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Docket Operations, M-30
U.S. Department of Transportation
1200 New Jersey Ave, SE
Room W12-140
West Building, Ground Floor
Washington, DC 20590-0001

RE: Docket No.: FAA–2020–0246; Pilot Records Database

The National Business Aviation Association (NBAA) represents the interests of 12,000 members who own, operate, and maintain business aircraft, including those companies who provide pilot training, in support of company travel needs. NBAA holds safety as a core value and we work closely with the FAA, including participating in the Pilot Records Database (PRD) Aviation Rulemaking Committee (ARC), to ensure that regulatory and policy development reflects input from affected stakeholders. On behalf of NBAA and the business aviation community, we submit these comments in response to the FAA's Pilot Records Database Notice of Proposed Rulemaking (NPRM).

We developed these comments to focus on the content of the proposal and to provide feedback to FAA's many questions embedded within the NPRM.

Summary

NBAA's comments reflect a review of the entirety of the FAA's proposal. Additionally, it is important that we highlight elements of this effort that we believe have the greatest potential for significant negative consequences to the business aviation industry.

First, the FAA's attempt to define a *"corporate flight department"* lacks any Congressional direction, is rooted in a false and baseless belief that "*corporate flight departments"* are "gateway operators" that are likely to provide pilots employment on their journey to a career with the scheduled airlines and its codification would create significant confusion in the industry, discouraging compliance. The addition of this definition will not improve safety for affected operators. We would suggest that the FAA abandon finalizing this definition.

Next, the Agency's substantial new recordkeeping and reporting requirements for certain operations conducted under FAR Part 91 exceeds statutory authority provided by Congress and fails to accurately estimate the burdens of compliance for these affected operators. The FAA offers no identifiable safety benefit and NBAA is unable to identify any positive safety outcome for Part 91 operators facing compliance with these measures. We recommend that the FAA

continue to support existing record request processes for other operators the FAA seeks to include in the PRD.

Finally, the FAA's proposal to include comments from check pilots during pilot training will have a significant chilling effect on safety and on documenting opportunities for pilot improvement. Additionally, this requirement contradicts previous FAA positions on the value of protecting check pilot comments during training and is contrary to FAA's broader efforts to de-identify data in support of safety improvement. We encourage the FAA to remove check pilot comments from the list of data required for the PRD.

Comments

NBAA believes that including certain Part 91 operators in this proposal exemplifies regulatory overreach. While the language contained in the enabling legislation contemplates "other persons," nowhere does Congress suggest that such an expansive growth of mandated reporting from Part 91 operations is warranted. Part 91 operators today do not have the same recordkeeping requirements as air carriers, reflecting the Agency's proportional regulatory approach to non-commercial operations. Additionally, Part 91 operators today effectively respond to the rare request made in accordance with the Pilot Records Improvement Act (PRIA) when a former employee seeks employment with an air carrier. In fact, our member survey data suggests that, on average, Part 91 operators within the FAA's proposed definition of a corporate flight department receive less than one PRIA request every two and a half years. NBAA urges the FAA to facilitate the continued use of PRIA feedback for Part 91 operators.

Additionally, we believe that the FAA has failed to provide industry and affected stakeholders sufficient time to analyze and provide feedback on this substantial proposal. This lack of additional time in the middle of this unprecedented COVID-19 crisis is disrespectful to many stakeholders in the regulatory process. After over nine years of regulatory development by the FAA to produce this proposal, allowing us only 90 days to consider the impact of this NPRM during the most significant crisis that aviation has ever faced is quite frankly inexcusable. Rushing through the public comment period, glossing over Administrative Procedures Act requirements and denying the public the opportunity to thoroughly evaluate the proposed rule risks an already fragile aviation job market and reflects a casual consideration of safety impacts. The significant number of requests for information by the FAA and frequent occurrences of contradictory guidance, preamble and proposed rules included in this NPRM suggests that the Agency should have released this proposal as an Advanced Notice of Proposed Rulemaking.

NBAA acknowledges that the rulemaking process limits the interaction the Agency may have with industry. An additional opportunity to provide the FAA with feedback through a

Supplemental NPRM or public hearing might result in a more effective rulemaking effort and could alleviate some industry concerns.

NBAA recommends that the FAA issue a Supplemental Notice of Proposed Rulemaking following the close of this comment period to reflect industry input on the Agency's substantial list of questions.

Scope Exceeds Statutory Authority

NBAA believes the proposed rule exceeds statutory authority and we are disappointed that the NPRM did not closely follow the recommendations of the ARC and other industry recommendations to meet the statutory requirements while imposing minimal new burdens.

Rulemaking is governed by the Administrative Procedure Act, 5 U.S.C. §§551 et seq. (APA). The APA directs reviewing courts to, inter alia, "hold unlawful and set aside agency action, findings, and conclusions" that violate the law or are otherwise "arbitrary and capricious." [cite]. Courts are authorized to review agency action in a number of contexts, including examining the statutory authority for an agency's action. A reviewing court will invalidate agency choices that exceed these limits. In addition, a court may examine an agency's discretionary decisions, or discrete actions with legal consequences for the public. As such, analysis of any proposed rule must begin with the authorizing statute, here the Airline Safety and Federal Aviation Administration Extension Act of 2010, P.L. 111-216, August 1, 2010, codified at 49 U.S.C. 44703(h)-(j) ("the PRD Act" or "Act").

The PRD Act directs that "The Administrator shall establish an electronic database …. containing the following records." Section 203(b)(2). The records to be kept are broken into two parts: those maintained by the Administrator [Section 203(b)(2)(A)] and those from "any air carrier or other person …. that has employed an individual as a pilot …. under regulations set forth in" various sections of Parts 121 and 135 of the Federal Aviation Regulations. [Section 203(0(2)(B)]. The proposed rules addressed herein rely upon the APA and the PRD Act as their authority for promulgation. Nowhere in the Act, however, is there any reference to a "corporate flight department" - a newly created category of operator that also appears nowhere else in the FAR's or in any other statute enacted by Congress. Similarly, the Act does not address air tour operators operating under FAR Part 91. Nonetheless, the proposed rule creates requirements for those types of operators – even though they are not subject to FAR Parts 121 or 135 as discussed in the Act. Since a "corporate flight department" – a term which can have any number of meanings and applications – and air tour operators are not addressed in the PRD Act, the proposed rule exceeds the FAA's statutory rulemaking authority when it creates requirements for those operators.

The FAA established an ARC expressly for the purpose of forming a consensus perspective with industry and government working collaboratively. Contrary to the statements in the NPRM, the PRD ARC went to great lengths to consider Congress' intent in P.L. 111-216, which led to this proposal, as well as existing regulation and policy to write recommendations that meet the intent of the law while remaining consistent with existing regulation.

Instead of following many of the ARC's consensus recommendations, the FAA took almost nine years to draft proposed regulations that significantly expand the scope of affected operators. This not only reaches far beyond Congressional intent, but it also, according to NBAA's survey responses, will neither add useful information to the hiring process nor improve safety.

NBAA recommends the FAA remove provisions that implement additional recordkeeping requirements from the proposed regulation intended for corporate flight departments and 91.147 operators.

FAA PRD ARC Recommendations on Part 91

The PRD ARC carefully considered the appropriate role of "others," including Part 91 operators, in the context of the legislative language and intentions of Congress, regardless of FAA statements to the contrary, and recommended the FAA limit database access by not requiring Part 91 operators to input data to the PRD. The ARC report explained:

> *"Part 91 aircraft operators include a vast array of operations, including business aircraft, fractional ownership programs, police departments, emergency medical service providers, and pipeline, surveying, banner towing, and parachute jump operations, among a host of others. These operators are not required to maintain records that would provide any meaningful or beneficial insight into a pilot's proficiency or abilities as they would pertain to employment at an air carrier. A pilot logbook is often the only record of proficiency maintained at Part 91 operators."*

Further, the ARC pointed out records of FAA certificate actions, including airman check rides, instrument ratings, type ratings and certificate enforcement actions will be contained in the PRD regardless of whether the pilot flies private Part 91 operations or commercial operations.

The ARC cautioned the FAA against assuming pilots of Part 91 operators of a certain fleet size are likely to transition to air carrier careers, adding the number of pilots who will transition to air carrier careers is difficult or impossible to identify or even quantify.

NBAA agrees that Part 91 operators likely to employ a pilot that might eventually transition to employment at an air carrier is a difficult group to identify or define. This cannot be defined based on the number of aircraft the operator utilizes; the size, weight, or rating requirements of an aircraft; or the types of missions the aircraft typically conducts, as none of those distinctions can be linked to a pilot's likelihood of obtaining future employment at an air carrier.

The FAA's proposal to define and include this group in the rule due to their nature as "gateway operator" is arbitrary and capricious. The NPRM indicates this is not based on quantitative analysis.

The PRD ARC considered, but ultimately rejected, any requirement that Part 91 operators enter either future or historical records into the PRD. The ARC expressed concerns about the burden to Part 91 operators and the potential security risks of including Part 91 operators in the PRD requirements. As a general safeguard, the ARC recommended limiting database access by additional "others" the law did not intend to capture:

> *"To require all Part 91 operators to submit data to the PRD would be a significant burden to this segment of the aviation community. It may also jeopardize the security and validity of the PRD by giving PRD access to the tens of thousands of Part 91 operators which could be required to submit data."*

NBAA agrees that to require all Part 91 operators to submit data to the PRD would not only be a significant burden to this segment of the aviation community, but it may also jeopardize the security and validity of the PRD by giving PRD access to thousands of Part 91 operators which could be required to submit data.

Given the nature of their operations, Part 91 operators rarely maintain the types of training and other records that might offer value to prospective hiring air carriers. This fact is acknowledged by the FAA in its current AC 120–68E, which states, in relevant part:

> "*We recognize that most 14 CFR Part 91 operators, other than §91.147 operators, are not required to establish or maintain pilot records under PRIA."*

During the past 14 years under PRIA, most air carriers have found that the overwhelming majority of PRIA requests to Part 91 operators produced documents of no significance to the hiring process. In fact, on most occasions, the response from the Part 91 operator has been only a brief letter stating that they do not have any relevant records. Further, given the small staff and limited resources of many Part 91 operators, requiring those entities to analyze, scan and transmit their pilot documents would be exceptionally burdensome. Accordingly, the PRD

ARC members concluded that, for both safety and cost reasons, Part 91 operators should be exempt from loading either future or historical records into the PRD.

NBAA recommends the FAA follow the consensus recommendations of the ARC by excluding Part 91 operations from the scope of this proposed rule.

Public Interest

NBAA reviewed FAA's proposal from several perspectives, including how applying this proposal to Part 91 operations would affect the public interest. It is clear that the FAA's regulatory construct applies the maximum amount of oversight of pilot performance and training for operations where the public has no ability to influence any aspect of the operation, such as in scheduled air transportation conducted under FAR Part 121, as exemplified by that ability to only purchase a ticket. Operations where the public has an opportunity to influence some or many aspects of the operation, such as departure location, arrival location, and departure time, for example, results in a less burdensome regulatory approach, reflecting the need for flexibility, such as those conducted under FAR Part 135.

The FAA applies its least burdensome regulatory approach to operations where the public has the most involvement in the operation, such as in non-commercial operations conducted under FAR Part 91. The owner or operator of the aircraft controls every aspect of the operation, reflecting the maximum amount of flexibility and that these operations are not available to the general public for compensation or hire. Typically, business aviation passengers are employed by the operator's company and are very knowledgeable about aviation operations.

Non-commercial operations conducted under Part 91, Subpart F are inherently different from those conducted under FAR Parts 121 and 135. From pilot training to FAA's regulatory oversight, it is clear that the FAA prioritizes its resources in support of air carrier operations, reflecting the public's expectation of safety oversight from the Agency.

There is no evidence contained in the FAA's proposal, regulatory evaluation or other documents that suggests company data for a pilot conducting operations under FAR Part 91, Subpart F materially impacts a hiring decision. As stated above, Part 91 operators affected by this NPRM receive an average of less than one PRIA request every two and a half years. Part 91 operators submitting small amounts of information that does not materially affect hiring decisions would also not materially contribute to the safety of passengers traveling on scheduled air carriers.

It is also important to contrast the influence of passenger input on scheduled commercial air carriers against the influence of passenger input on Part 91 aircraft. Passengers on scheduled air carriers, such as those conducted under Part 121, have no operational control which pilot conducts the flight and no influence over the training of the pilot. As a result, the most regulatory burden to protect an uninvolved public is essential. In contrast, Part 91 operators do not sell tickets to the general public. Rather, the owners or passengers on flights in furtherance of a business often have input on pilot hiring minimums, pilot training programs and alternate travel plans when weather or other factors increase risk on a particular trip. Additionally, Part 91 owners and passengers are typically more knowledgeable and more involved in the operation and often may direct or supervise various aspects of the operation. This greater involvement appropriately reflects a less burdensome regulatory approach reflecting the public's diminished need for safety assurance and data.

NBAA recommends limiting the scope of the proposed regulation to operators with the largest public interest, such as those that hold out for common carriage.

Business Aviation as a Gateway

The FAA interprets "other person," found in P.L. 111-216, to mean those "other persons" that employ pilots that would likely be air carrier pilots or prospective air carrier pilots at some later date.

The FAA then makes the assumption certain Part 91 operators act as these "Gateway Operators," that is, operators that often serve as points on the career path of a pilot for an air carrier or other passenger-carrying operation. These operators defined as "corporate flight departments" were deemed to be those entities that would serve as a springboard to working for an air carrier.

NBAA's members report a far different experience. A poll of Part 91 business operators revealed that operators affected by this proposal receive a request for PRIA information about once every two and a half years, on average. When examining all Part 91 business operations, operators received a PRIA request an average of just once every four years. This insight suggests Part 91 operations are not often "gateway operators."

This incredibly small number of PRIA requests calls into question the real impact on safety that would result from subjecting certain Part 91 operators to this onerous data reporting process.

As mentioned earlier, the PRD ARC stated that:

> *"A Part 91 operator likely to employ a pilot that might eventually transition to employment at an air carrier is a difficult group to identify or define. This cannot be defined based on the number of aircraft the operator utilizes; the size, weight, or rating requirements of an aircraft; or the types of missions the aircraft typically conducts, as none of those distinctions can be linked to a pilot's likelihood of obtaining future employment at an air carrier."*

The FAA reached the appropriate decision considering applicability to other currently unaffected entities when the agency determined the information provided would provide limited value compared to the regulatory burden.

> *"The FAA considered including other civil aviation operators who employ pilots such as Part 91 operations utilizing smaller general aviation aircraft, other Part 91 business aviation operations involving a single aircraft, part 133 external load operators, part 137 agricultural operators, and research and testing flights conducted by aircraft manufacturers. However, the FAA decided not to extend the PRD reporting provisions to these operators because they are not 'gateway' employers to air carriers and pilots employed by these operators do not often transition to careers as pilots in passenger-carrying operations. Therefore, the FAA questions the value that this information would provide relative to the attendant regulatory burdens it would impose on those operators."*

The FAA should reach the same conclusion about operators the Agency has proposed be defined as "corporate flight departments."

NBAA recommends that the FAA, based on a lack of supporting data to justify Part 91 operations as gateway operations, remove all Part 91 operators from the proposed rules.

Cost/Benefit Analysis Issues

The FAA's Regulatory Evaluation includes a number of false or poorly conceived assumptions about Part 91 operators.

First, the Regulatory Evaluation claims the proposal would not require operators to collect new data for entry into the PRD. Therefore, no costs would be imposed on operators to collect new data. In reality, Part 91 operators currently have no regulatory requirement to maintain certain records. Instead, the burden is on the airman to verify she or he is current and qualified in accordance with Part 61.

However, the FAA does not provide insight into the assumptions that built the costs or analysis of Part 91 training and checking events per year. The FAA considers initial compliance for Part 91 operators but includes no annual costs of compliance.

The FAA assumed that each flight department would incur a $2,400 cost but based on another false assumption - that affected Part 91 operators already maintain electronic databases. This incorrect assumption means the FAA grossly underestimated the regulatory compliance costs per operator.

Finally, the FAA outlines benefits of the rule - all of which apply to Part 121 and 135 air carriers. The FAA does not identify a single benefit for Part 91 and Part 125 Letter of Deviation Authority (LODA) operators who would be subject to this rule. This was not an oversight - there are truly no benefits for Part 91 and 125 LODA operators, only burdens and costs.

NBAA recommends the FAA remove Part 91 operators from the proposed rule or conduct a more accurate, thorough cost/benefit analysis in accordance with APA and EO 12866 requirements, if the Agency intends to subject Part 91 operators to this rule.

No Safety Benefit for Some Operators

Part 91 business aircraft operators – particularly those the FAA proposes to include inappropriately in this regulation – have an excellent safety record. Presumably, current hiring practices for this segment of the industry form a core component of our industry's enviable safety record.

The FAA's proposal and regulatory evaluation both fail to articulate any quantifiable safety value for Part 91 operators subject to these requirements.

Additionally, NBAA members already subject to PRIA requirements, specifically Part 135 air carriers, report PRIA results play a greater role in validating a pilot hiring decision, rather than as part of the pre-hiring consideration. Most companies have already selected a candidate and made a conditional offer before requesting PRIA. The FAA's new fee to access these records would likely only serve to reinforce an operator's use of the PRD as a hiring validation tool rather than as a component of their pre-hiring process.

Expanding the requirements of a program with minimal safety benefits to include additional, currently unregulated entities, creates an unnecessary burden and unfunded mandate.

Including certain Part 91 operators in this regulation even exceeds the NTSB recommendations that preceded P.L. 111-216, which primarily cite the need for 121 and 135 air carriers to share pilot information.

NBAA recommends the FAA remove Part 91 operators from the proposed rules, as records provided by Part 91 operators would provide minimal safety benefit to Part 121 and 135 air carriers in their hiring processes.

Definitions

NBAA recommends the FAA remove the definition of a **"*corporate flight department*"** and the associated requirement to submit records to the pilot records database from Part 111 and instead seek similar information from existing sources and processes. Business aviation represents a very diverse group of aircraft operators, ranging from single-pilot owner-operated single aircraft to multi-aircraft operators with a mix of fixed- and rotor-wing aircraft, and a single definition codified in regulation cannot adequately address the diversity of the industry.

According to the NPRM, "corporate flight department" means a person that operates two or more standard airworthiness airplanes that require a type rating under § 61.31(a) of this chapter, in furtherance of, or incidental to, a business, pursuant to the general operating and flight rules in Part 91 of this chapter or operates airplanes being operated under a deviation authority issued under § 125.3 of this chapter.

Many small Part 91 operators - even those with two or more aircraft - require personnel to serve in a variety of roles. They do not have the same scale of personnel and resources as large air carriers, which was clearly the focus of the NPRM authors.

The proposed definition does not appropriately consider whether affected operators are actually gateways to air carriers. The number of aircraft in a department does not substantially affect the likelihood of pilots seeking future employment with an air carrier.

This unnecessary definition could deter a Part 91 operator from purchasing additional aircraft or deter an operator from transitioning from small aircraft to those that require a type rating under §61.31. This could have a significant financial impact on the business aircraft manufacturing industry and could drive aircraft owners to different structures of aircraft ownership.

The FAA repeatedly uses the term "***furlough***" throughout the preamble and proposed rule. This term is not typically used in Part 91 or Part 135 operations. Very few business aviation operators furlough employees. Instead, they terminate employees without the opportunity for

returning to work at a future date. If a pilot is furloughed from a Part 121 air carrier position, it may deter the future employer from hiring a candidate, as the candidate is eligible to return to their previous position. NBAA recommends "laid off" or "position eliminated (temporary or permanent) instead of "furlough."

In the preamble, the FAA proposes to define the term ***"employed***" as being paid for more than 20 hours per week for services rendered to the operator. NBAA suggests the FAA include a clear definition of "employed" in §111.10 if the Agency intends to hold operators to this restriction. NBAA 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 also notes that many certificated operators utilize the services of contract pilots to move aircraft without paying passengers under the rules of Part 91. Contract pilots may perform this service for dozens of different operators per year.

Operators should not be responsible for submitting records for pilots who are employed less than half time, as this will help avoid duplication of training records. It should further be noted that in business aviation, most training is conducted independently by a Part 142 training center and that the operator themselves does not conduct any formal pilot training for the contract pilot. The contract pilot shows up fully trained and qualified. Having to report additional records on behalf of this person will result in a significant duplication of records that will surely confuse covered entities that must request records in the future.

NBAA further recommends aligning the definition with the common industry practice of employing contractors on a daily basis. NBAA believes the proposed definition of 20 hours per week is meant to be half-time based on a traditional 40 hour and five-day work week. Under this assumption, NBAA recommends altering the definition to include individuals employed 125 days per calendar year. This number is based on working 2.5 days for 50 weeks each year. As such, NBAA recommends altering the definition of employed to being paid for more than 20 hours per week or 125 days per year for services rendered to the operator.

<u>NBAA strongly recommends that the FAA remove the definition of "corporate flight department" and that it clarifies the definitions for "furlough" and "employed."</u>

Existing Recordkeeping Requirements

NBAA believes the FAA is imposing unnecessary mandates by creating new recordkeeping requirements. Language contained in multiple places in the PRD Act reference existing record keeping requirements. NBAA interprets this to indicate Congress did not intend to expand recordkeeping in their attempt to streamline communication.

The applicable statute continuously uses the word "maintained" – meaning records that air carriers and other regulated entities already possess. The statute does not infer that new record keeping requirements should be manufactured for the purposes of the pilot record database. This is further evidenced by direct references to §§121.111, 121.219, 121.683, 125.401, and 135.63, all of which are existing regulations that require certificated air carriers to record the information associated with the database. NBAA believes the FAA should focus on opportunities to seek information through existing recordkeeping requirements, rather than impose new administrative and costly burdens on Part 91 operators.

NBAA recommends the FAA limit records submitted to the PRD to only current operators required to comply with PRIA.

Inclusion of Check Pilot Comments

The NPRM would require operators to include instructor and check pilot comments from training events in the pilot record database. NBAA recommends that the FAA exclude check pilot and instructor comments from the PRD.

The ARC also recommended that the PRD not include training event comments by check pilots or instructors.

Specifically, the ARC recommended:

1. *The FAA clearly distinguish between "checking" and "training" events, saying, "Pilot performance or success in training cannot be accurately measured until training is complete, and should not be reported during the training process."*
2. *The FAA should only include "jeopardy events" (as described by the ARC charter objectives) in the PRD because only those events compare pilot performance to an objective standard.*
3. *Jeopardy events should only be reported as PASS/FAIL, SAT/UNSAT in order to ensure consistent and uniform reporting of objective facts.*

NBAA agrees with the ARC report that the FAA must not mandate reporting of information NOT required by P.L. 111-216, as unintended consequences could actually undermine safety.

The ARC expressed concern that including check pilot or instructor comments in the PRD might deter a pilot from receiving additional training. Further, 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. Requiring these comments be reported could diminish the opportunity to improve safety by focusing additional training on check pilot comments.

The FAA made the following statement in the NPRM:

> *"In the safety recommendation A–95–116, issued to the FAA on November 15, 1995, the NTSB asked the FAA to require all air carriers and their training facilities to maintain pertinent information on the quality of pilot performance, including subjective evaluations by individual instructors, check pilots, or FAA inspectors. The FAA responded that the inclusion of such information in a pilot's permanent record might make a training event a punitive experience rather than one in which a pilot could learn from mistakes. On January 3, 2000, the NTSB stated that the FAA had provided a convincing argument about the inappropriateness of subjective information in pilot records and the possibility that pilot training could be negatively affected."*

The FAA already acknowledged, and convinced the NTSB, that including check pilot comments in reports to future employers creates a punitive experience, rather than an opportunity to improve safety and pilot skills. NBAA recognizes that the PRD Act indicates comments maintained by an air carrier should be included in the PRD. However, the PRD Act also indicates the administrator should report to Congress every three years any proposed changes to records required to be included in the database, thus indicating the Administrator has the authority to exclude certain types of information. Certainly, a statement of facts that convinces the NTSB of the detrimental effects of including check pilot comments would also convince Congress.

We also believe that the check or instructor pilots could be held liable for future hiring decisions regarding a particular pilot. Unflattering comments may cost pilots future job opportunities and leave check pilots, or their employers open to liability. The statement of non-liability should specifically protect the instructor or check pilot. against civil, administrative, and criminal claims.

The FAA included a similar statement of non-liability to protect employers for information provided under PRIA. That protection has demonstrably failed. Accusers have brought 19 cases against employers since 2010, six of which were defamation cases.

Specifically, the ARC final report stated:

> *"Items such as informal instructor feedback and training grade sheets provide quick feedback and encourage a dialogue between student and instructor to enhance the educational process. The meaning of such communications is often not fully apparent, or even misleading, when read in isolation. The PRD ARC fully recognizes the meaning of such remarks cannot be understood without knowledge of the full context in which they were made, including the culture of the air carrier and the particular instructor's training orientation and biases. Such remarks are undoubtedly subjective statements. The ARC believes these characteristics of informal instructor or check airmen comments should be recognized, and for that reason propose a definition of the term 'Check Airman Comment'.*
>
> *To this end, the PRD ARC strongly recommends the FAA clearly specify in its regulations that educational and instructional communications, including comments or notes intended for that purpose, are not required to be maintained by air carriers and are not intended to be entered into the PRD. Such writings/documents may be designated 'FIPO—For Instructional Purposes Only—Not to Be Maintained as a Permanent Record.' Absent such a regulatory recognition of the need for these instructional tools, instructors will fear that any written constructive suggestions might be reported to the PRD, become a permanent record, and thereafter harm or even destroy the pilot's reputation. ARC members can attest that if written suggestions have that effect, instructors will avoid any such written communications. The FAA should take affirmative steps to avoid this consequence."*

NBAA recommends the FAA follow the ARC's recommendations regarding inclusion of the objective outcome of "jeopardy events" but not subjective instructor or check airman comments in the PRD.

Specific Reporting Requirements

Both the draft Advisory Circular AC XXX-PRD and the NPRM contain language indicating operators would report a pilot's aeronautical experience, flight time and flight maneuvers performed to maintain privileges of their certificate. These burdensome reporting requirements could reasonably result in a need for operators to log every flight hour, instrument approach and landing in the pilot record database. For example, maintaining IFR currency (thereby maintaining privileges of a certificate and ratings) could require an operator to track and report every instrument procedure flown by a pilot.

While the FAA may envision operators simply connecting existing recordkeeping systems to their database, it must be recognized that many operators do not maintain electronic records. In fact, the FAA has made maintaining electronic records for existing air carriers burdensome

through the requirement of a special authorization. Consequently, many small operators use simple but effective recordkeeping systems that will require the operator to submit information to the database manually. This proposal changes requirements from maintaining information on jeopardy training or checking events that happen once or twice per year, to mandating operators maintain detailed records on events that happen as often as every flight.

The FAA indicated in the NPRM that PRIA and PRD was designed to make records available to the hiring air carrier which were historically difficult to obtain. The FAA also recognized that hiring entities review a pilot's logbook prior to making a hiring decision.

NBAA recommends removing any data points associated with §61.57 from reporting requirements, as pilots often use their logbook to record and demonstrate proficiency and compliance with requirements listed in §61.57.

The NPRM Lacks Clarity

The PRD NPRM leaves operators with many questions as the language used is unclear and contradictory. In addition to the need for improved definitions, the NPRM leaves certificated operators wondering exactly when they need to query the PRD prior to using a pilot's services.

The FAA defined the term "individual employed as a pilot" in §111.10. NBAA recommends using this defined phrase in §111.105 where the FAA describes when a hiring air carrier needs to evaluate pilot records.

There is also a need for consistency and intentional use of the words "air carrier" and "other operators." Proposed language in §111.220 could leave many wondering if the reporting requirements apply to "other operators."

Language within the NPRM also contains many contradictory statements leaving operators confused on the intent of the proposal and the actions required by the rule. Most notably, §111.220(b)(3) states no person may report records documenting aeronautical experience, yet §111.220(a)(2) requires air carriers to report records related to currency and proficiency.

It is imperative the regulation language is clear regarding these reporting requirements. Providing additional guidance or clarification in Advisory Circulars is unacceptable as Advisory Circulars are not regulatory in nature.

NBAA recommends using consistent, intentional phraseology and to ensure clear expectations by operators and inspectors.

Disciplinary Action

The proposed rule requires operators to report disciplinary action but does not specify what types of disciplinary actions are reportable.

According to the NPRM preamble:

> *"Final disciplinary action record means a record of any corrective action taken by an employer in response to an event pertaining to pilot performance which is not subject to any pending formal or informal dispute initiated by the pilot. No disciplinary action may be considered final until 30 days after action."*

The proposed section 111.225(a) should be clarified in the regulatory text to limit reportable disciplinary action to "pilot performance related to the execution of aeronautical duties." The underlined portion is included in the Draft AC A.1.1 but is not included in the proposed regulatory text. This would clarify that only actions associated with a pilot's performance of *aeronautical duties* would be reportable. Currently, "pilot performance" is quite broad and is only further clarified by the draft AC. This clarification should be contained in the regulation itself to mitigate any malfeasance by a noncompliant operator or one with malicious intent. The AC can then clarify what is and is not appropriate in accordance with the preamble language regarding noncompliance. These items are often related to internal discipline activities involving poor employee behavior or compliance with company policies such as attendance, appearance/grooming, financial responsibilities, and other issues not related to aeronautical performance.

The FAA has consistently advised that only disciplinary action involving pilot proficiency should be turned over pursuant to PRIA. Air carriers are not to report employment-related actions unrelated to the pilot's aeronautical duties that result in a disciplinary action. To illustrate this need, consider a pilot who is terminated because he or she refuses to conduct a flight contrary to safety even though the aircraft owner or other passenger demands that he or she conduct the flight. That is related to "aeronautical duties" but is not a representation of poor performance. The pilot should not be penalized in future hiring decisions.

NBAA is further concerned about section 111.260 and the associated definition of "Final Disciplinary Action" in §111.10, which requires "other operators," presumably including certain Part 91 operators, to have a documented process for resolving disputes with respect to information documented in the PRD. For a two or three pilot, two aircraft operation, this could

be impractical or ineffective as there are usually few individuals involved in human resources in small or even mid-sized flight operations.

This is yet another reason why most Part 91 operators should not be subject to the PRD. Some small operators may not even have or retain these types of records. In fact, in the NPRM the FAA states that “all carriers” would be required to have a documented process, but later in the actual proposed regulatory language, includes "other operators” (see below). This element was clearly intended for air carriers, as was PRIA, not certain Part 91 operators. If the FAA defines “other person” as included in the Act, then that should exclude Part 91 operators which will experience a significant burden in developing processes and procedures to comply with 14 CFR 111 overall, including this section.

From the NPRM preamble text:

> *"All carriers would have to have a documented dispute process and conduct a reasonable investigation and publish these policies and procedures as proposed in § 111.260.”*
>
> *§111.260(a) as proposed: "Each air carrier or other operator that employs pilots must have a documented process for resolving disputes with respect to information documented in the PRD.”*

NBAA recommends the FAA codify “pilot performance” in the context of a reportable disciplinary action to mean "pilot performance related to the execution of aeronautical duties.”

Expunction of Legal Enforcement Action

The information contained in the PRD should only be available to qualifying employers for the purpose of evaluating a pilot-applicant. NBAA agrees that records from closed legal enforcement actions are appropriately included in the PRD. However, by maintaining that information in the PRD while limiting access to qualified employers, the FAA is still able to expunge records from closed legal enforcement actions from other records and databases such as the Enforcement Information System (“EIS”) maintained by the FAA, but not the PRD. This would prevent disclosure of that information in response to a FOIA or Privacy Act request by someone other than a qualified employer.

FAA’s expunction policy is consistent with the Privacy Act whose requirements must still be met in spite of the PRD. Closed legal enforcement actions are neither relevant nor timely after a certain length of time, supporting expunction to comply with the Privacy Act. However,

expunction from all sources other than the PRD is also consistent with the PRD Act since the FAA would still be maintaining the records as entered into the PRD for the sole purpose of allowing qualified employers to access and use the information in their hiring evaluations.

NBAA agrees with the PRD ARC's analysis and position that FAA's previous expunction policy is consistent with both the PRD Act as well as the Privacy Act as long as the records will continue to be maintained in the PRD.

NBAA also agrees with the PRD ARC's recommendations and recommends that the FAA:

1. Reinstate the 5-year expungement policy for enforcement actions for all pilot records.
2. If the FAA determines the records should be maintained indefinitely as a result of Public Law 111–216, the records only be maintained in the PRD and continue to be expunged from the EIS and any other FAA recordkeeping system that may contain them.

Historical Records Reporting

Contemplated in this rule is a provision that certain operators would digitize and upload all their historical records, an extremely costly burden on carriers in both time and money as well as forcing digitization of records of a private nature that may not have previously been digital – thereby subjecting airmen to new risks for privacy violations and breaches. The FAA should not create privacy risks for airmen where none previously existed, particularly when historical records are of the least use in any legitimate hiring decision.

The NPRM requires Part 125 operators to report historical records dating back to August 1, 2010. Operators will be required to upload employment, training, checking, testing, currency, proficiency, and disciplinary records for every pilot under their employment over the last ten years. Operators will be able to upload records in XML or manually.

The NPRM also requires Part 135 and 121 operators to report historical records dating back to August 1, 2005. Operators will be required to upload employment, training, checking, testing, currency, proficiency, and disciplinary records for every pilot under their employment over the last 15 years. Operators will be able to upload records in XML or manually.

Many Part 121, 125, and 135 operators might not have historical records dating back this far. The only notification from the FAA that operators should maintain records came via advisory information contained in an Information for Operators on August 15, 2011 (InFO 11014). InFOs are not regulatory in nature and the FAA cannot hold operators accountable for non-compliance with informational material. In contrast, the FAA communicated via every media

channel available and developed several teams to ensure the operating community was aware of ADS-B requirements. Further, the cost for uploading records for a two-decade period will place a substantial financial burden on small operators.

It is reasonable to assume Congress did not intend in P.L. 111-216 for initial compliance with PRD requirements to include fifteen years of historical records. Rather, Congress intended for records to be submitted for five years prior to the enactment date of the law. However, Congress did not necessarily foresee the nine-year timeline it has taken to publish this NPRM. Congress instead told the agency to begin establishing the database within 90 days after the date of enactment of P.L. 111-216.

This intent was further demonstrated when Congress enacted the FAA Extension, Safety, and Security Act of 2016 (FESSA). Section 2101 of FESSA required the FAA to establish an electronic pilot records database by April 30, 2017 - just nine months after the date of enactment.

NBAA recommends the FAA require only five years of records be submitted to the PRD for initial compliance. This is consistent with current regulations and PRIA language in AC 120-68H for operators currently subject to PRIA requirements.

Good Faith Exemption

The PRD Act provides that as long as the hiring air carrier makes a ‘‘documented good faith attempt’’ to access the information and the Administrator provides ‘‘written notice’’ of this lack of information, the pilot may begin service with the air carrier. The FAA proposes to codify this good faith exception in § 111.115 but does not clearly define “good faith.”

The FAA should more clearly define “good faith,” in accordance with existing PRIA language in AC 120-68H, which states:

> *“You may allow an individual to begin service as a pilot 30 calendar-days after submitting the request without first obtaining information from a previous employer that has gone out of business, is in bankruptcy, or is a foreign government or operator that employed the individual, if you make a documented attempt to obtain such information.”*

Additionally, NBAA recommends that the FAA extend the “good faith exception” safe harbor of proposed Section 111.115 to an employer’s obligation to report historical information under Section 111.205. Many non-air carrier operators have not maintained the records that would now be subject to reporting under the proposed rule. Similarly, to the extent they have

maintained the records, they may not be in a format that allows for reasonable reporting that is not unduly burdensome. NBAA is concerned requiring operators to report records that were 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.

NBAA recommends that the Agency clearly define "good faith" in accordance existing PRIA language and allow for good faith attempts to comply with the reporting requirements not previously required of these operators.

Employment Law and Liability Concerns

Public Law 111–216's protections for air carriers, such as release from liability provisions, apply only with respect to the entry of covered data and covered entities. Air carriers are not given immunity if they overreach by entering data that goes beyond the statute. Entities not explicitly defined by P.L. 111-216 might also not be protected by liability provisions.

Lack of clarity in the NPRM language and inconsistencies with P.L. 111-216 create employment law liabilities.

The proposed rule is also an indirect, improper method of regulating the employer and employee relationship that may also be inconsistent and/or contrary with state employment laws.

NBAA recommends aligning the proposed regulation with existing laws and including additional provisions to protect employers required to submit records to the database.

Operator and Air Carrier Approvals

By implementing an electronic PRD, the agency has – by example – determined electronic records are valid and sufficient evidence of regulatory compliance. Therefore, a Letter of Authorization (LOA), Management Specification (MSpec) or Operations Specification (OpSpec) for electronic recordkeeping, manuals and signatures seems to be an unnecessary, outdated requirement in light of the PRD proposal. LOAs, MSpecs and OpSpecs should not be required for any air carrier, operator or other entity whether required to participate in the electronic PRD or not. The PRD is evidence of the validity of electronic records and signatures in both the FAA's and Congress' view, providing an opportunity to reduce burden on all types of operators by removing this outdated authorization requirement.

If the FAA mandates 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. Otherwise, the costs of receiving authorization for electronic recordkeeping and ongoing related costs form an unfunded mandate.

NBAA recommends the FAA eliminate current requirements for operators to receive authorization to use electronic recordkeeping, manuals and signatures through LOA, MSpec or OpSpec.

Request for Reconsideration and Supplemental NPRM

This NPRM contains a significant number of requests for information by the FAA of industry and results in a long list of concerns from the industry. The NPRM published on March 30, 2020, should serve as an Advanced NPRM

NBAA strongly recommends the agency draft a Supplemental NPRM for additional comment before publishing a final rule.

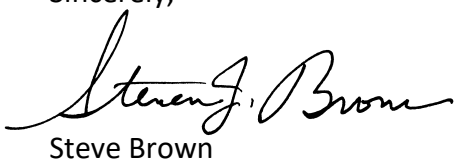
Conclusion

NBAA recognizes the PRD has the potential to streamline and enhance the current PRIA process. However, the current proposed rule exemplifies regulatory overreach, going far beyond the intent of the legislative mandate with no identifiable safety benefits for Part 91 operators. The NPRM lacks a robust analysis of the effects on Part 91 operations and ignores many consensus recommendations from the 2011 PRD ARC, resulting in a significant burden on numerous small entities with no clear nexus to Part 121 carrier hiring. Many of the shortcomings in the NPRM can be rectified by removing requirements for Part 91 operators to contribute information to the database.

In light of these comments and the other several hundred public comments submitted to the docket, NBAA encourages the FAA to consider this proposal as an Advanced NPRM and publish a Supplemental NPRM with all public comments carefully weighed.

NBAA appreciates the FAA's consideration of these comments. We look forward to continuing to work with the FAA towards our shared goal of enhancing safety.

Sincerely,



Steve Brown
Chief Operating Officer

The FAA requested feedback on over twenty individual questions. NBAA will address the applicable questions below.

However, NBAA notes the FAA is asking air carriers and other affected entities to educate the FAA in a public forum on each of the entities' differing forms and systems for implementing its employment policies, each of which is subject to the laws of 50 states and other territories, none of which is the province of the FAA, as evidenced by the FAA asking the questions.

> *Question 1: Whether employers believe that PRD will be utilized as a validation tool after an initial hiring decision has been made, or whether, because of the ease of electronic access, it will be utilized earlier in the decision-making process?*

NBAA discussed this question with a wide range of members operating under Parts 91, 125, 125 with a Letter of Deviation Authority and 135.

Today, PRIA compliance is one of the last steps in the hiring process. In some cases, operators wait to request PRIA records until after selecting a candidate or even until after scheduling the initial orientation class.

Requesting PRIA records can be quite burdensome. The process can take four to six weeks and involve sending the same request three times, never to hear back if an operator is out of business. Hiring air carriers must repeat the process for each employer for which the candidate was employed as a pilot in the last five years, which was up to three to five carriers in the recent hiring environment. By the time the air carrier receives the pilot's records, the applicant may have completed training, and the carrier is not likely to reverse a hiring decision after investing significant training resources in a candidate.

In other words, discussions with operators of all types indicate review of PRIA records does not lead to a hiring decision. Typically, a candidate has already been selected and the PRIA documents just confirm the hiring decision.

Further, an exemption for certain Part 135 small aircraft operations allows an operator to use a pilot in revenue service for up to 90 days after submitting a PRIA request but without receiving the results.

Members recognize that the PRD will make accessing pilot training records easier, as it provides all information electronically, in a single location, and without the sometimes-lengthy delays of the PRIA process. Due to the theoretical ease with which an operator can access candidate's training records through the PRD, operators suggest they might use it slightly earlier in the hiring process.

Operators were also quick to point out that while it will be easier to access, it will also be more costly. Under PRIA, operators may charge a nominal fee for the time required to respond to a PRIA request. However, few - if any - operators charge for this service. Because the PRD will include a $110 fee for checking records of a potential candidate, operators are not likely to use the PRD until near the end of the hiring process to minimize the cost.

Additionally, in business aviation, operators often already know the candidate personally or the candidate was referred by someone known to the operator. The PRD will remain a validation tool to verify the information received from references.

Further, proposed regulation §111.105(a) does not state whether information must be evaluated pre- or post-hire. If post-hire, then employers would need to make the offer of employment conditional upon review of the PRD data. Precedent in aviation hiring exists in this area as employment offers are typically conditioned upon obtaining a negative pre-hire drug test.

> *Question 2: Should PRD reporting extend to Part 133 external load and Part 137 agricultural operators?*

NBAA does represent a significant contingent of Part 133 external load or Part 137 agricultural operators. That said, the Association does not believe PRD reporting requirements should extend to these entities. Neither entity is included in the P.L. 111-216, nor were these entities represented in the 2011 ARC. Extending the PRD reporting requirements to Part 133 and Part 137 operators expands the scope of the regulations far beyond what was intended by legislation and is a clear example of regulatory overstep.

Further, training and checking reports for operations conducting a different mission offer less insight into a pilot's capability for air carrier operations. Operations under Part 133 and Part 137 are not point-to-point, do not include passengers, are often single-pilot, and are conducted in highly specialized aircraft. Therefore, these records would offer little value to passenger air carrier hiring decision-makers.

It is also important to note that Part 133 and Part 137 contain comparatively few compulsory training requirements and contain no specific training records requirements. Not only would providing training records be of little value to potential air carriers, but it would also create an additional burden on often small businesses with few additional resources to dedicate to this unfunded mandate, which would have no benefit to Part 133 and 137 operators.

NBAA adamantly recommends Part 133 and Part 137 operators continue to be excluded from this rulemaking.

> *Question 3: Would it be beneficial to require corporate flight departments operating a single aircraft to report to PRD? Why or why not?*

NBAA does not believe it would be beneficial to require corporate flight departments operating a single aircraft to report to the PRD. First, the FAA specifically says pilots shall not input their own data to the PRD, to the extent possible. It is highly likely pilots in single aircraft operations would have to report their own data.

Second, single aircraft operations are clearly beyond the scope of the NPRM and the legislation.

Third, there is no safety case for requiring flight departments with single aircraft to report to the PRD. In many cases, these are owners and operators with no intention to fly for an air carrier or they employ only one pilot, which would result in the pilot reporting their own information. Some owner-operator pilots might not even hold a commercial airman certificate. These individuals should be exempt from any PRD requirements.

> *Question 4: Do corporate flight departments maintain substantive records documenting pilot training, evaluation, performance, disciplinary actions, or release from employment or other professional disqualification? If so, for how long are such records typically retained?*

Not all Part 91 organizations maintain substantive records documenting pilot training, evaluation, performance, disciplinary actions or release from employment or other professional disqualification, nor are they required by regulation to do so.

Reasons for maintaining or not maintaining pilot records vary between operators. In some cases, pilots may be independent contractors or be employed by pilot services companies rather than by the operator as full-time employees. Some Part 91 operators would not have any of these records if it uses independent contract pilots or a pilot services company to crew its flights. Only businesses which actually employ pilots may have some of these records.

Additionally, many operators are quite small, so pilots would be required to maintain their own records or records of close friends and colleagues. In scenarios where the Part 91 operator actually maintains pilot training, evaluation, performance, disciplinary actions, or employment records, retention would vary depending upon the record retention policy for the specific employer.

Question 5: Would the proposal create a disincentive for corporate flight departments to create and retain records that are not otherwise mandated by federal regulation?

Yes. NBAA believes the additional burden of recordkeeping would be a disincentive to create and retain records not required by regulation. NBAA is also concerned it would create liability exposure for employers if they retained records not required by regulation, as these records would be discoverable and potentially damaging in the event of a civil lawsuit.

Further, more flight departments might choose to use independent contractors or pilot services companies rather than directly employing pilots.

Questions 6.-8. *Related to Public Aircraft Operators – Not Applicable to NBAA Membership*

Question 9: Would data from excluded entities provide information relevant to the evaluation of a pilot candidate for employment

The data could provide relevant information. However, the quality and amount of data would likely be very inconsistent and would not lead to significant safety improvements.

Additionally, extending the PRD requirements to excluded entities would be beyond the scope of the congressional mandate. The FAA has no data or basis to support an assumption that pilots employed by excluded entities will be future air carrier pilots. Applying PRD would be overly burdensome to those excluded entities who are otherwise not required to maintain the type of data/records included in the PRD.

For example, information from flight instruction, military, and single aircraft Part 91 operators would be minimal.

This would also create additional burden for what are often small businesses, without the FAA having conducted appropriate cost/benefit analysis in a Regulatory Evaluation, as required by Executive Order 12866.

Question 10: What level of detail (e.g. training completion dates or the pilots 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?

Very few operators have records dating back to 2005 and not all fields in table 3 are required for Part 91 operators.

Question 11: 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?

No. There are no additional records that might be relevant, nor would any such records be included in the legislative scope of P.L. 111-216. The NPRM already expands the legislative scope by including instructor and check pilot notes.

Question 12: 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.

NBAA believes this will be a substantial obstacle for many operators. If the FAA expects compliance from small operators, through a period of time in aviation that saw high turnover, the process needs to be simple. For historical documents, the FAA should consider a system that allows operators to send PDF copies of records to the agency. The FAA can then convert records to any format the agency feels is appropriate.

NBAA believes that few Part 91 and Part 135 operators will have the capacity to convert their training records to XML and will need to outsource the task to vendors with this capability.

It is also arbitrary and capricious in the absence of any data to suggest that records from more than 5 years ago have any influence or impact on a hiring decision.

Question 13: How quickly do air carriers and other operators believe they will be able to migrate their PRIA records into the PRD?

NBAA believes two years is a reasonable timeframe.

Question 14: Would it be helpful from either a pilot or a hiring employer's perspective to include a text box (with limited character count) for a pilot to be able to provide a narrative explanation of further information concerning a historical record? Would this also be helpful for present-day records?

A text box available for the pilot to provide narrative could be useful. Pilots should have an opportunity to provide a narrative for derogatory remarks in their records and a narrative could prevent a single event from permanently impacting a pilot's career.

The FAA must ensure the security of comments and provide the capability for the pilot to edit comments at future dates.

> *Question 15: FAA seeks public input on alternative systems, process, or technological solutions for efficient and accurate reporting of historical records.*

The FAA should consider XML as a forward-fit solution, not a requirement for historical documents. Records in PDF should be acceptable for initial compliance and historical records.

> *Question 16: The FAA welcomes comment on the proposal to retain drug and alcohol records for the life of the pilot, recognizing the constraints of the PRD Act. (related to drug and alcohol testing).*

Expanding the retention time for DOT drug and alcohol testing records from five years to the life of the pilot goes beyond the scope of the PDR Act as the FAA has oversight into this testing and it would conflict with existing regulations.

Not Required by the P.L. 111-216

Nowhere in the PRD Act does it require increasing the time to retain drug and alcohol testing records from five years to the life of the pilot. The PRD Act was created to promote safety in response to accidents caused by pilots that lacked the requisite training and skills commensurate with the responsibilities of operating as an air carrier. Increasing the time for retention of these records is overreaching and not consistent with the PRD Act.

FAA Medical Certificate Oversight:

Each pilot that is entered into the PRD has been issued a number of FAA medical certificates in the course of his or her flying career (and before). Each of those medical certificates was issued *only* after the pilot applied for the certificate and was subjected to careful consideration by the FAA. This vetting process includes drug and alcohol related incidents and testing. For airmen with any history of drug use or alcohol abuse, the FAA will not issue a medical certificate unless and until the airman proves he or she is fit and safe to fly and that any concerns of alcohol use or abuse have been resolved.

Procedurally, the FAA revokes the medical certificate of a pilot who has failed a DOT-required drug or alcohol test. This would, conceivably, be reported to the PRD by the FAA. Any drug/alcohol issues would have to be resolved to the FAA's satisfaction in order for the agency to issue a medical certificate. Thus, past records/information should have little value when the airman has a current medical certificate.

Existing Regulations Establish a 5 Year Retention Period

Federal regulations already mandate that employers maintain drug and alcohol testing records for five years therefore increasing the time to the life of the pilot would conflict with those regulations. *See* 49 C.F.R. § 40.333(a) and 14 C.F.R. §120.219 (a)(2)(i) (B) and (C). *See also* 14 C.F.R. §120.111 (f) wherein MROs are required to retain drug and alcohol records for five years. Increasing the time to the life of the pilot conflicts with existing regulations and will likely cause unnecessary confusion in an already heavily regulated industry.

Drug and Alcohol Record Retention Not Applicable to Part 91 Operators

For Part 91 operators, requiring drug and alcohol record retention is outside the scope of this rulemaking. Part 91 operators might conduct drug and alcohol testing as company policy but are not required to do so under Part 120.

Therefore, utilizing drug and alcohol testing records that would otherwise be unacceptable to the DOT/FAA would be inconsistent with the regulations and would have minimal value.

Extending Drug and Alcohol Retention Records Contrary to FAA Rehabilitation Initiatives

Additionally, the FAA provides first-time violators of certain drug and alcohol testing requirements with options to seek rehabilitation after positive drug or alcohol tests. The Human Intervention Motivation Study, for example, requires a pilot to surrender his/her certificate privileges for a period of one year while receiving treatment. This policy inherently acknowledges the possibility of recovery. Requiring records be kept for the life of the pilot is counter to the concepts of rehabilitation. Increasing the retention period from five years to the life of the pilot is unnecessary and will only harm pilots by stigmatizing them for an incident in the distant past that has been resolved.

> *Question 17: The FAA specifically solicits comment on its proposal to limit the text summarizing a pilot event in the PRD to 256 characters and whether this limitation or another alternative would most optimally balance the need for concise, fact-based summaries with potential limitations in being able to access the underlying record in certain circumstances. When providing comment on this, commenters are encouraged to review the example PRD record summaries outlined in "Examples of Termination Records Entered into the PRD."*

Summarizing an event in the manner suggested is unrealistic if there's any expectation of accuracy, since many of these circumstances are nuanced. The nuance is evidenced by the fact

that it takes the FAA multiples of 256 characters (not words, but characters) to write a two-page complaint against an airman relating to a matter directed at pilot performance or noncompliance. If the goal is transparency, responsibility and integrity, then the field size should not be limited. And if limited, it should allow for a reasonable explanation size since hiring decisions will be made on a limited summary prepared in each and every case by a person or entity with a bias against the individual airman. The NPRM states:

> "Standardized reporting of pilot disciplinary actions is beneficial for both ease of review for the air carrier and to **ensure each pilot is treated fairly**. [emphasis added]."

The NPRM goes on to discuss over the course of a paragraph the agency's displeasure with uploading disciplinary records and reports, claiming that the Administrator cannot effectively review every record for quality control that an operator may upload into the PRD. While the FAA is rightfully concerned about quality control, it ignores the fact that requiring the entity who took disciplinary action against an airman to summarize the circumstances to its own benefit in about two lines – as opposed to simply uploading the actual evidence involved – is actually contrary to FAA's stated goal. Transparency and integrity demand the use of the actual records involved, not creation of a new, limited record from a perspective that could be biased.

The FAA's examples of disqualification are an oversimplification. The FAA's examples refer to failure of various required checks. If the FAA's goal is simply to ensure a future employer is aware of a failed check, then the goal can be achieved with a simple column asking whether the airman failed a required check, then asking to identify the type and date of the required check.

An employer narrative is outside the scope of P.L. 111-216 as the Act appears to focus on actual records. The FAA shouldn't create an opportunity for the employer to comment, which could create liability for the employer.

> *Question 18: The FAA welcomes comments on whether the period of overlap during the transition between PRD and PRIA should be shortened or extended.*

The proposed period of overlap provides sufficient time for air carriers to transfer their historical records while still beginning to comply with PRD for their present and future records.

> *Question 19: The FAA also welcomes comment on whether it would be helpful for the FAA to maintain a publicly available list of all air carriers and operators who are fully compliant with PRD ahead of schedule so that prospective employers can query the PRD directly.*

The FAA should at the very least acknowledge that this is an attempt to incentivize carriers for early compliance with FAA's desires to digitize and upload historical data by publicly shaming

carriers who are unable to prioritize this non-revenue generating activity of questionable value. Identifying air carriers in this manner is an inappropriate activity for the FAA and could actually harm air carriers.

Additionally, there are privacy concerns for Part 91 operators. There is no public need or benefit to identify compliance by Part 91 operators covered by this proposal.

> *Question 20: The FAA requests comments with information and data on adding similar annual operation and maintenance costs that cover monitoring and troubleshooting for small and large operators, not just midsized.*

While the FAA seems to assume Part 91 operators and others affected by this proposed rule use electronic databases for recordkeeping, the FAA also determined only 12% of the records are currently electronic. Therefore, it is axiomatic that an astounding 88% will encounter a significant time and cost burden for compliance. This burden, on top of the notable industry weakness attributed to COVID-19, which has already resulted in at least one prominent bankruptcy filing, risks additional industry harm due to yet another regulatory mandate.

> *Question 21: FAA solicits comments regarding the determination that this proposed rule would have a significant economic impact on a substantial number of small entities.*

This will have a large impact on small companies and potentially larger impact on medium size companies that don't use electronic record keeping systems. These organizations are likely to have employed a large number of pilots in the last fifteen years. They will most likely need to use an electronic interface to provide records to the FAA in a reasonable time.

The most significant impact will be from required historical reporting dating back to 2005, if operators even have those records available. There will be considerable cost to convert historical records to XML.

Most operators have some form of digital record, such as a .pdf. Allowing (bulk) uploads of these digital records would substantially alleviate the economic impact on small operators.

Executive Order 12866 regarding small business and rulemaking dictate rules mustn't be burdensome. With this NPRM, the FAA is creating burdens not required by Congress and not advancing public safety.

> *Question 22: The agency is soliciting comments to—*

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

The proposed rule will marginally enhance safety but is unlikely to change hiring decisions. Many NBAA members indicated that they never received information from a PRIA response that changed their hiring decision. Further, past performance isn't always indicative of future results. A pilot might have a bad training or checking experience but that doesn't mean they are an unsafe pilot.

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

If XML conversion is required of historical records dating back over a decade, the FAA's assumed costs are significantly underestimated. The one-time burden of electronic reporting will be far more than 20 hours per operator, as many entities will have to convert records to XML, spend time working with IT teams, manage projects, or hire and oversee vendors.

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

The proposed rules could enhance the quality and utility of the information provided if the PRD is implemented properly. However, it will not likely enhance the clarity of the information, since the FAA has no control over the data submitted by the operators.

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

Historical records should be accepted into the PRD in PDF format. XML records could be a forward-fit solution.

Further, by implementing an electronic PRD, the FAA is recognizing the validity of electronic records. As a result, the FAA should eliminate the requirement for an LOA, MSpec or OpSpec, for electronic records, manuals, and signatures.