

Airline Alert: FAA Publishes Final Rule to Transition to Electronic Pilot Records Database

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Executive Summary: The Federal Aviation Administration (“FAA”) has published a final rule to transition from the Pilot Records Improvement Act (“PRIA”) to the electronic Pilot Records Database. The rule is effective August 9, 2021.

Background on PRIA and the PRD Act: In 1997, the PRIA was enacted in response to a series of aircraft accidents attributed to pilot error. PRIA requires a hiring air carrier to obtain certain records from the FAA, current and previous air carrier employers, and the National Driver Register (“NDR”). In 2010, Congress enacted the Airline Safety and Federal Aviation Administration Act, which included the Pilot Record Database Act (the “PRD Act”). See 49 U.S.C. §44703(i). In the PRD Act, Congress directed the FAA to create an electronic Pilot Records Database (the “PRD”). In 2015, the FAA began placing its records in the PRD.

The FAA's Final Rule: On June 10, 2021, the FAA published a final rule amending Title 14 of the Federal Aviation Regulations (the “FARs”) to add a new part 111 addressing the Pilot Records Database. The final rule is intended to transition from the PRIA requirements to the PRD, as required by the PRD Act. The final rule becomes effective on August 9, 2021.

The final rule requires all 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 under part 91 or part 125, and governmental entities conducting public aircraft operations (collectively referred to as “reporting entities”) to report relevant records to the PRD pursuant to the new 14 CFR part 111. Part 119 certificate holders, fractional ownership programs and persons conducting air tour operations must also review records in the PRD prior to allowing an individual to begin service as a pilot. The final rule refers to these entities as “reviewing entities.”

The final rule does not impose new substantive recordkeeping requirements on air carriers, but it does, in some circumstances, change the scope of the records required to be reported.

While records are being populated in the PRD, carriers are required to continue to comply with PRIA. For records created before June 10, 2022, a reporting entity must continue to maintain all PRIA-required records for five years from the date the record was created. 14 CFR §111.215(c). A reporting entity must respond to PRIA requests for historical records or, in the alternative, report those records to the PRD for the requesting entity to review. By **September 9, 2024**, the FAA intends to complete the

transition from PRIA to the PRD.

Accessing the PRD: Each operator must submit an application for access to the PRD by **September 8, 2021**. 14 CFR §111.15(a). The application for access to the PRD must contain the name of a designated responsible person(s) who will manage records and be responsible for all actions taken within the PRD for a particular operator. 14 CFR §111.15(c). Section 111.15(d) contains a list of job titles/descriptions that are allowed to serve as the designated responsible person(s). No person may use the PRD for any purpose other than to inform a hiring decision regarding a pilot or to report information on behalf of a reporting entity. 14 CFR §111.20. Records must remain in the PRD until the FAA receives official notice of a pilot's death or an FAA audit reveals that 99 years have passed since the date of birth on record for a particular pilot. 14 CFR §111.40.

Access to and Evaluation of PRD Records: Reviewing entities must review a pilot's records in the PRD prior to permitting the pilot to begin service as a required flight crewmember. 14 CFR §111.105. A reviewing entity must review (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; and (4) the employment history the pilot provides to the PRD in accordance with subpart D of the PRD regulations. 14 CFR §111.105. If, upon review of a pilot's employment history, a reviewing entity determines that records may be missing from the PRD, the reviewing entity must submit a request to the pilot's previous employer through the PRD to report any applicable records. 14 CFR §111.105(4). To access a pilot's records, the reviewing entity must obtain consent from the pilot (documented by the pilot in accordance with §111.310). 14 CFR §111.120.

Reviewing entities must begin using the PRD to evaluate FAA records on **December 7, 2021**. 14 CFR §111.100(b). Reviewing entities must begin using the PRD to evaluate all other records by **June 10, 2022**. 14 CFR §111.100(b).

Reporting of Records by Air Carriers and Operators:

» **Records Generated On or After June 10, 2022:**

Each reporting entity must report to the PRD the following records for each individual employed as a pilot:

- » Drug and alcohol testing results in accordance with §111.220;
- » Testing, qualification, and proficiency records in accordance with §111.225, including:
 - » Records establishing a pilot's compliance with FAA-required training, qualification, and proficiency events that the reporting entity maintains pursuant to §91.1027(a)(3), §121.683, §125.401, or §135.63(a)(4). This requirement includes comments and evaluations made by a check pilot or

evaluator.

- » Other records a reporting entity maintains documenting a pilot's compliance with FAA or employer-required training, checking, testing, or other events related to pilot performance.
- » Final disciplinary action records in accordance with §111.230.
 - » Reporting entities must provide to the PRD any final disciplinary action record pertaining to pilot performance. The report must include the type of disciplinary action taken, whether it resulted in removal of the pilot from aircraft operations, the date of the disciplinary action, and whether there are any additional documents available that are relevant.
 - » The final rule defines “record pertaining to pilot performance” as “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.” 14 CFR §111.10.
 - » A reporting entity must retain documents relevant to a final disciplinary record for five years and provide such documentation upon request within 14 days to (1) a reviewing entity or (2) the pilot that is the subject of the record.
 - » No reporting entity may report to the PRD any record of disciplinary action that is subsequently overturned because the event causing the action either 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 final decision of any person or panel with the authority to review employment disputes or any court of law.
 - » In the final rule, the FAA notes that, if a documented agreement between the employer and the pilot does not contain an affirmative finding that the pilot was not at fault, i.e. the agreement leaves unresolved whether the pilot was at fault, the final disciplinary action is not considered to be overturned and must be reported.
 - » The final rule notes that a reporting entity must only report “final” disciplinary actions in the PRD. “[I]nternal resolution processes that precede the record being final must be complete prior to entry of that disciplinary action in the PRD.”
 - » A reporting entity must provide records to the PRD regarding final disciplinary actions no later than 30 days after the action is final.
- » Final separation from employment records in accordance with §111.235.
 - » Reporting entities must provide to the PRD records concerning separation from employment kept pursuant to §91.1027(a)(3), §121.683, §125.401, or §135.63(a)(4).
 - » Reporting entities must provide to the PRD records pertaining to pilot

performance kept concerning separation from employment.

- » Each separation from employment record reported in the PRD must include a statement regarding the purpose of the separation including (1) whether the separation resulted from a termination as a result of pilot performance; (2) whether the separation is based on another reason; (3) the date of separation; and (4) whether there are additional documents available relevant to the record.
- » No entity should report to the PRD any record regarding separation of employment that was subsequently overturned (using the same language as used with respect to final disciplinary action records).
- » A reporting entity must retain documents relevant to a final separation from employment for five years and provide such documentation upon request within 14 days to (1) a reviewing entity or (2) the pilot that is the subject of the record.
- » A reporting entity must provide records of any separation from employment action no later than 30 days after the date of separation from employment is final.
- » Verification of motor vehicle driving record search and evaluation pursuant to §111.240: each operator subject to the requirements of §111.110 must document in the PRD within 45 days of a pilot's PRD date of hire that the operator met the requirements of §111.110. However, no operator may report any substantive information from motor vehicle records in the PRD.
- » Reporting entities must enter records created after June 10, 2022 into the PRD within 30 days of the effective date or within 30 days of the record becoming final when the record is a disciplinary record or separation from employment record. 14 CFR §111.215(a).
- » No reporting entity may report pilot records in the PRD that were reported by an individual as part of an Aviation Safety Action Program (ASAP) or other approved Voluntary Safety Reporting Program. 114 CFR §11.245.
- » Reporting entities must begin submitting contemporaneous records on **June 10, 2022**. 14 CFR §111.200(b)(1).
- » **Historical Records Generated Before June 10, 2022:**
- » Each part 119 operator authorized to conduct operations under part 121 or part 135 must report to the PRD all historical records kept in accordance with PRIA from August 1, 2005 through June 10, 2022. 14 CFR §111.255(a).
- » Each part 119 operator authorized to conduct operations under part 125 or that holds management specifications to operate in accordance with subpart K or part 91 must report all historical records kept in accordance with PRIA dating from August 1, 2010 until June 10, 2022. 14 CFR §111.255(b).
- » Operators required to report historical records must enter 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**. 14 CFR §111.255(d).

- » An operator must maintain all historical records reported to the PRD for at least five years after reporting those records to the PRD. 14 CFR §111.255(e).

Pilot Access and Responsibilities: Pursuant to §111.310, before a reviewing entity may access a pilot's records in the PRD, the pilot must apply for access to the PRD and provide written consent to the FAA for release of the pilot's records to the reviewing entity.

Advisory Circular 120-68-J: The FAA is currently finishing a new advisory circular on the PRD regulations. The advisory circular should be published soon, and it will likely contain practical guidance regarding compliance with the PRD regulations.

If you have any questions regarding this Alert or other labor or employment issues impacting the airline industry please contact the author, Sarah Aufdenkampe, saufdenkampe@fordharrison.com or any other member of our Airlines practice group. Of course, you can also contact the FordHarrison attorney with whom you usually work.