



Now Less Private: Business Aircraft Operations' Pilot Records

By Gregory J. Reigel

Business aircraft operators' private flight operations under 14 C.F.R. part 91 (Part 91) are now a little less private. Under newly promulgated 14 C.F.R. part 111 (Part 111), certain Part 91 business aircraft operators must now comply with a number of requirements under the Pilot Records Improvement Act (PRIA), as amended, and the electronic Pilot Records Database (PRD) regulations. These operators must now disclose, upon request, records they maintain with respect to their pilot hiring, training and checks, and employment termination.

Specifically, aircraft operators conducting flights under Part 91 using two or more aircraft in furtherance of, or incidental to, their business where the aircraft either (a) require a type rating or (b) are turbine helicopters (business aircraft operators) are now subject to several of the requirements under PRIA and the PRD. In order to understand how the sharing of pilot histories, which had previously only been applicable to information maintained by air carriers, came to apply to more private flight operations, it is helpful to look at the legislative and regulatory history that has led up to what these operators are facing today.

PRIA History

PRIA was enacted in 1997 in response to a series of accidents attributed to pilot error.¹ The ensuing discussion revealed that much of a pilot's history was not shared with hiring airlines because requests were never made of prior employers or because of employer liability concerns around sharing negative employment records. Before PRIA, employers were routinely advised by their counsel to limit or avoid giving employee references and to simply provide facts such as date of hire, position held, and date of employment termination.

Congress enacted PRIA to ensure that air carriers are able to adequately investigate each pilot's employment background and other information pertaining

to pilot performance before making a hiring decision and allowing that individual to serve as a flight crew member in air carrier operations. Importantly, the requirements of PRIA initially applied only to air carriers—that is, aircraft operators certificated under 14 C.F.R. part 119 (Part 119) and authorized to conduct 14 C.F.R. part 121 (Part 121) or 14 C.F.R. part 135 (Part 135) operations. Originally and for two decades, PRIA did not apply to Part 91 operators.

Under PRIA,² prior to allowing an individual to begin service as a pilot, air carriers must (i) make certain requests for pilot-related records from the Federal Aviation Administration (FAA) and the pilot's employers during the five-year period preceding the date of the employment application and (ii) receive that information. The records that must be requested and received include those pertaining to the individual's performance as a pilot and that relate to:

- the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman;
- any disciplinary action taken with respect to the individual that was not subsequently overturned; and
- any release from employment or resignation, termination, or disqualification with respect to employment.

Air carriers must also request information regarding the pilot applicant from the FAA and the National Driver Register (NDR).

When PRIA was first enacted, (i) a pilot candidate would sign a number of paper forms consenting to the release of information, and (ii) the air carrier would then send the appropriate form to the FAA, previous employers, and the NDR. If the air carrier received responsive information, the air carrier would have the opportunity to review the information before making hiring decisions regarding flight crew members.³ Although PRIA did not expressly require the air carrier to review and consider the information received, the expectation was that the air carrier would evaluate the information received when making its decision about whether to hire the pilot.

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The pilot candidate also had a right to receive copies of the records produced in response to the PRIA request.⁴ The air carrier requesting the records was also obligated to provide the pilot applicant with a reasonable opportunity to submit written comments to correct any inaccuracies the individual identified in the records before the air carrier made a final hiring decision.⁵ As with other regulatory violations, if an air carrier failed to comply with PRIA requirements (e.g., by not requesting, maintaining, or producing records; not providing the pilot applicant with an opportunity to correct inaccuracies; etc.), the air carrier was subject to FAA enforcement action.⁶

To assist air carriers and others with PRIA compliance, on May 8, 1997, the FAA issued Advisory Circular (AC) 120-68—Pilot Records Improvement Act of 1996, as amended.⁷ AC 120-68A provided information and standard forms for air carriers to use when complying with their PRIA obligations.⁸

PRD History

The Airline Safety and Federal Aviation Administration Extension Act of 2010 (the Act)⁹ amended PRIA to require the FAA to create a pilot records database containing various types of pilot records pro-

vided by (i) the FAA, air carriers, and other employers of pilots; and (ii) the NDR. Under the Act, air carriers are to have access to the PRD to review and evaluate a pilot's records before allowing that individual to begin service for them as a pilot. The FAA must maintain a pilot's records in this database until it receives notice that the pilot is deceased.

The FAA was slow in creating the required database. Therefore, when Congress enacted the FAA Extension, Safety, and Security Act of 2016, it included a provision that required the FAA to establish the electronic PRD by April 30, 2017.¹⁰ In 2010, the FAA issued AC 120-68E—Pilot Records Improvement Act of 1996, which, together with subsequent updates, provides guidance regarding PRIA compliance until the PRD is fully implemented.¹¹

PRD Notice of Proposed Rulemaking

On March 30, 2020, three years after the statutory deadline for establishing the electronic PRD, the FAA published the PRD notice of proposed rulemaking (NPRM) in the *Federal Register*.¹² As noted, the original intent of the Act was to enhance safety by

improving access to pertinent pilot information during the hiring process for select aircraft operators. Nevertheless, the NPRM proposed new and unexpected mandates for business aircraft operators that, since the passage of PRIA, had not been subject to the reporting requirements of the law.

The National Business Aviation Association (NBAA), many of its member companies, and other aviation trade associations submitted comments on the NPRM. The comments vehemently objected to the breadth of the NPRM as applied to Part 91 operators, new and onerous proposed record-keeping requirements, and other areas where it appeared that the FAA was acting beyond congressional intent.

In addition, the NBAA specifically objected to the FAA's use, in the proposed rule text, of "corporate flight department," a term that does not appear in the Act or in the Federal Aviation Regulations (FAR). The NBAA maintained that the FAA's creation of the term in a regulatory context had the potential to create a class of operator that could be extended to other areas of the FAR. The NBAA contended that the new definition did not improve safety for affected operators.

The NBAA further objected to the NPRM's extension of the record-reporting requirement (including currency, adverse training events, termination of employment, and disciplinary records) to corporate flight departments. Because language contained in multiple places in the Act referenced "existing" record-keeping requirements, the NBAA argued that was evidence that Congress did not intend to expand record keeping beyond air carriers.

The NBAA was also concerned about unintended consequences that would result from the NPRM's mandatory reporting of information not required by the Act. One example, discussed below, is the detrimental effect on safety that could result from including check pilot or instructor comments in the PRD.

PRIA/PRD Final Rule

On June 10, 2021, the FAA published the PRIA/PRD final rule establishing Part 111.¹³ Part 111 contains four subparts regulating various aspects of PRIA and the PRD.

- Subpart A contains the general requirements of Part 111, including the requirements for submitting an application for database access and other details about user roles within the PRD.¹⁴
- Subpart B provides requirements for operators reviewing records—in particular, details regarding employer obligations during the records-review process.¹⁵
- Subpart C contains provisions for record reporting, including those indicating which records to report and timelines for reporting records.¹⁶
- Subpart D provides requirements and information regarding pilots' access to the PRD.¹⁷

The NBAA's comments vehemently objected to the breadth of the NPRM as applied to Part 91 operators; new, onerous record-keeping requirements; and other areas in which FAA was arguably acting beyond congressional intent.

Part 111 requires Part 119 certificate holders, Part 91K fractional operators, and 14 C.F.R. § 91.147 air tour operators to submit information to, and review information in, the PRD. While the PRIA/PRD final rule did not retain the corporate flight department term from the NPRM, it did subject business aircraft operators to the PRD. These operators include those who operate two or more aircraft in furtherance of or incidental to a business solely under Part 91 where the aircraft are either (1) standard-airworthiness aircraft requiring a type rating under 14 C.F.R. § 61.31(a) or (2) turbine-powered rotorcraft.

As a result, business aircraft operators, public aircraft operators,¹⁸ and certain 14 C.F.R. part 125 (Part 125) operators must maintain reportable records and report them upon request. However, unlike Part 119 certificate holders, fractional operators, and air tour operators, they are not required to review pilot records via the PRD prior to putting an individual into service as a pilot.¹⁹

The timing requirements for compliance with the new PRD rules are complicated, and attention to the details of the rules is very important for a business operator to timely satisfy the requirements imposed by the rule. Here are important PRD deadlines.

- Compliance with subpart B of Part 111 is required beginning June 10, 2022, except for the air carriers' review and evaluation requirements in section 111.105(b)(1), for which compliance is required beginning December 7, 2021.
- Compliance with subpart C is required beginning June 10, 2022. Under section 111.255, compliance for reporting historical records dated on or after January 1, 2015, is required by June 12, 2023.
- Compliance for reporting historical records dated before January 1, 2015, is required by September 9, 2024.
- Concurrent compliance with PRIA requirements will end on September 9, 2024. As a result, operators who must obtain and review pre-hire records will need to use both PRD and PRIA processes until that time.

The PRD will identify the records that 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.

PRD Reporting

So, how does PRIA/PRD work for Part 91 business aircraft operators?

Access to the PRD

Covered Part 91 business aircraft operators must submit an application to access the PRD by September 8, 2021, or at least 30 days before the operator initiates

aircraft operations.²⁰ Application is made through the FAA's PRD website.²¹ The application must include the name of the operator and the full name, job title, telephone number, and email address of the "responsible person."²²

The responsible person is "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."²³ Once approved, the responsible person may access the PRD on behalf of the Part 91 business aircraft operator and may delegate PRD access to authorized users and proxies.²⁴ Any change to the application information requires an amendment within 30 days of the change.²⁵

Reporting to the PRD

Part 91 business aircraft operators already operating on June 10, 2022, are required to submit their responses to PRIA requests using the PRD after that date or, if operations are commenced after June 10, 2022, within 30 days of commencing operations.²⁶

Within 14 days of receiving a request for pilot information, Part 91 operators subject to the rule will be required to provide to the PRD information on:

- drug and alcohol testing (if applicable);²⁷
- pilot training, qualifications, and proficiency;²⁸
- final disciplinary actions related to pilot performance;²
- final separation from employment;³⁰ and
- certain historical data (which is voluntary).³¹

However, Part 91 business aircraft operators will only have to submit this data if they possess the information.³² If they do not possess responsive records, Part 91 business aircraft operators must provide a statement to that effect.³³ Once produced, this information will be available for review by pilots who may access their own records and air carriers that have a pilot's consent to access those same records.

Part 91 business aircraft operators are not required to review or access the PRD when they hire pilots.³⁴ However, if an operator is going to review the PRD records for a pilot, the operator must obtain the pilot's consent.³⁵ The FAA will maintain the PRD records for the life of the pilot.³⁶

If the Part 91 business aircraft operator discovers or is advised of an alleged error or inaccuracy in information previously reported to the PRD, it must correct that

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record in the PRD within 10 days or initiate an investigation to address and resolve any dispute over the accuracy of the record within 30 days.³⁷ In the latter circumstance, upon completion of the investigation, the record must be corrected in the PRD, or, if the operator determines that no correction is required, the disposition of the investigation must be reported to the PRD.³⁸

Concerns

Part 111's requirements create a potentially significant new administrative burden for Part 91 business aircraft operators. And because Part 111 does not impose any new records-creation obligation on Part 91 operators, some operators, in order to reduce their administrative burden, may choose to limit the records they create or collect related to pilot training, currency, qualifications, and professional competence. However, the absence of such records data could be a detriment to an operator in situations where those types of records would otherwise assist or support the operator in making employment decisions regarding the pilot.

It is also possible that records that once included explanations, observations, or other feedback for the benefit or education of the pilot (or maybe the operator) (e.g., comments by an examiner or check airman) might now be limited to simply documenting "satisfactory" or "unsatisfactory" to avoid future adverse impact on the pilot. The absence of this commentary could result in a less effective training or checking event, in addition to negating the benefits otherwise intended by the law.

The PRD obligations could also create or increase liability exposure for Part 91 business aircraft operators. Failure to comply with PRIA/PRD requirements could subject the operator to FAA legal enforcement action. An employer could be exposed to a civil lawsuit brought by a former pilot employee regarding the information either reported or not reported to the PRD. And an operator's PRIA/PRD compliance could certainly factor into an employer's or operator's third-party liability exposure arising from an accident involving a pilot where incomplete or inaccurate pilot information was, or perhaps wasn't, reported as required.

It will be important for covered Part 91 business aircraft operators to ensure that their reporting is within the PRD parameters. Reporting too much, too little, or inaccurate information, or failing to comply with the PRD's correction process when an error is reported, could result in having to defend against a former pilot employee's lawsuit under state employment laws.

Conclusion

Part 91 business aircraft operators subject to Part 111 need to review the regulations to understand their new reporting obligations. In addition to the new regulations, FAA letters of interpretation issued by the FAA's Office of the Chief Counsel discussing PRIA,³⁹

FAA Advisory Circular 120-68J,⁴⁰ and the FAA's PRD website⁴¹ are also recommended reading to understand the PRIA/PRD obligations. Finally, covered Part 91 business aircraft operators should review their record-keeping practices to determine not only what records need to be reported but also what records they may or may not want to create in the first place.

Endnotes

1. Public L. No. 105-142, 111 Stat. 2650 (Dec. 5, 1997). Clarifying amendments made to PRIA in Public L. No. 105-142, 111 Stat. 2650 (Dec. 5, 1997), identified a number of accidents as evidence supporting the enactment of PRIA.
2. 49 U.S.C. § 44703(h)-(j).
3. Interestingly, PRIA stated that the employer was required to "request and receive" the information. PRIA did not expressly state that the air carrier was required to evaluate the information received, other than in the context of "Pilots of Certain Small Aircraft." In that context, PRIA stated that an air carrier who will employ a pilot who will be flying aircraft with a maximum payload capacity of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation "shall obtain and evaluate such information." 49 U.S.C. § 44703(h)(14).
4. *Id.* § 44703(h)(6).
5. *Id.* § 44703(h)(9).
6. Compliance and Enforcement Program, FAA Order No. 2150.3A (issued Dec. 14, 1988), as subsequently changed; FAA Compliance and Enforcement Program, FAA Order No. 2150.3B (Oct. 1, 2007), as subsequently changed.
7. FED. AVIATION ADMIN., ADVISORY CIRCULAR 120-68—PILOT RECORDS IMPROVEMENT ACT OF 1996 (MAY 8, 1997).
8. The FAA has periodically updated AC 120-68; the current iteration, AC 120-68J, now addresses both PRIA and the PRD.
9. Public L. No. 111-216, 124 Stat. 2348 (2010).
10. Public L. No. 114-190, § 2101 (July 15, 2016).
11. FED. AVIATION ADMIN., ADVISORY CIRCULAR 120-68E—PILOT RECORDS IMPROVEMENT ACT OF 1996 (JULY 2, 2010).
12. 85 Fed. Reg. 17,660 (Mar. 30, 2020).
13. 86 Fed. Reg. 31,006 (June 10, 2021).
14. 14 C.F.R. §§ 111.1 to 111.40.
15. *Id.* §§ 111.100 to 111.135.
16. *Id.* §§ 111.200 to 111.255.
17. *Id.* §§ 111.300 to 111.320.
18. *Id.* § 111.1(b)(5). While the PRD does not apply to branches of the United States Armed Forces, National Guard, or reserve component of the Armed Forces, operators who are contractors for such excluded entities must comply with the PRD. *See, e.g.*, Letter from Fed. Aviation Admin. Office of the Chief Counsel to Mark A. Dombroff, Att'y (March 4, 2022)(legal interpretation on applicability of PRD to contractors who perform public aircraft operations on behalf of entities excluded from PRD compliance).
19. *Id.* § 111.1.
20. *Id.* § 111.15(b)(1).
21. *See Pilot Records Database*, FAA.gov, <https://www.faa.gov>.

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gov/regulations_policies/pilot_records_database (last visited Mar. 6, 2022).

22. 14 C.F.R. § 111.15(c)

23. *Id.* § 111.15(d).

24. *Id.* § 111.15(f).

25. *Id.* § 111.15(e).

26. *Id.* § 111.200(b)(1).

27. *Id.* § 111.220.

28. *Id.* § 111.225.

29. *Id.* § 111.230.

30. *Id.* § 111.235.

31. *Id.* § 111.255.

32. *Id.* § 111.215(b)(2).

33. *Id.*

34. *Id.* § 111.110.

35. *Id.* § 111.120.

36. *Id.* § 111.40.

37. *Id.* § 111.250.

38. *Id.*

39. *See, e.g.*, Letter from Fed. Aviation Admin. Office of the Chief Counsel to Jason T. Lorenzon, Att’y (Sept. 12, 2014), (legal interpretation discussing records pertaining to the individual’s performance as a pilot), https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/Data/interps/2014/Lorenzon-DeCola_&_Lorenzon_2014_Legal_Interpretation.pdf.

40. FED. AVIATION ADMIN., ADVISORY CIRCULAR 120-68J—PILOT RECORDS DATABASE AND PILOT RECORDS IMPROVEMENT ACT (June 28, 2021).

41. *Pilot Records Database, supra* note 20.