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PILOT RECORDS IMPROVEMENT ACT GUIDE

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Introduction

Between 1987 and 1994, errors by pilots were identified to be a contributing factor in seven major crashes of U.S. air carriers, resulting in 111 fatalities. The NTSB found that each pilot involved had a poor performance record and/or prior safety violations. The NTSB further found that hiring air carriers had lacked access to and/or had failed to obtain the pilot's flight qualifications and other safety-related records from the FAA or any previous employer.

Congress enacted the Pilot Records Improvement Act of 1996 (PRIA), 49 U.S.C. §44703, to address this issue. PRIA generally requires Part 121 and Part 135 air carriers to request, receive and evaluate certain performance and safety records before allowing an individual to begin service as a pilot. Records must be requested from the FAA, the National Driver Registry and previous employers of the pilot. PRIA also requires Part 121 and Part 135 air carriers to respond to PRIA information requests. Part 91 operators are not required to request or maintain records, but must respond to any request with any records that it maintains.

This guide has been prepared to provide general advice to NBAA members regarding their responsibility to make or respond to PRIA requests. While every effort has been made to include only accurate information, this guide should not be considered legal advice, and NBAA members are encouraged to consult with their aviation counsel regarding any specific questions or concerns regarding compliance with PRIA.

Step-by-Step Guide for Hiring Entities Requesting Pilot/Applicant Records

Step 1: Determine whether PRIA requires you to request PRIA records from the airman/applicant's former employer

- Generally, PRIA requires air carriers operating under Part 121 or Part 135 to request records for a pilot

Step 2: Download the following record request forms from FAA's website (https://www.faa.gov/pilots/lic_cert/pria/forms_docs/)

From the FAA:

- Form 8060-10, FAA Records Request
- Form 8060-10A, Airman Notice and Right to Receive Copy—FAA Records (PRIA)

From airman/applicant's previous employers (you'll need one of each form for each previous employer dating back five years):

- Form 8060-11, Air Carrier and Other Records Request
- Form 8060-11A, Airman Notice and Right to Receive Copy—Air Carrier and Other Records
- Form 8060-12, Authorization for Release of DOT Drug and Alcohol Testing Records Under PRIA and Maintained Under Title 49 of the Code of Federal Regulations (49 CFR) Part 40

From the National Driver Registry:

- Form 8060-13, National Driver Register Records Request (PRIA)

Step 3: Complete the air carrier portion of each form.

Step 4: Have the airman/applicant complete their portion of each form.

- Under PRIA, the airman/applicant must:
 - Provide their written consent for the release of their PRIA-related records
 - Be notified in writing that a request for their PRIA-related records will be made
 - Be provided with an opportunity to request a copy of the records that will be furnished
- If all of the forms listed in Step 2 are completed by the airman/applicant all of these requirements will automatically be satisfied

Step 5: Require the airman/applicant to sign a release from liability for any claim arising from the furnishing of such records to or the use of such records by the air carrier.

- Even though a liability statement is already included within the existing PRIA statute, an airman/applicant must still sign and return an additional release if requested

Step 6: Send the forms to the appropriate recipients.

- You should keep a record of when the recipient receives the forms
 - If forms sent via fax, keep the fax confirmation page
 - If forms sent via mail, you should send the forms certified (with a return receipt requested) via USPS or a private mail carrier that documents the date of delivery

Step 7: Receive the records.

- DO NOT accept records delivered by the pilot
- The FAA, previous employer(s) and the NDR must provide copies of all the required records to you within 30 days of your initial request
 - If you do not hear back from the previous employer(s) within 30 days, document your attempts to reach them, and then contact the PRIA program manager

Step 8: If the pilot/applicant requested a copy of the records that were furnished about them, provide them with a copy.

Step 9: Before making a final hiring decision, you must give the pilot/applicant an opportunity to submit written comments to correct any inaccuracies contained in the records.

- If the pilot/applicant submits written comments, his/her statements should be saved in the pilot/applicant's PRIA file

Step 10: While you are reviewing and evaluating the pilot's records, you must observe all privacy protections for that pilot/applicant and the confidentiality of the records.

- All PRIA-related records must be:
 - Kept confidential to protect the pilot's right to privacy
 - Used only for the hiring process
 - Viewed only by the personnel that are involved in the hiring process

Step 11: Newly hired pilots can be released for service only after the PRIA background check has been completed.

Step 12: Retain the PRIA related records.

- You should retain all PRIA-related records for the duration of a pilot's employment with you
- Keep them an additional five years after termination of the pilot's employment

Step-by-Step Guide for Employers Responding to PRIA Records Requests

Step 1: Review the documents from the requestor.

Step 2: Determine whether you have to respond to the request.

- If you employed the pilot more than five years ago, do not respond to the request
- If you did not receive a copy of the pilot/applicant's written consent for you to release such information (e.g., FAA Form 8060-11), do not respond to the request.; notify the requestor that their request is incomplete

Step 3 (Recommended): Obtain a liability release from the pilot.

- Such a release would limit the individual from seeking legal action against you for furnishing PRIA records or for information you entered in that individual's records
- Even though a liability statement is already included within the existing PRIA statute, a pilot/applicant still must sign and return an additional release if you ask them to
- However, you cannot withhold the requested records past the 30 calendar-day period allowed by statute while waiting for an individual to return the release

Step 4: Gather the records you must furnish.

Records Everyone Must Furnish If They Employ a Pilot

- In response to a records request, you must furnish the following records pertaining to the individual:
 - Disciplinary Actions that Resulted in Termination of Employment
 - Report any disciplinary actions you took against the pilot that played any role in the individual's termination or release from employment
 - Disciplinary Actions Involving Pilot's Performance
 - Only report disciplinary actions unrelated to an individual's termination or release from employment if the actions involved the individual's performance as a pilot and the employer did not subsequently overturn them
 - You should not report other employment-related actions that have nothing to do with the pilot's aeronautical duties that resulted in a disciplinary action, but did not result in discharge or termination

Records You Must Furnish If You Are a Part 121 Air Carrier

- In response to a records request, in addition to records everyone must furnish if they employ a pilot, you must furnish the following records pertaining to the individual:
 - Compliance records, including:
 - Proficiency and route checks
 - Airplane and route qualifications
 - Training
 - Records of each action taken concerning the release from employment or physical or professional disqualification of the flight crew member that the employer did not subsequently overturn
 - Records pertaining to the drug testing and alcohol misuse programs, including:
 - Confirmed alcohol test results indicating an alcohol concentration of 0.04 or greater
 - Verified positive drug test results
 - Documentation of refusals to take required alcohol and/or drug tests (including substituted/adulterated test results)
 - Documentation of other violations of DOT agency drug and alcohol testing regulations
 - Substance Abuse Professional (SAP) reports
 - All follow-up test results and schedules for follow-up tests, including documentation of the return-to-duty test
 - Information obtained from previous employers concerning drug and/or alcohol violations
 - Records of negative and canceled drug test results, and confirmed alcohol test results with an alcohol concentration of less than 0.039

Records You Must Furnish If You Are a Part 125 Air Operator

- In response to a records request, in addition to records everyone must furnish if they employ a pilot, you must furnish the following records pertaining to the individual:
 - Proficiency and route checks
 - Airplane qualifications
 - Records of each action taken concerning the release from employment or physical or professional disqualification of the flight crew member that the employer did not subsequently overturn

Records You Must Furnish If You Are a Part 135 Air Operator

- In response to a records request, in addition to records everyone must furnish if they employ a pilot, you must furnish the following records pertaining to the individual:
 - Compliance records, including:
 - Full name
 - Pilot certificate (by type and number) and ratings held
 - Aeronautical experience
 - Current duties and the date of assignment to those duties
 - Date and result of each of the initial and recurrent competency tests and proficiency and route checks required by part 135 and the type of aircraft flown during that test or check
 - Check pilot authorization, if any
 - Release from employment for physical or professional disqualification that the employer did not subsequently overturn
 - Date of the completion of the initial phase and each recurrent phase of the training required by part 135
 - Drug testing records, including:
 - Confirmed alcohol test results indicating an alcohol concentration of 0.04 or greater
 - Verified positive drug test results
 - Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated test results)
 - Documentation of other violations of DOT agency drug and alcohol testing regulations
 - Substance Abuse Professional (SAP) reports
 - All follow up test results and schedules for follow up tests, including documentation of the return-to-duty test
 - Information obtained from previous employers concerning drug and/or alcohol violations
 - Records of negative and cancelled drug test results, and confirmed alcohol test results with an alcohol concentration of less than 0.039

Additional Records You Must Furnish If You Are a Part 91 Operator

- If you operate solely under part 91, and are not conducting air tours under 91.147, then you do not have to request PRIA records when hiring pilots
- Remember, operators under 91.147 were required to request records under PRIA when they were considered to be sightseers under 135.1(c) and are still required to request drug and alcohol testing records under PRIA
- Most part 91 operators, other than 91.147 operators, are not required to establish or maintain pilot records under PRIA
- However, you are still required to respond to a PRIA request regarding a former employee by providing any documents you accumulated over the past five years that would provide relevant and useful background information concerning the pilot's experience, proficiency and safety history
- If you have no information at all concerning the individual, send a response to the record requestor stating so

Step 5: Send the records before the due date.

- The records are due to the air carrier/requestor within 30 calendar days of receiving the request
- If the pilot requested a copy of the records, you must send them a copy
 - Copies of records furnished to the applicant within 20 days of receipt of the request require no additional notification. Records furnished to the applicant after 20 days, but no later than 30 days, require a separate written notification within 20 days (such as a post card or letter) stating that the record will be furnished within 30 days

Step 6: You may charge the hiring employer a fee for the records you provide.

- If desired, you may establish a reasonable fee for the cost of processing the request and furnishing copies of the records
- However, you cannot withhold records until the hiring employer makes the payment

Frequently Asked Questions

1. Can we charge the cost of responding to a PRIA Request? If so, how much?

Yes. You may establish a reasonable fee for the cost of processing the request and furnishing copies of the records. You cannot withhold records until the hiring employer makes the payment.

2. What do we do if we receive an incomplete PRIA Request?

If you receive an incomplete PRIA request, for example if the request did not include the pilot's written consent for you to release information, do not respond to the request, but notify the requesting employer that their request is incomplete.

3. If a hiring carrier contacts us by phone after we respond to the PRIA Request and seeks additional information about the former employee, how should we respond?

PRIA does not require you to provide additional information above the records that must be provided. PRIA generally shields a former employer from most liability claims with respect to the information required to be provided under PRIA, but if you provide information that goes beyond the scope of what is required, it may be beyond the authority provided by the release and expose the responding party to potential liability. In such cases, pilots have brought actions against former employers under a number of legal theories including defamation, negligent misrepresentation and tortious interference with contract.

4. If we have records pertaining to the former employee that are more than five years old, should we provide them in response to a PRIA Request?

Do not provide records more than five years old unless the records relate to a suspension or revocation of an airmen certificate or motor vehicle license that is in effect on the date of the request.

5. Our chief pilot wants to send a cover letter advising as to his concerns about the former employee, is this allowed under PRIA?

PRIA only requires that you produce the requested records. As discussed in question 3, supplying additional information not requested may fall outside the scope of the release provided and may, therefore, expose the responding party to potential liability.

6. Are we required to provide disciplinary records that are unrelated to the former employee's termination and that have no bearing on the individual's performance as a pilot?

No. In fact, you want to avoid providing information that goes beyond the scope of what is required by PRIA because it may expose you to potential liability. You are only required to provide records of disciplinary actions pertaining to the pilot's performance as a pilot that were not subsequently overturned. This would include disciplinary actions related, for example to flight operations and pre-flight checks. Disciplinary action unrelated to such pilot's performance is not required to be reported under PRIA. See 2014 FAA Chief Counsel Interpretation discussing this question.

7. A former employee was denied employment as a result of our response to a PRIA request and is threatening litigation, what should we do?

Contact an attorney with experience handling employment and aviation issues. PRIA, as well as the laws of many states, provides protection to employers who respond to PRIA requests. Every situation is factually distinct, however, and it's important, therefore, to receive specialized legal advice.

8. The former employee filed for unemployment after we terminated him, are we required to provide the records relating to the unemployment claim in response to the PRIA Request?

Materials that you may have filed with the Department of Labor in response to an unemployment claim may require disclosure if they otherwise meet the criteria for disclosure outlined in this guidance, such as records related to disciplinary actions resulting in termination or involving pilot performance, compliance records, drug testing, etc.

9. How long should we maintain records?

Records obtained through a PRIA request or required to be provided in response to a PRIA request should be maintained for the length of the pilot's employment and for at least five years after the termination of the pilot's employment.

10. What is the Pilots Records Database? And how will this change our obligations under PRIA?

The FAA is required by statute to institute an online clearinghouse for certain pilot records. The PRD will contain records of FAA certification events, enforcement records, air carrier employment history and training data, and National Driver Register data. Once implemented, the PRD, including information submitted by employers, may largely replace the current PRIA process by allowing potential employers to see all of a candidate's employment history in a single location.

11. What if we receive an informal query rather than a PRIA request? How should we respond?

Respond to the party requesting records and advise that if the records are requested through PRIA you will respond and await receipt of the request and appropriate release.



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ABOUT NBAA

Founded in 1947 and based in Washington, DC, the National Business Aviation Association (NBAA) is the leading organization for companies that rely on general aviation aircraft to help make their businesses more efficient, productive and successful. Contact NBAA at 800-FYI-NBAA or info@nbaa.org. Not a member? Join today by visiting www.nbaa.org/join.