

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 11, 91, and 111**

[Docket No.: FAA–2020–0246; Amdt. Nos. 11–65, 91–363, and 111–1]

RIN 2120–AK31

**Pilot Records Database**

**AGENCY:** Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts final regulations for the use of an electronic Pilot Records Database (PRD) and implements statutory requirements to facilitate the sharing of pilot records among air carriers and other operators in an electronic data system managed by the FAA. This final rule requires 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 PRD. In addition, this rule identifies the air carriers and operators required to access the PRD to evaluate the available data for each pilot candidate prior to making a hiring decision.

**DATES:**

*Effective date:* This rule is effective August 9, 2021, except for the amendments at instruction 7, which is effective October 8, 2021; instructions 8 and 9, which are effective June 10, 2022; instructions 4, 11, and 12, which are effective September 9, 2024; instruction 13, which is effective September 8, 2027; and instructions 6, 10, and 14, which are effective September 10, 2029.

*Compliance dates:* For the requirements in § 111.15, compliance is required by September 8, 2021. Compliance with subpart B of part 111 is required beginning June 10, 2022, except the requirements in § 111.105(b)(1), for which compliance is required beginning December 7, 2021. Compliance with subpart C of part 111 is required beginning June 10, 2022.

In § 111.255, compliance for reporting historical records that date on or after January 1, 2015 is required by June 12, 2023. Compliance for reporting historical records that date before January 1, 2015 is required by September 9, 2024. Concurrent compliance with the requirements of the Pilot Records Improvement Act will end on September 9, 2024.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Morris, 3500 S MacArthur

Blvd., ARB301, Oklahoma City, Oklahoma 73179; telephone (405) 954–4646; email *christopher.morris@faa.gov*.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Executive Summary
  - A. Purpose of the Final Rule
  - B. Overview of the Final Rule
  - C. Summary of Benefits, Costs, and Cost Savings
- II. Authority for This Rulemaking
- III. Background
  - A. Statement of the Problem
  - B. History of PRIA and PRD
- IV. Comments Regarding General Issues, Applicability, Pilot Privacy, and the Transition From PRIA
  - A. General Support or Opposition
  - B. Applicability of the Rule
  - C. Pilot Privacy
  - D. Transition From PRIA to PRD
- V. Section-by-Section Discussion of Regulatory Text
  - A. Subpart A—General
  - B. Subpart B—Access to and Evaluation of Records
  - C. Subpart C—Reporting of Records by Operators
  - D. Subpart D—Pilot Access and Responsibilities
  - E. Other Amendments
  - F. Other Comments
  - G. Comments Related to Regulatory Notices and Analyses
- VI. Regulatory Notices and Analyses
  - A. Regulatory Evaluation
  - B. Regulatory Flexibility Determination
  - C. International Trade Impact Assessment
  - D. Unfunded Mandates Assessment
  - E. Paperwork Reduction Act
  - F. International Compatibility and Cooperation
  - G. Environmental Analysis
  - H. Privacy Analysis
- VII. Executive Order Determinations
  - A. Executive Order 13132, Federalism
  - B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - C. Executive Order 13609, Promoting International Regulatory Cooperation
- VIII. How To Obtain Additional Information
  - A. Rulemaking Documents
  - B. Comments Submitted to the Docket
  - C. Small Business Regulatory Enforcement Fairness Act

**List of Abbreviations and Acronyms Used Frequently in This Document**

AC—Advisory Circular  
 ARC—Aviation Rulemaking Committee  
 CFR—Code of Federal Regulations  
 FOIA—Freedom of Information Act  
 InFO—Information for Operators  
 NDR—National Driver Register  
 NPRM—Notice of Proposed Rulemaking  
 NTSB—National Transportation Safety Board  
 PAC—Public Aircraft Operations, Air Tour Operators, Corporate Flight Departments  
 PAO—Public Aircraft Operations  
 PAR—PRD Airman Record  
 PRD—Pilot Records Database  
 PRIA—Pilot Records Improvement Act

**I. Executive Summary***A. Purpose of the Final Rule*

This final rule amends Title 14 of the Code of Federal Regulations (14 CFR) by adding new part 111, Pilot Records Database (PRD). This final rule facilitates the transition from the information-sharing requirements of the Pilot Records Improvement Act (PRIA)<sup>1</sup> to an FAA-established electronic database, as required by the PRD Act.<sup>2</sup>

This final rule modernizes pilot record-sharing as it occurs currently under PRIA. The PRD will serve as a repository for pilot records and will contain records from a pilot's current and former employers, as well as the FAA. The FAA envisions that the PRD not only will be an indicator of pilots' abilities or deficiencies, but also that it will prompt conversations between applicants and hiring employers. PRD is intended to help ensure that no records about a pilot's performance with previous employers that could influence a future employer's decision go unidentified.

*B. Overview of the Final Rule*

This final rule requires all 14 CFR part 119 certificate holders, fractional ownership programs, persons holding a letter of authorization (LOA) to conduct air tour operations in accordance with § 91.147, persons conducting certain operations under part 91 or part 125 (referenced as “corporate flight departments” or “corporate operators” in this preamble),<sup>3</sup> and governmental entities conducting public aircraft operations (PAO) to report records to the pilot records database in new 14 CFR part 111. This rule uses the term “reporting entity” when referencing such requirements.

Part 119 certificate holders, fractional ownership programs and persons conducting air tour operations must review records prior to allowing an individual to begin service as a pilot. This rule refers to the different operators

<sup>1</sup> Public Law 104–264 section 502; 110 Stat. 3259. The requirements of PRIA were initially codified at 49 U.S.C. 44936, which 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 requirements of PRIA are codified at 49 U.S.C. 44703(h) and (j).

<sup>2</sup> 49 U.S.C. 44703(i) (Pub. L. 111–216, 124 Stat. 2348 (Aug. 1, 2020)). Referred to as “the PRD Act” for the remainder of this preamble.

<sup>3</sup> The FAA uses the term corporate flight departments to reference operators of two or more aircraft conducting operations in furtherance of or incidental to a business, solely pursuant to the general operating and flight rules in part 91 or operating aircraft pursuant to a Letter of Deviation Authority issued under § 125.3. This criteria is provided in § 111.1(b)(4).

subject to part 111 as “operators” generally, but also as “reviewing entity” when referencing these requirements.

The PRD will contain the required operator and FAA records for the life of the pilot and will function as a hiring tool that an operator will use in making decisions regarding pilot employment. Employers cannot search the PRD indiscriminately, as an operator that wishes to view records can see a pilot’s record only if that pilot has granted consent to that hiring employer. Pilot consent is time-limited and the duration is specified by the pilot. The FAA anticipates the PRD will improve pilot privacy because only specific data elements are required to be submitted, in contrast to current practice under PRIA, in which pilot records are exchanged in their entirety. The PRD

will indicate what records exist about a pilot; the operator is responsible for determining if it is necessary to obtain further information prior to permitting an individual to begin service as a pilot.

The Pilot Records Database Notice of Proposed Rulemaking (NPRM) published on March 30, 2020, and the comment period closed June 29, 2020. The FAA received approximately 800 comments. After careful consideration of these comments and thoughtful review of the proposal, the FAA adopts this final rule with certain modifications from the proposal. These modifications will reduce burdens while achieving the safety goals Congress intended for the PRD. The modifications will:

- Remove the proposed user fee to access the database for review of pilot records.

- Update the method of reporting to the PRD for certain operators without a part 119 certificate. Instead of providing records contemporaneously for all pilots employed, corporate flight departments, air tour operations, and public aircraft operations will be permitted not to upload training, disciplinary, and separation from employment records to the PRD unless and until requested by a hiring operator. Certain termination and disciplinary action records must be reported contemporaneously, however.

- Revise the level of detail required for reporting certain training and checking; disciplinary action; and separation from employment events to ensure all relevant records are captured while reducing subjectivity.
- Amend the compliance schedule, as set forth in the table below:

TABLE 1—TIMELINE FOR REPORTING AND REVIEWING RESPONSIBILITIES

| Date         | 90 Days after publication                  | 180 Days after publication                                 | One year after publication  | Two years after publication  | Three years and 90 days after publication  |
|--------------|--|--|---|--|--|
| Event .....  | Submit application for database access.    | Reviewing entities use the PRD for the FAA records review. | Begin reporting current pilot records, historical records; begin reviewing operator records in the PRD. | Complete historical record reporting for records dating on or after January 1, 2015. | Compliance with PRIA will no longer be available as an alternative to PRD; full compliance with PRD required. Historical record upload complete. |
| Entity ..... | Reporting entities and reviewing entities. | Reviewing entities.  | Reporting entities and reviewing entities.  | Reporting entities subject to § 111.255.   | Reporting entities, reviewing entities.  |

14 CFR part 111 contains four subparts. Subpart A contains the general requirements of part 111, including how to submit an application for database access and other details about user roles within the PRD. Subpart B provides requirements for operators reviewing records—in particular, details regarding employer obligations during the record review process for both the FAA records and records submitted by an entity reporting records. Subpart C contains provisions for record reporting, including which records to report and timelines for reporting records. Subpart D provides requirements and information regarding pilots’ access to the PRD.

1. PRD Access Requirements and Restrictions

Subpart A of part 111 provides general requirements for use of the PRD. It includes provisions on applicability, definitions, requirements for compliance timeframes, database access, fraud and falsification, and record retention.

Part 111 applies to each operator holding an air carrier or operating certificate issued in accordance with part 119 and authorized to conduct operations under part 121, part 125, or part 135; operators holding an LOA

issued under § 91.147; operators holding management specifications for a fractional ownership program under subpart K of part 91; operators conducting operations as a corporate flight department; entities conducting certain PAO operations; trustees in bankruptcy of any operator; pilots; and other persons who might access the PRD. Part 111 does not apply to any foreign air carrier or operator of U.S. registered aircraft.

Designated responsible persons under part 111 must apply for access to the PRD. Such persons will manage records and user accounts, and be responsible for all actions taken within the PRD for a particular operator, entity, or trustee. This rule provides a list of the appropriate management positions that will qualify to serve as a responsible person for an operator. Consistent with Congress’ direction that the FAA protect the privacy and confidentiality of pilot records in the PRD, part 111 provides specific requirements for the responsible person’s application that will enable the FAA to evaluate sufficiently each request for access. The responsible person may delegate his or her authority to access the database to certain other persons, but continued access is contingent on the validity of

the responsible person’s electronic access.

The FAA will deny database access to any person for failure to comply with any of the duties and responsibilities prescribed under part 111, or as necessary to preserve the security and integrity of the database. No person may use the database for any purpose except as expressly authorized under part 111 and no person may share, distribute, publish, or otherwise release any record accessed in the database to any person or individual not directly involved in the hiring decision, unless specifically authorized by law, or unless the person sharing the record is the subject of the record.

Lastly, subpart A contains requirements concerning the length of time that records pertaining to an individual must remain within the PRD. Such records must remain in the database until either the FAA receives official notification of a pilot’s death or an FAA audit of the database indicates that 99 years have passed since the date of birth on record for a particular pilot.

2. Access to and Evaluation of Records

Under subpart B of part 111, part 119 certificate holders, fractional ownership programs, air tour operations holding a letter of authorization under § 91.147,

and trustees in bankruptcy of those entities must review a pilot's records in the PRD prior to permitting the pilot to begin service as a required flight crewmember. These operators are "reviewing entities." In order to access and evaluate a pilot's records, a reviewing entity must receive consent from that pilot.

As set forth in the PRD Act, each reviewing entity must preserve the privacy and confidentiality of the records accessed in the database and the persons accessing the records on behalf of each reviewing entity are subject to all terms of access set forth in subpart A.

Reviewing entities must evaluate both the FAA records and records provided by an operator (reporting entity) subject to this rule. The FAA records include:

- Records related to current pilot and medical certificate information, including associated type ratings and information on any limitations to those certificates and ratings;
- 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 14 CFR part 61;
- Records related to enforcement actions resulting in a finding by the Administrator that was not subsequently overturned of a violation of Title 49 of the United States Code or a regulation prescribed or order issued under that title; and
- Records related to an individual acting as pilot in command or second in command during an aviation accident or incident.

Reviewing entities must also evaluate non-FAA records that the FAA includes in the PRD. Such records consist of an individual's pre-employment drug and alcohol testing history and other U.S. Department of Transportation drug and alcohol testing, including verified positive drug test results, alcohol misuse violations, including confirmed alcohol results of 0.04 or greater, and refusals to submit to drug or alcohol testing. Reviewing entities must begin using the PRD to evaluate the FAA records December 7, 2021.

Each reviewing entity must also evaluate any records submitted to the PRD by a reporting entity and must begin evaluating these records in the PRD on June 10, 2022. Reviewing entities must also evaluate any records obtained through the National Driver Register (NDR) process from the chief driver licensing official of a State.

Due to the possibility that a reporting entity might have additional records on request, the reviewing entity must

compare the pilot's list of former employers dating back five years and verify that no discrepancy exists between the pilot-provided employment history and the records available in the PRD.

### 3. Reporting of Records

Subpart C of part 111 requires reporting entities to submit records for each individual employed as a pilot, including drug and alcohol testing records under part 120, if applicable; training, qualification, and proficiency records, as applicable; final disciplinary action records; records concerning separation of employment; verification of a motor vehicle driving record search; and historical records. These records generally must be reported to the PRD contemporaneously, which for purposes of this preamble means within the time set by the FAA upon occurrence of the event causing creation of the record, typically 30 days.

Reporting entities include all reviewing entities, as well as corporate flight departments and public aircraft operations. Pursuant to the PRD Act, this rule includes requirements for record reporting by a trustee appointed by a bankruptcy court for an operator or entity subject to part 111, subpart C. This trustee must comply with all reporting requirements in part 111.

Certain records are not subject to required contemporaneous reporting. Each operator conducting PAO; air tour operations; and corporate flight departments are not required to report training qualification and proficiency records, certain final disciplinary action records, or certain records concerning separation of employment, unless and until they receive a request from a reviewing entity. If, however, the record memorializes a disciplinary action resulting in permanent or temporary removal of the pilot from aircraft operations or separation from employment resulting in termination, the record must be reported to the PRD contemporaneously. These operators must retain all records eligible for reporting upon request. If records are not available at the time of the request from the reviewing entity, these reporting entities must provide written confirmation to the FAA that no records are available.

No reporting entity may report pilot records related to a safety event that the entity reported as part of the Aviation Safety Action Program (ASAP) or any other approved Voluntary Safety Reporting Program.

If a reporting entity discovers or is informed that previously reported records contain inaccurate information,

that entity must correct the record within 10 days of knowledge that the record contains an error. When the reporting entity does not agree that the record contains an error, it must notify the pilot that the dispute will be resolved in accordance with the reporting entity's dispute resolution procedures. Each reporting entity must have a documented process for investigating and resolving record disputes in a reasonable amount of time. Once resolved, final disposition of the dispute must be documented in the PRD.

Air carriers and operators required to report historical records must complete submission of historical records generated on or after January 1, 2015 by June 12, 2023. Historical records preceding January 1, 2015 must be reported by September 9, 2024.

### 4. Pilot Access and Responsibilities

Subpart D of part 111 establishes requirements that apply to a pilot's access to the PRD. Each pilot must submit an application to the FAA to validate that pilot's identity for access to the PRD. Pilots provide consent to a reviewing entity to view their records through the PRD. Access also enables pilots to review their own records in the PRD. In the event a pilot is not able to meet the identity validation requirements associated with accessing the PRD, a pilot can receive a paper copy of his or her records by submitting a form to the FAA.

Pilots are responsible for designating which reviewing entities are able to access records for review. Before any operator may access a pilot's records in the PRD, the pilot must give written consent, designating the reviewing entity that will be allowed to access that pilot's records. Pilots must also provide separate written consent for operators to submit a request to the NDR for the pilot's motor vehicle driving record.

Pilots must verify that their employment history is complete and accurate. In addition, pilots who identify errors or inaccuracies in their respective PRD records are responsible for reporting the errors to the PRD. Once the FAA receives a report from the pilot of an error or inaccuracy, the FAA will designate the record as "in dispute" in the PRD. The record will remain designated as such until the entity that reported the record either corrects the record or completes the dispute resolution process.

### 5. Transition to PRD

Operators currently comply with PRIA. Continued use of PRIA is required to support a successful transition to

PRD. By September 9, 2024, the FAA intends to complete the transition from PRIA to PRD.

To support the transition, all operators subject to the applicability of part 111 must submit a responsible person application not later than September 8, 2021. The FAA will begin working with each subject operator and entity to facilitate a smooth transition. Additionally, reviewing entities must use the PRD to review the FAA records, beginning December 7, 2021.

Once the PRD begins accepting records on June 10, 2022, reporting entities must submit any new records generated on or after that date to the PRD. During this time, reporting entities must continue to respond to PRIA requests for historical records or, alternatively, report those historical records directly to the PRD for review. The PRD will display either a statement indicating a reporting entity has completed reporting all records for a pilot or a statement that the reviewing entity needs to submit a PRIA request to the reporting entity for records. The FAA envisions that as time goes on, records will be pre-populated in the PRD and any duplicative review of records will phase out. Duplicative reporting is never required; a reporting entity may always, beginning on June 10, 2022, upload a record to the PRD instead of responding to a PRIA request. Reviewing entities must also begin

reviewing records in the PRD on June 10, 2022, while continuing to comply with PRIA.

*C. Summary of Benefits, Costs, and Cost Savings*

This rule promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions by using the most accurate pilot records available and by making those records accessible electronically. After the effective date of the rule, operators will incur costs to report pilot records to the PRD and to train and register as users of the PRD. Operators will receive future cost savings once PRIA is phased out. The FAA will incur costs related to the operations and maintenance of the PRD.

Over a 10-year period of analysis (2021–2030), this rule results in present value net costs (costs less savings) to industry and the FAA of about \$67.0 million or \$9.5 million annualized using a seven percent discount rate. Using a three percent discount rate, this rule results in present value net costs of about \$71.0 million or about \$8.3 million annualized.

This rule provides recurring annual cost savings to industry because the PRD would replace PRIA three years and 90 days after the rule is published. Under PRIA, air carriers, operators, and pilots complete and mail, fax, or email

forms to authorize requests for the provision of pilots' records. Under the PRD, most of this process will occur electronically. Over a 10-year period of analysis (2021–2030), the rule provides present value cost savings to industry of about \$21.2 million or \$3.0 million annualized using a seven percent discount rate. Using a three percent discount rate, the present value cost savings to industry is about \$27.4 million or about \$3.2 million annualized. After the discontinuance of PRIA, the annual recurring cost savings will more than offset the recurring annual costs of the rule.

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

TABLE 2—SUMMARY OF BENEFITS, COSTS, AND COST SAVINGS

| Benefits  |  |
|---|--|
| • Promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions. |  |
| • Provides faster retrieval of pilot records compared to PRIA.  |  |
| • Reduces inaccurate information and interpretation compared to PRIA.   |  |
| • Provides easier storage of and access to pilot records than PRIA.   |  |
| • Allows pilots to consent to release and review of records.  |  |

Summary of costs and cost savings\* (\$millions)

| Category           | 10-Year present value (7%) | Annualized (7%) | 10-Year present value (3%) | Annualized (3%) |
|--------------------|----------------------------|-----------------|----------------------------|-----------------|
| Costs .....        | 88.2                       | 12.6            | 98.5                       | 11.5            |
| Cost Savings ..... | (21.2)                     | (3.0)           | (27.4)                     | (3.2)           |
| Net Costs .....    | 67.0                       | 9.5             | 71.0                       | 8.3             |

\* **Table Notes:** Columns may not sum due to rounding. Savings are shown in parentheses to distinguish from costs. Estimates are provided at seven and three percent discount rates per Office of Management and Budget (OMB) guidance. Industry and FAA costs are higher in the beginning of the period of analysis than industry cost savings that occur later in the period of analysis after the discontinuance of PRIA three years and 90 days after the rule is published. This results in larger annualized estimates of costs and net costs at a seven percent discount rate compared to a three percent discount rate.

**II. 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 section 203 of the Airline Safety and Federal Aviation Administration Extension Act of 2010,

herein called the PRD Act,<sup>4</sup> codified at 49 U.S.C. 44703(h)–(k). 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 persons that employ pilots. At a minimum, air carriers and persons 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. 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

<sup>4</sup> Public Law 111–216, 124 Stat. 2348 (Aug. 1, 2010).

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 expiration of the application of the Pilot Records Improvement Act of 1996.

### III. Background

#### A. Statement of the Problem

The Pilot Records Improvement Act (PRIA) was enacted in 1997 in response to a series of accidents attributed to pilot error.<sup>5</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 employers had not investigated the pilots' backgrounds.

Two accidents following the enactment and implementation of PRIA led the NTSB to make additional findings and recommendations regarding retention of pilot records; the sharing of information related to pilot performance among operators; and operators' review of previous performance records. 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), The Bahamas, after an in-flight failure of the right engine. The flight was conducted under the operating rule of 14 CFR part 135, as a scheduled international, passenger-commuter flight. Out of 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>6</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>7</sup>

In response to the Air Sunshine 527 accident, the NTSB issued recommendation A-05-01, in which it 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>8</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."

On February 12, 2009, Colgan Air, Inc. flight 3407 (d/b/a Continental Connection), crashed into a residence in Clarence Center, New York, 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 occurred 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>9</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>10</sup>

Additional safety issues the NTSB identified included deficiencies in the air carrier's recordkeeping system and its analysis of the flightcrew's qualifications and previous performance. Specifically, Colgan Air's check airman stated 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 the next day; however, the company's electronic records indicated that the second check was conducted 12 days after the failure. 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.<sup>11</sup> In addition to this failed check, the captain failed his practical tests for the instrument rating (airplane category) on October 1, 1991 and for 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.

As a result of its investigation, the NTSB issued recommendation A-10-019 to recommend 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."<sup>12</sup> Safety Recommendation A-10-017 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>13</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

<sup>5</sup> Clarifications to Pilot Records Improvement Act of 1996, H.R. Rep. 105-372 (Oct. 31, 1997), explained certain clarifying amendments made to PRIA in Public Law 105-142, 111 Stat. 2650 (Dec. 5, 1997), and 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). Each of these operators held a part 119 air carrier certificate and most of the flights occurred under 14 CFR part 135, except Continental Airlines flight 1713, which was operated under 14 CFR part 121.

<sup>6</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>7</sup> See NTSB Report AAR-04/03 at page 43.

<sup>8</sup> Letter to Marion C. Blakey Re Safety Recommendation A-05-01 and -02 (Jan. 27, 2005), available 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>9</sup> NTSB Report AAR-10/01 at 155 (Feb. 2, 2010), available at <http://www.ntsb.gov/investigations/AccidentReports/Reports/AAR1001.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> NTSB Safety Recommendation A-10-019 in Letter from NTSB Chairman Deborah A.P. Hersman to FAA Administrator J. Randolph Babbitt dated Feb. 23, 2010 at 26, available at <https://www.ntsb.gov/safety/safety-recs/reclatters/A-10-010-034.pdf>.

<sup>13</sup> NTSB Safety Recommendation A-10-017 in Letter from NTSB Chairman Deborah A.P. Hersman to FAA Administrator J. Randolph Babbitt dated Feb. 23, 2010 at 57, available at <https://www.ntsb.gov/safety/safety-recs/reclatters/A-10-010-034.pdf>. 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-10-017 remains classified Open-Acceptable Response."

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) 120-68G: The Pilot Records Improvement Act of 1996 (AC120-68G)*, (June 21, 2016) 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>14</sup> the NTSB advised that a rulemaking would ensure that air carriers are required to obtain and evaluate notices of disapprovals for pilot-applicants.

Following the Colgan Air 3407 accident, Congress enacted the PRD Act. The PRD Act required the FAA to establish an electronic pilot records database and provided for the subsequent sunset of PRIA. Congress has since enacted the FAA Extension, Safety, and Security Act of 2016 (FESSA), which required the FAA to establish the electronic pilot records database by April 30, 2017.<sup>15</sup>

On February 23, 2019, Atlas Air Inc. (Atlas) flight 3591, a Boeing 767, was destroyed after it descended rapidly from an altitude of about 6,000 ft mean sea level (MSL) and crashed in Trinity Bay, Texas, about 41 miles east-southeast of George Bush Intercontinental/Houston Airport (IAH), Houston, Texas, resulting in the death of the captain, first officer, and a nonrevenue pilot riding in the jump seat. Atlas operated the airplane as a part 121 domestic cargo flight.

The NTSB determined that the probable cause of this accident was an inappropriate response by the first officer as the pilot flying to an inadvertent activation of the go-around mode, which led to his spatial disorientation and nose-down control inputs that placed the airplane in a steep descent from which the crew did not recover. Contributing to the accident, according to the NTSB, were systemic deficiencies in the aviation industry's selection and performance measurement practices, which failed to address the first officer's aptitude-related deficiencies and maladaptive

stress response. The NTSB also noted the FAA's failure to implement the PRD as a contributing factor.

Consequently, the NTSB issued two new safety recommendations. Recommendation A-20-34 states:

Implement the pilot records database and ensure that it includes all industry records for all training started by a pilot as part of the employment process for any Title 14 Code of Federal Regulations Part 119 certificate holder, air tour operator, fractional ownership program, corporate flight department, or governmental entity conducting public aircraft operations regardless of the pilot's employment status and whether the training was completed.

Recommendation A-20-35 states:

Ensure that industry records maintained in the pilot records database are searchable by a pilot's certificate number to enable a hiring operator to obtain all background records for a pilot reported by all previous employers.

On March 30, 2020, the FAA responded to the legislative mandates and NTSB recommendations by publishing the PRD Notice of Proposed Rulemaking (NPRM) in the **Federal Register**.<sup>16</sup> Consistent with NTSB recommendation A-05-01, the FAA proposed to require all 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 the individual received during a practical test attempt for a certificate or rating. The proposed rule stated the FAA would upload data processed in the 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 proposed to require air carriers and operators to enter relevant information into the PRD in a standardized format.

Implementation of this rule is responsive to both new NTSB recommendations. Specifically, regarding Recommendation A-20-34, the FAA only has authority to require reporting of records by operators that have actually employed the pilot; however, the PRD will apply to records concerning training prior to the pilot beginning service as a pilot crewmember.

#### B. History of PRIA and PRD

Congress enacted PRIA to ensure that air carriers adequately investigate each pilot's employment background and other information pertaining to pilot performance 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 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 provisions of PRIA were self-implementing and the FAA's role was limited; therefore, there was no need for the FAA to develop implementing regulations. The FAA issued AC120-68G, which provided guidance for air carriers, operators and pilots regarding compliance with the PRIA statute. In advance of this rulemaking, the FAA moved its PRIA records to an electronic pilot record database, the first phase of PRD.<sup>17</sup> Use of the PRD for review of FAA records is voluntary under PRIA.

Following the Colgan Air 3407 accident, the FAA issued a Call to Action on Airline Safety and Pilot Training. The FAA published an Airline Safety and Pilot Training Action Plan<sup>18</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 updated AC 120-68E<sup>19</sup> on July 2, 2010, and incorporated elements from the Plan.

In response to the PRD Act, the FAA Administrator chartered the PRD Aviation Rulemaking Committee (ARC) on February 3, 2011.<sup>20</sup> The PRD ARC submitted a final report to the Associate Administrator for Aviation Safety on July 29, 2011. A copy of the report is in the public docket for this rulemaking.<sup>21</sup>

The FAA also issued further communications regarding pilot records. The FAA published an Information for Operators (InFO)<sup>22</sup> on August 15, 2011 (InFO 11014), advising all operators that conduct operations in accordance with

<sup>17</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.

<sup>18</sup> Fact Sheet—Update on the FAA's Call to Action to Enhance Airline Safety (Jan. 27, 2010), available at [https://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=11125](https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=11125).

<sup>19</sup> Advisory Circular—Pilot Records Improvement Act of 1996 (July 2, 2010), available at [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC%20120-68E.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-68E.pdf).

<sup>20</sup> The PRD ARC charter is available 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).

<sup>21</sup> The ARC report is available in the public 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>22</sup> InFOs are documents the FAA issues that contain information and recommendations.

<sup>14</sup> Advisory Circular—Pilot Records Improvement Act of 1996 (June 21, 2016), available at [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC\\_120-68G.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_120-68G.pdf).

<sup>15</sup> Public Law 114-190 section 2101 (July 15, 2016).

<sup>16</sup> 85 FR 17660.

parts 91, 121, 125, and 135 to retain any records on pilots employed in those operations.<sup>23</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 to August 1, 2005.<sup>24</sup> The FAA also issued a 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 the statute requires such entities to include in the database.<sup>25</sup>

The PRD Act directed the FAA to submit a statement to Congress by February 2012, and at least once every three years thereafter, indicating completion of a periodic review of the statutory requirements. The statement to Congress must contain FAA recommendations to change the records required to be included in the database or explain why the FAA does not recommend changes to the records referenced in Section 203. In its most recent report to Congress, in February 2018, the FAA indicated that it did not recommend any changes until it considers public comments on the PRD rulemaking proposal. The FAA expects to provide the next report by February 2021.

#### IV. Comments Regarding General Issues, Applicability, Pilot Privacy, and the Transition From PRIA

The Pilot Records Database NPRM published on March 30, 2020 and the comment period closed June 29, 2020. Approximately 800 comments were posted to the docket, many of which were form letters submitted by National Business Aviation Association (NBAA) members.

Generally, the Families of Continental Flight 3407<sup>26</sup> and others supported the rule. Many commenters, particularly

<sup>23</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>24</sup> Pilot Records Database—Status Update [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>25</sup> National policy notice N8900.279, “Pilot Records Retention Responsibilities Related to the Airline Safety and Federal Aviation Administration Act of 2010,” is available at [http://www.faa.gov/documentLibrary/media/Notice/N\\_8900.279.pdf](http://www.faa.gov/documentLibrary/media/Notice/N_8900.279.pdf). See also 49 U.S.C. 44703(i)(4)(B)(ii)(II).

<sup>26</sup> The Families of Continental Flight 3407 is an organization of family members and close friends of the victims of Continental Flight 3407 which crashed on February 12, 2009. This rule refers to that event as Colgan Air 3407.

part 91 operators<sup>27</sup> and aviation industry organizations, opposed the proposed rule. Commenters stated that not all covered records should apply to some types of operators, such as corporate operators and operators conducting public aircraft operations (PAO). They asserted that requiring such operators to include all record types would cause undue burden and would offer limited value, as the career path from part 91 operations to operations involving common carriage is less common. Commenters were also concerned about the user fee, particularly as it applied to small operators, and noted that they anticipated higher costs for recordkeeping than the estimated costs presented by the FAA. Commenters also requested a longer compliance period to transition from PRIA to PRD.

Commenters expressed concern about pilots’ privacy and objected to the inclusion of check pilot comments in the PRD. Commenters further objected to the inclusion of historical records and the method for record reporting.

#### A. General Support or Opposition

##### 1. Summary of Comments

Most comments that generally agreed with the proposed rule were submitted by the Families of Continental Flight 3407. These commenters supported the creation of the PRD on the grounds that it would prevent accidents such as crash of Colgan Flight 3407. Most of these commenters stated the crash was largely due to pilot error and that the PRD would have provided better review and scrutiny of pilot records, which could have prevented the accident.

The other commenters that generally supported the proposed rule, including the NTSB, the Regional Airline Association (RAA), Small UAV Coalition, and the National Air Disaster Foundation, did so on the basis that centralizing records in an electronic database would create a broad source of records available in a standardized format in one location. This centralization would limit the possibility that operators would overlook records, provide a seamless process of reviewing pilot records, aid operators in hiring the highest quality pilots, and improve transparency while still protecting the privacy of pilots’ records. One individual stated the proposed rule has some positive aspects for part 135 operators, especially in obtaining timely PRIA documents about a prospective crewmember’s

<sup>27</sup> The term “part 91 operators” refers to operations that occur solely under the regulatory requirements contained in 14 CFR part 91.

employment history, but believed the costs outweigh the benefits. This commenter indicated complying with the proposed rule would require hiring additional personnel.

Commenters who generally disagreed with the proposed rule stated the PRD would not be useful, would impose an unfair burden on affected operators or pilots or would be intrusive and violate pilot privacy. Commenters also stated that the PRD would be open to abuse and false reporting by employers, or would penalize pilots unfairly who do not train well or do not perform well in the culture of a particular airline. Others, including a flight department leader, stated the provisions are unnecessary because airline and charter organizations can change their internal hiring processes to assess the candidate without needing to leverage a standardized process for review of records. The FL Aviation Corp. and another individual commented that the NPRM provided no data concerning accidents or incidents that justify the change to the PRD or the requirements for inclusion of additional records and recordkeeping. The Coalition of Airline Pilots Associations (CAPA) urged the FAA to establish protocols to prevent U.S. candidates from being placed at a hiring disadvantage when competing for jobs among foreign applicants whose training data may be unverifiable.

Three commenters, including NBAA and CAPA, expressed concern that the proposed rule differs significantly from the consensus recommendations of the 2011 PRD Aviation Rulemaking Committee (ARC). CAPA recommended the FAA reconsider the ARC’s recommendations, in addition to reviewing the public comments.

##### 2. FAA Response

The FAA carefully reviewed all comments received in response to the NPRM and made several changes to the rule to ensure that it achieves the safety goals of the FAA and fully implements the statutory requirements set forth by Congress. As noted in the NPRM, industry, including part 91 operators, currently is subject to the requirements of PRIA. Although the implementation of the PRD changes the nature of industry participation in record-sharing, issues such as pilot privacy, abuse, false reporting, and penalization of pilots who do not perform well exist under PRIA, as well. In enacting the PRD Act, Congress directed the FAA to include safeguards in the PRD for pilot privacy and related concerns. The FAA discussed these proposed safeguards in the NPRM and adopts them, as appropriate, in this final rule.

The FAA carefully considered the input provided by the ARC. The FAA has already adopted many of its recommendations in the design and implementation of the PRD. While the FAA does not currently plan to implement all recommendations as described in the report, the ARC assisted the FAA in formulating the design of the PRD. This design is the result of careful consideration of the requirements, as outlined in the statute, the FAA's operational capabilities, and the effects on and benefits to industry.

The FAA is mindful of all comments concerning costs of compliance with this rule. The Regulatory Impact Assessment (RIA), which is available in the docket for this rulemaking, accounts for all costs incurred by entities. Section VI.A of this rule also includes a discussion of the costs.

### B. Applicability of the Rule

As discussed further in Section V.A.1., under the NPRM, part 111 applies to operators and would require them to report information to the FAA for inclusion in the PRD. Specifically, the FAA proposed to include pilot records from certain operations occurring under part 91, such as public aircraft operations, air tour operators operating in accordance with § 91.147, and corporate flight departments.

The FAA received comments related to the applicability of the proposed rule from the General Aviation Manufacturers Association (GAMA), the Aircraft Owners and Pilots Association (AOPA), NBAA, the U.S. Marshals Service Justice Prisoner and Alien Transportation System (JPATS), NASA's Aircraft Management Division, PlaneSense, Inc., Dassault Aviation, and several individual commenters, approximately 500 of whom were using a form letter provided by NBAA. Many commenters and the majority of individuals opposed applying the proposed requirements to part 91 operators. Some commenters, including NASA's Aircraft Management Division and JPATS, opposed the application of the proposed rule to PAO.

#### 1. Comments Received on the Inclusion and Definition of Corporate Flight Departments and Other Part 91 Operators

GAMA, NTSB, NBAA, AOPA, Koch Industries, operators, and individual commenters addressed the proposal to require all corporate flight departments to enter data on pilot performance into the PRD. Many of these commenters indicated that the proposal would impose unreasonably burdensome recordkeeping requirements on

corporate flight departments, which ultimately would benefit operators but would not increase the safety of corporate flight department operations. Several commenters asserted that Congress did not intend to impose these requirements on corporate flight departments and the proposal was FAA overreach. Many commenters noted that their corporate flight departments are small operations; as a result, some suggested they would need to add staff and modify their information technology systems to comply with the proposed requirements.

Several commenters objected to the definition of "corporate flight departments" in the NPRM, arguing that the FAA is creating a new category of operator, and that this is inconsistent with established categories of operations under parts 91, 121, and 135. GAMA, NBAA and its form letter campaign, AOPA, and the PlaneSense form letter campaign asserted that no basis exists in the PRD Act to establish such a definition and that it would add complexity and confusion. GAMA noted the proposed definition would require aircraft operators to first determine their status based on the definition and then add the new burden and cost of compiling, maintaining, and reporting pilot records. GAMA expressed concern that the proposed rule would expose operators to the possibility of enforcement action in the event the FAA disagrees with an operator's interpretation of the rule and the operator's subsequent actions.

GAMA, AOPA, and individual commenters asserted that the FAA assumes erroneously that part 91 corporate aviation commonly serves as a "pipeline" or "gateway" to employment with part 121 and part 135 operators. GAMA stated that studies show corporate flight departments are not gateway employers like flight schools with bridge agreements, operators under parts 91 subpart K and 135, and the U.S. military. Instead, GAMA stated that the most common path to part 121 air carrier employment starts at a flight school. GAMA identified the primary sources of airline hiring as part 141 and part 61 flight schools with bridge agreements, parts 135 and part 91(k) operators, and the U.S. military.<sup>28</sup> CAPA stated those gateway jobs are ever-changing and that although it is not unreasonable to require a certificate holder to keep pilot

records, trying to take this snapshot in time of what might be a gateway job could lead to future loopholes.

NBAA stated that business aviation represents a diverse group of aircraft operators ranging from single-pilot, owner-operated single aircraft to multi-aircraft operators with a mix of fixed-wing and rotor-wing aircraft. Therefore, according to NBAA, a single, codified definition will not adequately address the diversity of the industry. NBAA recommended the FAA remove any provisions that impose additional recordkeeping requirements that would apply to corporate flight departments and § 91.147 operators, as recommended by the ARC. NBAA also objected to the FAA basing the definition of corporate flight departments on the number of aircraft a department operates, as doing so could deter operators from purchasing aircraft.

NBAA urged the FAA to limit the scope of the proposed rule to operators with the most significant public interest, such as those that conduct common carriage, and to facilitate the continued use of PRIA feedback for part 91 operators. NBAA noted its member survey data suggests that, on average, part 91 operators within FAA's proposed definition of a corporate flight department receive less than one PRIA request every two-and-a-half years.

NBAA and other commenters stated that part 91 business operators—particularly those the FAA proposed to include in part 111—have excellent safety records, and the FAA's proposal and regulatory evaluation fail to articulate any quantifiable safety value for subjecting part 91 operators to the requirements of the proposed rule. NBAA further stated that NBAA members, such as certificate holders operating under part 135, are already subject to PRIA requirements and report that PRIA results play a greater role in validating existing pilot hiring decisions than in considering whom to hire. NBAA also pointed out that including certain part 91 operators exceeds the NTSB's recommendation, which only cites the need for parts 121 and 135 operators to share pilot information. NBAA recommended the FAA remove part 91 operators from the proposed rule, on the view that records provided by part 91 operators would provide minimal safety benefit to part 121 and part 135 operators in their hiring process.

An individual asserted that while InFO 11014<sup>29</sup> refers to part 91, 121 and

<sup>28</sup>James Higgins, et al., "An Investigation of the United States Pilot Labor Supply," University of North Dakota (2013); and Michael McGee, "Air Transport Pilot Supply and Demand—Current State and Effects of Recent Legislation," The RAND Corporation (2015).

<sup>29</sup>InFO 11014, described in Section III.B., published on August 11, 2015 and provided

135 records, the regulations cited are for parts 121, 125, and 135 only. The commenter stated no regulation requires part 91 operators to maintain records other than to show proficiency. The commenter further stated the InFO does not address part 91 record retention.

Other commenters stated that the FAA does not have statutory authority to impose the proposed recordkeeping requirements on part 91 operators. PlaneSense and the commenters that submitted comments as part of the PlaneSense form letter campaign (the PlaneSense commenters) asserted that the PRD Act identifies air carriers and “other persons” as having obligations under the Act, but specifically identifies the applicable pilot records to which the PRD Act applies as those kept pursuant to part 121, part 125, or part 135. Citing 49 U.S.C. 44703(h) and 44703(i), these commenters argued that the PRD Act does not include pilot records of operators whose flights are operated under part 91 or subpart k of part 91. The PlaneSense commenters also contended that no statutory authority exists in either section 44703(h) or 44703(i) that imposes an obligation on any operator conducting operations under part 91. They asserted that the FAA is overstepping its authority by interpreting the definition of “person” in the PRD Act to include noncommercial operators that the statute does not identify specifically. These commenters urged the FAA to remove references to fractional operators and corporate flight departments from the rule.

An air tour operator opined that the proposal would burden part 91 operators far beyond the intent of Congress by requiring frequent reporting by that group. Several commenters noted that corporate flight departments vary widely in the volume and nature of records retained. GAMA and other commenters suggested that the proposal would discourage corporate flight departments from creating and retaining records not otherwise mandated by regulation and may also discourage participation in voluntary safety programs and optional formal training. One individual suggested that while Congress and the FAA included indemnity clauses, they are not robust enough to prevent civil defamation actions.

Dassault Aviation asked the FAA to confirm that the proposed requirements for corporate flight departments are not applicable to original equipment manufacturer (OEM) demonstration and

information about future PRD compliance to air carriers and operators.

OEM production or experimental flight departments because they do not operate “a fleet of two or more standard airworthiness airplanes.”

In the preamble to the proposed rule, the FAA asked commenters to respond to three questions regarding corporate flight departments’ safety practices.<sup>30</sup> GAMA and four individual commenters provided responses. These commenters generally agreed it would not be beneficial to require corporate flight departments operating a single aircraft to report to the PRD because, in the case of owners operating their own aircraft, they would be reporting on themselves. GAMA asserted the Agency failed to “adequately address the scope of operations conducted under part 91, especially by owner-operators who use their aircraft for a variety of purposes and will likely never employ pilots.” An individual commenter noted it would be impossible for corporate flight departments operating a single aircraft to comply with the proposed requirements because every private aircraft owner would have to report on every pilot they employ or contract with regardless of how short the term. Another individual asked how the FAA would know all corporate flight departments are reporting to the PRD, as required.

In response to questions about the records corporate flight departments maintain, GAMA indicated many large corporate flight departments maintain records documenting pilot training, evaluation, performance, disciplinary actions, or release from employment or other professional disqualification. GAMA also noted that pilots of many corporate flight departments have responsibilities in addition to operating aircraft, so employment records may also contain much information that is not relevant to performance as a pilot and the pilot-related data is likely to exist in a form that differs from the record elements the PRD intends to include.

JPATS, NASA’s Aircraft Management Division, and individuals opposed the application of the proposed rule to PAO. Noting that the proposed rule would not apply to “[a]ny branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces,” JPATS said that Federal flight

<sup>30</sup> 85 FR at 17671 (requesting answers to whether it would be beneficial to require corporate flight departments operating a single aircraft to report to PRD; whether such flight departments already maintain substantive records that include certain types of information; and whether the proposed rule would create a disincentive for such departments to create and retain records not already required).

departments should be treated the same, unless the department maintains an FAA certificate, such as an air carrier or commercial operating certificate. NASA opposed placing pilot record reporting requirements on Federal Government PAO. Individual commenters also recommended the FAA exempt PAO from the proposed rule. One such commenter stated the proposed rule does not consider that pilots from the Department of Justice (FBI, DEA, U.S. Marshals) and the Department of Homeland Security (Air and Marine Operations, United States Coast Guard) can be targeted for retaliation for performing their duties.

In contrast to the comments discussed above, NTSB and an individual commenter expressed support for the inclusion of part 91 operators in the proposed rule. The individual commenter said that, as an employer of pilots for part 135 operations, it finds the current process to be flawed and time-consuming with respect to obtaining records from part 91 operators. The NTSB agreed that part 91 operators often serve as “gateway operators” for air carrier pilots.

## 2. FAA Response

The FAA carefully evaluated all comments received regarding the applicability of each proposed requirement. Upon consideration, the FAA determined that in light of the information and data provided by commenters, some requirements of the proposed rule were overly burdensome for certain types of operators. This rule reduces the reporting burden for certain operators conducting operations without a part 119 certificate, in that they are not required to report specific types of records unless and until requested. Such operators include public aircraft operations, air tour operations, and corporate flight departments, referred to in this section as the “PAC” group. This approach addresses many of the issues raised by commenters with respect to the burden on part 91 operators. Under the final rule, a reviewing entity will have access to a pilot’s records as needed, but that the reporting requirement for the PAC group scales according to the volume of requests.

Commenters stated that many pilots employed by PAC operators do not switch employers often and NBAA noted that some operators only receive a single PRIA request every two-and-a-half years. Accordingly, the FAA determined the most effective way to ensure review of a pilot’s records by a potential employer, while reducing extraneous records loaded by the PAC

group, is to require that group to enter only records that may be of particular concern to a hiring employer. Section V.C.4 of this rule contains a detailed discussion of this new method of reporting. This rule requires these PAC operators to enter certain records contemporaneous with the occurrence of a particular event or receipt of a record; this framework will reduce risk associated with a pilot error or omission with respect to that pilot's employment history. Section V.D.3 provides a description of this requirement. This rule will require the PAC operators to report all other records unless and until requested, with the exception of an air tour operator's drug and alcohol testing records.<sup>31</sup>

The FAA is mindful of the comments recommending exclusion of public aircraft operations from the PRD. The FAA, however, does not have discretion to completely exclude this group from the PRD requirements. The PRD Act requires the inclusion of records from "other person[s] [. . .] that ha[ve] employed an individual as a pilot of a civil or public aircraft."<sup>32</sup> The FAA notes that the PRD Act specifically excludes records from the branches of the "Armed Forces, the National Guard, or a reserve component of the Armed Forces,"<sup>33</sup> which would be public aircraft operations under 49 U.S.C. 40102. The exclusion of records from this narrow group of public aircraft operators, combined with the statutory language generally including individuals who are employed as pilots of public aircraft, indicates that the statute includes other (non-statutorily excluded) entities that conduct public aircraft operations.

Permitting the PAC group to report certain records only upon request is consistent with the FAA's framework for risk-based decision-making. Operators under part 119 are subject to robust requirements, concomitant with assuring the safety of the traveling public; in contrast, operators in the PAC group conduct operations that are subject to less FAA oversight and generally present a lower level of risk, due to reduced volume and frequency. The FAA anticipates a modest number of pilots will transition from the PAC group to reviewing entities. Given the considerations noted above, this method of reporting-upon-request available for PAC entities is consistent with the PRD Act and is scalable with the level of risk

of these types of operations. These operators currently respond to requests under PRIA. Excluding these operators from the applicability of the PRD entirely would not serve the FAA's safety mission; overall, this final rule requires an appropriate level of engagement from certain part 91 operators.

The FAA also received many comments concerning the proposed definition of corporate flight department. The FAA proposed to define corporate flight departments as operators conducting operations under part 91 with two or more standard airworthiness airplanes that require a type rating under § 61.31(a), in furtherance of, or incidental to, a business, or operators holding a letter of deviation authority under § 125.3. This rule removes the proposed definition from § 111.10 but instead includes the criteria in the applicability section of the rule. The criteria are also amended to include rotorcraft, which is described in detail in Section V.A.1. The FAA selected two aircraft because operators utilizing multiple aircraft tend to have more pilots, as described in the NPRM. Additionally, this rule will not require single-aircraft corporate flight departments conducting operations exclusively under part 91 to upload records to the PRD because, as mentioned by commenters, such operators often include only the single pilot conducting operations on behalf of the operator, who may be the same person. Setting the threshold at multiple aircraft better tailors this rule to apply to entities that may have applicable records.

In response to comments regarding whether an OEM's operations fall within the definition of a corporate flight department, the FAA reiterates that if the operations fall into the applicability criteria as adopted, part 111 would apply to that entity. Each manufacturer should remain aware of the applicability criteria and assess whether it meets the criteria for applicability.

### 3. Comments Regarding Other Types of Operators

Commenters also provided input concerning other types of entities, such as pilot schools and operators that are excluded from the applicability of part 119. Several commenters, including Koch Industries, CAE, and CAPA, asked why part 141 and part 142 schools are not required to report, and suggested that those entities should provide data instead of operators.

CAPA also stated that applicability should extend to the U.S. military. RAA

supported gathering data from part 133 and part 137 operations, while the National Agricultural Aviation Association (NAAA) agreed with FAA's decision not to require reporting from part 137 agricultural operators. NAAA stated that part 137 operators are not "gateway operators" for air carriers.

Commenters also responded to the FAA's request for comment regarding whether data from excluded entities would provide information relevant to the evaluation of a pilot candidate for employment. Airlines for America (A4A) stated it does not believe data from excluded entities would provide information relevant to the evaluation of a pilot candidate seeking employment. A4A recommended that the FAA focus on ensuring the PRD is successful by providing technical requirements and engaging with regulated entities before expanding the PRD to other entities. Ameristar Air Cargo, Inc. (Ameristar) asserted it would be unlikely that PRIA requests will be honored by foreign carriers without a treaty or bilateral agreement with ICAO member countries.

The Small UAV Coalition commented that the proposed rule is another regulation that applies to UAS air carriers only because a more suitable regulatory scheme addressing such operations does not exist. The Coalition stated that a set of comprehensive laws and regulations specific to UAS operations would help resolve the regulatory compliance burden that UAS operators face when seeking to conduct commercial business under existing regulatory schemes. The Coalition did not suggest that the overarching safety purposes of the PRD are inapplicable to commercial UAS operations, but stated that commercial UAS operations merit a realistic and tailored approach to record retention and review that is an integral part of a comprehensive rule on UAS air carriers. The Coalition urged the FAA to begin rulemaking to update air carrier operating rules for UAS air carriers.

### 4. FAA Response

The plain language of the statute only permits the FAA to require employers of pilots to report records. The Armed Forces are excluded by the plain language of the statute.<sup>34</sup> Similarly, training centers subject to 14 CFR part 141 or part 142 training centers would not be able to report records regarding pilots who received training at those centers, as individuals employed as flight instructors to provide flight

<sup>31</sup> Operators subject to 14 CFR part 120 must enter all drug and alcohol records into the database in accordance with the timelines and requirements included in § 111.220.

<sup>32</sup> 49 U.S.C. 44703(i)(2)(B) (emphasis added).

<sup>33</sup> *Id.*

<sup>34</sup> 49 U.S.C. 44703(h)(1)(B) (excluding, among other things, records from "a branch of the United States Armed Forces").

training are not employed for purposes of operating an aircraft. Therefore, the FAA did not propose to require compliance with part 111 by part 61 or part 141 pilot schools or part 142 training centers with part 111. The FAA also considered comments regarding the applicability of part 111 to operators conducting operations under part 133 (Rotorcraft External-Load Operations) or part 137 (Agricultural Aircraft Operations). This final rule maintains the proposed exclusion of those operations, for the reasons discussed in the NPRM. Primarily, the FAA determined that those operators would not be likely to generate records that would be useful to a reviewing entity and that pilots employed by those operators will generally be employed by another type of operator that would be a reporting entity before attempting to find employment in service of a reviewing entity like an air carrier.

As discussed in the NPRM and adopted in this final rule, the PRD Act is not applicable to foreign operators. Furthermore, the FAA does not have the technical capacity to accommodate reporting from non-U.S. operators. The FAA does not expect such entities to include any records in the PRD; however, reviewing entities are free to seek out information from any other previous employer for whom the pilot worked in addition to accessing the pilot's PRD record.

As explained in the NPRM, the PRD Act requires all operators to request and review records prior to allowing an individual to begin service as a pilot. As a result, the Act's requirements apply to pilots of UAS when those UAS are used in air carrier operations. This rulemaking is limited to addressing the statutory mandate of the PRD Act; as a result, comments urging the FAA to initiate separate rulemakings are outside the scope of this rulemaking.

### C. Pilot Privacy

The PRD Act requires the FAA to promulgate 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 operator.

In the NPRM, the FAA proposed to mitigate risks to privacy by adopting strict privacy standards and establishing limits on access to the contents of the PRD. Specifically, the FAA will adhere to National Institute of Standards and Technology (NIST) Special Publication 800.53 Security and Privacy Controls for Federal Information Systems and

Organizations to secure information contained in the PRD.

### 1. Summary of Comments

Approximately 24 commenters, including A4A, the Cargo Airline Association (CAA), NBAA, and Cummins, Inc., expressed concerns related to privacy issues. A4A commented that notice of a pilot's death should be supported by a certified copy of a death notice from any source, not just from next of kin, in order to avoid overburdening the database with extraneous information and increasing the risk of privacy issues. Commenters remarked on the importance of keeping pilot records confidential and only maintaining sensitive pilot information related to termination of employment or unsatisfactory completion of airman flight checks, and expressed concern about the data security. Commenters recommended that pilots have control over who can access their records and asked whether pilots will have an opportunity to direct how the PRD will share their information.

Commenters opposed the PRD on privacy grounds, stating that these pilots never signed up to have this information shared. Several commenters opposed including non-performance and non-aviation related disciplinary records. Cummins Inc. also asked who inside the FAA would have access to the database and who outside the FAA would have access to the database and non-anonymized data. NBAA commented that the information contained in the PRD should only be available to qualifying employers for the purpose of evaluating a pilot-applicant.

The A4A and CAA called for the FAA to issue a Privacy Impact Assessment (PIA)<sup>35</sup> related to the PRD. The commenters stated a PIA is needed to address security and privacy risks of the PRD, given that the PRD will collect, access, use, and permit dissemination to prospective employers of pilot records. These commenters requested the FAA address issues such as the time the FAA expects for it to approve access to users, the training required of users, and applicable parameters that will ensure privacy.

The FAA also received comments on keeping records for the life of the pilot. Ameristar commented that if the FAA determines that any record should be expunged, the Agency should not maintain that record and referenced 49 U.S.C. 44703(i)(2)(A)(iii), which states

<sup>35</sup> A PIA describes a process used to evaluate the collection of personal data in information systems. The objective of a PIA is to determine if collected personal information data is necessary and relevant.

that the FAA should not include records subsequently overturned. The commenter said that expungement and "overturned" as used in the PRD Act could mean the same thing, and that adding definitions of these terms would provide some clarity as to the treatment of the records. Ameristar commented that these records should not be maintained nor made available upon PRD request.

The PlaneSense commenters stated they generally agreed with a dissent to the PRD ARC recommendation, which said that the FAA should remove and store, for an undefined period of time, deceased pilots' records from the PRD for security purposes or assistance with an investigation.

CAPA disagreed with the requirement for retention of pilot records for the life of the pilot. The commenter stated that no data supports that information from an event that may have occurred years ago has any bearing upon a pilot's current or future performance. The FL Aviation Corp. commented that a request for a lifetime of records is itself onerous and far-reaching and could cause spillover by forcing the purchase or update of additional programs to retain additional data.

An individual commenter expressed concern about "the code quality of the page where people register to use the Pilot Records Database," and stated the DOT sign-up pages for MyAccess should not be used because of poor quality and security concerns. This commenter also stated that the system should undergo a third party review.

A4A recommended the FAA clarify that information in the PRD may be shared with NTSB officials when investigating an accident or incident; however, all other protection provided in the NPRM should continue to apply.<sup>36</sup>

### 2. FAA Response

The FAA reiterates that the pilot is the only person with control over which external entities view that pilot's records in the PRD. A pilot must provide specific, time-limited consent to a reviewing entity before that entity is permitted to view a pilot's records. A reviewing entity can only query the PRD for records of pilots who have specifically granted consent to that operator. After the pilot grants consent for access to the records, the pilot must also provide the reviewing entity with the pilot's name and pilot certificate number before the entity can review the

<sup>36</sup> The NPRM proposed to exclude records contained in the PRD from FOIA in accordance with the PRD Act, subject to certain exceptions.

records. 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 Act requires the FAA to ensure pilot privacy is protected.

Additionally, the pilot can withdraw consent at any time for PRD Airman Records (PARs). Records associated with a pilot are only released to an operator (a reviewing entity) after the pilot has created a PAR and consented to release of that specific PAR to that specific operator. When a pilot provides consent in these cases, the PAR is only available for a limited period of time, as selected by the pilot. Each PAR is a "snapshot" of the records as they existed at that moment when the PAR is generated and will not change even if the records in the original data source change. This ensures that the pilot knows exactly what is being displayed to the reviewing entity. When new records are added to the PRD and the pilot wants the PAR to encompass those records, the pilot must grant an updated consent to release the updated PAR, which will then replace the previous PAR. For this reason, while PARs can be available for up to 60 days, reviewing entities may prefer that a PAR be released to them more recently to ensure the PAR reflects the most recent information available. In addition to PARs only being available for a limited time period, the pilot can also revoke access to a PAR at any time.

Reviewing entities that wish to review a PAR must also have the pilot's name and certificate number to retrieve the PAR. Even if a pilot has granted consent to the PAR, an operator will not be able to search for all available PARs without having the name and certificate number related to the PAR for which the entity is searching. The pilot will likely provide the pilot's name and certificate number to the hiring operator as part of the vetting process. If the operator attempts to search for a PAR, but the pilot has not yet granted consent to view the PAR, the PRD will report that no PARs were found for that pilot.

Other than when a PAR has been created and specific consent has been provided to a reviewing entity to view that PAR, records within the PRD are only accessible to the record owner. As previously described, the record owner is normally the same entity which created the record; however, ownership can change in some circumstances. An operator that has entered records into the PRD can always view, edit, or remove those records later, as

appropriate, as long as it continues to be the record owner.

The PRD administrator will have the ability to view a pilot's records within the PRD for the limited purpose of supporting a pilot's request to release those records to a reviewing entity. This process is only used if the pilot cannot access the PRD system and specifically requests the FAA release a PAR to a reviewing entity. This will occur when the pilot submits a completed and signed FAA Form 8060-14 to the FAA for processing.

Although the PRD administrator can view the records in the PRD associated with a pilot, the FAA does not access this information for any other purpose than to support a pilot's request to review that pilot's own information, made via FAA Form 8060-14,<sup>37</sup> and for other administrative purposes. With limited exception, the FAA will not be reviewing records in the PRD to search for instances of non-compliance with FAA regulations. The only circumstance in which the FAA would use records in the PRD in an FAA enforcement action would be in cases involving suspected non-compliance with Part 111. Records contained in the PRD could be used to prove instances of non-compliance with the PRD reporting requirements or the absence of records could be an indicator of non-compliance. In any event, the statutory exclusion of these records from release in response to a Freedom of Information Act request applies, with the exceptions listed in the PRD Act. The FAA is permitted to release records to NTSB officials when investigating an accident or incident.<sup>38</sup>

The PRD Act requires the FAA to maintain records in the PRD for the life of the pilot and does not provide the FAA with discretion to expunge records outside of that timeframe. The FAA acknowledges that there is no research indicating that maintaining records for the lifetime of a pilot imbues greater safety benefits than a more time-limited lookback such as what was required under PRIA. Expunction of a record is not the same as a record being overturned. For enforcement records, an action under appeal subsequently might change the outcome of the initial enforcement action. This could result in the enforcement record being overturned and subsequently expunged. Expunction also would occur when a pilot reaches 99 years of age or upon the FAA receiving a notification of death.

The FAA agrees with A4A that a notification of death need not be

submitted only by next of kin. Upon further consideration, the information required to be submitted is sufficient to ensure authenticity of the documentation and there is no safety or security concern that warrants limiting who is permitted to submit such information.

With respect to the comment concerning the design code of MyAccess, the FAA protects personal identifiable information (PII) with reasonable security safeguards against loss or unauthorized access, destruction, usage, modification, or disclosure. These safeguards incorporate standards and practices required for federal information systems under the Federal Information Security Management Act (FISMA) and are detailed in the Federal Information Processing Standards (FIPS) Publication 200, Minimum Security Requirements for Federal Information and Information Systems, and NIST Special Publication 800-53. Detailed information regarding the steps taken to safeguard information for MyAccess is available in the Privacy Impact Assessment for MyAccess.<sup>39</sup> The FAA will publish an updated PIA for the PRD in the docket for this rulemaking, as referenced in Section VI.H., *Privacy Analysis*.

#### D. Transition From PRIA to PRD

The FAA proposed a transition timeline from PRIA to PRD. The FAA requested comments on whether the transition period should be shortened or extended and whether it would be helpful for the FAA to maintain a publicly available list of all operators that are fully compliant with the PRD requirements during the transition period.

##### 1. Summary of Comments

Writing jointly, the Families of Continental Flight 3407 stated that the crash of that flight underscores the criticality and urgency of finalizing the rule. The families called on the FAA, the U.S. Department of Transportation, and the Office of Management and Budget to finalize the rule as expediently as possible, to ensure every operator has access to the most complete information possible in hiring pilots. The families also noted that nearly a decade has passed since Congress required the PRD in August 2010. They further compared the current economic challenges the air carrier industry faces to challenges in

<sup>37</sup> A copy of FAA Form 8060-14 has been placed in the docket.

<sup>38</sup> 49 U.S.C. 44703(k).

<sup>39</sup> U.S. Department of Transportation Privacy Impact Assessment, May 31, 2017, <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/privacy/282206/faq-myaccess-pia-05312017.pdf>.

the decade after September 11, 2001, which they state led to growth of regional airlines and cost-cutting measures that contributed to the preventable tragedy of Flight 3407. The group called on government and industry stakeholders to be cognizant of this history to ensure these mistakes are not repeated.

The Regional Airline Association (RAA) and Atlas Air commented that, because it is difficult to predict the amount of time required for the transfer of data, the FAA might need to extend the transition period. The RAA recommended that during the transition period the FAA maintain a publicly available list of carriers and other operators that are fully compliant with the PRD ahead of schedule so that prospective employers can query the PRD directly. Atlas Air and A4A recommended similarly the FAA re-evaluate the sunset of PRIA requirements at the end of the transition period and extend it if not all affected carriers are in compliance with the PRD historical records requirement. Atlas Air highlighted that the uncertainties of the coronavirus disease 2019 (COVID-19) public health emergency may impact carrier compliance. A4A also recommended extensive industry participation in a test pilot program.

## 2. FAA Response

The FAA acknowledges the wide range of comments received regarding the timing of the implementation of the PRD and the transition period between PRD and PRIA. The FAA agrees that expeditious implementation of the PRD is a top priority, but understands the potential technical challenges that could occur during the course of the transition. After consideration of comments on this topic, the FAA made changes to the compliance dates and added interim compliance markers to facilitate a smooth transition. These changes are discussed further in Sections V.A.2 and V.E.

The interim compliance dates are for submission of the responsible person application, review of FAA records, review of industry records, reporting new records, and reporting historical records prior to the sunset of PRIA. This rule also provides the opportunity for certain operators to request a deviation in the event of unforeseen difficulties with the transfer of historical records. The PRD will also provide information regarding which employers have fully completed historical record upload for a particular pilot in order to eliminate any duplicative reporting during the transition period. The FAA intends to collaborate with industry by providing

helpful information regarding the transition upon identification of responsible persons by each operator subject to this rule.

## V. Section-by-Section Discussion of Regulatory Text

This section provides an explanation of substantive changes adopted in this final rule, as well as summaries of provision-specific comments and FAA responses. It should be noted that there are non-substantive revisions made throughout the regulatory text, such as section number changes or edits made for clarity and consistency.

In the NPRM, the FAA proposed to include subpart E to facilitate the transition from PRIA to PRD. However, the FAA did not adopt a regulatory requirement for continued compliance with PRIA in this rule. Because PRIA continues to be self-implementing in statute until September 9, 2024, part 111 does not need to include a regulatory requirement for continued compliance with PRIA. The FAA provides updated guidance in AC 120-68J with further information about continued compliance with PRIA as related to PRD compliance. The FAA includes sunset of PRIA in subpart A and requirements for reporting historical records in subpart C.

### A. Subpart A—General

#### 1. Applicability—Section 111.1

The FAA proposed that part 111 would generally be applicable to 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, governmental entities conducting public aircraft operations (PAO), as well as pilots with part 107 remote pilot certificates operating a UAS for compensation or hire.

Substantively, the FAA adopts § 111.1 as proposed. After reviewing comments received on the applicability of the rule, discussed extensively in Section IV.B., the FAA acknowledges that pilots employed by the operators mentioned previously transition much less frequently than originally anticipated to employment with reviewing entities. This revised method of reporting is discussed in greater detail in Section V.C.4. Given that change, although the previously-mentioned entities are still subject to part 111, the burden imposed is proportionate to the level of risk mitigation necessary to fulfill the intent of the PRD Act.

The FAA amends the regulatory text proposed originally in § 111.1 for

consistency and to clarify which pilots are subject to the applicability of the PRD. The proposed text captured which certificates a pilot would typically hold in order to be subject to the PRD, but did not note that only pilots who are employed by or seeking employment with an entity subject to the applicability of this part would need access to the database. The final rule removes the reference to the specific certificates pilots hold, and instead includes a requirement that would apply to any pilot working for a reporting entity or seeking employment with a reviewing entity.

The FAA also moved the applicability criteria for persons whom the FAA defined in the NPRM as “corporate flight departments” (referenced as such in this preamble) into § 111.1(b)(4). The FAA amends the criteria for a corporate flight department to include not only those who operate two or more type rated airplanes but also those who operate two or more turbine-powered rotorcraft, or any combination of two or more of those aircraft. By adding turbine-powered rotorcraft to this criteria, this rule applies to operators that operate more than one complex aircraft under part 91. After reviewing comments on corporate flight departments, as described in Section IV.B., the FAA determined the definition proposed in the NPRM inadvertently excluded turbine-powered rotorcraft operators. These turbine-powered rotorcraft operators generally utilize advanced aircraft under part 91; thus, their contributions to the PRD are as meaningful for safety as those operating type-rated airplanes.

The FAA also adds applicability criteria for PAO, which references the statutory definition and criteria for PAO under 49 U.S.C. 40102 and 40125, but does not include operations conducted by any branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces. This applicability provision aligns directly with the PRD Act.

The FAA also adopts regulatory text to provide criteria for when a trustee in bankruptcy must comply with the requirements of part 111, proposed originally in its own section in the NPRM. The FAA proposed that any operator subject to the applicability of part 111 that files a petition for bankruptcy would still be required to report records to the PRD. The FAA proposed that the trustee appointed by the bankruptcy court may act as the responsible person for reporting those records to the PRD. This section is adopted as proposed with non-substantive edits, one of which notes

that a trustee must comply with the reporting requirements of subparts A and C of part 111. While the NPRM only listed subparts C and E, the terms of access in subpart A would also be applicable to a trustee. Sections V.A.3 and V.C.11 contain summaries of, and responses to, comments about requirements related to a trustee in bankruptcy.

Lastly, this rule contains a reference to 14 CFR part 375 (Navigation of Foreign Civil Aircraft within the United States), expressly to exclude foreign operators from the applicability of this rule. Although foreign operators are regulated by 14 CFR part 375, as discussed in the NPRM, Congress did not include those operators in the PRD Act.

## 2. Compliance Dates—Section 111.5

In the NPRM, the FAA proposed compliance with part 111 by two years and 90 days after publication of the final rule. The FAA revises the proposed compliance dates in this final rule. The compliance dates specific to each section or subpart were moved to the applicable section or subpart for clarity. Section 111.5 provides the final date by which full compliance with the provisions of part 111 is required.

The FAA considered comments on the transition from PRIA to PRD, further discussed in Section IV.D., and how to facilitate a smooth transition to full compliance with the PRD for both industry and the FAA. Upon consideration, the FAA determined that it would not negatively affect safety to extend the final date of compliance, primarily because the final rule adopts interim compliance dates set between publication and September 9, 2024, to ensure persons subject to the rule begin using the PRD before the final compliance date. The compliance period is longer than originally proposed, but also begins with specific steps towards compliance earlier than originally proposed. As a result of the revised compliance dates, industry would begin reporting new records and historical records dated on or after January 1, 2015 one year after publication of the final rule. The extra year granted for extended compliance serves to provide a full two years of transition time for upload of historical records.

The FAA's primary objective in adopting this final rule with interim compliance dates is to be able to start extensive and necessary collaboration with industry to populate the PRD with the highest quality data. Additionally, the FAA is extending the compliance timeline because the FAA is developing

a method of electronic transfer to facilitate reporting of large amounts of historical records simultaneously. This will ease the process of reporting historical records for operators reporting records from 2005 and 2010, respectively. The FAA is committed to working with industry to enable a smooth transition from PRIA to PRD and desires the least burdensome process possible for record transfer. If the FAA is not able to provide a method of electronic transfer prior to the final compliance deadline, the FAA will consider extending the compliance date.

The FAA originally included subpart E in the proposed rule, which stated that air carriers and other operators subject to the applicability of PRIA would no longer be permitted to comply with PRIA two years and 90 days after publication of the final rule. The FAA adopts that section here. Some commenters recommended that the FAA continue PRIA; however, as the FAA discusses in Section IV.C.4 regarding comments about the transition to PRD, the PRD Act includes an explicit requirement that the FAA's implementing regulations for PRD must sunset PRIA. This section is amended to incorporate the extension of the final compliance deadline by one year. Use of PRIA is no longer permitted after September 9, 2024.

## 3. Definitions—Section 111.10

The FAA proposed several definitions in the NPRM. In response to comments received, the FAA amends several definitions to capture accurately the intent of the requirement and maintain consistency with other sections of part 111. The FAA also removed some definitions proposed in the NPRM after determining they were redundant or did not need to be codified.

### i. Comments Received

NBAA commented on the FAA's proposal to define the term "employed" as being paid for more than 20 hours per week for services rendered to the operator. NBAA explained it expects this definition to apply when describing individuals eligible to be the operator's responsible person and to the term "individual employed as a pilot." NBAA contended operators should not be responsible for submitting records for pilots who are employed less than half time, as this will avoid duplication of training records. NBAA also recommended aligning the definition of "employed" with the common industry practice of employing contractors on a daily basis. NBAA recommended that the FAA use the defined phrase "individual employed as a pilot" in

§ 111.105 when describing when a hiring operator needs to evaluate pilot records.

The PlaneSense commenters noted the proposed definition of "individual employed as a pilot" assumes the pilot is employed by the company at the time the pilot first undertakes training, creating an obligation to provide data on a pilot who may be receiving training, but is not yet an employee and may not become an employee. These commenters argued the definition is overly broad and that training records could be used against them by a future employer. The PlaneSense commenters stated such a requirement would circumvent an employer's and applicant's right to privacy regarding screening and hiring practices. These commenters requested the FAA revise the rule to reflect that the pilot has been hired or otherwise retained by the reporting company.

Cummins, Inc., A4A, and Ameristar expressed concern that the NPRM did not include a clear definition of "pilot performance." Cummins urged the Agency to include clear guidelines regarding what constitutes pilot performance and flying duties to ensure a consistent understanding of the data to be included in the database.

Ameristar recommended amending the definition of "Record pertaining to pilot performance" to identify specific events that must be maintained in the record, and that these events be limited to events required by law or regulation; for example, the term should include records of whether a pilot passed or failed a proficiency check. Ameristar recommended the FAA define additional terms such as "good faith" and "trustee in bankruptcy" for clarity and to remove subjectivity. Ameristar also suggested a "trustee in bankruptcy" be expanded to "a trustee in bankruptcy of an air operator that hires or utilizes pilots." Regarding the discussion about part 135 operators, Ameristar noted that the rule did not distinguish part 135 operators from part 135 air carriers. Ameristar indicated the proposed definition of "historical record" suggests the record is only generated after another operator requests that record. Ameristar recommended that the FAA amend the definition to read ". . . means records maintained by an air carrier or other operator under the requirements of this section (§ 111)" and delete the rest of the proposed definition.

A4A argued similarly that the FAA should clarify the meaning of "pertaining to pilot performance." Specifically, A4A asserted the proposed rule fails to resolve one of the key issues

that divided the members of the PRD ARC; namely:

Whether the disciplinary or termination records of a pilot who committed documented acts of racial discrimination, sexual harassment, harassing or intimidating behavior that impedes crew resource management, off-duty alcohol or drug misconduct, theft, fraud and/or dishonesty should be reported into the PRD.

A4A noted that the issue of drawing boundaries around the “performance of a pilot” split the PRD ARC members and constituted almost 20% of the PRD ARC Report. A4A suggested that some language in the NPRM could be read to support the position that records of actions such as harassment and lying should not be entered into the PRD, but that other aspects of the NPRM, FAA regulations, legislative history, and general good piloting practices would strongly support the submission of the grounds for the discipline and termination into the PRD. A4A stated that parties need definitive guidance from the FAA on how to handle the records of pilots who commit serious misconduct. Without a specific definition, A4A argued, whether a specific act is “related to the core duties and responsibilities of a pilot” will differ from employer to employer and may even differ within a single employer’s pilot population as the phrase becomes subject to disputes leading to arbitration and third-party resolution. A4A recommended that the final rule clarify what is included in a pilot’s “core duties and responsibilities” and specifically address “whether it includes crew resource management considerations and the obligation to treat all persons with dignity and respect.”

NBAA recommended that the FAA use consistent phrasing throughout the document and noted the need for consistency in the use of the words “air carrier” and “other operators.” For example, NBAA stated that based on the proposed language in § 111.220 it was not clear if the reporting requirements apply to “other operators.” An individual commenter stated “other persons” is vague and arbitrary and urged the FAA to define the term and open the definition for public comment. This commenter also noted the NPRM did not define the term “public aircraft operations.”

#### ii. FAA Response

The FAA revises the definition of “begins service as a pilot” to distinguish at what point the FAA considers a pilot to have begun service with an employer such that a PRD evaluation must have been completed for that pilot. This date

is in contrast to the “PRD date of hire” which is the first date on which an employer must begin entering records for a pilot. The “PRD date of hire” would include initial training and other training completed prior to beginning service as a required flight crewmember. The FAA also incorporates part of the proposed definition of “Individual employed as a pilot,” which was duplicative of the definition of “begins service as a pilot,” and adds that the individual can be employed directly or on a contract basis.

Commenters conflated the review of an individual’s records, which is not required to be complete until the individual begins service as a pilot, with when records must be reported about an individual, which will include any training that occurs prior to a pilot becoming a required flight crewmember. All records generated about a pilot from the PRD date of hire by the employer will be subject to the applicability of the PRD. For the purposes of reporting records to the PRD, the “PRD Hire Date” 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 operator subject to the applicability of part 111 in preparation for the individual’s service as a pilot, including both direct employment and employment that occurs on a contract basis for any form of compensation.

The NTSB expressed an interest in ensuring all records applicable to events prior to beginning service as a pilot would be captured in the PRD, discussed further in Section III.A.1. The FAA intends to capture any records that an operator may generate about a pilot in the time between when a pilot begins training and the time a pilot is actually assigned to act as a required flight crewmember. The FAA does not agree with commenters who asserted that training records that occur when a pilot is beginning employment with an operator should not be included in the PRD. As discussed further in Section V.F.3, the FAA and other commenters believe those records have significant value to a potential hiring employer. Any training that occurs prior to a pilot’s actual employment with an operator would not be included in the PRD due to the constraints of the PRD Act, but if the pilot is receiving training and any form of compensation for that training, the FAA will consider that pilot to be employed for purposes of part 111.

The FAA defines “begins service as a pilot” to mean the earliest date on which a pilot serves as a pilot flight crewmember or is assigned duties as a

pilot in flight for an operator that is subject to the applicability of this part. This definition applies when a pilot’s records must have been evaluated prior to allowing a pilot to begin service. This means an operator could hire a pilot and begin training before evaluating all of the records in the PRD. However, a pilot cannot be assigned to pilot duties without the operator having evaluated the records in the PRD.

Some commenters were concerned with how the definition of “employed” was used in the proposal. “Employed” in the context raised by NBAA refers to proposed criteria for a responsible person, described in the preamble of the NPRM, with no relationship to a pilot’s employment with an operator for purposes of reporting pilot records to the PRD. For the purpose of accessing the PRD, the proposed rule considered a responsible person for an entity conducting public aircraft operations or corporate flight department must be paid for more than 20 hours a week for services rendered to the operator. After considering comments, the FAA is not adopting the NPRM preamble description of “employed” as an eligibility factor for a responsible person.

The FAA amended the definition of “final separation from employment record” by removing the list of examples of separation from employment actions, which had included resignation, termination, physical or medical disqualification, professional disqualification, furlough, extended leave, or retirement. This revision reduces redundancy with the updated requirements in this rule, which address this subject adequately by describing the different possible categorizations for separation from employment actions in subpart C of part 111.

The FAA amends the definitions of “final separation from employment action” and “final disciplinary action” to reflect that it is incumbent on the operator to determine at what point a disciplinary or separation action is final and therefore subject to either reporting requirement in the PRD. Each operator has sufficient knowledge and oversight over its own processes for handling disciplinary action; therefore, the operator is in the best position to determine that an action is not subject to a pending dispute, which would include any legal proceeding regarding the final result of that action. Once no longer pending, including a record of it is appropriate. Section V.C.7 includes a description of the comments the FAA received on this topic.

In response to comments asking for clarification of training records pertaining to pilot performance, the FAA publishes an Advisory Circular, AC120–68J<sup>40</sup> with this rule that includes specific lists of events which the FAA expects to be entered into the PRD based on the training program for a particular pilot. The FAA intends that if a record exists for the pilot as described at § 111.225 and as further described in the AC, and the record is retained by the reporting entity, then it must be entered into the PRD. Each record type that an operator will report is described by the event that prompts the reporting requirement. The FAA considered including the specific listing in part 111, but determined that approach would limit the reporting flexibility needed as training and checking evolves in the future. The FAA also removed the reference to the FAA from this definition, because roles and responsibilities assigned by an employer inherently are subject to FAA regulations or other regulations without explicit mention in this definition.

The FAA further establishes in this final rule what the Agency considers to be a record associated with pilot performance. In § 111.10, the FAA defines a record pertaining to pilot performance as records of an activity or event directly related to an individual's completion of the core duties and responsibilities of a pilot to maintain safe aircraft operations. The duties and responsibilities are assigned by the employer and are based on FAA regulations or other applicable regulations, such as the Transportation Security Administration or the Pipelines and Hazardous Materials Safety Administration. Ultimately, the employer reporting the record would determine whether the action causing the employer to terminate the pilot's employment affected safe aircraft operations, as it is a case-by-case determination. Situations may occur in which a pilot's behavior or actions are not directly related to operating the aircraft but still affect that pilot's ability to maintain safe aircraft operations. One example of this would be documented harassment of a coworker who operates an aircraft with that pilot, regardless of whether the harassment occurs during flight operations. Fear of harassment could negatively affect safe aircraft operations. The FAA does not believe that it should preclude an employer from considering such an event as

related to a pilot's performance if that employer believes the event is fundamentally related to maintaining safe aircraft operations, which includes effective crew resource management. Overall, because good judgment by the pilot is a critical part of safe aircraft operation, pilot performance could include events other than those strictly related to a pilot's level of skill in operating an aircraft.

The FAA removed the definitions of "air carrier," "other operator," and "participating operator" from this final rule because those definitions were duplicative of applicability requirements. Where the FAA refers to "operators" in the regulatory text and the preamble, it is referring generally to all operators, including air carriers and other certificate holders, who would be subject to the applicability of this part.

After review and evaluation of the comments, the FAA amended the definition of "historical record" to remove the reference to the Administrator, as it was not necessary. In addition, this rule contains an amended applicability provision describing PAO, which provides specific criteria based directly on applicable statutory provisions.

This rule includes two definitions not proposed in the NPRM, to add clarity to the regulatory text regarding which operators are subject to each requirement. The FAA defines *Reviewing entity* as an operator subject to the applicability of subpart B of part 111 (Access to and Evaluation of Records); and *Reporting entity* as an operator subject to the applicability of subpart C of part 111 (Reporting of Records). These definitions do not substantively change part 111.

The FAA did not adopt a regulatory definition of "access the PRD," but confirms its meaning is to use the credentials issued by the Administrator in accordance with this part to retrieve information related to an individual pilot, to report to the PRD information required by this part, or for a responsible person to manage user access. A pilot also would access the PRD to grant consent to a reviewing entity to access that pilot's records.

Lastly, this rule does not include a definition of writing/written in part 111. The FAA will provide the appropriate signature requirements within the identity verification mechanism of PRD approval, as the FAA expects the PRD will accept digital signatures. Digital verification of the pilot's identity by logging into the PRD could also serve as a signature.

The FAA otherwise adopts § 111.10 substantively as proposed. The FAA

evaluated all comments regarding perceived lack of clarity or inconsistency in phraseology used and made updates to the final rule to convey clearly the requirements of each section. The FAA determined that prescriptive definitions of "good faith exception" and "trustee in bankruptcy" were not necessary, because the underlying regulations concerning these terms describe them adequately in context of the applicable requirements. This rule also contains edits throughout part 111 to maximize regulatory clarity, which alleviates the need include the other definitions that commenters requested.

#### 4. Application for Database Access—Section 111.15

In the NPRM, the FAA proposed requiring an operator's responsible person to submit an application for database access including information necessary for identity verification. The proposed rule included the ability for a responsible person to delegate PRD access to two other types of users (proxies and authorized users) and proposed minimum qualification requirements for the responsible person. Proposed § 111.15 also included terms for continuing access to the PRD, requirements for changes to application information, and timelines for compliance for new operators subject to this part.

This rule revises paragraph (a) to include an updated interim compliance date in which reporting entities must submit an initial application for database access. After considering comments received regarding observed gaps in PRIA, particularly those received from the NTSB and the Families of Continental Flight 3407, the FAA determined PRD implementation would be served best by ensuring employers subject to the rule begin to transition from PRIA to PRD as soon as possible. The FAA also acknowledges comments received requesting greater collaboration with industry and more time to enable compliance, especially considering potential technological difficulties and the effects of the COVID–19 public health emergency on the aviation industry.

The next step in building the industry records component of the database and facilitating its use is to ensure each operator subject to the applicability of this rule has identified a responsible person in the database. The PRD program manager will collaborate with that individual on the transition process. Consequently, the FAA includes a provision in § 111.15(a) requiring operators to submit an application with all of the information

<sup>40</sup> Advisory Circular 120–68J, The Pilot Records Database and Pilot Records Improvement Act Advisory Circular, which will be published to the docket for this rulemaking.

identified in § 111.15 by September 8, 2021. Operators initiating operations after September 8, 2021, must submit an application at least 30 days prior to initiating operations. Additionally, trustees in bankruptcy appointed for an operator subject to the applicability of this rule must begin to comply with the transition timelines of this rule as prescribed by part 111, as applicable. Because a trustee can either be delegated access or apply to be a responsible person, the FAA does not envision that every trustee would submit an application, but to the extent a trustee would be a responsible person and is currently appointed in accordance with the criteria in this section, the FAA would expect that trustee to submit an application if the trustee will be a responsible person.

The FAA makes clarifying amendments throughout the regulatory text in § 111.15(b)–(h), but does not make any other substantive changes to the requirements for the application for database access, except to require submission of a telephone number to accompany the email address. In response to a comment from CAA regarding how long the FAA expects to take to approve the PRD user access, the FAA requests applicants submit their applications one week in advance of necessary access.

#### 5. Database Access—Section 111.20

Proposed § 111.20 set forth the conditions under which authorized users and proxies, to whom a responsible person has delegated access, may access the PRD. Notably, persons may only access the PRD for purposes of uploading, reviewing, or retrieving records in accordance with the requirements of part 111. The FAA also proposed that if a responsible person's PRD access is terminated, the access of the authorized users and proxies may be terminated.

The FAA modifies proposed § 111.20 to consolidate parts of the section and to convey the FAA's intent to limit access to the PRD in a manner that is aligned entirely with the purpose of the PRD Act. A person may access the PRD only in a manner consistent with the purposes set forth in this section: For reporting pilot records or for reviewing pilot records to inform a hiring decision about a specific pilot. The responsible person is accountable for ensuring that any person accessing the PRD complies with part 111 when reporting or reviewing records on behalf of the responsible person. Further, under this final rule and in accordance with the PRD Act, proxy companies will not be permitted to collect PRD data about any

pilot for use by that company outside its specific employment with a particular operator for reporting or review of an individual pilot's records. "Skimming" or otherwise aggregating pilot data outside of the PRD for re-sale or to provide a list of pre-screened pilots is strictly prohibited both by § 111.20 and 49 U.S.C. 44703(i).

Lastly, as proposed in the NPRM and as adopted in this final rule, PRD access for authorized users and proxies is contingent on the continued validity of the responsible person's electronic access.

#### 6. Denial of Access—Section 111.25

The NPRM proposed that access credentials for the PRD would be subject to duration, renewal, and cancellation for a length of time to be determined by the Administrator. The FAA also proposed conditions under which the FAA could deny access to the PRD due to misuse of the database, including intentionally reporting inaccurate information, and as necessary to protect the security of the PRD. The FAA proposed denying access if an operator's operating authority is revoked. The proposed rule included a procedure for reconsideration of denial of access.

The FAA revises and reorganizes § 111.25 to remove duration, renewal, and cancellation of responsible person credentials, and modifies the title of the section accordingly. Those provisions did not specify a timeframe for any of those activities as it relates to the electronic credentials because the duration depends on the vendor providing the identity verification. Because multiple ways exist for complying with application submittal, identity verification, and approval for access, the FAA will provide further detail regarding the technological specifications of user accounts. As stated in the NPRM, the PRD will comply with all Federal guidelines for electronic databases. The final rule retains the proposed provisions for denial of access in this section, because the section contains the criteria under which database access may be denied and does not contain specific terms based on changing technology the PRD might use. The final rule also adds an intent requirement to one of the stated bases for denial of access, such that the intentional reporting of false or fraudulent information to the database is an enumerated reason to deny access.

The final rule further authorizes denial of access if the FAA suspends an operator's operating authority, such as a letter of authorization or operating certificate. This provision is otherwise adopted as proposed.

#### 7. Prohibited Access or Use—Section 111.30

The FAA proposed to prohibit unauthorized access or use of the PRD, including a prohibition on sharing records with anyone not directly involved in the hiring decision. The FAA adopts § 111.30 as proposed, except for a change to permit a pilot to share the pilot's own PRD airman record (PAR) without being subject to the prohibitions in part 111.

The FAA did not adopt the proposed definition of "directly involved in the hiring decision" as it is unnecessary. As stated in the NPRM, that phrase means:

[A]ny 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.

Pilot records must not be shared outside of persons working on behalf of a reviewing entity in furtherance of that specific hiring process.

In the NPRM, the FAA proposed to require air carriers and other operators complying with subpart B to maintain the privacy and confidentiality of pilot records, as required by the PRD Act at 49 U.S.C. 44703(i)(13). Specifically, the FAA proposed to require air carriers and other operators to secure pilot records in the normal course of business. The FAA adopts that proposed provision in this section with revisions to mirror the statutory standard for protection of such records. The intent of the regulation as proposed does not change; for example, if a hiring employer rendered pilot information insecure by distributing that pilot's PAR throughout the company to individuals not directly involved in the hiring process, the hiring employer would be in violation of this regulation.

In the NPRM, the FAA proposed to mitigate risks to privacy by adopting strict privacy standards and establishing limits on access to the PRD, and adopts those standards throughout this part. Specifically, 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 the PRD. The FAA further discusses issues raised by commenters with respect to pilot privacy in Section IV.C.

The FAA also removed paragraph (c) concerning the Administrator's access and use of information maintained in the database for purposes consistent with oversight. The FAA determined that while it will use its oversight

authority to ensure compliance with part 111, it was not necessary to codify the statement in the regulations.

#### 8. Fraud and Falsification—Section 111.35

The FAA proposed to prohibit fraudulent or intentionally false statements from being reported to the PRD. The FAA adopts § 111.35 substantively as proposed, with edits to the regulatory text to reorganize the section. Section V.C.11 contains a summary of, and response to, comments the FAA received regarding the inclusion of false or fraudulent statements as it relates to the record correction and dispute resolution process.

#### 9. Record Retention—Section 111.40

In proposed § 111.50, the FAA proposed to require records remain in the PRD for the life of the pilot. The proposed rule stated a pilot's records would be removed from the database upon notification of death from next of kin or when 99 years have passed since the individual's date of birth. The FAA adopts this provision with one substantive change, reorganizes the section, and rennumbers it as § 111.40. As summarized in Section IV.C and in response to comments, the FAA is removing the requirement that the notification of death come from the pilot's next of kin. The FAA also removed the record retention instructions for such records from this regulatory provision. The record retention term absent the notification of death described in this section is captured in the appropriate record retention schedule. The removal of this term from the regulatory text does not affect the FAA's requirements for such information.

Although identifying information from the pilot's record will be removed after notification of death or 99 years have passed since the individual's date of birth, the FAA may use de-identified information from those pilots in the database for research and statistical purposes to further the Agency's safety mission.

#### 10. Sections Not Adopted

##### i. User Fee—Proposed Section 111.40

Previously, § 111.40 contained the FAA's proposal for a user fee for accessing the PRD to evaluate pilot records. The FAA received comments from both organizations and individuals regarding the proposed user fee, most expressing opposition. Commenters were concerned about the cost of the fee and how a fee would affect a reviewing entity's ability to view a pilot's PAR

multiple times. Commenters also proposed different ways of adjusting the fee, which would have either benefited smaller operators or large operators depending on the method.

After considering the comments received and the changes to the structure of the database to ensure a burden proportionate to the safety benefits of this rule, the FAA determined to withdraw the user fee proposal, for multiple reasons. The new method of reporting in § 111.215 may require a reviewing entity to access a pilot's PAR more than once. Uncertainties also exist regarding how COVID-19 will impact hiring for reviewing entities, which would affect the user fee analysis. Therefore, no fee will exist for accessing the PRD at this time. The FAA will continue to evaluate the cost of the PRD and may revisit this determination at a later time.

##### ii. Freedom of Information Act (FOIA) Requests—Proposed Section 111.45

Under § 111.45, the FAA proposed that PRD records would be exempt from FOIA, with some exceptions, as set forth in 49 U.S.C. 44703(i)(9)(B). Specifically, information reported to the PRD would be 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.

##### a. Comments Received

A4A, the PlaneSense commenters, and an individual commented on proposed § 111.45, which addresses the FOIA requests. The commenters generally agreed with the proposal to exempt certain information reported to the PRD from disclosure in response to FOIA requests but relayed specific concerns regarding the language of the section or on the scope of the information permitted to be released. A4A also recommended the FAA clarify the definition of "de-identify," and what information can be shared with NTSB officials, and that carriers should have the ability to limit access to certain kinds of records. A4A stated that the FAA must state explicitly whether it intends to use PRD data for purposes

other than to meet PRD requirements. It also commented that the NPRM permits disclosure of information to correct a condition that compromises safety, consistent with an exception codified in part 193. The commenter said that the language in part 193 exceptions includes ensuring "that the holder of an FAA certificate is qualified for that certificate, and preventing ongoing violations of safety or security regulations." The commenter stated this raises the issue of whether the FAA intends to use the submitted information to take enforcement action.

The PlaneSense commenters and another individual recommended eliminating any reference to criminal investigation or prosecution and providing that the information may only be disclosed pursuant to a duly issued court order or subpoena. The PlaneSense commenters also requested that the provision of the proposal permitting release of records in the database in situations consistent with the safety responsibilities of the FAA not be used without prior reason to do so arising out of facts and circumstances occurring external to the database. Commenters said this section is overbroad and would permit the FAA to "go fishing" for enforcement information that might not otherwise have been identified by the FAA in the normal course of business. Commenters also opined that 24-hour access to data uploaded by those obligated to do so is an unwelcome intrusion on both the pilots' and the reporting employers' privacy.

Another commenter recommended the PRD have an Oversight Board to monitor the database, to request data from FAA, and to conduct investigations into aviation safety issues and training. The commenter said that the PRD would fit well under the Aviation Safety Information Analysis and Sharing umbrella and recommended that the FAA look at this program.

A4A suggested that the FAA includes an additional exception to PRD data disclosure under FOIA that permits PRD data disclosure only to the extent permitted by the Privacy Act, including routine uses described in the System of Records Notice for DOT/FAA, Aviation Records on Individuals. A4A commented that the FAA should provide the public with an opportunity to discuss what disclosures, permitted by the Privacy Act, it shall include for purposes of the PRD Act.

##### b. FAA Response

The FAA does not adopt the proposal to include the statutory disclosure

prohibitions in regulatory text because the statutory protections exist regardless of inclusion in this regulation. The FAA will process all FOIA requests in accordance with 5 U.S.C. 552 and current Agency procedure for such requests, claiming FOIA exemptions associated with the statutory protections listed in 49 U.S.C. 44703(i)(9)(B), where applicable.

Regarding comments on records contained in the PRD that would be subject to potential disclosure if the information is used as part of a criminal investigation or prosecution, the PRD Act specifically excludes information used to carry out a criminal investigation or prosecution from the information protection described in 49 U.S.C. 44703(i)(9)(B). The PRD Act does not narrow that exclusion to apply only to information provided in response to a duly-issued court order or subpoena. The FAA will handle requests for such information in accordance with established practices for provision of information used to carry out a criminal investigation or prosecution. As allowed by the PRD Act, the FAA may also use de-identified, summarized information to explain the need for changes in policies and regulations. Statistical information derived from such de-identified information may become available to the public in the future. A commenter requested clarification regarding the FAA's meaning of "de-identified." The term "de-identified" has a similar definition to the definition the commenter mentioned from part 193.<sup>41</sup> The FAA would also remove the pilot's certificate number so that there would be no way to discern the pilot's identifying information. The FAA does not retrieve pilots' records from the PRD for FAA enforcement or investigative purposes related to the pilots themselves.

The PRD Act, at 49 U.S.C. 44703(k), does not preclude the availability of a pilot's information to the NTSB in accordance with an investigation. The FAA would make records available to the NTSB in accordance with established procedures for provision of such information. Lastly, the FAA declines to establish an Oversight Board for the PRD, as doing so by regulation is beyond the scope of the proposed rule.

The FAA will publish an updated Privacy Impact Assessment (PIA) for the PRD system, which will be available at

[dot.gov/privacy](https://www.faa.gov/privacy) and in the public docket for this rulemaking.

#### B. Subpart B—Access to and Evaluation of Records

##### 1. Applicability—Section 111.100

In the NPRM, the FAA proposed that part 119 certificate holders, fractional ownership programs, and operators conducting air tour operations would be required to access the PRD to evaluate a pilot's records. The FAA adopts § 111.100 substantively as proposed. The applicability of this subpart remains unchanged from the NPRM. The FAA made edits to maximize regulatory clarity and to capture corresponding changes from other sections of part 111, as well as to consolidate duplicative requirements, and to add compliance dates for subpart B to this section.

##### i. Comments Received

The NTSB expressed support for the proposal to extend the evaluation requirements to non-air carrier entities, including corporate flight departments and air tour operators conducting operations in accordance with § 91.147. The NTSB noted that the FAA, in response to Safety Recommendation A-05-01, proposed to require all applicable operators to access and evaluate a pilot's records in the PRD before making a hiring decision. The NTSB stated if the final rule is consistent with the NPRM, it believes the final rule would meet the intent of Safety Recommendation A-05-01. A4A stated it believes the PRD information will be used earlier in the hiring process before a conditional offer of employment is made to the pilot. One individual commented that use of the PRD will lead to a safer transportation system and that the system should not rely on pilot record books.

Other commenters suggested the PRD would not be helpful in the hiring process because operators and owners already are incentivized to make informed hiring decisions based on a rigorous interviewing and screening process, regardless of regulatory requirements, given the significant liability associated with those decisions. Commenters also felt the PRD would not be beneficial for part 91 operators, opposed requiring any part 91 operators to review records, and indicated part 91 operators communicate directly with other flight departments as part of the applicant screening process. An individual commenter noted some operators do not have fulltime pilots and often need crew at the last minute, and asserted accessing and evaluating

PRD records on short notice would be impossible. Overall, some commenters generally contended operators would not use the database.

##### ii. FAA Response

The FAA agrees that all entities subject to this rule have an inherent incentive to make informed hiring decisions when hiring pilots. The FAA reiterates that the PRD is not intended to be the only source of information used by a subject employer when hiring a pilot. Neither does this rule tell a prospective employer what hiring decision to make on a pilot's job application after viewing pertinent information in the PRD. Rather, consistent with the PRD Act and the FAA's safety mission, this rule will ensure that critical information regarding a pilot's record does not go unnoticed or unshared. Regarding the comments about pre-existing coordination between flight departments, the FAA notes that corporate flight departments as set forth in the applicability of this section are not required to review records under part 111, but may opt into the database voluntarily for record review.

In response to the commenter who was concerned about a lack of time to review a pilot's record's on short notice, the FAA reiterates that a primary advantage of the PRD is the availability of records for hiring employers in an electronic database that is easily accessible.

The FAA adopts revised compliance timelines for subpart B in this section. Under § 111.15, all operators required to comply with subpart B will have a responsible person established in the database beginning no later than 90 days after the date of publication of the final rule, so the review of FAA records in the PRD is the next logical step toward facilitating full compliance with part 111. Some operators are already using the PRD optionally to review FAA records. The FAA acknowledges that the NTSB as well as members of Congress and the Families of Continental Flight 3407 are invested in the quick implementation of the PRD. The FAA finds that interim compliance helps quicken implementation and facilitates the successful long-term transition from PRIA to PRD. Entities utilizing and load-testing the PRD will help grow its capabilities for upload of industry records. Compliance with review of industry records begins one year after the date of publication of the final rule and the proposed date by which operators must comply with all of part 111 is extended one year from the proposal to three years and 90 days after

<sup>41</sup>In 14 CFR part 193, "de-identified" means that the identity of the source of the information, and the names of persons have been removed from the information.

the date of publication of the final rule, as discussed in Section V.A.2.

In the NPRM, the FAA proposed to allow corporate flight departments and PAO the discretion to choose to review certain records in accordance with subpart B. Regardless of this choice, the proposed rule would have required all such operators to comply with all the reporting requirements of subpart C. For those operators, the FAA adds a provision to require those operators to comply with § 111.120 (requiring receipt of pilot consent), to ensure compliance with those protections. Corporate flight departments and PAO choosing to access the PRD for record review must comply with certain requirements regarding pilot consent, but are not required to comply fully with other provisions in subpart B.

## 2. Evaluation of Pilot Records and Limitations on Use—Section 111.105

In the NPRM, the FAA proposed to prohibit operators subject to this part from permitting an individual to begin service as a pilot prior to reviewing that pilot's records in the PRD. The records proposed to be reviewed included FAA records, records populated from current and former employers reporting records in accordance with subpart C, historical records, and NDR records. The FAA also proposed prohibiting misuse of the database, including reviewing records without pilot consent, permitting someone to access the database without proper authorization, and using pilot information for any purpose other than determining whether to hire a particular pilot.

### i. Comments Received

CAPA indicated that the FAA stated this proposal does not contain a requirement for a substantial increase in records kept by the carrier; however, CAPA noted the PRD Act and the NPRM require evaluation of records. CAPA expressed concern about safeguards to ensure the carrier performs this evaluation with a set of standard metrics. CAPA recommended the FAA require pilots' labor organizations, airline management, and the FAA to perform the evaluation jointly, as has been done in other successful collaborations, such as ASAP.

Ameristar sought clarification regarding who is responsible for evaluating a pilot's records. Ameristar also recommended that the FAA modify proposed § 111.105(a)(3) to state the requirement specifically rather than refer to 49 U.S.C. 44703(h). Ameristar also commented that proposed § 111.105(b) appears to duplicate proposed § 111.120.

A4A noted the PRIA records are available to the hiring committee for review; however, it was not apparent to A4A if the hiring committee will have access to the record. A4A urged the FAA to eliminate the hiring language from the final rule and clarify there is no change in carrier obligation to review records prior to an individual beginning service as a pilot. CAA also commented that it is unclear how hiring committees assigned to review the records and rank applications for the future will be able to access the records and conduct reviews if only one of three individuals on a committee has access to review records, especially considering the proposed user fee charged to the operator each time the record is accessed.

CAPA commented that the proposed rule indicates that the PRD is only to be used for pilot hiring purposes, but the NPRM also mentions "assisting air carriers in making informed hiring and personnel management decisions." CAPA expressed concern about this contradiction and recommended it be corrected.

A4A also noted the NPRM proposes to limit the use of PRD data to permit using the data only for the purpose of determining whether to hire a pilot. A4A argues that, while a safety benefit exists for having current information for prospective pilots, the rule should also contain a provision to allow for access to other information that would be mutually beneficial to the individual pilot and the current employer.

A4A further recommended the FAA clarify that an air carrier would have the ability to limit access to specific types of pilot records (training, drug and alcohol) with regard to what types of records particular personnel of the air carrier are or able to access about a particular pilot. A4A said the NPRM does not state explicitly that authorized users with access to a pilot's records are limited with regard to records they may be able to access about a particular pilot. A4A recommended the FAA further limit access to confidential drug and alcohol testing records in the PRD to air carrier-designated persons that administer the drug and alcohol testing program.

### ii. FAA Response

The FAA will not standardize review criteria or metrics for review of pilot records, because every employer's hiring practices are different. The PRD is simply a means of providing pilot information for hiring decisions.

The FAA is limited by statute from permitting the use of the PRD for any purpose other than an employer's

review of a pilot's records for hiring decisions. In citing the PRD's usefulness for personnel management decisions, the FAA meant that having pertinent information before allowing an individual to begin service as a pilot can aid operators in overall personnel management. As such, the FAA will not allow access to the PRD for other purposes.

Review of a pilot's record, as set forth in § 111.10, must occur before the pilot begins service as a pilot. This clarification is discussed further in Section V.A.3.

The PRD Act does not provide discretion to allow access to the PRD for record review to anyone except a person from a reviewing entity who evaluates those records prior to permitting an individual to begin service as a pilot crewmember. Whoever the responsible person delegates to access the PRD will be able to evaluate those records for the limited purpose of reviewing information relevant to hiring decisions.

This rule addresses consent and privacy concerns, especially regarding sensitive pilot records, by providing safeguards in part 111. Further, the FAA takes seriously its fulfillment of all confidentiality requirements pertaining to the release of a pilot's drug and alcohol information, in accordance with 49 CFR part 40.

The FAA amends § 111.105 to make corresponding changes to subpart B to accommodate the new alternate method of reporting records permitted by § 111.215 for certain operators. The FAA also removes the prohibition on reviewing records without pilot consent, as it was duplicative of § 111.120.

Changes to § 111.105(a)(1) and (2) split review of FAA records from industry records to facilitate use of the PRD to review all FAA records beginning 180 days from the date of publication of the final rule. Industry is already required to review these FAA records under PRIA, so this change only affects the vehicle by which they access these records.

Section 111.105(a)(4) also includes a new provision associated with § 111.215, which enables a new method of reporting for certain operators. Section 111.105(a)(4) requires persons reviewing records in accordance with subpart B to compare the records in the pilot's PAR to the list of employers provided with the pilot's consent form (See Section V.D.3.). If an employer has not uploaded records relating to that pilot but the employer appears as a former employer on the list provided by the pilot, the PRD will generate a request for the reviewing entity that goes directly to the reporting entity, by

notifying the responsible person identified on the application in § 111.15. As described further in Section V.C.4., the reviewing entity will receive a notification once any relevant records have been reported, or notification that no applicable additional records are available to report.

This proposed rule adopts the remainder of § 111.105, as proposed.

### 3. Motor Vehicle Driving Record Request—Section 111.110

In § 111.110, the FAA proposed that all operators subject to part 111, with exceptions, must query the National Driver Register (NDR) prior to permitting an individual to begin service as a pilot, to obtain and review State records on the motor vehicle driving history of the pilot. The FAA proposed that entities querying the NDR would have to keep substantiating documentation for five years to ensure that the FAA would be able to audit, if necessary, the completion of this search.

#### i. Comments Received

A4A supported that the FAA did not require motor vehicle driving record information to be entered in the PRD, stating that this approach reduced opportunity for the PRD to include inaccurate or incomplete pilot information. A4A also stated this policy is consistent with the ARC recommendation regarding NDR data. Ameristar recommended that the FAA revise § 111.110(a)(3)(i) by replacing “49 U.S.C. 30301” with “a state participating in the NDR Program,” explaining that without this change, operators have to reference the statute.

#### ii. FAA Response

Section 111.110 is adopted substantively as proposed, with minor revisions. The FAA added a reference to § 111.310 in paragraph (a)(1) of § 111.110, to note that operators required to review records that do not hold a certificate under part 119 are not required to query the NDR. PRIA specified that air carriers must review any NDR records while evaluating the other pilot records. The FAA determined that it would be appropriate not to extend the requirement to part 91 operations, consistent with the FAA’s risk-based approach for regulating entities that do not hold a part 119 certificate.

### 4. Good Faith Exception—Section 111.115

The FAA proposed to include relief from the record review requirement for operators that made a good faith effort to obtain pilot records from the PRD but

were not able to do so, due to no fault of the hiring employer. The FAA also proposed that it may notify a hiring employer if it has knowledge that a pilot’s records in the PRD might be incomplete due to dissolution of an organization or other issues with a prior employer.

#### i. Comments Received

NBAA recommended that the FAA should more clearly define “good faith” in accordance with existing PRIA language in PRIA AC120–68G, which uses the phrase “documented attempt to obtain such information.”

NBAA recommended the FAA extend the good faith exception to the requirement in § 111.115 to report historical information under § 111.205. NBAA explained many non-air carrier operators have not maintained the records that would be subject to reporting under the proposed rule. Of those non-air carrier operators that have maintained records, NBAA indicated the records may not be in a format that allows for reasonable reporting that is not unduly burdensome. NBAA expressed concern that requiring operators to report records not maintained beyond the five-year period required by PRIA will encourage operators to manufacture records, diminishing the value of any accurate historical information in the database.

Ameristar noted “good faith” effort in proposed §§ 111.115(a)(1) and 111.410(a) is not defined and is subjective, and recommended the FAA define it. Ameristar suggested a registered letter sent to the last known place of business would constitute a good faith effort and has been accepted by FAA inspectors in the past. Ameristar also recommended that the FAA state some acceptable methods of compliance in the rule to provide guidance to affected parties. As an example, Ameristar stated certified mail return receipt requested or an acknowledged email should be acceptable.

#### ii. FAA Response

Section 111.115 is adopted as proposed. The meaning of “good faith” as used in part 111 comports with the current PRIA AC120–68G, which reads:

If a pilot/applicant’s former employer has not responded after 30 calendar-days, document your attempts to obtain the PRIA records from them and contact the PRIA program manager to determine its status (see paragraph 3.5.2). If the nonresponding employer is bankrupt, out of business, or is a foreign entity, your documented attempts to contact that employer fulfill your obligation under PRIA.

For application to the PRD, the reviewing entity’s following activities would suffice to fulfill the reviewing entity’s obligation under the PRD: Query of the PRD, completion of the NDR check, review of the pilot’s employment history, submission of requests to any employers listed on the pilot’s employment history that have not indicated that all records for that pilot are already in the PRD, and submission of PRIA requests to all the employers listed on the pilot’s employment history either in the PRD or with FAA form 8060–11. When the reviewing entity waits at least 30 calendar days to receive those records and completes the PRD-related activities described above, the good faith exception would be available to the reviewing entity.

Regarding the comment to extend the good faith exception to historical record reporting, the FAA emphasizes that the good faith exception in § 111.115 is written to apply generally to persons subject to this subpart who are evaluating any records pertaining to the individual’s previous employment as a pilot and therefore would be available for any records regarding a pilot, historical or contemporaneous.

### 5. Pilot Consent and Right of Review—Section 111.120

In § 111.120, the FAA proposed to prohibit an operator reviewing records from doing so prior to receiving consent from the pilot whose records it is reviewing and proposed requiring the consent be reported to the database. The FAA also proposed requiring the hiring employer to provide the pilot with a copy of any records received from the NDR upon request.

A4A asked the FAA to expand the pilot consent process beyond the scope of just the PRD to enable receipt by an operator of a pilot certificate or medical certificate upon renewal or change, to facilitate compliance with § 121.383. The FAA determined that use of the PRD for this purpose is beyond the scope of the PRD Act with respect to purposes for which information in the PRD may be used.<sup>42</sup> Other comments regarding pilot privacy are discussed in Section IV.C.

The FAA adopts § 111.120 as proposed, with minor edits and one substantive change. The FAA amends the regulatory text such that accessing the PRD to check whether the pilot has granted consent for that operator to view the pilot’s records would not be a violation of this regulation. The activity prohibited would be actual retrieval of the records prior to receiving consent.

<sup>42</sup> 49 U.S.C. 44703(i)(9)(A).

Although such retrieval will not be possible based on the technological restrictions imposed on the PRD by the system itself, the regulation also prohibits such retrieval in the absence of pilot consent.

#### 6. FAA Records—Section 111.135

In the NPRM, the FAA proposed requiring operators to review FAA records in the PRD. Specifically, the FAA proposed that hiring employers must review: Records related to current pilot and medical certificate information, including associated type ratings and information on any limitations to those certificates and ratings; 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 14 CFR part 61; records related to enforcement actions resulting in a finding by the Administrator that was not subsequently overturned of a violation of 49 U.S.C. or a regulation prescribed or order issued under that title; records related to an individual acting as pilot in command or second in command during an aviation accident or incident; records related to an individual's pre-employment drug and alcohol testing history; and drug and alcohol records reported to the FAA by employers regulated under other Department of Transportation regulations for whom that individual worked as a pilot.

##### i. Comments on the FAA's Expunction Policy

The FAA formerly maintained a long-standing policy to expunge historical airman and enforcement records.<sup>43</sup> The policy provided that, generally, records of legal enforcement actions involving suspension of an airman certificate or a civil penalty against an individual were maintained by the FAA for five years before being expunged. Records were not expunged if, at the time expunction was due, one or more other legal enforcement actions were pending against the same individual. The outcome of the most recent legal enforcement action determined when the older action was expunged; for example, 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 were 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. Accordingly, FAA published a notice (76 FR 7893, February 11, 2011) temporarily suspending its expunction policy. In the NPRM, the FAA proposed to maintain its current suspension of the expunction policy. Under existing policy, the FAA expunges an enforcement record in the Enforcement Information System (EIS), and only the information identifying the subject of the enforcement action is deleted (name, address, certificate number, etc.). The PRD Act, however, obligates 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 interprets the PRD Act to require that a pilot's records cannot be expunged until the FAA has received notice of an individual's death, or until 99 years have passed since that pilot's date of birth.

NBAA stated that the FAA's expunction policy is consistent with the Privacy Act and that the FAA must still meet the requirements of the Privacy Act despite the PRD. NBAA further commented that by maintaining information in the PRD while limiting access to qualified employers, the FAA is still able to expunge other records and databases, such as the EIS. The commenter said that closed legal enforcement actions are neither relevant nor timely after a certain length of time. NBAA endorsed the PRD ARC recommendation to reinstate the 5-year expunction policy for enforcement actions for all pilot records and the recommendation that if the FAA determines records should be maintained indefinitely as a result of the PRD Act, the records maintained in the PRD should be expunged from EIS and any other FAA recordkeeping systems that contain them.

RAA supported the proposal to maintain the current suspension of the expunction policy for all relevant EIS, CAIS, and AIDS records. The commenter also pointed to concerns expressed by the PRD ARC and asserted that the provisions of the PRD Act conflict with the Privacy Act.

##### ii. Comments on Use of Aircraft Accident and Incident Data for the Proposed Rule

CAPA expressed concern about the FAA's use of aircraft accident and incident data and suggested that the FAA's use of this data exceeds the scope of its mandate under the PRD Act. CAPA noted no current regulation or accepted practice exists in which the difficulty a pilot may have had in meeting a standard is considered in the pilot's ability to perform duties once the pilot has met that standard. CAPA argued if the objective is to identify pilots who are perceived to have "failed too often" in their attempt to meet a standard, then the standard should be the subject of additional review. CAPA also stated the evaluation standards remain equal for all applicants regardless of the training necessary to successfully complete an evaluation.

##### iii. FAA Response

The FAA adopts the provision as proposed in the NPRM with respect to the FAA's maintenance of its records in the PRD for the life of the pilot. Accordingly, the FAA is amending the records schedules for EIS records and AIDS records for this final rule. As discussed in the NPRM, the PRD Act requires pilot records to be kept "for the life of the pilot." Because a hiring employer could view a pilot's records indefinitely in the PRD, no harm results from maintaining suspension of the expunction policy with respect to records in EIS.

The FAA records within the PRD are considered copies of records maintained in the CAIS, AIDS, and EIS databases. These databases are subject to the U.S. Department of Transportation's system of records notice (SORN) entitled DOT/FAA 847, Aviation Records on Individuals (November 9, 2010, 75 FR 68849) and are made available to reviewing entities consistent with the consent provided by the pilot.

Records integrated within the individual PARs, and records that operators provide for inclusion within the PRD, are not considered to be part of an FAA system as those records, when connected to a pilot with identifying information, are not used by the Department in support of its mission. The FAA's retrieval of these records by unique identifier may only occur for administrative purposes. Rarely, the FAA may retrieve records from the system by unique identifier to respond to external criminal law investigation requests, or as part of an FAA investigation of the operator's compliance with PRD regulations. The

<sup>43</sup> The FAA adopted a policy to expunge records of certain closed legal enforcement actions against 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).

FAA does not retrieve pilots' records from the PRD for FAA enforcement or investigative purposes related to the pilots themselves.

However, the Department is committed to ensuring that these sensitive records are managed in a manner consistent with the Privacy Act and the Fair Information Practice Principles, and will protect the records in accordance with the Departmental Privacy Risk Management Policy, DOT Order 1351.18 and applicable Office of Management and Budget Guidance for the protection of personally identifiable information.

The FAA also adopts the requirement for review of records related to an aviation accident or incident as proposed. The FAA explained in the NPRM that including accident and incident data in the PRD would provide a more holistic historical record of a pilot, when combined with the other records proposed to be reported to the PRD by operators that previously employed the pilot. The FAA has the authority to identify, gather, and share that data, and has determined that doing so in the PRD is consistent with the PRD Act.

The FAA enters a pilot's pre-employment and non-FAA drug and alcohol history into the PRD; however, these are not FAA records. Instead, the respective employer that conducted the test or determined the violation occurred is responsible for the records.

The FAA adopts § 111.135 with no substantive changes, but with minor edits, for clarity.

## 7. Sections Not Adopted

### i. Refusal To Hire and Release From Liability

In accordance with the statutory requirement set forth in 49 U.S.C. 44703(i), the FAA proposed permitting hiring employers to require a pilot to execute a release from liability for any claim arising from use of the PRD in accordance with the regulations. The FAA also noted that the release from liability would not apply to any improper use of the PRD, as described in the proposed regulation. The FAA also proposed to permit an air carrier or operator to refuse to hire a pilot if the pilot does not provide consent to the operator to evaluate the pilot's records or if the pilot does not execute a release from liability for any claims arising from proper use of the PRD by the operator. The proposed regulatory text also prohibited a pilot from bringing any action or proceeding against a hiring employer for a refusal to hire the pilot for any reason described in this section.

### ii. Comments Received

A4A commented that the liability release provision proposed in the NPRM in § 111.125 reflects the current and appropriate requirements, by providing a release from liability except where information is known to be false and maintained in violation of a criminal statute. Additionally, A4A contended the proposal provides reasonable protections, which the PRD Act does not require, for refusal to hire a pilot that does not provide consent or liability release requested by a carrier. A4A suggested that the FAA clarify that carriers can determine the process by which a release is obtained from the pilot and not foreclose future options.

NBAA commented that release from liability provisions apply only with respect to the entry of covered data and covered entities; in this regard, air carriers are not given immunity if they overreach by entering data that goes beyond the statute. NBAA recommended the FAA align the proposed regulation with existing laws and include additional provisions to protect employers required to submit records to the database. NBAA also expressed concern that part 111 improperly regulates the employer-employee relationship and could be inconsistent with State employment laws.

### iii. FAA Response

The FAA does not have the authority to expand the release beyond what is described explicitly by statute. Only Congress can establish statutory liability release provisions. Furthermore, Congress required the FAA to establish the PRD. The FAA is not aware of State law that would affect FAA regulation of a Federal database for pilot records.

Further, as discussed in the NPRM, the FAA recognizes that 49 CFR 40.27 prohibits employers from having their employees execute any release "with respect to any part of the drug or alcohol testing process." However, the FAA considers drug and alcohol testing records stored in the PRD to be outside the testing process for the purpose of DOT enforcement. Therefore, drug and alcohol testing records stored in and supplied by the PRD are not excluded from the liability release set forth in the statute.

The FAA does not adopt the proposed provisions. Upon further review, the FAA determined that memorializing these statutory requirements in regulation is unnecessary. Title 49 U.S.C. 44703(j) refers to "written

consent".<sup>44</sup> The FAA considers the consent requirements of §§ 111.120 and 111.310 to constitute the consent that section 44703(j) intends. A court could cite this statute in determining that a litigant does not have standing to bring a claim, but codifying a regulation to further memorialize the provision is not necessary.

### C. Subpart C—Reporting of Records by Operators

#### 1. Applicability—Section 111.200

In the NPRM, the FAA proposed that certain operators would be required to report records to the PRD, in accordance with the statute. The FAA adopts this section substantively as proposed, with edits for consistency with other parts of the regulatory text throughout this section and with additional text.

In this section, the FAA adds compliance dates for when reporting of records to the PRD begins. The FAA expects to be able to accept industry records beginning June 10, 2022. As such, operators currently engaging in operations, or that initiate operations prior to June 10, 2022, must begin reporting new records described by § 111.205(b)(1) on June 10, 2022. Operators initiating operations after that date must begin complying with the PRD within 30 days of receiving their operations specifications. Historical record reporting falls on a different timeline and the FAA states in this section that the schedule for historical record reporting is set forth in § 111.255. Comments regarding the compliance timeline for reporting historical records are found in Section V.E.

#### 2. Reporting Requirements—Section 111.205

In § 111.205, the FAA proposed general requirements for compliance with subpart C. The proposal required operators subject to part 111 to report new records about a pilot it employs as well as historical records about a pilot currently or previously employed. Proposed § 111.205 would prohibit inclusion of the information not permitted to be entered into the PRD as described in § 111.245.

The FAA amends the proposal concerning § 111.205 to add the PRD date of hire to the list of information that an operator is required to enter about a pilot. Otherwise, this section is adopted substantively as proposed.

<sup>44</sup> Specifically, 49 U.S.C. 44703(j)(4)(A) states that an "air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B)."

Comments relating to the applicability of the reporting requirements of part 111 are discussed primarily in Section IV.B.

### 3. Format for Reporting Information—Section 111.210

In the NPRM, the FAA proposed that operators would have to report information to the PRD in a form and manner prescribed by the Administrator.

#### i. Comments Received

A4A took issue with the fact that the proposed rule creates a database of pilot record summaries, not of pilot records. A4A said summaries are contrary to the PRD statute, which requires an electronic database for records “that are maintained by the air carrier.” A4A added that this is an arbitrary and capricious reversal of the FAA’s own interpretation of what constitutes a “record” and substantially increases the costs of the proposed regulation while reducing the quality and quantity of information available in the PRD as compared to the PRIA record exchange program. A4A was especially concerned about the proposed requirement to input summaries of historical records, rather than scans of the records themselves. A4A stated that the FAA should provide the option to upload images of entire documents rather than relying on summaries.

A4A contends that the PRD does not provide potential employers with the level of comprehensive information Congress intended and that PRIA provides currently. A4A noted that under PRIA, a hiring carrier would receive the pilot’s record and could review any incidents demonstrating that a pilot has difficulty with crew resource management, even if the final disciplinary action is removed from the record via settlement. Under the proposed rule, however, that information would not be captured in the PRD because if a settlement overturns a disciplinary action, the entire record related to that action would be excluded from the PRD. Moreover, A4A noted, once PRIA sunsets, those records will be permanently inaccessible to potential employers.

A4A noted the NPRM provides no technical information on how an employer must report extensive pilot records into the PRD; therefore, the public cannot provide precise information on the potential impact of this regulation without having the technical requirements to report information into the PRD. A4A recommended that the FAA consider offering both XML and JSON formats as

standards for bulk data transfer and engage carrier technical representatives. A4A further recommended that the FAA provide carrier representatives with information on the lessons learned by the Federal Motor Carrier Safety Administration in the Commercial Driver’s License Drug and Alcohol Clearinghouse. RAA requested that a guide to XML be provided to PRD users at the close of the comment period, or at the earliest possible time. A4A also asked for technical clarification on how bulk records should be uploaded to the PRD.

Ameristar and Atlas Air also expressed concerns about the format for uploading records, stating that it would affect the timing and cost of compliance. Ameristar notes that the definition of “report to the PRD” is open-ended.

The National Air Transportation Association (NATA) recommended that the FAA extend the historical period for data transmission and allow the uploading of original documents. NATA stated that only 12% of carriers are using electronic pilot records, and the significant majority of recordkeeping systems do not have the ability to create an XML program to sweep up the data fields for transmission. NATA stated that it expects a large number of part 135 carriers to use manual entry, and that rushing could cause unnecessary errors that would be difficult to correct and only discovered in pilot disputes.

Ameristar stated the PRD should allow text submissions of historical records, noting the wide availability of the ASCII format. The commenter also recommended all historical records be allowed in the format in which the carrier maintained those records.

In the NPRM, the FAA requested comments on five questions related to the input of historical records.<sup>45</sup> RAA

<sup>45</sup> 85 FR 17678 (March 30, 2020). The questions included:

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 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

commented that it is difficult to answer Question 3 until an example of the proposed XML data transfer format is available for testing. Also responding to Question 3, CAPA stated there should be an opportunity for the public to make additional comments if the FAA chooses to collect any type of historical record not previously mentioned.

In response to Question 5, RAA stated that a text box could be useful in providing narrative explanations for historical records, but risks providing unneeded information to the receiving carrier. RAA suggested that the FAA could limit this through a drop-down menu. Also responding to Question 5, CAPA stated that this question is confusing because under the NPRM a pilot would already have an opportunity to correct inaccurate data. CAPA further stated that the FAA should clarify its intention, and also asked whether there would be one data package to correct the entire package, one per section, or some other arrangement.

The Families of Continental Flight 3407 emphasized that the database will only be as effective as the quality of the data entered into it and that there will need to be a continuous quality control process in place as the database is put into operation. These commenters called on the FAA and all stakeholders to make their best possible effort in this regard.

A4A also said the final rule should clarify the requirement for most records to be reported “within 30 days” of the event, and that the rule does not prohibit submission of information after 30 days.

#### ii. FAA Response

Section 111.210 is adopted as proposed. The FAA provides a description of an initial means of compliance for the format for reporting information in AC 20–68J accompanying this rule.

The NPRM proposed that operators summarize the information from a pilot’s record, rather than submitting the actual records to the PRD. Table 3 of the NPRM outlined the data elements necessary to include in the summary. The FAA acknowledged that many operators have maintained records in accordance with PRIA in varying degrees of detail, so the FAA’s intent with requiring submission of a summary rather than an original record was to create a standardized process and best practice for obtaining the relevant information. Further, the NPRM stated that clearly defining the specific data

information concerning a historical record? Would this also be helpful for present-day records?

elements in this proposed rule would enable reporting entities to refine the information included in the PRD that hiring operators find most useful for hiring decisions, rather than entering all data maintained on an individual pilot throughout his or her career. Lastly, requiring records to be entered in a standardized format is consistent with NTSB Recommendations A-10-17 and A-10-19.

The FAA confirms in this action that the summary approach would be used for current, future, and historical records. The FAA reaffirms the NPRM discussion on the data elements and information required for the summaries which emphasized that the summary approach was taken specifically to improve the quality of the information submitted to the PRD. The FAA notes, with respect to A4A's comment regarding subsequently overturned disciplinary actions, that the PRD Act and PRIA share identical language with respect to excluding disciplinary actions that were subsequently overturned.

While 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 their operations, 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 further acknowledged in the NPRM that requiring summaries rather than records differed from the current process under PRIA, stating that 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. As discussed in the NPRM, the FAA's role concerning PRIA and PRD are vastly different. The provisions of PRIA were self-implementing and the FAA's role in the PRIA process limited. The FAA did not develop implementing regulations for PRIA. The PRIA process generally involved only three parties for industry records: The potential employer, the past employer, and the pilot-applicant. In contrast, 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.

Limiting the data elements available to hiring employers is critical because

the PRD requires the FAA to ensure pilot privacy is protected. Because the Administrator cannot effectively review for quality control every record that an operator may upload to the PRD, the FAA proposed requiring standardized formats for such records. By using such formats, the PRD will ensure that specific data points are validated at the time of record upload. Accordingly, the FAA has used its discretion to determine that, specific to the PRD and its broad coverage of records and mandate to protect pilot privacy, a summary of that information rather than wholesale submission of the underlying records provides the most efficient, standardized, and succinct vehicle to meet Congressional intent concerning the information reported to the PRD and the privacy protections the FAA must afford pilots. Therefore, the FAA disagrees with the commenters who indicated the PRD should contain images or scans of the original records.

The FAA will make available two primary methods for entering records into the PRD: Manual entry and an electronic record upload. The manual method will be accessed via the PRD website. The reporting entity will be presented with a form to complete after selecting the pilot and what type of record is to be entered. The second method of loading records will be via an electronic transfer using a data format such as XML. The FAA originally considered allowing a large text block to be uploaded for historical records in the interest of expediting data upload. However, after additional consideration, such a block would make the record far less useful to a reviewing entity. If the information cannot be properly categorized, identified, and read by a person to understand the salient facts of the record, there is diminished value for providing the record to the PRD. A reporting entity may use either or both methods, as long as the entity does not load the same record via both methods.

The manual method will be available for use when the requirement to enter records becomes effective. This will allow reporting entities to begin entering records pursuant to the schedule described in the regulation. Shortly after the final rule is published, the FAA will begin finalizing the electronic record reporting format and keep industry informed of those efforts. The FAA expects to develop a format that will accommodate the most efficient industry adoption. As the PRD system matures and recordkeeping systems advance, electronic transfer may become the primary method of loading records into the PRD for many reporting entities. Detailed instructions

for using both methods will be described in AC 120-68J and other PRD user guides.

The FAA confirms that while reporting records beyond the 30-day timeline may be possible technically, doing so is inconsistent with the regulatory requirement to report records within 30 days when reporting in accordance with § 111.215(a).

The FAA removed the proposed regulatory definition of "report to the PRD" because the requirement is inherent in the regulation itself. By following the requirements of part 111, the operator is reporting to the PRD.

#### 4. Method of Reporting—Section 111.215

In the NPRM, the FAA proposed that all records would be uploaded within 30 days of record creation. As mentioned previously in Section IV.C, this rule adds a method of reporting records under subpart B for certain operators. New § 111.215 now offers the option for some operators to report certain pilot records to the database upon request from a hiring operator. The FAA considered comments regarding the number of pilots who will transition from corporate flight departments, air tour operations, or PAO ("PAC operators") to employment with a reviewing entity, and determined that many pilots will not make that transition or not change employers during the course of their careers. The FAA recognizes that many pilots view employment with the PAC operators as a career destination, not a gateway to service with a reviewing entity.

PAC operators may upload records for pilots they employ upon request instead of reporting all records automatically. The request mechanism will be built into the PRD as an automatic function. This upload-upon-request framework is subject to three exceptions. First, reporting upon request is not applicable for air tour operators' drug and alcohol records subject to 14 CFR part 120. Those records are subject to the reporting timeline for that section and must be reported contemporaneous with the receipt of each such record. Second, PAC operators must report separation from employment records which reflect termination of the pilot's employment, either due to pilot performance or due to professional disqualification, to the database within 30 days of record creation. Third, PAC operators must report disciplinary action records to the database where the outcome is a suspension from piloting an aircraft for any amount of time.

The FAA understands that different employers have different disciplinary

programs and the same action may be referred to with different terminology. The threshold consideration for determining whether an operator must report a disciplinary action record upon creation of the record is whether the pilot was no longer permitted for any period of time to pilot an aircraft during flight operations. The FAA considers such separation from employment and disciplinary actions as among the most significant events for a reviewing entity to consider when determining whether to employ a pilot. Therefore, the burden imposed by requiring PAC operators to report a certain record upon receipt or creation of the record will ensure reviewing entities have the most important records regardless of whether a pilot, in violation of the regulation, omits operators from his or her list of previous employers.

Aside from the three exceptions discussed, this rule requires the reporting of any remaining records held by a PAC operator only upon request from a hiring employer. To ensure no gap exists in pilot employment history, the FAA revises § 111.310 to require pilots to update their employment history dating back five years at the time of granting consent to the operator. Under § 111.105, the hiring employer must compare this history against the available records; if the database indicates that further records are available, the hiring operator will be able to generate a request through the PRD to the prior or current employer for upload. If a request is sent to a pilot's former employer and that former employer has no further records about an individual pilot, the former employer should report that no further records are available. The FAA envisions that even if no other records exist for an individual pilot (because the operator did not keep any training records, as discussed in Section V.C or because the pilot was not ever subject to disciplinary action) a separation from employment date might still exist for that pilot. If the separation from employment record was the result of a termination, the record would already be uploaded contemporaneously in the PRD; however, if the separation was not the result of a termination, a last-in-time date should still be entered into the PRD upon request, in order to populate the database with information about a pilot's employment history.

PAC operators are also required to maintain any records reserved for reporting upon request for five years or until otherwise reported to the PRD to ensure they are available for review by a hiring employer. This section includes a requirement that these operators and

entities continue to report records they would have furnished in accordance with a PRIA request to the PRD upon receipt of that request. This provision addresses any gap that would occur for records held by an operator complying with § 111.215(b) and reporting records on request. That group of operators is the same as those not required to report historical records. There are approximately three years of records that such operators would have continued to provide under PRIA but for its sunset. This provision requires that those operators upload those records to the PRD in the event a request is received.

For records required to be reported contemporaneously under § 111.215(a), both disciplinary action records and separation from employment records must be reported within 30 days of the date the record would be considered "final" by the operator as noted in § 111.230 and 111.235, which contain the requirements for reporting such records.

#### 5. Drug and Alcohol Testing Records—Section 111.220

As proposed in the NPRM, operators that must comply with 14 CFR part 120 are required to report certain records concerning drug testing and alcohol misuse to the PRD. Operators must report all drug test results verified positive by a Medical Review Officer (MRO), any alcohol test result with a confirmed breath alcohol concentration of 0.04 or greater, any refusal to submit to drug or alcohol testing, any record pertaining to an occurrence of on-duty alcohol use, pre-duty alcohol use, or alcohol use following an accident, all return-to-duty drug and alcohol test results, and all follow-up drug and alcohol test results. This rule adopts the requirement to report such records to the PRD, as proposed; however, the FAA has updated some language within this section for clarity.

##### i. Comments Received

The FAA received comments on the proposed requirement to report drug and alcohol testing records to the PRD from NTSB, Ameristar, RAA, NATA, and A4A.

While commenters expressed support for the proposed inclusion of records regarding a pilot's drug and alcohol violation history in the PRD, some commenters requested clarification on which records they must report. For example, commenters asked whether they must report non-DOT testing records and whether they must report all negative and non-negative testing records for all types of tests.

Commenters also sought clarification on the proposal to include all negative and non-negative return-to-duty test results in the PRD, as commenters read the text as excluding this requirement. Some commenters remarked that the inclusion of negative return-to-duty test results has little value for an operator's hiring determination. Some commenters stated the drug and alcohol testing regulations do not require an employer to maintain negative return-to-duty tests for longer than one year.

Commenters requested clarification on the regulatory references to recordkeeping requirements in this section, stating that some were specific to requirements of the MRO rather than the employer. One commenter asked whether the retention periods require expunging the records maintained in the PRD in accordance with 14 CFR part 120, and if so, how to do this.

A4A added that the FAA already has measures to prevent an air carrier from hiring an individual with drug or alcohol violations, and that providing this information would be duplicative of FAA records that already show such violations. Specifically, A4A referenced the requirement (under 14 CFR part 120) to report certain drug and alcohol violations to the Federal Air Surgeon and the potential for resulting certificate actions. A4A also stated that a positive return-to-duty test would permanently disqualify a pilot from holding an FAA pilot certificate, while a pilot that is already performing pilot functions for another air carrier would already have been subject to the return-to-duty requirement and received a negative return-to-duty test, so those negative outcomes would already be known to an operator.

##### ii. FAA Response

In the NPRM, the FAA included the requirement to report to the PRD substituted or adulterated drug test results with verified positive drug test results. To harmonize the final rule with 49 CFR 40.191(b), the FAA corrects this reference by including these results in the reporting requirement of § 111.220(a)(1)(ii) as refusals to submit to testing.

The FAA proposed to require operators to report all return-to-duty and follow-up test results to the PRD, as the review of return-to-duty and follow-up test results are critical to an operator's hiring decision. The FAA believes excluding these tests from PRD would provide an incomplete picture of a pilot's drug and alcohol history to employers making a hiring decision about a known violator. Return-to-duty and follow-up tests are directly related

to an individual's rehabilitation process, and as described in the NPRM, including these records will allow a hiring employer to see more specifically where an individual is in their treatment and return-to-duty process. This information is critical for an operator's hiring decision, as a pilot cannot perform flight crewmember duties for an operator under part 121, part 135, or § 91.147 until the return-to-duty process is complete.<sup>46</sup>

All pilot records (including documentation of return-to-duty testing) must be maintained for at least 5 years under 49 CFR 40.333(a)(1) and 49 U.S.C. 44703(h)(4). Therefore, operators will have maintained these records for at least that amount of time. The PRD Act also specifically requires inclusion of records kept under PRIA as of the date of enactment of the statute, which would include drug and alcohol testing records from that time period as well. This rule contains revised regulatory text to note the requirement to report all negative and non-negative drug and alcohol return-to-duty test results to the PRD.

In the NPRM, the FAA proposed that records related to on-duty use, pre-duty use, and use following an accident would be included in a pilot's disciplinary action record in the PRD. The NPRM also proposed to require an employer to enter a detailed summary of the violation. Upon further consideration, the FAA determined records of on-duty use, pre-duty use, and use following an accident must be included in the pilot's drug and alcohol history as alcohol misuse violations under part 120 of this chapter instead of the pilot's disciplinary action record. This will ensure an accurate display of a pilot's drug and alcohol history and will allow a hiring employer to determine whether a pilot is professionally qualified to perform flight crewmember duties. When entering alcohol misuse violations that do not include a test result in the PRD, the employer will need to input the report type and date of occurrence. Because a hiring employer that intends to hire an airman must obtain records of the occurrence from the previous employer in accordance with part 40, no further explanation of the violation is necessary in the PRD.

This rule also adds regulatory citations as they relate to drug and alcohol recordkeeping requirements, ensuring the rule references 14 CFR part 120 and 49 CFR part 40 for a regulated employer and MRO, where appropriate. For example, in many cases, only the

employer has the information, such as alcohol test results and in refusal determinations without a test result.

The process required by part 40 for an employer to obtain records covered by that part will still exist, and is in addition to the records available in the PRD. If an operator discovers a drug or alcohol violation record in an airman's PAR and decides to hire the airman, the operator must obtain information that the airman has subsequently complied with the return-to-duty requirements of 49 CFR part 40, subpart O, in accordance with 49 CFR 40.25(e). In accordance with the drug and alcohol testing regulations, a hiring employer cannot hire an airman to perform a safety-sensitive function if the employer is aware that the individual has violated the testing regulations and cannot obtain documentation that the individual has met the return-to-duty requirements of part 40, subpart O or part 120.

Because the PRD will not provide a hiring operator with return-to-duty documentation or actual test results, the operator must obtain documentation of the airman's successful completion of the DOT return-to-duty requirements (including initial and follow-up reports from the Substance Abuse Professional (SAP), the follow-up testing plan, and results for any return-to-duty and follow-up tests). The airman must provide the records that the airman is authorized to have, or the operator must obtain the airman's specific release of information consent to the former employer where the violation occurred, as required by 49 CFR 40.321 and formerly under the PRIA. AC 120-68J includes a sample release form (FAA Form 8060-12) to aid a hiring operator with requesting an airman's drug and alcohol records from the airman's previous employer(s).

Lastly, in response to A4A's comment that the FAA already has measures to prevent a reviewing entity from hiring an individual with a drug or alcohol violation, the PRD Act requires the FAA to include drug and alcohol records in the PRD as records maintained by the reporting entity.<sup>47</sup> The FAA does not have discretion to adjust the requirement. Further, drug and alcohol violation reports sent to the Federal Air Surgeon are not indefinitely available to the FAA. For example, if the FAA does not proceed with enforcement action, the record is expunged and is no longer part of the individual's violation history in the FAA's enforcement system (EIS). The violation still stands and the individual still needs to go through the

return-to-duty process, but there is no certificate action detected. In response to the statement regarding permanent disqualification, the FAA asserts that specific qualifications must be met to trigger the permanent disqualification provisions under §§ 120.111(e) and 120.221(b). A verified positive return-to-duty test will not trigger these provisions automatically.

#### 6. Training, Qualification, and Proficiency Records—Section 111.225

In the NPRM, the FAA proposed to require all operators complying with subpart C of part 111 to provide training, qualification, and proficiency records to the PRD. Under the proposed rule, employers would enter records maintained in accordance with established FAA regulations related to pilot training, qualifications, and proficiency events. In addition, the FAA proposed to require employers to enter records demonstrating an individual's compliance with FAA or employer-required "training, checking, testing, currency, proficiency, or other events related to pilot performance" that may be kept by covered employers.

As proposed in § 111.220(c), the minimum data required to be reported by all populations included the date of the event, aircraft type, duty position (PIC or SIC), training program approval part and subpart, the crewmember training or 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 from a check pilot, if appropriate.<sup>48</sup> The FAA also proposed to exclude certain records from the reporting requirements. Specifically, under the proposal, the PRD would not include records related to flight time, duty time, and rest time; records demonstrating compliance with physical examination requirements or any other protected medical records; records documenting aeronautical experience; and records identified in § 111.245, the provision that identifies certain voluntarily-submitted safety program records.

NBAA, ALPA, CAPA, A4A, RAA, CAA, the Families of Continental Flight 3407, Cummins, Inc., Ameristar, Atlas Air, and many individuals commented on the proposed requirement to report training, qualification, and proficiency records. Most of these comments addressed the proposed requirement to include check pilot comments from

<sup>48</sup> The FAA uses the term "check pilot" throughout part 111 and this preamble to refer also to the duties and responsibilities of a check airman.

<sup>46</sup> See 49 CFR part 40, subpart O.

<sup>47</sup> 49 U.S.C. 44703(i)(2)(B)(i)(II)-(III).

training events, to which some commenters objected. Commenters also addressed the reporting of records related to recurrent training, continuing qualification training under an Advanced Qualification Program (AQP), the reporting of aeronautical experience records, the lack of standardization in training records, and other issues related to the reporting of training records.

i. Comments Received Regarding Inclusion of Check Pilot Comments

NBAA, ALPA, CAPA, RAA, CAE, Cummins, Inc., and several individual commenters recommended that the FAA remove the proposed requirement to report check pilot comments from training events.<sup>49</sup> These commenters contended that requiring the reporting of check pilot comments would have a chilling effect on training and safety. Commenters also noted the subjective nature of such comments and highlighted the effect such comments could have on a pilot's career.

Ameristar suggested the FAA publish an advisory circular or appendix to the rule to detail how instructors and check airman should write comments regarding a pilot's performance to achieve objectivity. Ameristar provided examples of such comments.

Noting that unflattering check or instructor pilot comments may cost pilots future job opportunities and leave check pilots or their employers open to liability, NBAA said the statement of non-liability should specifically protect the check or instructor pilot against civil, administrative, and criminal claims. NATA also requested clarification on the liability protections for current and past employers entering required data into the PRD, not just new employers.

A4A recommended the FAA clarify that comments on pilot performance should only be entered into the PRD when made by a check pilot during evaluation events or during validation events in AQP continuing qualification (CQ).

ii. FAA Response

The FAA revised parts of this section for clarity, as set forth in the discussion that follows, and re-numbered this section, which the NPRM had proposed to designate as § 111.220.

The FAA is mindful of all comments received on the inclusion of check pilot

comments in the PRD. As discussed in the NPRM, the FAA is required by statute<sup>50</sup> to include in the PRD records pertaining to "the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman." Because the PRD is intended to improve the information sharing that occurs under PRIA, the FAA is careful not to reduce the benefits provided and instead to improve upon the PRIA system. Under PRIA, training, qualification, and proficiency records are provided wholesale to requesting operators. The FAA does not expect employers would redact portions of the particular records and provide the records in their entirety to the requester. Thus, under PRIA, hiring operators are able to see check pilots' comments in the record. These comments will provide a hiring operator information that helps in understanding the salient details of a qualification or proficiency event. The FAA removed "subpart K" from § 111.225 as adopted because the FAA expects that any comments by the person administering a proficiency check conducted under § 61.58 will also be reported to the PRD to the extent an operator is keeping records related to that section. This approach is consistent with the reporting required for other specified proficiency events administered by check pilots or evaluators such as for parts 121, 135, or 125. If the check required by § 61.58 is unsatisfactory, the tasks or maneuvers not completed satisfactorily will also be entered if maintained by the covered employer.

Some commenters suggested the FAA provide guidance regarding how the check pilots should draft comments. The FAA has not determined that comments from check pilots are generally problematic or that additional industry guidance is needed. Check pilots have entered comments as needed for years and have been guided by their approved training programs regarding what is appropriate to enter as a comment in a record. The requirement to report comments into the PRD does not alter existing processes that operators use when creating the original record.

A commenter expressed concern about inclusion of comments from instructors in the PRD. As described in the NPRM, the PRD will not include instructor comments but will instead collect records relating to the completion of training curricula. The FAA provides substantial supporting

guidance, such as AC 120-68J and the PRD record entry functionality itself, to designate which records may include check pilot comments when entered into the PRD.

Additionally, to the extent commenters have raised concerns about liability, this rule does not extend the statutory liability protection to cover inclusion of check pilot comments because this liability protection is already provided via a specific provision in the PRD Act itself.

iii. Comments Received Regarding Inclusion of AQP Validation Events

The NTSB, A4A, RAA, CAA, and the Families of Continental Flight 3407 sought clarification on which records from training programs approved in accordance with an AQP must be reported to the PRD.

The NTSB asserted that the Draft PRD AC<sup>51</sup> states that operators using a training program approved in accordance with an AQP would be required to enter into the PRD specific information about a pilot's qualification items completed through the AQP, but the language in the NPRM is not clear in this regard. The NTSB said the FAA should ensure the final rule contains language that specifies which AQP items, including but not limited to those referenced in the Draft PRD AC, must be reported to the PRD. The NTSB also said it does not support the proposal to exclude AQP "validation events" from the PRD reporting requirement, stating that it recognizes that "many validation events . . . are used to improve and add quality to the training program," but several AQP validation events contain evaluation elements that assess an individual's performance and proficiency (using a rating or score) and must be administered by an evaluator. The NTSB opined that the inclusion of the records of such events in the PRD is consistent with the overall intent of the NPRM. The NTSB recommended that the FAA ensure that the final rule requires PRD reporting for AQP evaluation elements that assess an individual's performance and proficiency, including but not limited to maneuver validations (MV), line operational evaluations (LOE), and line checks. The Families of Continental Flight 3407 concurred with the NTSB's comment, noted that it is critical to include AQP "validation events" that assess an individual's performance and

<sup>49</sup> For purposes of this rule and as reflected in the database, the FAA is using the term "training event" broadly to include training activity, checking and evaluation activities, and operating experience under the supervision of a check airman or evaluator.

<sup>50</sup> 49 U.S.C. 44703(i)(2)(B)(ii)(I).

<sup>51</sup> The draft PRD AC published along with the NPRM on March 30, 2020, and is available in the docket at <https://www.regulations.gov/document?D=FAA-2020-0246-0006>. The final PRD AC 120-68J will be available in the rulemaking docket.

proficiency to ensure that the overall safety intent of the PRD is met. The commenter urged the FAA to close these AQP-related loopholes as it finalizes the proposed rule.

A4A noted the FAA addressed reasons not to include AQP validations and validation comments in both the preamble (at 85 FR 17680) and the Draft PRD AC (at paragraph 10.1.2.5). A4A asserted those negative effects are limited to qualification courses. A4A went on to say the industry believes there is value in including CQ validations and comments in the PRD.

CAA, A4A, and RAA sought clarification on how continuing qualification training under AQP should be accounted for in the PRD. The commenters noted that many AQPs have a cycle of reviewing all required task elements in 24-month or 36-month increments, during which pilots will attend several simulator training sessions that conclude in either an MV or LOE. The commenters asked FAA to clarify whether continuing qualification MV under subpart Y and the training session associated with § 121.441(a)(1)(ii)(B) “simulator course training” should be reported to the PRD.

Commenters recommended the FAA name the events that must be uploaded to the PRD. A4A and RAA listed the events they believe should be uploaded to the PRD. For subpart Y of part 121 (Advanced Qualification Program), the commenters stated that the following should be uploaded: (1) All LOEs associated with an initial, transition, upgrade, differences or a continuing qualification training course; and (2) all MVs associated with a continuing qualification course. For subparts N (Training Program) and O (Crewmember Qualifications) of part 121, the commenters stated that the following should be uploaded: (1) All proficiency checks for both initial training and recurrent training; and (2) all simulator courses of training under subpart O. The commenters said that, if the FAA does not believe this level of detail is appropriate for the rule, it should develop either an AC or Order to provide standardization.

In contrast, ALPA said the FAA’s proposed exclusion of validation events (in an AQP) is an important safeguard of the efficacy of highly successful training programs and should be clearly stated in the regulations. Commenters believed that reporting validation events to the PRD would stifle free and open feedback from those administering the validation event. They also indicated that validation events are intended to provide feedback regarding the effectiveness of the training program

and not necessarily the proficiency of the pilot.

#### iv. FAA Response

The FAA seeks to ensure that records entered into the PRD based on AQP provide a hiring operator with the same benefit as records reported under non-AQP programs. Overall, AQP validation events that are conducted by an evaluator involve an assessment of a pilot’s proficiency and should be made available to a hiring operator. While AQP validation events provide valuable feedback regarding the effectiveness of the training program, they are also designed to ensure the pilot demonstrates an appropriate level of proficiency. As such, these AQP validation activities constitute proficiency events under the language in § 111.225(a), and the records (including evaluator comments) associated with these AQP validation activities must be included in the database.

After considering the comments received, the FAA determined that revision of the requirements concerning records of AQP validation events is appropriate. Some validation events, such as procedures validation (PV) conducted by an instructor in a qualification curriculum, do not constitute a proficiency event. Therefore, such validation events will not be reported individually in the database, but rather, will be reflected in the general reporting requirement indicating the pilot has completed the qualification curriculum. However, as noted, a PV event differs from those events conducted by AQP evaluators, such as an MV under a continuing qualification curriculum, which could provide a hiring operator with very meaningful information regarding an assessment of the pilot’s proficiency. This is particularly true in many CQ curricula. Many operators utilizing AQP programs will use a rotating schedule where the pilots complete an MV in one cycle and then an LOE in the next. Although they constitute two different types of events, they are both evaluations of pilot proficiency and thus must be reported to the PRD with the evaluator’s comments.

AC120–68J accompanying this rule will specify exactly which AQP validation events constitute “proficiency events” under § 111.225(a) and thus must be reported to the PRD. The AC will also describe which other AQP related records must be included, which would generally be completion of training events. The exact training record elements expected to be reported vary from employer to employer and

may require updates over time, within the requirements specified by § 111.225. The FAA will identify in the AC the record elements each employer will enter based on the regulatory requirement as compared to various training programs and curricula.

Commenters expressed both support for and opposition to including comments related to AQP validation events. Some AQP validation events that occur in various curricula are used to ensure a pilot has completed a knowledge or skill block before beginning the next. However, some AQP validation events provide a more holistic review of a pilot’s proficiency than other events. The FAA would consider the latter AQP validation events conducted by evaluators, such as MVs and LOEs, to be proficiency events; as a result, these AQP validation events could have evaluator comments entered in the original record. These comments will offer the same benefit to a reviewing entity as conventional check pilot comments.

As a result, the final rule includes references to “evaluators”—a term generally used in AQP—in addition to “check pilots,” a term generally used in subparts N and O of part 121 as well as in part 135. Some events reported to the PRD would be subject to evaluation by a person other than a check pilot. These comments will be as relevant to the proficiency of a pilot as those comments made by check airmen under traditional training programs. The PRD Act does not limit the inclusion of comments only concerning the technical qualifications of a check pilot, and the FAA finds the inclusion of these comments consistent with the intent of the statute.

#### v. Comments Regarding Aeronautical Experience

NBAA and two individuals commented on language in both the draft AC and the NPRM requiring reporting of a pilot’s aeronautical experience, flight time, and flight maneuvers performed to maintain privileges of their certificate. The individual commenter noted inconsistent statements between proposed § 111.220(b)(3), which says no person may report records documenting aeronautical experience, and § 111.220(a)(2), which requires operators to report records related to currency and proficiency. The commenters noted these reporting requirements will result in operators needing to log every flight hour, instrument approach, and landing in the PRD. NBAA asked the FAA to remove

reporting requirements related to § 61.57.

Another individual commenter expressed confusion over what it interpreted as a proposal not to require the reporting of aeronautical experience. The commenter argued that the entire purpose of the proposed rule is to ensure that appropriate aeronautical experience exists when hiring pilots.

#### vi. FAA Response

Regarding the exclusion of “aeronautical experience” in the reporting requirements proposed in the NPRM, the FAA recognizes that aeronautical experience, which is defined only in part 61, is used to describe the information that pilots must log to demonstrate compliance with the requirements of part 61. As defined in § 61.1, aeronautical experience means “pilot time<sup>52</sup> obtained in an aircraft, flight simulator, or flight training device for meeting the appropriate training and flight time requirements for an airman certificate, rating, flight review, or recency of flight experience requirements” of part 61. The FAA acknowledges that using the term “aeronautical experience” in part 111 could be confusing.

In the final rule, the FAA replaces “aeronautical experience” in the exclusion with “recent flight experience.” Although recent flight experience is a “qualification”<sup>53</sup> requirement like training and checking events, the final rule excludes these requirements from the reporting requirements in part 111. The FAA notes that the regulations generally identify this type of event in section headings. For example, § 135.247 sets forth recent experience requirements including takeoffs and landings that must be performed within a certain period of time before conducting an operation. Under § 111.225(b), these records are excluded from the reporting requirements but remain recordkeeping requirements for operators.

#### vii. Comments Regarding the Lack of Standardization in Training Records

Several commenters addressed the lack of industry standards in training records. Noting that training data is currently stored in company-specific formats that can be challenging to

decipher, an individual commenter suggested the FAA create an industry standard reporting format for the PRD. The commenter said the PRD should be easily understandable by anyone accessing it and that, without standardization, it could be difficult to discern which type of training event occurred and what was covered in each event. A4A recommended that the FAA work with carriers to discuss how events reported from one carrier can be interpreted by other carriers. CAA recommended the FAA provide additional guidance material to ensure standardization of all training records.

CAA, A4A, and RAA recommended that the FAA create a PRD working group to help standardize the form and manner of the records to be recorded in the PRD.

The General Aviation Manufacturers Association (GAMA) commented that the FAA’s attempt to create a statistical database disregards the fact that the PRD will be populated with statistically unrelated information.

Pointing to paragraph 10.1.1.1.2 of Draft AC 111, ALPA said it agrees with the FAA’s proposed use of a “Standardized Training Record Input” with a requirement to identify consistently each “Action/Event,” in reference to the primary training categories from the specific curriculum segments in the carrier’s FAA-approved training program.

#### viii. FAA Response

Some variation might exist in interpreting various operators’ training events. This is a particularly notable challenge for record-sharing under PRIA, concerning the original employer record. As a result, the FAA identified standardized data elements for entries. Using a standardized input will provide a consistent format as part of the PRD airman report. Providing the uniform report, regardless of the format used by a reporting entity, will allow reviewing entities to interpret the information accurately and efficiently. For example, when a reporting entity reports a proficiency check, it will select the regulatory basis for the check, such as a Part 121 subparts N and O based curriculum, from a drop down list. This selection will determine which data entry options are available based on the training or checking event. The only opportunity for reporting entity to provide text would be in the context of check pilot or evaluator comments. Because the selection of event type is primarily comprised of predefined items, every reporting entity who wishes to record, for example, a line check, will be reporting line checks in

the same format and manner with the same associated data fields such as the type of training program, the date of the check, and the results of the check. When these records are displayed to a reviewing entity in an organized report, the reviewing entity can digest the critical facts and details more quickly and easily than when a reviewing entity must review multiple reports in various formats produced by each previous employer.

The FAA revised AC 120–68J to refine the data elements that the FAA expects to see reported in the PRD in order to comply with the regulatory requirement set forth in § 111.225. Each training record will include information concerning the type of training program and curriculum the operator uses. The PRD will aid in identifying the training elements most crucial to identifying patterns in pilot performance, but the FAA notes that the purpose of the PRD is to share information with reviewing entities, not develop training elements.

#### ix. Comments Regarding the Requirement for Different Types of Operators To Enter Training Records in the PRD

Some commenters, including Koch Industries (Koch), which employs more than 30 pilots who hold type ratings under 14 CFR 61.31(a), objected to the requirement to report training and checking records. Koch asserted the FAA already maintains the records or that the records are available from training centers. RAA opposed the proposed requirement to include employer-required training records in the database, saying it will add nothing to comparative data or the standard reached by the individual, as the training may be voluntary and will vary widely from carrier to carrier.

NASA and JPATS noted an FAA pilot certificate is not a requirement to operate government aircraft at the discretion of the Federal agency, and that their qualification, requalification, currency, and check flight requirements do not align with part 61 currency requirements. These commenters stated the proposed requirements do not benefit the government and appear only to benefit industry. JPATS also noted it does not have the resources to maintain these records, that the records are not relevant to JPATS operations, and that the requirement would be burdensome.

The Small UAV Coalition said that, because unmanned aircraft systems (UAS) are different from the aircraft used in traditional air carriage, the safety risks that the PRD seeks to mitigate do not necessitate requiring UAS air carriers to produce or review

<sup>52</sup> “Pilot time” is defined in § 61.1 and includes time in which a person serves as a required pilot flightcrew member and time giving and receiving flight training in an aircraft, full flight simulator, flight training device, or aviation training device.

<sup>53</sup> The FAA views qualification requirements broadly as any certificate, rating, training, checking, testing and experience required to be qualified or maintain qualification for a position (e.g. pilot in command) in a particular operation (e.g. part 121).

training and proficiency records. Moreover, the commenter continued, given the significant difference between different types of UAS, the ability to compare training and performance records diminishes the relevance of that review. Accordingly, the Small UAV Coalition recommended that the FAA revise the regulatory text to state the requirement “does not apply to air carriers and other operators operating only autonomous unmanned aircraft systems.” The Coalition also requested the FAA acknowledge in the preamble of this rule that certain requirements for submission of documentation of compliance with employer-required training, checking, testing, etc., do not apply to air carriers or other operators using only autonomous UAS.

An individual commenter asked whether training providers would supply information to the PRD directly. Another individual commenter recommended that the FAA require part 142 training centers to provide training records to the database directly, thereby alleviating the administrative burden on part 91 operators. Another commenter said flight training providers, who support insurance industry requirements (such as FlightSafety, SimCom, LOFT, etc.) and maintain training records under § 61.58 for purposes of part 142 training centers, should report any below-standard performance on initial or subsequent type rating checks directly to the FAA.

#### x. FAA Response

To the extent that the commenters stated it is not appropriate to include training or proficiency records of pilots engaged in small UAS operations, the FAA does not agree. Small UAS operators subject to 14 CFR part 135 are already subject to recordkeeping requirements. The data elements provided in the AC will be broadly applicable to, and are appropriate for, both manned and unmanned operations. Consistent with all part 135 operations, pilots serving in part 135 unmanned aircraft operations are trained under an FAA-approved training program and are subject to proficiency checks and line checks. Although the operations might, in some ways, be different from manned aircraft, the pilots are trained and evaluated on areas universal to pilot performance, such as aeronautical decision-making, compliance with FAA regulations (including those related to airspace), and crew resource management. A pilot’s performance during training and checking events can provide relevant information to operators looking to employ a pilot; therefore, no basis exists for excluding

these pilot records from the reporting requirements. Moreover, the PRD Act does not expressly exclude such operations.

With respect to comments concerned about the inclusion of training records for certain part 91 operators, the FAA stated in the NPRM:

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

The FAA reiterates in this final rule that the NPRM did not propose to impose a new system of recordkeeping for training records not already kept by commercial air tour operators, corporate flight departments, and entities conducting public aircraft operations. As stated above, the FAA relied on information indicating that employers falling within this grouping (PAC operators) may keep training records of their own accord. If an operator keeps those records, the FAA proposed to require those records be reported to the PRD. While the record may not provide the same level of assurance that may accompany a required training record from an approved training program, these records play an important role in helping the reviewing entity make a comprehensive assessment of a pilot’s proficiency.

Upon review of the comments indicating that employers do not generally keep records generated exclusively under part 61, and in consideration of the new method of compliance for PAC operators to report training records upon request, the FAA does not envision that this requirement would be overly burdensome for PAC operators. Accordingly, § 111.225 requires that when a PAC operator maintains training records, the operator must enter those records into the PRD upon receipt of a request in accordance with § 111.215(b). The reporting entity should include any training records available to the extent those records are compliant with the requirements in § 111.225. As discussed in the NPRM, the FAA believes there is value in reporting of employer-specific training records, to the extent they exist, as

many operators complete training outside an approved training program. The FAA does not intend the PRD to create additional record keeping requirements. Instead, this rule makes some records that a reporting entity already maintains available in a central database for hiring employers. AC 120–68J describes in detail the possible record elements for entry in the PRD.

The PRD Act does not apply to part 142 training centers or any other entity that has not employed the pilot, as discussed further in Section V.A.1.

#### xi. Other Comments Regarding Training Records

Ameristar and ALPA commented on the proposed reporting elements for training records. Ameristar recommended that the FAA rewrite the paragraph to read: “Result of an event as satisfactory or unsatisfactory,” and delete the rest of the paragraph, and amend proposed § 111.220(c)(7) to require comments explaining a result that is unsatisfactory. ALPA said it agrees with the proposed requirement in § 111.220(c)(6) for every “Result of the event” to be reported as either “satisfactory” or “unsatisfactory” because the approach promotes uniform and objective reports. ALPA said it opposes the proposed requirement to include a brief comment explaining the basis for any “unsatisfactory” event. ALPA asserted this proposed requirement contradicts the language and intent of the PRD Act and is unwise as a matter of policy.

Atlas Air also commented on the importance of ensuring awareness of a pilot who initiated but did not finish a training program. The commenter noted the proposed rule requires reporting of training segments that end “Satisfactorily, Unsatisfactorily, Complete, Incomplete, Pass, or Fail,” but it does not give direction as to the description of what an “Incomplete” is and how it should be described in the free text areas of the PRD. The commenter stated the air carrier must provide the specific reason the training was not completed as related to pilot proficiency. Atlas Air stated the FAA needs to provide guidelines about the specific information to be reported in the free text areas to resolve inadequacies with the current PRIA system. CAA and RAA similarly recommended the FAA require carriers to report the reason a pilot did not complete a training course. CAE also questioned whether a pilot who, in training, shows consistent difficulty with a task or area of operation over more than one training event yet ultimately passes each event

successfully will be trackable in this system.

Noting that the pilot involved in the Continental Flight 3407 accident had training issues that included three instances of additional training while a first officer, Atlas Air and another commenter said it is unclear whether records of these types of additional training will be available in the PRD. The commenter stated none of that information would have been published in the PRD under the current proposal.

Ameristar asked the FAA to clarify “subpart of the title” in proposed § 111.220(c)(4). Ameristar also said proposed § 11.220(c)(4) and (5) appear to focus only on training but do not seem to include proficiency checks, line checks, or other checks. The commenter suggested references to regulatory sections only, and not to a company’s training program, which would be meaningless to a reviewing entity. Ameristar noted that training under part 121, Appendix E, may have well over 100 elements for which a satisfactory, unsatisfactory, or incomplete grade could be given to each element. The commenter asked whether the FAA intends records of all such events would be included, even if the pilot satisfactorily completes the type rating or proficiency checks. If so, the commenter asserted, this would be extremely burdensome for a reporting entity and would not serve any purpose or enhance safety. Ameristar said it believes that indoctrination ground training is not relevant as it is not aircraft specific.

Two individual commenters recommended the FAA remove the reporting requirement for pilot currency records. Commenting on the proposed requirements to report other training and qualification events (as well as drug testing results), a commenter also suggested that the final rule include language to protect operators from potential liability from a pilot taking legal action against an operator for reporting these factual items.

Cummins, Inc. suggested that the length of time a pilot needs to complete training should not result in adverse implications or negative connotations, including impact on future career options. Cummins stated the employer could discriminate inadvertently based on a disability, as a reasonable accommodation applied in some circumstances is allowing additional time to complete a test. Another commenter was concerned about the prospect of a pilot failing the check due to a temporary physical, emotional, or mental situation impacting the pilot’s ability to perform satisfactorily in a high

stress situation, and stated there should be some adjustments available to account for such circumstances.

An individual commenter said records maintained and reported for this section need to be limited to those events and training that occur while employed with the certificate holder or operator. This commenter also said the prohibition against reporting flight and duty time “is negative to safety and allows for continued fraudulent activity in the aviation industry.” The commenter asserted that providing certificate holders and operators with the ability to check stated experience against a trusted database and the pilot’s own logbook would increase safety and eliminate the possibility that flight time does not appear to match skill level.

A4A and RAA asked the FAA to clarify a record element, “Line Operating Flight Time,” because it appears that the FAA meant to use the Line-Oriented Flight Training (LOFT), as defined in AC 120–35D, instead of Line Operating Flight Time.

#### xii. FAA Response

The FAA removed the reference to “currency” in § 111.225(a)(2) as adopted. The FAA reevaluated the language of the proposed regulation and confirms that it does not intend to collect currency records in this part. This revision is further supported by the exclusion of recent flight experience<sup>54</sup> in § 111.225(b)(3). The FAA notes, however, that operating experience under the supervision of a check pilot or evaluator will be included in the PRD. These events are an assessment of pilot proficiency at a critical stage in a pilot’s service for an operator.

Specific flight information normally found in a pilot’s logbook such as departure point, destination, and flight time details will not be reported to the PRD, as the PRD is not intended to be a duplicate flight logbook. The FAA also determined it will not require reporting of items associated with §§ 61.56 (flight review) and 61.57 (recent flight experience). The FAA understands that pilots will often share the existence of these records with employers and that some employers may actually keep additional copies of the records. However, the pilot is under no obligation to share these records with employers for their recordkeeping. Commercial air tour operators, corporate flight departments, and entities conducting public aircraft operations

<sup>54</sup> The FAA notes that the term “currency” refers to meeting the appropriate airman and medical recency requirements specific to the operation or activity. See 14 CFR 61.2(b). It includes recent flight experience.

may indeed have these records, which are maintained by the pilot, but there will be many instances where operators will not have these records as the burden of compliance is on the pilot.

For training, proficiency, and qualification records for all reporting entities, this rule includes the items required to be reported in accordance with § 111.225(c)(7) to indicate the inclusion of specific detail about unsatisfactory events, which includes incomplete events. Such inclusion will ensure the amount of information provided to a reviewing entity is at least as much as is provided under PRIA. Where the result would be complete or incomplete, events that are complete would be considered “satisfactory” and events that are incomplete would be considered “unsatisfactory.” The form for reporting these records will distinguish between incomplete events and other unsatisfactory events. For such records, a reporting entity would provide further detail about the specific maneuvers or events that were unsatisfactory or incomplete. AQP validation events conducted by evaluators are an assessment of pilot proficiency, and the comments of the evaluator will be valuable to a reviewing entity. Such comments, including an indication of which events or maneuvers were unsatisfactory or incomplete, should also be included.

Ameristar asked if the FAA intended for the PRD record to include each maneuver or task included on a typical proficiency record. The forms used for proficiency checks include several items which could be accomplished during the checking event and normally, a check pilot or evaluator indicates whether an item is applicable, satisfactory, or unsatisfactory. The FAA agrees that requiring every specific item, satisfactory or unsatisfactory, to be reported in the PRD record would be overly burdensome. However, in the case of an unsatisfactory checking event, a reviewing entity needs to be able to determine exactly what task or maneuver was unsatisfactory. To that end, as discussed in the previous paragraph, the FAA will require reporting entities to indicate which tasks or maneuvers were unsatisfactory or incomplete while not requiring satisfactory items be listed in such detail.

The free text areas of the PRD will exist exclusively for comments related to a checking event and for an indication of events that are unsatisfactory or incomplete, as discussed previously. The FAA considers incomplete events to be unsatisfactory, as described above. The

form of the record itself will distinguish between incomplete events from other unsatisfactory events, based on the event type. The record entry for those events will also include specific detail indicating whether specific items were unsatisfactory or incomplete, as explained previously.

In response to the comments regarding second in command (first officer) training, as required by § 121.415(j), approved training programs must provide training for pilots who have been identified as having performance deficiencies during training and checking and/or multiple failures during checking. For AQP programs, § 121.913(b)(4) specifies that a special tracking curriculum is required when an air carrier has assigned a pilot to an augmented schedule of training, checking, or both. Reporting entities must include records of remedial training or special tracking when those records apply. These records, in addition to the other training, qualification, and proficiency records specified in AC 120–68J, will assist the reviewing entity in making an assessment of the pilot's history.

Regarding comments about the clarity in the regulatory text when the FAA refers to training, checking, and proficiency records in proposed § 111.220(c)(4) and (5), approved training programs are generally comprised of various curricula. Most curricula then include various training (e.g. § 121.427 recurrent training) and checking events (e.g. § 121.441 proficiency checks). The FAA considered what curricula and related events apply to the various training programs and which of those would provide meaningful information to a reviewing entity, the objective being to find the appropriate balance between providing sufficient detail in the PRD against the burden that may be placed on reporting entities. Part of this review by the FAA considered that while most records for a particular curriculum or training event are most often satisfactory, that record becomes much more telling to the reviewing entity when it is unsatisfactory. The FAA has included some records because, although a rare occurrence, noting unsatisfactory or incomplete performance by a pilot is an important part of the assessment and must be made available to a reviewing entity in the interest of safety. As described in AC120–68J, the FAA believes only particular record elements provided in the PRD will be applicable to a pilot. For example, reporting entities will enter various curriculum completions or withdrawals such as basic

indoctrination or upgrade curriculum. Various checking events such as line checks and maneuvers validations when completed as part of a continuing qualification curriculum will also be reported. Another example as reflected in AC120–68J is that in most cases, the FAA has removed the reporting element of “Upgrade ground training and upgrade flight training.” Instead, only a single record of the Upgrade training curriculum is entered. AC120–68J also includes certain specific training records such as extended envelope training.

The FAA agrees that a variety of circumstances could affect a pilot's ability to perform satisfactorily in a high stress situation but does not agree that the PRD should account for such a situation. Operating an aircraft often causes high stress situations for a pilot, regardless of a temporary situation affecting a pilot's ability to perform, and a pilot completing or satisfactorily passing a check regardless of external circumstances is a helpful indicator for a hiring employer. The FAA intends the PRD to prompt conversations; in this regard, a pilot is free to offer an explanation to an employer regarding a check failure or a delay to complete training and encourages pilots and potential employers to engage in a robust dialogue during the hiring process.

As discussed extensively in the NPRM, all records entered by reporting entities, including training, qualification, and proficiency records, must only be the records they have generated or are otherwise maintaining for their own operational needs. For example, a reporting entity would not report a record it received in response to a PRIA request. AC 120–68J states that records received in response to a PRIA request or records obtained from the PRD should be maintained as separate records and should not be stored with the other pilot records. This is to prevent those records obtained under PRIA or via the PRD from being entered again into the database or otherwise released to another operator in response to a PRIA request.

PAC operators that elect to keep records from training centers or when provided by pilots would report those records to the PRD even though they did not directly create those records as the records are serving that operator's direct operational needs.

The FAA clarifies that, when it mistakenly used the term Line Operating Flight Time in the NPRM, it was referring to Line Oriented Flight Training (LOFT). The FAA has since determined reporting individual LOFT

events to the PRD is not appropriate and that the PRD will instead accept information regarding training curricula, but not the individual training sessions they include.

Lastly, the PRD does not collect flight and duty records as this information is not particularly useful to a reviewing entity. These records would also impose a significant burden for reporting entities. A commenter opined that review of such records could help validate a pilot's logbook records if the PRD recorded flight and duty records. The commenter suggested a reviewing entity could compare the flights shown in the logbook against the flights shown in the PRD. This would only be true if the PRD contained every flight record, including records for flights performed unrelated to a reporting entity. It is not feasible to ensure every flight record could be entered in these cases. If the PRD included some of the flight and duty records but not others, the PRD would be inadequate for validating against a pilot's flight records. Additionally, the PRD does not perform any data validation to compare records entered against the various applicable regulations. For example, the PRD does not check that a pilot has performed a line check when required or that a pilot has successfully completed all required training. The PRD simply accepts the record and redisplay it to a reviewing entity. It is the responsibility of the reviewing entity to use the information found in the PRD to help assess a pilot when making a hiring decision and of the reporting entity to report accurate information.

This section also includes reporting deadlines. In the NPRM, the FAA proposed including reporting timelines in a different section (proposed § 111.250). The FAA has reorganized part 111 to move the expected timelines for reporting into each record section. The remainder of § 111.225 is adopted as proposed.

#### 7. Final Disciplinary Action Records—Section 111.230

As required by the PRD Act, the FAA proposed to include records of final disciplinary actions in the PRD. The FAA proposed including written warnings, suspensions, and terminations. The proposal excluded any disciplinary actions subsequently overturned as a result of a settlement agreement, the official decision or order of any panel or individual with authority to review employment disputes or by any court of law, or other mutual agreement between the employer and the pilot. The FAA also

proposed certain data elements to be included in the record.

i. Comments Received

The NTSB, A4A, NBAA, CAPA, ALPA, Ameristar, and individuals addressed the proposed requirement to report final disciplinary action records to the database. CAPA and four individual commenters opposed the proposed requirement to report final disciplinary action records to the PRD. The remaining commenters sought clarification from the FAA on the types of final disciplinary actions for which records must be reported or addressed other aspects of the proposed requirement.

ii. General Comments on Inclusion of Disciplinary Action Records

CAPA and several individual commenters objected to the reporting in PRD of any records related to disciplinary actions. These commenters argued that such information is too subjective and that including it in the PRD could open the door for false reports of disciplinary actions by vindictive or biased employers and could unfairly affect future employment opportunities.

iii. Comments Addressing the Types of Disciplinary Actions Reportable to the PRD

The NTSB, ALPA, NBAA, and A4A commented on the types of disciplinary actions that would be reportable to the PRD. Noting that it has identified deficiencies in pilots' adherence to standard operating procedures as contributing causal factors in aviation accidents, the NTSB expressed support for the FAA's proposal to expand upon what is required in PRIA to include in the PRD, "[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." ALPA expressed support for the FAA's proposal to limit disciplinary actions that may be entered into the PRD to only those "pertaining to pilot performance," excluding any 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. NBAA asserted, however, that "pilot performance" is quite broad and that the FAA should clarify in the regulatory text that reportable disciplinary action is limited to "pilot performance related to the execution of aeronautical duties," as stated in Draft AC 120-68J at

paragraph A.1.1. NBAA contended this clarification should be contained in the regulation itself to mitigate any malfeasance by a noncompliant or malicious operator.

A4A said that the definition of "final disciplinary action record" is unclear because it combines two distinct types of employment action—corrective and disciplinary—and is silent as to a third component that is often a required element of a disciplinary action, which is loss of pay or benefits. The commenter said the final rule should clarify that loss of pay or benefits is not necessary for an employment action to constitute a "final disciplinary action." A4A asserted that the proposed rule is unclear because it conflates corrective actions with disciplinary actions by stating in proposed § 111.225(d)(1) that employers must report "the type of disciplinary action taken by the employer," and then stating in proposed § 111.225(d)(3) that employers must submit "a brief summary of the event resulting in corrective action." A4A noted that some employers define "corrective action" as a non-disciplinary action taken by employers to remedy a perceived performance short-fall or minor misconduct, treating it as a training event, not a disciplinary event. The commenter said that it is unclear whether the FAA meant for the two types of actions to be identical or distinct.

A4A also noted that the proposed rule requires only that final disciplinary actions be reported, creating a potential years-long gap between when misconduct or performance failure occurs and when it is reported in the PRD, due to internal company grievance procedures. A4A said the final rule must address this gap and allow for the transparent transfer of relevant pilot records information to enable hiring carriers to make informed decisions.

ALPA strongly objected to the FAA's proposal to require carriers to add written descriptions about disciplinary actions.

ALPA and A4A commented on the proposal to prohibit entry of any record of disciplinary action that was subsequently overturned. ALPA expressed general support for the proposal, but for disciplinary actions overturned after entry into the database, the commenter urged the FAA to require carriers to submit requests for correction to the PRD within 5 days of such overturned action, instead of the 10 days proposed. A4A also noted that the proposal does not define what "overturned" means and said the final rule should clarify whether all, or some, settlement agreements constitute an

"overturning." A4A noted that the preamble points to language in House Report 105-372 (Oct. 31, 1997), clarifying that "subsequently overturned" includes discipline that has been rescinded as a result of a "legitimate settlement agreement," and that a "legitimate settlement agreement" could include instances in which the parties agree 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 air carrier agrees to wipe the pilot's record clean in order to pass the pilot onto another unsuspecting carrier. A4A argued that these examples in the preamble represent two unlikely scenarios occurring at the margins and do not address the majority of settlement agreements, which are entered into to avoid protracted litigation without admission of fault by the pilot or concession by the employer. A4A expressed concern over a perceived contradiction in the proposed rule, which clearly bars entry of disciplinary records when overturned by a settlement, without regard for the basis of that settlement. A4A suggested the FAA clarify whether all settlement agreements overturning a disciplinary action bar reporting of that action or whether § 111.225(b)(1) is limited to only those settlement agreements that recognize the pilot was not at fault.

Ameristar referred to Table 3 in the preamble to the NPRM, which contains the data elements required to be entered into a pilot's historical record, and questioned why aircraft type is relevant to a disciplinary action.

NBAA expressed concern about proposed § 111.260 and the definition of "Final Disciplinary Action," which would require "other operators," presumably including certain part 91 operators, to have a documented process for resolving disputes related to disciplinary action records included to the PRD. NBAA asserted that for a two- or three-pilot, two-aircraft operation, this could be impractical or ineffective, as few individuals are typically involved in human resources in a small or even mid-sized flight operation and some such operators may not even have or retain these types of records. NBAA argued that this is a reason why most part 91 operators should not be subject to the PRD.

iv. FAA Response

The FAA reiterates that the PRD Act requires reporting of disciplinary action records. In response to comments regarding whether loss of pay or benefits is necessary for an action to constitute a disciplinary action, the FAA defines

disciplinary action for purposes of part 111 without mentioning loss of pay or benefits because neither is necessary for an event to constitute a disciplinary action. The FAA does not adopt any employer-specific definitions of these events. The FAA notes that insofar as an operator might internally consider certain correctional records as non-disciplinary, this final rule intends to extend the same expectations regarding record reporting to the PRD as was required under PRIA. Operators should continue a similar posture to reporting disciplinary records to the PRD as was the case under PRIA. It is incumbent on the employer to include events falling within the general description this rule provides, regardless of an employer's internal definition. The FAA emphasizes, however, that the disciplinary action, as defined in this rule, must be relevant to pilot performance.

The FAA has reviewed comments suggesting the FAA require operators submit a correction within 5 days instead of 10 days for actions overturned after they are submitted to the database. The timeframe the FAA proposed in the NPRM is appropriate as it permits slightly more than one working week in the event the responsible person or other users are unavailable for five working days. This rule adopts the requirement, as proposed.

Section 111.230(b)(1) and the PRD Act prohibit inclusion in the PRD of disciplinary action records where the disciplinary action is subsequently overturned. The threshold question in determining whether a settlement agreement would cause a record to be removed or not reported is whether the settlement agreement invalidates the disciplinary action that prompted the creation of the record. When considering what agreements should cause a record to be removed or not reported, the interest of aviation safety supports narrowing that class to those agreements arising from situations in which parties agreed the action did not occur or was not the pilot's fault. As referenced by A4A, the "legitimate settlement agreement" language quoted in the NPRM further supports such a limitation.<sup>55</sup>

Accordingly, the FAA updates the regulatory text for this section and for § 111.235 regarding separation from employment actions to reflect that the FAA only considers such actions to be overturned for purposes of removing or not reporting the record where there is a finding in either the agreement or in

the decision of the person or panel with authority to adjudicate employment disputes or a court of law that the underlying event did not occur or the pilot was not at fault. An affirmative finding is required; an agreement or adjudication does not suffice to overturn an action where it merely leaves unresolved whether the event occurred or whether the pilot was at fault. If an agreement does not overturn the disciplinary action or separation from employment action in accordance with the terms set forth by the FAA in this part, then the record of the disciplinary action must be in the PRD. The FAA fully expects employers to act in a manner consistent with the PRD Act by not engaging in conduct that would wipe the pilot's record clean in order to pass him or her onto another unsuspecting carrier, as that effectively would undermine the purpose of the PRD.

The FAA also updates this section and § 111.235 to change "settlement agreement" to "documented agreement" and remove "other mutual agreement." The FAA reconsidered inclusion of this provision and determined that the only acceptable agreement between a pilot and an employer for purposes of determining that a disciplinary action record or a separation from employment action is overturned would be a documented agreement. Whether the agreement could be deemed a "settlement" agreement or some form of "other mutual" agreement is not germane; rather, the crux is that an informal, undocumented agreement between a pilot and an employer would not be sufficiently robust and verifiable to support removing or not reporting a record from the PRD.

The FAA will not require reporting of an aircraft type when entering final disciplinary actions. The FAA agrees with commenters that this data element is not relevant as part of the PRD record. Cases might exist in which a reviewing entity considers aircraft type; however, as stated previously, the PRD is not meant to be the final source of data when assessing a pilot during the hiring process. The PRD will be a baseline or starting point for discussion between the pilot, reviewing entities, and previous employers.

It is incumbent on the operator or entity employing the pilot to determine when an action is final. Once no further action is pending, this rule requires a record of the action. In determining that the action is final, the operator or entity should conclude that the action is not subject to any pending dispute, including any form of grievance procedure or litigation. The PRD Act

only permits entry of disciplinary action records that were not subsequently overturned. As a result, internal resolution processes that precede the record being final must be complete prior to entry of that disciplinary action in the PRD. The FAA acknowledges that, as the A4A noted, the PRD Act's prohibition on recording actions prior to the final record could create a "years-long" gap between when misconduct occurs and when it is reported in PRD. The FAA concurs with A4A's example that if a disciplinary action were "effective" that it could also be final, depending on the operator's determination that the action is not subject to pending dispute. The FAA does not have oversight over each operator or entity's disciplinary system, and defers judgement to an operator to decide when the action is a "final" record. Once an action is final, the record must be entered within 30 days.

Many commenters asked for clarification concerning the meaning of "any final disciplinary action record pertaining to pilot performance" and core duties and responsibilities of a pilot as they relate to sexual harassment, discrimination, or other misconduct. Section V.A.3, Definitions, includes a description of the FAA's considerations about which records pertain to pilot performance.

The FAA adopts § 111.230 with some changes to the regulatory text, primarily to incorporate text regarding reporting timelines and to add the possibility for certain operators to report records in accordance with the process set forth in § 111.215. In the NPRM, the FAA proposed including reporting timelines in a different section (proposed § 111.250) but after further evaluation, decided to instead include the expected timelines for reporting in each record section. The new text also reflects the new method for reporting for certain types of disciplinary action records, explained previously in Section V.C.4

This rule will not require a reporting entity to include a brief summary of an event resulting in the corrective action. The FAA explained in the NPRM that the PRD would include a text field limited to 256 characters. The FAA reviewed comments on this topic and concluded that 256 characters is not a significant amount of text in which to explain such an event and that establishing a version on which the employer and pilot agree may not be possible. Instead, consistent with the FAA's view of the PRD as a source of basic information but not the dispositive authority about a pilot's history, the database will include several options for categorization and a place to enter the

<sup>55</sup> 85 FR 17684.

date. Additionally, this final rule requires reporting entities to retain documents relevant to a final disciplinary action reported in accordance with § 111.230(a) for five years after reporting that event, if those documents are available. Reporting entities will also be required to provide those relevant documents to a reviewing entity upon request. Under this provision, “relevant” means that the documents form the basis for the record reported to the PRD. The FAA envisions the relevant documents that reporting entities will retain and share would be any information that would have been used to develop the summary record proposed by the NPRM, such as a written record of a suspension detailing the circumstances of the event that led to the action. Additionally, the FAA would consider these relevant documents to be available if the documents exist. The FAA does not expect that there would be a difference between the types of supplemental relevant documents retained under this provision and the types of documents currently shared between employers under PRIA about final disciplinary actions and separation from employment actions.

The FAA notes that this final rule also adopts an identical approach for any documents relevant to a separation from employment action. The FAA’s objective in adopting this provision is to ensure that if more detailed information about complex employment actions exists, reviewing entities have access to that information if desired when making a determination about whether to hire a pilot. The FAA has determined this requirement is commensurate with the frequency with which potential employers are likely to seek more information about final disciplinary action events. The FAA anticipates that most reviewing entities will make a determination about a pilot based on the information about the event that appears in the PRD, but encourages reviewing entities to request further information if it would be helpful in the hiring process.

A reporting entity must also provide a copy of such information to the subject pilot upon request, as would be required for any record reported to the PRD, and a pilot can submit a dispute resolution request for this information to a reporting entity through the PRD if that pilot disagrees with the content of the additional records. The reporting entity must provide these supplementary records within 14 days of receiving the request, consistent with the FAA’s timeframe for other record reporting provisions.

As adopted, the final rule requires an indication of whether the disciplinary action was a written warning, a suspension, or a termination; whether the disciplinary action resulted in a temporary or permanent removal from aircraft operations; and the date the disciplinary action occurred. For PAC operators, only disciplinary actions that resulted in a temporary or permanent removal from flight operations must be reported upon the action becoming final. Any other disciplinary action may be reported upon request from a reviewing entity, in accordance with the process set forth in § 111.215(b).

The remainder of § 111.230 is adopted as proposed, with renumbering from the NPRM as reflected throughout this section.

#### 8. Final Separation From Employment Records—Section 111.235

In the NPRM, the FAA proposed including separation from employment records in the PRD, in accordance with the statutory requirement to include such records. The FAA proposed requiring an employer to keep records under separate regulations, as well as other separation from employment records kept by the employer, specifically those related to pilot performance. The FAA also proposed prohibiting inclusion of separation from employment records where the action was subsequently overturned.

##### i. Comment Received

RAA, A4A CAPA, Ameristar, PlaneSense, Inc., and many individuals commented on the proposed requirement for operators to enter into the PRD certain information pertaining to a pilot’s final separation of employment. Ameristar asserted that “[r]ecords pertaining to pilot performance” is vague, is redundant of proposed § 111.230(a)(1), and appears to include non-pilot related information that is outside the scope of § 111.230(a)(1).

Commenting on separation from employment that an operator initiates but that is not due to pilot performance, an individual commenter asserted the FAA did not propose to allow the pilot’s end-of-employment disposition to reflect that the termination was unrelated to performance. In such instances, the commenter noted, the operator would indicate that the reason for the pilot’s release from employment was “Termination,” but there would be no further explanation and no opportunity for the pilot to add commentary. This commenter also noted that no path exists for a pilot to provide or deny consent to comments or

records provided by anyone who registers as an authorized user manager, which allows an authorized user to submit comments or records on a pilot, even pilots not under the user’s supervision. Addressing a situation in which a pilot resigns after being asked to engage in an unsafe operation, another individual suggested employers will fabricate a reason for separation to affect the pilot negatively.

Commenting on separation from employment that an operator initiates and that is related to pilot performance, RAA requested clarification regarding whether any termination related to a pilot’s performance would automatically create two entries into the PRD for the same incident—one record of the disciplinary action resulting in termination and another record of the termination, based on the underlying incident. RAA also noted that operators sometimes use both a primary and secondary reason for termination and questioned whether the operator must report both reasons or only the primary reason for termination.

A4A said the final rule should clarify that only those professional disqualifications related to pilot skills are reportable. A4A noted the FAA provided examples of professional disqualifications that would have to be entered into the PRD (at 85 FR 17687), which include a pilot who has been disqualified as a PIC due to a failed proficiency check and referred to SIC training and requalification. A4A stated the NPRM is unclear as to why this is listed as an example of a separation record when the pilot is still employed. A4A characterized this example as a failed training event, not a termination event. A4A suggested that including this example implies a carrier would be required to create a separate record each time a pilot is disqualified for any reason, even if that reason has no bearing on piloting abilities. A4A said that requiring a PRD report upon loss of such qualifications would be excessively burdensome and would not further safety.

A number of commenters, including CAPA and PlaneSense, addressed the proposed requirement for operators to submit “a brief summary of the event resulting in separation from employment.” The PlaneSense commenters objected to this proposed requirement and requested that the FAA either remove it from the final rule or that the final rule provide employers with immunity from legal action brought as a result of the summary. These commenters argued that this requirement is beyond the scope of the PRD Act, could violate pilots’ medical

privacy, and could make carriers vulnerable to lawsuits.

An individual commenter recommended that the FAA amend the language in proposed § 111.230(d)(6) to read: “For separation of employment a brief summary of the separation should be included.” The commenter said this would eliminate the loophole many pilots and air carriers use, in that non-performing pilots might be asked or told to resign instead of being terminated. The commenter argued this industry practice passes poor-performing pilots from carrier to carrier without a means to catch issues of performance found in the training environment. The commenter pointed to the First Officer of the Atlas Air 3591 crash in Trinity Bay, Texas, who “was found to have resigned multiple times for personal reasons.” However, A4A went on to state that “examination of data in the NTSB docket indicates that he wasn’t performing at these carriers as expected, but was allowed to resign without consequences.”

CAPA objected to the proposed 256-character limit for summaries terminations, arguing that such cases should not be subject to arbitrary limits.

NBAA noted “furlough” is not typically used in part 91 or part 135 operations and explained that few business aviation operators furlough their employees. This commenter indicated that furlough status may deter a prospective employer from hiring a candidate who is furloughed from a part 121 air carrier position, as the candidate remains eligible to return to the candidate’s previous position. NBAA recommended that the FAA replace “furlough” with “laid off” or “position eliminated” (temporary or permanent).

#### ii. FAA Response

The FAA agrees, after considering all comments received, that for many cases, a 256 character summary would not be sufficient. Adequate opportunity must exist to explain sufficiently a separation from employment action. Therefore, the FAA is removing the requirement for a summary. Employers will designate by category what type of separation from employment it was, and the date. As discussed in the previous section regarding final disciplinary actions, this final rule requires reporting entities to retain documents relevant to a final separation from employment action record for five years after reporting that event, if such documents are available. Reporting entities will also be required to provide those relevant documents to a reviewing entity upon request. The FAA is adopting this requirement instead of requiring reporting entities to

draft a 256 character summary of the event as proposed in the NPRM, and envisions the relevant documents that reporting entities share would be any information that would have been used to develop the proposed summary of the event. This amendment addresses the comments expressing concerns related to possible legal action as a result of the employer posting a summary.

As mentioned in the NPRM, the FAA understands situations might arise in which a pilot may resign without facing repercussions for poor pilot performance. Reporting entities should accurately construe the separation from employment action in the PRD. Even if a pilot is permitted to resign despite poor performance, a disciplinary action associated with that poor performance in the PRD would likely exist. In that situation, the FAA anticipates the hiring employer would review the resignation and disciplinary action as a consideration worthy of discussion with the pilot, and ask the pilot and former employer for information about the incident.

The FAA also removes the term “furlough” from the regulation, because it would also be considered an “employer-initiated separation unrelated to pilot performance.” Furlough entries should only be reported once the separation from employment has been final for 30 days.

If an event results in multiple outcomes, an identical disciplinary and separation from employment action for a pilot might exist. In such cases, the entity may report the event in the PRD as a termination as a result of a disciplinary action and a separation from employment resulting from pilot performance. All such information is relevant and must be included in the database. The pilot has an ability to request a correction or commence a dispute regarding any record, discussed further in Section V.C.11.

Generally, § 111.235 is adopted as proposed, with corresponding edits to reflect changes made to the previous section, including reference to compliance with § 111.215(b), moving details about timelines for reporting into this section, and adding amended language categorizing the type of separation from employment. The different categorizations available in the PRD, such as a termination as a result of pilot performance, including professional disqualification related to pilot performance, physical (medical) disqualification, employer-initiated separation not related to pilot performance, or any resignation, including retirement, will provide sufficient detail to give a reviewing

entity a picture of any topics worthy of discussion.

As discussed in the previous section in reference to disciplinary action records that were subsequently overturned, the FAA also makes corresponding changes to this section to reflect that a record is only subsequently overturned if there is a finding in a documented agreement, from a person or panel with the authority to review employment disputes, or from a court of law that the underlying event did not occur or was not the pilot’s fault.

The FAA otherwise adopts this section substantively as proposed. As discussed in the previous section, the FAA made corresponding updates to this section to reflect the new process adopted in § 111.215 and to reflect that PAC operators must report termination records related to pilot performance contemporaneously.

#### 9. Verification of Motor Vehicle Driving Record Search and Evaluation—Section 111.240

The FAA proposed that each operator subject to the requirements of § 111.110 must report to the PRD verification that it met the requirements of § 111.110. The verification would be required within 45 days of the PRD Date of Hire. In § 111.240, the FAA also proposed prohibiting the inclusion of any State driving records in the PRD. Section 111.240 is adopted as proposed, with edits to reflect reorganization of the regulatory text. The 45-day timeline for verification was removed from § 111.250 and placed into the text of § 111.240. The FAA notes that this verification should be marked as complete after the NDR report is received and the reviewing employer has requested records from any States that the NDR indicated would have records regarding the individual. Comments on NDR review are discussed in Section V.B.3.

#### 10. Special Rules for Protected Records—Section 111.245

In the NPRM, the FAA proposed to prohibit the inclusion of records protected by 14 CFR part 193 in the PRD. RAA and A4A supported the proposal. This section is adopted as proposed, with clarifying edits. No records reported as a part of an Aviation Safety Action Program or any other approved Voluntary Safety Reporting Program in accordance with part 193 may be reported to the database, as those records are designated as protected by the FAA. Records not designated as protected by the FAA about an event are still subject to reporting in accordance with this part.

## 11. Correction of Reported Information and Dispute Resolution—Section 111.250

In the NPRM, the FAA proposed a process for correcting errors that an operator becomes aware of with respect to information that an operator reported previously to the PRD. The FAA also proposed to require an employer subject to part 111 have a process in effect for handling disputes regarding pilot records that an operator reported to the PRD.

### i. Comments Received

Many comments addressed the proposed process for identifying and reporting errors and requesting corrections to pilot records in the PRD. Several commenters suggested the PRD automatically alert pilots when changes are made to their records, require pilots to digitally sign off on the accuracy of the changes, and provide pilots a free copy of their record annually.

Many commenters, including the Aircraft Owners and Pilots Association (AOPA), expressed concern that the proposed rule did not provide a clearly defined process for who is responsible for identifying and correcting inaccurate information in the PRD. They recommended those who have access to and might include information on a pilot's record, including the FAA and past employers, must be responsible for correcting inaccuracies that are brought to their attention. ALPA commented on proposed § 111.255, which would require an operator to submit a request for correction within 30 days after discovery of its submission of erroneous or inaccurate information to the PRD. ALPA asserted prompt corrective action is necessary, and stated that notices of correction are quick actions. As such, ALPA recommended the FAA require correction of erroneous information within 5 days.

AOPA and NATA noted that no requirement exists for removing inaccurate information, even if the information was demonstrably false. AOPA indicated the proposed rule did not require the FAA to make a notation concerning disputed information, only that the pilot may make the request. AOPA recommended that the FAA evaluate and remove or correct inaccuracies in the PRD if the employer is unwilling or unable to do so, consistent with the Privacy Act.

Several commenters, including AOPA, NATA, ALPA, and GAMA were concerned that the FAA provides no guidance on how a dispute resolution process should be structured and stated it is imperative that the dispute

resolution procedures involve meaningful review with well-established, mutually agreed-upon procedures. They urged the FAA to maintain oversight of the procedures to ensure a fair process. NATA also commented it would be useful when managing disputed records for a comment field to exist for all entries because similar challenges could arise from omitting an entry for a pilot or entirely missing a pilot entry, making it appear the pilot was never employed by the carrier. NATA further commented that the proposed rule did not clearly address how the FAA will manage pilot records of businesses that have closed. NATA asked, if a pilot identified an error by a prior employer that is now closed (and was neither acquired nor subject to bankruptcy proceedings), to whom the pilot should direct the request for correction and what outcomes are possible.

A4A commented on the process for resolving disputes over information documented in the PRD, asking the FAA to clarify the meaning of “dispute,” “documented process for resolving disputes,” and “investigation.” A4A recommended the FAA limit “disputes” to errors and inaccuracies in the PRD and foreclose any substantive challenge to the information contained within the record. A4A also recommended that the FAA provide a form on the PRD site (which the FAA would manage), in which pilots would enter their disputed claim. A4A recommended the final rule clarify that the dispute notation will remain in the PRD only during the pendency of the dispute. A4A also recommended that the final rule clarify that a negotiated grievance procedure under a collective bargaining agreement or, where applicable, other administrative grievance procedure meets the requirements of proposed § 111.260(a). Further, A4A asked the FAA to clarify that the collective bargaining agreement resolution process would satisfy carrier information correction requirements under the PRD. A4A said the final rule should not permit multiple disputes of the same information. Finally, A4A asked the FAA to clarify that when a carrier corrects an error in the PRD, only the new or corrected record will remain in the PRD.

With respect to historical records, NATA indicated it is possible there are no current air carrier employees with first-hand knowledge of prior pilots and the events recorded for them, and asked what carrier actions the FAA would consider reasonable. NATA argued complications associated with historical records support the need for the ability

to upload copies of physical documents to the PRD, the creation of larger summary text fields, and for adding those summary text fields to any record. NATA requested that the FAA provide additional information on how a carrier should proceed if there are gaps in their historical records.

Several commenters raised concerns about the potential for misuse of the information in the PRD. AOPA and an individual commenter noted the potential exists for employers to use the PRD in a coercive manner against current and former employees. CAPA commented that during periods of rapid growth, a carrier wishing to avoid pilot turnover could prevent its pilots from being considered for employment by other airlines by including training comments intended to discourage their selection. Several individuals noted the potential for an employer to purposefully or accidentally input incorrect or biased information about a pilot.

ALPA said the FAA should confirm that it has a legal responsibility to ensure data entered into and maintained in the PRD complies with the law. Where a pilot complains that data has been entered in violation of section 203 of the PRD Act, or has not been removed as required, ALPA stated the FAA should provide a procedure to remedy such actions. ALPA recommended the FAA provide pilots with a right of appeal through NTSB appeal procedures, according to 14 CFR part 821, to resolve any such unresolved claims.

A4A recommended that the FAA clarify explicitly in the final rule that air carriers and proxies have the option to access the PRD to review and correct information the air carrier reported to the PRD.

### ii. FAA Response

In the NPRM, § 111.250, Duty to Report Records Promptly, provided timelines for required records to be submitted to the FAA in a timely fashion. Section 111.250 listed required records and included specific days within which the records must be reported to the FAA. The FAA removes this regulatory section in its entirety and places each of those timeframes within the respective regulatory sections that discussed the underlying record requirement. As a result, the regulatory sections are renumbered, and proposed § 111.245, Requests for correction of reported information, is renumbered and re-titled § 111.250, Correction of reported information and dispute resolution. This section now also contains the provisions regarding the

dispute resolution process. The FAA considered all comments received on the error correction and dispute resolution process and made revisions to clarify certain aspects of the process.

The FAA received many comments on the NPRM requesting the FAA include more detailed, prescriptive requirements concerning dispute resolution, and for the FAA to confirm it has a legal responsibility to confirm data entered into the PRD complies with the law. However, as noted in the NPRM and in this final rule, the FAA is not required to verify the accuracy of data that reporting entities submit to the PRD. Operators are obligated by regulation and statute to enter accurate information and are in the best possible position to ensure that information is accurate. The PRD Act does not require the FAA to provide prescriptive requirements concerning disputes over information or to oversee a dispute resolution process. The FAA discusses the agency's privacy obligations in the Privacy Impact Assessment for PRD, which will be posted on the docket for this final rule. Nonetheless, the FAA has included requirements in this rule that ensure pilots are afforded remedies if they believe reporting entities have reported erroneous data. These requirements will limit misinformation or misuse of the PRD. Reporting entities must provide final disposition of record disputes to pilots who believe information provided by the entity is inaccurate and to identify disputed records within the PRD system. These processes fulfill the statutory requirement that individuals may make written requests to the Administrator, who will provide individuals a reasonable opportunity to submit written comments to correct any inaccuracies contained in the record.

Finally, although the FAA does not determine the accuracy of records provided by reporting entities, pilots may submit requests for amendment under the Privacy Act to the FAA if they believe records created and maintained by the FAA in its databases, as described in 49 U.S.C. 44703(i)(2), are inaccurate.

As mentioned previously, a pilot always has the option of requesting correction to a record with which the pilot disagrees. A reporting entity is obligated to correct any information that the employer confirms is inaccurate. If a pilot can demonstrate to the reporting entity that the information it entered in the database is inaccurate, the reporting entity must correct the information. Any abuse of the PRD by a reporting entity through the misreporting of information about a pilot would be both a regulatory

and statutory violation and of great concern to the FAA. Fraud or intentional falsification of records reported to the PRD is prohibited under § 111.35. Pilots can report fraud or suspected intentional falsification of records to the FAA for investigation.

With respect to comments regarding the potential for employers to use the PRD in a coercive manner, the FAA acknowledges that this is an inherent concern for any exchange of records about a person, and arguably exists under PRIA. The provision of appropriate statutory and regulatory opportunity for pilots to note disputes mitigates the potential for misuse.

The FAA clarified in Section IV.C.7 and 8 that summaries of the separation and disciplinary action records are not being required to be submitted under this final rule. The FAA recommends that reviewing entities to communicate with the pilot and the reporting entity about the exact nature of the disciplinary or separation action record, appropriately categorized.

In response to ALPA's comment regarding 14 CFR part 821, that part is codified in NTSB regulations and only applies to certificate actions, rather than resolution of disputes concerning pilot records. The FAA cannot amend another agency's regulations.

A pilot dispute of an error or inaccuracy could be substantive or non-substantive in nature. Pilots may flag the error or inaccuracy in the PRD directly, but the request for correction goes through the PRD directly to the reporting entity and would be resolved by that entity. No FAA approval is necessary to correct the record. The dispute notation will remain in the PRD only during the pendency of the dispute. The pilot may remove the dispute indicator if the pilot is satisfied that the record has been corrected. If a reporting entity corrects an error in the PRD, only the new or corrected record will remain visible in the PRD.

A negotiated grievance procedure under a collective bargaining agreement or, where applicable, other administrative grievance procedure would meet the requirements of § 111.255. The FAA does not set requirements for the details of employers' dispute resolution processes.

Information correction requirements under the PRD are complete once a record has either been corrected or the dispute process is complete. Because the FAA does not have a basis to determine the accuracy of industry records, if a reporting entity goes out of business and there is no trustee in bankruptcy to handle dispute resolution obligations, the record would remain in

dispute in the PRD indefinitely. The FAA expects a pilot would explain the nature of the disagreement to a hiring employer.

The FAA adopts the proposed provisions with edits to consolidate the regulation. The FAA also revised the reporting timeframe for record correction to occur within 10 days, unless the reporting entity engages the pilot in its dispute resolution process.

If an operator disagrees with the request for correction of erroneous information, it must engage the pilot requesting the correction in its direct dispute process. The operator must initiate investigation within 30 days, and, within a reasonable amount of time in consideration of the proceedings to establish the accuracy of the record, provide final disposition to the PRD. As mentioned previously, these capabilities will all be built into the functionality of the PRD.

## 12. Duty To Report Historical Records to the PRD—Section 111.255

Proposed § 111.420 incorporated the statutory requirement for air carriers and operators subject to PRIA to enter historical records into the PRD. For air carriers, the PRD Act requires that records dating from August 1, 2005, be entered into the PRD. For other persons, the Act requires records dating from August 1, 2010 must be entered into the PRD. The FAA adopts this provision in the final rule in subpart C.

### i. Comments Received

A4A recommended adopting a final rule that does not include a historical documents requirement. A4A stated that the obligation to provide "records that the air carrier or other person is maintaining on such date of enactment" under 49 U.S.C. 44703(i)(4) must be read in the context of the continued obligations to comply with PRIA until the PRD final rule is in effect. A4A stated the FAA accepted this implicitly when it discussed Alternative 4 in the Regulatory Flexibility Determination section of the NPRM and did not argue that this alternative is contrary to law.<sup>56</sup>

A4A opposed requirements for historical records of positive drug and alcohol test results or of a refusal to take the test. A4A suggested Congress may have intended to reference §§ 120.111(a) and 120.219(a), which only require certain records be retained. The

<sup>56</sup> Alternative 4 would require air carriers and operators to 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. 85 FR 17701, March 30, 2020.

commenter stated that neither of these sections require the return-to-duty tests for more than a year, and for this reason, the FAA cannot expect all carriers to have retained more than one year of these records.

A4A commented that the proposed regulation captures significant historical records that are not relevant to the hiring determination. The commenter also stated that, because of the significant burden of providing historical records and the nominal value of doing so, the FAA should not subject carriers to undisclosed or future intention to report additional historical information. One commenter noted that recordkeeping obligation of fractional operators in § 91.1027(a)(3) and (b) is to maintain records for a minimum of 12 months.

CAPA noted the backfilling of past pilot records accurately could be time consuming and expensive, if not impossible, and future guidance on recording training events that might result from this new rule may not translate accurately to previous recordkeeping practices. This commenter argued a requirement to provide historical records during the current COVID-19 public health emergency is unreasonable, and the new regulation should provide a consistent methodology to record and report data and have a defined future starting point.

The FAA received other comments on historical record reporting format; these comments are addressed in Section V.C.3. regarding the format for reporting records.

#### ii. FAA Response

As discussed extensively in the NPRM, the FAA is required by statute to include historical records in the PRD and does not have discretion to adjust the dates or records that the PRD must include. A4A's analysis disregarded critical text in 49 U.S.C. 44703(i)(4). The subsection cited in the PRD Act, particularly (h)(4)(B)(ii)(II), requires air carriers and other persons to report "[r]ecords that the air carrier or other person is maintaining, on such date of enactment pursuant to subsection (h)(4)." As stated above, subsection (h)(4) encompasses the 5-year period preceding the enactment of the PRD Act. Alternative 4 was not accepted for legal reasons. This alternative was discussed per the initial Regulatory Flexibility Analysis of impacts on small entities prepared for the NPRM as a means of addressing potential cost. At the time of the NPRM, the FAA presented Alternative 4 as a potentially legally permissible option, but on further review, determined that this was not the

case. If it were legally permissible, Alternative 4 might be a less costly solution than the final rule; however, given the lack of available data, the FAA is not able to ascertain whether including historical records only in a manner that mimics PRIA would achieve the purpose of the PRD Act. This final rule provides the lowest cost legally-permissible solution. The FAA will include a summary of commenters' concerns regarding the lookback period for historical records in its next triannual report to Congress, as set forth in 49 U.S.C. 44703(i)(12).

Regarding drug and alcohol testing records, Section IV.C.5. contains a response to A4A's statement regarding recordkeeping requirements for return-to-duty test results.

The FAA adopts this regulation as proposed, with some changes. Paragraph (c) is revised to list the specific types of operators that do not have to comply with the historical records reporting requirement. That group is the same as from the NPRM, but now more clearly defined. Additionally, the deadline for reporting historical records is now three years and 90 days after publication of the rule to coincide with sole compliance with part 111. The FAA also added a provision to establish interim timelines for historical records reporting. The FAA understands that operators uploading historical records may have significant records to provide to the PRD. To facilitate a PRD transition that focuses on the most relevant records in accordance with concerns expressed by the NTSB and the Families of Continental Flight 3407, the FAA will prioritize uploading historical records that date on or after January 1, 2015. Those historical records must be uploaded within two years of the date of publication of the final rule. All other historical records must be uploaded prior to the last date of PRIA usage, which will be three years and 90 days after publication of the final rule.

The section will include opportunity to request deviation from the compliance dates provided in (d) of this section. The FAA will consider providing deviations based on an evaluation that the delay in uploading historical records is due to circumstances beyond the control of the air carrier or other operator and that such a delay would not have an adverse effect on safety. Any operator seeking a deviation must include all information listed in subparagraph (2) in order for the FAA to be able to consider the request for deviation. The Administrator may terminate the grant of deviation at any time upon notice to the operator.

During the term of the deviation, the operator must continue to retain historical records for reporting to the PRD and would be required to provide individual pilot records upon request, if a request arises.

The FAA intends to engage with the responsible persons for each subject entity upon approval of a responsible person's application. The FAA is eager to begin the implementation process. The FAA will work with responsible persons to facilitate setting up PRD user accounts and to begin mandatory FAA records review. Over the course of the next year, the PRD program manager will also work closely with responsible persons from reporting entities to ensure technical challenges are overcome along the path to compliance. AC 120-68J accompanies this final rule, and further guidance will continue to follow as the implementation process progresses. The FAA is committed to working with industry to facilitate a smooth transition from PRIA to PRD and to ensure that all pertinent records, as required by the statute, are included in the PRD. Over time, once contemporaneous reporting is ongoing for five years and PRD compliance is normalized, the FAA expects operators will benefit from a cost savings.

The remainder of § 111.255 is adopted as proposed.

#### D. Subpart D—Pilot Access and Responsibilities

##### 1. Applicability—Section 111.300

The FAA proposed in the NPRM that subpart D would apply to pilots holding an airline transport or commercial pilot certificate under 14 CFR part 61, as well as any remote pilots operating with a part 107 certificate or any individual who is employed as a pilot by an operator of a public aircraft. As adopted, this subpart will apply to any pilot meeting the criteria in § 111.1, regardless of the certificate, in accordance with revisions made for consistency with § 111.1. The FAA notes that in response to a comment from AOPA about whether pilots without a commercial certificate would be able to access their records: Only pilots that would be employed by an operator subject to this part would have industry records in the PRD. Any other records would be FAA records with which the pilot would likely already be familiar.

##### 2. Application for Database Access—Section 111.305

In this section, the FAA proposed regulations governing pilot access to the PRD and the minimum information

necessary to gain access. The FAA also proposed to require submission of an application seven days prior to the anticipated date of access and that continued access would be subject to compliance with § 111.25.

#### i. Comments Received

One commenter stated the proposed requirement for pilots to provide a current U.S. mailing address and telephone number would prevent many pilots, who live outside the U.S. but are employed by U.S. air carriers, from being able to access their database records. Furthermore, it may inhibit pilots who live abroad but hold FAA-issued airman certificates from applying for jobs with U.S. based companies, as companies might not seek to work with paper-based release from liability agreements that would be required for access to a pilot's records. This commenter recommended the FAA allow those pilots access to the PRD through another means of validation that does not require a U.S. mailing address.

#### ii. FAA Response

The FAA adopts § 111.305 as proposed with three changes. The first change is that a pilot must first request access to the PRD for the purposes listed in § 111.305(a) if the pilot is requesting access to the pilot's own records, except as provided in § 111.315(c). Second, in response to concerns from commenters about the requirement for a U.S. mailing address, the FAA determined that for purposes of this regulation, a requirement for the pilot to have a U.S. mailing address is unnecessary. However, the FAA notes that system capabilities may be functionally limited for web access outside the United States. The FAA acceptance of an address does not guarantee an ability to access the PRD while located physically outside the United States. Third, the FAA removed the provision proposed in (d), which was duplicative of the denial of access provision adopted at § 111.25.

#### 3. Written Consent—Section 111.310

In § 111.310, the FAA proposed to require air carriers and other operators obtain consent from a pilot for review of both PRD records and any State motor vehicle driving records about that pilot. The FAA amends proposed § 111.310 to include affirmation of pilot employment history dating back five years. Inclusion of this pilot employment history addresses concerns from commenters, and in particular the NTSB, that there could be a gap in history for certain pilots, particularly if not all pilot records are uploaded

contemporaneously, as discussed in Section V.C regarding § 111.215. By requiring a pilot to provide an affirmation that their employment history for five years preceding the date of consent is accurate and complete and also by requiring employers to upload records that indicate problematic pilot performance, the FAA will ensure that a potential employer has access to all pilot records for review prior to permitting the pilot to begin service. The FAA otherwise adopts § 111.310 without substantive changes. The FAA did not receive any comments specific to this provision.

#### 4. Pilot Right of Review—Section 111.315

The PRD Act provides a statutory right of review for a pilot of his or her records. The FAA proposed to codify this right to review in § 111.315. The pilot has the right to review both the pilot record reflected in the PRD, as well as a copy of any State motor vehicle driving records that may have been provided to a prospective employer. The FAA adopts this section substantively as proposed, and adds paragraph (c), which allows a pilot to submit a request to the FAA so that the pilot can review all records contained in the PRD pertaining to that pilot, without credentials issued in accordance with § 111.305. The PRD record would be transmitted external to the database, so the pilot could access his or her record without accessing the PRD database. The FAA did not receive any comments specific to this provision.

#### 5. Reporting Errors and Requesting Corrections—Section 111.320

In the NPRM, the FAA proposed to require operators to have a process enabling a pilot to report errors and provide corrections to the pilot's PRD record. This process would involve flagging the record as incorrect and submitting comments explaining why that record is incorrect. The FAA would also flag that record as "in dispute" if a disagreement exists with respect to the content of the record. It would remain "in dispute" until resolution of that dispute between the pilot and an air carrier or other operator is complete.

The FAA reorganized this section to delete proposed (a) and (b). As the PRD Act requires the Administrator to provide an opportunity for an individual to submit written comments correcting his or her record in the PRD, a separate requirement in this section is not necessary and paragraph (a) is removed. Furthermore, proposed paragraph (b) was duplicative of

proposed paragraph (c), and therefore removed.

Paragraph (a), as adopted, requires a pilot to report any error or inaccuracy to the PRD in a form and manner acceptable to the Administrator. If the record was entered by a current or former employer, the pilot can use the PRD to flag a record as incorrect. This request will go through the PRD to the reporting entity. The PRD administrator will flag an FAA record manually, if disputed by the pilot, but that dispute resolution process occurs in the FAA system where the original record resides, such as CAIS or EIS. To correct an error or inaccuracy in a record, the pilot would need to request a correction under the Privacy Act. For FAA records, the AC 120–68J includes a description of the appropriate office to contact for each type of FAA record to request correction through the Privacy Act.

The process of adding a notation to a pilot record disputed by the pilot is automatic. The FAA does not review requests for notation. For discussion of further comments regarding dispute resolution, please see Section V.C.11.

#### E. Other Amendments

The FAA proposed to amend § 91.1051 to replace the pilot safety background check required by this section with compliance with part 111. The FAA instead removes § 91.1051, effective upon September 9, 2024, and consolidates applicability for part 111 in § 111.1. The FAA also withdraws proposed amendments to parts 91, 121, 125, and 135, for the same reason.

The FAA received comments on this topic from the PlaneSense commenters. These commenters indicated that fractional operators have an obligation under current § 91.1051 to conduct a pilot safety background check within 90 days of hiring a pilot, and the operator must request FAA records and records from previous employers spanning the prior 5 years of the pilot's flight-related employment records. These commenters note this section does not impose a recordkeeping requirement on the fractional operator, as § 91.1027 imposes that obligation.

Fractional operators would comply with the PRD as set forth in the applicability of part 111. A fractional operator would begin reviewing records in the PRD one year after the date of publication of the final rule and continue to comply with § 91.1051 where records are not yet available in PRD until three years and 90 days after the rule.

#### F. Other Comments

##### 1. Comments on Requests To Extend the Comment Period or Provide Further Rulemaking Documents

Several commenters, including the NBAA, Cargo Airline Association, Ameristar, Experimental Aircraft Association, and the National Air Transportation Association, requested that the FAA extend the public comment period. Many of these commenters indicated they needed more time to review the proposed rule and prepare their responses to the many detailed questions that the FAA posed, particularly because the proposal was published during the unprecedented COVID-19 public health emergency, which has affected the air transportation industry.

NBAA commented that the significant number of requests for information by the FAA preceding the NPRM, and the contradictions between the various documents supporting the proposal, suggests the FAA should have published an advance notice of proposed rulemaking. NBAA suggested developing a supplemental notice of proposed rulemaking (SNPRM) or holding a public hearing may result in a more effective rulemaking effort and alleviate some industry concerns. For these reasons, NBAA recommended the FAA issue a SNPRM to reflect industry input on the FAA's list of questions.

##### 2. FAA Response

The FAA refers commenters to its Denial Letter for Extension of Comment Period (FAA-2020-0246-0038), which the FAA posted to the rulemaking docket on June 12, 2020. The FAA reiterates this rationale and emphasizes the FAA's determination to move forward with adoption of this rule. This final rule clarifies specific points of confusion raised by commenters in response to the NPRM. Moreover, the FAA will work closely with industry to ensure a common understanding of the regulatory requirements in part 111.

##### 3. Comments on Electronic Records, LOAs, MSpecs, and OPSpecs

NBAA commented that, by implementing an electronic PRD, the FAA has, by example, determined electronic records are valid and constitute sufficient evidence of regulatory compliance. NBAA asserted if the FAA mandates that air carriers, operators, and other entities use and submit electronic records through the PRD but also requires authorization to use electronic recordkeeping through LOA, MSpec, or OpSpec, the FAA must include in its economic analysis the cost

of preparing policies and procedures for electronic recordkeeping, then requesting authorization for the LOA, MSpec, or OpSpec, plus the ongoing cost of maintaining electronic records, or risk establishing an unfunded mandate.

##### 4. FAA Response

The FAA acknowledges receipt of this comment but notes that these points and the associated costs are beyond the scope of this rulemaking.

#### G. Comments Related to Regulatory Notices and Analyses

The FAA received comments regarding costs associated with reporting records, the scope of applicability of part 111, the benefits of this rule, and the FAA's assumptions and data concerning both costs and the Paperwork Reduction Act.

##### 1. Comments on Costs Associated With Reporting Historical Records

A4A stated it agrees generally with the potential benefits of the proposed rule but asserted the FAA significantly underestimated the costs of the rule. A4A stated that it surveyed its members to respond to the FAA's requests for comments on the impact of the proposed rule, but that it faced several challenges in collecting the information it sought.

A4A noted that in the regulatory impact analysis of the proposed rule, the FAA states it anticipates most existing electronic record systems can export data through XML for uploading into the PRD and that carrier export utilities need to be configured initially to match the expected fields of the PRD. A4A said that estimating costs for what to report, but not how to report it, is extremely challenging, especially given the diversity of record formats over the 15-year historical records period. A4A described challenges such as a lack of technical requirements for reporting records accompanying the proposal and the absence of a pilot program.

A4A noted that its member survey resulted in 8 out of 10 members providing extensive information on the impact of the proposed rule, with descriptions of how the carriers would comply, the number of full-time employees that would be needed to comply, and cost estimates. Those eight members included four large part 121 carriers and four mid-size part 121 carriers. A4A estimated the average cost for a large part 121 carrier to transfer historical records electronically to be \$602,875. A4A estimated the average cost for a mid-size part 121 carrier to

transfer historical records to be \$175,000.

A4A noted that its member survey revealed that almost all carriers store electronic documents in different systems for different categories of documents. A4A suggested carriers will have to engage a variety of software experts to advise them on how to transfer the information that the FAA seeks.

Other commenters expressed concern about the cost to convert historical records to XML. Noting that most operators have some form of digital record such as a PDF, one commenter said allowing bulk uploads of such records would alleviate the economic impact on small operators substantially. The commenter also recommended allowing operators to send PDF copies of records to the FAA, which can then convert them into any format the FAA feels is appropriate. The commenter recommended taking advantage of existing recordkeeping requirements, such as part 142 training center records, to populate the database and reduce the burden on part 91 operators.

A4A also believes that the FAA underestimated costs for the manual entry of historical records. A4A stated that, based on its member survey, the FAA should use the maximum estimated historical records as the basis for determining the cost of manual entry of historical records into the PRD because that estimate more accurately reflects the number of manual records.

A4A also urged the FAA to correct its cost-per-pilot estimate to enter manual records to ensure realistic manual entry burdens are captured. The commenter recommended the FAA use an average of 20 minutes for manual entry of a pilot training/checking record, 15 minutes to set up a new pilot in the PRD, and 10 minutes to input manually both disciplinary records and termination events.

A4A also commented that the regulatory impact analysis for the proposed rule did not include costs to retrieve, search, and review historical files and that the FAA limited the costs of manually reporting historical records to the cost to type the data into the PRD once it has been collected. The commenter stated this grossly underestimates the actual burden to air carriers to report historical data manually to the PRD, particularly for historical drug and alcohol testing records, and the FAA should include such burden in its analysis. A4A encouraged the FAA to reassess its cost analysis for manually reporting drug and alcohol testing records.

A4A estimated the number of pilots who have worked at covered carriers since 2005 that are still alive is at least 130,000. A4A calculated total labor costs of \$540 to input a single pilot's historical records into the PRD, then multiplied these labor costs by 130,000 pilots to arrive at an estimate of \$70,200,000 in total costs for part 121 carriers to retrieve, search, and review historical documents and ensure sensitive information not required by the PRD is excluded. This estimate includes both manual entry and electronic data entry. A4A recommended that, given these substantial additional costs, the FAA should eliminate the requirement to provide historical documents or, in the alternative, require no more than 5 years of historical documents from the final rule compliance date.

An individual commented on the FAA's estimate for the time it would take to enter a pilot's information manually, estimating instead that it would take approximately an hour per pilot. The commenter noted it has paper records, so it will have to find the records, sort through years of training certificates, and then enter records going back 15 years for each pilot. The commenter noted that 40 percent of its pilots have been employed with the company for more than 10 years. The commenter said that if it goes back 15 years, it would have to enter records for 251 part 121 pilots alone. The commenter noted that entering records for these 251 pilots would take 6.3 weeks of doing nothing but data entry. The commenter called this overly burdensome and expensive.

A4A recommended that the FAA adopt Alternative 4 from the initial Regulatory Flexibility Analysis as the final rule.<sup>57</sup> A4A stated that Alternative 4 is the most effective option for capturing historical records. A4A stated that this would only require accessing records through both the PRD and PRIA for 5 years, as opposed to 2 years under the proposed rule. A4A stated the benefit of not having to input 18 years of pilot records would outweigh the burden of accessing pilot information through both PRIA and the PRD for three more years. ALPA also supported Alternative 4, and quoted the PRD ARC stating pilot records from training events accessed more than 5 years ago

<sup>57</sup> Alternative 4 would require air carriers and operators to 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. 85 FR 17701, March 30, 2020.

would be of no value to the hiring process.

A4A also commented that it is crucial for the FAA to stand up a working group immediately after a final rule is published. Further, A4A noted that, even though carriers may have some historical records in electronic format, this does not guarantee they can convert such records for the PRD. A4A stated none of its members has its drug and alcohol records systems connected to other systems; accordingly, the carriers will have to configure separately each set of historical records for reporting the PRD. A4A estimated the costs of reporting historical records will multiply based upon the number of systems from which an air carrier must collect and report data to the PRD.

## 2. FAA Response

The FAA has updated the regulatory impact analysis of the final rule with data A4A provided for increased costs of reporting records to the PRD and the costs of searching, retrieving and reviewing historical records. Details are provided in the comment responses below. The FAA also updated the regulatory impact analysis of the final rule using the electronic data costs referred to above for part 121 operators. The other commenters did not submit data on the costs to convert historical records to XML.

The FAA made the decision not to accept PDF because of data storage concerns and because personal information would have to be redacted; however, as mentioned previously, the FAA will provide a means to accomplish electronic batch upload of records. As discussed in section V.C., the PRD Act does not permit record reporting by part 142 training centers, as the PRD Act is restricted to entities that employed a pilot.

In the final rule, the FAA includes the cost for manual entry of drug and alcohol testing, verification of NDR search, and pilot disciplinary actions, where required. The FAA does not agree that it should use the maximum estimated historical records as the basis for determining the cost of manual entry of historical records. The final rule analysis continues to use the average of minimum and maximum estimated historical records.

The FAA includes the cost of entering disciplinary and termination records using 10 minutes as the time to enter each of these record types, as suggested by A4A. The FAA does not include the cost of setting up a pilot in the PRD for the first time, as it will occur via an automated script from the airman registry. The FAA does not agree with

A4A's recommendation to use 20 minutes for manual entry of a pilot training record; instead, the FAA uses an average of 4 minutes to enter this type of record. This estimate of 4 minutes does not include the time it might take to locate the record from the official record keeping system. A4A appears to capture this time in its estimate of supplemental costs, which includes the cost to retrieve, search and review historical records. The FAA incorporated A4A's supplemental cost of \$70.2 million in the final Regulatory Impact Assessment (RIA), available in the docket for this rulemaking.

The FAA has increased the cost of retrieving, searching, and reviewing historical records for part 121 operators based on data provided by A4A, as explained below. While the FAA included a supplemental cost of reporting historical records for the NPRM, the FAA accepted A4A's estimate that it would cost part 121 operators \$70.2 million to retrieve, search, and review historical documents and ensure sensitive information not required by the PRD is excluded. For the final rule, the FAA updated its analysis to include this cost for part 121 operators.

The FAA acknowledges the lower costs of Alternative 4 but believes the technological capabilities of the PRD will, in a few years, reduce concern over electronic upload of historical records. The FAA considered all comments received requesting a different interpretation of the PRD Act's requirement to include historical records and maintains that the statute is explicit with respect to which records must be included, as discussed in Section V.C.12.

The preamble of this rule includes discussion regarding the plans the FAA has for providing information to industry after publication of the final rule, beginning with the first compliance date for submitting a responsible person application, which is 90 days after publication of the final rule. The FAA also commits to providing a method for electronic transfer of records prior to the sunset of PRIA.

## 3. Comments on the Impact to Part 91 Operators

GAMA, NBAA, the FL Aviation Corp., Cummins, Inc., and more than 500 individuals commented on the costs and other burdens the proposed recordkeeping and reporting requirements would impose on part 91 operators. Most of these commenters asserted that the proposed rule would impose significant costs and other

burdens on these operators with little-to-no associated benefits.

GAMA commented that the administrative burden and associated cost of recordkeeping imposed on part 91 operators, which are not currently subject to the same recordkeeping requirements as part 121 and part 135 operators, is unreasonable because these operators typically do not benefit from the information in the PRD.

NBAA stated the proposed rule lacks a robust analysis of the effects on part 91 operations and ignores many consensus recommendations of the PRD ARC, resulting in a significant burden on numerous small entities with no clear nexus to part 121 carrier hiring. NBAA recommended that the FAA either remove part 91 operators from the rule or conduct a more accurate cost-benefit analysis in accordance with the Administrative Procedure Act and Executive Order 12866. NBAA also disagreed with the FAA's claim that the proposal would not require operators to collect new data for entry into the PRD and they and other operators pointed out that part 91 operators currently have no regulatory requirement to maintain certain records. These commenters contended that the new recordkeeping and reporting requirements would therefore require operators to revise completely current procedures they have used effectively for years, which will be costly.

NBAA also commented that the FAA considers initial compliance for part 91 operators but includes no annual costs of compliance and provides no insight into the assumptions that built the costs or analysis of part 91 training and checking events per year. NBAA asserted that the assumption that part 91 operators maintain electronic databases is false.

NASA's Aircraft Management Division stated that the level of data provided to the PRD is excessive and requires a recurring enormous effort. The commenter noted that NASA's primary records source is a paper-based personnel training and qualification file for each pilot. The commenter estimated that the rule's burdensome recurring data requirement would add a significant cost to NASA of approximately \$1 million annually.

An individual commented that the FAA's cost analysis ignores the increased cost to part 91 operators and is therefore not comparable to the current PRIA structure, rendering it useless for cost savings comparison. This commenter also faulted the cost analysis for not estimating overall costs on a per user basis. The commenter questioned whether the FAA estimated

the total number of users and what this rule would mean to each one. The commenter said it is incorrect to suggest there is no societal cost when there is no estimate on the burden to the individual user, especially ones who must absorb additional costs (part 91), rather than simply increasing ticket prices to cover the costs, as the scheduled air carriers have done.

The FL Aviation Corp. expressed concern that the cost of transaction requests will triple their current cost of responding to record requests. The commenter appears to be referring to user fees. The FL Aviation Corp. also asserted that, without any background data or information, the FAA's cost estimate represents nothing more than opinions or speculation and appear arbitrary, especially given that part 91 operations have never previously been included in the records sweep.

#### 4. FAA Response

The FAA has reduced substantively<sup>58</sup> the reporting requirements and therefore costs for corporate flight departments, public aircraft operations, and air tour operators in the final rule. These operators will only be required to provide records upon request from a hiring air carrier, unless the records reflect termination or certain disciplinary actions, in which case these operators must report the records contemporaneously. In addition, air tour operators must report drug and alcohol records contemporaneously.

The proposed rule required reporting only of records that the operator had accumulated; it did not propose that operators collect new data. The final rule as adopted also does not propose recordkeeping requirements that diverge significantly from PRIA; therefore, the FAA does not agree operators would have to revise current procedures, other than to enter records to the PRD, as required by the rule that they have accumulated.

For the NPRM, the FAA erroneously assumed that corporate flight departments maintain all records in electronic databases and assumed that all records would transfer to the PRD in the first year. The FAA has reconsidered this assumption and, in this rule, includes annual costs to enter records manually for all operators.

The FAA disagrees that the cost analysis ignores the increased cost to part 91 operators. The FAA detailed these costs in the analysis of the

proposed rule and has updated them in this final rule. The FAA estimated cost savings due to discontinuation of PRIA and the costs of reporting records to the PRD. The FAA presents the distribution of costs over operator types in the analysis along with an estimate of the number of users. The FAA estimates some costs on a per record basis. Some operators may choose to pass these additional costs on in increased ticket prices and some may absorb these costs. Regardless, these costs are captured in the analysis.

This rule does not include the user fee the FAA had proposed to include. Therefore, this rule does not estimate the cost of transaction requests.

The FAA documented its assumptions and sources in the analysis for the proposed rule. When data was not available, the FAA relied on input from subject matter experts.

#### 5. Comments on the Benefits of the Rule

NBAA stated all the benefits of the rule identified by the FAA apply to part 121 and part 135 air carriers. NBAA said there are no benefits for part 91 and part 125 operators that would be subject to this rule, only burdens and costs.

A4A disagreed with the FAA's assumption that one of the benefits of the NPRM is to 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. A4A said this is not a benefit of the PRD because the same concern exists with PRIA; carriers will have to interpret the same difficult-to-read handwritten files to comply with the PRD. A4A also identified an additional risk of incorrect or misinterpreted information being entered into the PRD and remaining there for the life of the pilot.

#### 6. FAA Response

This rule responds to a statutory requirement and was not motivated by a purpose to benefit one particular operator type over another; instead, Congress directed parameters for who would be reporting entities and reviewing entities. As a result of this rule, operators will be better prepared to make informed hiring decisions to support aviation safety. Although files may still be difficult to read, the FAA assumes that it is not as difficult for an operator to interpret its own historical records as it would be for an operator to interpret another operator's historical records.

<sup>58</sup> However, estimated costs the FAA includes in this final rule are higher than those estimated in the NPRM because the FAA considered data on part 121 costs submitted by a commenter.

## 7. Other Comments on Assumptions and Data

A4A stated the FAA must revise its cost analysis to correct the assumption that if a carrier has the FAA's approval for a computer-based recordkeeping system with OpSpec A025,<sup>59</sup> then all records that carrier must upload to the PRD are already in an electronic format. A4A noted that, while a carrier must obtain A025 to use an electronic recordkeeping system to ensure the same data integrity used in a paper system, A025 authorization does not mean that every carrier system is electronic. A4A said its member survey revealed that many human resource files containing disciplinary records or separation records are paper-based. Furthermore, A4A noted that even carriers that store human resource records electronically responded that they would need to enter information manually into the PRD because human resources files contain sensitive information that cannot be shared.

A4A noted the FAA's estimate excludes transition upgrade training, which the FAA explained is because it does not know how frequently pilots train on new aircraft, but expects such training is infrequent. A4A stated the results of its member survey indicate that a mid-size and large part 121 carrier averages between 1,200 and 3,000 transition training events per year. A4A asked the FAA to amend the analysis to reflect this omitted data to assess the true impact and cost of this rulemaking.

## 8. FAA Response

The FAA acknowledges some records it assumed to be entered electronically might have to be entered manually and the costs of manual entry may be underestimated for this reason. It is not clear from the A4A comment how many of these events will result in records required for the PRD. A transition-training curriculum consists of multiple training events. This number varies by approved training program. An event might be a ground school session or simulator session. All the events together make up the curriculum. After the pilot finishes all the events, they are considered to have completed the training curriculum. The PRD only accepts completion (or withdrawal) of the training curriculum. It does not accept records of each event that make up the curriculum. In other words, the

PRD accepts one record documenting that the pilot finished the curriculum, not multiple records detailing each event in the curriculum. A4A's comment is unclear concerning whether the basis of the estimates is the count of transition curricula or the number of events inside the curriculum.

## 9. Comments on Paperwork Reduction Act Burden Issues

One commenter stated that mandating dual recordkeeping for 2 years and 90 days post-implementation effectively doubles the workload for covered employers, which does not meet the requirements of the Paperwork Reduction Act. Another commenter remarked generally that the requirements of the proposed rule seems to contradict the purpose of the Paperwork Reduction Act.

## 10. FAA Response

PRIA is maintained until the PRD is populated with the minimal records necessary to ensure that hiring air carriers have access to the records they need and that no gap exists. However, if the operator updates PRD with records before PRIA is phased out the operator does not have to report records via PRIA. There should be no dual reporting requirements, because an operator would provide records via either PRIA or PRD until PRIA is phased out. The FAA assessed the baseline incremental change in costs in the analysis of the proposed rule, noting that cost savings do not begin until PRIA is phased out. In addition, the FAA acknowledged that the analysis in the NPRM potentially overestimates costs as operators can transition to PRD before the date when PRIA is discontinued, yet cost savings are not captured until that date.

## VI. Regulatory Notices and Analyses

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. In addition, DOT rulemaking procedures in subpart B of 49 CFR part 5 instruct DOT agencies to issue a regulation upon a reasoned determination that benefits exceed 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 (Pub. L. 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 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). The FAA provides a detailed Regulatory Impact Analysis of this final rule in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined this rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified previously. These analyses are summarized in this section.

### A. Regulatory Evaluation

#### 1. Benefits

This rule promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions by using the most accurate and complete pilot records available and by making those records accessible electronically. The rule requires 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 will 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.

<sup>59</sup> OpSpec A025—Extension of Due Date for Required Action by Notice N 8900.368, OpSpec/MSpec/TSpec/LOA A025, Electronic Signatures, Electronic Recordkeeping Systems, and Electronic Manual Systems, available at [https://fsims.faa.gov/wdocs/notices/n8900\\_395.htm](https://fsims.faa.gov/wdocs/notices/n8900_395.htm).

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

- Promote aviation safety by facilitating operators' consideration of pilot skills and performance when making hiring decisions by using the most accurate and complete pilot records available and by making those records accessible electronically. As previously discussed, a single algorithm does not exist that can tell the potential employer whether it should hire a pilot based on a ratio of satisfactory and unsatisfactory flight checks. However, providing this information electronically about the airman will assist the potential employer in making a hiring decision in a timelier and less cumbersome manner than is possible with PRIA.

- Allow for speedier retrieval of pilot records from the PRD than is possible with PRIA. Under PRIA, the hiring air carrier requests records from sometimes multiple carriers and waits to receive the records. With the PRD, the operator will merely log on to the database and, in most cases, 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.

- Allow pilots to consent to release and review of records.

2. Cost Savings

This rule results in recurring annual cost savings to industry because the PRD will replace PRIA three years and 90 days after the rule is published. Under PRIA, air carriers, operators, and

pilots complete and mail, fax, or email forms to authorize requests for pilots' records to be provided. Under the PRD, most of this process occurs electronically. Over the 10-year regulatory period after the effective date of the rule (2021–2030), the present value cost savings to industry is about \$21.2 million or \$3.0 million annualized using a seven percent discount rate. Using a three percent discount rate, the present value cost savings to industry is about \$27.4 million over the 10-year period of analysis or about \$3.2 million annualized. After the discontinuance three years and 90 days after the rule is published, the annual recurring industry cost savings will more than offset the recurring annual costs of the rule.

3. Costs

i. Net Regulatory Costs of the Rule

After the effective date of the rule, operators will incur costs to report pilot records to the PRD and to train and register as users of the PRD. The FAA will incur costs of the rule related to the operations and maintenance of the PRD. Over a 10-year period of analysis (2021–2030), the rule results in present value net costs (costs less savings) to industry and the FAA of about \$67.0 million or \$9.5 million annualized using a seven percent discount rate. Using a three percent discount rate, the rule results in present value net costs of about \$71.0 million or about \$8.3 million annualized.

The cost driver of the rule is the reporting cost for air carriers to upload historical records before the discontinuance of PRIA three years and 90 days after the effective date of the rule. These up-front costs are

discounted less in terms of present values than the recurring cost savings that occur after the discontinuance of PRIA. These historical record reporting costs represent about 87 percent of the total costs of the rule.<sup>60</sup> As discussed previously, the statutory requirements limit FAA's discretion to reduce the requirements for operators to report historical records. This limits the FAA's ability to reduce the associated costs. However, the cost savings from the discontinuance of PRIA are expected to pay for these high upfront costs over the long run as the PRD becomes widely used.

ii. FAA Costs To Develop the PRD

In addition to future regulatory costs, the FAA has incurred costs to prototype and develop the PRD since 2010.<sup>61</sup> From 2010 to 2020, the FAA estimates the present value PRD development costs are about \$14.1 million or \$1.5 million annualized using a seven percent discount rate. Using a three percent discount rate, the present value PRD development costs are about \$18.0 million over the same period or about \$2.4 million annualized. In the context of analyzing the impacts of the rule, these are "sunk" costs that already occurred and cannot be recovered. These sunk costs are contrasted with prospective costs, which are future regulatory costs of the rule. The FAA presents these sunk costs to inform the public of the total PRD development and regulatory costs.

4. Summary of Benefits, Costs, and Cost Savings

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

TABLE 3—SUMMARY OF BENEFITS, COSTS, AND COST SAVINGS

| Benefits  |                            |                 |                            |                 |
|---|----------------------------|-----------------|----------------------------|-----------------|
| <ul style="list-style-type: none"> <li>• Promotes aviation safety by facilitating operators' consideration of pilot skill and performance when making hiring and personnel management decisions.</li> <li>• Provides faster retrieval of pilot records compared to PRIA.</li> <li>• Reduces inaccurate information and interpretation compared to PRIA.</li> <li>• Provides easier storage of and access to pilot records than PRIA.</li> <li>• Allows pilots to consent to release and review of records.</li> </ul> |                            |                 |                            |                 |
| Summary of Costs and Cost Savings *<br>(\$Millions)   |                            |                 |                            |                 |
| Category  | 10-Year present value (7%) | Annualized (7%) | 10-Year present value (3%) | Annualized (3%) |
| Costs .....   | 88.2                       | 12.6            | 98.5                       | 11.5            |
| Cost Savings .....  | (21.2)                     | (3.0)           | (27.4)                     | (3.2)           |

<sup>60</sup> Based on the Regulatory Impact Analysis of the final rule, about 88% of the historical record reporting costs are incurred by part 121 operators.

<sup>61</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)). OMB Circular A–4 asks agencies to consider costs of mandates

based on a pre-statutory baseline. The FAA provides discussion of these costs to inform the total PRD development and regulatory costs.

Summary of Costs and Cost Savings \*  
(\$Millions)

| Category        | 10-Year present value (7%) | Annualized (7%) | 10-Year present value (3%) | Annualized (3%) |
|-----------------|----------------------------|-----------------|----------------------------|-----------------|
| Net Costs ..... | 67.0                       | 9.5             | 71.0                       | 8.3             |

\* **Table Notes:** Columns may not sum due to rounding. Savings are shown in parentheses to distinguish from costs. Estimates are provided at seven and three percent discount rates per OMB guidance. Industry and FAA costs are higher in the beginning of the period of analysis than industry cost savings that occur later in the period of analysis after the discontinuance of PRIA three years and 90 days after the rule is published. This results in larger annualized estimates of costs and net costs at a seven percent discount rate compared to a three percent discount rate.

5. Scope of Affected Entities

The entities affected by this final rule are: Part 119 certificate holders, fractional ownership programs, air tour operators, corporate flight departments, and PAO, as well as individual pilots.

6. Changes to the Regulatory Impact Analysis Since the Proposed Rule

The FAA updated its analysis for changes incorporated in the final rule and additional information and data identified during the comment period. The following is a summary of these changes.

- The analysis no longer includes the impacts of user fees. Industry will not incur user fees under the final rule. For the proposed rule, the FAA estimated the 10-year present value of the user fees were about \$13.2 million or \$1.9 million annualized using a 7 percent

discount rate in 2016 constant dollars.

Using a 3 percent discount rate, the present value of the user fees were about \$16.3 million over 10 years or about \$1.9 million annualized.

- The analysis reflects reduced PRD reporting requirements that reduce industry costs in the final rule compared to the proposal for air tour operators, public aircraft operations and corporate flight departments.

- The analysis incorporated additional data from commenters to update costs for reporting historical records to the PRD, increasing the estimates of costs under the final rule as compared to the preliminary analysis of the proposed rule. In the proposed rule and the preliminary Regulatory Impact Analysis, the FAA requested comments and additional data on costs and data uncertainties.

- Reporting of records begins one year after the rule is published rather than beginning in the year of publication of the rule, providing more time for operators to prepare to report.

- Reporting of historical records back to year 2015 occurs in year 2 and the remainder in year 3, rather than an even distribution over 2 years.

- The analysis uses updated wage data.

The following table compares the net costs of the proposed rule as published, the net cost of the proposed rule with updates for cost data received from public comments, and the costs of the final rule with changes in requirements to reduce costs in addition to updates for cost data received from public comments.

TABLE 4—COMPARISON OF NET COSTS: PROPOSED RULE AND FINAL RULE  
[\$Million]

| Net costs                        | Proposed rule | Proposed rule | Final rule |
|----------------------------------|---------------|---------------|------------|
| 10-Year Present Value (7%) ..... | 12.8          | 80.8          | 67.0       |
| Annualized (7%) .....            | 1.8           | 11.5          | 9.5        |
| 10-Year Present Value (3%) ..... | 11.5          | 87.8          | 71.0       |
| Annualized (3%) .....            | 1.4           | 10.3          | 8.3        |

\* Updated for data from public comments.

+ Updated for changes in requirements and data from public comments.

The FAA analyzed the impacts of this rule based on the best publicly available data at the time of this writing. The FAA acknowledges uncertainty exists in estimating the costs of this rule, given the variety of operators and record-keeping practices.

The analysis of this rule reflects operator and industry conditions that predate the COVID-19 public health emergency. While there is currently a lack of data to forecast the timing of recovery from COVID-19 impacts relative to implementation of the rule, the analysis provides information on the types of impacts that may be experienced in the future as the economy returns to baseline levels.

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 rule will have a significant economic impact on a substantial number of small entities. If the Agency determines that it will, Section 604 of the Act requires agencies to prepare a Final Regulatory Flexibility Analysis describing the impact of final rules on small entities.

The FAA has determined this final rule will have a significant economic impact on a substantial number of small entities. Therefore, under the requirements in Section 604 of the RFA, the Final Regulatory Flexibility Analysis must address:

- A statement of the need for, and objectives of, the rule;
- A statement of the significant issues raised by the public comments in

response to the initial regulatory flexibility analysis, a statement of the assessment of the Agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

- The response of the Agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

- A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

- A description of the steps the Agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the Agency which affect the impact on small entities was rejected.

1. Statement of the Need for and Objectives of the Rule

Following the Continental Flight 3407 accident, Congress enacted the Airline Safety and Federal Aviation Administration Extension Act of 2010, Public Law 111–216 (Aug. 1, 2010).<sup>62</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. The PRD Act requires the FAA to ensure the database contains records from various sources related to individual pilot performance and to issue implementing regulations. It also amended PRIA by requiring the FAA to ensure operators evaluate pilot records in the database prior to hiring individuals as pilots. Congress has since enacted the FAA Extension, Safety, and Security Act of 2016 (FESSA), Public Law 114–190 (July 15, 2016). Section 2101 of FESSA required the FAA to establish an electronic pilot records database by April 30, 2017. This final rule implements those statutory mandates.

2. Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

A significant issue commenters raised was the concern that the proposed rule would impose significant burdens on small businesses with little-to-no associated benefits or could put small companies or flight departments out of business. Commenters were concerned about corporate flight departments and public aircraft operations, which the FAA considered along with air tour operators as potential gateway operators (*i.e.*, operators from which pilots would transfer to air carriers). Commenters, in addition to describing the excessive burden that the rule would impose, stated that it was infrequent that a pilot would leave employment with these types of operators to seek employment with an air carrier. The FAA assessed these concerns and reduced the burden for these operators by requiring only that these operators report records upon request from a hiring air carrier, with an

exception requiring that they report contemporaneous termination records and certain disciplinary records. Contemporaneous reporting of drug and alcohol records by air tour operators would also be required, even in the absence of a request for them.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Agency received no comments from the Chief Counsel for Advocacy of the Small Business Administration.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

This rule will affect substantial numbers of small entities operating under parts 91K, 121 and 135, air tour operators, entities conducting public aircraft operations, and corporate flight departments. There are approximately 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 consist of a couple of pilots flying less than five passengers per air tour. The FAA estimates that all fractional ownerships are large with revenues exceeding \$16.5 million. The FAA also estimates that entities conducting PAO 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 affected.

TABLE 5—SUMMARY OF SMALL ENTITIES IMPACTED

| Type/part                            | Number of entities | NAICS code <sup>63</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.           |

<sup>62</sup> Referred to as “the PRD Act” in this rule.

TABLE 5—SUMMARY OF SMALL ENTITIES IMPACTED—Continued

| Type/part                       | Number of entities | NAICS code <sup>63</sup>                           | SBA size standard                 | Size       |
|---------------------------------|--------------------|--|-----------------------------------|------------|
| 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. |

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

While this rule will affect a substantial number of small entities, the FAA maintains that small entities will be affected to a lesser extent than large entities. This is because costs are a function of size. For instance, costs to enter data on pilots manually depends on the number of pilots who 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 10 pilots for a part 125 operator. Air tour operators would not be required to report historical records and would incur a cost of \$43 per operator per year (or about \$14 per pilot per year), and part 125 operators would incur a cost of \$725 per operator (or about \$72 per pilot) per year.

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The rule requires air carriers, certain 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 PRD. The records 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 Driver Register. Requirements for corporate flight departments, air tour operators and public aircraft operations, many of which are small businesses, have been reduced in the final rule to only require reporting of most records upon request. Contemporaneous reporting must occur for records concerning termination and disciplinary actions for public aircraft and air tour operators and corporate flight departments. In addition, drug and alcohol records for air tour operators are also always required. The types of professional skills needed are clerical skills for data entry, computer skills for electronic data transfer, management pilot skills for reviewing and summarizing pilot records, training and development skills, and human resource management skills.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

By reducing reporting requirements on public aircraft and air tour operators and corporate flight departments, many of which are small businesses, the Agency has minimized the significant economic impact on small entities. This does not contradict the PRD Act.

The FAA considered the following four alternatives in Regulatory Flexibility Determination section of the proposed rule. In Alternative 1, the FAA considered requiring all of the past pilot historical data. This alternative was rejected because the FAA determined the proposed requirement would be sufficient to comply with the statute. In

Alternative 2, the FAA considered other options for the form and manner in which historical records could be submitted to the PRD by operators employing pilots. These 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. The FAA rejected this alternative because it would result in extraneous and possibly protected or sensitive information to be submitted to the PRD, could impose a burden on the FAA to review, and is beyond the FAA does not think Congress intended PRD to be a repository of all the information available on a pilot. In Alternative 3, the FAA considered interpreting the PRD Act broadly and 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. The FAA rejected this alternative because it interpreted the requirement to apply to those most likely to employ pilots who might subsequently apply to become air carrier pilots. In Alternative 4, the FAA considered requiring 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, at which point PRIA could be discontinued. The FAA rejected this because the lack of a singular database would be detrimental to the purpose of the rulemaking and diminish efficiency of review of pilot records by employers who would have to access records through both PRIA and PRD. At the time of the NPRM, the FAA presented Alternative 4 as a potentially legally permissible option, but on further review, determined that this was not the case.

Below is a more detailed description of Alternative 2 and the reasons it was

<sup>63</sup> For definitions of the NAICS codes please refer to 2017 NAICS Manual, pg. 380 [https://www.census.gov/eos/www/naics/2017NAICS/2017\\_NAICS\\_Manual.pdf](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.

rejected. This alternative might have affected the impact on small entities.

The FAA considered 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), 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 might be most expedient and least costly<sup>64</sup> for some air carriers and operators, the FAA rejected this option for multiple reasons. First, the PRD ARC highlighted an issue with the contents of historical records, indicating 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.

In addition, the PRD should serve as an effective tool to assist an air carrier or operator in making hiring decisions, not as a catch-all repository for all existing information maintained by employers of pilots, or as a replacement for existing air carrier and operator recordkeeping systems. If an employer transmitted scanned documents or photographs of a pilot’s record to the PRD, a hiring employer could be overwhelmed by the amount of information provided for review, some of which might not be relevant to the hiring decision and could impede the hiring employer’s ability to consider relevant information quickly and efficiently.

The final alternative adopted is what was proposed in the NPRM with changes, one of which reduces record reporting requirements for PAO, air tour operators, and corporate flight

departments. The factual, legal, and policy reasons for the alternative adopted in the final rule are found in the preamble discussion preceding this section.

#### *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. This rule addresses a Congressional mandate to promote the safety of the American public and it does not create 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 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 agencies to 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 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 information collection amendments to OMB for its review.

*Summary:* The rule requires part 119 certificate holders, 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 PRD. The records 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 query of the National Driver Register.

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

The FAA summarizes the changes in burden hours and costs by subpart relative to the interim compliance dates of the rule. As previously discussed, air carriers and other operators currently comply with PRIA. The publication of this rule begins the transition to use of the PRD. For a modest duration of time, continued compliance with PRIA is required, to ensure appropriate, complete transition. The FAA also made changes to the regulatory text for compliance dates and added interim compliance markers in order to facilitate a smooth transition. These changes are discussed further in Sections V.A.2 and V.E. Where practical the FAA presents burden and costs over three years as typically presented for estimates of burden and costs for collections of information.<sup>65</sup>

#### 1. Subpart A General

##### i. Section 111.15 Application for Database Access

Air carriers and other operators subject to the rule will submit application for database access 90 days after the publication of the rule. The

<sup>64</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.

<sup>65</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.

table below presents the number of users expected to apply for access to the PRD, the estimated time it will take each user to register, the hourly rate of the persons registering, and the estimated hour burden for all users to register.

TABLE 6—BURDEN FOR APPLICATION FOR DATABASE ACCESS \*

| Users expected to apply/register | Respondents    | Hourly rate | Time to register | Total costs      | Total hours   | Average costs per year * | Average hours per year * |
|----------------------------------|----------------|-------------|------------------|------------------|---------------|--------------------------|--------------------------|
| Responsible persons .....        | 5,033          | \$91.33     | 0.50             | \$229,832        | 2,517         | \$76,611                 | 839                      |
| Pilots .....                     | 175,860        | 46.28       | 0.33             | 2,685,804        | 58,034        | 268,580                  | 5,803                    |
| Authorized Individuals .....     | 10,066         | 91.33       | 0.50             | 459,664          | 5,033         | 153,221                  | 1,678                    |
| Proxies .....                    | 1,904          | 91.33       | 0.50             | 86,946           | 952           | 28,982                   | 317                      |
| <b>Total .....</b>               | <b>192,863</b> |             |                  | <b>3,462,246</b> | <b>66,536</b> | <b>527,394</b>           | <b>8,637</b>             |

\* **Table Notes:** See the Regulatory Impact Analysis available in the docket for details on the hourly rates and costs. Average costs and hours are three-year averages.

2. Subpart B—Accessing and Evaluating Records

i. Section 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.

3. Subpart C—Reporting of Records by Air Carriers and Operators

Each operator will 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.

Subpart C of part 111 requires all part 119 certificate holders, 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.

Under the Pilot Records Improvement Act (PRIA), operators are required to provide these records to another operator upon request; therefore, this rule will not require collection of new information.<sup>66</sup> This action contains amendments to the existing information collection requirements previously approved under OMB Control Number 2120-0607. Under this existing information collection, which is associated with PRIA and PRD, operators are currently required to maintain certain records in accordance with regulatory requirements and to maintain records that would be subject to PRIA in order to respond to PRIA requests. Under this action, industry would be required to report to the PRD those records that they are already required to collect. Therefore, the FAA has determined that this action amends the existing information collection only so far as to require submission of information to request access to the database and electronic or manual submission of the records already collected by industry. We estimate that burden here.

The rule requires that one year after publication new records be reported to the PRD. New records are all records generated as of that date.

As previously discussed, there are two methods for reporting data to the PRD. The first method is 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 is manual data entry using the same pre-established data field forms for each record type. The FAA estimated how many operators will likely report data directly from their own electronic databases. The FAA also estimated how many operators will likely enter data manually to the PRD. The following discussion summarizes the estimates of the burden and the cost of reporting records to the PRD.

i. Present and Future Record Reporting

Air carriers and operators will incur a burden to transfer pilot records electronically from their databases to the PRD. The burden includes the time required for operators to develop an encoding program to transfer records from their electronic databases via an automated utility to appropriate fields within the PRD.

The following table presents the number of respondents (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.

TABLE 7—ELECTRONIC REPORTING OF PRESENT AND FUTURE RECORDS \*

| Operator type          | Respondents | Hours per respondent | Hourly rate | Initial cost for electronic reporting | Annual cost for electronic reporting | Initial hours for electronic reporting/year | Annual hours |
|------------------------|-------------|----------------------|-------------|---------------------------------------|--------------------------------------|---|--------------|
| Small 121 .....        | 51          | 20                   | \$120       | \$122,400                             | \$76,500                             | 340   | 1,020        |
| Mid-size 121 .....     | 13          | 35                   | 75          | 34,125                                | 19,500                               | 152   | 260          |
| Large 121 .....        | 4           | 400                  | 89          | 142,400                               | 6,000                                | 533   | 80           |
| <b>Total 121 .....</b> | <b>68</b>   | <b>455</b>           |             | <b>298,925</b>                        | <b>102,000</b>                       | <b>1,025</b>                                | <b>1,360</b> |
| Small 135 .....        | 234         | 20                   | 120         | 561,600                               | 351,000                              | 1,560                                       | 4,680        |
| Mid-size 135 .....     | 2           | 35                   | 75          | 5,250                                 | 3,000                                | 23  | 40           |

<sup>66</sup> 49 U.S.C. 44703(h).

TABLE 7—ELECTRONIC REPORTING OF PRESENT AND FUTURE RECORDS \*—Continued

| Operator type   | Respondents | Hours per respondent | Hourly rate | Initial cost for electronic reporting | Annual cost for electronic reporting | Initial hours for electronic reporting/year | Annual hours |
|-----------------|-------------|----------------------|-------------|---------------------------------------|--------------------------------------|---|--------------|
| Total 135 ..... | 236         | 55                   | .....       | 566,850                               | 354,000                              | 1,583                                       | 4,720        |
| Small 125 ..... | 18          | 20                   | 120         | 43,200                                | 27,000                               | 120   | 360          |
| Total 125 ..... | 18          | 20                   | .....       | 43,200                                | 27,000                               | 120   | 360          |
| Part 91K .....  | 4           | 1,897                | 95          | 720,800                               | 6,000                                | 2,529                                       | 80           |
| Total 91K ..... | 4           | 1,897                | .....       | 720,800                               | 6,000                                | 2,529                                       | 80           |
| Total .....     | 326         | 2,427                | .....       | 1,629,775                             | 489,000                              | 5,258                                       | 6,520        |

\* Table Notes: See the Regulatory Impact Analysis available in the docket for more details. Estimates may not total due to rounding.

The following table summarizes the present and future pilot records to the burden and costs for operators to enter PRD manually.

TABLE 8—MANUAL ENTRY OF PRESENT AND FUTURE RECORDS

| Type of operations                | Hours | Cost     | Respondents |
|-----------------------------------|-------|----------|-------------|
| Part 121 .....                    | 141   | \$12,269 | 8           |
| Part 135 .....                    | 6,993 | 609,006  | 1,817       |
| Part 125 .....                    | 192   | 16,654   | 52          |
| Air Tours .....                   | 16    | 1,464    | 1,091       |
| Part 91K .....                    | 214   | 18,552   | 3           |
| PAO .....                         | 21    | 1,831    | 323         |
| Corporate Flight Department ..... | 106   | 9,265    | 1,413       |
| Total .....                       | 7,683 | 669,041  | 4,707       |
| Average .....                     | 2,561 | 223,014  | 1,569       |

ii. Historical Record Reporting

The rule requires that historical records will be reported to the PRD beginning one year after publication of the final rule. Parts 121 and 135 air carriers will report historical records

they have maintained back to August 1, 2005 through that date. Parts 125 and 135 operators and 91K fractional ownerships will report historical records they have maintained back to August 1, 2010 through one year after publication of the final rule. Those

operators with approved electronic databases will transfer data electronically. The table below summarizes the number of respondents, burden hours, and the one-time cost of electronic reporting.

TABLE 9—BURDEN OF ELECTRONIC REPORTING HISTORICAL RECORDS \*

| Type of operations/size groupings | Respondents | Hours/Respondent | Hourly rate | Electronic reporting costs | Electronic reporting hours |
|-----------------------------------|-------------|------------------|-------------|----------------------------|----------------------------|
| Small 121 .....                   | 51          | 20               | \$120       | \$122,400                  | 1,020                      |
| Mid-size 121 .....                | 13          | 2,333            | 75          | 2,275,000                  | 30,333                     |
| Large 121 .....                   | 4           | 6,774            | 89          | 2,411,500                  | 32,154                     |
| Total part 121 (1) .....          | 68          | 9,127            | .....       | 4,808,900                  | 63,507                     |
| Small 135 .....                   | 226         | 20               | \$120       | 542,400                    | 4,521                      |
| Mid-size 135 .....                | 2           | 70               | 75          | 10,500                     | 141                        |
| Total part 135 .....              | 228         | 90               | .....       | \$552,900                  | 4,599                      |
| Small part 125 .....              | 18          | 20               | \$120       | 43,200                     | 360                        |
| Total part 125 .....              | 18          | 20               | .....       | \$43,200                   | 360                        |
| Part 91K .....                    | 4           | 385              | \$95        | 146,200                    | 1,539                      |
| Total Part 91K .....              | 4           | 385              | .....       | \$146,200                  | 1,539                      |
| Total Burden .....                | 318         | 9,622            | .....       | \$5,551,200                | 70,068                     |

\* Table Notes: (1) Includes carriers certificated under both parts 121 and part 135. Estimates may not total due to rounding.

The following table summarizes the burden and costs for operators to manually enter historical records to the PRD.

TABLE 10—MANUAL ENTRY OF HISTORICAL RECORDS

| Type of operations | Respondents | Total hours | Total cost   |
|--------------------|-------------|-------------|--------------|
| Part 121 .....     | 18          | 1,439,468   | \$71,025,356 |
| Part 125 .....     | 33          | 853         | 80,370       |
| Part 135 .....     | 1,912       | 95,354      | 9,162,087    |
| Part 91K .....     | 5           | 5,748       | 544,279      |
| Total .....        | 1,968       | 1,541,423   | 80,812,091   |

iii. Reporting Pilot Employment History

In addition to operators reporting pilot records, pilots will be required to enter five years of employment history at the time they give their consent for an air carrier to review their records. The PRD will provide the pilot an electronic

form including a pull down menu allowing access to air carriers, which should make it efficient for a pilot to complete the employment history form. If the former employer is on the list, the data prefills from FAA data. In the case that a former employer is not available

through the menu, the pilot can add the name of the employer and fill in the data. The FAA estimates it will take a pilot an average of 2 minutes to complete their employment history. The following table shows total costs for pilots to enter their employment history.

TABLE 11—BURDEN AND COST FOR REPORTING PILOT EMPLOYMENT HISTORY

| Number of pilots | Hourly rate | Time to complete employment history | Cost to complete employment history |
|------------------|-------------|-------------------------------------|-------------------------------------|
| 175,860 .....    | \$46.28     | 2 mins                              | \$271,293                           |

iv. Request for Deviation

Operators may request a deviation from the historical records reporting based on a determination that a delay in compliance, due to circumstances beyond control of the entity reporting historical records, would not adversely

affect safety. While the deviation is in effect, the reporting operator would report records upon request under PRIA. The FAA does not envision that it would grant deviation authority past the sunset date of PRIA, but if that situation were to occur, the FAA expects that an operator would still be required to

report individual pilot records upon request manually to the PRD during the term of the delay in uploading those records electronically.

The FAA estimates that one percent of part 121 and part 135 operators may request such a deviation in years 2 and 3 after the publication of the final rule.

TABLE 12—DEVIATION REQUESTS

| Operator type  | Respondents | Hours | Hourly rate | Total hours | Total cost |
|----------------|-------------|-------|-------------|-------------|------------|
| Part 121 ..... | 0.76        | 2     | \$87.04     | 1.52        | \$132      |
| Part 135 ..... | 20.53       | 2     | 87.04       | 41.06       | 3,574      |
| Total .....    |             |       |             | 42.58       | 3,706      |

The following table summarizes the total reporting burden and costs for the first three years after the publication date of the rule.

TABLE 13—BURDEN FOR FIRST THREE YEARS [After the publication of the rule]\*

| Section   | Respondents hours | Year 1 |             | Year 2  |            | Year 3  |            | Total     |             |
|---|-------------------|--------|-------------|---------|------------|---------|------------|-----------|-------------|
|   |                   | Hours  | Cost        | Hours   | Cost       | Hours   | Cost       | Hours     | Cost        |
| \$ 111.15 Annual Registration burden ...            | 69,761            | 14,305 | \$1,045,051 | 5,803   | \$268,563  | 5,803   | \$268,563  | 25,911    | \$1,582,177 |
| \$ 111.205(a) Reporting Present and Future Records: |                   |        |             |         |            |         |            |           |             |
| <i>Electronic Reporting:</i>                        |                   |        |             |         |            |         |            |           |             |
| Initial costs .....                                 | 326               |        |             | 15,773  | 1,629,775  |         |            | 15,773    | 1,629,775   |
| Annual costs .....                                  | 326               |        |             | 6,520   | 489,000    | 6,520   | 489,000    | 13,040    | 978,000     |
| <i>Manual Data Entry:</i>                           |                   |        |             |         |            |         |            |           |             |
| Annual costs .....                                  | 4,707             |        |             | 3,775   | 328,789    | 3,798   | 330,787    | 7,573     | 659,776     |
| \$ 111.255 Historical Record Reporting:             |                   |        |             |         |            |         |            |           |             |
| <i>Electronic Reporting</i> .....                   | 318               |        |             | 23,356  | 5,551,200  |         |            | 23,356    | 5,551,200   |
| <i>Manual Data Entry</i> .....                      | 1,968             |        |             | 770,712 | 40,406,046 | 770,712 | 40,406,046 | 1,541,424 | 80,812,092  |

TABLE 13—BURDEN FOR FIRST THREE YEARS—Continued  
[After the publication of the rule] \*

| Section  | Respondents hours | Year 1 |           | Year 2  |            | Year 3  |            | Total     |            |
|--|-------------------|--------|-----------|---------|------------|---------|------------|-----------|------------|
|  |                   | Hours  | Cost      | Hours   | Cost       | Hours   | Cost       | Hours     | Cost       |
| § 111.310 Written consent (Employment History) ..... | 17,586            | .....  | .....     | 5,862   | 27,129     | 5,862   | 27,129     | 11,724    | 54,259     |
| § 111.255 Deviation request .....                    | 2,129             | .....  | .....     | 43      | 3,706      | 43      | 3,706      | 85        | 7,412      |
| Total .....  | 97,121            | 14,305 | 1,045,051 | 831,843 | 48,704,408 | 792,738 | 41,525,231 | 1,638,886 | 91,274,691 |

\* Estimates may not total due to rounding.

4. Effects of Reduced Burden From the Discontinuation of the Pilot Records Improvement Act

The PRIA will be discontinued three years and 90 days after the effective date

of the proposed Pilot Records Database. Once PRIA is discontinued there will be cost savings, which are captured in the analysis associated with this final rule. The following table provides a three

year analysis of net burden and cost savings for the amended collection of information once PRIA is discontinued.

TABLE 14—REDUCED BURDEN FROM DISCONTINUATION OF PILOT RECORDS IMPROVEMENT ACT \*

| Section  | Respondents | Year 4   |             | Year 5   |             | Year 6   |             | Total    |              |
|--|-------------|----------|-------------|----------|-------------|----------|-------------|----------|--------------|
|  |             | Hours    | Cost        | Hours    | Cost        | Hours    | Cost        | Hours    | Cost         |
| § 111.15 Annual Registration burden                  | 52,758      | 5,803    | \$268,563   | 5,803    | \$268,563   | 5,803    | \$268,563   | 17,409   | \$805,689    |
| § 111.205 Reporting Present and Future Records:      |             |          |             |          |             |          |             |          |              |
| Electronic Data Transfer .....                       | 326         | 6,520    | 489,000     | 6,520    | 489,000     | 6,520    | 489,000     | 19,560   | 1,467,000    |
| Manual Data Entry .....                              | 4,707       | 3,881    | 337,996     | 3,894    | 339,100     | 3,904    | 340,097     | 11,679   | 1,017,193    |
| § 111.310 Written Consent (Employment History) ..... | 17,586      | 586      | 27,129      | 586      | 27,129      | 586      | 27,129      | 1,759    | 81,388       |
| Total Cost .....                                     | .....       | 16,790   | 1,122,688   | 16,803   | 1,123,792   | 16,813   | 1,124,789   | 50,407   | 3,371,270    |
| § 111.5 Discontinuation of PRIA—Total Savings .....  | 101,999     | 31,831   | 4,813,969   | 31,831   | 4,813,969   | 31,831   | 4,813,969   | 95,493   | 14,441,908   |
| Net Total Savings .....                              | .....       | (15,041) | (3,691,281) | (15,028) | (3,690,177) | (15,018) | (3,689,180) | (45,087) | (11,070,638) |

\* Estimates may not total due to rounding.

Individuals and organizations may send comments on the information collection requirement to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW, Washington, DC 20053 by July 12, 2021.

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 no ICAO Standards and Recommended Practices correspond to these proposed regulations.

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 5–6.6f 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 final rule may have on collecting, storing, and disseminating personally identifiable information (PII) for use by operators subject to this final rule in making hiring decisions. A copy of the PIA will be included in the docket for this rulemaking and will be available at <http://www.transportation.gov/privacy>.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this 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 final 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 13609, Promoting International Regulatory Cooperation

Executive Order 13609 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 this

action would have no effect on international regulatory cooperation.

**VIII. How To Obtain Additional Information**

**A. Rulemaking Documents**

An electronic copy of a rulemaking document may be obtained by using the internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA’s Regulations and Policies web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/) or
3. Access the Government Printing Office’s web page at <http://www.gpo.gov/fdsys/>.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

**B. Comments Submitted to the Docket**

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA’s dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

**C. Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA, visit [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

**List of Subjects**

**14 CFR Part 11**

Administrative practice and procedure, Reporting and recordkeeping requirements.

**14 CFR Part 91**

Air taxis, Aircraft, Airmen, Aviation safety, Charter flights, Public aircraft, Reporting and recordkeeping requirements.

**14 CFR Part 111**

Administrative practice and procedure, Air carriers, Air taxis, Aircraft, Airmen, Air operators, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Public aircraft, Reporting and recordkeeping requirements.

**The Amendment**

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

**PART 11—GENERAL RULEMAKING PROCEDURES**

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102, and 51 U.S.C. 50901–50923.

■ 2. Effective August 9, 2021, amend § 11.201 in the table in paragraph (b) by revising the entry for “Part 111” to read as follows:

**§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.**

| 14 CFR part or section identified and described | Current OMB control No. |
|---|-------------------------|
| * * * *   | * * * *                 |
| (b) * * *                                       | * * *                   |
| Part 111 .....                                  | 2120–0607               |
| * * * *   | * * *                   |

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

■ 3. The authority citation 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).

**§ 91.1051 [Removed]**

■ 4. Effective September 9, 2024, § 91.1051 is removed.

■ 5. Effective September 8, 2021, add part 111 to subchapter G to read as follows:

**PART 111—PILOT RECORDS DATABASE**

**Subpart A—General Sec.**

- 111.1 Applicability.
- 111.5 Compliance date.
- 111.10 Definitions.
- 111.15 Application for database access.
- 111.20 Database access.
- 111.25 Denial of access.
- 111.30 Prohibited access and use.
- 111.35 Fraud and falsification.
- 111.40 Record Retention.

**Subpart B—Access to and Evaluation of Records**

- 111.100 Applicability.
- 111.105 Evaluation of pilot records.
- 111.110 Motor vehicle driving record request.
- 111.115 Good faith exception.
- 111.120 Pilot consent and right of review.
- 111.135 FAA records.

**Subpart C—Reporting of Records**

- 111.200 Applicability.
- 111.205 Reporting requirements.
- 111.210 Format for reporting information.
- 111.215 Method of reporting.
- 111.220 Drug and alcohol testing records.
- 111.225 Training, qualification, and proficiency records.
- 111.230 Final disciplinary action records.
- 111.235 Final separation from employment records.
- 111.240 Verification of motor vehicle driving record search and evaluation.
- 111.245 Special rules for protected records.
- 111.250 Correction of reported information and dispute resolution.
- 111.255 Reporting historical records to PRD.

**Subpart D—Pilot Access 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.

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40113, 44701, 44703, 44711, 46105, 46301.

**Subpart A—General**

**§ 111.1 Applicability.**

(a) This part prescribes the rules governing the use of the Pilot Records Database (PRD).

(b) Except as provided in subsection (c) of this section, this part applies to:

(1) Each operator 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 operator that holds management specifications for a fractional ownership program issued in accordance with subpart K of part 91 of this chapter.

(3) Each operator that holds a letter of authorization issued in accordance with § 91.147 of this chapter.

(4) Each operator that operates two or more aircraft described in paragraph

(b)(4)(i) or (ii) of this section, in furtherance of or incidental to a business, solely pursuant to the general operating and flight rules in part 91 of this chapter, or that operates aircraft pursuant to a Letter of Deviation Authority issued under § 125.3 of this chapter.

(i) Standard airworthiness airplanes that require a type rating under § 61.31(a) of this chapter.

(ii) Turbine-powered rotorcraft.

(5) Each entity that conducts public aircraft operations as defined in 49 U.S.C. 40102(a)(41) on a flight that meets the qualification criteria for public aircraft status in 49 U.S.C. 40125, unless the entity is any branch of the United States Armed Forces, National Guard, or reserve component of the Armed Forces.

(6) Each trustee in bankruptcy of any operator or entity described in this paragraph, subject to the following criteria:

(i) If any operator subject to the requirements of this subpart files a petition for protection under the Federal bankruptcy laws, the trustee appointed by the bankruptcy court must comply with the requirements of subparts A and C of this part.

(ii) The operator may delegate its authority to the trustee appointed by the bankruptcy court to access the PRD on its behalf in accordance with § 111.20 or the trustee may submit an application to the FAA requesting access to the PRD consistent with the requirements of § 111.15.

(7) Each person that submits or is identified on the application described in § 111.15 and is approved by the Administrator to access the PRD.

(8) Each person who is employed as a pilot by, or is seeking employment as a pilot with, an operator subject to the applicability of this part.

(c) This part does not apply to foreign air carriers or operators subject to part 375 of this title.

#### § 111.5 Compliance date.

(a) Compliance with this part is required by September 9, 2024, except as provided in §§ 111.15, 111.100, 111.200, and 111.255.

(b) Beginning on September 9, 2024, the Pilot Records Improvement Act (PRIA) ceases to be effective and will not be an available alternative to PRD for operators, entities, or trustees to which this subpart applies.

#### § 111.10 Definitions.

For purposes of this part, the term—  
*Authorized user* means an individual who is employed by an operator, entity, or trustee and who is designated by a

responsible person to access the PRD on behalf of the employer for purposes of reporting and evaluating records that pertain to an individual pilot applicant.

*Begin service as a pilot* means the earliest date on which a pilot serves as a pilot flight crewmember or is assigned duties as a pilot in flight for an operator or entity that is subject to the applicability of this part.

*Final disciplinary action record* means a last-in-time record of corrective or punitive action taken by an operator or entity who is subject to the applicability of this part in response to an event pertaining to pilot performance. No disciplinary action is considered final until the operator determines the action is not subject to any pending dispute.

*Final separation from employment record* means a last-in-time record of any action ending the employment relationship between a pilot and an operator or entity who is subject to the applicability of this part. No separation from employment is considered final until the operator determines the separation is not subject to any pending dispute.

*Historical record* means a record that an operator subject to the applicability of Subpart C of this part must generate and maintain in accordance with 49 U.S.C. 44703(h)(4) and must report to the PRD in accordance with 49 U.S.C. 44703(i)(15)(C)(iii).

*PRD Date of Hire* means:

(1) The earliest date on which an individual:

(i) Begins any form of required training in preparation for the individual's service as a pilot on behalf of an operator or entity subject to the applicability of this part; or

(ii) Performs any duty as a pilot for an operator or entity subject to the applicability of this part.

(2) This definition includes both direct employment and employment that occurs on a contract basis for any form of compensation.

*Proxy* means a person who is designated by a responsible person to access the PRD on behalf of an operator, entity, or trustee subject to the applicability of this part for purposes of reporting or retrieving records.

*Record pertaining to pilot performance* means a record of an activity or event directly related to a pilot's responsibilities or completion of the core duties in conducting safe aircraft operations, as assigned by the operator employing the pilot.

*Reporting entity* means an operator, entity, or trustee that is subject to the applicability of subpart C of part 111,

including its responsible person, authorized users, and proxies.

*Responsible person* means the individual identified on the application required by § 111.15 and who meets at least one of the criteria in § 111.15(e).

*Reviewing entity* means operator that is subject to the applicability of subpart B of part 111, including its responsible person, authorized users, and proxies.

#### § 111.15 Application for database access.

(a) Each operator, entity, or trustee to which this part applies must submit an application for access to the PRD in the form and manner prescribed by the Administrator by September 8, 2021.

(b)(1) Each operator or entity to which this part applies that plans to initiate operations after September 8, 2021, must submit the application required by this section to the FAA at least 30 days before the operator or entity initiates aircraft operations.

(2) Within 30 days of appointment by a bankruptcy court as described in § 111.1(b)(6)(i), a trustee must submit the application required by this section or receive delegation of access from the applicable operator or entity.

(c) The application required by this section must contain the following information:

(1) The full name, job title, telephone number, and electronic mail address of the responsible person who is authorized to submit the application in accordance with paragraph (d) of this section;

(2) The name of the operator, entity, or trustee;

(3) The FAA air carrier or operating certificate number, as applicable; and

(4) Any other item the Administrator determines is necessary to verify the identity of all individuals designated by an operator, entity, or trustee to access the PRD.

(d) The application required by this section must be submitted by a responsible person who holds at least one of the following positions, unless otherwise approved by the Administrator:

(1) For each operator that holds an air carrier or operating certificate issued in accordance with part 119 for operations under part 121, a person serving in a management position required by § 119.65(a) of this chapter.

(2) For each operator that holds an operating certificate issued in accordance with part 119 for operations under part 125, a person serving in a management position required by § 125.25(a) of this chapter.

(3) For each operator that holds an operating certificate issued in accordance with part 119 for operations

under part 135 using more than one pilot in its operations, a person serving in a management position required by § 119.69(a) of this chapter.

(4) For each operator that holds an operating certificate issued in accordance with part 119 for operations under part 135 authorized to use only one pilot in its operations, the pilot named in that certificate holder's operation specifications.

(5) For each operator that holds a letter of authorization issued in accordance with § 91.147 of this chapter, an individual designated as the responsible person on the operator's letter of authorization.

(6) For each operator that holds management specifications for a fractional ownership program issued in accordance with 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 is employed by the fractional ownership program and whose identity the Administrator has verified.

(7) For any other operator or entity subject to the applicability of this part, or any trustee appointed in a bankruptcy proceeding, an individual authorized to sign and submit the application required by this section who is employed by the operator and whose identity the Administrator has verified.

(e) Each operator, entity, or trustee must submit to the FAA—

(1) An amended application for database access no later than 30 days after any change to the information included on the initial application for database access occurs, except when the change pertains to the identification or designation of the responsible person.

(2) An amended application identifying another responsible person eligible for database access in accordance with this section, immediately when the operator, entity, or trustee is aware of information that would cause the current responsible person's database access to be cancelled or denied.

(f) Upon approval by the FAA of a request for access to the PRD, each person identified in paragraph (e) is authorized to:

(1) Access the database for purposes consistent with the provisions of this part, on behalf of the operator, entity, or trustee for which the person is authorized, for purposes consistent with the provisions of this part; and

(2) Delegate PRD access to authorized users and proxies in accordance with § 111.20.

#### § 111.20 Database access.

(a) *Delegation.* The responsible person may delegate PRD access to authorized users or proxies for purposes of compliance by the operator, entity, or trustee with the requirements of subpart B or C of this part.

(b) *Terms for access.* No person may use the PRD for any purpose other than to inform a hiring decision concerning a pilot or to report information on behalf of the operator, entity, or trustee.

(c) *Continuing access for authorized users and proxies.* PRD access by authorized users and proxies is contingent on the continued validity of the responsible person's electronic access. If a responsible person's electronic access is cancelled, the database access of authorized users and proxies will be cancelled unless the operator, entity, or trustee submits an amended application for database access and receives FAA approval of that application in accordance with § 111.15.

#### § 111.25 Denial of access.

(a) The Administrator may deny PRD access to any person for failure to comply with any of the duties or responsibilities prescribed by this part or as necessary to preserve the security and integrity of the database, which includes but is not limited to—

(1) Making a fraudulent or intentionally false report of information to the database; or

(2) Misusing or misappropriating user rights or protected information in the database.

(b) The Administrator may deny any operator or entity access to the PRD if the Administrator revokes or suspends the operating certificate or other authorization to operate.

(c) Any person whose access to the database has been denied by the Administrator may submit a request for reconsideration of the denial in a form and manner the Administrator provides. Database access will not be permitted pending reconsideration.

#### § 111.30 Prohibited access and use.

(a) No person may access the database for any purpose other than the purposes provided by this part.

(b) No person may share, distribute, publish, or otherwise release any record accessed in the database to any person or individual not directly involved in the hiring decision, unless specifically authorized by law or unless the person sharing or consenting to share the record is the subject of the record.

(c) Each person that accesses the PRD to retrieve a pilot's records must protect the confidentiality of those records and

the privacy of the pilot as to those records.

#### § 111.35 Fraud and falsification.

No person may make, or cause to be made, a fraudulent or intentionally false statement, or conceal or cause to be concealed a material fact, in—

(a) Any application or any amendment to an application submitted in accordance with the requirements of this part;

(b) Any other record reported to the PRD in accordance with the requirements of this part; or

(c) Any record or report that is kept, made, or used to show compliance with this part.

#### § 111.40 Record retention.

(a) The Administrator will maintain a pilot's records in the PRD for the life of the pilot. Any person requesting removal of the records pertaining to an individual pilot must notify the FAA of the pilot's death in a form and manner acceptable to the Administrator.

(b) The notification 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—Access to and Evaluation of Records

##### § 111.100 Applicability.

(a) This subpart prescribes requirements for the following reviewing entities:

(1) Each operator that holds an air carrier or operating certificate issued by the Administrator in accordance with part 119 of this chapter and is authorized to conduct operations under part 121, part 125, or part 135 of this chapter.

(2) Each operator that holds management specifications to operate in accordance with subpart K of part 91 of this chapter.

(3) Each operator that holds a letter of authorization to conduct air tour operations in accordance with § 91.147 of this chapter.

(b) Compliance with this subpart is required beginning June 10, 2022, except compliance with § 111.105(b)(1) is required beginning December 7, 2021.

(c) If an operator described in § 111.1(b)(4) or an entity described in § 111.1(b)(5) accesses the PRD to review records in accordance with this subpart, the operator or entity must comply with § 111.120.

**§ 111.105 Evaluation of pilot records.**

(a) Except as provided in § 111.115, no reviewing entity may permit an individual to begin service as a pilot until the reviewing entity has evaluated all relevant information in the PRD.

(b) Evaluation must include review of all of the following information pertaining to that pilot:

(1) All FAA records in the PRD as described in § 111.135.

(2) All records in the PRD submitted by a reporting entity.

(3) All motor vehicle driving records obtained in accordance with § 111.110.

(4) The employment history the pilot provides to the PRD in accordance with subpart D of this part. If, upon review of the employment history provided by the pilot and the records described in (b)(2) of this section, a reviewing entity determines that records might be available that the pilot's previous employer has not yet uploaded in the database, the reviewing entity must submit a request to the pilot's previous employer(s) through the PRD to report any applicable records in accordance with the process in § 111.215(b).

**§ 111.110 Motor vehicle driving record request.**

(a) Except as provided in paragraph (d) of this section, no reviewing entity may permit an individual to begin service as a pilot unless the reviewing entity has requested and evaluated all relevant information identified through a National Driver Register (NDR) search set forth in chapter 303 of Title 49 concerning the individual's motor vehicle driving history in accordance with the following:

(1) The reviewing entity must obtain the written consent of that individual, in accordance with § 111.310, before requesting an NDR search for the individual's State motor vehicle driving records;

(2) After obtaining the written consent of the individual, the reviewing entity must submit a request to the NDR to determine whether any State maintains relevant records pertaining to that individual; and

(3) When the NDR search result is returned, if the NDR search result indicates that records exist concerning that individual, the reviewing entity must submit a request for the relevant motor vehicle driving records to each chief driver licensing official of each State identified in the NDR search result.

(b) Each reviewing entity must document in the PRD that the reviewing entity complied with this section, as prescribed at § 111.240.

(c) Upon the Administrator's request, each reviewing entity must provide documentation showing the reviewing entity has conducted the search required by paragraph (a). The reviewing entity must retain this documentation for five years.

(d) This section does not apply to operators described in § 111.100(a)(2) through (3).

**§ 111.115 Good faith exception.**

Reviewing entities may allow an individual to begin service as a pilot without first evaluating records in accordance with § 111.105 only if the reviewing entity—

(a) Made a documented, good faith attempt to access all necessary information maintained in the PRD that the reviewing entity is required to evaluate; and

(b) Received notice from the Administrator that information is missing from the PRD pertaining to the individual's employment history as a pilot.

**§ 111.120 Pilot consent and right of review.**

(a) No reviewing entity may retrieve records in the PRD pertaining to any pilot prior to receiving that pilot's written consent authorizing the release of that pilot's information maintained in the PRD.

(b) The consent required in paragraph (a) of this section must be documented by that pilot in accordance with § 111.310.

(c) Any pilot who submits written consent to a reviewing entity in accordance with § 111.310(c) may request a copy of any State motor vehicle driving records the reviewing entity obtained regarding that pilot in accordance with § 111.110. The reviewing entity must provide to the pilot all copies of State motor vehicle driving records obtained within 30 days of receiving the request from that pilot.

**§ 111.135 FAA records.**

No reviewing entity may permit an individual to begin service as a pilot unless a responsible person or authorized user has accessed and evaluated all relevant FAA records for that individual in the PRD, including:

(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 this chapter.

(c) Records related to enforcement actions resulting in a finding by the Administrator, which was not subsequently overturned, of a violation of title 49 of the United States Code or a regulation prescribed or order issued under that title.

(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 an individual's pre-employment drug and alcohol testing history and other U.S. Department of Transportation drug and alcohol testing including:

(1) Verified positive drug test results;

(2) Alcohol misuse violations, including confirmed alcohol results of 0.04 or greater; and

(3) Refusals to submit to drug or alcohol testing.

**Subpart C—Reporting of Records by Air Carriers and Operators****§ 111.200 Applicability.**

(a) This subpart prescribes the requirements for reporting records to the PRD about individuals employed as pilots and applies to the following reporting entities:

(1) Each operator 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 operator that holds management specifications to operate in accordance with subpart K of part 91 of this chapter.

(3) Each operator that holds a letter of authorization to conduct air tour operations in accordance with § 91.147 of this chapter.

(4) Each operator described in § 111.1(b)(4).

(5) Each entity that conducts public aircraft operations as described in § 111.1(b)(5).

(6) The trustee in bankruptcy of any operator described in this section.

(b) Compliance dates for this subpart are as follows:

(1) For a reporting entity already conducting operations on June 10, 2022, compliance with this subpart is required beginning June 10, 2022.

(2) For a reporting entity that initiates operations after June 10, 2022, compliance with this subpart is required within 30 days of the reporting entity commencing aircraft operations.

(3) Specific compliance dates for historical records are set forth in § 111.255.

**§ 111.205 Reporting requirements.**

(a) Each reporting entity must provide the information required in paragraph (b) of this section for any individual employed as a pilot beginning on the PRD date of hire for that individual.

(b) Each reporting entity must report the following records to the PRD for each individual employed as a pilot:

- (1) All records described in §§ 111.220 through 111.240 generated on or after June 10, 2022;
- (2) All historical records required by § 111.255 of this part, as applicable; and
- (3) The PRD date of hire.

(c) No person may enter or cause to be entered into the PRD any information described in § 111.245.

**§ 111.210 Format for reporting information.**

Each reporting entity must report to the PRD all records required by this subpart for each individual the reporting entity employed as a pilot in a form and manner prescribed by the Administrator.

**§ 111.215 Method of reporting.**

(a) Except as provided in paragraph (b) of this section of this part, all records created on or after June 10, 2022, and required to be reported to the PRD under this subpart must be reported within 30 days of the effective date of the record, or within 30 days of the record becoming final when the record is a disciplinary action record or a separation from employment record.

(b) Each operator conducting an operation described in § 111.1(b)(4), entity conducting a public aircraft operation, operator conducting an air tour operation under § 91.147, or a trustee for such an operator or entity must either comply with paragraph (a) of this section or report and retain pilot records in accordance with all requirements of this paragraph.

(1) Operators, entities, or trustees listed in this paragraph (b) must report a record described in § 111.225, § 111.230, or § 111.235 to the PRD upon receipt of a request from a reviewing entity within 14 days, unless the record memorializes one or more of the following:

(i) A disciplinary action that resulted in permanent or temporary removal of the pilot from aircraft operations as described in § 111.230, which must be reported in accordance with paragraph (a) of this section.

(ii) A separation from employment action resulting from a termination as described in § 111.235, which must be reported in accordance with paragraph (a) of this section.

(2) If no records are available at time of request from a reviewing entity, the

operator, entity, or trustee must provide written confirmation within 14 of the days of the request to the PRD that no records are available.

(3) An operator, entity, or trustee must retain a record eligible to be reported upon request under paragraph (b)(1) of this section for five years from the date of creation, unless the operator or entity already reported that record to the PRD.

(c) For records created before June 10, 2022, and maintained in accordance with PRIA, an operator, entity, or trustee listed in paragraph (b) of this section must continue to maintain all records that would have been provided in response to a PRIA request for five years from the date of creation of the record, and must report that record upon request from a reviewing entity in accordance with paragraph (b).

**§ 111.220 Drug and alcohol testing records.**

(a) Each operator or trustee required to comply with part 120 of this chapter and subject to the applicability of this subpart must report to the PRD the following records for each individual whom the reporting entity has employed as a pilot:

(1) Records concerning drug testing, including—

(i) Any drug test result verified positive by a Medical Review Officer, that the Medical Review Officer and employer must retain in accordance with § 120.111(a)(1) of this chapter and 49 CFR 40.333(a)(1)(ii);

(ii) Any refusal to submit to drug testing or records indicating substituted or adulterated drug test results, which the employer must retain in accordance with 49 CFR 40.333(a)(1)(iii);

(iii) All return-to-duty drug test results verified by a Medical Review Officer, that the employer must retain in accordance with 49 CFR 40.333(a)(1)(ii) or (iii) or (a)(4);

(iv) All follow-up drug test results verified by a Medical Review Officer, which the employer must retain in accordance with 49 CFR 40.333(a)(1)(v).

(2) Records concerning alcohol misuse, including—

(i) A test result with a confirmed breath alcohol concentration of 0.04 or greater, which the employer must retain in accordance with § 120.219(a)(2)(i)(B) of this chapter;

(ii) Any record pertaining to an occurrence of on-duty alcohol use, pre-duty alcohol use, or alcohol use following an accident, which the employer must retain in accordance with § 120.219(a)(2)(i)(D) of this chapter;

(iii) Any refusal to submit to alcohol testing, that the employer must retain in accordance with § 120.219(a)(2)(i)(B) of

this chapter and 49 CFR 40.333(a)(1)(iii);

(iv) All return-to-duty alcohol test results, that the employer must retain in accordance with 49 CFR 40.333(a)(1)(i) or (iii) or (a)(4);

(v) All follow-up alcohol test results, which the employer must retain in accordance with 49 CFR 40.333(a)(1)(v).

(b) Each record reported to the PRD in accordance with paragraph (a) of this section must include the following:

(1) In the case of a drug or alcohol test result:

- (i) The type of test administered;
- (ii) The date the test was administered; and
- (iii) The result of the test.

(2) In the case of alcohol misuse, as described in paragraph (a)(2)(ii) of this section:

- (i) The type of each alcohol misuse violation;
- (ii) The date of each alcohol misuse violation.

(c) In addition to the requirements of §§ 120.113(d)(3) and 120.221(c), operators required to report in accordance with this section must report records within 30 days of the following occurrences, as applicable:

(1) The date of verification of the drug test result;

(2) The date of the alcohol test result;

(3) The date of the refusal to submit to testing; or

(4) The date of the alcohol misuse occurrence.

**§ 111.225 Training, qualification, and proficiency records.**

(a) Except as provided in paragraph (b) of this section, each reporting entity must provide to the PRD the following records for each individual whom the reporting entity has employed as a pilot:

(1) Records establishing an individual's compliance with FAA-required training, qualifications, and proficiency events, which the reporting entity maintains pursuant to § 91.1027(a)(3), § 121.683, § 125.401 or § 135.63(a)(4) of this chapter, as applicable, including comments and evaluations made by a check pilot or evaluator; and

(2) Other records the reporting entity maintains documenting an individual's compliance with FAA or employer-required training, checking, testing, proficiency, or other events related to pilot performance concerning the training, qualifications, proficiency, and professional competence of the individual, including any comments and evaluations made by a check pilot or evaluator.

(b) No person may report any of the following information for inclusion in the PRD:

(1) Records related to flight time, duty time, and rest time.

(2) Records demonstrating compliance with physical examination requirements or any other protected medical records.

(3) Records documenting recent flight experience.

(4) Records identified in § 111.245.

(c) Each record reported to the PRD in accordance with paragraph (a) of this section must include:

(1) Date of the event;

(2) Aircraft type, if applicable;

(3) Duty position of the pilot, if applicable;

(4) Training program approval part and subpart of this chapter, as applicable;

(5) Crewmember training and qualification curriculum and category of training as reflected in either a FAA-approved or employer-mandated training program;

(6) Result of the event (satisfactory or unsatisfactory);

(7) Comments of check pilot or evaluator, if applicable under part 91, 121, 125, or 135 of this chapter. For unsatisfactory events, the tasks or maneuvers considered unsatisfactory must be included.

(d) An operator, entity, or trustee that complies with § 111.215(b) must report records in accordance with paragraphs (a) through (c) of this section upon request, if that operator or entity possesses those records.

(e)(1) Each reporting entity must provide a record within 30 days of creating that record, in accordance with § 111.215(a), unless the reporting entity is an operator, entity, or trustee complying with § 111.215(b).

(2) An operator, entity, or trustee complying with § 111.215(b) must provide records described in this section or a statement that it does not have any records described in this section within 14 days of receiving a request from a reviewing entity.

#### **§ 111.230 Final disciplinary action records.**

(a) Except as provided in paragraph (b) of this section, each reporting entity must provide to the PRD any final disciplinary action record pertaining to pilot performance with respect to an individual whom the reporting entity has employed as a pilot.

(b) No person may report to the PRD any record of disciplinary action that was subsequently overturned because the event prompting the action did not occur or the pilot was not at fault as determined by—

(1) A documented agreement between the employer and the pilot; or

(2) The official and final decision or order of any panel or person with

authority to review employment disputes, or by any court of law.

(c) If a reporting entity receives notice that any disciplinary action record reported to the PRD under paragraph (a) of this section was overturned in accordance with paragraph (b), that entity must correct the pilot's PRD record in accordance with § 111.250 within 10 days.

(d) Each final disciplinary action record that must be reported to the PRD under paragraph (a) of this section must include the following information:

(1) The type of disciplinary action taken by the employer, including written warning, suspension, or termination;

(2) Whether the disciplinary action resulted in permanent or temporary removal of the pilot from aircraft operations;

(3) The date the disciplinary action occurred; and

(4) Whether there are additional documents available that are relevant to the record.

(e) An operator, entity, or trustee complying with § 111.215(b) must report records described in paragraphs (a) through (d) of this section upon request, unless the disciplinary action resulted in permanent or temporary removal of the pilot from aircraft operations. If the disciplinary action resulted in permanent or temporary removal of the pilot from aircraft operations, the operator, entity, or trustee must report the record in accordance with § 111.215(a).

(f)(1) A reporting entity must provide records of final disciplinary actions no later than 30 days after the action is final, unless the reporting entity is an operator, entity or trustee complying with § 111.215(b).

(2) An operator, entity or trustee complying with § 111.215(b) must report records described in this section, or state that it does not have any applicable records, within 14 days of receiving a request from a reviewing entity.

(g) Each reporting entity must:

(1) Retain documents relevant to the record reported under paragraph (a) of this section for five years, if available; and

(2) Provide such documents upon request within 14 days to:

(i) A reviewing entity; or

(ii) The pilot that is the subject of the record.

#### **§ 111.235 Final separation from employment records.**

(a) Except as provided in paragraph (b) of this section, each reporting entity must provide to the PRD the following

records for each individual whom the reporting entity has employed as a pilot:

(1) Records concerning separation 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 separation from employment for each pilot that it employs.

(b) No person may report to the PRD any record regarding separation from employment that was subsequently overturned because the event prompting the action did not occur or the pilot was not at fault as determined by—

(1) A documented agreement between the employer and the pilot; or

(2) The official and final decision or order of any panel or individual given authority to review employment disputes, or by any court of law.

(c) If a reporting entity receives notice that any separation from employment record reported to the PRD under paragraph (a) of this section was overturned in accordance with paragraph (b) of this section, that entity must correct the pilot's PRD record in accordance with § 111.250 within 10 days.

(d) Each separation from employment action record that must be reported to the PRD in accordance with paragraph (a) of this section must include a statement of the purpose for the separation from employment action, including:

(1) Whether the separation resulted from a termination as a result of pilot performance, including professional disqualification;

(2) Whether the separation is based on another reason, including but not limited to physical (medical) disqualification, employer-initiated separation not related to pilot performance, or any resignation, including retirement;

(3) The date of separation from employment; and

(4) Whether there are additional documents available that are relevant to the record.

(e) An operator, entity, or trustee complying with § 111.215(b) must report the records described in paragraphs (a) through (d) of this section upon request, unless the separation from employment action resulted from a termination. If the separation from employment record resulted from a termination, the operator, entity, or trustee must report the record in accordance with § 111.215(a).

(f)(1) A reporting entity must provide any records of separation from employment actions no later than 30 days after the date of separation from

employment is final, unless the reporting entity is an operator, entity, or trustee complying with § 111.215(b).

(2) An operator, entity, or trustee complying with § 111.215(b) must report records described in this section or state that it does not have any applicable records within 14 days of receiving a request from a reviewing entity.

(g) Each reporting entity must:

(1) Retain documents relevant to the record reported under paragraph (a) of this section for five years, if available; and

(2) Provide such documents upon request within 14 days to:

- (i) A reviewing entity; or
- (ii) The pilot that is the subject of the record.

**§ 111.240 Verification of motor vehicle driving record search and evaluation.**

(a) Each operator subject to the requirements of § 111.110 of this part must document in the PRD within 45 days of the pilot's PRD date of hire that the operator met the requirements of § 111.110.

(b) No operator may report any substantive information from State motor vehicle 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 was reported by any individual as part of any 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 Correction of reported information and dispute resolution.**

(a) A reporting entity that discovers or is informed of a perceived error or inaccuracy in information previously reported to the PRD must correct that record in the PRD within 10 days of identification, or initiate dispute resolution in accordance with paragraph (b) of this section.

(b) Each reporting entity must—

(1) Initiate investigation of any dispute within 30 days of determining that it does not agree that the record identified is inaccurate.

(2) Provide final disposition within a reasonable amount of time to any request for dispute resolution made by an individual about PRD records.

(3) Document in the PRD the final disposition of any dispute made by a pilot in accordance with this paragraph (b) and § 111.320.

**§ 111.255 Reporting historical records to PRD.**

(a) Each operator that holds an air carrier certificate issued in accordance with part 119 of this chapter and is authorized to conduct operations under part 121 or part 135 of this chapter must report to the PRD all historical records kept in accordance with PRIA dating from August 1, 2005 until June 10, 2022, in a form and manner prescribed by the Administrator.

(b) Each operator that holds an 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 or that holds management specifications to operate in accordance with subpart K of part 91 of this chapter must report to the PRD all historical records kept in accordance with PRIA dating from August 1, 2010, until June 10, 2022, in a form and manner prescribed by the Administrator.

(c) If an operator required to report historical records to the PRD in accordance with this section is appointed a trustee in a bankruptcy proceeding, the trustee must report the operator's historical records.

(d) Compliance for reporting historical records that date on or after January 1, 2015, is required by June 12, 2023. Compliance for records that date before January 1, 2015, is required by September 9, 2024.

(e) An operator or trustee subject to the applicability of this subpart must maintain all historical records reported to the PRD in accordance with paragraphs (a) and (b) of this section for at least five years after reporting those records.

(f) An operator or trustee is not required to report historical records for any individual who is 99 years of age or older on June 10, 2022.

(g)(1) The Administrator may authorize a request for deviation from paragraph (d) of this section based on a determination that a delay in compliance, due to circumstance beyond control of the operator or trustee reporting historical records, would not adversely affect safety.

(2) A request for deviation from paragraph (d) of this section must include the following information:

- (i) The name of the operator or trustee;
- (ii) The name of the responsible person;
- (iii) The name of the pilot(s) who are the subject of the record;
- (iv) Historical record type for which deviation is requested;
- (v) Date range of records; and

(vi) Justification for the request for deviation, including a description of the circumstance referenced in (g)(1).

(3) Operators and trustees granted deviation in accordance with this paragraph must continue to retain historical records and respond to requests for such records for the term of that deviation in a form and manner prescribed by the Administrator.

(4) The Administrator may, at any time, terminate a grant of deviation issued under this paragraph.

**Subpart D—Pilot Access and Responsibilities**

**§ 111.300 Applicability.**

This subpart applies to each individual who is employed as a pilot by, or is seeking employment as a pilot with, an operator or entity subject to the applicability of this part, as set forth in § 111.1.

**§ 111.305 Application for database access.**

(a) A pilot must request electronic access to the PRD by submitting an application in a form and manner acceptable to the Administrator. Except as provided in § 111.315(c), electronic access to the PRD is required when—

(1) The pilot seeks to review and obtain a copy of that pilot's own comprehensive PRD record;

(2) The pilot gives consent to a particular operator to access that pilot's comprehensive PRD record; or

(3) The pilot exercises 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:

(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 mailing address and telephone number.

(4) An electronic mail address.

(5) Any additional information that the Administrator might request to verify the identity of the pilot requesting access to the PRD.

(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.

**§ 111.310 Written consent.**

(a) Before any operator may access a pilot's records in the PRD, that pilot must apply for access to the PRD in accordance with § 111.305 and provide written consent to the FAA for release of that pilot's records to the operator, in a form and manner acceptable to the Administrator.

(b) Provision of consent must include an affirmation that the employment history of the pilot for five years preceding the date of consent is accurate and complete. If the pilot finds the employment history is not complete, the pilot must update the employment history to list all past employers.

(c) Before an operator submits 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 specific to the NDR search.

#### § 111.315 Pilot right of review.

(a) Once a pilot has received electronic access in accordance with § 111.305, the pilot may access the PRD to review all records pertaining to that pilot.

(b) A pilot who submits written consent to a reviewing entity in accordance with § 111.310(c) may request a copy of any State motor vehicle driving records obtained by the reviewing entity in accordance with § 111.110.

(c) A pilot may review all records contained in the PRD pertaining to that pilot, without accessing the PRD and without obtaining electronic access issued in accordance with § 111.305, upon submission of a form provided by the Administrator to confirm the pilot's identity.

#### § 111.320 Reporting errors and requesting corrections.

A pilot who identifies an error or inaccuracy in that pilot's PRD records must report the error or inaccuracy to the PRD in a form and manner acceptable to the Administrator.

#### § 111.10 [Amended]

■ 6. Effective September 10, 2029, amend § 111.10 by removing the definition of "historical record".

#### § 111.15 [Amended]

■ 7. Effective October 8, 2021, amend § 111.15 by removing paragraph (a) and redesignating paragraphs (b) through (f) as paragraphs (a) through (e).

#### § 111.100 [Amended]

■ 8. Effective June 10, 2022, amend § 111.100 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

■ 9. Effective June 10, 2022, amend § 111.200 by revising paragraph (b) to read as follows:

#### § 111.200 Applicability.

\* \* \* \* \*

(b) Compliance is required for this subpart as follows:

(1) Compliance with this subpart is required within 30 days of the reporting entity commencing aircraft operations.

(2) Specific compliance dates for records described in § 111.205(b)(2) are set forth in § 111.255.

\* \* \* \* \*

■ 10. Effective September 10, 2029, further amend § 111.200 by revising paragraph (b) to read as follows:

#### § 111.200 Applicability.

\* \* \* \* \*

(b) Compliance with this subpart is required beginning within 30 days of the reporting entity commencing aircraft operations.

\* \* \* \* \*

#### § 111.205 [Amended]

■ 11. Effective September 9, 2024, amend § 111.205 by removing paragraph (b)(2) and redesignating paragraph (b)(3) as (b)(2).

■ 12. Effective September 9, 2024, amend § 111.215 by revising paragraph (a) to read as follows:

#### § 111.215 Method of Reporting.

(a) Except as provided in paragraph (b) of this section, all records required to be reported to the PRD under this subpart must be reported within 30 days of the effective date of the record, or within 30 days of the record becoming final when the record is a disciplinary action record or a separation from employment record.

\* \* \* \* \*

#### § 111.215 [Amended]

■ 13. Effective September 8, 2027, further amend § 111.215 by removing paragraph (c).

#### § 111.255 [Removed]

■ 14. Effective September 10, 2029, § 111.255 is removed.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), U.S.C. 106(f), 106(g) 44701(a), 44703, 44711, 46105, and 46301 on or about May 25, 2021.

**Steve Dickson,**

*Administrator, Federal Aviation Administration.*

[FR Doc. 2021-11424 Filed 6-9-21; 8:45 am]

**BILLING CODE 4910-13-P**