aircraft operations, air tour operators, fractional ownerships, and corporate flight departments would be required to enter relevant data on individuals employed as pilots into the PRD, and this would be available electronically to those entities. In addition, this proposal identifies all air carriers, fractional ownerships, and some other operators or entities that would be required to access the PRD and evaluate the available data for each pilot candidate prior to making a hiring decision.

**DATES:** Send comments on or before June 29, 2020.

**ADDRESSES:** Send comments identified by docket number [FAA-2020-0246] using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at (202) 493-2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal

information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Christopher Morris, 3500 S MacArthur Blvd., ARB301, Oklahoma City, Oklahoma 73179; telephone (405) 954-4646; email [christopher.morris@faa.gov](mailto:christopher.morris@faa.gov).

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### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). This rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules, and the specific authority provided by § 203 of the Airline Safety and Federal Aviation Administration Extension Act of 2010 ("the PRD Act"), codified at 49 U.S.C. 44703(h)–(j). The PRD Act identifies several rulemaking requirements.

The PRD Act requires the Administrator to promulgate regulations to establish an electronic pilot records database containing records from the FAA and records maintained by air carriers and other operators that employ pilots. At a minimum, air carriers and operators employing pilots must report "records that are generated by the air carrier or other person after [August 1, 2010,]" as well as "records that the air carrier or other person [was] maintaining, on [August 1, 2010,]" on any person employed as a pilot.<sup>1</sup> The PRD Act also requires air carriers to access the database and evaluate any relevant records maintained therein pertaining to an individual before allowing that individual to begin service as a pilot.

The FAA is further required to issue regulations to protect and secure the personal privacy of any individual whose records are accessed in the new electronic database; to protect and secure the confidentiality of those records; and, to prevent further dissemination of those records once accessed by an air carrier. The PRD Act also requires the implementing regulations to prescribe a timetable for the implementation of the PRD as well as a schedule for sunseting the Pilot Records Improvement Act of 1996.

### I. Overview of the Proposal

This proposed rule would require all Title 14, Code of Federal Regulations (14 CFR) part 119 certificate holders, fractional ownership programs, persons authorized to conduct air tour operations in accordance with § 91.147,<sup>2</sup> persons operating a corporate flight department, and governmental entities conducting public aircraft operations (collectively referred to as "covered entities") to report relevant records to

an electronic pilot record database (PRD) managed by the FAA.

Currently, the FAA, air carriers and other operators maintain pilot records pursuant to the statutory requirements contained in the Pilot Records Improvement Act (PRIA).<sup>3</sup> The FAA maintains records related to airman certificates and legal enforcement actions that result in a finding of a violation that was not subsequently overturned. Air carriers and other operators maintain records related to pilot training and qualification, final disciplinary actions, final separation from employment actions, and drug and alcohol testing. Currently, under PRIA, an employer is required to have a candidate for employment as a pilot complete a series of paper forms. Some of the forms are mailed to the previous employers to request copies of any available records as specified by PRIA. Another form is submitted to the FAA to request the FAA records as specified by PRIA. The FAA typically processes the requests and provides the appropriate records within 3 business days. These records may be provided via mail or email. The FAA processes approximately 20,000 individual requests per year. The FAA does not have an estimate for how many records requests are exchanged between employers annually. FAA currently col-locates its PRIA records in an electronic database called the PRD, which was created with funds appropriated by Congress and is in beta testing. Air carriers and other operators share their records with each other in accordance with a manual, paper-based process. Congress mandated the creation of a fully electronic database for all of these records collectively, which was the genesis for this rulemaking.

The proposal does not impose new substantive recordkeeping requirements on air carriers or operators. Rather, the proposal would require that covered entities report specific data to the PRD from records that are required to be kept pursuant to regulations, or from records that are otherwise kept by covered entities in their role as an employer. When this rule is finalized, the current PRD, which is currently populated with FAA records, will also be populated with air carrier and operator airman records. Air carriers and other operators would be required to electronically transfer into the PRD historical records they currently maintain (in accordance with statutory requirements) as well as new records they create in the future. The PRD would contain the required air carrier, operator, and FAA records for

<sup>1</sup> 49 U.S.C. 44703(i)(4)(B)(ii). Also, § 44703(h)(4) states that "the Administrator and air carriers shall maintain pilot records described in paragraphs (1)(A) and (1)(B) for a period of at least 5 years."

<sup>2</sup> Hereafter referred to as "air tour operators" for the purposes of this preamble.

<sup>3</sup> 49 U.S.C. 44702(h)

the life of the pilot and would be permitted to be used only as a hiring tool in an air carrier or operator's decision-making process for pilot employment. Pilot consent would be time-limited to a designated air carrier to view that pilot's records. Air carriers cannot search PRD broadly—the system would limit them to a specific individual's records only if the pilot gives consent and the consent period is still in effect.

All air carriers and operators would be required to continue to comply with the PRIA until two years and 90 days after the publication of the final rule that follows this proposal. As a result, for a period of time air carriers and

operators would have to comply with both the PRIA record retention requirements and the PRD reporting requirements. All air carriers and operators that are subject to the reporting requirements in this proposal would be required to begin entering specific pilot records within one year of the publication date of the final rule. Air carriers and operators employing pilots would be required to input all historical records into the PRD within two years of the publication date of the final rule. Finally, PRIA would cease to be effective two years and 90 days after publication of the final rule, as set forth in statute.

*A. Summary of Current PRIA Requirements, the PRD Act, and Proposed Requirements for the PRD*

The establishment of the PRD would eventually phase out the current PRIA request process. In addition, the FAA proposes to add certain additional requirements that are responsive to the mandates in Public Law 111–216 section 206, as well as beneficial from a safety perspective. The following table summarizes the current recordkeeping and reporting requirements under PRIA, the requirements imposed by legislation, and the key recordkeeping and reporting requirements of this proposal.

Subject	Current PRIA requirements	The PRD Act	NPRM
Accessibility .....	Physical and Electronic .....	Electronic .....	Electronic.
Affected Entities .....	Part 119 certificate holders, governmental entities conducting public aircraft operations, air tour operators, and fractional ownership programs.	Part 119 certificate holders, governmental entities conducting public aircraft operations, and other persons.	Part 119 certificate holders, air tour operators, fractional ownership programs, corporate flight departments, and governmental entities conducting public aircraft operations.
FAA Records .....	Current airman certificates with associated type ratings and limitations; current airman medical certificate, including any limitations; and summaries of FAA legal enforcement actions resulting in a finding by the Administrator of a violation that was not subsequently overturned.	Current airman certificates with associated type ratings and limitations; current airman medical certificate, including any limitations; any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under 14 CFR part 61; and summaries of FAA legal enforcement actions resulting in a finding by the Administrator of a violation that was not subsequently overturned.	Current airman certificates with associated type ratings and limitations; current airman medical certificate, including any limitations; any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under 14 CFR part 61; and summaries of FAA legal enforcement actions resulting in a finding by the Administrator of a violation that was not subsequently overturned; accident and incident information.
Air Carrier and Operator Records.	Records maintained in accordance with appendices I and J to part 121, section VI paragraph (A) (drug and alcohol testing records); § 121.683, § 125.401; and § 135.63(a)(4) (crew-member records), excluding records related to flight time, duty time, and rest time, disciplinary action records not subsequently overturned; separation from employment records; national driver register records, as required in accordance with PRIA's implementing statute.	Records maintained in accordance with § 120.211(a) (drug and alcohol testing records); § 121.683, § 125.401, and § 135.63(a)(4) (crew-member records), excluding records related to flight time, duty time, and rest time; disciplinary action records not subsequently overturned; separation from employment records; national driver register records.	Records proposed to be reported to the FAA in accordance with § 111.215 (drug and alcohol testing records); § 111.220 (training, qualification, and proficiency records); § 111.225 (disciplinary action records); § 111.230 (separation from employment records); § 111.240 (verification of motor vehicle driving record search and evaluation); and § 111.265 (historical record reporting).
National Driver Register Search.	Required in accordance with Public Law 104–264, Section 502.	Required .....	Required.
User Fee .....	Industry established .....	Reasonable charges by the FAA for processing requests and furnishing copies.	Fee per record accessed by an air carrier or operator.
Timeframe of Records Documented.	Previous five years from the date of request as required in accordance with Public Law 104–264, Section 502.	(1.) Part 121 and 135 air carrier records dating back to August 1, 2005 through the life of the pilot; (2.) Part 125 and 135 operator records dating back to August 1, 2010 through the life of the pilot; and, (3.) FAA records dating back to August 1, 2010, through the life of the pilot.	(1.) Part 121 and 135 air carrier records dating back to August 1, 2005, through the life of the pilot or 99 years, whichever is less; (2.) Part 125 and 135 operator as well as 91K fractional ownership records dating back to August 1, 2010 through the life of the pilot or 99 years, whichever is less; and, (3.) FAA records dating back to August 1, 2010, through the life of the pilot.
Timeline for Records to be Reported to a Hiring Air Carrier or Operator.	Within 30 days as required in accordance with Public Law 104–264, Section 502.	Promptly .....	Reported to the PRD within 30 days of the reportable event and available for review immediately.

Subject	Current PRIA requirements	The PRD Act	NPRM
Compliance Schedule.	In effect .....	Established by the FAA Administrator	(1.) One year after the publication of the final rule—report present and future records; access and evaluate records in the PRD, subject to a user fee. (2.) Two years after the publication of the final rule—report historical records. (3.) Two years and 90 days after the publication of the final rule—sunset of PRIA.

*B. Summary of the Costs and Benefits of This Proposed Rule*

The FAA estimated quantified costs and savings of this proposed rule. After the effective date of the final rule that follows this proposal, air carriers and other operators would incur costs to report pilot records to the PRD, and to train and register as users of the PRD. Air carriers would also receive cost savings once PRIA is phased out. The FAA would incur costs of the proposed rule related to the operations and maintenance of the PRD.

Over a 10-year period of analysis from 2021 through 2030,<sup>4</sup> the FAA estimates the proposed rule would result in present value net costs to industry and the FAA of about \$12.8 million or \$1.8 million annualized using a 7% discount rate. Using a 3% discount rate, the proposed rule would result in present value net costs of about \$11.5 million over the same 10-year period or about \$1.4 million annualized.

However, the FAA estimates industry would receive a net cost savings from the proposed rule from the discontinuance of PRIA. Over the same 10-year period, the present value net cost savings of the proposed rule to industry are about \$2.6 million or \$0.4 million annualized using a 7% discount rate. Using a 3% discount rate, the proposed rule would have a present value net cost savings to industry of about \$7.0 million over the same 10-year period or about \$0.8 million annualized.

In addition to future regulatory costs, the FAA has incurred costs to develop the PRD since 2010.<sup>5</sup> From 2010 through 2020, the FAA estimates the present value PRD development costs are about \$14.1 million or \$1.5 million annualized using a 7% discount rate. Using a 3% discount rate, the present

value PRD development costs are about \$18.0 million over the same period or about \$2.4 million annualized.

Therefore, the FAA estimates the total impacts of this regulatory action over a 21-year period of analysis from 2010 through 2030 that includes PRD development costs before the effective date of the final rule and future PRD regulatory impacts after the effective date of the final rule. Over this 21-year time period, this regulatory action would result in present value net costs of about \$30.8 million or \$2.8 million annualized using a 7% discount rate. Using a 3% discount rate, this regulatory action would result in present value net costs of about \$25.6 million over the 21-year period of analysis or about \$1.7 million annualized.

This rulemaking also proposes a user fee to be applied to costs related to the operations and maintenance of the PRD beginning one year after the effective date of the final rule. Government fees and taxes are considered transfer payments per OMB Circular A-4 and are not considered a societal cost. These transfers are reported separately from the costs and cost savings of this proposed rule. The proposed PRD user fee would effectively be a transfer payment from industry to the FAA to cover the FAA's PRD operation and maintenance (O&M) costs. The FAA estimates the 10-year present value of the user fees to be about \$13.2 million or \$1.9 million annualized using a 7% discount rate, reflecting the FAA's underlying O&M costs. Using a 3% discount rate, the total present value of the user fees would be about \$16.3 million over 10 years or about \$1.9 million annualized.

This proposed rule would enhance aviation safety by assisting air carriers in making informed hiring and personnel management decisions using the most accurate and complete pilot records available and electronically accessible. The database created by the proposed rule would contain information maintained by the FAA

concerning current airman certificates with any associated type ratings and current medical certificates, including any limitations or restrictions to those certificates, airman practical test failures, and summaries of legal enforcement actions. The PRD would contain air carrier, operator, and FAA records on an individual's performance as a pilot that could be used as a hiring tool in an air carrier's decision-making process for pilot employment. These records would remain in the PRD for the life of the pilot.

**II. Background**

*A. Statement of the Problem*

The Pilot Records Improvement Act (PRIA)<sup>6</sup> was enacted in 1997 in response to a series of air carrier accidents attributed to pilot error.<sup>7</sup> The National Transportation Safety Board (NTSB) found that although the pilots had a history of poor training performance or other indicators of impaired judgment, their backgrounds had not been investigated by their current employers.

Two accidents following the enactment and implementation of PRIA led the NTSB to make additional findings and recommendations regarding pilot record retention, the sharing of information related to pilot

<sup>6</sup>Public Law 104-264, § 502; 110 Stat. 3259. The requirements of PRIA were initially codified at 49 U.S.C. 44936, and PRIA became effective on February 7, 1997. Substantive amendments were made to PRIA on December 5, 1997 (Pub. L. 105-142; 111 Stat. 2650) and April 5, 2000 (Pub. L. 106-181; 114 Stat. 61). Currently the PRIA requirements are codified at 49 U.S.C. 44703(h) and (j).

<sup>7</sup>Congressional Committee report dated October 31, 1997 (H.R. Rep. 105-372), explained certain clarifying amendments made to PRIA in Public Law 105-142 (H.R. 2626; Dec. 5, 1997), listed the following accidents as evidence supporting the enactment of PRIA: Continental Airlines flight 1713 (November 15, 1987); Trans-Colorado flight 2286 (January 19, 1988); AV Air flight 3378 (February 19, 1988); Aloha Island Air flight 1712 (October 28, 1989); Scenic Air flight 22 (April 22, 1992); Express II flight 5719 (December 1, 1993); and American Eagle flight 3379 (December 13, 1994). All of these operators held a part 119 air carrier certificate, and most of these flights were operated under part 135, except Continental Airlines flight 1713, which was operated under part 121.

<sup>4</sup>For this preliminary analysis, the FAA assumes the effective date of the final rule to be in calendar year 2021 with the 10-period of analysis of future regulatory impacts to be 2021 through 2030.

<sup>5</sup>On August 1, 2010, Congress directed the Administrator to establish the PRD (Pub. L. 111-216, Section 203 (49 U.S.C. 44703(i)).

performance among air carriers and operators, and the review of previous performance records by air carriers. On July 13, 2003, Air Sunshine Incorporated flight 527 (d/b/a Tropical Aviation Services, Inc.) ditched in the Atlantic Ocean about 7 nautical miles west-northwest of Treasure Cay Airport (MYAT), Bahamas, after an in-flight failure of the right engine. The flight was operating under the provisions of 14 CFR part 135 as a scheduled international, passenger-commuter flight. Out of the nine total passengers, two passengers died after evacuating the airplane and five passengers sustained minor injuries. The pilot sustained minor injuries, and the airplane sustained substantial damage.

The NTSB determined that “the probable cause of the accident was the in-flight failure of the right engine and the pilot’s failure to adequately manage the airplane’s performance after the engine failed.”<sup>8</sup> The NTSB also found that “the pilot had a history of below-average flight proficiency, including numerous failed flight tests, before the flight accident, which contributed to his inability to maintain maximum flight performance and reach land after the right engine failed.”<sup>9</sup>

In response to the Air Sunshine 527 accident, the NTSB issued recommendation A–05–01, which advised the FAA to require all “part 121 and 135 air carriers to obtain any notices of disapproval for flight checks for certificates and ratings for all pilot-applicants and evaluate this information before making a hiring decision.”<sup>10</sup> The NTSB recognized the importance of validating FAA ratings and certifications, as required by PRIA, but noted that “additional data contained in FAA records, including records of flight check failures and rechecks, would be beneficial for a potential employer to review and evaluate.” The NTSB acknowledged that while “a single notice of disapproval for a flight check, along with an otherwise successful record of performance, should not adversely affect a hiring decision,” a history of “multiple notices of disapproval for a flight check might be significant[. . .] and should be evaluated before a hiring decision is made.” There is not likely a single algorithm which can tell the potential employer if they should hire a pilot

based on a ratio of satisfactory and unsatisfactory flight checks.<sup>11</sup> However, providing this information about the airman would assist the potential employer in developing a more complete picture of that airman’s overall performance as a pilot.

On February 12, 2009, Colgan Air, Inc. flight 3407 (d/b/a Continental Connection), crashed into a residence in Clarence Center, NY, about 5 nautical miles northeast of the Buffalo-Niagara International Airport, New York resulting in the death of all 49 passengers on board and one person on the ground. The flight was operated under 14 CFR part 121.

The NTSB determined that “the probable cause of this accident was the captain’s inappropriate response to activation of the stick shaker, which led to an aerodynamic stall from which the airplane did not recover.”<sup>12</sup> Contributing factors included: “(1) The flightcrew’s failure to monitor airspeed in relation to the rising position of the low-speed cue, (2) the flightcrew’s failure to adhere to sterile cockpit procedures, (3) the captain’s failure to effectively manage the flight, and (4) Colgan Air’s inadequate procedures for airspeed selection and management during approaches in icing conditions.”<sup>13</sup>

Additional safety issues identified by the NTSB in the Colgan Air 3407 accident report included certain deficiencies in the air carrier’s recordkeeping system, as well as the air carrier’s analysis of the flightcrew’s qualifications and previous performance. Specifically, Colgan Air’s records showed that the captain had failed his initial proficiency check on the Saab 340 on October 15, 2007, received additional training, and passed his upgrade proficiency check on October 18, 2007. In addition to this particular failed check at Colgan, the NTSB stated that the captain failed his practical tests for the instrument rating (airplane category) on October 1, 1991; the commercial pilot certificate (single-engine land airplane) on May 14, 2002; and required additional training in three separate training events while a first officer at Colgan. The NTSB deemed these discrepancies in the captain’s training records as noteworthy because

the captain had demonstrated previous training difficulties during his tenure at Colgan Air.

As a result of its investigation, the NTSB issued recommendation A–10–19, which provided that the FAA require all “part 121, 135, and 91K operators to provide the training records requested in Safety Recommendation A–10–17 to hiring employers to fulfill their requirement under PRIA.” Safety Recommendation A–10–17 advises the FAA to require all “part 121, 135, and 91K operators to document and retain electronic and/or paper records of pilot training and checking events in sufficient detail so that the carrier and its principal operations inspector can fully assess a pilot’s entire training performance.”<sup>14</sup>

In the Colgan Air 3407 final aircraft accident report, the NTSB noted the issuance of Safety Recommendation A–05–01 as a result of the Air Sunshine 527 accident. The NTSB indicated its continued recommendation that airman certification information concerning previous notices of disapproval should be included in an air carrier’s assessment of the suitability of a pilot-applicant. The NTSB also indicated that notices of disapproval should be considered safety-related records that must be included in an air carrier’s evaluation of a pilot’s career progression. While recognizing that the FAA had revised *Advisory Circular (AC) 120–68: The Pilot Records Improvement Act of 1996*<sup>15</sup> to indicate that the hiring employer may, at its discretion, request a record of an individual’s notices of disapproval for flight checks from the FAA,<sup>16</sup> the NTSB advised that a more permanent action through rulemaking would ensure that air carriers be required to obtain and evaluate notices of disapprovals for pilot-applicants.

This proposed rule both implements requirements of the PRD Act and responds to several open NTSB recommendations. First, consistent with NTSB recommendation A–05–01, the FAA proposes to require all air carriers and operators to access and evaluate an individual’s records in the PRD before making a hiring decision. These records would include any notices of disapproval that the individual received during a practical test attempt for a certificate or rating. The FAA would upload data processed in the

<sup>8</sup> See NTSB Report AAR–04/03 (Adopted October 13, 2004) at page 47, which can be obtained at <http://www.ntsb.gov/investigations/AccidentReports/Reports/AAR0403.pdf>.

<sup>9</sup> See NTSB Report AAR–04/03 at page 43.

<sup>10</sup> The January 27, 2005, safety recommendation letter may be accessed at [http://www.ntsb.gov/safety/safety-recs/RecLetters/A05\\_01\\_02.pdf](http://www.ntsb.gov/safety/safety-recs/RecLetters/A05_01_02.pdf).

<sup>11</sup> The purpose of flight checks is to validate certificates and ratings—they were not originally developed to inform hiring decisions. Accordingly, the FAA has not conducted research to document their relationship to general pilot performance.

<sup>12</sup> See NTSB Report AAR–10/01 (adopted February 2, 2010) at page 155, which can be obtained at <http://www.ntsb.gov/investigations/AccidentReports/Reports/AAR1001.pdf>.

<sup>13</sup> See NTSB Report AAR–10/01 at page 155.

<sup>14</sup> By letter dated February 21, 2014, the NTSB reported that “pending implementation of the PRD, including guidance about when comments are needed in PRD entries, Safety Recommendation A–10–17 remains classified Open—Acceptable Response.”

<sup>15</sup> Including subsequent updates and revisions.

<sup>16</sup> See AC 120–68F, paragraph 3–8, Note.

Certification Airmen Information System (CAIS) on a nightly basis to ensure both air carriers and operators have the most accurate and up-to-date information to make an informed hiring decision. Second, consistent with A-10-17 and A-10-19, the FAA proposes to require air carriers and operators to enter relevant information into the PRD in a standardized format. This information is intended to help an air carrier to make an informed hiring decision.

#### B. History of PRIA and PRD

Following the Colgan Air 3407 accident, Congress enacted the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111-216; August 1, 2010).<sup>17</sup> Section 203 of the PRD Act required the FAA to establish an electronic pilot records database and provided for the subsequent sunset of PRIA.

Additionally, Congress has since enacted the FAA Extension, Safety, and Security Act of 2016 (FESSA) (Pub. L. 114-190; July 15, 2016). Section 2101 of FESSA required the FAA to establish an electronic pilot records database by April 30, 2017. This proposed rule implements those statutory mandates.

#### 1. Current Elements of PRIA

##### a. Pilot Employment Background

As previously mentioned, Congress enacted PRIA to ensure that air carriers adequately investigate an individual's employment background and other information pertaining to the individual's performance as a pilot before allowing that individual to serve as a flight crewmember in air carrier operations. PRIA requires a hiring air carrier to obtain records from three distinct sources utilizing standardized forms including: (1) Current and previous air carriers or operators that had employed the individual as a pilot, (2) the FAA, and (3) the National Driver Register (NDR).

The records that must be requested by a hiring air carrier and provided by a pilot's current and previous employers in response to a PRIA request include all records kept pursuant to particular provisions of Title 14, Code of Federal Regulations related to maintaining current crewmember records and drug and alcohol testing records,<sup>18</sup> excluding records related to flight time, duty time, and rest time. Also required to be in the

PRIA request are "any other records pertaining to the individual's performance as a pilot that are maintained by the air carrier or person concerning the following: (1) The training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check pilot; (2) any disciplinary action taken with respect to the individual that was not subsequently overturned; and (3) any release from employment or resignation, termination, or disqualification with respect to employment."

In accordance with PRIA, an air carrier must request records related to the individual for "the 5-year period preceding the date of the employment application of the individual." No person is permitted to furnish records in response to a PRIA request "if the record was entered more than 5 years before the date of the request, unless the information concerns a revocation or suspension of an airman certificate or motor vehicle license that is in effect on the date of the request." The FAA and previous air carrier and/or operators are required to retain all pilot records which would be furnished in response to a PRIA request, except NDR-related records, for a period of at least 5 years. PRIA permits an air carrier or other person who receives a request for records under PRIA to "establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records."<sup>19</sup>

The records furnished in response to a PRIA request are commonly used as a "validation" tool, rather than a research, screening, or selection tool.<sup>20</sup> Many employers will hire a pilot and then ensure all records are received prior to permitting the pilot to begin service because the PRIA process can take an extensive amount of time.

##### b. Pilot Rights and Protection in Accordance With PRIA

Since records provided in accordance with PRIA may affect an individual's future employment status as a pilot with an air carrier, the hiring air carrier must "obtain written consent to the release of those records from the individual that is the subject of the records requested."<sup>21</sup> The air carrier is permitted to "require the individual. . . to execute a release from liability for any claim arising from the furnishing of such records to or the use of such records by such air carrier

(other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute)." If an individual seeking employment as a pilot with the air carrier refuses to provide written consent to obtain the subject's records or refuses to execute a release from liability, an air carrier may refuse to hire that individual as a pilot, and no action or proceeding may be brought against the air carrier as a result. Notably, an air carrier receiving records in response to a PRIA request must "take such actions as may be necessary to protect the privacy of the pilot and the confidentiality of the records, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision."<sup>22</sup>

Records obtained from the various sources required in accordance with PRIA may only be used by an air carrier to assess the qualifications of the individual in deciding whether to hire the individual as a pilot. Therefore, a person who receives a request for records under PRIA must "provide to the individual who is the subject of the records . . . written notice of the request and of the individual's right to receive a copy of such records" as well as a copy of such records, if requested by the individual.<sup>23</sup> Accordingly, PRIA requires the current or previous employer to "make available, within a reasonable time, but not later than 30 days after the date of the request, to the pilot for review, any and all employment records . . . pertaining to the employment of the pilot" that are maintained by the air carrier and subject to being furnished in response to a PRIA request.<sup>24</sup> The subject of the records must also be given the "reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before an air carrier makes a final hiring decision with respect to the individual."<sup>25</sup>

##### c. FAA Guidance for Compliance With PRIA

The provisions of PRIA were self-implementing and the FAA's role in the PRIA process was limited; therefore, the FAA did not develop implementing regulations. The FAA issued Advisory Circular (AC) 120-68: Pilot Records Improvement Act of 1996 to provide guidance material for air carriers, operators and pilots regarding compliance with the PRIA statute. AC

<sup>17</sup> Referred to as "the PRD Act" for the remainder of this NPRM.

<sup>18</sup> § 121.683; paragraph (A), of section VI of appendix I to part 121 and paragraph (A), of section VI of appendix J to part 121; § 125.401; and, § 135.63(a)(4).

<sup>19</sup> § 44703(h)(7).

<sup>20</sup> Report from the PRD ARC, page 12. Available at [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/media/PRDARC-2032011.pdf](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/PRDARC-2032011.pdf).

<sup>21</sup> § 44703(h)(5).

<sup>22</sup> § 44703(h)(11).

<sup>23</sup> § 44703(h)(6).

<sup>24</sup> § 44703(h)(10).

<sup>25</sup> § 44703(h)(9).

120–68 contains information for FAA inspectors as well as for air carriers and operators that must comply with PRIA requirements. The FAA has developed and made available on its website additional PRIA-related information to further facilitate compliance with the statutory requirements.<sup>26</sup>

Under PRIA, and as described in AC 120–68, every request for records pursuant to PRIA involves three parties: The potential employer, the past employer, and the pilot-applicant. When an individual seeks employment as a pilot for an air carrier, the hiring air carrier initiates the process to request and receive all relevant records as required under PRIA. The hiring air carrier completes its part of the forms for requesting records from current and past employers, the FAA, and the NDR, and the pilot-applicant completes the necessary forms to provide written consent for the release of his or her PRIA-related records before the hiring entity can send the records requests forward to the appropriate respondent(s). The pilot-applicant's completion of these forms satisfies the PRIA requirement that a pilot receive written notice that a request for his or her records was made. A pilot-applicant is also entitled to a copy of all records provided to the hiring carrier under PRIA.

#### 4. History of the Pilot Records Database

##### a. Pilot Records Database Aviation Rulemaking Committee

In response to the mandate of Sec. 203 of Public Law 111–216, the FAA Administrator chartered the PRD Aviation Rulemaking Committee (ARC) on February 3, 2011.<sup>27</sup> The purpose of the ARC was to assemble a broad cross-section of entities involved in pilot records and safety to develop recommendations for the FAA on the best way to implement an electronic PRD. Participants included representatives from the aviation industry, professional associations, organized labor, safety organizations, as well as FAA representatives.

Specifically, the ARC examined where the data for the PRD should be maintained; what information should be kept in the new database; who would have access to the information and what methods would be used to make the information accessible; methods for the timely transfer of relevant information to the database on an ongoing basis;

methods to safeguard the data; establishing a written consent/release from liability process; developing a common process for air carriers to handle disputes by pilots concerning the accuracy of PRD entries; developing common definitions and terms for PRD users; determining a suitable structure for data tables to maintain training, qualification, employment action, and NDR records required by this legislation; and methods to initially load the database with historical records.

The PRD ARC submitted a final report to the Associate Administrator for Aviation Safety on July 29, 2011. A complete copy of the report, including ARC recommendations, dissenting recommendations, and a list of participating organizations has been placed in the public docket for this rulemaking.<sup>28</sup>

The ARC focused primarily on proposals for implementing the PRD in a manner that would most enhance aviation safety for the flying public, but did not necessarily consider whether the recommendations would meet congressional intent. Thus, the ARC made certain recommendations contrary to the plain language of the PRD Act. The ARC Report also explicitly stated that certain congressionally mandated requirements were left to be interpreted by the FAA at a later date.<sup>29</sup>

##### b. Electronic Database Development

In advance of this rulemaking, the FAA determined it prudent to move its PRIA records to an electronic pilot record database, also called the PRD.<sup>30</sup>

In September 2015, the FAA initiated a phased approach to establish the PRD. During the initial implementation stages, the PRD will only include FAA records, as required by PRIA. Upon adopting a final rule in this rulemaking proceeding, the PRD would include not only the FAA records mandated under PRIA, but also the employer records mandated by Section 203 of the PRD Act.

The phased approach was developed to provide direct, uninterrupted access to FAA pilot records to air carriers and operators required to comply with PRIA.

<sup>28</sup> A copy of the complete final ARC report will be placed in the docket for this rulemaking and is also available at [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/index.cfm/document/information?documentID=312](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information?documentID=312).

<sup>29</sup> [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/index.cfm/document/information?documentID=312](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information?documentID=312).

<sup>30</sup> The FAA was appropriated “under section 106(k)(1) of the PRD Act and codified at U.S.C. 44703(i)(14), a total of \$6,000,000 for fiscal years 2010 through 2013” in order to establish a pilot records database.

The FAA records, such as pilot certification and failed practical tests, would be available for an air carrier or operator to make an informed hiring decision. Implementing the FAA records portion of the PRD is an important step in fulfilling the objective that Congress articulated in the PRD Act. It allows the FAA to have at least one portion of the database ready for use on when the rule is effective and to allow air carriers to familiarize themselves with that process.

##### c. Related Actions to the Pilot Records Database

Following the Colgan Air 3407 accident, the FAA issued a Call to Action on Airline Safety and Pilot Training, which began with a meeting on June 15, 2009 (including participants from the FAA, airlines and labor organizations), to specify concrete actions and to elicit voluntary commitments from industry.<sup>31</sup> As a result of that meeting, the FAA published an Airline Safety and Pilot Training Action Plan<sup>32</sup> that included a number of key initiatives including a focused review of air carrier flight crewmember training, qualification, and management practices. In addition, the FAA released an updated version of the PRIA AC 120–68E on July 2, 2010, incorporating elements from the Plan.

The FAA also published an Information for Operators (InFO)<sup>33</sup> on August 15, 2011 (InFO 11014), advising all operators that conduct operations in accordance with part 91, 121, 125, and 135 to indefinitely retain any records on pilots employed in those operations.<sup>34</sup> The FAA published a second InFO on March 13, 2014 (InFO 14005), further reminding the regulated entities of their responsibility to retain pilot records dating back as early as August 1, 2005.<sup>35</sup> To verify that air carriers and operators that employ pilots are retaining pilot records in accordance with PRIA for future inclusion in the database, the

<sup>31</sup> A final report, dated January 2010, “Answering the Call to Action on Airline Safety and Pilot Training” is available at: <http://www.faa.gov/news/updates/?newsId=60224&print=go>.

<sup>32</sup> [https://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=1125](https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=1125).

<sup>33</sup> An InFO message contains valuable information for operators that should help them meet administrative requirements or certain regulatory requirements with relatively low urgency or impact on safety. InFOs contain information or a combination of information and recommended action to be taken by the respective operators identified in an InFO.

<sup>34</sup> [http://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/info/all\\_infos/media/2011/InFO11014.pdf](http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2011/InFO11014.pdf).

<sup>35</sup> [http://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/info/all\\_infos/media/2014/InFO14005.pdf](http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2014/InFO14005.pdf).

<sup>26</sup> See [http://www.faa.gov/pilots/lic\\_cert/pria](http://www.faa.gov/pilots/lic_cert/pria).

<sup>27</sup> The PRD ARC charter may be found at [http://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/media/PRD.ARC.cht.20110203.pdf](http://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/PRD.ARC.cht.20110203.pdf).

FAA issued a national policy notice titled “Pilot Records Retention Responsibilities Related to the Airline Safety and Federal Aviation Administration Act of 2010.” The notice directed FAA inspectors to verify that air carriers or operators have a system in place to retain records that must be reported for inclusion in the database, as required by the statute.<sup>36</sup>

Section 203 of the PRD Act directed the FAA to submit a statement to Congress by February 2012, and at least once every three years thereafter for a periodic review of the statutory requirements. The statement to Congress must contain any FAA recommendations to change the records required to be included in the database or the reasons why the FAA does not recommend any changes to the records referenced in Section 203. In its September 2015 report to Congress the FAA indicated that it had initiated a rulemaking project entitled Pilot Records Database, Regulation Identifier Number (RIN) 2120–AK31. In its most recent report to Congress, in February 2018, the FAA indicated that it did not recommend any changes in the records referenced in Section 203, until it considers public comments on the Pilot Records Database rulemaking proposal.

### III. Discussion of the Proposal

The FAA proposes new part 111, Pilot Records Database, to codify requirements for accessing and evaluating records, reporting of records, and pilot rights and responsibilities. Subpart A contains general requirements. Subpart B contains requirements for database access and evaluation of records. Subpart C contains requirements for record reporting. Subpart D contains pilot rights and responsibilities. Subpart E contains requirements regarding compliance with PRIA during the PRD transition.

#### A. Persons Affected by the Proposal

The PRD Act requires air carriers to access and evaluate the records maintained in the PRD pertaining to an individual pilot before allowing that individual to begin service as a pilot. The PRD Act also requires air carriers, as well as any other person that employs an individual as a pilot of a civil or public aircraft, to report information

concerning the pilots they employ for inclusion in the database.<sup>37</sup>

The FAA is proposing in subpart C of part 111 to require all part 119 certificate holders, 91K fractional ownership programs, persons authorized to conduct air tour operations in accordance with § 91.147, persons operating a corporate flight department, covered governmental entities conducting public aircraft operations and employing pilots, and trustees in bankruptcy to enter relevant data on individuals employed as pilots into the PRD. As of May 30, 2018, there were an estimated 5,006 air carriers and operators employing pilots that would be required to report pilot records to the database. Any other entity that employs pilots, such as pilot schools or training centers, would not be required to enter data into the PRD.

#### 1. Air Carriers and Other Employers Required To Assess and Review

The FAA proposes to require all air carriers<sup>38</sup> who have been issued a part 119 air carrier certificate and are authorized to conduct operations under part 121 or part 135 to comply with the pilot employment background check requirements of subpart B of the proposed rule. The PRD Act requires air carriers and certain other persons to report information to the FAA for inclusion in the PRD and requires air carriers to access the PRD for purposes of evaluating all pertinent information pertaining to an individual before allowing that individual to begin service as a pilot.

Additionally, the FAA proposes that part 125 and 135 operators, 91K fractional ownership programs, and air tour operators, be required to access and evaluate an individual’s records in the PRD before making a hiring decision. The FAA determined that it was in the interest of safety to include these employers, in addition to air carriers, for several reasons. Operators that conduct operations under part 125, 135 or 91K are currently required to review pilot records in accordance with PRIA. The FAA interprets the PRD Act to require an enhancement to safety. The FAA does not believe that it would enhance safety to remove this requirement with respect to this population of employers.

<sup>37</sup> The PRD Act explicitly excludes the Armed Forces and National Guard, including reserve components, from the information reporting requirements.

<sup>38</sup> As defined in 49 U.S.C. 40102, “air carrier” means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation (*i.e.* foreign air transportation, interstate air transportation, or the transportation of mail by aircraft).

This proposed rule would also include air tour operators within the scope of its applicability. Although PRIA does not require these operators to review pilot records, the FAA believes that extending this requirement to air tours operators is consistent with the safety philosophy underpinning the PRD Act. Air tour operators share some similarities with aspects of part 121 and part 135 air carriers. These operators are responsible for the carriage of passengers for hire and the PICs who conduct these operations must hold at least a commercial pilot certificate. Given the similarity to air carrier responsibilities to the traveling public, the FAA believes that it is in the interest of safety to require air tour operators to review records in the PRD prior to making a hiring decision.

While the requirement for air carriers to conduct a pilot employment background check before allowing an individual to begin service as a pilot would be mandatory, the FAA proposes to permit voluntary compliance with the provisions for access and evaluation of records in subpart B for other operators that are required to report data to the PRD. If an operator opts into the requirements of subpart B for evaluating an individual’s records in the PRD, the operator would be required to comply with *all* other aspects of subpart B of the proposal and would be included in those persons affected by the proposal.<sup>39</sup> Although not mandated by the PRD, the FAA believes that other potential employers of pilots could benefit from accessing the information in the PRD prior to making a hiring decision. If an employer chooses to opt in, it would be required to comply with all of the regulations in subpart B to protect pilots’ privacy rights and the integrity of the database.

As mentioned previously, currently, PRIA is often used as a tool for validating the record of a pilot rather than as a research, screening, or selection tool prior to actually hiring the pilot because of the length of time the PRIA process takes. The ARC, in its report, asserted that immediate electronic access to information would be a benefit of an electronic database in lieu of continuing the paper-based PRIA process.<sup>40</sup> The FAA is requesting comment on whether employers believe that PRD will be utilized as a validation tool after an initial hiring decision has

<sup>39</sup> With one exception—other employers opting into subpart B would not have to complete the NDR search and verification.

<sup>40</sup> Report from the PRD ARC, p. 72, available at [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/media/PRDARC-2032011.pdf](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/PRDARC-2032011.pdf)

<sup>36</sup> A copy of national policy notice N8900.279, “Pilot Records Retention Responsibilities Related to the Airline Safety and Federal Aviation Administration Act of 2010,” may be viewed at [http://www.faa.gov/documentLibrary/media/Notice/N\\_8900.279.pdf](http://www.faa.gov/documentLibrary/media/Notice/N_8900.279.pdf). The statutory cite can be found at 49 U.S.C. 44703(i)(4)(B)(ii)(II).



been made, or whether, because of the ease of electronic access, it will be utilized earlier in the decision-making process. The FAA requests that commenters consider the cost, in terms of employee time and processing fees (discussed further in the RIA), when responding to this question.

## 2. Operators Employing Pilots That Must Enter Data

The express language of the PRD Act requires pilot records from any air carrier and “other person” to be included in the PRD. While the Act did not define “other person”<sup>41</sup> or otherwise define who other than air carriers should be subject to the reporting requirements, the FAA interprets “other person” to mean those “other persons” that employ pilots that would likely be air carrier pilots or prospective air carrier pilots at some later date. The principal reason for this interpretation is that the PRD Act mandates that air carriers, but not other employers, access the data for hiring decisions. Accordingly, a reasonable interpretation of the PRD Act, read in its entirety, is that the reporting requirements are limited to those records that would assist with air carrier hiring decisions. The FAA does not interpret the PRD Act to require other types of employers to incur the burden of submitting documents to the PRD that are either unlikely to ever be accessed by a hiring air carrier, or that would not assist with an air carrier’s hiring decision.

To determine which employers, other than air carriers, should be subject to the proposed reporting requirements, the FAA reviewed its implementation of PRIA, the requirements of the PRD Act, the relevance of the records kept by other employers of pilots (who are not air carriers) to air carriers in making hiring decisions, and the characteristics of the different types of requisite flight time that pilots accumulate before seeking employment with an air carrier.

The FAA also studied the following operating characteristics in comparison to part 121 air carrier operations to determine which operators should be subject to the proposed rule: The operating conditions of the flight (including the complexity of the operation and the type and complexity of the aircraft flown), the applicable operating rules, the applicable recordkeeping rules, and the progress and career path of the pilot as affected by the July 15, 2013 *Pilot Certification*

and *Qualification Requirements for Air Carrier Operations* final rule.<sup>42</sup>

Individuals desiring a career as a professional pilot for an air carrier can seek experience with other operators to obtain the requisite flight time. These “gateway operators” will be utilized with greater frequency in the future as a result of FAA’s *Pilot Certification and Qualification Requirements for Air Carrier Operations* final rule. That final rule significantly increased the total number of required flight hours from 250 to 1,500 for part 121 air carrier second-in-command pilots to hold an airline transport pilot (ATP) certificate.<sup>43</sup> The FAA recognizes that an individual may acquire flight time various ways to be eligible for a position with a part 121 air carrier. However, because it is now more time-intensive to receive the requisite experience for operations with a 121 carrier than before, the FAA expects the traditional path toward a pilot position at a part 121 air carrier will continue to be used, as opposed to more alternative methods of gaining experience, which are discussed below. To identify the typical paths for a pilot to acquire the minimum aeronautical experience to serve as a PIC in part 121 operations, the FAA examined the various aircraft operations and associated operating rules through which pilots can acquire flight time towards an ATP.

Similar operating conditions to a part 121 air carrier include operating large, turbine-powered airplanes, carrying passengers from a departure to an arrival point, and required training and checking events as a function of regulation or pilot certification. The FAA further considered which operations are subject to recordkeeping requirements on pilot training and performance similar to part 121 operations by using information identified in GAO reports, the Department of Transportation’s Office of Inspector General (DOT OIG) reports, data from internal FAA databases, and current FAA regulations.

The FAA believes that the most useful information for the database is captured by applying the record reporting requirements to the operators that most likely serve as a gateway for pilots to accumulate the required aeronautical experience necessary for an ATP to conduct in air carrier operations. As a result of these analyses, the FAA identified categories of employers that

serve as gateway operators—that is, operators that often serve as points on the career path of a pilot for an air carrier or other passenger-carrying operation. The FAA identified gateway operators based on its expertise and experience with those pilots and their typical employment pathways and is not based on a quantitative analysis of different employment pathways for obtaining an ATP. The FAA proposes to define “operators employing pilots” that would be subject to PRD reporting requirements to include the following groups that employ one or more individuals as pilot flight crewmember(s): (a) Each person that holds an operating certificate issued by the FAA in accordance with part 119 of this chapter; (b) each person that conducts air tour operations pursuant to a letter of authorization issued in accordance with 14 CFR 91.147; (c) each person that conducts operations pursuant to a fractional ownership program authorized in accordance with subpart K of part 91 of this chapter; (d) each person that operates a corporate flight department, as defined in part 111, pursuant to the general operating and flight rules in part 91 of this chapter; (e) each person that conducts operations of public aircraft; and (f) a trustee in bankruptcy. This proposal largely is consistent with existing PRIA requirements, with the addition of corporate flight departments.

The FAA considered extending the record-reporting provisions of the proposal to other civil aviation operators who employ pilots such as part 91 operations utilizing smaller general aviation aircraft, other part 91 business aviation operations involving a single aircraft, part 133 external load operators, part 137 agricultural operators, and research and testing flights conducted by aircraft manufacturers.<sup>44</sup> However, the FAA decided not to extend the PRD reporting provisions to these operators because they are not “gateway” employers to air carriers. Since pilots employed by the previously-referenced operators do not often transition to careers as pilots in passenger-carrying operations, the FAA questions the value that this information would provide relative to the attendant regulatory burdens it would impose on those operators. The FAA invites comments, with supporting documentation, about whether PRD reporting should extend to part 133 and 137 operators.

<sup>41</sup> Hereinafter these “other persons” are referred to as “operators employing pilots” or “operators.”

<sup>42</sup> 78 FR 42324. Prior to this rulemaking, pilots obtained a large portion of their flight hours serving as SIC in part 121 operations.

<sup>43</sup> Certain pilots can obtain a restricted privileges ATP certificate with fewer than 1500 logged hours.

### 3. Overview of Affected Entities

#### a. Part 121 Air Carriers

Part 121 prescribes rules governing the domestic, flag, and supplemental operations conducted by persons holding an air carrier or operating certificate issued under part 119.<sup>45</sup> Part 121 air carriers operate multi-engine, transport category airplanes with more than nine passenger seats or airplanes having a payload capacity of more than 7,500 pounds between scheduled service cities within the United States, as well as internationally originating or terminating in the United States, while carrying passengers and freight. These air carriers are held to the highest safety standard by the FAA, as required by 49 U.S.C. 44701–44716, to ensure the public's safety in air travel. As of May 30, 2018, the FAA has issued 70 part 119 certificates to persons authorizing operations under part 121.

#### b. Part 135 Air Carriers And Operators

Part 135 air carriers and operators operate aircraft that are configured for 30 or fewer passengers or 7,500 pounds of payload or less. The operators comprising the commuter and on-demand industry segment range from a company with one pilot and one aircraft to a company with over 600 aircraft. Operations include short flights to small regional airports, cross-country domestic flights to larger cities, or international flights. As of May 30, 2018, the FAA has issued part 119 air carrier or operating certificates to 2,011 persons authorizing operations under part 135, compared to the 70 air carriers operating under part 121.

The operations conducted in accordance with part 135 provide a wide array of operating environments for pilots, including airspace complexity and operational tasks, similar to those encountered in operations conducted in accordance with part 121. Pilots serving in the following part 135 operations must also hold an ATP certificate prior to acting as pilot-in-command:

- (1) Commuter operations using multiengine airplanes with nine or fewer passenger seats (Scheduled 135);
- (2) on-demand operations using airplanes with 10 or more passenger seats; and
- (3) turbojets.

#### c. Part 125 Operators

Part 125 operators conduct operations not involving common carriage, with airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or

more.<sup>46</sup> As of May 30, 2018, 71 persons have been issued certificates or letters of deviation authority (LODAs) authorizing operations under part 125.

While part 125 operators do not offer air transportation services to the general public, the type of operation conducted in accordance with part 125 is similar in many respects to part 121 and 135 air carriers and part 135 operations, including airspace complexity and operational tasks. Additionally, a part 125 operator must ensure that specific crewmember training is conducted and recorded in accordance with § 125.401.<sup>47</sup>

Like part 121 air carriers and part 135 air carriers and operators, part 125 operators would be required to access and evaluate the information contained on an individual in the database, pursuant to subpart B of proposed part 111. The proposal for part 125 operators is consistent with the FAA's current guidance for compliance with PRIA. That guidance advises part 125 operators to obtain an individual's pilot records prior to making a hiring decision.

The FAA is proposing to consider part 125 letter of deviation (LODA) holders as corporate flight departments subject to the reporting requirements of the PRD. Part 125 LODA holders are part 125 operators who do not have to comply with all aspects of part 125 because they hold a letter of deviation authority and many operate in a manner that is similar to corporate flight departments. The FAA believes those operators should be required to comply with the reporting aspects of PRD, though not the review elements unless they elect to opt in. The FAA addresses LODA holders as a part of the corporate flight department discussion in section f.

#### d. Part 91, Subpart K Fractional Ownership Programs

Part 91, subpart K ("part 91K") fractional ownership programs are issued management specifications (MSpecs) by the FAA and have recordkeeping requirements similar in most respects to part 135 operators. The part 91K fractional ownership program provides both entry-level pilots and highly experienced pilots access to many aircraft with operating environments similar to part 135 air

carriers, especially the type of aircraft operated by a part 91K fractional ownership program. The aircraft are typically multi-engine, turbine-powered fixed wing aircraft that require the pilot in command (PIC) to hold an airline transport pilot (ATP) certificate during part 91K operations.<sup>48</sup> However, the PIC can hold a commercial pilot certificate with an instrument rating if operating any other aircraft. As of May 30, 2018, there were 8 part 91K programs, employing about 3,364 pilots, flying general aviation business aircraft. Many part 91K fractional ownerships also hold part 119 air carrier or operating certificates.

A pilot's ability to fly at the ATP certificate level and demonstrating this proficiency during evaluation is an important regulatory distinction between commercial and private pilot certification. Specifically, these pilots gain experience as a PIC of a turbine-powered airplane in operations closely aligned with part 121 operations, such as the carriage of passengers in technologically advanced aircraft through complex airspace, as discussed in more detail previously. Thus, part 91K programs are more likely than other part 91 operations, such as private/recreation flying, personal business, or banner towing operations, to facilitate a pilot's career progression to a part 121 air carrier due to the similarity to part 121 operations.

Additionally, the FAA also proposes to update the process required to be completed by a part 91K program manager in accordance with current § 91.1051 to include compliance with proposed part 111. The FAA proposes to amend § 91.1051 to require that the pilot safety background check include the records maintained in the PRD. A part 91K program manager would be required to comply with the requirements of a pilot safety background check by requesting an individual's record in the PRD, as well as obtaining relevant information on the individual's aeronautical experience. This amendment would provide regulatory relief to 91K program managers and former employers because they would be able to obtain certain pilot records from the PRD instead of requesting them from the pilot's previous employers.

#### e. Section 91.147 Air Tour Operators

An air tour operator is an individual or company that holds a letter of authorization (LOA) to conduct air tours

<sup>46</sup> Non-common carriage is defined in 14 CFR 110.2 as meaning "an aircraft operation for compensation or hire that does not involve a holding out to others."

<sup>47</sup> In addition, § 125.401 requires records to be kept concerning the release of employment or physical or professional disqualification of any flight crewmember for at least 6 months.

<sup>48</sup> See 14 CFR 91.1053(a)(2)(i).

<sup>45</sup> 14 CFR 121.1(a).

within a defined geographic location.<sup>49</sup> Air tour operators, which share some similarities with aspects of part 121 and part 135 air carriers, generally maintain useful and reliable information on pilots serving in these operations. Like air carriers, these operators are responsible for the carriage of passengers and the PICs who conduct these operations must hold a commercial pilot certificate or higher.<sup>50</sup> In this regard, air tour operators provide a means by which pilots may acquire significant flight time in a short timeframe while operating in an environment with similarities to air carrier operations. Air tour operators often employ commercial pilot certificate holders who ultimately pursue a career as a pilot with a part 121 or part 135 air carrier.

In order for a pilot to operate an aircraft for an air tour operator, that pilot would be provided with training in the authorized aircraft, airspace, and procedures in conducting the air tour to maintain a safe operation.<sup>51</sup> The training provided, however, is likely to be less robust than an air carrier's training and, as such, fewer data points exist from which an air tour operator can glean information in order to determine a pilot's capability. As a result, reviewing prior employer and FAA records could be beneficial to air tour operators and, by extension, to the traveling public. Therefore, the FAA is proposing to require all air tour operators to comply with the access and evaluation requirements of subpart B of part 111 as well as enter data on the performance of an individual employed as a pilot into the PRD in accordance with subpart C of part 111.

#### f. Corporate Flight Departments

The FAA is proposing to require all corporate flight departments to enter data on the performance of an individual employed as a pilot into the PRD in accordance with subpart C of part 111 of the proposed rule. The FAA is proposing to define a corporate flight department as a person that operates: (1) A fleet (two or more) of standard airworthiness airplanes, (2) that require

a type rating under 14 CFR 61.31(a), and are operated in furtherance of, or incidental to, a business, pursuant to the general operating and flight rules of part 91 or airplanes being operated under a deviation authority issued under § 125.3.

Corporate flight departments are typically owned and operated by a company and offer the opportunity for company executives and employees to reach customers in a short period of time. The FAA believes that corporate flight departments typically operate airplanes that provide both entry-level pilots and experienced pilots access to many type-rated airplanes that offer similarities to those operated by air carriers. The operations within these departments are structured in ways that resemble many aspects of the air carrier environment including aircraft type, airspace complexity, and the carriage of passengers. As a result, the FAA believes that the records maintained by corporate flight departments would be useful for air carriers to review prior to making a hiring decision on a pilot.

During the analysis of information on corporate flight departments, the FAA encountered several significant issues in determining the number of corporate flight departments that would be affected by the proposed regulations. First, corporate flight departments generally conduct operations under part 91 since these operators are not engaged in common carriage. Second, the FAA would not be able to determine the number of pilots affected by the proposal as the total number of corporate flight departments was unknown. Thus, the FAA could not rely on its own internal data to substantiate the number of companies that have corporate flight departments.

Several business aviation industry advocates, such as the General Aviation Manufacturers Association (GAMA) and the National Business Aviation Association (NBAA), provided data on specific segments of the business aviation industry, which is comprised of about 14,960 individuals, companies, and corporations. Large corporate flight departments often employ pilots that continue in their career progression to work at an air carrier, whereas this is less common for single-aircraft corporate flight departments. Therefore, the FAA decided to extend the proposed reporting requirements to only corporate flight departments with a fleet of two or more aircraft, as a result of weighing the impact of including all business aviation entities against the usefulness of the records for air carriers in making a hiring decision.

The FAA examined the data on the number of business jets and large turbine powered airplanes in the national airspace system. The FAA analyzed the data from the Civil Aviation Registry to differentiate the type of aircraft registered in the United States by type certification and standard airworthiness certificates. All large airplanes (weighing more than 12,500 pounds) or that are turbojet-powered were included in the analysis. The FAA further analyzed the number of aircraft in this group to determine the number of persons that own more than one aircraft, or a fleet of aircraft (excluding single aircraft operators) since these operators likely have multiple flight crews assigned to their aircraft.

In the FAA's history of overseeing a variety of types of certificate holders, the FAA has learned that a pilot's employment with a small operator, such as one with only a single aircraft, does not typically lead to employment with a certificate holder that conducts operations with many passengers. As a result, the minimal amount of pilot records from a small operator is unlikely to result in information beneficial for making an air carrier hiring decision. In contrast, for corporate flight departments with a fleet of two or more aircraft, it is common for insurance companies to require annual formal training at a part 142 training center. Because insurance providers often require formal flight training provided by a part 142 flight school, high quality records will most likely be available to document each pilot's performance. These types of pilot records that large corporate flight departments hold contain precisely the data that hiring air carriers will find beneficial to use when making hiring decisions. Additionally, many single aircraft operators only have one crewmember. These operators would likely only be reporting records on *themselves* on an individual basis and might not complete formal flight training. Furthermore, many might not have the financial resources to justify formal flight training when it is not required. In these cases, both the records available and the number of associated pilots would be minimal; in general, the modest amount of records available might not be helpful to operators. Therefore, the FAA concludes only those operators who have a fleet of at least two aircraft should be subject to the proposed reporting requirement.

The FAA further believes that a part 125 LODA holder is similar in nature to corporate flight departments. A part 125 LODA holder is an operator who holds a deviation from §§ 119.23 and 125.5 (the requirements to hold an operating

<sup>49</sup> As of May 30, 2018, the FAA has issued 1,111 LOAs to operators in order to conduct air tours. Many of the LOAs have been issued to existing part 119 certificate holders.

<sup>50</sup> See 14 CFR 61.133, Commercial pilot privileges and limitations.

<sup>51</sup> The FAA requires a responsible person to be named on the application for authorization to conduct air tours and provide a purpose and details of the air tour. The responsible person must ensure that the flight is conducted for compensation or hire while using a powered aircraft within a pre-established area of airspace. Additionally, the air-tour operator must comply with any other requirements listed in the FAA-issued LOA.

certificate and OpSpecs). The FAA is proposing that part 125 LODA holders be considered corporate flight departments that are subject to the reporting requirements of the PRD. These operators use U.S.-registered civil airplanes that have a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved. As of May, 2018, there were 57 LODA holders. Historically, part 125 LODA holders have been regulated most similarly to part 91 operators and are typically used in business aviation, serving some of the same functions as corporate flight departments. Accordingly, the FAA proposes to treat them like corporate flight departments.

The FAA is seeking comment, with supporting documentation, on current corporate, flight departments' safety practices and invites commenters to respond to the following:

- Would it be beneficial to require corporate flight departments operating a single aircraft to report to PRD? Why or why not?

- Do corporate flight departments maintain substantive records documenting pilot training, evaluation, performance, disciplinary actions, or release from employment or other professional disqualification? If so, for how long are such records typically retained?

- Would the proposal create a disincentive for corporate flight departments to create and retain records that are not otherwise mandated by federal regulation?

#### g. Governmental Entities Conducting Public Aircraft Operations

The FAA has limited oversight of governmental entities conducting public aircraft operations (PAOs), though such operations must comply with the regulations applicable to all aircraft operating in the National Airspace System (NAS) (*i.e.*, part 91 general operating flight rules). The government entity conducting the PAO is responsible for oversight of the operation, including aircraft airworthiness and any operational requirements imposed by the government entity. Although a government entity conducting a PAO is not required to use an FAA-certificated pilot, many government entities require their pilots to hold an FAA pilot certificate and undergo recurrent training throughout their employment with the operator.<sup>52</sup> As a result, pilot records maintained by an operator of

public aircraft would relate to part 61 currency requirements and would be similar to those maintained by holders of a part 119 operating certificate authorized to conduct operations in accordance with part 125. The FAA recognizes that some operators of public aircraft contract with part 135 or certificated air carriers but they are accounted for in those sections of the proposed rule and regulatory analysis. A search of FAA records found 322 current entities conducting PAO as of May 30, 2018.<sup>53</sup>

Pursuant to the PRD Act, the FAA is proposing to require government entities that conduct PAO to enter records maintained by the entity on individuals who hold an FAA pilot certificate and conduct PAO. These requirements are proposed in subpart C. Pilots holding an FAA pilot certificate and employed by operators who perform public aircraft operations may seek subsequent employment with an air carrier. Pilots who do not hold an FAA pilot certificate do not typically proceed directly to further employment with air carriers, because in order to progress to further employment with an air carrier they would need to first obtain the relevant pilot certificate and then likely work for a "gateway" operator to an air carrier. Accordingly, the FAA sees limited utility in maintaining these records and do not interpret § 203 of the PRD Act to include them.

The FAA seeks comment on: (1) The level of data that would be provided to the PRD by government entities on individuals employed as pilots for PAO; (2) the type of records maintained by PAOs; and (3) cost to government entities to provide these records.

#### h. Trustees in Bankruptcy

The PRD Act also requires that a "trustee in bankruptcy for the air carrier or person" continue to provide records to the PRD in event that an air carrier or other operator files for bankruptcy.<sup>54</sup> Therefore, the FAA is proposing in subpart C to 14 CFR 111.270 to require trustees in bankruptcy, or the debtor-in-possession if no bankruptcy trustee is appointed, to continue to comply with the reporting requirements for the PRD. This practice is consistent with other safety-based regulations that continue to be enforced while an air carrier or other operator is in bankruptcy. The FAA is proposing to require the individual

accessing the database to be able to have their identity validated prior to the FAA granting PRD access, consistent with minimum requirements for database access.

When an air carrier or operator is in bankruptcy and maintains its certificate, the bankruptcy does not alter any regulatory or statutory requirements. However, if a hiring air carrier is unable to obtain records because an individual's previous employer ceases to exist or is otherwise unable to submit pilot records, the PRD Act provides that as long as the hiring air carrier makes a "documented good faith attempt" to access the information and the Administrator provides "written notice" of this lack of information, the pilot may begin service with the air carrier.<sup>55</sup> The FAA proposes to codify this good faith exception in § 111.115.

#### 4. Entities That Will Not Be Required To Report Information

As previously explained, the FAA interprets the PRD Act requires the following employers of pilots to report information about those pilots: Part 119 certificate holders, 91K fractional ownership programs, persons authorized to conduct air tour operations in accordance with § 91.147, persons operating a corporate flight department, covered governmental entities conducting public aircraft operations and employing pilots, and trustees in bankruptcy. The FAA does not interpret the PRD Act to require the following entities to report information to the PRD:

- Part 91: Aerial Advertising (Banner Towing), Aerial Photography Operators, Airshow Performers and Acrobatic Teams, Business Aviation Operators (other than operators of a fleet of airplanes that require a type rating under 14 CFR 61.31(a)), Glider Operations, Pipeline Patrol, Commercial Hot Air Balloon Operators; and charitable sightseers under 14 CFR 91.147(k)
- Part 129: Foreign Air Carriers
- Part 133: External Load Operators
- Part 137: Agriculture Operators
- Aircraft and Equipment Manufacturers
- Living History Flight Experience Exemption Holders

Most of these entities have historically not been subject to recordkeeping requirements, or operating rules and limitations comparable to air carriers.

The operators listed in the preceding paragraph represent those that would be

<sup>53</sup> The FAA maintains records related to known entities conducting public aircraft operations that are conducted by local, State, and Federal governments. These records are maintained in the FAA's Safety Performance Analysis System (SPAS).

<sup>54</sup> See 49 U.S.C. 44703(i)(2)(B).

<sup>55</sup> *Id.*, at § 44703(i)(12).

<sup>52</sup> Referenced 14 CFR 61.3(a).

unlikely to generate useful records for a hiring air carrier. For example, not many of their records would be subject to PRD reporting; this would create an unnecessary burden on these operators to participate in PRD reporting. In addition, even if they have records, those records would be of limited value to hiring employers. In the FAA's experience, most pilots whom these operators employ are unlikely to advance to employment with an air carrier. If they did want to eventually work for an air carrier, however, the FAA's experience shows that they will, over the course of their careers, progress to employment with another "gateway" operator required to enter records into the PRD, before becoming eligible to seek employment with an air carrier. Additionally, the entities excluded from the requirements to enter data offer stark differences from the part 121 air carrier environment. Many aircraft owners operate their own aircraft, but some hire a pilot to fly their aircraft for them. For many of these owners who also operate their own aircraft, the operation is purely for pleasure or perhaps in furtherance of a business. While some of these pilots are trying to acquire flight experience to move into aviation as a career, many have no intentions of moving into the industry as a commercial pilot. Since PRD is intended to capture the airman history for those pilots seeking employment with aviation employers (part 135/121, for example), these types of operations are not the group targeted by the statute. Additionally, many pilots performing operations such as these are operating at the floor of the FAA risk assessment. Thus, their proficiency and recordkeeping requirements are low. Beyond passing the practical test (private pilot for example), they are only required to complete a flight review with an instructor every two years. This is an informal review, not a practical test, and is normally only documented as an endorsement in the pilot's logbook if it was satisfactory. The only consistent data the FAA would obtain as required records would be flight reviews and perhaps recency of takeoffs and landings. These sorts of details are routinely evaluated by the hiring air carrier during the logbook reviews. PRIA and PRD was designed to make records available to the hiring air carrier which were historically difficult to obtain. Of all the record sources to be reviewed by the hiring air carrier, the pilot logbook is the most accessible and considered a fundamental item reviewed in the hiring process.

Under this proposal, foreign air carriers are excluded from the reporting requirements. The FAA assumes that Congress intended the PRD requirements to apply only to U.S. citizens because it used the term "air carrier", which is defined in 49 U.S.C. 40102 and includes a U.S. citizenship requirement. The agency further assumes that "or other person" also applies only to U.S. citizens because, if Congress had intended for the reporting requirement to apply to non-citizens, it would have included the term "foreign air carrier" which is also found in 49 U.S.C 40102.

The FAA invites comments on whether data from excluded entities would provide information relevant to the evaluation of a pilot candidate for employment.

#### 5. Other Sources of Pilot Records

The FAA also considered applying the record reporting requirement in the proposed rule to training providers and institutions of higher education. These groups were not addressed by the Act because they do not actively employ individuals to serve as pilots in civil or public aircraft operations.

A review of the sources of air carrier pilots (parts 121 and 135) by the GAO indicates that the majority of pilots hired by air carriers accumulated their hours by working as a flight instructor (CFI).<sup>56</sup> Pilots selected as flight instructors provide training to pilot applicants for an FAA certificate or rating. Since individuals employed as flight instructors to provide flight training are not employed for purposes of operating an aircraft, but for instructing or "teaching", the FAA does not find that the Act contemplates the reporting to the PRD by training providers. Therefore, the FAA is not proposing to require compliance by parts 61 or 141 pilot schools or part 142 training centers with part 111.

Similarly, the FAA does not believe the PRD Act extends to institutions of higher education (where pilots obtain flight training) because these institutions do not employ individuals to serve as pilots in commercial operations. As a result, the FAA is not proposing to require institutions of higher education that hold an LOA from the FAA to report records to the PRD. Individuals obtaining the training for an FAA certificate or rating are not employed as pilots but instead are paying for flight instruction, or paying

the instructors or evaluators employed by the institutes of higher education.

#### B. FAA Records To Be Reported to the Pilot Records Database

The PRD Act requires the PRD to contain certain records maintained by the FAA. The FAA must include records concerning current airman certificates, associated ratings, and any limitations to the certificate or ratings. Also, the PRD must contain a pilot's current medical certificate including any limitations, documentation of a failed attempt of an individual to pass a practical test required to obtain a certificate (since August 2010) or type rating under 14 CFR part 61, and summaries of legal enforcement actions resulting in a finding by the Administrator that was not subsequently overturned.

The above records are currently maintained by the FAA in a manner consistent with the PRIA statute. However, since the implementation of PRIA, the FAA has received many inquiries from air carriers on how to obtain additional FAA information such as accident and incident information and other drug and alcohol test records.<sup>57</sup> The FAA also received recommendations from the DOT OIG on any additional information that should be provided to an air carrier through a PRIA request.<sup>58</sup> The FAA proposes in § 111.140 to include the previously-mentioned records in the PRD, as well as FAA accident and incident information and certain drug and alcohol testing records. The additional information, including FAA records as identified in § 111.140, would provide a holistic historical record of a pilot, when combined with the records proposed to be reported to the PRD by air carriers and operators that previously employed the individual as a pilot. These records are described in greater detail in the text that follows.

For the appropriate FAA records to be contained in the PRD, the proof-of-concept system included several interfaces with current FAA systems: The Comprehensive Airmen Information System, Enforcement Information System, and Accident/

<sup>57</sup> The FAA receives on average 177,533 airman requests for records from air carriers per year via the FOIA. This average was deviated from requests accumulated from 2009–2014.

<sup>58</sup> The final report was published on August 20, 2015. <https://www.oig.dot.gov/sites/default/files/FAA%20Pilot%20Records%20Database%20Progress%20Final%20Report%5E8-20-15.pdf>. Specifically, the DOT OIG recommended that as part of the FAA response to a request for records, the FAA should incorporate a written notification to air carriers that additional records may be available through FOIA and Privacy Act requests.

<sup>56</sup> United States Government Accountability Office report titled "Aviation Workforce: Current and Future Availability of Airline Pilots," p. 23, available at <https://www.gao.gov/assets/670/661243.pdf> (February 2014).

Incident Data System. Additionally, the FAA would enter certain records related to drug and alcohol testing into the PRD. Any error discovered in FAA data must be addressed by the Flight Standards District Office or the Drug Abatement Division that originated the record. Any changes to the source record would be reflected in the PRD.

### 1. Comprehensive Airmen Information System

The Comprehensive Airman Information System (CAIS) contains key information derived from airman certificate applications, temporary airman certificates, notices of disapprovals, disapproved applications, enforcement actions, correspondence, requests for replacement certificates, letters of verification of authenticity, and other information that supports the issuance of airman certificates. To ensure that the PRD contains the most accurate FAA certificate information on pilots, CAIS certificate data would be provided to the PRD on a nightly basis. Providing CAIS data directly responds to the PRD Act mandate to include this information in the PRD.

CAIS would provide the PRD with the most recent date of a medical exam, medical class, and medical limitations (if any). The pilot certificate information that would be provided through the PRD would include the level of pilot certificate and privileges; associated ratings such as category, class, and type of aircraft; and, information on any limitations to those certificates and ratings. The date of issuance of the individual's pilot certificate and the certificate number would also be reported to the PRD from CAIS.

The verification of an individual's current qualifications would be helpful in preventing falsification, which would limit the possibility of an operator hiring an individual who does not meet the requirements for a particular operation. This verification will be particularly helpful to air carriers that receive a high volume of pilot applications. However, verifying an individual's current qualifications would not provide an air carrier or operator with sufficient information alone. The individual's qualifications, historical pilot certificate action, and previous operator's records are also necessary to provide an accurate history.

### 2. Enforcement Information System

Consistent with the PRD Act and the FAA's implementation of PRIA, the FAA is proposing to include information on an individual's closed

enforcement actions.<sup>59</sup> The enforcement action information would be uploaded to the PRD at regularly scheduled intervals via an interface with the FAA's internal Enforcement Information System (EIS). The EIS contains information about individuals, investigations, legal counsel information, and FAA surveillance activity, all related to enforcement. The EIS receives all enforcement and compliance data directly from FAA Aviation Safety Inspectors and FAA legal counsel. The FAA assigns a data steward for each component of the EIS—the person who is responsible for reviewing data integrity and accuracy and applying retention and data quality procedures. This information is maintained in accordance with Federal guidelines, and when applicable, the FAA maintains a policy that addresses data retention and destruction within the EIS.

#### a. Summaries of Legal Enforcement Actions

The FAA proposes to allow an air carrier access information from the EIS about closed enforcement actions on an individual through the PRD for the purpose of evaluating a pilot-applicant's record. If an individual has a record or multiple records in the EIS, an air carrier will be able to review the following information from a closed enforcement record: The FAA's report number, violation date, final action date, description of the subject's violation (including regulation and regulation description that was indicated in the enforcement), and the final sanction imposed on the subject with the corresponding certificate number.

The FAA does not propose to allow access to information regarding a pending case or event that was self-disclosed by an individual through a voluntary safety reporting program such as an Aviation Safety Action Program (ASAP). No ASAP record would be released through the PRD as described in Section E of this document, titled Exclusion of Voluntary Aviation Safety Program Records.

#### b. Expunction of Legal Enforcement Actions and Airman Records

In accordance with long-standing FAA policy, many historical airman and enforcement records have been expunged.<sup>60</sup> The policy provides that,

<sup>59</sup> The PRD Act specifically requires summaries of legal enforcement actions resulting in a finding by the Administrator that was not subsequently overturned.

<sup>60</sup> The FAA adopted a policy to expunge records of certain closed legal enforcement actions against

generally, records of legal enforcement actions involving suspension of an airman certificate or a civil penalty against an individual be maintained by the FAA for five years before being expunged. Records are not expunged if, at the time expunction is due, one or more other legal enforcement actions are pending against the same individual. The outcome of the most recent legal enforcement action determines when the older action will be expunged (e.g., if a pilot's certificate was suspended in May 2000, but received another suspension in March 2005, both actions would be expunged in March 2010, if no other enforcement actions were brought against the individual through March 2010). Actions resulting in revocations are never expunged.

Following the enactment of the PRD Act, the FAA examined whether the expunction of certain enforcement actions could continue in light of the data collection, data retention, and FOIA protection requirements of the PRD. Under existing policy, the FAA expunges an enforcement record in EIS, only the information identifying the subject of the enforcement action is deleted (name, address, certificate number, etc.); however, the PRD Act obliges the FAA to "maintain all records entered into the [PRD] pertaining to an individual until the date of receipt of notification that the individual is deceased." As FAA records are part of the "records entered into the [PRD] pertaining to an individual," the FAA interpreted the PRD to require that a pilot's records could not be expunged until the FAA has received notice of an individual's death. Accordingly, the FAA published a notice (76 FR 7893, February 11, 2011) temporarily suspending its expunction policy.<sup>61</sup>

The FAA's interpretation notwithstanding, the PRD ARC expressed concern that provisions of the PRD Act conflict with the Privacy Act requirements to maintain correct, accurate, relevant, and timely individual pilot records. The PRD ARC believed that because the records in the PRD are to be maintained solely for the purpose of assisting an air carrier in making a hiring decision, the requirement to maintain enforcement actions should not impact the

individuals. This policy applies to both airman certificate holders and other individuals, such as passengers. FAA Enforcement Records; Expunction Policy. 56 FR 55788. (Oct. 29, 1991). A copy of this policy has been placed in the docket for this proposed rulemaking.

<sup>61</sup> However, the FAA has continued to expunge legal enforcement cases closed with no violation found and administrative actions as the PRD statute does not require the entry of these records into the PRD.

previously established record-retention and expunction policies regarding FAA enforcement records. As a result, the ARC recommended that the FAA reinstate the 5-year expunction policy or, in the alternative, expunge records from all FAA databases other than PRD after five years.

The FAA does not believe the ARC recommendation is consistent with the statutory requirement that the FAA maintain the records in the PRD for the life of the pilot. Therefore, the FAA is proposing to maintain its current suspension of the expunction policy that includes all relevant EIS records, as well as CAIS and Accident/Incident Data System (AIDS) records, in the PRD for the life of a pilot.

### 3. Accident/Incident Data System

The FAA proposes to include information from the Accident/Incident Data System (AIDS) to air carriers through the PRD. AIDS contains records of aircraft accidents and incidents occurring in the United States and those involving U.S.-registered aircraft outside of the United States. The information maintained in AIDS is not specifically referenced in the PRD Act but is available today to an air carrier via a Privacy Act (PA) request with the pilot's written consent. An air carrier may obtain a pilot's history of accidents and/or incidents, if any exist, upon request. The information obtained from a PA request responds to a standard question on air carriers, operators, state governments, and Federal government applications for employment.

The FAA proposes to include information from the AIDS in the PRD to streamline the request process for information that could assist in making a hiring decision. The FAA believes this data would permit an air carrier to receive important information on an individual pilot's history in a way that is more efficient for industry and the FAA because the air carriers would no longer have to submit privacy act requests in addition to conducting an evaluation with the data in the PRD. Furthermore, including the information

from AIDS would facilitate the automated processing of PA requests for information, and permitting the FAA to utilize its resources more efficiently.

### 4. Drug and Alcohol Records To Be Entered by the FAA

#### a. Pre-Employment Testing Records

The PRD Act requires air carriers and operators that seek to employ pilots to enter certain drug and alcohol records into the PRD for individuals employed as pilots. However, in the event that a violation occurs during a pre-employment test<sup>62</sup> and the air carrier does not hire the potential employee, the air carrier would not be able to enter those records and the FAA would have to enter them instead.

In accordance with FAA regulations for Drug and Alcohol testing, 14 CFR part 120, employers or their Medical Review Officer (MRO) are required to report to the Federal Air Surgeon any pilot or individual holding a part 67 medical certificate that violates the drug and alcohol testing requirements, including a pre-employment test. The FAA proposes to submit to the PRD those records of pre-employment drug or alcohol violations and refusals to submit to testing that are required to be submitted to the FAA by air carriers and other employers or their MRO. The inclusion of these records is significant because a violation of this type would render the individual unqualified to perform as a pilot. As a result, these records are directly relevant to an air carrier's hiring decision.

This is also true if the violation occurs while the pilot is acting in a safety-sensitive position while employed by an employer regulated by another operating administration of DOT. Title 49, Code of Federal Regulations section 40.25 requires review of whether applicants had a previous positive result or refusal at another DOT mode. Consistent with the PRD Act's requirement to include records that "[pertain] to the individual's performance as a pilot . . ." the FAA Drug Abatement Division, Special Investigations Branch will enter into PRD those records

maintained by the FAA that show a positive drug and/or alcohol violation from an employer regulated by DOT. Under the provisions of 14 CFR part 120 and 49 CFR part 40, a future employer is prohibited from using those individuals in a safety-sensitive position until the return-to-duty process is completed.

Any drug and alcohol testing records created for an individual prior to the "PRD Date of Hire" (*i.e.*, pre-employment drug and alcohol testing, or refusal) would be entered into PRD by the FAA. Specifically, the dates of pre-employment verified positive drug test results and alcohol confirmation test results of 0.04 or greater, and refusals to submit to drug and/or alcohol testing are important to include into PRD because this information enables a hiring air carrier to determine if a pilot is qualified.

### 5. Part 107 Remote Pilot in Command Certificates

The PRD Act requires all air carriers to request and review records prior to allowing an individual to begin service as a pilot. The PRD Act applies to air carrier pilots irrespective of the type of aircraft they operate. As a result, the Act's requirements apply to pilots of unmanned aircraft systems (UAS) when those UAS are used in air carrier operations.

The FAA expects that in the future, air carriers and other operators that primarily operate sUAS might hire pilots with remote pilot in command certificates,<sup>63</sup> in combination with other FAA approvals, to serve as pilots-in-command of their sUAS. These certificates would be populated in the Pilot Records Database by the FAA for verification by a potential employer. The FAA expects air carriers and other operators that utilize UAS to comply with the regulations proposed herein when hiring pilots for such operations.

<sup>63</sup> Under 14 CFR part 107, which governs civil small unmanned aircraft system (sUAS) operations, the person manipulating the controls of a sUAS is issued a remote pilot certificate with an sUAS rating.

*C. Reporting Requirements of Historical Records Maintained by Air Carriers and Operators Employing Pilots*

The PRD Act’s requirements for reporting historical records to the PRD are twofold. First, the PRD Act requires employers (including air carriers and other covered employers) to report records generated after August 1, 2010. Second, air carriers (but not other covered employers) must report the records they are maintaining pursuant to § 44703(h)(4) of PRIA, which includes records generated on August 1, 2005 and later. Therefore, the FAA proposes to require air carriers authorized to conduct operations in accordance with parts 121 and 135 to provide records (also referred to as historical records) on each individual employed as a pilot since August 1, 2005, to the PRD. Other non-air carrier employers of pilots subject to the reporting requirements in this proposed rule would be required to report the records they generated as of August 1, 2010 for inclusion in the PRD. This requirement is not tied to PRIA, rather, it is a PRD-specific requirement, and is applicable to operators authorized to conduct operations in accordance with parts 125 and 135, as well as part 91K fractional ownerships.

The FAA does not propose to require air tour operators, corporate flight departments, and governmental entities conducting public aircraft operations to report *historical* information to the PRD. The historical records they would be able to provide to the PRD would likely be inconsistent, particularly because any records they keep to document compliance with training requirements are not kept in accordance with a requirement from a specific regulatory part such as part 121, 135, or 125. In

contrast, prospective records would conform to the reporting requirements in this rule. The burden for these small operators to input the minimal information they have would likely not be justified by any specific benefit these historical records would provide. Operators may upload any records they have on a voluntary basis.

The PRD Act requires that air carriers maintain certain records received from other employers in response to a PRIA request. For purposes of populating historical records into the PRD, the FAA proposes to require that air carriers submit their own historical documents which were generated in response to a PRIA request, but not those received from other employers via a PRIA request.

The FAA is interpreting the records referred to in subsection (h)(4) as those documents generated by an air carrier in response to a PRIA request, as opposed to those records received from another air carrier. As each air carrier and operator would be required to input its own historical records into PRD, an air carrier or other operator would not be required to enter records that it had received from another air carrier under PRIA. The FAA believes that this provides the least burdensome and non-duplicative requirements for entry of historical records into the PRD.

Upon enactment of the PRD Act, air carriers became responsible for the retention of records dated August 1, 2005 to the present. Also, on the date of enactment, operators and part 91K fractional ownerships became responsible for the retention of records dated on or after August 1, 2010. Therefore, the FAA is proposing in §§ 111.265 and 111.420 to require all air carriers authorized to conduct

operations in accordance with part 121 or part 135 to provide specific records kept in accordance with PRIA on or after August 1, 2005, through one year after the publication of the final rule. One year compliance is proposed so that all affected employers have time to adopt use of the system. The FAA is likewise proposing to require commercial operators authorized to conduct operations in accordance with parts 125 and 135 as well as part 91K fractional ownerships to provide specific records kept in accordance with PRIA on and after August 1, 2010, through one year after the publication of the final rule. The remaining persons affected by the proposed rule—entities conducting public aircraft operations, air tour operators, and corporate aviation operators—are not required to comply with these historical record reporting requirements. These persons may voluntarily enter historical records into the PRD.<sup>64</sup>

The FAA proposes in § 111.420 that any required historical record documented on August 1, 2010 through one year after the publication of the final rule would be required to be entered into the PRD within two years of the publication of the final rule. The proposed extended timeline for the entry of historical records would provide air carriers and operators time to enter the applicable records for each pilot employed during the documentation dates previously explained.

Table 2 illustrates the historical record reporting provision of the PRD Act for records that have been previously documented by a part 119 certificate holder and operators employing pilots.

TABLE 2—OVERVIEW OF PROPOSED HISTORICAL RECORD REPORTING BY POPULATION

Historical records maintained in accordance with PRIA			
Record documentation date	Parts 121 and 135 air carriers	Parts 125 and 135 operators and part 91K fractional ownerships <sup>65</sup>	Other operators employing pilots
Records predating 8/1/2005 .....	N/A .....	N/A .....	N/A.
Records dating from 8/1/2005 through 7/31/2010 .....	Must Report .....	N/A .....	N/A.
Records dating from 8/1/2010 through initial proposed compliance date .....	Must Report .....	Must Report .....	Voluntary Reporting Only.

<sup>64</sup> The documentation date of records previously maintained in accordance with PRIA by air carriers, operators, and fractional ownerships will be

referred to as “historical records” for the remainder of the proposal.

<sup>65</sup> Part 125 operators operating under a LODA would not be required to report historical records.



1. Data Required for Submission of Historical Records to the Pilot Records Database

As previously discussed, the FAA interprets the persons affected by the PRD Act’s historical record provision to include part 119 certificate holders and fractional ownerships only. PRIA identifies specific regulations that require a part 119 certificate holder to retain documents regarding the training, qualification, and performance of a pilot in order to demonstrate compliance with the appropriate regulations.<sup>66</sup>

In order to assist part 119 certificate holders and operators in their compliance with PRIA, the FAA issued AC 120–68 to create a standardized process and best practices for obtaining a pilot’s records and determining whether a company is required to comply with a PRIA request.

The FAA also acknowledges that historical records are maintained in a variety of media, including digital, paper-typed, paper-handwritten, microfiche, and scanned. Not all of these media are easily transferrable to an electronic database. Furthermore, the ARC indicated that “smaller air carriers may lack the equipment and resources required to convert records to an electronic format.” Based on required inspections of part 119 certificate

holders by FAA inspectors, the FAA finds that approximately 12% of part 119 certificate holders maintain historical records electronically.<sup>67</sup>

Since part 119 certificate holders maintain historical records in many formats on a variety of media, the FAA is proposing that the historical records be submitted to the PRD through a limited number of data points entered into a freeform text box which is an on-screen rectangular frame into which a person types text. In this case, the text will be specific data points, described in the paragraph that follows. The general data fields that would be required to match an employed or previously employed pilot with a record in the PRD would include: The pilot’s name, certificate number, and dates of employment. A part 119 certificate holder would also be required to enter the following records that must be maintained per current regulations:

- Training and qualification event data maintained in accordance with 14 CFR 121.683, 125.401, and 135.63(a)(4), except flight, duty and rest time;
- Available drug and alcohol testing records maintained in accordance with 14 CFR 120.111 and 120.219(a) and 49 CFR 40.333(a);
- Disciplinary action record that was not subsequently overturned; and

- Separation from employment record that was not subsequently overturned.<sup>68</sup>

The FAA believes that by clearly defining the specific historical data elements in this proposed rule, part 119 certificate holders would be able to refine the information about pilots included in the PRD that hiring air carriers find the most relevant to hiring decisions, rather than entering all data maintained on an individual pilot throughout his or her career. Additionally, by limiting the set of historical data elements, the FAA would be harmonizing the amount of records each pilot would have in his or her respective PRD file, which also would promote efficiency for air carrier review of those records. The historical record data elements discussed in Table 3 would not differ substantively from the data elements collected for a pilot’s present and future records.

All proposed data elements required to be reported for each pilot employed by a part 119 certificate holder are included in Table 3. As previously stated, the amount of data recorded for each pilot is expected to vary. For example, some pilots may have multiple dates for completion of training events depending on their length of employment.

TABLE 3—DATA ELEMENTS REQUIRED TO BE ENTERED INTO A PILOT’S HISTORICAL RECORD

Training and qualification events required by FAA regulation				
Pilot data element <sup>69</sup>	Date(s) completed YYYYMMDD	Aircraft type (model designation as listed in FAA order 8900.1)	Duty position (PIC or SIC)	Result satisfactory (complete), unsatisfactory, or incomplete
Indoctrination .....				
Related Aircraft Differences .....				
Initial .....				
Upgrade .....				
Transition .....				
Differences .....				
Requalification .....				
Operating Experience .....				
Line Operating Flight Time .....				
Reestablish Recency of Experience .....				

<sup>66</sup> PRIA excludes flight and duty time recordkeeping requirements.

<sup>67</sup> FAA inspections required in accordance with national policy notice entitled “Pilot Records Retention Responsibilities Related to the Airline Safety and Federal Aviation Administration Act of 2010”; results were collected through December 12, 2015. An electronic recordkeeping system is defined by the FAA as “A system of record processing in which records are entered,

electronically signed, stored, and retrieved electronically by a computer system rather than in the traditional “hardcopy” or paper form.” FAA Order 8900.1, Vol 3, Ch 31, Sec 1, Para 3–2983(L). This definition could include, for example, both scanned copies of records as well as structured data sets.

<sup>68</sup> The FAA does not currently regulate, collect or review this information, but expects employers would have disciplinary action data on a minimal

number of pilots employed, depending on their internal retention timelines for employment records.

<sup>69</sup> The pilot data element is only required if the subject has been administered any aspect of the data element. The pilot data element is not applicable (and therefore not required) if the pilot has not attempted the data element.

TABLE 3—DATA ELEMENTS REQUIRED TO BE ENTERED INTO A PILOT’S HISTORICAL RECORD—Continued

Training and qualification events required by FAA regulation					
Pilot data element <sup>69</sup>	Date(s) completed YYYYMMDD	Aircraft type (model designa- tion as listed in FAA order 8900.1)	Duty position (PIC or SIC)	Result satisfactory (com- plete), unsatisfac- tory, or incomplete	
Line Check .....					
Continuing Qualification .....					
Recurrent .....					
Qualification .....					
Drug and alcohol testing violations, if applicable					
Test result	Date(s) for each confirmed test and/or violation YYYY/MM/DD				
Drug Test Verified Positive ..					
Refusal to Submit to Drug Testing .....					
Alcohol Confirmation Test Result of 0.04 or Greater					
Refusal to Submit to Alcohol Testing .....					
Return-to-Duty and Follow- up Negative Result .....					
Disciplinary action record data, if applicable					
Type of action	Date of event YYYY/MM/DD	Aircraft type (model designa- tion as listed in FAA order 8900.1)	Duty position (PIC or SIC)	Date of discipli- nary action YYYY/MM/DD to YYYY/MM/DD	Summary of event (256 character limit in free text)
Written Warning .....					
Suspension .....					
Separation from employment data, if applicable					
Type of action	YYYY/MM/DD	Aircraft type (model designa- tion as listed in FAA order 8900.1)	Duty position (PIC or SIC)	Date of discipli- nary action YYYY/MM/DD to YYYY/MM/DD	Summary of event (256 character limit in free text)
Termination .....					
Resignation .....					N/A

Since many air carriers and operators have maintained records in accordance with PRIA in varying degrees of detail, the FAA is proposing that part 119 certificate holders enter the specific data elements listed in Table 3. The data elements would be entered into an unlimited character, free text field for inclusion in the PRD. The FAA is proposing two methods for part 119 certificate holders to report present, future, and historical data elements to the PRD. Each employer could opt to use either of the following acceptable methods:

2. Reporting Method Option 1: Data Transfer Using an Automated Utility

The first option is to transmit data electronically using an automated utility. The data would be transmitted via an automated utility such as XML through the PRD application, and the PRD application would be able to extract the relevant information for each pilot and enter the information into the appropriate fields in the PRD. An air carrier would need to code its XML utility to meet the requirements of the

PRD XML user guide to utilize the application’s batch upload capability.<sup>70</sup>

The amount of time an air carrier or other operator employing pilots spends transmitting data to the PRD using such an automated utility would depend on the user’s internet connection, bandwidth, and volume of data being sent to the PRD. However, the automated utility would need to be confirmed compatible with the PRD.

<sup>70</sup> Upon publication of the final rule, an XML user guide will be provided to PRD users.

### 3. Reporting Method Option 2: Manual Data Entry

The second method for air carriers and others employing pilots to transmit data to the PRD would be through direct manual data entry, using the same pre-established data field forms for each record type. The FAA expects that this method would only be used by those operators without the technical capability to use an automated utility such as an XML.

Under either method, each air carrier would be expected to complete a historical record for each pilot employed since August 1, 2005.<sup>71</sup> Each operator operating under parts 125, 135, or 91K fractional ownership would complete a historical record for every pilot employed since August 1, 2010. The FAA notes that even if pilots have retired, resigned, or were disqualified and replaced by other pilots, each pilot employed by an air carrier or operator would be required to have a record in the PRD, even if those pilots may never again be employed by an air carrier or operator. The FAA also notes that the agency does not have data on the exact number of historical records we expect to be submitted to the database regarding former pilots who are not currently employed.

The PRD Act requires that air carriers maintain records for five years after reporting them to the PRD.<sup>72</sup> The FAA is therefore proposing in § 111.420 of the proposed regulation that all historical records be maintained by the air carrier or operator for five years after being reported to the FAA for inclusion in the PRD, notwithstanding other applicable rules or regulations (e.g., drug and alcohol testing records) pertaining to retention of such records.

### 4. Alternative Solutions Considered

The ARC recommended that the FAA consider permitting various file formats for submission to the PRD. The ARC also highlighted many issues associated with uploading various file formats. The FAA considered other options for the form and manner in which historical

records could be submitted to the PRD by air carriers and operators employing pilots. These alternative options included permitting the submission of records in portable document format (PDF), Joint Photographic Experts Group (JPEG), bitmap (BMP), or other similar electronic file formats; the submission of records using coded Extensible Markup Language (XML); or the submission of specified information through direct manual data entry.

While the submission of records in PDF, JPEG, BMP, or other similar electronic file formats may be preferred and expedient for some air carriers and operators, the FAA rejected this option for multiple reasons. Primarily, the FAA notes that the ARC highlighted a crucial issue with the contents of historical records. The ARC indicated that many historical records maintained by the aviation industry contain information “far outside” the scope of the PRD such as disciplinary records unrelated to pilot performance. The acceptance of such file formats would allow a large volume of extraneous data to be submitted to the PRD, possibly including protected or sensitive information on individuals or an air carrier/operator.

This would create an unnecessary burden for the FAA because the FAA would be required to review each individual pilot record and redact information to determine whether it included protected or sensitive information. The FAA also considered requiring the individual pilots who are the subjects of any files uploaded to the PRD to review each record prior to an air carrier retrieving them or shortly after being uploaded. Either way, this variance and non-standardization could result in disagreements between pilots and employers, resulting in the FAA acting as an arbitrator in each instance.

Furthermore, the FAA would need to ensure that the correct record is placed in the appropriate individual pilot “folder” and that the documents uploaded to the system contain information that is legible.

Unfortunately, there is no assurance that PDF, JPEG, BMP, or other similar file formats would be usable by air carriers. If an air carrier’s computer system could not support the file format or voluminous records maintained over the life of a pilot, the files would be rendered useless. Variables such as the age and condition of the original record, the darkness of the text on the page, and the legibility of any handwriting on the page could create a document that provides little or no value to the PRD, with no assistance to an air carrier or operator employing pilots during the

hiring decision. In each circumstance, a delay in the availability of pilot records may result in an air carrier reviewing incomplete data to make a hiring determination. The missing information may be deemed significant by the hiring air carrier.

Foremost, the PRD would serve as a tool to assist an air carrier or other operator in making hiring decisions in a manner that positively impacts safety, not to serve as a repository for all existing information maintained by employers of pilots, or as a replacement for existing air-carrier recordkeeping systems. By allowing scanned documents or photographs of a pilot’s record to be transmitted to the PRD, the FAA would be unable to assure that each record submitted contained only the types of data relevant to the hiring decision. Additionally, including information that is not related to safety in an FAA database meant to inform an air carrier’s hiring decision is not within the FAA’s statutory authority. The PRD Act also includes a requirement to protect pilots’ privacy, and including extraneous information would not be consistent with that statutory charge.

### 5. Public Input on Historical Records

Commenters are strongly encouraged to provide supporting data when responding to the following questions, including data supporting anticipated costs associated with compliance with this proposal and to provide sample records demonstrating the level of detail captured in historical records dating back to August 1, 2005, for each record type (e.g., training, checking, release from employment). Such sample records should not provide any personally identifiable information about employees or other pilots in the docket; rather, only provide specific details on record format and content of the historical records. The FAA asks commenters to respond to the following questions with regard to any historical records maintained by air carriers and operators employing pilots in accordance with 49 U.S.C. 44703(i)(4)(B)(ii):

1. What level of detail (e.g., training completion dates or the pilot’s entire training record including each activity/task and outcome) do operators keep for historical pilot records dating back to August 1, 2005 and how accurately do the data requirements outlined in Table 3 reflect that level of detail?

2. Are air carriers or operators maintaining other relevant records used by an air carrier or operator in making a hiring decision that the FAA has not considered or not chosen to include as

<sup>71</sup> Current FAA source data from the Safety Performance Analysis System and the National Vital Information Subsystem indicates that the number of pilots currently employed by a part 91 subpart K operator is 3,364, a part 121 air carrier is 82,131, a part 125 operator is 418, a part 135 air carrier/operator is 24,545 as of May 30, 2018. The Department of Transportation maintains the total number of pilots that have operated for the airlines (part 121) and commercial operations (91K, 125, and 135) dating back to 1999. The FAA does not maintain data on the number pilots that have been active since 2005 but that are not currently employed. [http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national\\_transportation\\_statistics/html/table\\_03\\_24.html](http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_03_24.html).

<sup>72</sup> 44703(i)(15)(C)(iii).

a historic data requirement in this proposal?

3. What amount of effort do employers perceive will be involved in reviewing the historic data and structuring it into an XML format? The FAA would also welcome information from any employers that do not intend to use the back-end XML solution.

4. How quickly do air carriers and other operators believe they will be able to migrate their PRIA records into the PRD?

5. Would it be helpful from either a pilot or a hiring employer's perspective to include a text box (with a limited character count) for a pilot to be able to provide a narrative explanation of further information concerning a historical record? Would this also be helpful for present-day records?

In addition, the FAA seeks input from the public on alternative systems, processes, or technological solutions for efficient and accurate reporting of historical records.

#### D. Reporting Requirements: Present and Future Records

With respect to current and future records, the PRD Act requires the FAA to establish an electronic database to capture certain records provided by employers.<sup>73</sup> First, the PRD Act requires employers to report to the FAA for inclusion in the database certain pilot training, checking, disciplinary and separation from employment records maintained pursuant to §§ 121.683, 125.401 and 135.63(a)(4) and certain drug and alcohol testing records maintained in accordance with §§ 120.111(a) and 120.219(a).<sup>74</sup> Second, the PRD Act requires employers to report certain categories of other records "pertaining to an individual's

performance as a pilot" to the extent relevant records may be kept by the employer.<sup>75</sup> Third, the PRD Act requires employers to report "information concerning the motor vehicle driving record of the individual" obtained "from the chief driver licensing official of a State" pursuant to 49 U.S.C. 30305(b)(8), which governs the NDR.<sup>76</sup>

Details on the data the FAA proposes to require employers to enter into the PRD consistent with the requirements of the PRD Act are summarized below and described in the subsections that follow. The data includes the following on pilot employees:

- The completion of certain training, qualification, proficiency and competency events;
- Other pilot training, qualification, proficiency or competency events kept by the employer;
- Drug and alcohol testing records maintained in accordance with the FAA's drug and alcohol testing regulations;
- Final disciplinary actions; and
- Final separation from employment actions.

The FAA proposes in § 111.250 to implement these present and future record reporting provisions one year after publication of the final rule to give covered employers time to fulfill the requirements of this proposed rule. Each action this proposed rule would require employers to enter after this time would be entered within 30 days of either the PRD hire date or the beginning of service. The FAA proposes to define "PRD hire date" as the first date on which the pilot is expected to begin any form of company-required training or any other duties assigned by an air carrier or other operator employing pilots.

At any time between the effective date of the final rule and one year after the publication of the final rule, an air carrier may begin entering present and future records into the PRD; however, the date on which the air carrier or operator begins entering the records into the PRD is the date the air carrier begins compliance and must remain in compliance with the rule. At that point, all records from prior to the first day of compliance would be considered historical records and all records from the first date of compliance and after would be present and future records. The FAA will note this unique date, as well as the air carrier or operator, for auditing compliance.

Part 119 certificate holders and fractional ownerships would be required to begin accessing and evaluating records in the PRD one year after publication of the final rule. Part 119 certificate holders and fractional ownerships, as well as any operators opting into the evaluation provision of part 111, would be required to access and evaluate an individual's PRD records and request PRIA records from current and former employers until all required air carriers and operators comply with the historical record reporting provision of part 111. This duplicative requirement would be temporary; the sole purpose is to avoid any lapse in PRIA records that were kept during the transition, which, as stated previously would conclude by two years after publication of the final rule.

A summary of the compliance periods for reporting records and accessing for purposes of evaluation is provided in Table 4.

TABLE 4—PROPOSED COMPLIANCE TIMELINES FOR PRD

Action	Compliance period <sup>77</sup>	Applicable record dates
Present and Future Record Reporting.	By One Year from the Publication Date of the Final Rule.	A date determined by the air carrier or operator during the compliance period; however, once the records begin to be entered into the PRD, compliance is mandatory.
Historical Record Reporting	By Two Years from the Publication Date of the Final Rule.	Beginning on August 1, 2005 or August 1, 2010, as applicable, through the date determined by the air carrier or operator when present and future records begin to be reported to the PRD.
Accessing the PRD for Purposes of Evaluating Records.	By One Year from the Publication Date of the Final Rule.	All records documented in the PRD and a request for records to current and/or previous employers under PRIA.
	By Two Years from the Publication Date of the Final Rule.	All records documented in the PRD.

<sup>73</sup> Air carriers and operators that employ pilots will be referred to throughout this section as employers.

<sup>74</sup> See § 44703(i)(2)(B)(i).

<sup>75</sup> See § 44703(i)(2)(B)(ii).

<sup>76</sup> See § 44703(i)(2)(C).

<sup>77</sup> Air carriers, other operators and participating operators may neither enter records into the PRD nor access the PRD for non-FAA records until the effective date of the final rule.

### 1. Data Pertaining to the Individual's Performance as a Pilot

As previously stated, the PRD Act requires air carriers to keep records pursuant to specific provisions of title 14 (§§ 121.683, 125.401, or 135.63(a)(4)), but also includes a more general provision that requires the reporting of certain categories of records "pertaining to an individual's performance as a pilot" by employers for inclusion in the PRD. This provision requires air carriers to report records concerning: (1) The training, qualifications, proficiency or professional competence of an individual; (2) any disciplinary action taken with respect to an individual that was not subsequently overturned; and (3) any release from employment or resignation, termination or disqualification with respect to employment. These reporting requirements specifically extend to any other records that are kept by an employer (even if the record is not explicitly required to be kept by a provision in 14 CFR). However, as provided in the PRD Act, only those records in each of these categories that "pertain to pilot performance" would be reported for inclusion in the PRD.

The FAA proposes to define the term "records pertaining to pilot performance," consistent with the agency's interpretation of this phrase in PRIA, as meaning "[r]ecords of an activity or event specifically related to an individual's completion of the core duties and responsibilities of a pilot to maintain safe aircraft operations, as assigned by the employer and established by the FAA."<sup>78</sup>

Records related to pilot performance are not limited solely to events arising out of the pilot's demonstration of proficient flying skills (*i.e.*, when the pilot is seated at the controls of an aircraft) and the demonstration of compliance with FAA regulatory requirements.<sup>79</sup> A pilot's duties and responsibilities to ensure safe aircraft operations includes demonstrating adherence to certain established company procedures during all aspects of an aircraft operation. Records of relevant events subject to the reporting requirements would also include certain events that occurred on the ground pre-flight or post-flight (*e.g.*, conducting aircraft exterior pre-flight and post-flight inspections, visual icing inspections, drug and alcohol violations) in connection with a flight operation.

<sup>78</sup> See FAA's Office of the Chief Counsel legal interpretation to Lorenzon, dated September 12, 2014. A copy of this legal interpretation has been placed in the docket for this proposed rulemaking.

<sup>79</sup> *Id.*

Moreover, the duty to maintain safe aircraft operations includes ensuring the safety of crewmembers, passengers, cargo, the aircraft and the operating environment.<sup>80</sup> Therefore, the proposed definition would extend to both FAA-established requirements and certain standards set by the employer that reflect activity that is linked to the statutory requirement that the database include records pertaining to the individual's performance as a pilot.

The FAA considers certain documentation to be unrelated to an individual's performance as a pilot and, therefore, beyond the scope of the PRD Act mandate. As proposed, the database reporting requirements would exclude records maintained by an operator related to an individual's performance of job functions unrelated to serving as a flight crewmember during the operation of an aircraft (for example, an individual's performance of duties while serving as a flight engineer, instructor, or evaluator in simulators) or while an individual performed services that do not require a pilot certificate issued under part 61.

Additionally, in accordance with the PRD Act mandate, the FAA proposes in § 111.220(b) to exclude flight time, duty time, and rest records from the reporting requirement. The FAA is also proposing in § 111.220(b) to prohibit the entry of records containing physical examination data or any other protected personal medical information into the database. Exclusion of these records is directed by the PRD Act and other medical privacy laws. The PRD Act does require certain records to be kept concerning compliance with required medical examinations and information concerning release from employment due to physical disqualification. Inclusion of those documents in the PRD are discussed in the section regarding CAIS records and in the section regarding separation from employment, respectively. The FAA also notes that data concerning a pilot's active medical certificate would be reported by the FAA to the PRD, as required by the PRD Act, and previously discussed in this preamble. Records concerning disqualification are addressed further in the discussion titled "Separation from Employment".

#### a. Pilot Training, Qualification, and Proficiency Records (§ 111.220)

As previously indicated, the PRD Act requires employers to report to the FAA for inclusion in the database records kept pursuant to 14 CFR 121.683, 125.401, and 135.63(a)(4) and any

<sup>80</sup> *Id.*

records related to pilot performance specific to the training, qualifications, proficiency or professional competence of an individual.<sup>81</sup>

Accordingly, the FAA is proposing in § 111.220(a) to require employers to enter records maintained in accordance with an established provision of FAA regulations related to pilot training, qualifications, and proficiency events, as well as certain additional records that may be kept voluntarily by covered employers.<sup>82</sup>

As proposed in § 111.220(c), the minimum data required to be reported by all populations would include: The date of the event, aircraft type, duty position (PIC or SIC), training program approval part and subpart, the crewmember training/qualification curriculum and category as reflected in the FAA-approved or employer-mandated training program, the result of the action (satisfactory or unsatisfactory), and limited comments, if appropriate.<sup>83</sup>

Comments would be reported to the PRD in two circumstances. First, employers operating under parts 121, 125, or 135 would be required to report any comments from a check pilot associated with a qualification record. Check pilot comments would be accepted for parts 121, 125, and 135 users because pilots employed in these contexts are qualified by a check pilot.<sup>84</sup> By contrast, comments on the performance of a pilot that were documented by someone other than a check pilot, such as a flight instructor, would not be accepted in the database. The FAA believes that neither validation events<sup>85</sup> (in an Advanced Qualification Program,<sup>86</sup> or AQP) nor

<sup>81</sup> See 49 U.S.C. 44703(i)(2)(B)(i).

<sup>82</sup> All records maintained in accordance with an established training, qualification, proficiency, or professional competency regulation, such as those cited in the PRD Act, §§ 121.683, 125.401, and 135.63(a)(4) are referenced as "pilot training" records throughout the remainder of the section, unless otherwise noted.

<sup>83</sup> The FAA notes that some of this information could be populated in the database in advance by the FAA using information from the air carrier's user registration. Thus, the employer may not be required to enter all data points for each record reported. For example, the training program approval part in 14 CFR, which would be reported in accordance with § 111.220(c)(4) of the proposed rule, would likely be pre-filled, when possible.

<sup>84</sup> As per 14 CFR 135.337, a check pilot is "a person who is qualified to conduct flight checks in an aircraft, in a flight simulator, or in a flight training device for a particular type aircraft."

<sup>85</sup> Validation events are used during AQP pilot training to ensure a pilot can demonstrate the ability to meet specific training requirements. This ensures an appropriate level of competency has been achieved before advancing to related or more complex tasks outlined in the training program.

<sup>86</sup> AQP allows for an alternative method for training and evaluating pilots based on

instructor comments should be included in the PRD. First, the PRD Act does not require employers to report either of these types of data to the PRD. Second, the FAA does not believe that flight instructor notes would have sufficient value as a hiring tool to warrant including them. In the safety recommendation A-95-116, issued to the FAA on November 15, 1995, the NTSB asked the FAA to require all air carriers and their training facilities to maintain pertinent information on the quality of pilot performance, including subjective evaluations by individual instructors, check pilots, or FAA inspectors. The FAA responded that the inclusion of such information in a pilot's permanent record might make a training event a punitive experience rather than one in which a pilot could learn from mistakes. On January 3, 2000, the NTSB stated that the FAA had provided a convincing argument about the inappropriateness of subjective information in pilot records and the possibility that pilot training could be negatively affected.<sup>87</sup> Finally, the FAA believes that validation events and instructor comments should not be entered into the database to ensure standardization among all other training and certification regulations. Other training and certification regulations do not include validation events and instructor comments.

The second instance in which comments would be accepted to the PRD would be when a certificate holder enters the category of pilot training and curriculum segment in which a pilot participated (*e.g.*, ground training or flight training). The results of each specific curriculum segment would be reflected in the database as satisfactory or unsatisfactory.<sup>88</sup> If the result is entered as unsatisfactory, a comment briefly explaining the unsatisfactory performance would be required for completion of that particular pilot training database record.

The FAA includes detailed guidance regarding examples of specific data elements that could be reported by each population in Draft AC 111, a copy of which has been placed in the docket for

instructional systems design, advanced simulation equipment, and comprehensive data analysis to continuously validate curriculums. Requirements of subparts N and O that are not specifically addressed in the certificate holder's AQP continue to apply to the certificate holder and to the individuals being trained and qualified by the certificate holder.

<sup>87</sup> [https://www.nts.gov/\\_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-95-116](https://www.nts.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=A-95-116).

<sup>88</sup> A satisfactory or unsatisfactory result may also be submitted to the PRD as a pass or fail, or complete or incomplete, since these terms may be used synonymously by certificate holders with approved training programs.

this rulemaking. The FAA notes that the proposal would not require the reporting of compliance with training and qualification events to a specific task level because particular training, qualification, and proficiency requirements may not be the same for every pilot depending on the training program and the duty position for which they are training to serve.

#### i. Part 121 Air Carrier Training Records

The FAA is proposing in § 111.220 to require: (1) Part 121 air carriers to enter into the PRD any record documenting an individual's compliance with FAA-required training, qualifications, and proficiency events kept in accordance with § 121.683, subject to limited exceptions proposed in § 111.220(b); and (2) employers to report any other records that may be kept documenting compliance with other requirements. Such records could be relevant to training, qualifications, proficiency, or professional competence, including check pilot comments that are not otherwise excluded by proposed § 111.220(b), as discussed previously.

All training and qualifying events conducted through an approved part 121 training program are required to be recorded in accordance with § 121.683, regardless of the subpart under which the training program is approved. Certificate holders that conduct operations under part 121 may train and qualify pilots in accordance with the provisions of current subparts N and O or under an Advanced Qualification Program (AQP) in accordance with subpart Y of part 121.<sup>89</sup> The record for a pilot trained in accordance with part 121, subpart Y, includes training records for the indoctrination curriculum, qualification curriculum, and continuing qualification curriculum. Because curricula vary, however, not every possible entry applies to each individual air carrier or operator.

#### ii. Part 125 Operator Training Records

As required by the PRD Act, the agency proposes in § 111.220 to require records maintained pursuant to § 125.401 by part 125 certificate holders to be reported to the PRD, except for flight time, duty time, and rest time. Additionally, § 111.220(a)(2) would

<sup>89</sup> 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. Requirements of subparts N and O that are not specifically addressed in the certificate holder's AQP continue to apply to the certificate holder and to the individuals being trained and qualified by the certificate holder. *See* § 121.903(b).

require employers to report any other records that may be kept documenting compliance with other FAA- or employer-required events related to training, qualifications, proficiency, or professional competence, including check pilot comments. Part 125 letter of deviation (LODA) holders<sup>90</sup> would comply with the reporting requirements of a corporate flight department because LODA holders have been given relief from the recordkeeping requirements of part 125.

Part 125 operators are required to maintain records pursuant to § 125.401 demonstrating compliance with the prescribed qualification and testing requirements in subpart I of part 125. Furthermore, part 125 establishes testing requirements for pilot initial and recurrent qualification. An operator must maintain the records on the completion of a part 125 required test as well as a pilot's currency requirements referenced in § 61.51(a)(2). The FAA proposes to require employers to report all of the records described in this paragraph regardless of whether they are identified in part 125 or cross-references to part 61.

Additionally, pursuant to § 111.220(a)(2), the FAA is proposing to require all part 125 operators to enter records concerning an individual's performance as a pilot, including records that demonstrate compliance with recent flight experience and the applicable training and qualification regulations in part 125.<sup>91</sup> These records include initial and recurrent pilot testing requirements and instrument proficiency checks. In accordance with § 125.291(a), each PIC must pass a written or oral test on specific knowledge of the aircraft and operation. Additionally, a PIC must pass an instrument proficiency check in accordance with § 125.291(a) and complete an approach procedure in accordance with § 125.291(b). Pursuant to § 125.283, second in command pilots also must demonstrate compliance with

<sup>90</sup> The FAA has issued 57 letters of deviation from § 119.23 and § 125.5 (the requirement to hold an operating certificate and Operation Specifications) to operators likely meeting the part 125 training requirements. These operators operate aircraft which are U.S.-registered civil airplanes with a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved. The number of operators holding a part 125 letter of deviation was retrieved for the FAA's Web Based Operations Safety System (WebOPSS) on May 30, 2018.

<sup>91</sup> In accordance with the regulatory requirements prescribed in § 61.51, *Pilot logbooks*, the FAA is proposing to require all part 125 operators to enter specific information into the database that displays compliance with recent flight experience regulations.

the recent instrument experience required in § 61.57. Check pilot comments designated in accordance with § 125.295 must also be included. The FAA proposes to require part 125 employers to report these records because they would provide information that is directly pertinent to the pilot's past performance, and would therefore be useful to a prospective air carrier employer. These records would also provide an established baseline of a pilot's career for air carriers to evaluate against a pilot's personal recordkeeping system in their pilot logbook to ensure consistency and to help employers detect intentional or inadvertent logbook inaccuracies.

### iii. Part 135 Air Carrier and Operator Training Records

As previously discussed, the PRD Act requires records maintained pursuant to § 135.63(a)(4) to be entered into the PRD, as well as other records the air carrier may be maintaining related to the training, qualifications, proficiency, or professional competence of the pilot, including check pilot comments maintained in accordance with § 135.337.<sup>92</sup> Some of the records maintained in accordance with § 135.63(a)(4) are basic identifying information, such as a pilot's name; FAA pilot certificate type, ratings held, and number; and duties. Other records kept pursuant to § 135.63(a)(4) require training records specific to the pilot to be maintained, which include: (1) The date and result of each of the initial and recurrent competency tests and proficiency and route checks required by part 135 and the type of aircraft flown during that test or check; and (2) the date and completion of the initial phase and each recurrent phase of the training required by part 135. Additionally, § 135.63(a)(4) requires a certificate holder to maintain a record of the pilot's aeronautical experience, flight time, authorizations to act as a check pilot, and any action taken concerning the pilot's release from employment for physical or professional disqualification.

### iv. Part 91 Subpart K Fractional Ownership Training Program Records

Part 91 subpart K (91K) fractional ownerships would be required to report records to the PRD. In 91K operations, per § 91.1053, pilots either complete a training program approved by the FAA or complete training for the continued currency of a pilot certificate issued in accordance with part 61. The FAA also believes that many operators have

voluntarily established a pilot training or proficiency program for operational safety purposes. Therefore, in § 111.220(a)(1), the FAA is proposing to require 91K fractional ownerships to report certain records described below to the database, which are kept in accordance with § 91.1027(a)(3). In addition, under § 111.220(a)(2), 91K fractional ownerships would be required to report any other records kept documenting an individual's compliance with other FAA- or employer-required training, checking, testing, currency, proficiency, or other events related to pilot performance, including check pilot comments as applicable.

All 91K programs, per § 91.1073, must have an approved training program for their pilots. However, a 91K fractional ownership may seek approval for a pilot training program in accordance with §§ 91.1065 through 91.1107, or in accordance with part 135, subparts E, G, and H, or subparts N and O, or Y, of part 121.<sup>93</sup> For any training that is conducted in accordance with the various methods of approval to qualify a pilot to conduct operations under subpart K of part 91, the recordkeeping requirements in § 91.1027(a)(3) still apply. Under § 91.1027(a)(3), each program manager is required to maintain an individual record of each pilot used in subpart K of part 91. Therefore, the FAA is proposing to require each 91K program manager to enter the pilot records kept pursuant to § 91.1027(a)(3). Examples of specific values for PRD entry are provided in the Draft AC.

While § 111.220(a) would require the reporting of all records kept in accordance with § 91.1027(a)(3) concerning compliance with training and checking events, records concerning flight time, medical certification and the pilot's assigned duties would be excepted in accordance with § 111.220(b).

The pilot training and currency requirements that would be required to be recorded for operations conducted in accordance with part 91 are prescribed in part 61 and incorporated by reference in part 91. For example, part 61 prescribes that each pilot certificated under the part is required to complete a flight review, recent flight experience, and a proficiency check, if operating under instrument flight rules, at regularly scheduled intervals.<sup>94</sup> The

<sup>93</sup> A training program approved in this manner for a fractional ownership would enter a different value for the approved training program subpart that differs slightly from that of a traditional 91K training program.

<sup>94</sup> See § 61.56 for exceptions that apply under certain circumstances for pilot currency.

purpose of these events is similar to that of the required training and checking events of other rule parts. Therefore, as proposed in § 111.220(a)(2), 91K operators would be required to report to the PRD records that document compliance with part 61 requirements for flight review, recent flight experience, and proficiency checks. The 91K operator would also be required to report other relevant records concerning training, qualification, proficiency or professional competence that may be kept by the employer, as required by the PRD Act. The FAA believes these records fall within the PRD mandate because they include data that is directly pertinent to the pilot's past performance and are therefore relevant to an air carrier's hiring decision. These records would also provide an established baseline of a pilot's career for air carriers to evaluate against a pilot's personal recordkeeping system in his or her pilot logbook. Examples of records are detailed in the Draft AC.

The FAA notes that 91K fractional ownerships would only be required to report check pilot comments in accordance with proposed § 111.220(a) if the 91K fractional ownership uses a training program approved under parts 121 or 135. When 91K fractional owners do not have an approved training program, they are not generally required to keep a record of pilot check rides, and would not be by this rule.

The FAA is also proposing to amend § 91.1051: *Pilot safety background check*, for consistency with the requirements proposed in new part 111; the proposed amendment replaces the current background check requirements with a reference to the new part.

### v. Pilot Training Records Documented by Commercial Air Tour Operators, Corporate Flight Departments, and Entities Conducting Public Aircraft Operations

Commercial air tour operators authorized by § 91.147, corporate flight departments operating a fleet (two or more) of type-rated airplanes, and governmental entities conducting public aircraft operations would be required to report records to the PRD. The statutory mandate at 49 U.S.C. 44703(i)(2)(B)(ii) extends to records required to be kept pursuant to an FAA regulation and other records employers keep voluntarily. Therefore, the FAA is proposing in § 111.220 to require these employers to report these records to the PRD.

The FAA recognizes that commercial air tour operators, corporate flight departments, and entities conducting public aircraft operations are not

<sup>92</sup> See § 44703(i)(2)(B)(ii)(I).

required to maintain an approved pilot training program or maintain records concerning employer-mandated pilot training and qualification events. However, all pilots must record certain events in their pilot logbooks to maintain their currency<sup>95</sup> with an FAA pilot certificate pursuant to § 61.57. While these events are required to be recorded by pilots in their logbooks, the FAA expects that operators employing pilots maintain similar pilot training and currency records demonstrating compliance with part 61 to document that their pilots are trained, qualified and current for operational safety and regulatory compliance purposes. These records, which document compliance with part 61 requirements for flight review, recent flight experience, and proficiency checks, would be reported to the PRD under proposed § 111.220 and methods of compliance are explained further in the draft AC.

## 2. Drug and Alcohol Testing Records

The PRD Act requires records maintained pursuant to §§ 121.111(a) and 121.219(a) to be included in the database.<sup>96</sup> The FAA believes Congress intended to refer to the same drug and alcohol testing regulatory provisions in the PRD Act as referenced in PRIA, which can be found under in part 120, at §§ 120.111 and 120.219(a), respectively.<sup>97</sup> These are the same records required to be retained by 49 CFR 40.333(a).

Currently under PRIA, an air carrier must furnish drug and alcohol testing records maintained in accordance with Appendices I and J to part 121.<sup>98</sup> These regulations require certain records pertaining to employees serving in safety-sensitive positions to be maintained by a part 119 certificate holder conducting operations under parts 121 or 135, as well as persons authorized to conduct air tour operations pursuant to § 91.147.<sup>99</sup> The records required to be maintained

demonstrate an employer's compliance with pre-employment, reasonable cause/suspicion, random, post-accident, return-to-duty, follow-up testing for use of prohibited drugs or misuse of alcohol, and documentation of other violations within the Department of Transportation modal administration drug and alcohol testing regulations.

The FAA is proposing in subpart C of part 111 to require employers to report specific records maintained in accordance with §§ 120.111 and 120.219(a) to the database, subject to certain limitations, as well as additional drug and alcohol testing records kept in accordance with 49 CFR 40.333(a), which the FAA believes are necessary to ensure a comprehensive history for each individual subject to drug and alcohol testing is available in the PRD.

The FAA is proposing to require the reporting to the database of verified positive drug test results or refusals to submit to testing in accordance with § 120.111 and violations of the alcohol misuse prohibitions and refusals to submit to testing in accordance with § 120.219(a)(2)(i)(B). As proposed in subpart C of part 111, all employers required to comply with part 120 would report the date of the verified or confirmed test or when the refusal occurred, the type of test administered or refused, and the result of the test (*e.g.*, whether it was a verified positive drug test result, alcohol result with a breath alcohol concentration of 0.04 or greater, or refusal to submit to testing).

The majority of the requirements in §§ 120.111 and 120.219(a) require records about a company's training procedures for personal testing and handling of drug and alcohol tests, rather than individual pilot results to be retained by an employer. The FAA is only proposing to require the reporting to PRD of those records that relate specifically to individual pilot testing and occurrences of prohibited drug use and alcohol misuse, because other records kept in accordance with these provisions are not related to individual pilot performance.

Additionally, consistent with 49 U.S.C. 44703(i)(2)(B)(ii), the FAA is proposing in § 111.215 to require certain other drug and alcohol testing records related to pilot performance maintained by employers in accordance with 49 CFR 40.333(a)(1)(iii) and (v) to be reported to the database. As proposed, employers would be required to report records concerning any refusal to submit to drug or alcohol testing, which must be retained by the employer in accordance with § 40.333(a)(1)(iii), records concerning all required return-to-duty drug or alcohol testing, and

follow-up drug or alcohol testing, which must be retained by employers in accordance with § 40.333(a)(1)(v). Employers would not report follow-up testing schedules to the PRD. It is appropriate to include this additional information in the PRD because the limited records kept in accordance with §§ 120.111 and 120.219(a) would not provide an individual's comprehensive drug and alcohol testing history with a single employer.<sup>100</sup> In addition, the records kept in accordance with § 40.333(a)(1) relate to the professional competence of a pilot.<sup>101</sup> The FAA interprets the PRD Act to require employers to report information to provide prospective employers with a pilot's comprehensive drug and alcohol testing history on which to base a hiring decision.

The FAA is proposing to include follow-up and return-to-duty testing information in the PRD, including verified negative drug test results and alcohol test results with a concentration of less than 0.02. These results demonstrate a pilot's progress in an employer's rehabilitation program, which is required by FAA regulations. Whether a pilot has or has not completed a rehabilitation program is necessary for an air carrier's hiring decision. The FAA is not proposing to require other negative test results to be reported to the PRD.

Under existing regulation, if the pilot has a second occurrence of a verified positive drug test result or one occurrence of drug use while the pilot is on duty, he or she is permanently disqualified from performing pilot duties.<sup>102</sup> Additionally, an individual performing a safety-sensitive function is permanently disqualified from performing pilot duties after two confirmed alcohol violations or one occurrence of alcohol use during the performance of a safety-sensitive function. Since these records would demonstrate an individual's professional competency to prospective employers, the FAA believes it is appropriate to require the reporting of these records to PRD. According to the

<sup>95</sup> Currency requirements include flight maneuvers which must be performed by a pilot to maintain the privileges of their certificate.

<sup>96</sup> The references to these particular provisions in part 121 appear to be the result of a typographical error, as those sections of the regulations, which were in effect when Public Law 111-216 was enacted, do not relate to recordkeeping.

<sup>97</sup> The recordkeeping requirements set forth in §§ 120.111(a) and 120.219(a) remain unchanged substantively from the time Congress enacted PRIA.

<sup>98</sup> In 2009, the drug and alcohol provisions referenced in PRIA were recodified without substantive change, and these requirements may now be found in 14 CFR part 120.

<sup>99</sup> These persons subject to the requirements of part 120 are collectively referred to as "employers" throughout this section. The remainder of the PRD-user community would not be impacted by this aspect of the proposal.

<sup>100</sup> For a complete and accurate representation of an individual's drug and alcohol testing history to be conveyed in the database to a hiring air carrier, the FAA will also include applicable records to the database as previously discussed.

<sup>101</sup> See 49 U.S.C. 44703(i)(2)(B)(ii)(I).

<sup>102</sup> As contained under 14 CFR part 120, a person employed in a safety-sensitive position who has two verified positive drug test results or two confirmed alcohol violations or engaged in prohibited drug use or alcohol misuse while on-duty after September 19, 1994 is permanently disqualified from performing the safety-sensitive functions the employee performed prior to the second drug or alcohol test or on-duty violation.



drug and alcohol testing regulations in part 120, when a pilot has violated the drug and alcohol testing regulatory prohibitions related to on-duty, pre-duty or use following an accident, the employer is required to remove a pilot from the performance of safety-sensitive functions, and the employer must not return the pilot until the pilot has completed the return-to duty process. These violations, which could professionally disqualify a pilot, are provided to the FAA through an employer's current requirement to report to the Federal Air Surgeon. These reports must include documentation to support the employer's determination that the pilot has violated the prohibitions.

Once the pilot has completed the return-to-duty process, the drug and alcohol testing regulations do not prescribe any other employer actions. However, the employer may choose to take other employment related/disciplinary actions, including terminating the pilot. Because these violations do not necessarily involve a positive drug or alcohol test result, the FAA is proposing to require an employer to provide the details of the action taken related to a pilot's violation of the on-duty, pre-duty, and use following an accident drug and alcohol testing prohibitions into the pilot's disciplinary action record, as opposed to as a part of the drug and alcohol testing record. Under the disciplinary action record, the employer would enter a detailed summary of the violation in the text field that is limited to 256 characters.

The proposed requirements would provide a future air carrier with the most meaningful and useful information about an individual's drug and alcohol testing history. This proposal would not impact the five-year record retention requirements for drug and alcohol records or the requirement to provide records of notification to the Federal Air Surgeon of refusals to submit to drug and alcohol testing, verified positive drug test results, and violations of the alcohol misuse prohibitions within two working days in accordance with 14 CFR part 120 or 49 CFR part 40 for employers.

Employers could remove drug and alcohol records from their files after five years, as appropriate. However, any information from those records required by PRD would remain in the PRD for the life of the pilot. The agency notes that to the extent this information remains in PRD, the availability and use of that information is limited by the PRD Act and the proposed rule in § 111.105 for purposes of employers making a hiring

decision. The FAA recognizes that the record retention period in the PRD Act is different from the record retention period applicable to the FAA's drug and alcohol testing program. The FAA welcomes comment on the proposal to retain drug and alcohol records for the life of the pilot, recognizing the constraints of the PRD Act.

### 3. Disciplinary Action Records

Under the PRD Act, relevant disciplinary action records to be reported for inclusion in the PRD are those records of disciplinary actions, maintained by an employer, that pertain to pilot performance and have not been overturned.<sup>103</sup> The FAA is proposing to define "final disciplinary action record" for purposes of proposed part 111 as "a record of any corrective action taken by an employer in response to an event pertaining to pilot performance, which is not subject to any pending formal or informal dispute initiated by the pilot." Each final disciplinary action record meeting the proposed definition would be required to be reported promptly to the database in accordance with § 111.225 after a 30-day waiting period.

As previously discussed, records pertaining to pilot performance are not limited to records solely regarding the pilot's demonstration of proficient flying skills and compliance with FAA regulatory requirements. A pilot's duty to maintain safe aircraft operations also includes adherence to certain established company procedures during aircraft operations. As proposed, the disciplinary action records pertaining to pilot performance would not be limited to the events that occurred while the pilot is seated at the controls during flight; they would extend to records of events that occurred in connection with the pilot's completion of duties and responsibilities on the ground, during the pre-flight or post-flight operations of an aircraft that is intended for operation (for example, events occurring during exterior pre-flight or post-flight inspections, visual icing inspections, or behavior related to on-duty drug or alcohol use, pre-duty alcohol use and alcohol use following an accident).

Records of disciplinary action resulting from events specifically related to a pilot's performance of assigned duties and responsibilities to maintain safe flight operations and adhere to standard operating procedures could reflect deficiencies relevant to future employers' hiring decisions. The NTSB has identified deficiencies in operators' adherence to standard operating procedures as contributing

causal factors in aviation accidents.<sup>104</sup> As indicated in the NTSB report on the February 9, 2009 Colgan accident (NTSB/AAR-10/01), the investigation revealed that noncompliance with standard operating procedures was a contributing factor to the accident. Therefore, the proposal for reporting disciplinary records extends to records kept concerning compliance with both FAA-established requirements, as well as certain standards set by the employer.

The PRD Act requires disciplinary action records that are not subsequently overturned to be included in the PRD. Accordingly, the FAA proposes the same requirement in § 111.225.

Congress expanded PRIA with its enactment of the PRD Act and uses much of the same language to describe requirements related pilot records. Accordingly, the FAA interprets language in the PRD Act to have the same meaning as language in PRIA when the language is identical or substantively similar. As described below, the FAA interprets language in the PRD Act related to disciplinary actions to have the same meaning as in PRIA.

For example, in a U.S. House of Representatives Report ("House Report") accompanying certain amendments to PRIA in 1997, Congress clarified the intended meaning of a disciplinary action that has been "subsequently overturned."<sup>105</sup> The House Report clarified that " 'subsequently overturned' means either discipline that has been rescinded as a result of a legitimate settlement agreement between the employer and the pilot or the pilot's representative or discipline that has been reversed by the employer or by a panel or an individual given authority to review employment disputes." Congress indicated "[a] legitimate settlement agreement could include instances where the parties agree that the action that was the subject of discipline did not occur or was not the pilot's fault. However, it should not include instances where the airline agrees to wipe the pilot's record clean in order to pass him or her onto another unsuspecting carrier." Therefore, "[i]n the Committee's view, in cases where the discipline is rescinded or reversed . . . the documents reflecting the charges underlying the initial decision to impose the discipline are not required to be maintained or disclosed." In light of the foregoing, the FAA

<sup>104</sup> See Safety Recommendation A-07-8, as a result of the accident involving Pinnacle Airlines flight 3701 in Jefferson City, Missouri, for a comparative example.

<sup>105</sup> See H.R. Rep. 105-372 (Oct. 31, 1997).

<sup>103</sup> See § 44703(i)(2)(B)(ii)(II).

continues to interpret the meaning of “disciplinary action that was subsequently overturned” in accordance with this legislative direction.

The FAA recognizes that a disciplinary action may be overturned through a number of formal and informal processes, such as an internal company dispute or legal adjudication. Therefore, the FAA is proposing in § 111.225 to require an employer to report disciplinary action records pertaining to an individual’s performance as a pilot within 30 days after the action has been documented as final in the pilot’s employment record.

In the event of a dispute, the record must be entered in the PRD within 30 days after the dispute is considered resolved or closed by the employer. All carriers would have to have a documented dispute process and conduct a reasonable investigation and publish these policies and procedures, as proposed in § 111.260. However, if a dispute develops after the disciplinary action is entered into the PRD and action is subsequently overturned by the employer, then the air carrier or other operator would be required to remove or correct the data entered into the PRD within 10 days of the disciplinary action being overturned as proposed in § 111.250(b)(5)(ii).

Additionally, as proposed, disciplinary records arising out of actions or events unrelated to the pilot’s completion of core duties and responsibilities to ensure the safe operation of the aircraft would not be reported to the FAA for inclusion in the database. Examples of disciplinary records that should not be reported to the database include those related to an individual’s noncompliance with behavior or morality-based company policies such as attendance policy; adhering to appearance or grooming standards; or failure to conduct oneself appropriately with the public, passengers, or vendors. Specifically, a disciplinary action related to insubordination and where there is no indication the pilot’s actions impacted the safe operation of an aircraft has previously been found by the agency to be unrelated to pilot performance.<sup>106</sup> The FAA would not expect such a disciplinary record to be reported to the database.

The FAA would also not require an employer to report an oral warning to the database. The FAA determined it was inappropriate to require the reporting of data concerning oral warnings because an oral warning may

not be documented in a suitable manner for verification purposes.

In contrast, the FAA expects that a disciplinary action record pertaining to an incorrect aircraft maintenance log entry would be reported to the database to the extent it “relates to pilot performance because the record indicates the pilot failed to comply with post-flight procedures related to the condition of the aircraft for continued flight.”<sup>107</sup>

In keeping with the other types of records that would be required to be reported for inclusion in the PRD, the FAA proposes to require the reporting of disciplinary action records in a standardized format. The method of compliance for this format is detailed in the PRD Draft AC. The employer would be required to report disciplinary action records, including: Identifying pilot information (e.g., the pilot’s last name and FAA pilot certificate number); the type of disciplinary action taken by the employer in response to the event (e.g., written warning, suspension, or termination); and a brief summary of the event resulting in discipline. The data field for the summary of event would be limited to no more than 256 characters entered as free text. The summary field would be used by the employer to briefly summarize the underlying event that resulted in discipline and provide additional relevant information about the disciplinary action taken, such as the length of a suspension, if applicable. Additional information must consist only of those details that can be confirmed from the employer’s personnel records, with no extraneous information that cannot be independently verified in written record included.

Unlike the current process under PRIA, the proposed requirements ensure the standardized collection of and access to safety data regarding disciplinary actions by clearly defining the type of event, the type of disciplinary action, timeframes for data entry, and specific data that must be reported to the PRD for evaluation by a future employer. The proposed requirements for reporting certain disciplinary records to the PRD would ensure that air carriers and other employers have access to relevant records that would help the employer evaluate the ability of a pilot-applicant to engage in safe aircraft operations.

The FAA is obligated to ensure that only information that is relevant to a hiring employer’s review of a potential employee is housed in the system. Limiting the data elements available to

hiring employers is critical because the PRD requires the FAA to ensure pilot privacy is protected. This mandate is specific to PRD. Standardized reporting of pilot disciplinary actions is beneficial for both ease of review for the air carrier and to ensure each pilot is treated fairly. Additionally, allowing uploading disciplinary reports in lieu of standardized data entry introduces record-quality concerns, such as readability of document scans. Even in cases in which the visual quality of the records uploaded is insufficient, uploads of records would still be accepted into the PRD. Operators would only discover the content of disciplinary records once a hiring air carrier or operator later requests those records. This could be months or years after the record was uploaded and the original record may no longer be available. The Administrator cannot effectively review for quality control every record that an operator may upload into the PRD. As a result, the FAA proposes requiring standardized formats for such records.<sup>108</sup> By using such formats, the PRD would ensure that specific data points are validated at the time of record upload. The PRD functionality would not include an ability to cross-reference or cross-check records against one another, however. To the extent that a pilot identifies an inconsistency or error, it would be incumbent on him or her to flag the record as in dispute and contact the record originator for resolution.

As discussed earlier in this preamble, the FAA is soliciting comment on whether a PRD query would function similarly to current PRIA queries as a “validating” mechanism toward the end of the hiring process. The FAA recognizes that there may be situations where a hiring operator is unable to gain access to the underlying content of disciplinary record summarized in the PRD because the record no longer exists or the party responsible for originally entering the record does not share it with the hiring operator. The FAA considered, but is not proposing, allowing for a lengthier summary of the event in situations where the pilot and the operator mutually agree upon the full language summarizing the incident in PRD. The FAA specifically solicits comment on its proposal to limit the text summarizing a pilot event in the

<sup>108</sup> Upon implementation of the PRD (following a final rule), the FAA would encourage pilots to review their PRD records periodically. Although the FAA may (at some point in the future) implement an automatic notification feature when new records are added, during the initial implementation phases, this functionality will likely not be available.

<sup>106</sup> See Lorenzon interpretation.

<sup>107</sup> *Id.*

PRD to 256 characters and whether this limitation or another alternative would most optimally balance the need for concise, fact-based summaries with potential limitations in being able to access the underlying record in certain circumstances. When providing comment on this, commenters are encouraged to review the example PRD record summaries outlined in “Examples of Termination Records Entered into the PRD”.

#### 4. Proposal for Reporting Records Concerning Separation From Employment

Among the records that must be kept by operators pursuant to §§ 121.683, 125.401, and 135.63(a)(4), and thus reported to the PRD in accordance with the PRD Act, are records “concerning the release from employment or physical or professional disqualification of any flightcrew member . . .”<sup>109</sup> In addition, the PRD Act requires air carriers and operators that employ pilots to report any other records pertaining to pilot performance that are maintained by the employer concerning “any release from employment or resignation, termination or disqualification with respect to employment.”<sup>110</sup>

##### a. Separation Information To Enter Into the Database

As proposed in § 111.230, air carriers and operators would be required to access the PRD and enter limited, specific information pertaining to a pilot’s final separation of employment. In particular, the data required to be entered would include the following fields: (1) The final date of employment; (2) a multiple-option category field to indicate the nature of the separation of employment that would require the employer to select the type of separation in a drop-down menu such as resignation, termination, physical (medical) disqualification, professional disqualification, furlough, extended leave, or retirement; and (3) for certain types of separations, a brief summary of the action resulting in the separation with the employer, as discussed further in this section. The record concerning separation of employment would be entered into the database by all employers in a standardized electronic format, provided in the draft AC 111.

##### b. Final Date of Employment

As proposed in § 111.230, a record regarding a pilot’s separation from employment would only be required to

be reported by employers once the separation action is considered final. Individual pilots and others have contacted the FAA with questions regarding what separation from employment records must be furnished by an employer in response to a PRIA request. In one hypothetical presented to the agency for consideration, a pilot asked whether a termination record that is overturned by an employer and replaced by a resignation record in accordance with a settlement agreement must be reported in response to an air carrier’s PRIA request, or whether the final resignation record solely must be reported.

The FAA proposes a last-in-time requirement for separation from employment records consistent with the agency’s proposal for disciplinary action records. As proposed, only the most chronologically recent disposition of an individual’s separation from employment would be reported to the PRD for each period of employment with a particular operator. If a termination is overturned, as in the preceding hypothetical, the termination record must not be reported to the PRD. Moreover, if any informal or formal dispute is pending between the pilot and the employer regarding the circumstances of the pilot’s separation from employment, the record would not be considered final and would not be reported to the PRD. If any separation has been overturned as a result of a settlement agreement, an official decision by a panel or individual with the authority to review employment disputes or a court of law, or mutual agreement of the employer and pilot, the employer would be prohibited from entering that record.

##### c. Reinstatement of Employment

In some situations, such as the hypothetical previously discussed, after a termination is finalized, a pilot may successfully appeal his or her termination to the air carrier and be reinstated. In these situations, an air carrier would be required to submit a correction request to remove the separation record from the database within 30 days of reinstatement.

##### d. Types of Separation

All covered employers subject to the proposed rule would be required to report each pilot’s separation from employment that is related to pilot performance for inclusion in the PRD, including certain minimum details. The FAA believes this information is necessary in order to provide potential hiring air carriers with information relevant to a hiring decision.

##### i. Separation From Employment That Was Not Due to Pilot Performance and Was Initiated by an Air Carrier or Operator

The FAA acknowledges that many situations could exist that result in a pilot being released from employment unrelated to his or her performance as a pilot. Typical examples of a pilot being released from employment are a pilot being furloughed or being placed on extended leave. In such cases, the air carrier or operator would be required to enter the individual’s final date of employment and the reason for being released from employment, but no further information would be required.

##### ii. Air Carrier/Operator-Initiated Separation Related to Pilot Performance

If a pilot were terminated due to unsatisfactory performance as a pilot or as a result of disciplinary action related to pilot performance, the air carrier or operator that terminated the individual would be required to input the final date of employment of the pilot, indicate that the individual was terminated, and provide a brief summary of action resulting in termination. The FAA understands that most disciplinary actions do not result in termination of employment; however, as previously indicated, some actions or events involving a pilot’s performance could lead the employer to take disciplinary action in the form of termination. In such a case, the FAA notes that the employer would be required to complete PRD entries for both the record concerning the disciplinary action as well as the record concerning termination, provided the underlying action or event was related to the individual’s performance, and the decision was not subsequently overturned by the employer. Both decisions would have to be final determinations before the information is reported to PRD. The FAA does not believe that the entry of both records into the PRD is overly burdensome because the record concerning release from employment would be limited to the data elements previously described, and requiring both sets of information is consistent with the requirements of the PRD Act. Moreover, if the termination were overturned but the disciplinary action was not, that is important information for an air carrier to consider in a future hiring decision. The FAA notes that these entries would not be connected to one another in the database—each record would appear independently.

Additionally, a pilot may be required to separate from an employer as a result

<sup>109</sup> See 14 CFR, 121.683(a)(2), 125.401(a)(2), and 135.63(a)(4)(ix).

<sup>110</sup> See § 44703(i)(2)(B)(ii)(III).

of disqualification from employment as a pilot. The reasons could stem from no longer holding the appropriate pilot or medical certificate,<sup>111</sup> not meeting the requisite eligibility terms of employment as a pilot (e.g., maintaining a valid passport or other terms listed in a company's general operations manual), or violating the drug- and alcohol-testing requirements. These examples of disqualification are sometimes unrelated to a pilot's performance; however, they greatly affect the individual's legal obligations related to the operation of an aircraft for an air carrier or operator. The air carrier or operator would be required to enter the final date of employment with the employer and indicate that the pilot was disqualified through the appropriate category selection as listed previously.

The FAA is proposing to require a brief summary of the action to be reported to the PRD under certain circumstances of separation. If the air carrier or operator initiated the separation with the pilot due to termination or professional disqualification, a brief summary of the final action would be required, but the selection of any other separation category field (*i.e.*, resignation, physical (medical) disqualification, furlough, extended leave, or retirement) would not permit an explanation to be entered into the PRD. The FAA believes this summary would provide a benefit to the prospective employers of the individual pilot, as well as a direct benefit to the individual pilot, because a limited amount of objective details surrounding the individual's final separation would be available to prospective employers. The following examples demonstrate the type of entries the FAA would (or would not) expect an air carrier or operator to input when reporting a summary of an event leading to a pilot's termination or for professional disqualification:

#### Examples of Termination Records Entered Into the PRD

- Joe Smith was terminated on May 29, 2015, due to failed training events as an SIC. The failures occurred on April 28, 2015, May 1, 2015, and May 28, 2015.
- Joe Smith was terminated on May 29, 2015, due to an accident involving a company aircraft.

<sup>111</sup> If an individual were no longer able to hold a first-class medical certificate and, as a result, could no longer act as a PIC but was able to hold a second-class medical certificate and act as an SIC, an air carrier or operator would be required to input into the PRD that the individual was physically disqualified as a PIC. A final date of employment would not be entered into the PRD in this situation since the pilot continues to be employed as an SIC.

#### Examples of Professional Disqualification Records Entered Into the PRD

- Joe Smith was disqualified as a PIC on May 28, 2015, due to failure of a recurrent proficiency check. Joe is scheduled for SIC training for requalification.
- Joe Smith was disqualified as an SIC on May 29, 2015, due to a failed line check. Joe is not able to operate as an SIC until completing requalification training.
- Joe Smith was disqualified as a PIC and SIC on May 29, 2015, due to poor performance during upgrade training. Joe may requalify as an SIC after the completion of SIC training.
- Joe Smith was disqualified as a PIC on May 29, 2015, due to incomplete required differences training. Joe will requalify once the training has been completed successfully.
- Joe was disqualified as a pilot on May 29, 2015, due to violating the pre-duty alcohol use prohibition. Joe may return to perform duties upon completion of the substance abuse professional's report and a negative return-to-duty test.

#### Example of Termination Records Not Accepted Into the PRD <sup>112</sup>

- Joe Smith was terminated on May 29, 2015, due to noncompliance with the company's dress-code policy. In the company's manual, the company requires the pilot to be in uniform at all times while on duty. Joe was given a written warning on May 12, 2014, and final warning on January 2, 2015, before his termination.
- Joe Smith was terminated on May 29, 2015, due to noncompliance with the company's attendance policy. Joe was tardy for check-in at the beginning of a trip on October 12, 2012, late for check-in during a scheduled overnight on January 5, 2013, and absent for a trip on December 25, 2014.
- Joe Smith was terminated on May 29, 2015, due to insubordination. The pilot was instructed by crew scheduling to operate a flight from OKC-ORD on January 15, 2015; however, Joe declined to operate the flight.

#### iii. Pilot-Initiated Separation Unrelated to Pilot Performance

If a pilot employee resigns his or her position with an air carrier or other operator (voluntarily or at the direction of the employer), the air carrier or

operator would be required to enter the final date of employment with the employer and indicate that the pilot resigned. Because resignations are pilot-initiated, they do not generate employer records that are otherwise covered under the PRD Act or this proposed rule. Accordingly, employers would not be required to enter information other than the date of resignation into the database.

The FAA recognizes that generally, in the employment context, employers and employees reach an agreement under which the employee resigns in lieu of termination. For the purposes of this proposal, the FAA does not believe that it will affect the purpose and integrity of the PRD. If a resignation in lieu of termination occurs for safety or performance related reasons, there would be other information submitted to PRD documenting those issues. If the resignation is for other reasons unrelated to the pilot's qualifications, that information would be outside the scope of reportable information. Lastly, if a pilot resigned subsequent to a disciplinary action related to his or her performance as a pilot, that disciplinary action would remain reportable the PRD irrespective of the resignation.

#### 1. State Driving Records and the National Driver Register

Section 44703(i)(2)(C) requires the PRD to contain "information concerning the motor vehicle driving record of the individual." This information must be obtained "[i]n accordance with § 30305(b)(8) of [title 49 U.S.C.] from the chief driver licensing official of a [s]tate," as provided in the PRD Act. Moreover, § 44703(i)(4)(B)(i) requires this information to be reported by "air carriers and other persons . . . to the Administrator promptly" for inclusion in the database.

Currently under PRIA, a prospective air carrier employer or authorized agent must request and receive relevant "information concerning the motor vehicle driving record of [an] individual" using the National Driver Register (NDR) "pointer system," before allowing the individual to begin service as a pilot. The NDR, which is maintained by the National Highway Traffic Safety Administration (NHTSA), is a system for identifying whether an individual has a record of certain driving offenses in "participating" States.<sup>113</sup>

<sup>112</sup> The separation-of-employment date would be documented in the PRD and include a statement that the individual was terminated from employment for other than pilot-performance issues, as defined by PRD.

<sup>113</sup> A "participating State" is "a State that has notified the Secretary under [49 U.S.C. 30303] of its participation in the National Driver Register." Currently, all 50 States and the District of Columbia participate in the NDR.

In current practice, consistent with PRIA and AC 120–68, the air carrier obtains the pilot candidate’s consent prior to searching the NDR for that candidate’s driving records. Next, the air carrier submits a request to the State that has issued the individual pilot’s driver’s license to perform an inquiry in the NDR. The NDR database performs a query on the individual to match any of the following information: State of record, full legal names and/or alias names, date of birth, driver’s license number, social security number (State law permitting), height, weight, eye color, and gender.

If no matches are found, that means that there are no records on driving offenses in the NDR on that particular person, a file indicating that no “hits” were found is sent to the air carrier from the NDR, and the process is complete. However, if a match is found, the NDR then returns a search result to the air carrier, with information pointing to the State with relevant driving offense information for the individual subject of the search. The prospective employer then submits a request for those records to the State or States indicated in the search.

Accordingly, under PRIA, the air carrier’s obligation is complete when either: (1) The NDR search returns a negative result indicating no participating State has relevant records pertaining to the individual; or (2) in the event of a positive NDR search result, the air carrier has requested and received all relevant State driving records from each participating State listed in the NDR search result.

The PRD Act builds on the PRIA mandate by placing an affirmative obligation on the air carrier to evaluate the records an air carrier requests and receives. See 49 U.S.C. 44703(h)(1)(C) and 44703(i)(2)(C). As a result, the FAA’s proposal for implementing the PRD Act’s NDR requirements largely mirrors the existing PRIA framework for air carriers to obtain driving records using the NDR, as documented in AC 120–68. The notable difference is, in addition to directing hiring air carriers to request and receive records from the NDR, the proposed rule also directs the air carrier to evaluate the records, or lack thereof, during the hiring process. The proposed rule does not require or contemplate that the hiring operator would record its evaluation of a pilot’s driving record within the PRD.

The FAA acknowledges that the PRD Act could be interpreted to require driving records identified in an NDR search to be included in the PRD (see 49 U.S.C. 44703(i)(2)(C) and (i)(4)(B)(i)); however, the FAA does not believe that

would be a reasonable interpretation. Requiring air carriers to copy NDR “pointer information” and substantive State driving record information related to an individual pilot into the PRD creates an unreasonable conflict with existing State authority over driver recordkeeping and expunction of records, would conflict with 49 U.S.C. 30305, and creates an unnecessary duplication of records. The FAA does not interpret the PRD Act to supersede these other statutory provisions. Reading the requirements of these authorities together, the FAA does not interpret the PRD Act to create new reporting or record keeping requirements that would duplicate existing NDR and State processes and authorities.

To facilitate compliance with the statutory requirement that air carriers and participating operators review any pointer information, this proposed rule would require employers retain a record of the completion of the NDR search for potential audit by an FAA inspector. Employers would verify they completed the search by checking a box which will be contained in the PRD.

#### *E. Exclusion of Voluntary Aviation Safety Program Records*

The FAA proposes in § 111.245 to prohibit entry into the PRD of any record containing information regarding an event (e.g., training or evaluation) imposed by an air carrier or other person, above and beyond usual FAA-required training and proficiency requirements, as a corrective action related to the subject of a protected voluntary safety report. The FAA has created several voluntary safety programs to encourage the disclosure of safety events or incidents that occur within the aviation industry, which might otherwise remain unreported due to an individual’s fear of disciplinary action or the potential for FAA enforcement action. The goal of these programs is to identify and correct potential safety hazards. Among these programs is the Aviation Safety Action Program (ASAP), established in 1997, which encourages voluntary reporting by preventing the FAA and employers from using the voluntary reports as a basis to take legal enforcement action and disciplinary action, respectively.<sup>114</sup> Further, the ASAP report is protected from disclosure to the public, with certain defined exceptions.<sup>115</sup> The

<sup>114</sup> More information about ASAP can be found in AC 120–66.

<sup>115</sup> Voluntarily provided information can be disclosed if “withholding it would not be consistent with the FAA’s safety and security responsibilities.” 14 CFR 193.9. One example of

information contained within voluntary safety programs is protected from disclosure by 49 U.S.C. 40123 and the agency’s implementing regulations at 14 CFR part 193. The PRD ARC expressed concern about the treatment of ASAP and other voluntary safety reporting records in the context of PRD and recommended that these records be excluded from the PRD. The ARC stated that these programs have been very effective in enhancing aviation safety, and that the ability of employers, unions, and the FAA to discuss de-identified information in a non-punitive atmosphere was key to the success of ASAP and other programs like it. To include such information in the PRD would have a chilling effect on these programs, and therefore harm their safety effectiveness and compromise the FAA mission.

Although events reported through ASAP might “pertain [ ] to the individual’s performance as a pilot” as well as the individual’s “professional competence” and any resulting corrective action assigned could include training, the FAA agrees with the ARC that it is appropriate to exclude ASAP reports from the PRD. The FAA does not interpret the PRD Act to supersede the existing protection given to voluntarily provided ASAP records under § 40123 and 14 CFR part 193. To do so would have a chilling effect on these programs, harm their safety effectiveness, and compromise the FAA’s mission. Nothing in the PRD Act points to this intended outcome. Therefore, the FAA is not proposing to include any voluntarily submitted report or any information related to the underlying event reported through ASAP or other approved voluntary safety reporting program otherwise protected by a part 193 designation, which would potentially reveal the source or substance of the voluntarily submitted report.

#### *F. Good Faith Exception*

The PRD Act provides an exception that permits air carriers or operators to hire pilots without obtaining the required records from the PRD if the carrier makes a good faith effort to access them.<sup>116</sup> This exception is limited the circumstances discussed

this is de-identified, summarized information used to explain the need for changes in policies and regulations. The FAA may also disclose information if, among other situations, it is needed “to correct a condition that compromises safety or security, if that condition continues uncorrected.” § 193.9(a)(2). Also, individual programs like ASAP can also have their own disclosure policies “consistent with the FAA’s safety and security responsibilities” that cover additional situations.

<sup>116</sup> Codified at 49 U.S.C. 44703(i)(12).

below. The FAA believes that many air carriers and operators would need to utilize this exception to hire individuals as pilots since more than 750 companies, including commercial carriers, from 2010 through 2015 have ceased operations and no longer hold an FAA certificate.<sup>117</sup> Additionally, the DOT OIG estimates an additional 550 commercial carriers will cease operations prior to the implementation of the PRD. In an effort to ensure pilots that were previously employed by air carriers and operators that have ceased operations are not disqualified for employment opportunities as a pilot, the FAA is proposing to implement the “good faith exception” in § 111.115.

The good faith exception would have limitations to prevent its misuse. If an individual was employed as a pilot by an air carrier after August 1, 2005, all of the pilot’s records would have to be included in the PRD if the air carrier were still in operation at the time of PRD implementation. Additionally, if an individual was employed by a part 125 or 135 operator as a pilot after August 1, 2010, all of the pilot’s records would have to be included in the PRD if the operator were still in operation at the time of PRD implementation. However, if the air carrier or operator was not in business at the time of PRD implementation, the individual’s records related to performance as a pilot may not be able to be included in the PRD. In these circumstances, the good faith exception would apply. However, the records not reported to the PRD on an individual’s performance as a pilot by a defunct air carrier or operator would not need to be considered for hiring purposes and would be considered to satisfy the “good faith exception.”

#### *G. Pilot Records Improvement Act (PRIA) Transition*

The PRD Act gives the FAA the discretion to determine an appropriate transition period from the PRIA to the PRD requirements. The FAA proposes to sunset the PRIA requirements two years and 90 days after the effective date of the final rule that follows this proposal. During that time, affected operators would be responsible for complying with both the PRD and the PRIA requirements. The FAA believes this is appropriate because, during the transition period, the PRD will contain some—but not all—historical records. Accordingly, not all pilots would have

a complete record in the database for prospective employers to search.

PRIA’s continuation would be a necessary component of the transition to an electronic database by allowing air carriers and other operators a period of time during which to transition their present and future records to an electronic system. The continuation of PRIA would also provide additional time to develop a mechanism by which to transfer historical records to the PRD. During this transition, air carriers and other operators would still be able to report, access, and evaluate the PRIA records necessary for employment of pilots.

The FAA determined that two years and 90 days would be an appropriate length of time in which to maintain PRIA after publishing a final PRD rule. This overlap in PRD and PRIA requirements is intended to provide time for air carriers or operators who may not yet be compliant with proposed PRD to resolve any remaining issues regarding completeness of PRD records and hiring carriers or operators to fulfill pilot applicant evaluation obligations. The FAA anticipates it will take time for air carriers and operators, particularly the larger companies who have thousands of records, to establish procedures and the technical ability to begin uploading records into the PRD. Not all air carriers might be able to comply with the requirements simultaneously. The proposed period of overlap provides time for air carriers to transfer their historical records while still beginning to comply with PRD for their present and future records. This will facilitate the gathering of pilot records from all sources while the transition is ongoing.

This proposed rule would allow up to 1 year from publication of the final rule for these companies to establish the policies and procedures and to begin uploading records into the PRD. After they begin uploading, it will take additional time to complete the process of compliance, based on the number records to be entered, the process selected, and the resources each company devotes to the task. Considering the wide range of air carriers and operators that would be required to upload records, this proposed rule provides an additional year to completely upload all historical and current records into the PRD once the process of inputting the records begins. During this uploading period, it will be impossible for a hiring aviation employer to know which records have been uploaded to the PRD and which are still only maintained by previous employers. It will be necessary,

therefore, for the hiring employers to review all FAA records maintained in the PRD as well as request records from previous employers using the PRIA process to ensure they have evaluated all pertinent records. The FAA welcomes comments on whether the period of overlap during the transition between PRD and PRIA should be shortened or extended. The FAA recognizes that there are inefficiencies associated with this overlap, and that air carriers and operators that are compliant ahead of schedule may wish to direct queries to the PRD rather than respond to paper-based PRIA inquiries. The FAA also welcomes comment on whether it would be helpful for the FAA to maintain a publicly available list of all air carriers and operators who are fully compliant with PRD ahead of schedule so that prospective employers can query the PRD directly. The FAA would consider providing reasonable incentives for early compliance, and invites comments on possible incentives for early compliance.

Additionally, during the transition to PRD, entities that conduct public aircraft operations, air tour operators who conduct operations under § 91.147, and trustees in bankruptcy would also be required to respond to PRIA requests from other air carriers and operators. These operators would be required to report records under the proposed PRD and are currently required to comply with PRIA to different extents, as discussed previously in this NPRM. For consistency with the PRD reporting requirements, the FAA has determined that these operators would also be required to report records in accordance with the existing PRIA reporting process, during the transition to PRD, once PRD is effective. Essentially, all carriers should be using the PRD for FAA records and should be receiving air carrier records via PRIA until the compliance period is complete.

#### **IV. Database Design and Security**

The PRD application would contain sensitive information whose loss, misuse, or unauthorized access could drastically affect the privacy of application users or affect the conduct of Federal government programs. With this threat in mind, the FAA will adhere to National Institute of Standards and Technology (NIST) Federal Information Security Management Act (FISMA) 800.53 Security and Privacy Controls for Federal Information Systems and Organizations to secure information contained in PRD.

The PRD application would categorize PRD users into different roles when they register for PRD access. The

<sup>117</sup> DOT OIG audit report (page 8) entitled “FAA Delays in Establishing a Pilot Records Database Limit Air Carriers’ Access to Background Information.”

functionality available to each user would be determined by this categorization. User access would be tightly controlled, with the majority of users (*i.e.*, pilot-users) only able to view data. Users representing air carriers and operators employing pilots that are required to report data into the PRD would be granted data entry permission, and PRD administrative users within the FAA would be granted permission to manage system-level issues, such as the pilot-consent expiration period. A small set of PRD users within the FAA would be granted sufficient privileges to update PRD-specific reference tables used to define and support PRD records. The FAA believes that the security constraints on the PRD would enable the database to operate securely.

*A. Management of Users*

The PRD Act directs the Administrator to “prescribe such regulations as may be necessary . . . to protect and secure . . . the personal privacy of any individual whose records are accessed” in the database and to protect and secure “the confidentiality of those records”.<sup>118</sup> Furthermore, the PRD Act requires that the FAA prescribe regulations “as may be necessary to preclude the further dissemination of records received . . . by the person who accessed the records”.<sup>119</sup>

The information expected to be stored in the PRD and its supporting systems would be maintained with the highest practicable degree of security by implementing protective features to provide a secure system to store personal and confidential records on the performance of an individual as a pilot. However, the FAA believes that database security features alone would not provide sufficient protection of pilot records due to the number of certificated pilots and others expected to utilize the database. Therefore, the FAA is proposing to control access to the PRD through the establishment of a process to manage user access to the database, as well as any activity within the PRD. The proposed process would ensure the highest practicable degree of protection of privacy and confidentiality of the information contained in the PRD, while facilitating permissible actions by approved users. This proposed process is consistent with the limits imposed in the PRD Act on electronic access to the PRD, as well as how PRD data may be used.<sup>120</sup>

All users of the PRD must have an FAA user account prior to accessing the

PRD. FAA user accounts are used to validate identity of the user and serves as a gate-keeper for several FAA systems, one of which is the PRD. All internal users (FAA employees and contractors) already hold FAA user accounts and no additional action is needed prior registering for a specific PRD user account. All external users must successfully create an FAA user account, if not already obtained, which includes an identity verification process. In the event an airman cannot successfully create an FAA user account, they will not be able to access the PRD directly. In these cases, an alternate process exists which allows an airman to sign a consent for to release his or her records to a potential aviation employer without the airman accessing the PRD.

After an individual who needs access to the PRD has obtained an FAA user account, they may register for the appropriate PRD specific user account. The PRD provides different account types dependent on the functions to be fulfilled by each user. Some PRD users will have more than one PRD user account type, referred to as user roles.

Pilots who will use the PRD to allow others to review their records would register for an airman role within the PRD. Those users will only be able to view their own record.

Collectively, the roles held by individuals who work directly for a particular air carrier or other operator are called authorized user roles. Authorized user roles include more specific roles supported by the PRD such as authorized responsible person role, authorized user manager role, and authorized consumer role. Individuals who will manage records, manage other user accounts, and be accountable for all actions taken within the PRD for a particular air carrier or other operator would register for an authorized responsible person role. The FAA Flight Standards person in the PRD Administrator Role must approve the responsible person. As part of the approval, the FAA would check the list of fiduciaries maintained by the FAA inspector for that air carrier to further verify the correct person is requesting to be the responsible person.

Individuals who will manage records for a particular aviation employer would register for an authorized consumer role. They would not have the same level of access as an authorized responsible person. Individuals who will manage other user accounts for a particular aviation employer would register for an authorized user manager role. These roles are also available in cases of third parties accessing the PRD on behalf of

a particular air carrier or other operator. Third party users are referred to as proxies and include proxy responsible persons, proxy authorized consumers, and proxy user managers.

The FAA expects that approximately 210,000 individuals would initially apply for access to the PRD, most of whom would be individual pilots seeking access to verify their own records. Table 5 depicts the users expected to initially apply for access to the PRD. However, air carriers and operators who would be required to report pilot data to the PRD would be required to apply to the FAA for access to the PRD within one year after the final rule’s publication to obtain user credentials, before the deadline to report this information. The individuals who seek access to the database on behalf of an air carrier or operator would be granted greater access privileges, as discussed later in this proposal, compared to individual pilots with limited access to their own records.

TABLE 5—USERS EXPECTED TO INITIALLY APPLY FOR ACCESS TO THE PRD

Part 121 Air Carriers .....	70
Part 125 Operators .....	71
Part 135 Air Carriers and Operators .....	2,011
91.147 Air tour Operators .....	1,111
Public Aircraft Operations .....	322
91K Fraction Ownerships .....	8
Corporate Flight Departments .....	1,413
Pilots .....	193,000
Authorized Users .....	10,000
Proxies .....	1,904
<b>Total .....</b>	<b>210,000</b>

Of the approximately 210,000 individuals expected (through the proposed requirements) to register for PRD access in accordance with the implementation of the PRD, the FAA expects that 5,006 requests would be received from air carriers and operators employing pilots that would be required to report data to the PRD.

All individuals registering for access to the database on behalf of an air carrier or other operator employing pilots whose registrations are approved would be issued a unique identifier representing their user account that would be verified using appropriate methods designed to provide the level of security necessary to protect the database from unauthorized use. The FAA anticipates air carriers or operators employing many pilots may seek FAA approval for the responsible person to delegate database access to other individuals (*e.g.*, individuals working in

<sup>118</sup> See § 44703(i)(11)(A).

<sup>119</sup> See § 44703(i)(11)(B).

<sup>120</sup> See § 44703(i)(9) and (13).

a human resource department) to input and access data in the PRD.<sup>121</sup> The expected average number of users with access privileges per air carrier or operator would be two; based on that assumption, the FAA expects 5,006 air carriers and operators to assign a total of 10,000 individuals user rights to the PRD. The FAA also expects part 121 certificate holders to have a higher number of users with access privileges than other air carriers and operators.

Finally, individual pilots would be provided access the PRD for two purposes: To provide consent to air carriers or other prospective employer to access their records during the hiring process, and to access and review for accuracy their own individual information maintained in the database at any time. The FAA proposes to limit pilot access to the PRD to holders of an FAA-issued commercial pilot certificate, airline transport pilot certificate, or remote pilot certificate, where applicable.<sup>122</sup>

All air carriers, operators, and eligible pilots would be required to register for user rights to the PRD through a web-based process proposed in §§ 111.15 or 111.305, as applicable. The FAA would then issue user IDs only electronically to an air carrier, operator, company, or eligible individual pilot upon completion of the registration process and validation of the information.

The basic eligibility requirement for access to the PRD would be that the air carrier, operator, or individual is known to the FAA before the registration process begins. This would ensure the air carrier, operator, company, or individual has had an identification verification completed in accordance with FAA procedures by an FAA Aviation Safety Inspector, Aviation Safety Technician, designee of the Administrator, or other authorized person. During PRD implementation, the FAA may find that some operators have not already been verified by the FAA because they have not had prior interaction with their local Flight Standards District Office. Those operators would have to verify themselves to the FAA prior to

registering for the PRD. The FAA expects that this number would be small.

#### 1. Overview of User Roles and Registration

Approved registrants would be issued user IDs via their user account, subject to renewal, cancellation and denial, in order for the FAA to continuously manage all database users and maintain system security. The FAA proposes that all prospective users would identify the requested user role through the registration process. Individuals registering for user rights to the PRD would select the appropriate role requested depending on the access type needed with the PRD. Only a single unique ID is needed to register for multiple roles with the PRD. As previously described, the roles available are authorized responsible person, authorized consumer, and authorized user manager. This role structure is duplicated for proxy users.

The FAA proposes in § 111.15(b) that the user registration process require all users to provide the FAA with the individual's full name, the individual's date of birth, a valid electronic mail address, all business names and the address for the principal base of operations for the air carrier or other operator, the purpose for which database access is requested, the individual's job title, the FAA air carrier or operating certificate number and pilot certificate number, as applicable, and any additional information the Administrator may request in order to verify identity. Additional information would not be requested unless the registrant's identity cannot be verified with the information provided. Additionally, if an individual is registering for an authorized responsible person user role, the individual would include information regarding the applicable eligibility criteria provided in § 111.15(d). All of this information is necessary for identity verification.

If an operator employing pilots—such as an entity conducting public aircraft operations, corporate flight department, or a trustee in a bankruptcy proceeding—does not have an FAA-issued operating certificate number, the operator would provide its principal business address, the type of aircraft operated, and the number of aircraft operated. The FAA would use this information to determine eligibility for PRD access and location of the operator.

#### 2. Registration for Pilot Records

Each air carrier or other operator required to enter data into the PRD would be assigned a pilot records

database identification (PRD ID) in order to track all activity conducted in the PRD by each air carrier or operator. The PRD ID would be used to identify an air carrier or operator during any activity conducted in the PRD by a responsible person, authorized user, or proxy. A PRD ID would be assigned to an air carrier or operator during the initial registration process for access to the PRD. The PRD ID would be valid as long as the air carrier or operator maintains an active responsible person for the PRD. However, the PRD ID would be subject to cancellation if it did not have any responsible persons assigned to the account for a period of 24 months. Additionally, all individual users, including users in the pilot role, would be issued individual user IDs via their user account that can be used to track PRD activity.

#### B. General Eligibility Requirements for Access to the Pilot Records Database

The FAA is proposing to establish eligibility requirements for required users of the PRD to further ensure system security. One such required user is a responsible person, who is the primary point of contact for each employer and has the most control over each employer's relationship with the PRD. Responsible persons would be required to meet the strictest eligibility criteria since that user role would be provided the most access rights to the PRD of any user other than the Administrator. Other individuals with database access would be assigned, edited, or deactivated by the responsible person. Additionally, the responsible person and air carrier or operator would assume any liability for a user accessing the PRD through the air carrier or operator's assigned PRD ID, as proposed in § 111.20. All activity in the PRD would be tracked by the user ID, and the log would be maintained by system usage to ensure system security. The FAA expects that responsible persons for air carriers and operators would establish additional requirements and procedures for authorized users and proxies prior to delegating access to the PRD.

#### 1. Authorized Responsible Persons

One eligible individual employed by each air carrier and operator would be required to register as an authorized responsible person (RP) through the air carrier's PRD ID. Air carriers would be accountable for the RP. The air carrier or operator and the RP would be responsible for entering, accessing, editing, and monitoring all activity, subject to the limitations of use, in the PRD by the air carrier or operator. Since

<sup>121</sup> Operators employing less than five pilots may not choose to use multiple users because they have different resource allocations than a larger operator would and therefore would likely have fewer individuals performing jobs that would require interaction with the database. An analysis of the FAA's Safety Performance Analysis System (SPAS) on December 2, 2015, indicated that 1,442 air carriers and operators employing pilots have less than five pilots employed at the time of analysis.

<sup>122</sup> In accordance with §§ 61.89, 61.101, 61.113, and 61.315, only commercial and ATP certificate holders may operate an aircraft for compensation or hire as a pilot.



the RP would be responsible for all of the air carrier's or operator's interaction with the personal and confidential information within the PRD, the individual would be required to meet several eligibility requirements to achieve a high level of security. The eligibility requirements proposed for the PRD would ensure that the individual's identity is verified by the FAA.

The FAA is proposing in § 111.15(d)(1) that an individual registering for access to the PRD as a RP, on behalf of a part 119 certificate holder authorized for operations under parts 121 or part 135, be a person who serves in a management position listed under § 119.65(a) or 119.69(a) (as applicable) and is listed on the air carrier's operations specifications. Those management positions include the Director of Safety, Director of Operations, Chief Pilot, Director of Maintenance, and Chief Inspector for part 121 and Director of Operations, Chief Pilot, and Director of Maintenance for part 135. The FAA does not assume that management personnel will fulfill all of the air carrier's PRD obligations. Thus, the FAA proposes to permit the RP to delegate the authority to fulfill the air carrier's PRD obligations to another employee (*i.e.*, authorized consumer or user manager) or proxy. The RP and air carrier would continue to be held accountable for actions of any individuals delegated the authority to use the PRD.

If the RP no longer meets the criteria in § 111.15 to serve in that position, his or her PRD user credentials would be cancelled once the FAA is notified. The air carrier would then have to seek FAA approval of a new RP through the process described in § 111.15(e).

If a RP's database access is cancelled, the delegation of database access to authorized users and proxies would remain valid as long as the air carrier or other operator submits an application for database access for a new RP prior to the cancellation of the prior RP's credentials, in accordance with proposed §§ 111.15(e) and 111.20(c)(1). If the RP role is unoccupied for any period of time, the database access of authorized users and proxies may also be denied until a new RP is in place. Additionally, if the access of a RP is denied for any reason provided in § 111.25(d), the database access of authorized persons and proxies connected to that responsible person may also be denied. These access limitations are to ensure database integrity and security and to provide the FAA with the authority to limit database access in a case of misuse by a database user.

In accordance with § 111.15(d)(2), individuals registering for access to the PRD as a RP on behalf of a part 125 operator would be required to serve in a required management position under § 125.25(a), which would be a Director of Operations position. The FAA is proposing that all part 125 operator RPs meet the eligibility requirements similar to the proposal for part 121 responsible persons. Similarly, the FAA would therefore permit the RP to delegate the authority to use the PRD to other employees or proxies.

The FAA is proposing in § 111.15(d)(4) that the RP listed on an application for an air tour operator to register for access to the PRD would be the same responsible person listed on the operator's letter of authorization. The FAA expects that the responsible person named on the operator's letter of authorization would input pilot records into the PRD since the operations are typically seasonal, and air tour operators employ fewer pilots than other entities required to report data to the PRD. However, responsible persons for an air tour operator would also be permitted to delegate authority to another individual meeting the eligibility requirements outlined in § 111.20 for data entry purposes (and retrieval, if appropriate). The air tour operator and responsible persons would be held accountable by the FAA for the responsible person's actions within the PRD.

A registration for PRD access from a fractional ownership program under part 91 subpart K would be required to designate the program manager as defined in § 91.1001(b)(9), or another individual designated as being officially able to apply for and receive management specifications for the program manager to serve as the operator's RP. The designated individual who may register for and receive management specifications issued in accordance with § 91.1015 must be listed on the fractional ownership's management specification in paragraph A007. Additionally, the individual registering for access to the PRD as a RP on behalf of the 91K fractional ownership must meet the remaining requirements proposed in § 111.15(d)(6)—that is, the individual must be employed by the fractional ownership program, and that the FAA must verify that individual's identity in accordance with Federal IT practices. If the program manager meets the requirements of § 111.15(d)(6), that individual would be able to register for access to the PRD on behalf of the fractional ownership program—otherwise, it must be a different

individual listed on the management specification in paragraph A007. The FAA believes that the additional requirements for a RP of a fractional ownership program are necessary since a program manager is not required to hold an FAA certificate and thus may be unknown to the FAA. The FAA believes that the security of the PRD would be enhanced by the proposed requirement that responsible persons be known to the FAA.

Entities conducting public aircraft operations and corporate flight departments would also be required to register for a user ID from the FAA and select a responsible person for PRD access. These operators would be required to designate as their responsible person an individual who serves in a position equivalent to a chief pilot and who is responsible for either the management of the pilots on staff or the management of its business. The individual must be employed by the operator applying for access and have their identity verified by the FAA in order to receive access.

The FAA proposes to define employment with an entity conducting public aircraft operations or corporate flight department in the same way as it would define employment for a fractional ownership program. The FAA proposes to define the term *employed* for the purposes of these types of operators as being paid for more than 20 hours per week for services rendered to operator.

At the time of registration, a responsible person applying for credentials for an entity conducting public aircraft operations, a corporate flight department, or any operator that does not have FAA-approved management personnel would be required to furnish a statement to the FAA declaring his or her intention to act as the operator's point of contact for PRD matters. This statement would be required in addition to the information required of all other responsible persons as proposed in § 111.15(d)(6). This statement is necessary to establish the applicant's authority to act as the RP within the PRD and will be retained by the FAA.

In addition, the responsible person would be required to furnish the principal business address of the operator, the type of aircraft operated, and the number of aircraft operated to confirm that the proposed rule's reporting requirements apply to the operator. The information the registrant provides would be verified by the FAA's PRD program manager by using the information on file with the FAA. If the information is verified, the PRD would

issue a user ID and user credentials to the responsible person. If the operator is not required to comply with the proposed part 111 requirements, the system will notify the registrant of the option to report information to the PRD on a voluntary basis. If the operator elects to report, all information entered into the PRD would have to comply with the appropriate regulations.

## 2. Responsible Persons' Delegation Authority and Authorized Users

An individual designated as an air carrier's or operator's responsible person would be issued credentials with delegation authority. The air carrier's or operator's responsible person would use his or her delegation authority to grant PRD access to other authorized users employed by the operator (*i.e.*, authorized consumers and authorized user managers) or proxies that meet the eligibility requirements of § 111.20. All user delegations would be completed electronically through the PRD and would not require FAA approval, authorization, or action other than the issuance of a different user ID, which would be used to track the authorized users. Each authorized user or proxy would have a unique user ID used, which would remain active only while the authorized user is employed by the operator or air carrier.

If any individual were to take action inconsistent with any provision of part 111, the air carrier's or operator's RP, and the employer, may be subject to enforcement action. The FAA notes that an air carrier or operator could grant user access rights to an individual who is not certificated, or otherwise known by the FAA, if the individual is an employee of the air carrier or operator, or is an employee of a proxy that has already obtained a user ID from the FAA. However, the air carrier or operator would be required to assume liability for any individual accessing the PRD on its behalf.

Air carriers and operators would be responsible for selecting authorized users and could change the individuals or the access rights for individuals at any time within the PRD. An air carrier may impose additional eligibility requirements on authorized users, and may assign this role to multiple persons.

As proposed in § 111.25, the registration would be valid for an amount of time to be determined by the Administrator from the date of issuance, unless it is cancelled or denied. The Administrator may also require renewal of credentials at recurring intervals. Currently, for access to the PRD for FAA PRIA records, user credentials are renewed every 365 days. This will likely

be continued for end-state PRD subject to change of identity validation platforms, but the FAA would do so in accordance with all applicable information security guidance. PRD registration is subject to denial if the responsible person or any user fails to comply with the duties and responsibilities of PRD access or as necessary for its security. Failure to comply might include but is not limited to accessing information without consent, reporting false or fraudulent information to the PRD (as discussed in proposed § 111.35), and misuse of information from the PRD. Section 111.30 proposes to prohibit unauthorized access or use of the PRD. If database access is denied under § 111.25(d)(1), that person or individual user may submit a request for reconsideration in a form and a manner prescribed by the Administrator as proposed in § 111.25(d)(3), but database access would not be permitted pending reconsideration in order to preserve database security.

Additionally, if any air carrier or other operator with database access has its operating certificate or other authority to operate revoked by the FAA, per § 111.25(d)(2), the Administrator may deny database access.

## 3. Proxies

Air carriers or operators may elect to have outside organizations query or report data to the database on their behalf. Such an organization would be referred to as a proxy. The FAA proposes in § 111.20(a) to permit air carriers and operators employing pilots to delegate access rights to proxies. The air carrier's responsible person could delegate authority to individuals employed by a company that has obtained a user ID and employs individuals to comply with the requirements of subparts B or C of the proposed part 111.<sup>123</sup> The specific requirements that could be delegated include the entry of data on pilots employed by a specific air carrier or operator and requesting a pilot's records after receiving consent from the pilot during the hiring process for a specific air carrier or operator. Proxies would have limited use of the PRD based on the authority delegated by an air carrier or operator employing pilots. Additionally, air carriers and operators who elect to utilize a proxy would have to ensure that established procedures

<sup>123</sup> As of November 1, 2014, approximately 51 companies offered services to air carrier and operators that are qualified to act on their behalf to comply with PRIA.

exist to ensure any proxy is able to comply with the proposed regulations in part 111 and any additional requirements imposed by the air carrier or operator. The air carrier or operator would not be permitted to delegate any responsibility or liability to the proxy. The FAA expects that procedures would be in place by the air carrier, operator, or proxy to ensure that all database regulations are adhered to during any use by the proxy.

Proxies would not be permitted to access the PRD without specific consent from an air carrier or operator since all activity in the database must be connected with an air carrier or operator. Each proxy would receive their own user ID. However, air carrier or operator user IDs (which are issued to responsible persons) would only function with the proxy's user ID if the responsible person has delegated authority to the proxy. Therefore, any activity performed in the database on behalf of an air carrier or operator would be authorized by the responsible person and tracked by the database if any misuse were to occur. The FAA believes that proposing the ability to utilize a proxy for complying with the reporting and accessing requirements would alleviate some time burden from air carriers or operators as long as the management of the proxies is actively monitored by the responsible person.

## 4. Pilot Users

As provided by the PRD Act, pilots would be required to provide consent for an air carrier to access and evaluate their PRD records during the hiring process. Additionally, the FAA would encourage all individual pilots to review their PRD records for accuracy and to submit correction requests if necessary. Individual pilots would be granted access to the PRD electronically by following the registration process in this section—specifically, by providing the requested identity information during the registration process. Individual pilots who have been certificated by the FAA have already been identified and vetted through an established process. Thus, these users pose minimal known risks to the PRD. Additionally, access to the PRD through an individual pilot-user role would be limited, and all access to the PRD would be tracked via a unique username for each user.

Pilots may access the PRD, as proposed in § 111.305, to review their own records and to give consent for an air carrier to access their record during the hiring process. A pilot's application for PRD access must include the pilot's full name from his or her pilot certificate, place of birth, FAA-issued

certificate number, a current U.S. mailing address and phone number, and a valid email address. These credentials would be subject to the same renewal, cancellation, and denial discussed in § 111.25.

Pilot consent is time-limited to a designated air carrier to see the FAA records in the PRD. Air carriers cannot search PRD broadly—the system would limit them to a specific individual's records only if the pilot gives consent and the consent period is still in effect. The pilot can revoke consent at any time. When granting consent, the pilot selects the length of time the record will be available.<sup>124</sup> The fee is only charged at the point the record is actually accessed by the hiring operator. No fees would be incurred in the event that a pilot's consent expires, is revoked, or reissued prior to the employer accessing the record. The time-limited consent period would only be for the operator's ability to access the record in the PRD; once downloaded, the operator could maintain the pilot's record within its internal paper or electronic systems, subject to applicable law relating to retention of personal information about an applicant.

### *C. Protection of the Privacy and Confidentiality of Pilots and Other Users*

Section 203(b) of the PRD Act, codified in 49 U.S.C. 44703(i)(11), generally requires the FAA to implement regulations necessary to protect the privacy of individuals whose records are reported to the PRD, to protect the confidentiality of those records, and to prevent further dissemination of records obtained from the database.

The FAA proposes § 111.135 to require each person who accesses the PRD to actively protect the privacy of records and prevent their dissemination by keeping them secure. The FAA also proposes to prohibit an air carrier (or any other person who opts into the evaluation requirements as permitted in § 111.100 of this proposed rule) from accessing the PRD for an unauthorized purpose and from using any information retrieved from the PRD for any purpose other than “assessing the qualifications of the individual in deciding whether to hire the individual as a pilot.”

The FAA also believes users of the PRD must effectively manage the retention and storage of any information accessed from the PRD for the purposes of evaluating an individual for

employment. However, the FAA considered including specific restrictions on the retention and storage of data retrieved by an air carrier, operator, or other person from the PRD. The FAA also considered whether it would be appropriate to build another control into the system that disallows printing of an individual's information.

The FAA recognizes that there is significant variation among recordkeeping systems across the populations of air carriers and operators that would be subject to the information reporting and retrieval provisions of this proposed rule. The agency also recognizes that air carriers and operators would continue to use other sources of information, in addition to information in the PRD, such as information obtained separately through the NDR and personnel information from other available sources, to evaluate an individual in making a hiring decision. Therefore, the FAA believes it would disrupt the aviation industry's hiring processes to prevent information accessed in the PRD from being printed. The agency also notes that even if a print function were excluded from the PRD system, the information accessed in the PRD could be captured and retained by users of the system in other ways (e.g., using the print screen function, taking a photograph of the screen, or copying the information into another format). Additionally, the FAA does not believe that a proposal to limit the period of time for which an air carrier or operator employing pilots may retain the records accessed from the PRD would be beneficial. The agency believes it is important to allow air carriers and operators the flexibility to build appropriate controls for protecting privacy and confidentiality of information into their existing recordkeeping systems.

The FAA recognizes that setting performance-based standards would provide the necessary flexibility to database users while ensuring the FAA would be able to take appropriate action in the event that an individual's privacy or confidentiality were compromised. The FAA proposes in § 111.135 to require all air carriers and operators to affirmatively protect the privacy and confidentiality of the records it has access to in the PRD. Each individual who interacts with the database would have a responsibility to protect the privacy and confidentiality of PRD records, and if the FAA found that an individual violated that responsibility by being misusing a pilot's information, the employer would be subject to enforcement for violation of this provision.

The FAA also proposes in § 111.105 to prohibit any air carrier or operator employing pilots, and proxies that access the PRD and retrieve information pertaining to an individual, from disseminating that information, for any purpose, to any person who is not directly involved in the hiring decision. The FAA emphasizes that in the event individual data retrieved from the PRD is used for any unauthorized purpose, is shared with any unauthorized individual, or is otherwise disseminated in violation of these provisions, the agency would exercise its enforcement authority to the greatest extent permitted by law.

Additionally, § 111.45 provides that, generally, information provided to the PRD, except the information specifically excepted in paragraph (b), could not be disclosed pursuant to FOIA, as required by the PRD Act.<sup>125</sup> The following exceptions would apply, as provided by the PRD Act: De-identified, summarized information may be disclosed to explain the need for changes in policies and regulations; information may be disclosed to correct a condition that compromises safety; information may be disclosed to carry out a criminal investigation or prosecution; information may be disclosed to comply with 49 U.S.C. 44905, regarding information about threats to civil aviation; and such information as the Administrator determines necessary may be disclosed if withholding the information would not be consistent with the safety responsibilities of the FAA. Records within the PRD may be disclosed outside of FAA to the extent permitted by the Privacy Act, including any routine uses described in the System of Records Notice for DOT/FAA 847, Aviation Records on Individuals (75 FR 68849, Nov. 9, 2010).

Lastly, 32 CFR 2002 sets forth instructions for federal agencies' handling of controlled unclassified information (CUI). Pilot records data that is determined to be CUI would be handled in accordance with the DOT and FAA's CUI policies, once implemented.

### *D. Electronic Access to Records*

The PRD Act requires the FAA to provide air carriers with access to the PRD for purposes of evaluating the records pertaining to each individual the air carrier is considering to hire as a pilot. The FAA also may permit “an individual designated by an air carrier to have electronic access to the database” subject to certain limitations included in the PRD Act and other

<sup>124</sup> For example, options could distinct time periods such as—30, 45, or 60 days or a specific date. The specific details and time intervals available are subject to final system development and implementation processes.

<sup>125</sup> 49 U.S.C. 44703(i)(9)(B)

terms proposed by the FAA. All individuals who would access the PRD must have their identity validated prior to access.

In addition, the PRD Act requires that air carriers and certain other persons report information “to the Administrator promptly for entry into the database” with regard to any individual used as a pilot in the air carrier or other person’s operations. However, the PRD Act leaves the FAA discretion to determine the means by which the information is to be reported to the FAA for inclusion in the PRD. The FAA has determined that the most appropriate means for air carriers and operators to report information for inclusion in the PRD is to establish a process to grant direct electronic access to whoever would be required to report information.

By granting a user direct electronic access to the PRD, the FAA would facilitate the expedient use of timely and reliable information for an air carrier or operator employing pilots in making a hiring decision on a pilot seeking employment. The FAA contemplated utilizing physical documents for air carriers and other persons to record data, which then would have been mailed to the FAA for data entry; however, this process was duplicative and time-intensive compared to direct user entry in an electronic format. A record mailed to the FAA for entry into the PRD may be delayed by shipping and processing time, which could result in inaccurate or outdated information being available to a hiring air carrier or operator employing pilots.

The PRD Act also requires air carriers to “obtain the written consent of an individual before accessing records pertaining to the individual” in the PRD. The FAA is prohibited from allowing “an air carrier to access records pertaining to an individual from the database . . .” unless the air carrier has demonstrated “to the satisfaction of the Administrator that the air carrier has obtained the written consent of the individual.” In order to ensure that no information pertaining to any individual is accessed in the PRD without the explicit permission of that individual, the FAA believes it is appropriate to automate the process for pilots to provide their consent for a particular air carrier or operator employing pilots to access their individual PRD data.

The electronic format for a pilot to submit his or her consent to the PRD for a particular air carrier or other person to gain access to his or her PRD records would ensure a standardized and accurate process that can be completed

in a timely manner. This consistent, electronic process would permit a pilot to grant consent and enable the air carrier or other PRD user to access the pilot’s information more quickly than a physical document that must be recorded and tracked by the user accessing the system.

As provided in §§ 111.15 and 111.305 of the proposed rule, all PRD users, including air carriers and operators, other pilot employers, and individual pilots, would be required to register for access and use of the PRD.

#### 1. Pilot Consent

Before a hiring air carrier or operator may access the PRD to obtain an individual’s records, the individual responsible for hiring must obtain consent from the pilot. As proposed, consent would be provided by the individual seeking employment with a particular air carrier or other operator and expire after a period of time, set by the pilot, that does not exceed 60 days. Once the pilot has become an authorized user of the PRD, that pilot would be able to provide consent for a particular air carrier to retrieve that pilot’s PRD record. As provided in the PRD Act and proposed in § 111.125, the hiring employer may also require a pilot-applicant “to execute a release from liability for any claim arising from accessing the records or the use of such records.”<sup>126</sup> This would be completed outside of the PRD through the hiring employer.<sup>127</sup>

#### 2. Hiring Employer’s Role During the Request Process

After obtaining pilot consent, the hiring employer or its proxy would access the pilot-applicant’s PRD records by entering the pilot’s first or last name and FAA pilot certificate number. The FAA emphasizes that, except for the Administrator, only personnel directly involved in making the hiring decision would be allowed to access and evaluate the pilot-applicant’s PRD record. During

<sup>126</sup> In drafting this waiver, air carriers should take care to avoid expanding the release beyond what is permitted in the statute. Section 40.27 of Title 49, Code of Federal Regulations (49 CFR) bars employers from having their employees execute any release “with respect to any part of the drug or alcohol testing process.” This section does not, however, exclude drug- and alcohol-testing records stored in and supplied by the PRD from the permitted waiver. For the purpose of FAA enforcement, the FAA considers drug- and alcohol-testing records stored in the PRD to be outside the drug- or alcohol-testing process, as stated in 49 CFR 40.27.

<sup>127</sup> Some records could contain derogatory information. In the RIA, the FAA acknowledges this possibility and the uncertainty in the amount of derogatory information that may be revealed in PRD.

its review and evaluation, the hiring employer would be required to take the appropriate actions necessary to protect the privacy of the pilot and the confidentiality of the records. Any questions developed by the air carrier or operator should be directed to the individual during the interview phase of the hiring process.

Consistent with current practice under PRIA and in accordance with the PRD Act, the FAA proposes in § 111.130 that if an individual seeking employment as a pilot with the air carrier refuses to provide written consent to obtain the subject’s records or refuses to execute a release from liability, an air carrier may refuse to hire that individual as a pilot. In this case, no action or proceeding may be brought against the air carrier.

The hiring employer should report to the PRD Program Manager any information that the hiring employer discovers outside the PRD that should have been included in the PRD. The Program Manager will advise the prior employer of the discrepancy.

#### 3. Record Retention and Removal Upon Death of a Pilot

The FAA is required to “maintain all records entered into the database under [the PRD Act] pertaining to an individual until the date of receipt of notification that the individual is deceased; and may remove the individual’s records from the database after that date.” However, the FAA does not historically receive pilot death notifications unless the individual was involved in a fatal accident. In order to remove records in a timely manner from the PRD, the FAA proposes to maintain an individual’s records in the PRD until the FAA receives official notification of the pilot’s death from the pilot’s next of kin, or until 99 years have passed since the individual’s date of birth. This would ensure a pilot’s records remain in the PRD as required by the PRD Act, while also providing a method for removing records absent official notification of an individual pilot’s death. The FAA acknowledges that it may never receive such notification and proposes this alternative to ensure compliance with the PRD Act’s provision on removal of a deceased pilot’s PRD record. Notification of a pilot’s death would be made in accordance with the provisions of proposed § 111.50. The FAA notes that in a dissent to the PRD ARC report, some ARC members suggested the FAA remove and store, for an undefined period of time, deceased pilots’ records from the PRD, in a location where the records would remain available to the

FAA for security purposes or assistance with an investigation.<sup>128</sup>

The Omnibus Transportation Employee Testing Act of 1991<sup>129</sup> provides for a permanent bar for employees who have been found to have committed alcohol-or-drug related misconduct after successfully completing a rehabilitation program from performing the same duties that they performed before such conduct. Since the individual reaching 99 years of age is a sufficient amount of time to serve as a lifetime ban, the FAA believes this number is an appropriate amount of time after which records can be deleted in order to maintain a current database when no notification of death is received.

#### V. User Fee for Accessing the PRD for Purposes of Evaluation

The PRD Act permits the FAA to recover a reasonable fee related to processing a request and furnishing copies to an air carrier or operator through the PRD.<sup>130</sup> The PRD Act further requires that fees recovered through the processing and furnishing of records in the database must be applied to certain costs related to the operation and maintenance of the database. Pursuant to this authority and to ensure the application's sustainability, the FAA proposes a user fee applicable to air carriers and operators that access a pilot's record in the database for the purpose of evaluating employee records, but not for reporting records. This user fee will also not apply to individual pilots accessing their own records in the PRD.

The FAA proposes to implement the user fee requirement one year after the date of publication of the final rule to coincide with the requirement for air carriers and operators to meet the PRD pilot record evaluation requirements of subpart B of part 111. Therefore, all users that access and evaluate an individual's records in the PRD would be subject to the proposed user fee beginning one year after the effective date of the final rule.

To establish a fee, the FAA developed a report ("Pilot Records Database Fee Methodology Report") to provide an explanation concerning the methodology for the PRD user fee structure.<sup>131</sup> The user fee was designed by taking into consideration costs associated with the projected operations and maintenance of the PRD. As

described in the user-fee report, the FAA proposes to charge a fee each time an air carrier or operator accesses an individual's record in the database. That fee is based on the following equation:

*User Fee per Request: F equals C (the annual cost of operation and maintenance of the PRD) divided by R (the annual requests through the PRD).*

$$F = \frac{C}{R}$$

When using this formula, the projected user fee would be \$110 in Fiscal Year 2020. By imposing a fee per use based on the elements of the equation, the FAA would have the flexibility to update the fee, consistent with the Office of Management and Budget's Advisory Circular A-25, as the application's projected operations and maintenance costs change over its life. Thus, the user fee can be updated based on the number of requests to access an individual's records in the PRD and the application's annual cost of operation and maintenance.

#### VI. Regulatory Notices and Analyses

##### A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

A full regulatory evaluation is available in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (2) would have a significant economic impact on a substantial number of small entities; (3) would not create unnecessary obstacles to the foreign commerce of the United States; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

##### 1. Summary of Total Benefits and Costs

After the effective date of the final rule that follows this proposal, air carriers and other operators would incur costs to report pilot records to the PRD, and to train and register as users of the PRD. Air carriers would also receive future cost savings once PRIA is phased out. The FAA would incur costs of the proposed rule related to the operations and maintenance of the PRD.

Over a 10-year period of analysis from 2021 through 2030,<sup>132</sup> the FAA estimates the proposed rule would result in present value net costs to industry and the FAA of about \$12.8 million or \$1.8 million annualized using a 7% discount rate. Using a 3% discount rate, the proposed rule would result in present value net costs of about \$11.5 million over the same 10-year period of analysis or about \$1.4 million annualized.

However, the FAA estimates industry would receive a net cost savings from the proposed rule due to the discontinuance of PRIA. Over the same 10-year period of analysis, the present value net cost savings of the proposed rule to industry are about \$2.6 million or \$0.4 million annualized using a 7% discount rate. Using a 3% discount rate, the proposed rule would have a present value net cost savings to industry of about \$7.0 million over the same 10-year period of analysis or about \$0.8 million annualized.

In addition to future regulatory costs, the FAA has incurred costs to prototype and develop the PRD since 2010.<sup>133</sup> From 2010 to 2020, the FAA estimates the present value PRD development costs are about \$14.1 million or \$1.5

<sup>132</sup> For this preliminary analysis, the FAA assumes the effective date of the final rule to be in calendar year 2021 with the 10-period of analysis of future regulatory impacts to be 2021 through 2030.

<sup>133</sup> On August 1, 2010, Congress directed the Administrator to establish the PRD (Pub. L. 111-216, Section 203 (49 U.S.C. 44703(i)).

<sup>128</sup> Report from the PRD ARC, p. 102.

<sup>129</sup> 49 U.S.C.A. §§ 45101-45106 (1995).

<sup>130</sup> See 49 U.S.C. 44703(i)(8).

<sup>131</sup> A copy of the user fee development report has been placed in the docket with this proposal.

million annualized using a 7% discount rate. Using a 3% discount rate, the present value PRD development costs are about \$18.0 million over the same period or about \$2.4 million annualized.

Therefore, the FAA estimates the total impacts of this regulatory action over a 21-year period of analysis from 2010 through 2030 that includes PRD

development costs before the effective date of the final rule and future PRD regulatory impacts after the effective date of the final rule. Over this 21-year time period, this regulatory action would result in present value net costs of about \$30.8 million or \$2.8 million annualized using a 7% discount rate. Using a 3% discount rate, this

regulatory action would result in present value net costs of about \$25.6 million over the 21-year period of analysis or about \$1.7 million annualized.

The following table summarizes the total benefits, costs and savings of the proposed rule to industry and the FAA.

TABLE 6—SUMMARY OF PRD BENEFITS, COSTS AND SAVINGS

Benefits			
<ul style="list-style-type: none"> <li>Enhanced aviation safety by assisting air carriers in making informed hiring and personnel management decisions.</li> <li>Provides faster retrieval of pilot records compared to PRIA.</li> <li>Reduce inaccurate information and interpretation compared to PRIA.</li> <li>Easier storage and access of pilot records than PRIA.</li> <li>Allow for electronic searching of information on pilot records.                             <ul style="list-style-type: none"> <li>Allows pilots to consent to releasing records—pilots have the opportunity to view the records.</li> </ul> </li> </ul>			
Net Costs (Millions)			
Category	Estimate .....	Discount Rate <sup>1</sup>	
		7%	3%
<b>10-Year Regulatory Period (after effective date of rule), 2021–2030</b>			
Industry <i>Cost Savings</i> from Discontinuance of PRIA [a].	10-Year Present Value .....	(\$24.2)	(\$30.8)
	Annualized .....	(3.5)	(3.6)
Industry Costs [b] .....	10-Year Present Value .....	21.6	23.7
	Annualized .....	3.1	2.8
FAA Costs [c] .....	10-Year Present Value .....	15.4	18.6
	Annualized .....	2.2	2.2
Net Regulatory Costs [d = a + b + c] <sup>2</sup> .....	10-Year Present Value .....	12.8	11.5
	Annualized .....	1.8	1.4
<b>11-Year Development Period (before effective date of rule), 2010–2020</b>			
Development Costs [e] .....	11-Year Present Value .....	18.0	14.1
	Annualized (over 11 years) .....	2.4	1.5
<b>21-Year Total Development and Regulatory Periods, 2010–2030</b>			
Total Costs .....	21-Year Present Value [= d + e] .....	30.8	25.6
	Annualized (over 21 years) .....	2.8	1.7

**Notes:**

<sup>1</sup> Estimates may not total due to rounding and parenthesis “( )” around estimates denote savings.

<sup>2</sup> Industry and FAA costs are higher in the beginning of the period of analysis than industry cost savings resulting in net present value and annualized costs. This results a larger present value net regulatory cost estimate at a 7% discount rate compared to a 3% discount rate.

**2. Scope of Affected Entities**

The entities potentially affected by this proposed rule are: Part 119 certificate holders, fractional ownership programs, persons authorized to conduct air tour operations in accordance with § 91.147, persons operating a corporate flight department, and governmental entities conducting public aircraft operations.

**3. Assumptions**

- Analysis uses 2016 dollars.<sup>134</sup>

<sup>134</sup> Based on the best available information of impacts developed at the time of writing. Some information and data used in this analysis are based on 2016 FAA studies and data analysis of information technology costs and user fee calculations, such as the Pilot Records Database Fee

- The period of analysis includes 11 years of past PRD development costs that occur before the effective date of the final rule (2010–2020) and 10 years of future PRD regulatory impacts that would occur after the effective date of the final rule (2021–2030) for a total of 21 years (2010–2030).

- Air carriers who currently have FAA-approved electronic databases would continue to record pilot records into their own electronic database systems and transfer these records via automated utility to the PRD.

Methodology Report (available in the docket). The FAA plans to update these studies, reports and data analysis for the final rule.

- Corporate flight departments are assumed to all have electronic databases.

- Parts 125 and 91K operators, and part 135 operators without FAA approval for electronic databases, are assumed to enter data manually into PRD.

- Air tour operators and entities conducting public aircraft operations are assumed to enter records manually.

- All others who do not currently have electronic databases are assumed to maintain the in-house systems and, in addition, would enter data manually into PRD.

- At the time of writing, the FAA only had data for additional annual cost of \$1,500 for monitoring, trouble-

shooting and modifying for mid-size carriers. Therefore, for years two through ten, we added an additional \$1,500 per mid-size carrier per year—see the regulatory Impact Analysis in the docket for more information. The FAA believes these incremental costs associated with operation and maintenance would be realized by all operators as a result of this proposal over and above existing information management practices, but is uncertain how to quantify them. The FAA is also uncertain if these costs would be at the same level annually or if they would diminish over time. The FAA requests comments with information and data on adding similar annual operation and maintenance costs that covering monitoring and troubleshooting for small and large operators, not just mid-sized.

4. Benefits

This proposed rule would result in enhanced aviation safety by assisting air carriers in making informed hiring and personnel management decisions using the most accurate and complete pilot records available and accessible electronically. The proposed rule would require the expanded use of the PRD that includes information maintained by the FAA concerning current airman certificates with any associated type ratings and current medical certificates, including any limitations or restrictions to those certificates, airman practical test failures, and summaries of legal enforcement actions. The PRD would contain air carrier, operator, and FAA

records on an individual’s performance as a pilot for the life of the individual that could be used as a hiring tool in an air carrier’s decision-making process for pilot employment.

By requiring that pilot records be entered into the PRD and reviewed by the hiring air carrier, this proposal would:

- Enhance aviation safety by assisting air carriers in making informed hiring and personnel management decisions using the most accurate and complete pilot records available and electronically accessible. As previously discussed, there is not likely a single algorithm which can tell the potential employer if they should hire a pilot based on a ratio of satisfactory and unsatisfactory flight checks. However, providing this information about the airman would assist the potential employer in developing a more complete picture of that airman’s overall performance as a pilot;
- Allow for speedier retrieval of pilot records from PRD than is possible with PRIA; with PRIA the hiring air carrier would have to request the records from sometimes multiple carriers and wait to receive the records. With PRD, the carrier would just have to log on to the database and search for the records;
- Lower the potential of inaccurate interpretation of pilot records by allowing for easier reading of pilot records, as the PRIA records might sometimes be handwritten and difficult to read;
- Allow for easier storage and access of pilot records than PRIA; and,

- Allow for electronic searching of information on pilot records.

5. Cost Savings

This proposal would result in quantified cost savings to industry because the proposed PRD would replace PRIA two years and 90 days after the final rule is effective. Today under PRIA, air carriers, operators, and pilots complete and mail (or fax) forms to authorize requests for pilots’ records to be provided. Under the proposal, most of this process would occur electronically. Over the 10-year regulatory period after the effective date of the final rule (2021–2030), the FAA estimates industry would receive present value cost savings of \$24.2 million or \$3.5 million at a 7% discount rate. Using a 3% discount rate, the present value cost savings to industry would be about \$30.8 million over the same 10-year period of analysis or about \$3.6 million annualized. The preliminary analysis suggests industry cost savings from the discontinuance of PRIA would offset industry costs to implement PRD.

6. Costs

This proposed rule would require industry to report pilots’ records to the FAA—present, future, and historical—and to register and train users of the PRD. The FAA acknowledges there’s an initial cost to reporting historical records that will not be recurring. The following table summarizes the net industry costs of the proposed rule.

TABLE 7—SUMMARY OF NET INDUSTRY COSTS (AFTER EFFECTIVE DATE OF RULE), 10-YEAR PERIOD OF ANALYSIS [2021–2030] \*

Industry Costs by Major Provision Category	
Reporting Present and Future Records .....	\$9,194,728
Reporting Historical Records .....	10,470,382
Train and Register PRD Users .....	5,955,764
Total Industry Costs of Proposed PRD .....	25,620,873
Total Cost Savings from Discontinuing PRIA .....	(37,190,516)
Total Net Costs .....	(11,569,643)
7% Present Value .....	(2,603,728)
3% Present Value .....	(7,040,752)

\* Parenthesis “( )” around numbers are used to indicate savings and distinguish from costs.

The following table summarizes the impacts to industry and the FAA after the effective date of the final rule. Over a 10-year period of analysis from 2021 through 2030, the FAA estimates the

proposed rule would result in present value net costs to industry and the FAA of about \$12.8 million or \$1.8 million annualized using a 7% discount rate. Using a 3% discount rate, the proposed

rule would result in present value net costs of about \$11.5 million over the same 10-year period of analysis or about \$1.4 million annualized.

TABLE 8—SUMMARY OF IMPACTS TO INDUSTRY AND FAA (AFTER EFFECTIVE DATE OF RULE), 10-YEAR PERIOD OF ANALYSIS [2021–2030] \*

Year	Potential calendar year	Industry costs and savings			FAA costs	Net cost of proposed rule		
		Costs	Cost savings from discontinuing PRIA	Net		Undiscounted	7% Present value	3% Present value
1	2021	\$13,119,306		\$13,119,306	\$2,301,395	\$15,420,701	\$14,411,870	\$14,971,554
2	2022	5,561,251		5,561,251	2,275,204	7,836,455	6,844,663	7,386,610
3	2023	864,779	(4,648,815)	(3,784,035)	2,254,025	(1,530,010)	(1,248,944)	(1,400,176)
4	2024	865,700	(4,648,815)	(3,783,114)	2,236,273	(1,546,841)	(1,180,078)	(1,374,348)
5	2025	866,582	(4,648,815)	(3,782,233)	2,197,556	(1,584,677)	(1,129,853)	(1,366,956)
6	2026	867,295	(4,648,815)	(3,781,519)	2,160,898	(1,620,621)	(1,079,888)	(1,357,245)
7	2027	867,906	(4,648,815)	(3,780,908)	2,124,240	(1,656,668)	(1,031,690)	(1,347,023)
8	2028	868,627	(4,648,815)	(3,780,187)	2,087,581	(1,692,606)	(985,112)	(1,336,159)
9	2029	869,355	(4,648,815)	(3,779,460)	2,050,923	(1,728,537)	(940,210)	(1,324,780)
10	2030	870,071	(4,648,815)	(3,778,744)	2,014,265	(1,764,479)	(896,972)	(1,312,938)
Total		25,620,873	(37,190,516)	(11,569,643)	21,702,361	10,132,717	12,763,788	11,538,541
Annualized Net Costs							1,817,276	1,352,669

\* Notes: (i) Totals may not add due to rounding. (ii) In this table, parenthesis “( )” around numbers are used to indicate savings and distinguish from costs. (iii) Total undiscounted net cost is lower than present value estimates due to higher initial cost of reporting historical records discounted less than savings that occur after PRIA is discontinued.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

This proposed rule is expected to have a significant economic impact on a substantial number of small entities. Under Sections 603(b) and (c) of the RFA, the initial regulatory flexibility analysis for a proposed rule must:

- Describe the reasons the agency is considering the action
- State the legal basis and objectives
- Describe the recordkeeping and other compliance requirements
- State all federal rules that may duplicate, overlap, or conflict
- Describe the estimated number of small entities impacted
- Describe alternatives considered

1. Description of Reasons the Agency Is Considering the Action

The FAA is publishing this rule to comply with the Airline Safety and Federal Aviation Administration Extension Act of 2010, which requires the FAA to establish an electronic database of pilot records. Congress introduced this legislation in response to the Colgan Air airplane crash in 2009, which killed 50 people.

In response to the Colgan Air flight 3407 accident findings by the NTSB, Congress passed H.R. 5900, which amended many longstanding aviation programs, including PRIA. H.R. 5900 was signed into law by the President as Public Law 111–216, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (the PRD Act). Section 203 of the PRD Act requires the FAA to establish a pilot records database that contains records from various sources related to individual pilot performance and to issue implementing regulations. Section 203 of the PRD Act amended PRIA by requiring the FAA to establish an electronic database that contains pilot records, which must be evaluated by air carriers prior to hiring an individual as a pilot. To address the requirements of Section 203, the FAA chartered an ARC to make recommendations on the implementation of the pilot records database.

2. Statement of the Legal Basis and Objectives

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). This rulemaking is promulgated under the general authority described in 49 U.S.C. 106(f), which establishes the authority

of the Administrator to promulgate regulations and rules, and the specific authority provided by § 203 of the Airline Safety and Federal Aviation Administration Extension Act of 2010 (“the PRD Act”), codified at 49 U.S.C. 44703(h)–(j).

The authority for this particular rulemaking is derived from § 44703(i), which requires the Administrator to promulgate regulations to establish an electronic database containing records from the FAA and records maintained by air carriers and operators that employ individuals as pilots.

3. Description of the Recordkeeping and Other Compliance Requirements

The proposed rule would require all part 119 certificate holders, fractional ownership programs, persons authorized to operate air tour operations in accordance with § 91.147, persons operating a corporate flight department, and entities conducting public aircraft operations to report relevant records to an electronic PRD managed by the FAA. The PRD would include records from air carriers and persons that employ pilots regarding pilot training, qualification, proficiency, professional competence, drug and alcohol testing, final disciplinary action, and final separation from employment action. Air carriers and operators would also be required to enter verifying data in the PRD for each individual considered for employment as a pilot. Additionally, the database would include information maintained by the FAA concerning current airman certificates with any associated type ratings and current medical certificates, including any limitations or restrictions to those certificates, airman practical



test data, and summaries of legal enforcement actions.

4. All Federal Rules That May Duplicate, Overlap, or Conflict

The FAA would discontinue PRIA 2 years and 90 days after the publication of this rule. While it may seem that the FAA's PRD requirements overlap with PRIA, only the time period overlaps which would allow sufficient time for industry to begin using PRD and to finish entering historical data into PRD. This would allow PRIA to be available so hiring air carriers could receive the pilot records that have not yet been entered into the PRD. Hiring air carriers would, for approximately two years,

continue to engage in the PRIA process for air carrier records in order to ensure that no records are missed in the intervening time. The full implementation of PRD after PRIA expires will result in significant improvement to ease of access to those records and no duplication of records.

5. Description and an Estimated Number of Small Entities Impacted

This proposed rule would affect substantial numbers of small entities operating under 91K, parts 121 and 135, air tour operators, entities conducting public aircraft operations, and corporate flight departments. There are four dozen small part 121 carriers and two

thousand small part 135 carriers and operators. All part 125 operators are small. Air tour operators are also typically small. These operators may involve a couple of pilots flying less than five passengers per air tour. The FAA expects that all fractional ownerships are large with revenues exceeding \$16.5 million. The FAA also estimates that entities flying public use aircraft are associated with large governmental jurisdictions. The FAA assumes that any corporation that could afford a corporate flight department would have in excess of \$16.5 million in revenues and is therefore a large entity. The table below offers more details on the operator types effected.

TABLE 9—SUMMARY OF SMALL ENTITIES IMPACTED

Type/part	Number of entities	NAICS code <sup>135</sup>	SBA size standard	Size
Part 121 Air Carriers ...	76	481111—Scheduled Passenger Air Transportation; 481112—Scheduled Freight Air Transportation; 481211—Nonscheduled Chartered Passenger Air Transportation; 481212—Nonscheduled Chartered Freight Air Transportation.	Less than 1,500 employees.	45 small, 31 large.
Part 135 Air Carriers and Operators.	2,053	481111—Scheduled Passenger Air Transportation; 481112—Scheduled Freight Air Transportation; 481211—Nonscheduled Chartered Passenger Air Transportation; 481212—Nonscheduled Chartered Freight Air Transportation.	Less than 1,500 employees.	2050 small, 3 large.
Part 125 Operators .....	70	481219—Other Nonscheduled Air Transportation .....	less than \$16.5M in revenues.	All small.
Part 91.147 Air Tour Operators.	1,091	481219—Other Nonscheduled Air Transportation .....	less than \$16.5M in revenues.	All small.
Part 91.K Fractional Ownership.	7	481219—Other Nonscheduled Air Transportation .....	less than \$16.5M in revenues.	All large.
Public Use Aircraft .....	323	481219—Other Nonscheduled Air Transportation .....	Large Governmental Jurisdictions.	All large.
Corporate Flight Departments.	1,413	481219—Other Nonscheduled Air Transportation .....	less than \$16.5M in revenues.	All large.

\* Size information is based on data available from eVID (FAA Management Information System, Vital Information Subsystem).

While there is a substantial number of small entities that would be affected by this rule, the FAA maintains that small entities would be affected to a smaller extent than large entities. This is because costs are a function of size. For instance, costs to manually enter data on pilots depends on the number of pilots that work and have worked for the operator. Both air tour operators and Part 125 operators are comprised entirely of small businesses. The FAA estimated that an average of about 3 pilots work for an air tour operator and 8 for a part 125 operator. Air tour operators would not be required to report historical records and would incur a cost of \$56 per operator per year (or about \$20 per pilot per year), and part 125 operators would incur a cost of \$526 per operator (or about \$65 per pilot) per year.

6. Alternatives Considered

The FAA considered four alternatives for the proposed rule. Some of these alternatives could have been less costly for small entities but the FAA rejected them because the advantages of selecting those alternatives were outweighed by policy considerations described below. Rather than proposing to require reporting from employers that might never employ pilots who would conduct operations on behalf of an air carrier, the proposed rule would only require reporting from entities that employ pilots who are or who would likely become air carrier pilots. The agency determined that requiring the submission of documents to the PRD that are unlikely to be accessed by a hiring air carrier or would not assist with an air carrier's hiring decision would be unduly burdensome and unnecessary for compliance with the PRD Act. The applicability of this

proposed rule would minimize the burden because it would apply only to those employers that the PRD Act covers.

Alternative 1

The FAA considered requiring all of the past pilot historical data, but decided the proposed requirements would be sufficient, which is information that hiring air carriers find most significant to review. The FAA believes those entering the data would be better able to refine this information and that hiring air carriers and operators would be more attentive to this more relevant data. Also, by limiting the set of historical data elements, the FAA would be harmonizing the amount of records each pilot would have in his or her respective PRD file.

Alternative 2

The FAA considered other options for the form and manner in which historical

<sup>135</sup> For definitions of the NAICS codes please refer to 2017 NAICS Manual, pg. 380 [https://www.census.gov/eos/www/naics/2017NAICS/2017\\_](https://www.census.gov/eos/www/naics/2017NAICS/2017_)

*NAICS Manual.pdf*. Also, please note that these definitions may not completely align with the

definitions set out in the FAA Code of Federal Regulations.

records could be submitted to the PRD by air carriers and operators employing pilots. These alternative options included permitting the submission of records in portable document format (PDF), JPEG, bitmap (BMP), or other similar electronic file formats; the submission of records using coded XML; or the submission of specified information through direct manual data entry.

While the submission of records in PDF, JPEG, BMP, or other similar electronic file formats maybe the most expedient and least costly<sup>136</sup> for some air carriers and operators, the FAA rejected this option for multiple reasons. First, the FAA notes that the PRD ARC highlighted a crucial issue with the contents of historical records and indicated that many historical records maintained by the aviation industry contain information “far outside” the scope of the PRD. The acceptance of such file formats (e.g., PDF, JPEG or BMP) would allow a large volume of extraneous data to be submitted to the PRD, possibly including protected or sensitive information on individuals or an air carrier or operator. The FAA would be required to review each individual pilot record and redact information as appropriate. This review may cause the availability of the uploaded records to be delayed until such time that the FAA could redact inappropriate information, if any existed within the file.

Finally, the FAA believes Congress intended the PRD to serve as a tool to assist an air carrier or operator in actually making hiring decisions, not only to serve as a repository for all existing information maintained by employers of pilots, or as a replacement for existing air carrier and operator recordkeeping systems. By allowing scanned documents or photographs of a pilot’s record to be transmitted to the PRD, the FAA could not provide assurance that each record submitted would contain only the types of data relevant to the hiring decision, unless the FAA were to review each and every pilot record uploaded to the PRD. Furthermore, the FAA could not provide such assurances on every individual pilot record since much of the information could only be confirmed by the subject of the record.

#### Alternative 3

The FAA considered and rejected interpreting the PRD Act broadly and

<sup>136</sup> Submitting PDF, JPEG, BMP or similar electronic formats might be less costly because the operator would not have to transcribe records from one format to another.

requiring all employers of pilots to comply with the proposed PRD requirements, regardless of whether the information would be useful to hiring air carriers or not. This could have included 22,000 employers. However, the FAA did not believe that this was a reasonable interpretation of the PRD Act. Looking at the statute as a whole, the FAA interpreted the requirement to be that “other persons” means those likely to employ pilots that would subsequently apply to be air carrier pilots. This interpretation is discussed in more detail in section III. Therefore, the FAA determined that applying the proposed requirements to those aircraft operators whose operations are most similar to air carrier operations would ensure the most relevant data would be available to hiring air carriers when conducting pilot employment background checks and would limit any potential database security issues that may arise from maintaining a high volume of employment information.

#### Alternative 4

Finally, the FAA has considered an alternative of requiring that air carriers and operators report present and future pilot records to the PRD, but continue to send historical records under PRIA until the PRD has 5 years of pilot records (by the start of 2025, the PRD would have data from 2020 to 2024), at which point PRIA could be discontinued. With this alternative, a hiring air carrier or operator would be able to access at least 5 years of pilot records back from when they are considering hiring the pilot (either because they would receive them via a PRIA request, or because they would be in PRD). This alternative might be less costly for some operators than submitting historical records through PRD because sending historical records under PRIA would not require them to transcribe records into the PRD format. However, the FAA rejected this alternative because the lack of a singular database would be detrimental to the purpose of the rulemaking and would diminish efficiency of review of pilot records by other employers who would have to access pilot records through both PRIA and PRD.

Therefore, this proposed rule would have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

#### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub.

L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has determined this proposed rule addresses a Congressional mandate to ensure the safety of the American public. As a result, this rule does not create an unnecessary obstacle to foreign commerce. As a result, this rule is not considered as creating an unnecessary obstacle to foreign commerce.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Unfunded Mandates Assessment Reform Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed amendments to the existing information collection requirements previously approved under OMB Control Number 2120–0607. As required by the Paperwork Reduction Act of 1995

(44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

*Summary:* The FAA is proposing to require air carriers, specific operators holding out to the public, entities conducting public aircraft operations, air tour operators, fractional ownerships, and corporate flight departments to enter relevant data on individuals employed as pilots into the Pilot Records Database (PRD). The records that would be required to be entered into the PRD include those related to: Pilot training, qualification, proficiency, or professional competence

of the individual, including comments and evaluations made by a check pilot; drug and alcohol testing; disciplinary action; release from employment or resignation, termination, or disqualification with respect to employment; and the verification of a search date of the National Drivers Register.

*Use:* The information collected in accordance with 44703(i) and maintained in the Pilot Records Database would be used by hiring air carriers to evaluate the qualification of an individual prior to making a hiring determination as a pilot in accordance with 44703(i)(1).

**Paperwork Impact to Industry**

*Subpart A—General*

§ 111.15 Application for Database Access

**Registering Users—**In order to get to access the PRD, users would have to go through a registration process with the FAA. The table below indicates the number of users expected to apply for access to the PRD, the estimated time it would take each user to register, the hourly rate of the persons registering and the estimated hour burden for all users to register.

INITIAL BURDEN FOR USERS TO APPLY/REGISTER FOR ACCESS TO THE PRD

Users expected to apply for access to the PRD to comply with PRD	Respondents	Hourly rate *	Time to register	Total cost to register PRD users	Hours for users to register
Responsible persons .....	5,033	\$84.74	0.50	\$213,248	2,517
Pilots .....	175,860	44.66	0.33	2,591,790	58,034
Authorized Individuals .....	10,066	84.74	0.50	426,496	5,033
Proxies .....	1,904	84.74	0.50	80,672	952
<b>Total .....</b>	<b>192,863</b>	<b>.....</b>	<b>.....</b>	<b>3,312,207</b>	<b>66,536</b>

\* See the Regulatory Evaluation available in the docket for details on the hourly rates and costs.

*Subpart B—Accessing and Evaluating Records*

§ 111.240 Verification of Motor Vehicle Driving Records

Air carriers and participating operators must be able to provide supporting documentation to the Administrator upon request that a search of the NDR was conducted, and that documentation must be kept for five years. The FAA considers this burden de minimis.

*Subpart C—Reporting of Records by Air Carriers and Operators*

§ 111.205 General, (a) Each Air Carrier and Operator Must Report the Information Required by This Subpart for an Individual Employed as a Pilot Beginning on the PRD Date of Hire for That Individual

Each air carrier and other operator would report to the PRD all records required by this subpart for each individual employed as a pilot in the form and manner prescribed by the Administrator.

The FAA is proposing in subpart C of part 111 to require all part 119 certificate holders, 91K fractional ownership operators, persons authorized to conduct air tour operations in accordance with 14 CFR 91.147, persons operating a corporate flight department, entities conducting public aircraft operations, and trustees

in bankruptcy to enter relevant data on individuals employed as pilots into the PRD. Relevant data includes: Training, qualification and proficiency records; final disciplinary action records; records concerning separation of employment; drug and alcohol testing records; and verification of motor vehicle driving record search and evaluation.

The FAA has determined that there would be no new information collection associated with the proposed requirement. However, industry would be required to report data that they already collect to the PRD. We estimate that burden here.

The rule would require that one year after publication present and future records be reported to the PRD. Present and future records are all records going forward.

As previously discussed, there would be two methods for reporting data to PRD. The first method would be to transmit data electronically using an automated utility such as XML, so it can be read by both the user and the PRD. The second method would be through direct manual data entry, using the same pre-established data field forms for each record type. The FAA estimated how many air carriers and operators would report data directly from their own electronic databases. The FAA also determined how many air carriers and operators would enter data manually to the PRD, and on how many pilots they

would enter data. The following discussion summarizes the estimates of the burden and the cost of reporting records to the PRD.

**Electronic Reporting of Records to the PRD**

Air carriers and operators would incur a one-time burden to transfer pilot records electronically from their databases to the PRD. The burden includes the time required for air carriers and operators to develop an encoding program to transfer records from their electronic databases via an automated utility to appropriate fields within the PRD. They could also incur an annual burden to monitor, troubleshoot and modify the transfer of data to the PRD.

Industry sources representative of small, medium and large carriers provided the number of hours along with the cost per hour to develop an encoding program. A representative fractional ownership provided an estimated total cost to develop the program. As the fractional ownership did not provide hours or hourly wage rates, the FAA estimated these for the fractional ownership. To do this we averaged the wage rates received from the other operators and divided the fractional ownership total cost by this wage rate. Further, a mid-size carrier estimated an additional annual updating cost of \$1,500 for monitoring, trouble-

shooting and modifying, which we applied to mid-size carriers. The tables below indicate the number of respondents (in other words, number

of air carriers or operators), estimated hours, hourly rate and the cost of electronic reporting, for electronic reporting of present and future records,

both one-time burden and annual updating burden and for electronic reporting of historical records.

ONE-TIME BURDEN OF ELECTRONIC REPORTING OF PRESENT AND FUTURE RECORDS

Operator type	Respondents	Hours	Hourly rate *	One-time cost of electronic reporting *
Small 121 .....	51	20	\$120	\$122,400
Mid-size 121 .....	13	35	75	34,125
Large 121 .....	4	400	89	142,400
Total 121 .....	68	455	.....	298,925
Small 135 .....	234	20	120	561,600
Mid-size 135 .....	2	35	75	5,250
Total 135 .....	236	55	.....	566,850
Small part 125 .....	18	20	120	43,200
Total 125 .....	18	20	.....	43,200
Part 91K .....	4	1,897	95	720,800
Total 91K .....	4	1,897	.....	720,800
Small Corporate Flight Dept .....	1,413	20	120	3,391,200
Total Corporate Flight Dept .....	1,413	20	.....	3,391,200
Total One-Time Burden .....	1,739	2,447	.....	5,020,975

\* Industry sources representative of small, medium and large carriers provided us with the number of hours along with the cost per hour. See the Regulatory Evaluation available in the docket for more details.

ANNUAL COST OF ELECTRONIC REPORTING PRESENT AND FUTURE RECORDS

Operator type	Respondents	Hours *	Hourly rate *	Annual cost of electronic reporting
Mid-size 121 .....	13	20	\$75	\$19,500
Mid-size 135 .....	2	20	75	3,000
Total Annual Burden .....	15	40	.....	22,500

\* Based on information from a mid-size carrier, the additional annual cost per mid-size respondent is \$1,500 (=20 hours × \$75 hourly rate). See the Regulatory Evaluation available in the docket for more details.

Manual Reporting of Present and Future Data

To estimate the burden of reporting records manually to the PRD, the FAA first estimated the amount of time that it would take to report pilot records for

each of the operator types. The total amount of time per pilot per year for each operating type to manually enter the records to PRD is indicated in the table below (in row labelled “Amount of time per pilot per year”). Included in the table is the time for each of the

recording events, an estimate of the cost per event and the total cost per pilot per year. These data are used in the calculations of manual reporting costs and time burden by affected operating part.

TIME AND COST PER PILOT BY AFFECTED OPERATING PART—MANUAL REPORTING

Manual record entry activity	Hourly rate	135		121		125		Air tour		91K		PAO	
		Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost
Setting up current pilots in PRD for the first time.	\$84.74 .....	3	\$4.24	3	\$4.24	3	\$4.24	3	\$4.24	3	\$4.24	3	\$4.24
Training/checking/testing events per year.	\$81.19 .....	10.8	14.61	10.4	14.07	13.6	\$18.39	4	5.41	10.8	14.61	13.6	18.39
Ground training per year ...	\$81.19 .....	4	5.41	4	5.41	4	5.41	0	0.00	4	5.41	4	5.41
Initial training/check (one time event for new pilots).	\$81.19 .....	0.648	0.88	0.648	0.88	0.540	0.73	0.108	0.15	0.864	1.17	0.540	0.73
Amount of time per pilot per year.	Initial .....	18.45	.....	18.05	.....	21.14	.....	7.11	.....	18.66	.....	21.14	.....
	Recurring .....	15.45	.....	15.05	.....	18.14	.....	4.11	.....	15.66	.....	18.14	.....

TIME AND COST PER PILOT BY AFFECTED OPERATING PART—MANUAL REPORTING—Continued

Manual record entry activity	Hourly rate	135		121		125		Air tour		91K		PAO	
		Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost	Time in minutes	Cost
Total cost per pilot per year.	First Year .....	.....	25.14	.....	24.60	.....	28.77	.....	9.80	.....	25.43	.....	28.77
	Subsequent Years .....	.....	20.90	.....	20.36	.....	24.53	.....	5.56	.....	21.19	.....	24.53

\* Time and cost estimates may not sum to totals due to rounding. See the Regulatory Evaluation in the docket for more details.

The FAA estimated the number of air carriers and operators (in other words, the number of respondents) who would report data manually to the PRD and the number of pilots working for them. The FAA calculates the hours required for data entry by multiplying the time it takes to enter records per pilot per year

by the number of pilots. For example, to enter data manually for a part 121 pilot in year 1 it would take 18.05 minutes/60 minutes times the estimated number of pilots (271) or 82 hours.

Costs are calculated by multiplying the number of pilots by the cost per pilot per year. For example, the cost of manually entering data in year 1 for

pilots working in part 121 is pilots × \$24.60 or \$6,667.<sup>137</sup> The burden to enter present and future records manually to PRD is presented for each operating type for years 1 through 3 of the information collection in the tables below.<sup>138</sup> These sums are later averaged over the three years.

PART 121 MANUAL ENTRY

Year	Number of respondents—part 121 air carriers	Pilots	Hours for data entry	Costs
1 .....	8	271	82	\$6,667
2 .....	8	273	68	5,558
3 .....	8	275	69	5,599
Total .....	.....	.....	219	17,824

PART 125 MANUAL ENTRY

Year	Part 125 Manual entry—Operators not approved for electronic			
	Number of respondents—part 125 operators	Pilots	Hours for data entry	Costs
1 .....	52	528	186	\$11,162
2 .....	52	528	160	9,578
3 .....	52	528	160	9,578
Total .....	.....	.....	506	30,318

PART 135 MANUAL ENTRY

Part 135 Manual entry—operators not approved for electronic							
Year	Number of respondents—135 air carriers	Pilots	Hours for data entry	Number of respondents—135 operators	Pilots working for 135 operators	Hours for data entry	Costs
1 .....	1,649	12,627	3,883	168	342	105	\$326,041
2 .....	1,649	12,684	3,266	168	344	89	272,285
3 .....	1,649	12,731	3,278	168	345	89	273,288
Total .....	.....	.....	10,427	.....	.....	283	871,614

<sup>137</sup> This is the first year cost—subsequent years do not include the cost of entering or “setting up” pilots in the database for the first time except for new pilots (that occur on an annual basis).

<sup>138</sup> The FAA estimates the change in burden and cost for these amendments over three years to align with the three-year approval and renewal cycle for most information collections. The FAA based pilot

estimates on internal databases and the FAA forecast.

AIR TOUR OPERATORS MANUAL ENTRY

Year	Number of respondents air tour operators	Pilots	Hours for data entry	Costs
1 .....	1,091	3,088	366	\$30,262
2 .....	1,091	3,091	212	17,186
3 .....	1,091	3,091	212	17,186
Total .....	.....	.....	790	64,634

PART 91K MANUAL ENTRY

Year	Number of respondents—91K	Pilots (1)	Hours for data entry	Costs
1 .....	3	398	124	\$10,127
2 .....	3	399	104	8,447
3 .....	3	399	104	8,447
Total .....	.....	.....	332	27,021

PUBLIC AIRCRAFT OPERATIONS MANUAL ENTRY

Year	Number of respondents—PAO	Pilots	Hours	Costs
1 .....	323	2,821	994	\$81,159
2 .....	323	2,824	854	69,266
3 .....	323	2,824	854	69,266
Total .....	.....	.....	2,702	219,691

<sup>1</sup> Estimates based on pilot numbers from FAA databases and FAA forecast.

<sup>2</sup> Number of pilots times cost per pilot per previous table. Estimates may not total due to rounding.

A summary of the burden for present and future pilot records that we expect would be manually entered to the PRD

is presented in the next table. The average annual hour burden is 5,240 and the average annual cost burden is

\$304,961 for manual entry into the PRD of present and future records.

MANUAL ENTRY—PRESENT AND FUTURE

Type of Operations	Hours	Cost	Respondents
Part 121 .....	219	\$17,824	8
Part 135 .....	10,710	871,614	1,817
Part 125 .....	506	30,318	52
Air Tours .....	790	64,634	1,091
Part 91K .....	332	27,021	3
PAO .....	2,702	219,691	323
Total .....	15,259	1,231,102	3,294
Average/year .....	5,086	410,367	1,098

111.265 Historical Record Reporting  
The rule requires that two years after publication historical records be reported to the PRD. Parts 121 and 135 air carriers would report historical records they have maintained back to August 1, 2005 through initial proposed

compliance date. Parts 125 and 135 operators and 91K fractional ownerships would report historical records they have maintained back to August 1, 2010 through initial proposed compliance date. Those operators with approved electronic databases would transfer data

electronically. The table below summarizes the number of respondents hours/respondent, hourly rate and the one-time cost of electronic reporting.

Electronic Data Transfer of Historical Records

ONE-TIME BURDEN OF ELECTRONIC REPORTING HISTORICAL RECORDS

Size groupings	Respondents	Hours/ respondent	Hourly rate	One-time cost of electronic reporting
Small 121 .....	51	20	\$120	\$122,400
Mid-size 121 .....	13	70	75	68,250
Large 121 .....	4	400	89	142,400
Total part 121 (1) .....	68	490		333,050
Small 135 .....	226	20	120	542,400
Mid-size 135 .....	2	70	75	10,500
Total part 135 (1) .....	228	90	.....	552,900
Small part 125 .....	18	20	120	43,200
Total part 125 .....	18	20	.....	43,200
Part 91K .....	4	385	95	146,300
Total Part 91K .....	4	385	.....	146,300
Total Burden .....	318	985	.....	1,075,450

<sup>1</sup> Includes carriers certificated under both parts 121 and part 135.

Manual Reporting

The FAA estimated the burden to report historical records to PRD, back to August 1, 2005 for part 121 and part 135 air carriers, and back to August 1, 2010 for parts 125 and 135 operators and part 91K fractional ownerships. The FAA first estimated the number of pilots who worked for affected operators and carriers that would manually report

historical records. The FAA then estimated a base cost burden to report these records by multiplying the base cost<sup>139</sup> (per pilot per year) by the number of pilots with historical records over the years 2005 through 2018 (that would be manually reported to PRD). Then the FAA added a supplement to represent the additional cost that would be required to report historical records,

which would be more difficult to retrieve and transpose to the PRD.

The burden using the base cost for reporting historical records to the PRD is summarized in the tables below for each of the operating types that would have to report historical records for years 2005 through 2020.<sup>140</sup> The discussion of the supplemental cost follows the tables.

PART 121 MANUAL ENTRY HISTORICAL

Part 121 Manual Entry—Operators not approved for Electronic

Year	Number of respondents— part 121 air carriers	Part 121 pilots	Hours for data entry	Costs
2005 .....	18	2,027	508	\$41,270
2006 .....	18	2,026	508	41,249
2007 .....	18	2,055	515	41,840
2008 .....	18	2,096	526	42,675
2009 .....	18	2,064	518	42,023
2010 .....	18	2,030	509	41,331
2011 .....	18	2,035	510	41,433
2012 .....	18	2,078	521	42,308
2013 .....	18	2,139	537	43,550
2014 .....	18	2,183	548	44,446
2015 .....	18	2,209	554	44,975
2016 .....	18	2,254	565	45,891
2017 .....	18	2,281	572	46,441
2018 .....	18	2,315	581	47,133
2019 .....	18	2,331	585	47,459
2020 .....	18	2,346	588	47,765
Total .....	.....	34,469	8,645	701,789

<sup>139</sup> The base cost is the cost to type the data into PRD once it has been collected.

<sup>140</sup> The end date depends on the publication date of the final rule. At the time of writing and for the purposes this analysis, the FAA assumed the final rule would be published in 2019. The FAA will

adjust the estimates of historical records as necessary after the publication of the proposed rule and the end of the comment period.

## PART 125 MANUAL ENTRY

Year	Number of respondents	Part 125 Pilots	Part 125 Hours	Costs
2005				
2006				
2007				
2008				
2009				
2010	33	363	110	\$8,902
2011	33	355	107	8,709
2012	33	342	103	8,381
2013	33	317	96	7,780
2014	33	306	93	7,505
2015	33	297	90	7,285
2016	33	282	85	6,928
2017	33	288	87	7,067
2018	33	294	89	7,202
2019	33	299	90	7,338
2020	33	300	91	7,366
Total		3,443	1,041	84,463

## PART 135 MANUAL ENTRY

Year	Number of respondents—135 air carriers	Pilots working for part 135 Carriers	Hours for data entry	Number of respondents—135 operators	Pilots working for 135 operators	Hours for data entry	Total costs part 135
2005	1,744	17,594	4,530	168			\$367,713
2006	1,744	17,389	4,478	168			363,437
2007	1,744	17,358	4,470	168			362,784
2008	1,744	18,196	4,685	168			380,291
2009	1,744	18,112	4,664	168			378,542
2010	1,744	17,815	4,587	168	339	87	379,423
2011	1,744	17,646	4,544	168	336	87	375,828
2012	1,744	17,554	4,520	168	334	86	373,854
2013	1,744	17,288	4,452	168	329	85	368,202
2014	1,744	17,236	4,438	168	328	84	367,087
2015	1,744	17,145	4,415	168	326	84	365,144
2016	1,744	17,016	4,382	168	324	83	362,406
2017	1,744	17,284	4,451	168	329	85	368,121
2018	1,744	17,555	4,521	168	334	86	373,889
2019	1,744	17,751	4,571	168	338	87	378,068
2020	1,744	17,845	4,595	168	340	88	380,068
Total		280,786	72,303		3,657	942	5,944,857

## 91K MANUAL ENTRY

Year	Number of respondents	Pilots	Hours	Costs
2005				
2006				
2007				
2008				
2009				
2010	5	1,823	476	\$38,629
2011	5	1,781	465	37,739
2012	5	1,716	448	36,362
2013	5	1,595	416	33,798
2014	5	1,538	401	32,590
2015	5	1,491	389	31,594
2016	5	1,416	370	30,005
2017	5	1,447	378	30,662
2018	5	1,472	384	31,192
2019	5	1,498	391	31,743
2020	5	1,504	393	31,870
Total		17,281	4,511	366,184



The FAA adds a supplemental burden to the base cost burden of reporting historical records, by adding an additional 30 minutes of a training and development manager and an additional 10 minutes of a human resources manager to estimated pilot records kept in 2005 and 2010. The following table summarizes the supplemental cost.

MANUAL ENTRY SUPPLEMENTAL COST FOR HISTORICAL RECORDS

	Training & development manager	Human resources manager	Total added cost
Time in hours .....	30	10	
Wage Rate .....	\$81.19	\$84.74	
Total Extra Cost per Pilot .....	\$40.60	\$14.12	\$54.72

The following table summarizes the base hours and base cost burden for reporting historical records and the supplemental cost burden to represent the additional cost of locating and transposing historical records to the PRD. To derive supplemental hours the FAA multiplied the supplemental time burden<sup>141</sup> described earlier by estimated pilots with records being reported manually in 2005 and 2010. To derive supplemental costs, the FAA multiplied the additional supplemental cost per pilot by the estimated pilots with records being reported manually in 2005 and 2010.

MANUAL ENTRY—HISTORICAL BASE AND SUPPLEMENTAL BURDEN AND COSTS

	Base hours	Base cost	Supplemental hours (1)	Supplemental costs	Total hours	Total cost	Respondents
Part 121 .....	8,645	\$701,789	2,705	\$55,074	11,350	\$756,863	18
Part 125 .....	1,041	84,463	242	5,936	1,283	90,399	33
Part 135 (2) .....	73,245	5,944,857	23,606	7,563,071	96,851	13,507,928	1,912
Part 91K .....	4,511	366,184	1,215	25,746	5,726	391,930	5
Total .....	87,442	7,097,293	27,768	7,649,827	115,210	14,747,120	1,968
Average/year (2) .....	.....	.....	.....	.....	57,605	\$7,373,560	

§ 111.425 Discontinued Compliance With Pilot Records Improvement Act

The PRIA would be discontinued two years and 90 days after the effective date of the proposed Pilot Records Database. Accordingly, there would be a reduced paperwork burden due to the fact that pilots, carriers and operators would no longer have to complete FAA forms to request PRIA records. The table below indicates the annual number of FAA forms completed by airmen, hiring and previous employers during the hiring process. This burden would be eliminated because air carriers and pilots would no longer have to complete and mail (or fax) forms in order for air carriers to request pilot records and for pilots to allow records to be released.

Hours saved are estimated by multiplying the time required to complete each form by each entity times the number of forms completed annually. Cost savings are estimated by multiplying the time required to complete the form by the wage rate for each entity completing times the number of forms completed annually. Three different entities would have to complete form 8060-12 while only two different entities would have to complete the other three forms. We expect the same entities would complete each form for one PRIA request. In other words one airman, and one hiring entity would each complete Form 8060-10, Form 8060-11, and Form 8060-11A and in addition one

previous employer would complete Form 8060-12 per PRIA request. So as not to double count or under count we take the number of respondents to be the three respondents (airman, hiring entity and previous employer) completing 24,120 forms (Form 8060-12) or 3 times 24,120. If we multiplied the number of entities completing each form by the number of forms and added the results for all the forms, we would be double counting respondents, as it is likely the same person would complete all the forms. If we chose one of the forms only requiring two entities to complete to estimate number of respondents, we would be underestimating respondents.

<sup>141</sup> An additional 40 minutes, including 10 minutes of a human resources manager and 30

minutes of a training and development manager or .667 hours.

**COST SAVINGS FOR DISCONTINUED COMPLIANCE WITH PILOT RECORDS IMPROVEMENT ACT**

FAA Form	Number of forms completed annually	Airman	HRM—hiring entity	HRM—previous employer	Airman	HRM	Airman	HRM	Total	Hours	Respondents
8060-10	17,586	10	10	N/A	\$44.66	\$84.74	\$130,898	\$248,373	\$379,271	5,862	17,586
8060-11	28,138	7	7	N/A			146,606	\$278,178	424,784	6,565	28,138
8060-11A	28,138	10	10	N/A			209,438	397,397	606,834	9,379	28,138
8060-12	28,138	6	6	17			125,663	914,012	1,039,675	5,628	28,138
							612,605	1,837,960	2,450,565	27,434	101,999
Hours to gather records										4,397	
Total Hours including hours to gather records										31,831	

Notes: (i) Totals may not add due to rounding.  
 (ii) HRM = Human Resources Manager.

The table below summarizes the total paperwork burden in terms of hours, cost and respondents.

**TOTAL PAPERWORK BURDEN**

Total paperwork burden	Year 1		Year 2		Year 3		Total		
	Respondents	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost
§ 111.15 Application for database access one-time costs averaged per year—Annual Registration burden	69,761	14,305	\$979,621	5,803	\$259,162	5,803	\$259,162	25,911	\$1,497,945
111.205 General (a) (Reporting Present and Future Records) Electronic Data Transfer:									
Present and Future one-time costs	1,739	2,447	\$5,020,975					2,447	5,020,975
Present and Future annual costs	15	40	22,500	40	22,500	40	22,500	120	67,500
Manual Data Entry:									
Present and Future annual costs	1,744	5,740	465,418	4,753	382,320	4,766	1,231,102	15,259	2,078,840
111.265 Historical Record Reporting Electronic:									
Historical one-time costs	318	985	1,075,450					985	1,075,450
Manual Data Entry:									
Historical per year	1,968	57,605	7,373,560	57,605	7,373,560			115,210	14,747,120
Total Burden	75,545	81,122	14,937,524	68,201	8,037,542	10,609	1,512,764	159,932	24,487,830
Total Savings—Discontinuation of PRIA	101,999	31,831	4,648,815	31,831	4,648,815	31,831	4,648,815	95,493	13,946,444
Net Burden/Costs		49,291	10,288,709	36,370	3,388,727	(21,222)	(3,136,051)	64,439	10,541,386

**Paperwork Impact to the Federal Government**

The following table summarizes the FAA burden and cost of the PRD. The

FAA uses an hourly wage rate for a grade 14 step 5 position of \$80.56 to estimate costs.<sup>142</sup>

**FAA BURDEN TO DEVELOP AND OPERATE PRD**

Year	Operations and maintenance costs	Hours
1	\$2,471,000	30,671
2	2,384,690	29,600
3	2,335,606	28,990
<b>Total</b>	<b>7,191,296</b>	<b>\$89,261</b>
<b>Average</b>	<b>2,397,099</b>	<b>\$29,754</b>

\*See the Regulatory Evaluation available in the docket for details on the hourly rates and costs

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of IT.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking by May 29, 2020. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New

<sup>142</sup> 2016 locality wage adjusted for the Washington, Maryland, Virginia area, and a fringe benefit rate of 36.25%.

Executive Building, Room 10202, 725  
17th Street NW, Washington, DC 20053.

#### *F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

#### *G. Environmental Analysis*

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6d “Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking and issuance of Final Rules) covering administration or procedural requirements (Does not include Air Traffic procedures; specific Air Traffic procedures that are categorically excluded are identified under Paragraph 5–6.5 of this Order.)” and involves no extraordinary circumstances.

#### *H. Privacy Analysis*

The FAA conducted a privacy impact assessment (PIA) in accordance with section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889. The FAA examined the effect the proposed rule may have on collecting, storing, and disseminating personally identifiable information (PII) for use by air carriers in making hiring decisions. A copy of the PIA is included in the docket for this rulemaking and is additionally available at [transportation.gov/privacy](http://transportation.gov/privacy).

### **VII. Executive Order Determinations**

#### *A. Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, does not have Federalism implications.

#### *B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *C. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*

This proposed rule is expected to be an E.O. 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule’s economic analysis.

### **VIII. Additional Information**

#### *A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring

expense or delay. The agency may change this proposal in light of the comments it receives.

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

#### *B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies); or
3. Accessing the Government Printing Office’s web page at <http://www.gpo.gov/fdsys/>. Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and

technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

## IX. The Proposed Amendments

### List of Subjects

#### 14 CFR Part 91

Aircraft, Airmen, Aviation safety, Commercial Operators, Flights for Compensation or Hire, Fractional Ownership, Public aircraft, Reporting and recordkeeping requirements.

#### 14 CFR Part 111

Air carriers, Aircraft, Airmen, Air operators, Aviation safety, Public aircraft, Reporting and recordkeeping requirements.

#### 14 CFR Part 121

Air carriers, Aircraft, Airmen, Air operators, Aviation safety, Reporting and recordkeeping requirements.

#### 14 CFR Part 125

Aircraft, Airmen, Air operators, Aviation safety, Reporting and recordkeeping requirements.

#### 14 CFR Part 135

Air carriers, Aircraft, Airmen, Air operators, Aviation safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of Title 14, Code of Federal Regulations as follows:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend part 91 by adding § 91.27 to read as follows:

### § 91.27 Pilot Records Database.

(a) Each person that conducts operations as a corporate flight department as defined in § 111.10 of this chapter, must comply with the requirements in part 111 of this chapter in accordance with the applicable timelines in that part.

(b) Reserved.

■ 3. Revise § 91.1051 to read as follows:

### § 91.1051 Pilot Records Database

(a) The program manager for any fractional ownership program approved

in accordance with this subpart is subject to the requirements of part 111 of this chapter applicable to operators that employ pilots and must achieve compliance in accordance with the applicable timelines in that part.

(b) Reserved.

■ 4. Add Part 111 to read as follows:

## PART 111—PILOT RECORDS DATABASE

### Subpart A—General

Sec.

- 111.1 Applicability.
- 111.5 Compliance dates.
- 111.10 Definitions.
- 111.15 Application for database access.
- 111.20 Database access by authorized users and proxies.
- 111.25 Duration, cancellation and denial of access.
- 111.30 Unauthorized access or use prohibited.
- 111.35 Fraud and falsification.
- 111.40 Fee.
- 111.45 Freedom of Information Act (FOIA) requests.
- 111.50 Record retention in the PRD.

### Subpart B—Accessing and Evaluating Records

- 111.100 Applicability.
- 111.105 Evaluation of pilot records and limitations on use.
- 111.110 Motor vehicle driving record request.
- 111.115 Good faith exception.
- 111.120 Pilot consent and right of review.
- 111.125 Release from liability.
- 111.130 Refusal to hire.
- 111.135 Duty to maintain privacy and confidentiality of pilot records.
- 111.140 FAA Records

### Subpart C—Reporting of Records by Air Carriers and Operators

- 111.200 Applicability.
- 111.205 General.
- 111.210 Format for reporting information.
- 111.215 Drug and alcohol testing records.
- 111.220 Training, qualification and proficiency records.
- 111.225 Final disciplinary action records.
- 111.230 Records concerning separation of employment.
- 111.240 Verification of motor vehicle driving record search and evaluation.
- 111.245 Special rules for protected records.
- 111.250 Duty to report records promptly.
- 111.255 Requests for correction of reported information.
- 111.260 Direct disputes.
- 111.265 Historical record reporting.
- 111.270 Reporting by trustee in bankruptcy.

### Subpart D—Pilot Rights and Responsibilities

- 111.300 Applicability.
- 111.305 Application for database access.
- 111.310 Written consent.
- 111.315 Pilot right of review.
- 111.320 Reporting errors and requesting corrections.

## Subpart E—Compliance with Pilot Records Improvement Act (PRIA)—Transition to PRD

- 111.400 Applicability.
- 111.405 Continued compliance with PRIA required.
- 111.410 Duty to request and evaluate records.
- 111.415 Duty to furnish records.
- 111.420 Duty to report historical records to PRD.
- 111.425 Discontinued compliance with PRIA.
- 111.430 Expiration of subpart.

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40113, 44701, 44703(h), 44703(i), 44711, 46105.

### Subpart A—General

#### § 111.1 Applicability.

(a) This part establishes the rules governing the mandatory and voluntary use of the Pilot Records Database (PRD).

(b) This part applies to the following persons:

(1) Each person that holds an air carrier or operating certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, 125, or 135 of this chapter;

(2) Each person that conducts air tour operations pursuant to a letter of authorization issued in accordance with § 91.147 of this chapter;

(3) Each person that conducts operations pursuant to a fractional ownership program authorized in accordance with subpart K of part 91 of this chapter;

(4) Each person that conducts operations as a corporate flight department, as defined in this part, pursuant to the general operating and flight rules in part 91 of this chapter;

(5) Each person that conducts public aircraft operations;

(6) The trustee in bankruptcy of any air carrier or other operator described in this paragraph;

(7) Any other person authorized by the Administrator to access the PRD;

(8) Any individual who holds an air transport or commercial pilot certificate issued under part 61 of this chapter or a remote pilot certificate under part 107 of this chapter; and,

(9) Any individual who is employed by a person that conducts public aircraft operations.

(c) This part does not apply to:

(1) Any branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces; or

(2) Any foreign air carrier or other foreign operator of U.S. registered aircraft.

**§ 111.5 Compliance dates.**

(a) Compliance with subpart B of this part is required by [DATE ONE YEAR AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(b) Compliance with subpart C of this part is required as follows:

(1) For an air carrier or operator conducting operations on [DATE 1 YEAR AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER], compliance is required with the reporting requirements of this subpart beginning on [DATE 1 YEAR AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER]; and,

(2) For an air carrier or other operator that initiates operations after [DATE 1 YEAR AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER], compliance is required with the reporting requirements of this subpart within 90 days of the issuance of the air carrier or operator's operations specifications, unless otherwise authorized by the Administrator.

(c) Compliance with the historical records reporting requirements of § 111.420, compliance is required by March 31, 2022.

**§ 111.10 Definitions.**

For purposes of this part, the term—

*Access the PRD* means to use the credentials issued by the Administrator in accordance with § 111.20 or § 111.25 to retrieve information related to a particular individual pilot or to report to the PRD information required by this part, or for a responsible person to manage user access.

*Air Carrier* means any person that holds an air carrier certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under parts 121 or 135 of this chapter.

*Authorized user* means an individual employed by an air carrier or other operator and designated by a responsible person to access the PRD on behalf of the air carrier or other operator for purposes of reporting and evaluating the records pertaining to an individual pilot applicant.

*Corporate flight department* means a person that operates two or more standard airworthiness airplanes that require a type rating under § 61.31(a) of this chapter, in furtherance of, or incidental to, a business, pursuant to the general operating and flight rules in part 91 of this chapter or operates airplanes being operated under a deviation authority issued under § 125.3 of this chapter.

*Date an individual begins service as a pilot* means the earliest date on which a pilot serves as a flight crewmember for

an air carrier or other operator required to comply with the provisions of this part.

*Directly involved in the hiring decision* means any individual who is responsible for making pilot hiring decisions on behalf of the employer or who is responsible for advising the decision maker on whether or not to hire an individual as a pilot.

*Final disciplinary action record* means a record of any corrective action taken by an employer in response to an event pertaining to pilot performance which is not subject to any pending formal or informal dispute initiated by the pilot. No disciplinary action may be considered final until 30 days after action.

*Final separation from employment record* means a last-in-time record of any action ending the employment relationship between a pilot and an air carrier or other operator which is not subject to any pending formal or informal dispute initiated by the pilot. The separation from employment actions include: Resignation, termination, physical (medical) disqualification, professional disqualification, furlough, extended leave, or retirement. No separation from employment may be considered final until 30 days after action.

*Historical record* means 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 Pilot Records Improvement Act, 49 U.S.C. 44703(h)(4) and maintained in accordance with 49 U.S.C. 44703(i)(15)(C)(iii).

*Individual employed as a pilot* means any individual used as a pilot by an air carrier or other operator, as defined in this section, whether that individual is retained directly or on a contract basis for any form of compensation.

*Operator that employs pilots or other operator* means the following groups of persons, other than air carriers, that use one or more individuals as flight crewmember(s):

(a) Each person that holds an operating certificate issued by the FAA in accordance with part 119 of this chapter;

(b) Each person that conducts air tour operations pursuant to a letter of authorization issued in accordance with § 91.147 of this chapter;

(c) Each person that conducts operations pursuant to a fractional ownership program authorized in accordance with subpart K of part 91 of this chapter;

(d) Each person that operates a corporate flight department, pursuant to the general operating and flight rules in part 91 of this chapter;

(e) Each person that conducts operations of public aircraft; or

(f) A trustee in bankruptcy.

*Participating operator* means an operator that employs pilots covered by this part that voluntarily seeks to access the PRD for purposes of assessing the qualifications of a pilot candidate in accordance with subpart B of this part.

*Pilot* means an individual who holds a commercial pilot or airline transport pilot certificate issued under part 61; or an individual who holds a part 107 certificate with an ability to conduct UAS operations carrying people or property for compensation or hire and who is employed by an air carrier or other operator.

*Pilot Records Database (PRD) or the database* means the electronic system for enabling the exchange of pilot information between the FAA, air carriers, and operators, developed by the FAA pursuant to Section 203 of the Airline Safety and Federal Aviation Administration Extension Act of 2010, Public Law 111–216.

*PRD Hire Date or PRD Date of Hire* means the earliest date on which an individual is expected to begin any form of company required training or to perform any other duty for an air carrier or other employer in preparation for the individual's service as a pilot.

*Proxy* means a person or entity approved by the Administrator to access the PRD system electronically on behalf of an air carrier or other operator subject to the requirements of this part and designated by a responsible person for an air carrier or other operator.

*Record pertaining to pilot performance* means records of an activity or event specifically related to an individual's completion of the core duties and responsibilities of a pilot to maintain safe aircraft operations, as assigned by the employer and established by the FAA.

*Report to the PRD* means to access the PRD system electronically, and submit information in the form and manner prescribed by the Administrator pertaining to each individual employed as a pilot as required by this part.

*Responsible person* means an individual identified on the application required by §§ 111.15 and satisfies the criteria in § 111.15(d).

*Writing/Written* means documented in hard paper copy or electronic format and affixed with a signature.

**§ 111.15 Application for database access.**

(a) Each air carrier and other operator that employs pilots must submit an application for database access to the FAA in the form and manner prescribed by the Administrator, including all information described in this section and any additional information that may be requested by the Administrator.

(b) The application required by this section must include, at a minimum, the following information as well as any additional information that may be requested by the Administrator in order to verify the identity of all individuals designated by an air carrier or other operator to access the database:

(1) The full name, job title, and valid electronic mail address of the individual authorized to submit the application in accordance with paragraph (d) of this section who will act as the responsible person.

(2) The purpose(s) for which database access is requested, including whether the applicant seeks access to comply with subpart B or subpart C of this part, or both.

(3) All business names and the address for the principal base of operations for the air carrier or other operator.

(4) FAA air carrier or operating certificate number and pilot certificate number, as applicable.

(c)(1) The application required by this section may include a request for limited system administrator rights authorizing the responsible person identified in accordance with paragraph (b)(1) of this section to delegate his or her authority to access the database on behalf of the air carrier or other operator to authorized users and proxies of the air carrier or other operator.

(2) A proxy identified by a responsible person on an application described in paragraph (b)(1) of this section must also submit an application in a form and manner prescribed by the Administrator for approval.

(d) The application required by this section must be signed and submitted by a responsible person who meets the following minimum qualifications, or by another individual if approved by the Administrator:

(1) For part 121 air carriers, a person serving in a management position required by § 119.65(a) of this chapter.

(2) For part 125 operators, a person serving in a management position required by § 125.25(a) of this chapter.

(3) For part 135 air carriers and operators, a person serving in a management position required by § 119.69(a) of this chapter.

(4) For a part 135 air carrier or operator using only one pilot in its

operations, the pilot named in the certificate holder's operation specifications.

(5) For persons conducting operations pursuant to a letter of authorization issued in accordance with § 91.147 of this chapter, an individual designated as a responsible person on the operator's letter of authorization.

(6) For persons conducting operations pursuant to subpart K of part 91 of this chapter, an authorized individual designated by the fractional ownership program manager, as defined in § 91.1001(b) of this chapter, who meets all of the following conditions:

(i) The individual must have their identity verified by the FAA in a form and manner acceptable to the Administrator; and

(ii) The individual must be employed by the operator.

(7) For any other operator required to comply with this part, or any trustee appointed in a bankruptcy proceeding, an individual authorized to sign and submit the application required by this section, must meet all of the following conditions:

(i) The individual must have their identity verified by the FAA in a form and manner acceptable to the Administrator; and

(ii) The individual must be employed by the operator.

(e)(1) Air carriers and operators must submit an amended application for database access to the FAA in the form and manner prescribed by the Administrator no later than 30 days after any change in the information included on the initial application for database access, except in the case of information pertaining to a change to the responsible person.

(2) There must be a valid responsible person approved by the Administrator at all times for continued authorized user and proxy access to the database. In the case of any change or information that would cause the current responsible person's database access to be cancelled or denied, the air carrier or operator must submit an amended application to the FAA identifying a different responsible person who is eligible for database access in accordance with this section and prior to the change in status of the current responsible person.

(f) When a request for electronic access to the database is approved by the FAA, the Administrator will issue credentials to the responsible person who submitted the application required by this section, authorizing the responsible person to:

(1) Access the database on behalf of the particular air carrier or other

operator for purposes consistent with the provisions of this part; and

(2) Exercise limited database administrator rights to delegate the air carrier or other operator's authority to access the database to authorized users and proxies in accordance with § 111.20.

(g) Credentials issued based on an application submitted to the FAA in accordance with this section, as well as any authority delegated by any responsible person under paragraph (f)(2) of this section, are subject to renewal, cancellation and denial of access by the Administrator in accordance with §§ 111.20 and 111.25.

(h) An air carrier or other operator that initiates operations after [DATE 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER] must submit the application required by this section to the FAA at least 90 days before the air carrier or other operator initiates aircraft operations.

**§ 111.20 Database access by authorized users and proxies.**

(a)(1) If approved in accordance with § 111.15, the responsible person for an air carrier or other operator required to access the database in accordance with this part may delegate to employees of the air carrier or operator, or to a proxy approved in accordance with § 111.15, the authority to access the database on its behalf for purposes of complying with the requirements of subparts B or C of this part.

(2) The air carrier or other operator must establish procedures to ensure an authorized user or proxy approved by the Administrator understands and complies with § 111.135 and the terms applicable to database access in paragraph (b) of this section and the privileges and limitations of this part.

(b) Access to the database by authorized users and proxies on behalf of the air carrier or other operator is subject to the privileges and limitations applicable to air carriers and operators in this part as well as the following terms and any additional terms that may be established by the Administrator:

(1) Any authorized user or proxy delegated authority to access the database on behalf of an air carrier or other operator in order to comply with the evaluation requirements of subpart B of this part, may only use the database registration issued by the Administrator to access information in the database to inform a hiring decision concerning a pilot applicant.

(2) Any authorized user or proxy delegated authority to access the database on behalf of an air carrier or other operator in order to comply with

the reporting requirements of subpart C of this part, may only use the database registration issued by the Administrator to access the PRD for purposes of reporting information to the database on behalf of the air carrier or other operator.

(3) Proxies must provide assurances to the air carrier or other operator that the information obtained using such access will not be used for any purpose other than collecting the information for evaluation by the air carrier or other operator for purposes of making the hiring decision and will be subject to inspection upon request of the Administrator.

(c) Access to the database by authorized users and proxies may be subject to the valid access of the responsible person.

(1) In the case of cancellation of a responsible person's database access, the database access of authorized users and proxies will remain valid if the air carrier or other operator submits a new application for database access indicating a new responsible person prior to cancellation of the prior responsible person and obtains approval of that application.

(2) In the case of denial of a responsible person's database access, the database access of authorized persons and proxies may also be denied.

**§ 111.25 Duration, cancellation, and denial of access.**

(a) Duration. Database registration is valid for an amount of time determined by the Administrator unless cancelled or denied and includes both a user identification and a PRD identification.

(b) Renewal. The Administrator may require the renewal of credentials issued to any person or individual user at recurring intervals and as necessary to protect the security and integrity of the database.

(c) Cancellation. The Administrator may cancel any database registration that remains inactive for an amount of time determined by the Administrator, or if the person or individual user holding the registration no longer satisfies the eligibility criteria prescribed by this part.

(d) Denial of access.

(1) The Administrator may deny database access to any person or individual user for failure to comply with any of the duties and responsibilities prescribed by this part, including but not limited to:

(i) Accessing an individual's information in the database without first obtaining the written consent of that individual;

(ii) Reporting false or fraudulent information to the database;

(iii) Misusing or misappropriating user rights or protected information from the database; or

(iv) As necessary to preserve the security and integrity of the database.

(2) The Administrator may deny access to the database registration of any air carrier or other operator employing a pilot if the operating certificate or other authority to operate is revoked by the FAA.

(3) If database access is denied to any person or individual user under (d)(1) of this section, that person or individual user may submit a request for reconsideration in a form and a manner prescribed by the Administrator. Database access will not be permitted pending reconsideration.

(e) When access has been cancelled or denied for any person or individual user, that person or individual user must reapply for access, as applicable, in accordance with § 111.15.

**§ 111.30 Unauthorized access or use prohibited.**

(a) No person may access the database for any purpose except as expressly authorized by this part.

(b) No person may share, distribute, publish, or otherwise release any information accessed in the database to any person or individual who is not directly involved in the hiring decision, unless specifically authorized by law.

(c) No requirement in this section or this part prohibits the Administrator from accessing and using information maintained in the database for purposes consistent with the oversight authority of the FAA.

**§ 111.35 Fraud and falsification.**

No person may make, or cause to be made, any of the following:

(a) A fraudulent or intentionally false statement in, or a known omission from, any application or any amendment thereto, or in any other record or test result reported to the Pilot Records Database in accordance with the requirements of this part.

(b) A fraudulent or intentionally false statement in, or a known omission from, any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this chapter.

**§ 111.40 Fee.**

(a) The fee for processing each request made by an air carrier, other operator or participating operator, or their designated proxies, made in accordance with subpart B of this part for an individual pilot's records maintained in

the PRD is established using the following methodology and published by the Administrator:

- (1) User Fee per Request: (F). Equals
- (2) Annual Cost of Operation and Maintenance of the PRD: (C). Divided by
- (3) Annual Requests through the PRD: (R).

$$F = \frac{C}{R}$$

(b) The fee required in paragraph (a) of this section must be paid to the FAA in a form and manner prescribed by the Administrator.

(c) The fee will be imposed per pilot record accessed in the PRD.

(d) An individual pilot will not be charged a fee for accessing his/her record in the PRD.

(e) An air carrier or other employer will not be charged a fee for reporting records to the PRD.

**§ 111.45 Freedom of Information Act (FOIA) Requests.**

(a) Except as provided in paragraph (b) of this section, information reported to the PRD in accordance with the provisions of this part is exempt from the disclosure requirements of 5 U.S.C. 552(b)(3)(B).

(b) Information reported to the PRD in accordance with the provisions of this part is subject to disclosure as follows:

(1) De-identified, summarized information may be disclosed to explain the need for changes in policies and regulations;

(2) Information may be disclosed to correct a condition that compromises safety;

(3) Information may be disclosed to carry out a criminal investigation or prosecution;

(4) Information may be disclosed to comply with 49 U.S.C. 44905, regarding information about threats to civil aviation; and

(5) Such information as the Administrator determines necessary may be disclosed if withholding the information would not be consistent with the safety responsibilities of the FAA.

**§ 111.50 Record Retention in the PRD.**

(a) All information pertaining to an individual pilot that is reported for inclusion in the database in accordance with this part will be maintained in the database until one of the following occurs:

(1) The FAA receives official notification of an individual pilot's death, in accordance with paragraph (b) of this section, from the pilot's next of kin; or

(2) An FAA audit of the database indicates that 99 years have passed since the date of birth on record for the individual.

(b) Any notification submitted to the FAA in accordance with paragraph (a)(1) of this section must include the following:

(1) The full name of the pilot as it appears on his or her pilot certificate;

(2) The pilot's FAA-issued certificate number; and

(3) A certified copy of the individual's certificate of death.

### Subpart B—Accessing and Evaluating Records

#### § 111.100 Applicability.

(a) The requirements of this subpart are mandatory for any person that:

(1) Holds an air carrier or operating certificate issued by the FAA in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, 125, or part 135 of this chapter;

(2) Has been issued management specifications to operate in accordance with part 91 subpart K of this chapter; or

(3) Has been issued a letter of authorization to conduct air tour operations in accordance with § 91.147 of this chapter.

(b) Operators that employ pilots and are subject to the reporting requirements in subpart C of this part, may also include in the application for access to the database under § 111.15 a request to opt in to the requirements of this subpart to assess the qualifications of an individual in determining whether to hire the individual as a pilot, provided:

(1) The application for access to the database for purposes of evaluating any information maintained in the database is submitted for approval to the FAA in the form and manner prescribed by the Administrator;

(2) Any other operator that requests access to the database in accordance with this paragraph may be required to submit a new application or amendment thereto, along with any additional information that may be requested by the Administrator;

(3) Any participating operator that is authorized by the Administrator to access the database in accordance with this paragraph must comply with § 111.40 and the requirements of this subpart, with the exception of 111.110, and unless otherwise specified.

#### § 111.105 Evaluation of pilot records and limitations on use.

(a) No air carrier or participating operator may permit an individual to

begin service as a pilot, unless the person has evaluated all relevant information pertaining to that individual in the course of deciding whether to hire the individual to work as a pilot, including:

(1) All information pertaining to the individual maintained in the PRD;

(2) All information pertaining to the individual obtained from the chief driver licensing official of each state in accordance with § 111.110, if required; and

(3) Records related to the individual that are maintained by another air carrier or other operator in accordance with the provisions of 49 U.S.C. 44703(h) and subpart E of this part, until such time as those provisions expire.

(b) No person may access the database for purposes of retrieving the information maintained in the database pertaining to an individual, unless the individual has provided his or her consent in accordance with § 111.120.

(c) No person required to access the database for purposes of evaluating the information maintained in the database regarding an individual may allow any individual to access the database on its behalf except as provided in § 111.20.

(d) Except as provided in subpart D, no person may use any information pertaining to an individual that is retrieved from the database for any purpose except to assess whether or not to employ that individual as a pilot.

(e) Paragraph (a)(3) of this section will expire on [DATE 2 YEARS AND 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER].

#### § 111.110 Motor vehicle driving record request.

(a) No air carrier or participating operator may permit an individual to begin service as a pilot, unless the air carrier or participating operator has requested and evaluated all relevant information from the chief driver licensing official of each State, identified through a National Driver Register (NDR) search concerning the individual's motor vehicle driving history in accordance with the following process:

(1) For each individual the air carrier or participating operator is considering employing as a pilot, the air carrier must obtain the written consent of the individual before requesting an NDR search for the individual's State motor vehicle driving records;

(2) After obtaining the written consent of the individual, the air carrier or participating operator must submit a request to the NDR to determine

whether any State maintains relevant records pertaining to the individual; and

(3) When the NDR search result is returned—

(i) If the NDR search result indicates a participating State, as defined in 49 U.S.C. 30301, maintains records concerning the individual, the air carrier must submit a request for the relevant motor vehicle driving records to the chief driver licensing official of each State identified in the NDR search result; or

(ii) If the NDR search result does not identify any participating State maintaining relevant motor vehicle driving record data concerning the individual, then the air carrier's obligation under this paragraph is complete.

(b) The air carrier or participating operator must report to the PRD, in the form and manner prescribed by the Administrator, verification that consent was received from the individual to conduct the NDR record search required in paragraph (a) of this section.

(c) Verification that compliance with the requirements of this section has been accomplished must be reported to the PRD in accordance with § 111.240.

(d) The air carrier or participating operator must provide to the Administrator, upon request, documentation to establish that the air carrier or participating operator has conducted the search required by paragraph (a) of this section. The air carrier or participating operator documentation must retain this documentation for five years.

#### § 111.115 Good faith exception.

(a) Notwithstanding the provisions of § 111.105, an air carrier or participating operator may allow an individual to begin service as a pilot, without first evaluating all records pertaining to the individual's previous employment as a pilot, only if—

(1) The air carrier has made a documented good faith attempt to access the information maintained in the PRD; and

(2) The air carrier has received notice from the Administrator that certain information pertaining to an individual's employment history as a pilot is not contained in the PRD.

#### § 111.120 Pilot consent and right of review.

(a) No person may access the PRD for purposes of evaluating the records pertaining to any individual in the course of deciding whether to hire the individual to work as a pilot, unless prior to the date of access, the person has been notified by the Administrator



that the individual whose records the person seeks to access in the database has provided written consent authorizing the release of his or her information maintained in the database to that person.

(b) Except as provided in § 111.110, the individual consent required in paragraph (a) of this section must be reported to the database by the individual in accordance with § 111.310 in a form and manner prescribed by the Administrator.

(c) Any individual that submits a written consent to an air carrier or other operator in accordance with § 111.310(b) is entitled to request a copy of any State motor vehicle driving records obtained by the prospective employer in accordance with § 111.110. The prospective employer must provide a response to the individual with copies of any State motor vehicle driving records obtained within 30 days.

#### **§ 111.125 Release from liability.**

(a) Except as provided in paragraph (b) of this section and notwithstanding any other provision of law or agreement to the contrary, an air carrier or participating operator may require an individual, with respect to whom the air carrier must access records in the database pursuant to this part, to execute a release from liability for any claim arising from:

(1) Accessing the individual's records in the database; or

(2) The use of such records by the air carrier in accordance with the requirements of this part.

(b) No air carrier may require any individual with respect to whom the carrier is accessing records in the PRD to execute a release from liability for any claim arising from furnishing information known to be false and maintained in violation of a criminal statute.

#### **§ 111.130 Refusal to hire.**

(a) In addition to reasons related to a pilot applicant's qualifications, an air carrier or participating operator may refuse to hire an individual as a pilot if:

(1) The individual did not provide written consent required in §§ 111.110 and 111.120 of this chapter, in the form and manner prescribed by the Administrator, for the air carrier to receive records from the PRD or from the chief driver licensing official of any state; or

(2) The individual did not execute the release from liability that may be requested by the air carrier in accordance with § 111.125.

(b) No action or proceeding may be brought against an air carrier by or on

behalf of an individual who has applied for or is seeking a position as a pilot with the air carrier if the air carrier refused to hire the individual pursuant to paragraph (a) of this section.

#### **§ 111.135 Duty to maintain privacy and confidentiality of pilot records.**

Each person authorized to access the database for purposes of retrieving information pertaining to an individual pilot candidate must take action to protect the privacy of any individual whose records are accessed in the database and adequately secure in a normal course of business the confidentiality of such records retrieved from the database.

#### **§ 111.140 FAA Records.**

No air carrier or participating operator may permit an individual to begin service as a flight crewmember unless the air carrier or operator's responsible person has accessed and evaluated all relevant information pertaining to the following FAA records included in the PRD:

(a) Records related to current pilot and medical certificate information, including associated type ratings and information on any limitations to those certificates and ratings.

(b) Records maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under part 61 of title 14, Code of Federal Regulations.

(c) Records related to enforcement actions resulting in a finding by the Administrator of a violation of Title 49 of the United States Code or a regulation prescribed or order issued under that title that was not subsequently overturned.

(d) Records related to an individual acting as pilot in command or second in command during an aviation accident or incident.

(e) Records related to pre-employment and other Department of Transportation modal Administration drug and alcohol testing including:

1. Verified positive drug tests;
2. Alcohol tests resulting in a confirmed breath alcohol concentration of 0.04 or greater; and
3. Refusals to submit to drug or alcohol tests.

#### **Subpart C—Reporting of Records by Air Carriers and Operators**

##### **§ 111.200 Applicability.**

This subpart prescribes the requirements for reporting records on individuals employed as pilots and applies to the following persons:

(a) Each person that holds an air carrier or operating certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, 125, or 135 of this chapter;

(b) Each person that conducts air tour operations pursuant to a letter of authorization issued in accordance with § 91.147 of this chapter;

(c) Each person that conducts operations pursuant to a fractional ownership program authorized in accordance with subpart K of part 91 of this chapter;

(d) Each person that conducts operations with a corporate flight department, as defined in this part, pursuant to the general operating and flight rules in part 91 of this chapter;

(e) Each person that conducts operations of public aircraft; and

(f) The trustee in bankruptcy of an air carrier or operator described in this paragraph.

##### **§ 111.205 General.**

(a) Each air carrier and operator must report the information required by this subpart for an individual employed as a pilot beginning on the PRD date of hire for that individual.

(b) Each air carrier and operator must report the following information for each individual employed as a pilot:

(1) All relevant records described in §§ 111.215 through 111.240 generated by the air carrier or other operator on or after [DATE 1 YEAR AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]; and

(2) The historical records addressed in § 111.265.

(c) No person may enter, or cause to be entered, into the database any information covered in § 111.245.

##### **§ 111.210 Format for reporting information.**

Each air carrier and other operator must report to the database all records required by this subpart for each individual employed as a pilot in the form and manner prescribed by the Administrator.

##### **§ 111.215 Drug and alcohol testing records.**

(a) Each air carrier and other operator required to comply with part 120 of this chapter must report to the database the following records concerning drug and alcohol testing for each individual pilot employed by that air carrier or other operator in the form and manner prescribed by the Administrator:

(1) Records concerning drug testing, including—

(i) Any drug test result verified positive, adulterated, substituted, or

otherwise non-negative by a Medical Review Officer, which must be retained by the Medical Review Officer and employer in accordance with § 120.111(a)(1) of this chapter;

(ii) Any refusal to submit to drug testing, which must be retained by the employer in accordance with 49 CFR 40.333(a)(1)(iii); and

(iii) All follow-up drug test results, verified by a Medical Review Officer, which must be retained by the Medical Review Officer and employer in accordance with 49 CFR 40.333(a)(1)(v).

(2) Records concerning alcohol testing, including—

(i) A test result with a confirmed breath alcohol concentration of 0.04 or greater, which must be retained by the employer in accordance with § 120.219(a)(2)(i)(B) of this chapter;

(ii) Any result pertaining to an occurrence of on-duty alcohol use, pre-duty alcohol use, or alcohol use following an accident, which must be retained by the employer in accordance with § 120.219 (a)(2)(i)(B) of this chapter;

(iii) Any refusal to submit to alcohol testing, which must be retained by the employer in accordance with 49 CFR 40.333(a)(1)(iii); and

(iv) All follow-up alcohol test results, which must be retained by the employer in accordance with 49 CFR 40.333(a)(1)(v).

(b) Each drug or alcohol test result that must be reported to the database in accordance with paragraph (a) of this section must include the following information in the form and manner prescribed by the Administrator:

- (1) The type of test administered;
- (2) The date the test was administered; and
- (3) The result of the test.

#### **§ 111.220 Training, qualification and proficiency records.**

(a) Each air carrier and other operator must report to the PRD in a form and manner acceptable to the Administrator, the following records for each individual employed as a pilot:

(1) Records documenting an individual's compliance with FAA-required training, qualifications, and proficiency events, which are kept pursuant to §§ 91.1027(a)(3), 121.683, 125.401 or 135.63(a)(4) of this chapter, as applicable, including any comments and evaluations made by a check pilot; and

(2) Other records the air carrier maintains documenting an individual's compliance with FAA or employer-required training, checking, testing, currency, proficiency, or other events related to pilot performance concerning

the training, qualifications, proficiency, or professional competence of the individual, including any comments and evaluations made by a check pilot.

(b) No person may report any of the following information for inclusion in the database:

(1) Records related to flight time, duty time and rest time.

(2) Records demonstrating compliance with physical examinations or any other protected medical records.

(3) Records documenting aeronautical experience.

(4) Records identified in § 111.245.

(c) Each record reported to the PRD in accordance with paragraph (a) of this section must include all of the following information in the form and manner prescribed by the Administrator:

(1) Date of the event;

(2) Aircraft type;

(3) Duty position of the pilot;

(4) Training program approval part and subpart of this title, as applicable;

(5) Crewmember training/qualification curriculum and category as reflected in either a FAA-approved or employer-mandated training program;

(6) Result of the event (satisfactory or unsatisfactory, and, if unsatisfactory, a brief comment explaining the basis for the unsatisfactory result); and

(7) Comments of check pilot, if applicable under subpart K of part 91, part 121, part 125, or part 135 of this chapter.

#### **§ 111.225 Final disciplinary action records.**

(a) Except as provided in paragraph (b) of this section, each air carrier and other operator must report to the database, in a form and manner acceptable to the Administrator, any final disciplinary action record pertaining to pilot performance with respect to an individual employed as a pilot.

(b) No person may report to the database any record of disciplinary action that was subsequently overturned as a result of any one of the following:

(1) A settlement agreement between the employer and the pilot or the pilot's representative;

(2) The official decision or order of any panel or individual given authority to review employment disputes, or by any court of law; or

(3) Other mutual agreement of the employer and the pilot.

(c) Whenever an air carrier or other operator receives notice that any disciplinary action record, which has been reported to the database under paragraph (a) of this section, was overturned, the air carrier or other operator must request a correction to the pilot's PRD record in accordance with § 111.255.

(d) Each final disciplinary action record that must be reported to the database in accordance with paragraph (a) of this section must include the following information in the form and manner prescribed by the Administrator:

(1) The type of disciplinary action taken by the employer, including written warning, suspension, or termination;

(2) The date the corrective action occurred; and

(3) A brief summary of the event resulting in corrective action.

#### **§ 111.230 Records concerning separation of employment.**

(a) Except as provided in paragraph (b) of this section, each air carrier and other operator must report to the PRD, in a form and manner acceptable to the Administrator, the following records for each individual employed as a pilot:

(1) Records concerning release from employment kept pursuant to §§ 91.1027(a)(3), 121.683, 125.401 or 135.63(a)(4) of this chapter; and

(2) Records pertaining to pilot performance kept concerning a release from employment or resignation, termination or professional disqualification with respect to employment for each pilot that it employs.

(b) No person may report to the database any record regarding separation from employment that has been overturned as a result of any one of the following:

(1) A settlement agreement between the employer and the pilot;

(2) The official decision or order of any panel or individual given authority to review employment disputes, or by any court of law; or

(3) Other mutual agreement of the employer and the pilot.

(c) Whenever an air carrier or other operator receives notice that any separation from employment record, which has been reported to the database under paragraph (a) of this section, was overturned, the air carrier or other operator must request a correction to the pilot's PRD record in accordance with § 111.255.

(d) Each separation from employment action record that must be reported to the database in accordance with paragraph (a) of this section must include the following information in the form and manner prescribed by the Administrator:

(4) The type of separation from employment, which could include: resignation, termination, physical (medical) disqualification, professional disqualification, furlough, extended leave, or retirement;

(5) The date of separation from employment; and

(6) For termination or professional disqualification, a brief summary of the event resulting in separation from employment.

**§ 111.240 Verification of motor vehicle driving record search and evaluation.**

(a) Each air carrier or participating operator subject to the requirements of subpart B of this part must report to the PRD, in a form and manner acceptable to the Administrator, verification that the requirements in § 111.110 have been met.

(b) No person may report any substantive information from the state driving records pertaining to any individual obtained in accordance with § 111.110 for inclusion in the PRD.

**§ 111.245 Special rules for protected records.**

No person may report any pilot record for inclusion in the PRD that pertains to a safety event, that was reported by any individual as part of an Aviation Safety Action Program (ASAP) or any other approved Voluntary Safety Reporting Program for which the FAA has designated reported information as protected in accordance with part 193 of this chapter.

**§ 111.250 Duty to report records promptly.**

(a) Except as provided in § 111.260 and subpart E for reporting historical records to the PRD, all records created on or after [DATE 1 YEAR AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER] and required to be reported to the database under this subpart must be reported to the PRD promptly.

(b) For purposes of this section, a record will be considered as having been reported promptly if the record is submitted to the FAA within the following timeframe for the type of record submitted—

(1) PRD Hire Date. Within 30 days of the PRD Hire Date.

(2) Date Individual Begins Service as a Pilot. Within 30 days of beginning service.

(3) Training, Qualification and Proficiency Records. Within 30 days of record creation.

(4) Drug and Alcohol Testing. Notwithstanding the requirements of §§ 120.113(d)(3) and 120.221(c), within 30 days of the following, as applicable:

(i) The date a drug test result is verified by the Medical Review Officer;

(ii) The date an alcohol test result is confirmed by the Breath Alcohol Technician; or

(iii) The date of the refusal to submit to testing.

(5) Disciplinary Actions.

(i) Each air carrier and other operator must report records of final disciplinary actions no later than 30 days after the disciplinary action is considered final under § 111.225.

(ii) If any final disciplinary action is overturned after the information has been reported to the PRD, the air carrier or other operator must submit a request for correction in accordance with § 111.255 within 10 days after the disciplinary action is overturned.

(6) Release from Employment.

(i) Each air carrier and other operator must report any release from employment or resignation, termination, or disqualification with respect to employment of an individual no later than 30 days after the date of release from employment.

(ii) If any decision regarding release from employment is overturned after the information has been reported to the PRD, the air carrier or other operator must submit a request for correction in accordance with § 111.255 within 10 days after the decision to reinstate the pilot.

(7) Verification of Motor Vehicle Driving Record Search and Evaluation. Within 45 days of PRD Date of Hire.

(8) Other Records Pertaining to Pilot Performance. Within 30 days of record creation.

**§ 111.255 Requests for correction of reported information.**

(a) An air carrier or other operator that discovers an error or inaccuracy in information previously reported to the PRD must submit a request for correction in a form and manner acceptable to the Administrator.

(b) Requests for correction must be submitted to the database within 30 days of discovering the error or inaccurate information.

**§ 111.260 Direct disputes.**

(a) Each air carrier or other operator that employs pilots must have a documented process for resolving disputes with respect to information documented in the PRD.

(b) Each air carrier and other operator that employs pilots must respond in a reasonable amount of time to any dispute made by an individual which it has employed as a pilot with respect to information documented in the PRD.

(c) Each air carrier and other operator must conduct a reasonable investigation of any dispute made by an individual pilot in accordance with paragraph (a) of this section and § 111.320.

(d) The resolution of any dispute made by an individual pilot in accordance with paragraph (a) of this

section and § 111.320 must be documented in the PRD by the air carrier or other operator.

**§ 111.265 Historical record reporting.**

(a) Except as provided in paragraph (b) of this section, each person subject to the provisions of this subpart must comply with the requirements in subpart E of this part regarding continued compliance with PRIA and reporting of historical records to the PRD.

(b) Persons conducting operations of a corporate aircraft fleet pursuant to the general operating and flight rules in part 91 of this chapter are not required to comply with this section or subpart E of this part.

**§ 111.270 Reporting by trustee in bankruptcy.**

(a) If any air carrier or other operator subject to the requirements of this part files a petition for protection under the Federal bankruptcy laws, the trustee appointed by the bankruptcy court must comply with all reporting requirements of subpart C and subpart E of this part applicable to the air carrier or other operator.

(b) The air carrier or other operator may delegate its authority to the trustee appointed by the bankruptcy court to access the database on its behalf in accordance with § 111.20 or the trustee may submit an application to the FAA requesting access to the database consistent with the requirements of § 111.15.

**Subpart D—Pilot Access and Responsibilities**

**§ 111.300 Applicability.**

This subpart applies to:

(a) Any individual who holds an airline transport or commercial pilot certificate under part 61 of this chapter or a remote pilot certificate under part 107 of this chapter; or

(b) Any individual who is employed as a pilot by an operator of a public aircraft.

**§ 111.305 Application for database access.**

(a) Any pilot may request electronic access to the PRD by submitting an application to the FAA in the form and manner acceptable to the Administrator for one or more of the following purposes:

(1) To review and obtain a copy of his or her own comprehensive PRD record;

(2) To give consent to a particular air carrier or participating operator to access his or her comprehensive PRD record; or

(3) To exercise any other privileges provided by this part.

(b) The application required in paragraph (a) of this section must include, at a minimum, the following information as well as any additional information that may be requested by the Administrator in order to verify the identity of the pilot requesting access to the database:

(1) The pilot's full name as it appears on his or her pilot certificate;

(2) The pilot's FAA-issued certificate number;

(3) A current U.S. mailing address and telephone number; and

(4) A valid electronic mail address.

(c) The application required in paragraph (a) of this section must be submitted at least 7 days before the pilot seeks to access the PRD for any authorized purpose.

(d) Credentials issued by the FAA to any pilot based on application submitted in accordance with this section are subject to renewal, cancellation, and denial of access by the Administrator in accordance with § 111.25.

#### § 111.310 Written consent.

(a) Before any air carrier or participating operator may access an individual's records in the PRD for purposes of retrieving information for compliance with subpart B of this part, the individual must apply for access to the PRD in accordance with § 111.305 and provide written consent to the FAA, in the form and manner acceptable to the Administrator, that authorizes the Administrator to release his or her records maintained in the database to the particular air carrier or participating operator.

(b) Before any air carrier or participating operator may submit a request to the NDR for an individual's motor vehicle driving record for purposes of compliance with § 111.110, the individual must provide written consent to the air carrier or participating operator in the form and manner acceptable to the Administrator.

#### § 111.315 Pilot right of review.

(a) Once a pilot has been issued credentials by the FAA to access the PRD based on an approved application submitted to the FAA in accordance with § 111.305, the pilot may access the database at any time to review all records pertaining to him or her that have been reported to the PRD (including airman certification information reported by the Administrator) and to submit the written consent required in accordance with § 111.310(a).

(b) Any pilot who submits written consent to an air carrier or other

operator in accordance with § 111.310(b) may request a copy of any State motor vehicle driving records obtained by the prospective employer in accordance with § 111.110. The prospective employer must provide a response within 30 days of receiving the pilot's request.

#### § 111.320 Reporting errors and requesting corrections.

(a) Notwithstanding any other provision of law or agreement, the Administrator, upon receipt of written request from an individual must provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records.

(b) Any pilot who identifies an error or inaccuracy in his or her records maintained in the PRD must submit a notice and request for correction to the person that reported the erroneous information to the PRD. If the information disputed was reported by an air carrier or other operator, the dispute must be made with that person in accordance with the person's established policies and procedures required in accordance with § 111.255.

(c) Any pilot who identifies an error or inaccuracy in his or her FAA data in the database must report the error or inaccuracy to the FAA in the form and manner acceptable to the Administrator consistent with the requirements of the Privacy Act.

(d) If a pilot believes a particular record reported to the PRD by any person that has employed the individual or reported by the Administrator is erroneous or inaccurate, the pilot may request, in the form and manner acceptable to the Administrator, that the Administrator enter a notation into the individual's PRD record indicating that certain information pertaining to the individual in the database has been disputed by the pilot.

#### Subpart E—Compliance With PRIA—Transition to PRD

##### § 111.400 Applicability.

(a) This subpart addresses the continuing obligations of air carriers and other operators subject to the requirements of PRIA, and identified in paragraph (b) of this section, until full compliance has been achieved with subparts A through C of this part by each air carrier and other operator.

(b) Except as provided in paragraph (c) of this section, this subpart applies to the following persons:

(1) Each certificate holder authorized to conduct operations under part 121 of this chapter;

(2) Each certificate holder authorized to conduct operations under part 135 of this chapter;

(3) Each certificate holder authorized to conduct operations under part 125 of this chapter;

(4) Each person that conducts air tour operations pursuant to a letter of authorization issued in accordance with § 91.147 of this chapter;

(5) Each person that conducts operations pursuant to a fractional ownership program approved in accordance with subpart K of part 91 of this chapter;

(6) Each person that conducts public aircraft operations; and

(7) The trustee in bankruptcy of any air carrier or other operator described in this paragraph.

(c) This subpart does not apply to any new entrant air carrier or other operator that initiates aircraft operations on or after [DATE 2 YEARS AND 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER].

##### § 111.405 Continued compliance with PRIA required.

Until [DATE 2 YEARS AND 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER], each air carrier or other operator described in § 111.400(b) must continue to make a good faith effort to comply with all applicable requirements of PRIA at 49 U.S.C. 44703(h).

##### § 111.410 Duty to request and evaluate records.

(a) Until [DATE 2 YEARS AND 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER], each air carrier must make a good faith effort to request and receive records in accordance with the requirements of PRIA at 49 U.S.C. 44703(h) if the historical records pertaining to the pilot's previous employment with an entity are not available in the PRD.

(b) Once the records have been obtained in accordance with paragraph (a) of this section, the air carrier or other operator must evaluate the records before allowing any individual to begin service as a pilot.

##### § 111.415 Duty to furnish records.

Until [DATE 2 YEARS AND 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER], at the request of a hiring air carrier and with the prior written consent of the pilot applicant, each air carrier and other operator must furnish to the hiring air carrier any records maintained in accordance with PRIA under 49 U.S.C. 44703(h), which have not been reported to the PRD pursuant to § 111.265.

**§ 111.420 Duty to report historical records to PRD.**

(a) Air carriers must 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.

(b) Operators employing pilots, except as provided in paragraph (c) of this section, must report to the PRD all historical records kept in accordance with 49 U.S.C. 44703(h)(4), dating from August 1, 2010 up to [DATE 1 YEAR AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER] in the form and manner prescribed by the Administrator.

(c) Persons conducting operations pursuant to the general operating and flight rules in part 91 of this chapter are not required to comply with this section.

(d) All historical records required to be reported to the PRD in accordance with paragraphs (a) and (b) of this section must be reported to the PRD no later than [DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER].

(e) All historical records required to be reported to the FAA for inclusion in the PRD in accordance with paragraph (a) and (b) of this section must be maintained by the air carrier or other operator for at least five years after the records have been reported to the PRD, notwithstanding other applicable rules or regulations pertaining to retention of such records.

**§ 111.425 Discontinued compliance with PRIA.**

Beginning on [DATE 2 YEARS AND 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER], air carriers or other operators employing pilots may no longer comply with the provisions of 49 U.S.C. 44703(h).

Exclusive compliance with Subparts A–D of Part 111 is required.

**§ 111.430 Expiration of subpart.**

This subpart sunsets on [DATE 7 YEARS AND 90 DAYS AFTER PUBLICATION OF FINAL RULE IN FEDERAL REGISTER].

**PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS**

■ 5. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95 126 Stat 62 (49 U.S.C. 44732 note).

■ 6. Amend § 121.683 by adding new paragraph (d) to read as follows:

**§ 121.683 Crewmember and dispatcher record.**

\* \* \* \* \*

(d) Each certificate holder authorized to conduct operations in accordance with this part is subject to the Pilot Records Database requirements applicable to air carriers in part 111 of this chapter and must achieve compliance in accordance with the applicable timelines in that part.

**PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 7. The authority citation for part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 8. Amend § 125.401 by adding new paragraph (d) to read as follows:

**§ 125.401 Crewmember record.**

\* \* \* \* \*

(d) Each certificate holder authorized to conduct operations in accordance with this part is subject to the Pilot Records Database requirements applicable to operators that employ pilots in part 111 of this chapter and must achieve compliance in accordance with the applicable timelines in that part.

**PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

■ 9. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 10. Amend § 135.63 by adding paragraphs (e) to read as follows:

**§ 135.63 Recordkeeping requirements.**

\* \* \* \* \*

(e) Each certificate holder authorized to conduct operations in accordance with this part is subject to the Pilot Records Database requirements applicable to air carriers in part 111 of this chapter and must achieve compliance in accordance with the applicable timelines in that part.

Issued under authority provided by 49 U.S.C. 106(f), 106(g) 44701(a), and 44703 in Washington, DC, on March 3, 2020.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

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