



U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

Effective Date: FEB 3 2011

**SUBJ: FAA Pilot Records Database**

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**1. PURPOSE.** This document establishes the FAA Pilot Records Database Aviation Rulemaking Committee (ARC) according to the Administrator's authority under Title 49 of the United States Code (49 U.S.C.), section 106(p)(5).

**2. BACKGROUND.**

- a. In August 2010, Congress enacted the "Airline Safety and Federal Aviation Administration Extension Act of 2010" (the "Act"). Section 203 of the Act, titled "FAA Pilot Records Database," requires the FAA to establish and maintain an electronic database containing the following records:
  - 1) FAA Records – concerning current airman certificates, including airman medical certificates and associated type ratings and information on any limitations to those certificates and ratings; also includes failed attempts at a practical test and closed legal enforcements.
  - 2) Air Carrier and Other Records – records pertaining to the individual's performance as a pilot that are maintained by the air carrier or person concerning:
    - (a.) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with 121.411, 125.295, or 135.337 of such title.
    - (b.) any discipline action taken with respect to the individual that was not subsequently overturned; and
    - (c.) any release from employment or resignation, termination, or disqualification with respect to employment.
  - 3) National Driver Register (NDR) Records – In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.
- b. Congress also required the FAA to:
  - 1) Provide periodic reports (not later than 18 months after enactment and at least once every 3 years thereafter) to Congress on:
    - (a.) recommended changes by the Administrator to FAA records, air carrier records, and other records required to be in the database; and/or
    - (b.) why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (a.).
  - 2) Provide for the protection and security of records and the personal privacy of individuals whose records are accessed through the database; and preclude the

further dissemination of records received by those performing a record check as required by the Act.

- 3) Establish reasonable charges for processing requests and furnishing copies of requested records to authorized users of the database.

- c. To carry out the requirements of Section 203 of the Act, the FAA is chartering an ARC. The ARC will accomplish the tasks directed in Section 203 of the Act based on the Congressional timelines outlined in the Act.

**3. OBJECTIVES AND SCOPE OF THE ARC.** The ARC will provide a forum for the U.S. aviation community to discuss and provide recommendations to the FAA concerning the development of requirements to meet Section 203 of the Act.

- a. The ARC will specifically identify the best methods to enable air carriers, "others" and individual pilots to use the Pilot Records Database (PRD). This includes:
  - 1) examining alternatives for where the data (from three sources) will be maintained and alternatives for which organizational entity will have responsibility for PRD maintenance and reporting;
  - 2) determining what information is required to be kept in the new system;
  - 3) determining who will have access to the information and what methods will be used to make the information accessible;
  - 4) determining methods for the timely transfer ("promptly") of relevant data to the database on an on-going basis;
  - 5) establishing a process with safeguards to limit the use of the database strictly to those making hiring decisions;
  - 6) establishing a "written consent; release from liability" process;
  - 7) developing a common process for the air carriers to handle disputes by pilots concerning the accuracy of data provided by the air carriers and expected response/resolutions times;
  - 8) developing standard definitions for common terms to be used in the database records;
  - 9) determining a suitable structure for data tables to maintain training, qualifications, employment actions, and national driver record data records required by this legislation; and
  - 10) determining methods to initially load the database with historical data.
- b. The ARC shall consider scalability of its recommendations to address the needs of small businesses and "others" that employ pilots.
- c. The ARC will develop recommendations to Title 14 Code of Federal Regulations (CFR) part 121; (CFR) part 125; (CFR) part 135; and other associated regulations as may be required to comply with the intent of Section 203 of the Act. These recommendations will be presented to the Associate Administrator for Aviation Safety for rulemaking consideration on or before May 31, 2011.

#### **4. ARC PROCEDURES.**

- a. The ARC shall provide advice and recommendations to the Associate Administrator for Aviation Safety and acts solely in an advisory capacity. Once the ARC recommendations are delivered to the Associate Administrator, it is within her discretion to determine when and how the report of the ARC is released to the public.
- b. The ARC will discuss and present information, guidance, and recommendations that the members consider relevant in addressing the objectives.
- c. The ARC may be reconvened following the submission of its recommendations for the purposes of providing advice and assistance to the FAA, at the discretion of the Associate Administrator.

#### **5. ORGANIZATION, MEMBERSHIP, AND ADMINISTRATION.**

- a. The membership of the ARC will consist of: (1) individuals from the government, air carriers, pilot labor organizations that can provide experts in the following areas: air carrier training, air carrier record keeping, human resources records, and airman privacy; (2) individuals from organizations that can provide insight into state and/or national driver record systems; and (3) other appropriate specialties as determined by the FAA.
  - 1) The ARC will consist of no more than 20 individuals.
  - 2) The FAA will identify the number of ARC members that each organization may select to participate. The Associate Administrator for Aviation Safety will then request that each organization name its representative(s). Only the representative for the organization will have authority to speak for the organization or group that he or she represents.
  - 3) Active participation and commitment by members will be essential for achieving the ARC's objectives and for continued membership on the ARC.
- b. The Associate Administrator for Aviation Safety is the sponsor of the ARC and will select an industry chair(s) from the membership of the ARC and the FAA-designated representative for the ARC. Once appointed, the industry chair(s) will:
  - 1) Coordinate required committee and subcommittee (if any) meetings in order to meet the ARC's objectives and timelines;
  - 2) Provide notification to all ARC members of the time and place for each meeting;
  - 3) Ensure meeting agendas are established and provided to the committee members in a timely manner; and

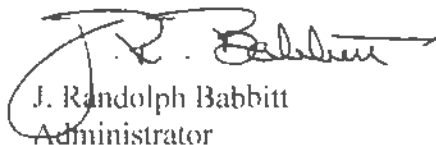
- 4) Perform other responsibilities as required to ensure the ARC's objectives are met.
- c. A record of discussions of committee meetings will be kept.
- d. Although not required, ARC meeting quorum is desirable.

**6. PUBLIC PARTICIPATION.** ARC meetings are not open to the public. Persons or organizations that are not members of the ARC and are interested in attending a meeting must request and receive approval before the meeting from the chair(s) persons and the designated Federal representative.

**7. AVAILABILITY OF RECORDS.** Records, reports, agendas, working papers, and other documents that are made available to or prepared for or by the ARC will be available for public inspection and copying at the FAA Flight Standards Service, Regulatory Support Division, AFS-600, P.O. Box 25082 Oklahoma City, OK 73125, consistent with the Freedom of Information Act, 5 U.S.C. section 522. Fees will be charged for information furnished to the public according to the fee schedule published in Title 49 CFR part 7.

**8. PUBLIC INTEREST.** The ARC's formation is determined to be in the public interest and is designed to fulfill the performance of duties imposed on the FAA by Federal law.

**9. EFFECTIVE DATE AND DURATION.** This ARC is effective upon issuance of this order. The ARC will remain in existence until March 31, 2012, unless sooner suspended, terminated or extended by the Administrator.



J. Randolph Babbitt  
Administrator



**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

Effective Date:

**SUBJ: FAA Pilot Records Database (PRD) – Aviation Rulemaking Committee (ARC)**

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This purpose of this memorandum is to extend the duration of the FAA Pilot Records Database Aviation Rulemaking Committee (ARC). This ARC was established according to the Administrator's authority under Title 49 of the United States Code (49 U.S.C.), section 106(p)(5).

This ARC was originally set to expire on March 31, 2012. However, there is an important PRD milestone this summer which would benefit from continued involvement of the ARC membership. Therefore, the time period for the Pilot Records Database will be extended by another 18 months and will now expire on September 30, 2013.

Michael Huerta  
Acting Administrator

Attachment

*Pilot Records Database*  
*Aviation Rulemaking Committee*  
*Report from the PRD ARC*

*July 29, 2011*      *(Revised)*

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## EXECUTIVE SUMMARY

On July 29, 2010, the 111th Congress passed House bill 5900, the Airline Safety and Federal Aviation Administration (FAA) Extension Act of 2010. President Barack Obama signed the bill into law August 1, 2010, creating Public Law 111–216. Section 203 of the law mandated that the FAA construct a Pilot Records Database (PRD). The required specifications for the database can be found in their entirety in Section 1, PRD ARC Background.

In order to facilitate creation of the PRD, FAA Administrator J. Randolph Babbitt established the PRD Aviation Rulemaking Committee (ARC) using his authority under Title 49 of the United States Code (49 U.S.C.) § 106(p)(5), on February 3, 2011. The ARC brought together subject matter experts from eleven associations, representing all types of commercial aviation operations and pilots. The purpose of the ARC is to provide the Administrator recommendations based on the expertise of the aviation community, including what the industry believes would be the best practices to make the PRD a useful tool to enhance aviation safety. In particular, the ARC is to make recommendations in areas identified by section 3 of the ARC charter, found in section 1.0 of this report. The ARC also identified several recommendations that were not pertinent to any one charter objective or were pertinent to several, and created a “Global Recommendations” section to accommodate them.

While the PRD ARC referred often to § 203 of Public Law 111–216; the existing Pilot Records Improvement Act of 1996 (PRIA), 49 U.S.C. § 44703(h)–(j); and other documents and public testimony surrounding this issue, it did not limit itself to any individual or group’s perceived interpretation of the task assigned to the FAA by Congress. The ARC deliberated from a position that, while not unconcerned with congressional intent, was primarily focused on determining the practices in creating the PRD that would most enhance aviation safety for the flying public. While the ARC recognizes that Congress removed the 5-year look-back limitation from § 203, the ARC members believe the 5-year rolling timeframe was appropriate and fully adequate to ensure all relevant pilot data would be provided. The ARC cannot identify any legitimate justification for the maintenance of lifetime pilot records.

Several times during deliberations, the PRD ARC identified experts on a particular subject that could be invited to present to the ARC, therefore enhancing the ARC’s collective knowledge on that subject. In any area of this report that refers to information from a presentation providing support for a recommendation, it is never intended to suggest that the presenter was making a recommendation. The majority of recommendations are made by ARC consensus, except as otherwise noted in the dissent section.



In addition to those already mentioned, the PRD ARC deliberated under a number of agreed-upon assumptions. It was obvious to the ARC that the PRD should only be used to make a hiring decision, and that nothing contained in the PRD dictates what that decision should be. This assumption gave the ARC the ability to ask whether each idea would be valuable to those who make a hiring decision. It was also decided early on that the PRD is just one tool among many an employer will use to select a candidate. In fact, the information available indicated that the PRD will most likely be used only as a verification tool, not an evaluation tool. For example, the average air carrier will use PRD information to compare and verify the information on a pilot applicant's resume and application. Nothing precludes an employer from seeking other sources of information when determining whether to hire a pilot.

Another concept discussed during PRD ARC deliberations was the notion that the PRD would be blind to industrial practices and terminology. For example, the PRD does not know whether a pilot is on probation, a chief pilot, or even vice president of operations, nor should it. It only cares that a pilot is employed by, or seeking employment from, an air carrier covered under PRD regulations and is capable of flying revenue trips. Therefore, the ARC feels strongly that anyone employed by, or seeking employment from, an air carrier covered by PRD regulations should have his or her data accessed prior to a hiring decision, and be allowed input once hired.

The PRD ARC deliberated extensively on whether flight engineers should be considered pilots by the PRD. Flight engineers can fall into a number of different categories. Flight engineers are certificated by the FAA and must possess a flight engineer certificate, but many have no pilot certificates, ratings, or qualifications, while others possess one or several. Some flight engineers will never seek or attain a pilot position; others merely hold a flight engineer position until they can upgrade. The ARC members could not determine if Congress intended to include any or all of these types of flight engineers in the law, or if Congress intended to preclude any or all of these types. The ARC has left this for the FAA and Congress to clarify.

One of the PRD ARC charter objectives was to “develop standard definitions for common terms to be used in the database records.” The ARC discovered that FAA manuals already define the most common terms. New terms that arise out of developing the regulation or building the database will need to be defined by the FAA as they arise. The definitions section contained in appendix B of this report clarifies terminology with meanings specific to the ARC recommendations and this report.

Section 3(b) of the PRD ARC charter objectives reads, “The ARC shall consider scalability of its recommendations to address the needs of small businesses and ‘others’ that employ pilots.” This consideration was addressed throughout the process by the inclusion of the Aircraft Owners and Pilots Association, the National Air Transportation Association, and the National Business Aviation Association as ARC members. Therefore no specific section of this report makes recommendations on this objective. The ARC deliberated a great deal over this issue, especially when deciding which “others” would be useful to include in the PRD regulation. The ARC decided to include only Title 14, Code of Federal Regulations (14 CFR) part 135 operators, with the exception of one dissent. A great deal of consideration was given to including 14 CFR part 91 pilots and operators in the PRD. The most notable subject in that discussion was the reduced number of required checkrides for those employed at part 91 operations. With company checkrides not required by these operations, an employer would have little to add to the

PRD that would not already have been added by the FAA. It would also not be useful or practical for these operators to access the database when hiring a pilot, as the typical pilot hired in such an operation is entry-level, with little data available, and in any event will fly a private aircraft. This is discussed in greater detail in section ? of this report.

The PRD ARC would like to thank the Administrator for the opportunity provided to submit its recommendations in this report. The ARC's recommendations achieve a significant enhancement in safety over the current requirements found in PRIA and exceed the requirements of Public Law 111–216 § 203. The recommendations are intended to provide pertinent data to those making a hiring decision without intruding unnecessarily into a pilot applicant's privacy. With tight security and regulations controlling access and the type of data that is entered, the PRD will provide immediate access to those making a hiring decision and enhance safety for decades to come.

## 1.0 PRD ARC BACKGROUND

### PRD ARC CHARTER

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#### SUBJ: FAA Pilot Records Database

**1. PURPOSE.** This document establishes the FAA Pilot Records Database Aviation Rulemaking Committee (ARC) according to the Administrator's authority under Title 49 of the United States Code (49 U.S.C.), section 106(p)(5).

#### **2. BACKGROUND.**

- a. In August 2010, Congress enacted the "Airline Safety and Federal Aviation Administration Extension Act of 2010" (the "Act"). Section 203 of the Act, titled "FAA Pilot Records Database," requires the FAA to establish and maintain an electronic database containing the following records:
  - 1) FAA Records – concerning current airman certificates, including airman medical certificates and associated type ratings and information on any limitations to those certificates and ratings; also includes failed attempts at a practical test and closed legal enforcements.
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  - 1) Provide periodic reports (not later than 18 months after enactment and at least once every 3 years thereafter) to Congress on:
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- a. The ARC will specifically identify the best methods to enable air carriers, “others” and individual pilots to use the Pilot Records Database. This includes:
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- b. The ARC shall consider scalability of its recommendations to address the needs of small businesses and “others” that employ pilots.
- c. The ARC will develop recommendations to Title 14 Code of Federal Regulations (CFR) part 121; (CFR) part 125; (CFR) part 135; and other associated regulations as may be required to comply with the intent of Section 203 of the Act. These recommendations will be presented to the Associate Administrator for Aviation Safety for rulemaking consideration on or before May 31, 2011.

#### **4. ARC PROCEDURES.**

- a. The ARC shall provide advice and recommendations to the Associate Administrator for Aviation Safety and acts solely in an advisory capacity. Once the ARC recommendations are delivered to the Associate Administrator, it is within her discretion to determine when and how the report of the ARC is released to the public.
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- c. The ARC may be reconvened following the submission of its recommendations for the purposes of providing advice and assistance to the FAA, at the discretion of the Associate Administrator.

#### **5. ORGANIZATION, MEMBERSHIP, AND ADMINISTRATION.**

- a. The membership of the ARC will consist of: (1) individuals from the government, air carriers, pilot labor organizations that can provide experts in the following areas: air carrier training, air carrier record keeping, human resources records, and airman privacy; (2) individuals from organizations that can provide insight into state and/or national driver record systems; and (3) other appropriate specialties as determined by the FAA.
  - 1) The ARC will consist of no more than 20 individuals.
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  - 3) Active participation and commitment by members will be essential for achieving the ARC's objectives and for continued membership on the ARC.
- b. The Associate Administrator for Aviation Safety is the sponsor of the ARC and will select an industry chair(s) from the membership of the ARC and the FAA-designated representative for the ARC. Once appointed, the industry chair(s) will—
  - 1) Coordinate required committee and subcommittee (if any) meetings in order to meet the ARC's objectives and timelines;
  - 2) Provide notification to all ARC members of the time and place for each meeting;
  - 3) Ensure meeting agendas are established and provided to the committee members in a timely manner; and
  - 4) Perform other responsibilities as required to ensure the ARC's objectives are met.
- c. A record of discussions of committee meetings will be kept.
- d. Although not required, ARC meeting quorum is desirable.

**6. PUBLIC PARTICIPATION.** ARC meetings are not open to the public. Persons or organizations that are not members of the ARC and are interested in attending a meeting must request and receive approval before the meeting from the chair(s) persons and the designated Federal representative.

**7. AVAILABILITY OF RECORDS.** Records, reports, agendas, working papers, and other documents that are made available to or prepared for or by the ARC will be available for public inspection and copying at the FAA Flight Standards Service, Regulatory Support Division, AFS-600, P.O. Box 25082, Oklahoma City, OK 73125, consistent with the Freedom of Information Act, 5 U.S.C. section 522. Fees will be charged for information furnished to the public according to the fee schedule published in Title 49 CFR part 7.

**8. PUBLIC INTEREST.** The ARC's formation is determined to be in the public interest and is designed to fulfill the performance of duties imposed on the FAA by Federal law.

**9. EFFECTIVE DATE AND DURATION.** This ARC is effective upon issuance of this order. The ARC will remain in existence until March 31, 2012, unless sooner suspended, terminated, or extended by the Administrator.

## **FAA PILOT RECORDS DATABASE**

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The Airline Safety and Federal Aviation Administration (FAA) Extension Act of 2010 (Public Law 111–216) Section 203

(a) Records of Employment of Pilot Applicants. Section 44703(h) of title 49, United States Code, is amended by adding at the end the following:

“(16) APPLICABILITY. This subsection shall cease to be effective on the date specified in regulations issued under subsection (i).”

(b) Establishment of FAA Pilot Records Database. Section 44703 of such title is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following:

“(i) FAA PILOT RECORDS DATABASE.

“(1) IN GENERAL. Before allowing an individual to begin service as a pilot, an air carrier shall access and evaluate, in accordance with the requirements of this subsection, information pertaining to the individual from the pilot records database established under paragraph (2).

“(2) PILOT RECORDS DATABASE. The Administrator shall establish an electronic database (in this subsection referred to as the ‘database’) containing the following records:

“(A) FAA RECORDS. From the Administrator—

“(i) records that are maintained by the Administrator concerning current airman certificates, including airman medical certificates and associated type ratings and information on any limitations to those certificates and ratings;

“(ii) records that are maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under part 61 of title 14, Code of Federal Regulations; and

“(iii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

“(B) AIR CARRIER AND OTHER RECORDS. From any air carrier or other person (except a branch of the Armed Forces, the National Guard, or a reserve component of the Armed Forces) that has employed an individual as a pilot of a civil or public aircraft, or from the trustee in bankruptcy for the air carrier or person—

“(i) records pertaining to the individual that are maintained by the air carrier (other than records relating to flight time, duty time, or rest time) or person, including records under regulations set forth in—

“(I) section 121.683 of title 14, Code of Federal Regulations;

“(II) section 121.111(a) of such title;

“(III) section 121.219(a) of such title;

“(IV) section 125.401 of such title; and

“(V) section 135.63(a)(4) of such title; and

“(ii) other records pertaining to the individual's performance as a pilot that are maintained by the air carrier or person concerning—

“(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

“(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and

“(III) any release from employment or resignation, termination, or disqualification with respect to employment.

“(C) NATIONAL DRIVER REGISTER RECORDS. In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

“(3) WRITTEN CONSENT; RELEASE FROM LIABILITY. An air carrier—

“(A) shall obtain the written consent of an individual before accessing records pertaining to the individual under paragraph (1); and

“(B) may, notwithstanding any other provision of law or agreement to the contrary, require an individual with respect to whom the carrier is accessing records under paragraph (1) to execute a release from liability for any claim arising from accessing the records or the use of such records by the air carrier in accordance with this section (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

“(4) REPORTING

“(A) REPORTING BY ADMINISTRATOR. The Administrator shall enter data described in paragraph (2)(A) into the database promptly to ensure that an individual's records are current.

“(B) REPORTING BY AIR CARRIERS AND OTHER PERSONS

“(i) IN GENERAL. Air carriers and other persons shall report data described in paragraphs (2)(B) and (2)(C) to the Administrator promptly for entry into the database.

“(ii) DATA TO BE REPORTED. Air carriers and other persons shall report, at a minimum, under clause (i) the following data described in paragraph (2)(B):

“(I) Records that are generated by the air carrier or other person after the date of enactment of this paragraph.

“(II) Records that the air carrier or other person is maintaining, on such date of enactment, pursuant to subsection (h)(4).

“(5) REQUIREMENT TO MAINTAIN RECORDS. The Administrator—

“(A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that the individual is deceased; and

“(B) may remove the individual's records from the database after that date.

“(6) RECEIPT OF CONSENT. The Administrator shall not permit an air carrier to access records pertaining to an individual from the database under paragraph (1) without the air carrier first demonstrating to the satisfaction of the Administrator that the air carrier has obtained the written consent of the individual.

“(7) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS AND CORRECT INACCURACIES. Notwithstanding any other provision of law or agreement, the Administrator, upon receipt of written request from an individual—

“(A) shall make available, not later than 30 days after the date of the request, to the individual for review all records referred to in paragraph (2) pertaining to the individual; and

“(B) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records.

“(8) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES

“(A) IN GENERAL. The Administrator may establish a reasonable charge for the cost of processing a request under paragraph (1) or (7) and for the cost of furnishing copies of requested records under paragraph (7).

“(B) CREDITING APPROPRIATIONS. Funds received by the Administrator pursuant to this paragraph shall—

“(i) be credited to the appropriation current when the amount is received;

“(ii) be merged with and available for the purposes of such appropriation; and

“(iii) remain available until expended.

“(9) PRIVACY PROTECTIONS

“(A) USE OF RECORDS. An air carrier that accesses records pertaining to an individual under paragraph (1) may use the records only to assess the qualifications of the



individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the individual and the confidentiality of the records accessed, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

“(B) DISCLOSURE OF INFORMATION

“(i) IN GENERAL. Except as provided by clause (ii), information collected by the Administrator under paragraph (2) shall be exempt from the disclosure requirements of section 552 of title 5.

“(ii) EXCEPTIONS. Clause (i) shall not apply to—

“(I) deidentified, summarized information to explain the need for changes in policies and regulations;

“(II) information to correct a condition that compromises safety;

“(III) information to carry out a criminal investigation or prosecution;

“(IV) information to comply with section 44905, regarding information about threats to civil aviation; and

“(V) such information as the Administrator determines necessary, if withholding the information would not be consistent with the safety responsibilities of the Federal Aviation Administration.

“(10) PERIODIC REVIEW. Not later than 18 months after the date of enactment of this paragraph, and at least once every 3 years thereafter, the Administrator shall transmit to Congress a statement that contains, taking into account recent developments in the aviation industry—

“(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be included in the database under paragraph (2); or

“(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

“(11) REGULATIONS FOR PROTECTION AND SECURITY OF RECORDS. The Administrator shall prescribe such regulations as may be necessary—

“(A) to protect and secure—

“(i) the personal privacy of any individual whose records are accessed under paragraph (1); and

“(ii) the confidentiality of those records; and

“(B) to preclude the further dissemination of records received under paragraph (1) by the person who accessed the records.

“(12) GOOD FAITH EXCEPTION. Notwithstanding paragraph (1), an air carrier may allow an individual to begin service as a pilot, without first obtaining information described in paragraph (2)(B) from the database pertaining to the individual, if—

“(A) the air carrier has made a documented good faith attempt to access the information from the database; and

“(B) the air carrier has received written notice from the Administrator that the information is not contained in the database because the individual was employed by an air carrier or other person that no longer exists or by a foreign government or other entity that has not provided the information to the database.

“(13) LIMITATIONS ON ELECTRONIC ACCESS TO RECORDS

“(A) ACCESS BY INDIVIDUALS DESIGNATED BY AIR CARRIERS. For the purpose of increasing timely and efficient access to records described in paragraph (2), the Administrator may allow, under terms established by the Administrator, an individual designated by an air carrier to have electronic access to the database.

“(B) TERMS. The terms established by the Administrator under subparagraph (A) for allowing a designated individual to have electronic access to the database shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual provide assurances satisfactory to the Administrator that—

“(i) the designated individual has received the written consent of the pilot applicant to access the information; and

“(ii) information obtained using such access will not be used for any purpose other than making the hiring decision.

“(14) AUTHORIZED EXPENDITURES. Of amounts appropriated under section 106(k)(1), a total of \$6,000,000 for fiscal years 2010 through 2013 may be used to carry out this subsection.

“(15) REGULATIONS

“(A) IN GENERAL. The Administrator shall issue regulations to carry out this subsection.

“(B) EFFECTIVE DATE. The regulations shall specify the date on which the requirements of this subsection take effect and the date on which the requirements of subsection (h) cease to be effective.

“(C) EXCEPTIONS. Notwithstanding subparagraph (B)—

“(i) the Administrator shall begin to establish the database under paragraph (2) not later than 90 days after the date of enactment of this paragraph;

“(ii) the Administrator shall maintain records in accordance with paragraph (5) beginning on the date of enactment of this paragraph; and

“(iii) air carriers and other persons shall maintain records to be reported to the database under paragraph (4)(B) in the period beginning on such date of enactment and ending on the date that is 5 years after the requirements of subsection (h) cease to be effective pursuant to subparagraph (B).

“(16) SPECIAL RULE. During the one-year period beginning on the date on which the requirements of this section become effective pursuant to paragraph (15)(B), paragraph (7)(A) shall be applied by substituting ‘45 days’ for ‘30 days’.”

(c) CONFORMING AMENDMENTS

(1) LIMITATION ON LIABILITY; PREEMPTION OF STATE LAW. Section 44703(j) (as redesignated by subsection (b)(1) of this section) is amended—

(A) in the subsection heading by striking “Limitation” and inserting “Limitations”;

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A) by striking “paragraph (2)” and inserting “subsection (h)(2) or (i)(3)”;

(ii) in subparagraph (A) by inserting “or accessing the records of that individual under subsection (i)(1)” before the semicolon; and

(iii) in the matter following subparagraph (D) by striking “subsection (h)” and inserting “subsection (h) or (i)”;

(C) in paragraph (2) by striking “subsection (h)” and inserting “subsection (h) or (i)”;

(D) in paragraph (3), in the matter preceding subparagraph (A), by inserting “or who furnished information to the database established under subsection (i)(2)” after “subsection (h)(1)”;

(E) by adding at the end the following:

“(4) PROHIBITION ON ACTIONS AND PROCEEDINGS AGAINST AIR CARRIERS

(A) HIRING DECISIONS. An air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

(B) ACTIONS AND PROCEEDINGS. No action or proceeding may be brought against an air carrier by or on behalf of an individual who has applied for or is seeking a position as a pilot with the air carrier if the air carrier refused to hire the individual after the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute a release from liability requested under subsection (h)(2)(B) or (i)(3)(B).”

(2) LIMITATION ON STATUTORY CONSTRUCTION. Section 44703(k) (as redesignated by subsection (b)(1) of this section) is amended by striking “subsection (h)” and inserting “subsection (h) or (i)”.

## 2.0 RECOMMENDATIONS

### OBJECTIVE

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**3.a.1—Examining alternatives for where the data (from three sources) will be maintained and alternatives for which organizational entity will have responsibility for PRD maintenance and reporting.**

### CHALLENGE

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To determine who will design, construct, maintain, and regulate the Pilot Records Database (PRD).

### BACKGROUND

The Federal Government, including the Federal Aviation Administration (FAA), has numerous programs to collect, analyze, disseminate, and store data. In some cases, the controlling agency performs these functions in-house; in others, some or all are contracted to third parties. Third parties used by the FAA, for example, include the National Aeronautics and Space Administration, the MITRE Corporation, and Universal Technical Resource Services, Inc.

### DISCUSSION

The FAA has many options available to answer the questions posed in this objective's challenge. The PRD Aviation Rulemaking Committee (ARC) does not have the information or expertise to determine the most cost- and task-effective method for the FAA to design, build, and maintain the PRD. However, the ARC members feel strongly that the information contained in the PRD will be of a sensitive nature and should be strictly controlled by the FAA. The PRD could contain social security numbers, pilot certificate numbers, birth dates, physical descriptions, medical information, employee records, driving records, criminal background checks, or other sensitive security information. Responsibility for this information should not be delegated to a third party.

### RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) The FAA determines the level of design, construction, and maintenance of the PRD necessary to ensure the security of the type of information the PRD will contain.
- 2) The FAA employs or contracts the level of expertise necessary to design, construct, and maintain the PRD in accordance with recommendation 1.
- 3) The FAA is the organizational entity that ensures any data entered into the PRD complies with all PRD regulations, and removes any non-compliant data.
- 4) The FAA is the organizational entity that ensures access to the PRD complies with PRD regulations.
- 5) Congress appropriates the funds necessary for the FAA to accomplish recommendations 1 through 4.

## OBJECTIVE

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**3.a.2 and 3.a.9—The ARC will specifically identify the best methods to enable air carriers, “others,” and individual pilots to use the Pilot Records Database (PRD). This includes: (2) Determining what information is required to be kept in the new system; (9) Determining a suitable structure for data tables to maintain training, qualifications, employment actions, and national driver record data records required by this legislation.**

## CHALLENGE 1: PILOT TRAINING, QUALIFICATIONS, PROFICIENCY, AND PROFESSIONAL COMPETENCE

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The PRD ARC carefully reviewed § 203 (b)(2)(i)(2)(B)(ii) of Public Law 111–216 and considered how best to effectuate the overarching goal of maximizing air safety. This subsection provides for the reporting of “other records pertaining to the individual’s performance as a pilot that are maintained by the air carrier or person concerning ... the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title....”

In evaluating what information should be required to be maintained in and entered into the PRD, the PRD ARC considered what items actually pertain to pilot performance and would be relevant to an air carrier’s assessment of a pilot applicant’s aeronautic suitability. The ARC was especially concerned that the statutory provisions not be implemented in a way that causes unintended adverse safety consequences. The ARC sought to make recommendations that would enhance safety in the realistic environment in which training and evaluations occur.

### BACKGROUND

#### The Statutory Goal of Providing Air Carriers With Pilot Applicant Performance-Related Data

The PRD ARC recognized that the underlying legislative intent of the existing Pilot Records Improvement Act (PRIA) of 1996, Title 49 of the United States Code (49 U.S.C.) § 44703(h)–(j), and subsequent amending legislation was to ensure relevant pilot proficiency records are provided to hiring air carriers to enable them to make informed decisions and hire competent pilots. The ARC considered findings of prior accident investigations and the nature of information later found to be important for air carriers to access. Since the enactment of PRIA and its amendments, the amount of information air carriers possess when evaluating pilot applicants has dramatically increased. The following are examples of changes resulting from the legislation:

- A pilot who fails to perform to established standards at his prior employer cannot hide that information and obtain new employment at an unsuspecting, different air carrier. PRIA and § 203 of Public Law 111–216 require the hiring air carrier to obtain and review such records before allowing an individual to begin service as a pilot.
- An air carrier cannot hire a pilot without obtaining and evaluating information from the FAA concerning any failed attempts by that individual to pass a practical test required to obtain a certificate or type rating under the applicable part under Title 14. Although such crewmember records existed at the FAA prior to the February 12, 2009, Colgan Air Flight

3407 accident, the air carrier had not accessed such information because there had been no requirement in place at the time the captain was hired. Under § 203 of Public Law 111–216, these records must now be accessed and evaluated.

- A pilot terminated for failing to progress appropriately in training and qualification events cannot avoid disclosure of such facts by simply omitting that employment history on a subsequent application for pilot employment. The permanent PRD required by § 203 of Public Law 111–216 will make all such air carrier records accessible to any prospective future air carrier employer.

### **Briefing by a Major Air Carrier Manager of Pilot Hiring**

The manager of pilot recruiting and training at a major air carrier briefed the PRD ARC about that air carrier’s pilot hiring process and the information it finds relevant and helpful for its hiring decisions. Key facts were gleaned from this presentation. First, the information obtained about each pilot applicant is far more wide-ranging than that required under PRIA. Like most air carriers, this carrier uses a detailed employment application that elicits extensive employment history data, going well beyond the scope of PRIA and § 203 of Public Law 111–216. The application process also includes background checks regarding pilot applicants’ criminal and credit histories.

At this air carrier, similar to many other major air carriers, pilot applicants meriting further consideration are questioned by a hiring review panel, which includes at least two pilots. The air carrier’s detailed interview process was reported to be a source of important information, and also ferrets out inconsistencies and past performance problems. Additional information comes from other informal sources, including other pilots, and may include chief pilots with whom the applicant previously worked. This briefing clearly demonstrated that PRIA does not limit the nature of the information an air carrier obtains, nor is it the main source of such information.

PRIA records are obtained and reviewed at this air carrier when a pilot is in training but before he or she begins service. It was helpful for the PRD ARC to recognize that use of PRIA records as a validation tool, rather than a research or selection tool, is not uncommon.

The manager personally reviews each pilot’s PRIA records at this air carrier, and has been doing so since PRIA’s implementation. Such experience enabled the manager to identify the data considered important for applicant review.

Second, and significantly, the manager reported the most relevant and helpful sources of information are the reports of FAA-required testing events, such as proficiency checks or other such uniform evaluations.

Third, and also importantly, records containing prior training program details, including instructor notes or comments, were of little to no value in assessing the relative qualification or competence of pilot applicants, due to the tremendous variance between air carrier training programs, the wide variation in training quantification standards, and the great subjectivity of instructor comments.

Fourth, the inclusion of such additional training program details actually detracts from the review process. The Manager explained that the inclusion of extraneous details (such as instructor notes or comments, and other detailed training program entries) makes it more difficult to identify truly relevant data. Inclusion of such materials increases the risk that the important FAA-required testing events could be overlooked.

Fifth, the Manager also reported personal experience in which the air carrier had been provided with PRIA documents reporting a pilot's training failures that were mixed-up and pertained to a different pilot. Because that air carrier selects pilots for training prior to the PRIA record review, it contacts any pilot whose PRIA records show inconsistent information and gives that person a chance to explain or advise that the records are incorrect. The PRD ARC recognizes, however, that not all air carriers have the same approach. Such experience highlighted to the ARC the risks of incorrect data being entered or erroneously reported.

The practical experience reported by the Manager resonated with the PRD ARC participants. The realistic assessment of which data is useful and relevant and which is not was consistent with the experiences of individual ARC participants, and validated the ARC's thinking. It also provided a basis for the exclusion of irrelevant information that the ARC members sought to protect from inclusion in the PRD.

### **Training Programs Generally And AQP Specifically**

The PRD ARC also considered standards and methods used in air carrier training programs. The ARC considered its members' firsthand experience with training programs generally, and their particular experience with Advanced Qualification Programs (AQP) and other voluntary safety reporting programs.

Voluntary safety reporting programs use de-identified data to improve safety at individual air carriers and throughout the industry. AQPs submit de-identified student performance data to the FAA on a regular basis and use such data to continually monitor and alter the content of the training program based upon ongoing risk assessments. A tenet of such programs is the confidentiality of the data obtained and used.

AQPs and other such voluntary safety reporting programs enhance safety in two important ways. First, they enable each air carrier to simultaneously monitor and identify patterns of performance or response, which enables immediate modifications to the program and allows an air carrier to continually re-focus the program to maintain relevance. Second, the programs enable the FAA to identify wider trends and take appropriate corrective action to further air safety.

### **Briefing By FAA's AQP Manager**

The FAA's AQP Manager briefed the PRD ARC and provided additional information about training programs generally, AQPs specifically, and the FAA's six other voluntary safety reporting and auditing programs. Some of the key facts obtained follow.

First, AQPs are the wave of the future. A vast majority of air carriers currently use AQPs, and more are expected to join those ranks. Second, each air carrier and training program has its own culture. The training programs vary greatly in the ways students are rated. While each training program is approved by the FAA, air carriers maintain discretion to determine the method of

rating students. At some air carriers, a large number of students score the highest possible rating of “5,” rendering “5” an average rating; at others, few students score a “5”, making “5” the outlier. The method an air carrier uses to rate pilots reflects that air carrier’s culture.

The AQP Manager emphasized the purely subjective nature of instructor assessments and the wide variation in grading standards and scales. Due to such subjectivity and grading variability, comparing one air carrier’s AQP training data to another’s is meaningless; accordingly, such comparisons are not made. The AQP Manager explained that data assigning numeric ratings to pilots in AQP training is not intended to measure pilot performance; rather, it is used to evaluate the effectiveness of the training.

Third, spending more time in training does not evidence that a student has a problem or will be less qualified or proficient at the end of training. In fact, training times at air carriers with AQPs are 10 to 15 percent longer than at those with traditional training programs. The AQP Manager explained the number of hours spent in training is a measure of what instructors are doing, not a measure of what students are learning.

Fourth, various indicators show the special effectiveness of AQP training and similar approaches. More air carriers are choosing AQPs despite the greater time and expense of such programs. AQPs may be more cost-effective than traditional training programs in the long run, however, by preventing more accidents and incidents and perhaps reducing the need for retraining. Moreover, a 2001 pilot training survey that generated over 1,200 responses—one of the largest studies of its kind to date— found AQP training to be more realistic than traditional training, and structured to ensure pilots learned new things each time. In the survey, pilots were asked various questions intended to measure their “utility reaction.” This measures the usefulness of the training to pilots and has been found to be one of the most predictive indicators of whether a pilot will carry what he or she learned back to line flying, according to the AQP Manager.

Finally, and perhaps most significantly, the AQP Manager stressed the importance of ensuring the confidentiality of training data. It is that protection that results in a full flow of information from the pilot to the air carrier and the FAA. And it is that complete flow of information that ensures the greatest level of safety by enabling checks and corrections to the training program as a whole, and the identification of air carrier- and industry-wide problems that can then be corrected before causing any aviation accidents.

The principles underlying AQPs and other voluntary safety programs informed the PRD ARC’s thinking about how § 203 of Public Law 111–216 should be interpreted and applied.

## ***DISCUSSION***

The experience of the PRD ARC participants is that comparing pilot performance during training holds no value and better critiques of instructor and training program effectiveness than individual pilot performance. The ARC recognizes, as did the Manager of Pilot Recruiting and Training and the FAA’s AQP Manager, that training programs are designed and certified to qualification standards that vary greatly. Additionally, grading criteria and other measures of success are similarly inconsistent between training programs and are not a reliable or objective measure of individual pilot performance.



The PRD ARC participants strongly believe that only data which is an objective measure of pilot performance should be entered into the PRD. The ARC participants' direct experience, validated by the experience of the Manager of Pilot Recruiting and Training, is that only events measured against objective and common standards required for the issuance or maintenance of an FAA certificate, rating, or qualification should be entered into the PRD.

The PRD ARC proposes to define these reportable events as "PRD Jeopardy Events." The Manager of Pilot Recruiting and Training referred to these as "FAA-required testing events." Because the ARC strongly believes that such PRD Jeopardy Events are the only uniform and consistent indicators of pilot performance, it believes it is essential for the FAA to include an explicit definition of the terminology in its regulations. The ARC deliberately chose to use a new term, as commonly used terms have different meanings and could be confusing. The word "check" has many different interpretations within Title 14, Code of Federal Regulations (14 CFR) and does not necessarily refer to a reportable event. For example, "phase checks" are more akin to "validations" under 14 CFR part 121, which are intended to represent pilot progress through training, as opposed to pilot performance after the completion of training, and are thus not reportable events.

Reporting events that accurately reflect a pilot's actual aeronautical performance is consistent with the statutory goal of furthering public safety. Populating the database only with information that truly reflects pilot performance best protects both individual pilots and the public at-large.

The PRD ARC also recognizes safety is better served by limiting the information entered into the PRD to that which is truly reflective of pilot performance. The ARC agrees with the statements made by the manager of pilot recruiting and training that the inclusion of extraneous training program materials, such as training program details, instructor notes, or comments, makes identification of truly relevant data more difficult. The ARC likened the information to a college transcript. It is important to see that an individual passed all of his courses and received his degree; it is not important to see copies of every term paper, exam, or professor's comment.

Similarly, the PRD ARC notes training grade sheets are a job aid created and used to facilitate the learning process and are not intended to memorialize an objective measure of pilot performance. They may be akin to practice exams given in a college course to assist in mastery of the written material. Most importantly, such information is not a reflection of pilot performance or ultimate success in training. Rather, such communications are rendered quickly to foster immediate discussion and are not intended to be a permanent record that forever follows the pilot throughout his career.

Moreover, the PRD ARC is extremely concerned that § 203 of Public Law 111–216 not be applied in any way that would undermine the process by which individual pilots learn in the training environment. Learning is fostered in an environment in which a free exchange of information between instructor and student takes place. Often, areas to focus on in training are divulged by the student to the instructor only when the student feels comfortable enough to reveal his questions or deficiencies. Student pilots in a training environment should be encouraged to seek individualized feedback and constructive suggestions. Instructors and check airmen should feel free to communicate educational feedback and practical advice. It is essential that implementation of § 203 of Public Law 111–216 not discourage or eliminate this aspect of the training and learning process.

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.” See Appendix B of this report.

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.

Any requirement stemming from § 203 of Public Law 111–216 that causes instructors or check airmen to restrict or refrain from giving pilots substantive feedback while in training would be a serious negative unintended consequence of the law. The FAA should recognize that absent such a “safe harbor” or clear regulatory carve-out provision, there is a serious risk of this adverse effect. The PRD ARC’s suggested approach would encourage instructors to fully communicate with their students during training, and foster, rather than impede, pilot training and proficiency.

The PRD ARC also believes it is extremely important that pilots are able to seek additional training where desired, and that the length of time a pilot spends in training not carry any adverse implications or negative connotations. For this reason, the ARC does not include the start date of training in the information it recommends be entered into the PRD. The ARC’s recommendation is to report only training completion dates.

Some pilots may choose to obtain additional training to attain a higher level of proficiency than the minimum required to pass the applicable qualifications test. Deterring such actions would undermine safety. Some of the PRD ARC members reported taking unusual steps to ensure additional training would not be documented, and prevent any adverse inferences by future prospective employers. ARC participants recognize that a pilot will not seek additional training time if there is any risk that it could negatively impact the perception of the pilot.

Further, as shown in the AQP presentation, more time spent in training does not indicate the fully trained pilot is any less competent or proficient. To the contrary, evidence suggests that more training may make the pilot more competent. Likewise, two equally skilled and proficient pilots may spend different lengths of time training to learn new aircraft systems. It is vital that the policies and procedures adopted to implement § 203 of Public Law 111–216 not have any consequences that would deter a pilot from seeking more training time.

The remarks of the FAA’s AQP Manager amply demonstrate the vital role AQPs serve in protecting air safety and the data they provides to individual air carriers and the FAA. The PRD ARC members fully agree with this view and urge the FAA to take all steps to continue the protection of these programs and the confidential data obtained through them. The ARC considers the maintenance of confidential data obtained pursuant to voluntary training programs to be of paramount importance, and urges in the strongest possible terms that the FAA take all steps to ensure the continued protection of such data. The ARC recommends the regulations implementing § 203 of Public Law 111–216 reiterate and reinforce the confidentiality of such data and make clear that neither PRIA nor § 203 of Public Law 111–216 should alter these programs in any way.

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) It is essential the FAA distinguish between “checking” and “training.” 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 requires the electronic reporting of data that objectively measures pilot performance. Only events measured against objective and common standards should be reported.
- 3) The FAA incorporates in the implementing regulations the term “PRD Jeopardy Event” (as defined in the discussion of ARC charter objective 3.a.8) to identify those events that represent objective measures of pilot performance and are to be entered into the PRD.
- 4) PRD Jeopardy Events should be recorded in a “pass or fail” format (“SAT” (satisfactory) or “UNSAT” (unsatisfactory)). Reporting performance results consistently and uniformly helps ensure that objective facts are recorded.
- 5) The results of the following indicators of pilot performance (PRD Jeopardy Events) should be entered by air carriers and “others” into the PRD. Only events measured against objective and common standards required for the issuance or maintenance of an FAA certificate, rating, or qualification should be entered into the PRD.

Note: Information reported on FAA form 8710, Airman Certificate and/or Rating Application, will be maintained by the FAA and included in the PRD from the FAA. The inclusion of any separate or duplicate air carrier reporting requirements with respect to that information is not necessary.

- a. Part 121: Domestic, Flag, and Supplemental Operations: Subparts N & O—  
Training Programs and Crewmember Qualifications
  - Qualification Training Program: Certificate holders shall report the outcome of the event that results in an aircrew qualification, as defined by the certificate holder's Qualification Training Program and as identified below.
  - Proficiency Checks (121.401, 121.441)
  - Recurrent Training: Certificate holders shall report the outcome of the event that results in maintaining qualification as defined by the certificate holder's Recurrent Training Program and as identified below.
  - Proficiency Checks (121.427, 121.441)
  - Line Checks (121.440): Certificate holders shall report the results of all Line Checks as described by this part.
- b. Part 121: Domestic, Flag, and Supplemental Operations: Subpart Y—Advanced Qualification Programs
  - Qualification Curriculum: Certificate holders shall report the outcome of the event that results in an aircrew qualification as defined by the certificate holder's Qualification curriculum and as identified below.
  - Line Operational Evaluation or equivalent evaluation (121.913)
  - Line Checks (121.913)
  - Continuing Qualification Curriculum: Certificate holders shall report the outcome of the event that results in maintaining qualification as defined by the certificate holder's Continuing Qualification curriculum and as identified below.
  - Line Operational Evaluation or equivalent evaluation (121.915)
  - Line Checks (121.915)
- c. Part 125: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6000 Pounds or More:
  - Initial and Recurrent Pilot Testing Requirements: Certificate holders shall report the outcome of the events that result in an aircrew qualification for each type of airplane to be flown by the pilot, as described by this part and as identified below.
  - Written or Oral Test (125.287a)
  - Competency Check (125.287b)
  - Instrument Proficiency Check (125.291)
- d. Part 135: Commuter and On-Demand Operations

- Initial and Recurrent Pilot Testing Requirements: Certificate holders shall report the outcome of the events that result in an aircrew qualification for each type of airplane to be flown by the pilot, as described by this part and as identified below.
  - Written or Oral Test (135.293a)
  - Competency Check (135.293b)
  - Instrument Proficiency Check (135.297)
  - Line Checks (135.299)
- 6) The FAA should take great care that its implementation of § 203 of Public Law 111–216 and the regulations concerning the PRD therein not have any unintended consequences that undermine safety.
- 7) The FAA should 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 or documents should be designated “FIPO”—“For Instructional Purposes Only—Not to Be Maintained as a Permanent Record.”
- 8) Pilots should not be deterred from seeking additional training. The PRD ARC believes it is extremely important that pilots may seek additional training where desired, and that the length of time a pilot spends in training not carry any adverse implications or negative connotations. For this reason, the ARC recommends only the completion date of training, and not the start date, be entered into the PRD.
- 9) The FAA should confirm that § 203 of Public Law 111–216 mandates no new burden to create, modify, or redefine the content of a pilot record. The repeated use of the word “maintained” in § 203 of Public Law 111–216 leaves no doubt that the law imposes no new document creation requirements on air carriers.
- 10) The confidentiality of student performance data and all other such information obtained pursuant to voluntary safety programs such as AQP’s must remain fully protected. The FAA should specifically affirm that such information is not subject to any reporting to the PRD.

The proposed data tables to support the PRD data are below.

***TRAINING, QUALIFICATION, PROFICIENCY, AND COMPETENCY RECORD  
(PRD JEOPARDY EVENT RECORD)***

All training events that result in a test to objective criteria are to be recorded and categorized according to the criteria below.

<b>Training provider certificate number:</b>	Certificate number training provider.
<b>Training provider name:</b>	Name of the training provider as it appears on the certificate (used for error checking).
<b>Pilot certificate number:</b>	Certificate number of the pilot.
<b>Pilot last name:</b>	Name of the pilot as it appears on their certificate (used for error checking).

<b>Date of training:</b>	YYYYMMDD — Date the examination was administered or training was terminated.
<b>Aircraft Type:</b>	The aircraft or simulator used for the jeopardy event. <u>Valid values:</u> List of standard values used on certificates.
<b>Duty position: (Code)</b>	The position in the air craft the person was in during the test <u>Valid values:</u> <ul style="list-style-type: none"> <li>• PIC (Pilot in command)</li> <li>• SIC (Second in command)</li> <li>• FE (Flight Engineer)</li> </ul>
<b>Training program:</b>	What is the type of training program in place at the air carrier or operator? <u>Valid values:</u> <ul style="list-style-type: none"> <li>• <b>121NO</b> (Part 121 carrier operating under a traditional Subpart N &amp; O training system)</li> <li>• <b>121Y</b> (Part 121 carrier operating under an approved Advanced Qualification Program (AQP) training system in accordance with Subpart Y)</li> <li>• <b>135</b> (Part 135 carrier)</li> <li>• <b>125</b> (Part 125 operator)</li> </ul>
<b>Jeopardy event: (Code)</b>	See definition of Jeopardy event. <u>Valid values:</u> <ul style="list-style-type: none"> <li>• For 121 operators under Subpart N &amp; O programs: <ul style="list-style-type: none"> <li>○ <b>QPC</b> (Qualification Proficiency Check i/a/w 121.401 &amp; 121.441)</li> <li>○ <b>RPC</b> (Recurrent Proficiency Check i/a/w 121.427 &amp; 121.441)</li> <li>○ <b>LC</b> (Line Check i/a/w 121.440)</li> </ul> </li> <li>• For 121 operators under Subpart Y (AQP) programs: <ul style="list-style-type: none"> <li>○ <b>QLOE</b> (Qualification Line Operational Evaluation (LOE) of equivalent i/a/w 121.913)</li> <li>○ <b>CQLOE</b> (Continuing qualification LOE or equivalent i/a/w 121.913)</li> <li>○ <b>LC</b> (Line Check i/a/w 121.913 &amp; 121.915)</li> </ul> </li> <li>• For 135 operators: <ul style="list-style-type: none"> <li>○ <b>OWT</b> (Oral or written test i/a/w 135.293a)</li> <li>○ <b>CC</b> (Competency check i/a/w 135.293b)</li> <li>○ <b>IPC</b> (Instrument proficiency check i/a/w 135.297)</li> <li>○ <b>LC</b> (Line Check i/a/w 135.299)</li> </ul> </li> <li>• For 125 operators: <ul style="list-style-type: none"> <li>○ <b>OWT</b> (Oral or written test i/a/w 125.287a)</li> <li>○ <b>CC</b> (Competency check i/a/w 125.287b)</li> <li>○ <b>IPC</b> (Instrument proficiency check i/a/w 125.291)</li> </ul> </li> </ul>
<b>Results:</b>	The final results of the jeopardy event. <u>Valid values:</u> SAT/UNSAT

### ***DUTIES HISTORY [135.63(A)(4) ]***

This information is only required for part 135 operators and reflects those records maintained in accordance with 14 CFR § 135.63(a)(4).

<b>Pilot certificate number:</b>	Certificate number of the pilot receiving the action.
<b>Pilot last name:</b>	Name of the pilot as it appears on their certificate (used for error checking).
<b>Start Date:</b>	YYYYMMDD <u>Valid values:</u> (TODAY – 60 years) > date <= TODAY
<b>End Date:</b>	YYYYMMDD <u>Valid values:</u> <ul style="list-style-type: none"> <li>• Start_Date &gt;= date &lt;= TODAY</li> <li>• Null</li> </ul>

<b>Aircraft Type:</b>	The aircraft to which the pilot is assigned. <u>Valid values:</u> List of standard values used on certificates.
<b>Duty position: (Code)</b>	The position in the air craft the person was in during the test <u>Valid values:</u> <ul style="list-style-type: none"><li>• <b>PIC</b> (<i>Pilot in command</i>)</li><li>• <b>SIC</b> (<i>Second in command</i>)</li><li>• <b>FE</b> (<i>Flight Engineer</i>)</li></ul>

Note: An XML method will be devised such that an existing duty history record can be revised in order to add the End Date.

## **CHALLENGE 2: DISCIPLINARY ACTION AND RELEASE FROM EMPLOYMENT**

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Section 203(b)(2)(i)(2)(B)(ii) of Public Law 111–216 identifies certain categories of records “pertaining to the individual’s performance as a pilot” that are to be included in the PRD (“B(ii) records”). B(ii) records specifically include “(II) any disciplinary action ... that was not subsequently overturned; and (III) any release from employment or resignation, termination, or disqualification with respect to employment.” The explicit statutory language, consistent with the goals of the legislation, limits the relevant disciplinary and release from employment records to those involving pilot proficiency.

In § 203(b)(2)(i)(2)(B)(i)(I) of Public Law 111–216, air carriers are directed to enter into the PRD records maintained by air carriers pursuant to 14 CFR § 121.683. Among other things, that section requires certificate holders to record actions taken concerning flight crewmembers’ release from employment or physical or professional disqualification, and to keep such records for at least 6 months.

First, the PRD ARC must define what constitutes “disciplinary action” pertaining to the individual’s performance as a pilot for purposes of entry into the PRD. Second, the ARC must reconcile the direct and explicit B(ii) language which limits PRD documents involving disciplinary actions and releases from employment to only those involving “performance as a pilot” with the B(i) reference to including records maintained under § 121.683.

### **BACKGROUND**

The intent of PRIA and § 203 of Public Law 111–216 is to provide hiring air carriers with information about air carrier pilots that directly reflects their pilot proficiency. The law was not intended to replace or supersede air carriers’ other human resource functions with respect to pilot hiring, nor was it intended to provide a one-stop shop for all other information an air carrier might seek pertaining to pilot applicants.

The legislative history of PRIA clearly elucidates this congressional intent. In the legislative history accompanying the 1997 amendments to PRIA, Congress noted a question had arisen involving “which records must be requested, received, and maintained by air carriers,” particularly with respect to the requisite records pertaining to “actions taken concerning release from employment or physical or professional disqualification ... and any disciplinary action that was not subsequently overturned.” The answer, Congress explained, is:

... [a]ll of these [statutory] requirements are directed toward the competency of the individual as a pilot. Indeed, the whole thrust of the 1996 Act was to ensure that the airline would have the information needed to determine whether the applicant was capable of flying the plane safely. While other information, such as how the pilot interacts with customers, may be important, it is not the focus of this legislation. Therefore, while airlines would be free to request and receive other information not directly related to the competency of the individual as a pilot, the Committee does not consider it to be required by the Pilot Records Improvement Act.<sup>1</sup>

Especially significant is the congressional statement that all of these requirements—including the providing of records “concerning release from employment or physical or professional disqualification”—are required to be turned over only if they directly involve the competency of the individual as a pilot.

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.

For a number of years, the FAA interpreted PRIA to require the reporting of disciplinary actions resulting in termination only if they involved pilot performance. See PRIA Advisory Circulars (AC) 120–68A p. 4; AC 120–68B p. 6 (... records pertaining to the *individual’s performance as a pilot* that are maintained ...) (emphasis in original), AC 120–68C p. 7 (... records pertaining to the *individual’s performance as a pilot* that are maintained ...) (emphasis in original) (**DO NOT include records that DO NOT pertain to the individual’s performance as a pilot.**) (emphasis in original). In 2007, the FAA changed its interpretation of PRIA without explanation and began advising that *all* termination records should be produced. It nonetheless maintained in AC 120–68D that its directive that with respect to all other disciplinary actions, only those involving pilot performance should be provided.

## DISCUSSION

The PRD ARC gave great weight to the B(ii) language in § 203 of Public Law 111–216. The categories of records listed under B(ii)—including disciplinary action and releases from employment—are explicitly limited to “records pertaining to the individual’s performance as a pilot.” The law is constructed to specifically prescribe that records involving disciplinary action and releases from employment are subject to that limiting language.

The PRD ARC considered congressional intent, underlying incidents that brought about Public Law 111–216, PRIA, and ACs related to PRIA, and recognized that the purpose of § 203 of Public Law 111–216 and PRIA is to provide records pertaining to pilot proficiency. This overriding intent pertains to all disciplinary actions, including terminations. That intent is explicitly stated in House Report 105–372.

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<sup>1</sup> House Report 105–372, Clarifications to the Pilot Records Improvement Act of 1996, at 3.



The FAA has consistently, and in our view correctly, required only disciplinary actions involving pilot performance to be turned over under PRIA. The FAA has interpreted the requirements pertaining to termination records inconsistently. The PRD ARC believes the FAA’s original interpretation—requiring records involving releases from employment to be treated the same as all other disciplinary actions and turned over *only* if they directly involve pilot performance—is the correct one. That approach is more consistent with the true purpose of Public Law 111–216, and more internally consistent with the structure of the statute.

The FAA should clarify these provisions and provide detailed regulations to ensure only information about disciplinary actions intended by Public Law 111–216 to be entered into the PRD is entered. Such specificity and clarification is necessary to protect both air carriers and pilots.

Public Law 111–216’s protections to air carriers, such as release from liability provisions, apply only with respect to the entry of covered data. Air carriers are not given immunity if they overreach by entering data that goes beyond the statute. The FAA should make clear in its regulations what information is appropriate for PRD entry. Likewise, the PRD was created for the specific and limited purpose of providing prospective air carrier employers with records relevant to pilot proficiency and aeronautical skills. The PRD was not intended to be a human resources clearinghouse for other interesting but not flight safety skill-related data.

The PRD ARC’s proposed definition limiting “disciplinary action” to that involving the individual’s competence as a pilot effectuates the language and intent of PRIA and § 203 of Public Law 111–216. It should not be interpreted as sanctioning or minimizing the seriousness of misconduct unrelated to pilot proficiency. Employers are free to obtain and consider information not required by PRIA or § 203 of Public Law 111–216. The ARC recognizes, as did Congress, that the PRD is only one tool among many employers use when evaluating prospective pilot applicants for employment.

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) The FAA shall define “disciplinary action” for purposes of the PRD as follows. “Disciplinary action” that must be maintained and turned over to the PRD must (1) be taken by an employer; (2) impose an adverse penalty on the pilot, such as a suspension without pay; (3) directly involve the individual’s performance as a pilot, which means it involves the pilot’s performance of aeronautical duties; and (4) not have been subsequently overturned.
- 2) An employer action that does not result in an adverse penalty or sanction to the employee, such as a letter of counseling or warning, is not considered “disciplinary action” under this definition and should not be entered into the database.
- 3) Inappropriate or wrongful conduct in the workplace for which the employee is penalized by the employer but does *not* involve the pilot’s aeronautical duties is not considered “disciplinary action” for purposes of the PRD and should not be turned over to it.

- 4) The following are examples of conduct that does *not* involve a pilot's aeronautical duties and would not meet this definition of disciplinary action: violation of an employer's dependability or attendance policy; failure to meet an employer's appearance or grooming standards; insubordination; violation of the duty of loyalty; sexual harassment; theft or dishonesty; fraud; interpersonal conflict; failure to conduct oneself appropriately with the public, customers, or vendors; violations of company policy that do *not* involve the pilot's aeronautical duties; and drug and alcohol misconduct that is not separately reportable under § 203 of Public Law 111–216.
- 5) Information beyond the statutory scope that is entered into the PRD by an air carrier may void the release of liability provisions. The regulations should clearly identify this risk to air carriers regarding situations where they enter inappropriate information.
- 6) Disciplinary action involving pilot performance that is subsequently overturned should be “promptly” removed from the database. (The terms “subsequently overturned” and “prompt” for purposes of this section are defined in the discussion of ARC charter objective 3.a.4.) Discipline that has been “subsequently overturned” includes action unilaterally reversed by the employer; taken in a good-faith settlement agreement between the employer and pilot or between the employer and the pilot's union or other representative; ordered by an arbitrator or other individual given authority to review employment disputes; rendered by a panel or System Board of Adjustment; or taken by a court or other appeal or review process.
- 7) Air carrier records pertaining to a pilot's release from employment, resignation, or termination shall be maintained and turned over to the PRD only if such records directly involve the individual's *performance as a pilot*. If a record on its face contains no references to the pilot's performance of his aeronautical duties, such record is not covered by this section.
- 8) An air carrier shall identify by date only the release of a pilot from employment for reasons which do not pertain to the individual's performance as a pilot.

The proposed data tables to support the PRD data are below.

#### **DISCIPLINE INVOLVING PILOT PERFORMANCE**

NOTE: Inappropriate or wrongful conduct in the workplace for which the employee is penalized by the employer but which does *not* involve the pilot's aeronautical duties, is *not* considered “disciplinary action” for purposes of entry into this PRD and should *not* be entered below.

Thirty days must have passed before discipline involving pilot performance is permitted to be entered below.

<b>Pilot certificate number:</b>	Certificate number of the pilot receiving the action.
<b>Pilot last name:</b>	Name of the pilot as it appears on his or her certificate (used for error checking).
<b>Date of action:</b>	YYYYMMDD
<b>Action type: (Code)</b>	<ul style="list-style-type: none"><li>• Disciplinary suspension of duties without pay</li><li>• Disqualification</li><li>• Termination</li></ul>

## RELEASES FROM EMPLOYMENT

<b>Pilot certificate number:</b>	Certificate number of the pilot receiving the action.
<b>Pilot last name:</b>	Name of the pilot as it appears on his or her certificate (used for error checking).
<b>Date of action:</b>	YYYYMMDD

## DATES OF EMPLOYMENT

All pilot hires and releases form employment will be recorded in PRD.

<b>Pilot certificate number:</b>	Certificate number of the pilot receiving the action.
<b>Pilot last name:</b>	Name of the pilot as it appears on their certificate (used for error checking)
<b>Date of action:</b>	YYYYMMDD <i>Valid values:</i> 19950801 > date <= TODAY
<b>Action type (Code):</b>	<i>Valid values:</i> <ul style="list-style-type: none"><li>• H (Date of hire)</li><li>• R (Date of release from employment)</li></ul>

Note: The data is only required for new hires on the date of effectiveness of the PRD. Data need not be entered for employees hired prior to the PRD effective date.

## CHALLENGE 3: EXPUNGEMENT OF FAA LEGAL ENFORCEMENT ACTIONS

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As a result of passage of Public Law 111–216, the FAA has suspended its expungement policy for enforcement actions on all airman certificates. In the notice of suspension, the FAA stated it “will determine the full effect of the Act’s requirements on the expunction policy and will amend its expunction policy accordingly.”

In 1991, the FAA adopted a policy of expunging records of certain closed legal enforcement actions against individuals in an effort to support the requirements of the Privacy Act of 1974, 5 U.S.C § 552a—that any information maintained regarding an individual be accurate, relevant, timely, and complete. Records of enforcement action on an airman certificate has limited relevancy with time. It was therefore decided enforcement actions should be expunged from pilot’s record after 5 years. The FAA determined that actions leading to a certificate revocation are severe enough to maintain relevancy over time, and therefore records of those revocations are not expunged.

### BACKGROUND

Public Law 111–216 requires the FAA to maintain certain records within a PRD for the purpose of providing information on an individual pilot for air carriers to access and evaluate in deciding whether to hire the individual as a pilot. Among those records, the FAA is required to maintain “summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.”

### DISCUSSION

In 1991, the FAA adopted a policy of expunging records of certain closed legal enforcement actions against individuals, 56 Federal Register (FR) 55,788 (Oct. 29, 1991). The FAA decision to adopt this expungement policy was based on the findings of a 1989 System Safety and Efficiency Review (SSER) of its General Aviation Compliance and Enforcement Program. The

SSER review team comprised both FAA personnel and representatives of various industry organizations, including the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, and the National Business Aviation Association, and included input from air carriers, corporate operators, and professional pilots through a series of public meetings and submissions. There was much deliberation with regard to the accuracy, relevancy, timeliness, and completeness of pilot records maintained by the FAA. The SSER team concluded that the interest of safety may not require the FAA to maintain all violation histories for an indefinite period of time, and that certain types of enforcement information regarding individuals has limited usefulness over time. The FAA's final determination was made based on meaningful and thorough discussion, legal analysis, and consideration of submitted comments directly addressing the Privacy Act requirements that any information maintained regarding an individual be accurate, relevant, timely, and complete. On this basis, the FAA developed and implemented a policy of expunging certain enforcement information from agency records.

The FAA expungement policy includes both airman certificate holders and non-holders such as passengers. Among other things, the policy provides that, in general, records of legal enforcement actions involving suspension of an airman certificate or a civil penalty against an individual are maintained for 5 years and then expunged. Cases closed with no enforcement action are expunged within 90 days. The expungement policy does not apply to enforcement actions resulting in revocation of the airman certificate, which are maintained indefinitely. Records of administrative actions are maintained for 2 years, a policy that was in existence at the time of the 1991 expunction policy and was left unchanged by its adoption. Further, no legal enforcement action record is expunged if, at the time expungement is due, one or more other legal enforcement actions is pending against the same individual.

When a record is expunged from an Enforcement Information System (EIS), any information which identifies the individual will be removed from the EIS record, including the individual's name, address, date of birth, FAA certificate number, and aircraft identification number and owner's name and address. The case report number is not removed, nor is the rest of the information, such as the FARs violated and the final action. This information is retained so the FAA is able to conduct statistical research of that data.

The expungement policy is a means of ensuring compliance with the Privacy Act, which requires that information kept on an individual be accurate, relevant, timely, and complete. Enforcement actions are issued for widely varying regulatory violations and are often dependent upon the Flight Standards District Office or individual inspectors where the infraction is being investigated. Approximately 99 percent of all FAA enforcement cases are first offenses and generally involve inadvertent violations of altitude or airspace deviations. There is debate over whether FAA enforcement efforts promote compliance with statutory and regulatory requirements for aviation safety. Additionally, enforcement actions are generally not a good predictor of pilot skill, competence, or future safety violations.

Enforcement action statements placed in a pilot's record contain little detail on the factors that contributed to the violation. The severity of the offense, details of the factors leading to the violation, and timeliness of the infraction need to be considered in order to obtain a full picture of the violation. Without identifying the circumstances that led to the deviation, the simple statement that an enforcement action took place provides no information regarding the

magnitude of the underlying offense, nor offers any insight into the likelihood of the pilot being involved in another infraction. Additionally, if a substantial period of time has elapsed since the incident, the infraction itself (and the record of it) would become entirely irrelevant.

In many enforcement cases, individual pilots may wish to contest charges against them but lack the financial resources to do so. Instead, pilots often accept the issuance of an enforcement action against their certificate with the understanding that the certificate action will be expunged after 5 years. The sudden suspension of the expungement policy unfairly maintains note of enforcement action on these pilots' records.

Enforcement actions that remain on a pilot's record may unjustly disqualify that person from lower cost insurance, renting aircraft, the ability to participate in a partnership, or obtaining employment.

Enforcement actions are typically the result of human error, not intentional violation of regulations, and most often represent the first and only enforcement action in a pilot's record. In contrast, the criminal background check required for initial employment at an air carrier based at a 14 CFR part 49 airport is limited to a 10-year look-back period under 49 U.S.C. § 44936, Employment investigations and restrictions. Criminal acts reflect willful and deliberate violations of public law and include serious offenses such as murder. Certainly, the relevance of pilot records pertaining to enforcement actions is similarly time-limited. Pilots with such prior incidents should not be negatively branded for life.

There is much controversy regarding the standardization and effectiveness of enforcement actions assessed against individual pilots based upon the Flight Standards District Office or individual FAA inspectors conducting the investigation. Recently, the Government Accountability Office was asked to assess how the FAA uses its enforcement options to address noncompliance and what management controls are in place to ensure that enforcement efforts and partnership programs result in compliance with aviation safety regulations. In its report, the Office noted that "because FAA has not evaluated the effect of its enforcement actions, it is not possible to tell whether those actions have had a deterrent effect on future violations." Enforcement action on a pilot's record does not provide any meaningful information to a hiring air carrier and is not a good differentiator in pilot hiring, particularly if a substantial amount of time has passed since the violation.

Public Law 111–216 calls for the FAA to maintain summaries of legal enforcement actions resulting in a finding by the Administrator of either a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned. It appears that this provision of the law was inserted without any deliberation or meaningful discussion about the relevance of entering and maintaining *all* enforcement action data without limitation. Similarly, no consideration appears to have been given to the important interests served by the FAA's 1991 Privacy Act determination and expungement policy.

The PRD ARC is concerned that provisions of § 203 of Public Law 111–216 conflict with the Privacy Act and its requirements to maintain accurate, relevant, and timely individual pilot records.

Public Law 111–216 requires a PRD in order to establish record requirements for pilots seeking employment at an air carrier only. The PRD ARC recognizes that the PRD is intended to be secure and not subject to the Freedom of Information Act, 5 U.S.C. § 552. Since these records in the PRD are to be maintained solely for the purpose of hiring at an air carrier, the requirement to maintain enforcement actions should not impact the previously established record retention and expungement policies regarding FAA records for pilots flying for personal or business purposes. Enforcement actions maintained in the PRD will meet the requirement of Public Law 111–216 without negatively affecting the hundreds of thousands of pilots that are not and have no intention of seeking employment with an air carrier.

## **RECOMMENDATIONS**

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The PRD ARC recommends that—

- 1) The FAA consider the conflicting legal responsibilities imposed by the Privacy Act and the new Public Law 111–216. The PRD ARC further recommends that the 5-year expungement policy for enforcement actions be reinstated 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.
- 3) The FAA reinstates the 5-year expungement policy for all pilot enforcement actions and all pilot records not be subject to the Freedom of Information Act.

## **CHALLENGE 4: NATIONAL DRIVER REGISTER RECORDS**

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The PRDARC has carefully reviewed § 203 of Public Law 111–216 and the law governing the National Driver Register (NDR), 49 U.S.C. chapter 303, and has also considered the existing regulatory scheme and legal requirements that govern airmen, such as 14 CFR § 61.15 and FAA form 8500–8, the Airman Medical Application. The question is whether to change the current system, which works well.

The PRD ARC fully supports and understands the need to review a pilot applicant’s driving record to ensure there no serious infractions, such as driving under the influence (DUI) or driving while intoxicated (DWI), exist. As further discussed in the background and discussion area of this report, the ARC recognized that a new hire pilot could not be placed in service until the pilot received and passed a first- or second-class physical. During the medical examination process, the pilot must check either “yes” or “no” relating to a driving arrest or conviction. Regardless of which box is checked, the FAA independently performs an NDR search for DUI or DWI violations and obtains its own NDR data. The current process works effectively, meets the intent of the law, and continues this process throughout the pilot’s career.

## **BACKGROUND**

Independent of PRIA and § 203, the FAA has developed and implemented a successful regulatory, oversight, and enforcement scheme that identifies pilots who have had alcohol- or drug-related motor vehicle convictions or State motor vehicle administrative actions. The FAA uses that information in conjunction with other relevant medical information to identify any

pilots who do not meet the applicable medical or safety standards. The FAA representatives participating in the PRD ARC indicated that § 203 of Public Law 111–216 requires air carriers to obtain and report NDR data to the FAA for entry into the PRD. The ARC does not agree with that reading and strongly believes this approach would not serve to improve air safety. Section 203 of Public Law 111–216 does *not* specify who should report the “information concerning” the driving records to the FAA Administrator. Section 203 of Public Law 111–216 lumps together the data to be provided under subsections B and C, and states such data is to be reported by air carriers and “other persons.” This language does not specifically mandate reporting by air carriers. It authorizes “information concerning” motor vehicle actions to be reported by “other persons,” such as the NDR or even another subdivision of the FAA. Likewise, 49 U.S.C. § 30305, which governs access to NDR information, does not impose this requirement on air carriers.

In rejecting the interpretation that air carriers directly access NDR records, the PRD ARC acknowledges that an air carrier-requested search of the NDR could produce some driving violations in addition to DUI and DWI violations. However, the PRD ARC concluded that the value of this additional information was “de minimis.” More importantly, air carriers would only be required to do a “one-time” search on their pilots. Conversely, leaving responsibility for NDR searches with the FAA ensures the pilot’s NDR records are updated at least annually.

Under this scheme, pilots have two separate reporting requirements. First, under 14 CFR § 61.15(e), a pilot is required to affirmatively write to the FAA Security and Hazardous Materials Branch (“Security Branch”) within 60 days of a drug- or alcohol-related “motor vehicle action.” The reporting obligation is effective even without an actual conviction. A pilot whose driver’s license is cancelled, suspended, or revoked for a drug- or alcohol-related driving cause is required to provide a timely written report of such action. A *conviction* for violating any Federal or State laws prohibiting operating a motor vehicle while intoxicated, impaired, or under the influence of drugs or alcohol requires a separate FAA report under 14 CFR § 61.15(c). The Security Branch reviews these reports and refers cases to the FAA’s Enforcement Branch where appropriate.

Second, the FAA’s medical application requires a pilot to provide truthful answers and explanations to questions about “any” arrest, conviction, or administrative history involving driving while intoxicated, impaired, or under the influence of drugs or alcohol. The application requires the pilot to “certify” the truthfulness of his statements and answers, and provides notice of the potential criminal penalties for any false or fraudulent statements. Most commercial pilots are required to be medically recertified every 6 months. One year is the maximum time a commercial airman can hold a medical certificate without re-examination and completion of the medical application.

Despite the threat of certificate action for not reporting and the harshest civil penalties and risk of criminal prosecution for falsely reporting, the FAA does not solely rely on individual pilot reports to ensure full disclosure of relevant motor vehicle actions. In 1987, the FAA sought and obtained a statutory amendment, 49 U.S.C. § 30305(b)(3), to the NDR authorizing it to receive information from the NDR regarding motor vehicle actions pertaining to any individual who has applied for an airman medical certificate. The FAA’s actual practice with respect to accessing that information was described in detail to the PRD ARC by the Manager of the Regulatory and

Support Branch of the FAA's Security Branch. The manager stated that the FAA independently checks and requests NDR data every time a pilot submits a medical application, regardless of whether he or she answered "yes" or "no" concerning a history of any arrests, convictions, or motor vehicle administrative actions. A pilot, in order to exercise the privileges of commercial and air transport flying, is required to possess a current second- or first-class medical certificate. Second class medicals are renewed once a year and first class medicals are renewed every 6 months for those pilots over the age of 40 and once a year for those pilots under the age of 40. Therefore the FAA NDR data check occurs annually at a minimum and twice a year in many cases.

A pilot who has more than one motor vehicle action within 3 years is subject to significant enforcement action.<sup>2</sup> A pilot who fails to report a motor vehicle action as required by § 61.15(e) is subject to significant enforcement action.

A pilot who intentionally falsifies his medical application by answering "no" to the question about whether he or she has "ever" in his life had an arrest, conviction, or administrative action involving driving while intoxicated, impaired, or under the influence of drugs or alcohol will be subject to the harshest possible enforcement action. "[I]t is now the FAA's general sanctions policy that the making of intentionally false or fraudulent statements in violation of FAA statutory or regulatory requirements will result in the revocation of all certificates held by a certificate holder."<sup>3</sup> The PRD ARC members report the FAA consistently applies this policy.

The cost to air carriers of obtaining NDR data on all of their pilots is substantial. A search of costs imposed by the States showed fees ranging from \$17 to \$25 per individual search. One air carrier representative calculated that even with a discounted rate of \$6 per search, the cost to the air carrier would \$72,000. There is no justification for imposing expensive and unduly burdensome requirements on air carriers without enhancing air safety in any way.

The subject matter experts explained in detail to the PRD ARC the supporting processes already in place to find pilots who have a drug- or alcohol-related driving offense such as a DUI or DWI.

The FAA carefully reviews all of this information to determine whether the pilot meets the medical certification standards. For example, a pilot who, in the preceding 2 years, used a substance in a situation in which use was physically hazardous will not qualify if there has been a prior instance *at any other time* of using a substance in a situation in which use was physically hazardous, under 14 CFR § 67.107(b)(1). Diagnoses of alcohol or other substance dependence or substance abuse are also medically disqualifying, under 14 CFR § 67.107(a)(4) and (b).

Only after reviewing and evaluating all of the above-described information, including multiple reports and documents pertaining to any motor vehicle actions, does the FAA issue any pilot a medical certificate. These thorough procedures by which the FAA obtains motor vehicle action data from multiple sources demonstrate existing procedures are in effect to fully ensure such data is utilized in the most effective way to ensure air safety.

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<sup>2</sup> 14 CFR § 61.15(d) and FAA Order 2150.3B, Compliance and Enforcement Program

<sup>3</sup> 72 Fed. Reg. 55853



The FAA has a thorough process in place to obtain relevant motor vehicle action data from numerous sources, including the NDR. Such information is reviewed by at least two separate divisions of the FAA—the Security and the Medical Certification Branches. The data is reviewed in conjunction with other potentially relevant data such as medical examinations. The data is not reviewed in isolation but rather is considered for the purpose of determining whether pilots meet the applicable medical and safety standards. The FAA’s current comprehensive review process is the best means to effectuate the goal of air safety. Imposing a requirement that air carriers separately obtain the same data and consider it in isolation without relevant medical and other information does not further the goal of safety, nor does it add to the air carrier’s pilot hiring decision process.

The subject matter experts briefed the PRD ARC and explained that, as described in greater detail below, there is a high rate of “false positive” reported “matches” on the NDR. The NDR’s matching algorithm is crude, and as a result more than 50 percent of the names reported to the FAA as “matches” actually refer to other individuals and not to the pilots about whom the FAA inquired.

If any third party, such as an air carrier, is required to obtain NDR data and turn it over to the PRD, there is a significant risk that erroneous, mismatched reports would be entered in pilots’ files. Errors would be more difficult to detect because air carriers, unlike the FAA, neither use the data nor have any context in which to review it. The adverse impact is especially great since such data would be entered into a permanent database. Moreover, there is no certain avenue of appeal for any erroneous records obtained and entered by air carriers. As such, pilots would be at greater risk of having a “false positive” motor vehicle action report without clear recourse.

The FAA’s approach ensures relevant motor vehicle records are timely and continually reviewed. Because the FAA searches the NDR *every time* a pilot applies for a medical application, pilots are regularly scrutinized and the most current data is considered. The FAA approach also protects against passing along older State records that may later be corrected. The NDR process ensures the FAA is reviewing the correct, most current State-provided information. Its scheme is more protective of safety than a one-time dump of prior records or an accumulation of old, uncorrected records in a permanent file.

It should also be noted that under the current NDR legislation, 49 U.S.C. § 30305(b)(8), such information is accessible to any air carrier who chooses to require it of prospective pilot applicants. The PRD ARC recommends that obtaining NDR information should be optional and not mandatory for hiring air carriers. Given the extensive review of motor vehicle action data by the FAA, an air carrier can be assured a pilot meets the applicable medical standard if he or she has been awarded an FAA medical certificate.

## **DISCUSSION**

The NDR Chief and two NDR representatives gave the PRD ARC a detailed briefing about the manner in which NDR information on individuals seeking employment as a pilot or to obtain an airman medical certificate is obtained and released under 49 U.S.C. §§ 30305(b)(8) and 30305(3). The Manager of the Regulatory and Support Branch of the FAA’s Security Branch in Oklahoma City also addressed the ARC and provided in-depth information about the agency’s practice and procedures for checking airman motor vehicle records.

The NDR representatives and FAA Security Branch Manager explained that the process by which information is obtained from the NDR is cumbersome and time-consuming. First, the information maintained at the national level by the NDR is *not* a complete record of drivers' convictions and administrative actions. It is a central repository of "pointer information"—identifying information (name, date of birth, driver's license number, gender, height, weight, and eye color) provided by the States pertaining to individuals whose privileges to drive a motor vehicle have been revoked, suspended, canceled, or denied, or to individuals who have been convicted of serious traffic-related offenses.

When the NDR searches its system on behalf of the FAA, its matching algorithm uses the name, date of birth, and gender to identify potential matches. Potential matches are then sent by the NDR to each State of record (SOR), which provides the history of each potential match back to the NDR. The NDR creates a file of "matches" and "no-hits" and gives it to the FAA. Because the searches are done based upon such general information—name, date of birth, and gender—they generate numerous matches on more than one person with the same information and have a high "false positive" rate. Consequently, under a typical search request from the FAA, more than 50 percent of "matches" it receives from the NDR do not, in fact, pertain to the pilots in question.

The FAA Security Branch Manager explained that in one week they sent 6,243 record requests to the NDR. In response, they received 94 "pointer records." Of those, only 40 were accurate; the other 54 had to be discarded.

Allowing NDR searches to remain the responsibility of the FAA without entry into the PRD balances the relevant interests appropriately. The FAA has the experience and resources to carefully review the data to ensure a pilot is not falsely reported as having a motor vehicle action. Moreover, should a pilot be erroneously charged with providing false information to the FAA regarding a motor vehicle action (or failing to report an actual motor vehicle action), there are procedures in place to enable the pilot to challenge any such assertion. If the FAA takes enforcement action against a pilot for such actions, the pilot can appeal the matter and present evidence in his behalf through the National Transportation Safety Board's (NTSB) appeal procedures.

The NDR representatives stressed it is the responsibility of the receiver of the records to determine whether the person inquired about is the same individual for whom records were provided. Where the FAA requests records on individual pilots, it bears the burden of ensuring that a "match" is a correct one and that it does not deny a medical application or take enforcement action based on an erroneous match. Finally, the process is time-consuming. The average turnaround for records is 4 to 6 weeks, although getting information from certain States can take months.

Besides the procedures described above, since at least 2009 the FAA has been requiring *additional* information from pilots with a history of an alcohol-related offense. Pilots are required to provide the following records that independently substantiate the facts pertaining to their motor vehicle actions and provide potentially relevant medical information:

- Complete copies of all court records associated with the offense (must include the police/investigative reports, blood alcohol content (BAC), and all records associated with any care, treatment, or assessments or evaluations for alcohol abuse or related disorders.
- A detailed statement from the pilot regarding his or her past and present patterns of alcohol use and the circumstances surrounding the offense.
- A complete copy of the pilot's current driving record from the Department of Motor Vehicles of any State in which he or she has held a driver's license.

Pilots whose records reveal that they refused an alcohol test requested by a law enforcement officer or that their BAC was above .14999 are required to obtain an evaluation from a certified substance abuse specialist or addictionologist in accordance with FAA guidelines. (See Exhibit 1, Example of Letters Sent to Pilots in Appendix D.)

After a long discussion where the entire program was explained in detail, the PRD ARC has come to the conclusion that the existing regulatory scheme and FAA oversight protects safety.

## RECOMMENDATIONS

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Because—

- 1) The PRD ARC has concluded no safety interest is enhanced by requiring the entry of NDR information into the PRD. The current system has worked effectively for many years and there is no need to alter a working system and take the chance of reducing the effectiveness of the current process.
- 2) Requiring air carriers to separately obtain and report NDR data is not required by § 203 of Public Law 111–216.
- 3) Requiring NDR data to be entered into the PRD is unwise as a matter of policy.
- 4) Any requirement that air carriers separately obtain NDR data would unduly burden the industry without serving any useful purpose.

The PRD ARC recommends that—

- 1) The FAA take all reasonable steps to ensure there is no requirement to enter NDR data into the PRD based upon the well-documented safeguards in the FAA's current oversight scheme.
  - a. The PRD ARC urges the FAA to recommend to Congress in the statement it transmits pursuant to the "Periodic Review" provision of § 203 of Public Law 111–216 that any requirement to transmit NDR data to the PRD be eliminated, and to provide Congress with details of its successful oversight and review scheme.
  - b. The PRD ARC urges the FAA to delay implementation of the NDR provisions to enable Congress to enact, if necessary, any requisite statutory technical amendments.
- 2) In the alternative, should the FAA reject recommendation 1 and require air carriers to directly request the driving records from the NDR, the FAA should require the air carriers to submit only those NDR records that involve DUI and DWI violations.

The proposed data tables to support the PRD data are below.

## NDR DATA

The statute is unclear as to whether the data to be provided is the NDR pointer information, the SOR data concerning the specific infractions, or both. The following presents a limited set of data from both the NDR pointer system and the SOR infraction data. The infraction data was included in order to provide context to the NDR pointer data such that the air carrier could make a more informed decision as to the applicability of a specific infraction on the potential risk the pilot presents. A record is to be entered into PRD for each SOR infraction record identified by the air carrier as applying to the pilot.

<b>Pilot certificate number:</b>	Certificate number of the pilot.
<b>Pilot last name:</b>	Name of the pilot as it appears on their certificate (used for error checking).
<b>Date of NDR search:</b>	YYYYMMDD
<b>NDR result:</b>	Indicate whether the air carrier received at least one positive NDR match. <u>Valid values:</u> <ul style="list-style-type: none"> <li>• 1 (Match)</li> <li>• 0 (No record found)</li> </ul>
<b>Driver's license number (DLN):</b>	From NDR pointer Alphanumeric (30) or Null
<b>State of record (SOR):</b>	Enter a value for each SOR pointer identified with the pilot. Char(2) <u>Valid values:</u> Standard reference table for States (National Standard) for only 50 states States and DC or null

<b>State of record (SOR):</b>	Enter a value for each SOR pointer identified with the pilot. Char(2) <u>Valid values:</u> Standard reference table for States (National Standard) for only 50 States and DC or null
<b>Date of SOR search:</b>	The date the SOR compiled the record being entered YYYYMMDD
<b>SOR record or case number:</b>	The record or case identifier used by the SOR to uniquely identify the specific record or case. Alphanumeric (30)
<b>SOR DLN:</b>	From State of Record system Alphanumeric (30)
<b>SOR name:</b>	Concatenated First, Middle, Last, and suffix name fields from the State of Record system separated by spaces VarChar()
<b>SOR AKA:</b>	Enter a value for each AKA contained within the SOR data. Concatenated First, Middle, Last, and suffix name fields from the State of Record system separated by spaces VarChar()
<b>Violation date:</b>	The date of the violation. YYYYMMDD
<b>Violation code type:</b>	From the SOR data. <u>Valid values:</u> <ul style="list-style-type: none"> <li>• W (Withdrawal)</li> <li>• C (Conviction)</li> </ul>

<b>Violation code (NDR ACD code):</b>	The American Association of Motor Vehicle Administrators (AAVMA) Violations Exchange Code contained in the SOR data. Alphanumeric(3) <i>Valid values:</i> Valid code values listed in Appendix A to 23 CFR part 1327
<b>ACD code detail:</b>	Some ACD codes—for example, A11 and S92—require additional detail. If the ACD reported does not have additional detail, this field is left null. The format of the detail is a five-digit number with possible leading and trailing zeros. <i>For example: A11' "Driving under the influence of alcohol with BAC at or over _ _ (detail field required)." The first two positions are the BAC and the rest of the field contains zeroes.</i>

## CHALLENGE 5: DRUG AND ALCOHOL TESTING INFORMATION

The PRD ARC must determine how to provide comprehensive information to the PRD for making pilot hiring decisions while (1) recognizing the special place alcohol and drug testing has for those serving safety-sensitive functions, (2) recognizing the value of employee assistance programs (EAP) for recovery, (3) considering the medical aspects of drug and alcohol testing programs, (4) considering the thorough oversight by FAA-licensed medical professionals over drug and alcohol testing results, and (5) not overburdening the PRD and potential hiring air carriers with information that is fully addressed through other regulatory requirements for air carriers and persons.

### DISCUSSION

During its discussion, the PRD ARC referenced the following regulatory information contained within 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs; 14 CFR § 120.101 et seq., Drug Testing Program Requirements; and 14 CFR § 120.201 et seq., Alcohol Testing Program Requirements.

The PRD ARC considered issues related to drug and alcohol testing data being supplied to the PRD because Public Law 111–216 cites 14 CFR § 121.111(a) and 14 CFR § 121.219(a). The ARC believes these regulations were cited in error and that the intent was to address records maintained pursuant to § 120.101 et seq. and § 120.201 et seq. 14 CFR part 120, Drug and Alcohol Testing Program,<sup>4</sup> was created in order to consolidate the drug and alcohol testing requirements for air carriers operating under part 121 and part 135 that were previously contained within Appendices I and J of part 121, and those individuals operating under 14 CFR § 91.147. The purpose is to establish a program designed to prevent accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

The genesis of the rules and regulations regarding government-mandated drug testing in the transportation industry is Executive Order No. 12564, issued in 1986, which mandated drug testing programs for Federal employees in sensitive positions, urged the establishment of a voluntary testing program, authorized drug tests of applicants for Federal employment, and required drug tests when a reasonable suspicion of drug use existed, when an accident occurred, and as part of EAPs. Subsequently, regulations for pilots were implemented by the Department of Transportation, and the FAA followed these regulations and developed some of their own.

<sup>4</sup> Doc. No. FAA–2008–0937, 74 FR 22653, May 14, 2009

The FAA regulates domestic and foreign air carriers operating in the United States to ensure that they conduct pre-employment, reasonable suspicion, random, and post-accident testing for use of alcohol or controlled substances by employees in safety-related positions. The FAA also prescribes regulations for the conduct of periodic, recurring testing of those employees. Where a drug test confirms that an individual has used alcohol or a controlled substance in violation of law or Federal regulation, the consequence is certificate suspension or revocation, disqualification, or dismissal. These regulations do not require the FAA to dismiss or revoke the certificate of any employee who tests positive for drug or alcohol use. Rather, it provides the FAA the authority to take such a step directly or require an air carrier to do so.

An employee who has been determined to have used alcohol or a controlled substance in violation of law or regulation may be prohibited from serving in a safety-sensitive position until that individual has completed a rehabilitation program. This does not prevent employers from discharging employees with positive test results; it merely prevents employees from returning to safety-sensitive positions without completing a rehabilitation program designed to end their drug or alcohol abuse. For pilots, these rehabilitation programs have generally enjoyed great success.

Upon review of these regulations—and more specifically the administrative requirements of 49 CFR § 120.111, and the record handling and reporting requirements of 49 CFR § 120.219—the PRD ARC determined that reporting drug and alcohol testing results to the PRD would be overly redundant and would inundate potential hiring air carriers with information that is already reported by the FAA through a certificate action process overseen by FAA-licensed medical experts.

First, records maintained under these regulations are retained and reported under thorough, centralized regulations, and the related drug and alcohol testing programs are closely scrutinized and monitored by the FAA.

Second, if a pilot is found in violation of these regulations, certificate suspension or revocation results, and reporting to the PRD would therefore be accomplished through this certificate action. If warranted, emergency revocation may occur. In the alternative, pilots are entitled to federally mandated EAPs, depending on an employer's specific policies and procedures.

Third, the test results handling, record retention, and confidentiality provisions of the drug and alcohol testing program regulations prescribe 2- and 5-year retention requirements under 14 CFR § 120.219(a), which PRD reporting and lifetime retention would contradict.

Fourth, EAPs often include a treatment and rehabilitation program and self-admittance procedures, and lifetime inclusion of such records to the PRD would compromise the success of these programs and provide a disincentive for individuals performing safety-sensitive functions to self-admit.

Fifth, random screenings occur with a frequency that would create unnecessary additional costs and other burdens upon air carriers who already make annual reports directly to the FAA under 14 CFR § 219(b). A requirement to additionally report these results to the PRD would be overly redundant.

Finally, pilots who experience recovery after positive drug and alcohol test results or after self-admittance into alcohol or drug treatment programs are evaluated by specially trained licensed medical professionals and return to service in safety-sensitive positions only after evaluation and regular oversight by an FAA-licensed aeromedical physician. In these instances, subjecting follow-on test records to PRD recording would intrude upon the doctor-patient relationship and have an overall negative impact on these successful rehabilitation programs.

In summary, the PRD ARC recognizes the desire to closely approximate the regulations set forth in PRIA in this area and understands the need for employers to receive information on a prospective pilot candidate as it relates to previous drug and alcohol testing compliance. The ARC believes that necessary and relevant information for hiring decisions will be sufficiently reported into the PRD by requirements assigned to the FAA under 49 U.S.C § 44703(i)(2)(A). Regardless of PRD requirements, employers will still be mandated to obtain previous employer drug and alcohol records of a prospective employee that may not otherwise be contained within the PRD under the requirements of 49 CFR § 40.25, Department of Transportation Drug and Alcohol Testing Program, resulting in duplicative information requests.

Additionally, as noted with other records to be contained in the database, the record retention requirements of the listed sections and the intended lifetime database mandated by § 203(b)(2)(i)(5)(A) are inconsistent. Air carriers are required to maintain records for a period of 5 years under 14 CFR § 120.111(a), and for periods of 2 or 5 years under § 120.219(a). This may result in a pilot applicant discovering incorrect information within his or her record, only to find the reporting employer no longer maintains the original record, disallowing correction of the record by due process. Regardless, the PRD ARC recognizes the desire to closely approximate the regulations set forth in PRIA in this area.

For air carriers administering drug and alcohol testing programs, reporting requirements for positive drug screenings, violations of alcohol misuse provisions, and refusal to submit to testing are currently contained within 14 CFR § 120.<sup>5</sup> These sections provide clear reporting requirements to the Federal Air Surgeon and the FAA Office of Aerospace Medicine, Drug Abatement Division within 2 working days by the employer, medical review officer (MRO), and substance abuse professional (SAP) for individuals that hold either an airman certificate issued under 14 CFR part 61, or a medical certificate issued under 14 CFR part 67.

Providing data maintained by the FAA to the PRD will serve the safety purposes of the travelling public, not overly burden the PRD with duplicative data that may ultimately be misinterpreted or untimely, and serve to maintain a clear, accurate, and concise record of a pilot applicant's past performance as a pilot.

Further, the ultimate goal of the PRD is to enhance safety for the traveling public through use of an electronic database that would provide useful, timely, and relevant data to an individual responsible for making a hiring decision at an air carrier. While the PRD ARC believes that the FAA reporting this data meets this requirement, it understands that the FAA may ultimately be required to take an alternative approach.

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<sup>5</sup> 14 CFR §§ 120.111(d), 120.113(d), and 120.221(c) and (d)

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) The FAA accomplishes drug and alcohol reporting for purposes of the PRD.
- 2) The PRD data entered by the FAA should be those records reported to it by employers, MRO, and SAP of—
  - a. A positive drug test, per 14 CFR § 120.113(d),
  - b. A refusal to submit to a drug test, per 14 CFR § 120.111(d),
  - c. A violation of alcohol misuse provisions, per 14 CFR § 120.221(c), or
  - d. A refusal to submit to an alcohol test, per 14 CFR § 120.221(d).
- 3) Should the FAA reject recommendation 1 above and maintain the position that the drug and alcohol testing data entered into the PRD originate from those records maintained by the air carrier, the PRD data entered by the air carrier should be those records that have been reported to the FAA under the following sections:
  - a. A positive drug test, per 14 CFR § 120.113(d)
  - b. A refusal to submit to a drug test, per 14 CFR § 120.111(d)
  - c. A violation of alcohol misuse provisions, per 14 CFR § 120.221(c)
  - d. A refusal to submit to an alcohol test, per 14 CFR § 120.221(d)

The proposed data tables to support the PRD data are below.

### **DRUG AND ALCOHOL RECORDS (MAINTAINED BY THE FAA)**

These records are reported to the Federal Air Surgeon and FAA Office of Aerospace Medicine, Drug Abatement Division, in accordance with part 120.

<b>Pilot certificate number:</b>	Certificate number of the pilot receiving the action.
<b>Pilot last name:</b>	Name of the pilot as it appears on their certificate (used for error checking).
<b>Action:</b>	States the type of action being reported. <u>Valid values:</u> <ul style="list-style-type: none"><li>• Positive drug test, per 14 CFR § 120.113(d)</li><li>• Refusal to submit to a drug test, per 14 CFR § 120.111(d)</li><li>• Violation of alcohol misuse provisions, per 14 CFR § 120.221(c)</li><li>• Refusal to submit to alcohol test, per 14 CFR § 120.221(d)</li></ul>
<b>Date:</b>	YYYYMMDD
<b>Explanation:</b>	



## OBJECTIVE

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**3.a.3 and 3.a.5—The ARC will specifically identify the best methods to enable air carriers, “others” and individual pilots to use the Pilot Records Database (PRD). This includes: 3) determining who will have access to the information and what methods will be used to make the information accessible; 5) establishing a process with safeguards to limit the use of the database strictly to those making hiring decisions.**

## CHALLENGE

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The main challenges the PRD ARC faced and considered when framing its recommendations for the above objectives were ensuring: (1) protection, security, and confidentiality of the records; (2) pilot privacy protection; (3) that records are not given to any individual not directly involved in the hiring decision process; and (4) preclusion of further dissemination of the records than required.

## BACKGROUND

As the PRD is an electronic database not previously required by law, this objective has no background information when addressing the above objectives. The PRD ARC cautions the FAA to simply use all current PRIA practices and to consider our recommendations regarding the new challenges such a large database of sensitive data creates.

## DISCUSSION

Prior to providing detail recommendations on those groups permitted access to the database, the PRD ARC must first address, in a general sense, how these groups will access the data.

In most cases, all access will be electronic,<sup>6</sup> through the use of a specific login tied to each individual regardless of group. This login identification will provide access or the ability to input, retrieve, evaluate, or otherwise comment on a PRD record based on permissions granted for that login as further discussed below. There are two exceptions: (1) A pilot who would like to access their individual record will be provided a process to access the record via postal mail for a period of time during the transition until a fully operational PRD is in place or at a time determined by the FAA, whichever is later. (2) A pilot who meets the requirements to receive a login of having a PRD record and holding a title at a part 121, 125, or 135 air carrier will be provided two separate logins as a safeguard measure. These will be discussed further in the accessing section of each group.

The PRD ARC concludes that four main groups will require access to the PRD. Each group has specific needs for access, with unique safeguards, and this will be addressed separately in the following paragraphs.

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<sup>6</sup> The PRD ARC recommends electronic means for the entire database to include access, retrieval or inputting, and for consents/viewing by pilots. The ARC does so with the understanding that the FAA would develop an electronic access system that meets the highest standards of protection against fraud.

## Pilots

Pilot access shall include the ability to (1) view their individual record, (2) grant consent to specific air carriers to access the PRD for the purposes of allowing that air carrier access and evaluation of their record to make a hiring decision, and (3) dispute any inaccuracies in their record. The term “pilot,” for purposes of discussing access, is defined by the PRD ARC as an individual holding or having held a commercial license, airline transport pilot (ATP) license, or other equivalent license that may subsequently be accepted by the FAA. These licenses equate to a minimum licensing requirement for employment as a pilot by the entities requiring access to this database to assist in making hiring decisions. The ARC acknowledges the FARs require a number of management positions within an air carrier to also be pilots; therefore the ARC recommendations must apply to those individuals as well.

The PRD ARC recognizes that some individuals—for example, those holding private pilot licenses—will have records prior to obtaining the above-mentioned certificates, and those records will be captured and provided to the PRD at such time as the individual meets the definition of a pilot as referenced above. This process provides an inherent safeguard, as the only pilots able to gain access to their PRD records are those qualified to gain employment by air carriers required to access the database during the hiring decision process. The ARC was presented data showing approximately 1.2 million pilots holding at least a private pilot license; conversely, 300,000 of those pilots would meet this recommendation threshold.

The PRD ARC recommends a pilot be given lifetime access to his or her PRD data. This includes situations in which a pilot might not be able to exercise the rights of the required licenses for reasons such as being unable to hold a valid medical certificate or suspension or revocation of the license. Furthermore, the ARC recommends there be no requirement for the pilot to gain access if he or she so chooses, although it recognizes in order for the pilot to be initially hired by any part 121 or 135 air carrier the pilot would need to take the steps necessary to provide electronic consent. If a pilot has no desire to gain access, be hired, or leave his current air carrier, there shall be no requirement to gain access.

The pilot is the gatekeeper to the hiring air carrier’s access to his records. The pilot must authorize a specific air carrier to access his PRD record. This means that the pilot must execute a specific consent for each air carrier to which a pilot is granting access. The PRD ARC contemplated whether a pilot should be permitted to select a blanket authorization for all air carriers. The ARC concluded this would potentially allow for unnecessary risk to the privacy of the individual records being dispersed. Further, any particular pilot would conceivably be identifying 10 or fewer air carriers at any one time, and selecting each of these as a safeguard PRD access by each air carrier would not be burdensome. The PRD is not intended to be used by an air carrier as a recruiting tool.

The pilot will authorize access by electronic means through the PRD. Each authorization will have a duration associated with it to further safeguard against open-ended access of these records and to prevent having a pilot log in repeatedly to reauthorize. The PRD ARC recommends an individual authorization will expire if not retrieved by the particular air carrier within 120 calendar days of authorization. In addition, this authorization will be for a one-time retrieval of a record; if an air carrier were to desire additional access, they would be required to obtain a new authorization from the pilot. When the air carrier accesses the pilot’s records, an electronic

communication will be sent to the pilot stating the name of the air carrier that accessed their records. The pilot may then log in to the database where he or she may retrieve information pertaining to the access, up to and including the actual report the specific air carrier received. Once an air carrier accesses the database, the consent for that air carrier expires. The pilot may withdraw consent for any and all air carriers at any time. An air carrier will be unable to access a pilot's record if (1) consent by the pilot was never granted, (2) a time period of 120 calendar days elapses from consent date by the pilot, (3) the pilot electronically withdraws consent, or (4) the air carrier has already accessed the pilot's record.

In the sections of this recommendation regarding air carriers and "others," the PRD ARC addresses access by a pilot who is also involved in the hiring decision or inputting data on pilot employees.

### **Air Carriers**

Air carrier access is a complex issue, as an air carrier will require access to both its current pilots' input data and, at times, potential pilots' records in order to make hiring decisions. The ARC recommends *only* part 121 & 135 air carriers retrieve data, and this shall be limited to retrieval for those involved in the hiring decision, not to preclude the use of a designated agent.

The PRD ARC acknowledges the need for the FAA to develop an air carrier validation process. There are two items to consider: the air carrier as a whole and the individuals at the air carrier.

The PRD ARC reviewed the different status types of an air carrier, including those pending an air carrier certificate, those with suspended or revoked certificates, and those surrendering a certificate. The ARC found a need for air carrier access to the PRD in all cases but surrendering such certificate. Upon notification to the FAA that an air carrier is surrendering their certificate, that air carrier's access shall be terminated, including all unique logins associated with that air carrier. The ARC contemplated limiting retrieval access to times when the air carrier is hiring, but found that each air carrier will define "hiring" differently, and that the pilot consent recommendation covers the safeguarding of the database during times when the air carrier is not hiring.

The PRD ARC recognizes an air carrier may need to access the PRD to input data and retrieve records for hiring prior to receiving its final certificate number. The FAA shall use the "preapplication" process currently used by its Flight Standards Service, Aviation Data Systems Branch (AFS-620), in which a potential air carrier must provide a company name, proposed management names, type of certificate, and other information, and will then be provided a precertification/designator number. The ARC recommends AFS-620 will be responsible for providing the precertification/designator number to those in the FAA maintaining the PRD. AFS-620 will also report the change for correction to the PRD upon the issuance of a final certificate.

Use of a certificate or precertification/designator number as an identifier will give the FAA complete confidence that the individual at the air carrier applying for PRD access is in fact applying for access for a valid air carrier. The air carrier will have the best knowledge on who in its organization is best qualified to use the database, and is therefore granted access via a unique login. The PRD ARC recommends the air carrier provide the FAA one individual to receive the “keys” to the database for authorization of further individual logins necessary to comply with PRD requirements.

This individual shall be one of the air carrier’s choosing who holds a position as required by part 119.65 for a part 121 air carrier, part 119.69 for a part 135 air carrier, or part 125.25 for a part 125 operator. This person will be considered the sponsor for this air carrier and issued a login by the FAA. It will be their role to delegate, if applicable, the requirements of accessing and inputting PRD data for their air carrier. If the sponsor chooses to delegate the responsibilities of the PRD, he or she will issue single logins for each additional individual needed for compliance, allowing tracking of who accessed or inputted data. An air carrier will determine the number of persons allowed login credentials to the PRD, although it is recommended to keep this number to a minimum to keep the database as secure as possible.

The purpose of the PRD ARC’s recommendation that the sponsor be the individual who holds one of the above-mentioned key positions at an air carrier is twofold. This individual has the qualifications and professionalism to understand that these records are to be used exclusively by those individuals involved in the hiring decision, the necessity for strict safe-keeping of the records, the sensitive nature of the records, and the individual privacy interests involved. The ARC also believes this recommendation adds a level of security to the actual database, as the FAA can easily identify these individuals under the requirements of the FARs. This will allow the FAA to better manage air carrier access and have a single go-to person for each air carrier.

The PRD ARC recommends the database have a function that provides for consent by the air carrier’s employee or designated agent prior to an air carrier accessing records for evaluation of an individual pilot. The ARC conceived a box to check or other type of verification that must be initiated by this individual, with a statement signifying this consent.

The statement should include acknowledgements that (1) the individual is accessing records on behalf of said air carrier, (2) the records are to be used solely for the purposes of assessing the qualifications of the pilot to make a hiring decision, (3) the records will be kept secure and viewed only by those persons authorized to be a part of the hiring decision, and (4) once the hiring decision has been made, a copy (paper or read-only electronic) of the PRD record may be kept provided the air carrier takes such action to ensure confidentiality of such records. Prior to the pilot’s record being displayed, the individual accessing the record must consent to these statements. This statement page shall occur for *each* individual pilot’s record an air carrier accesses and, if applicable, *each* time for the same pilot.

Furthermore, the database must specify the pilot applicant information needed by an air carrier accessing the database for retrieval to properly capture the correct pilot’s record. The PRD ARC concluded the pilot’s unique certificate number and full name would be sufficient.

Any time a PRD record is printed, the PRD ARC recommends the FAA print a notice in the header and footer of each page of a pilot's record in the database delineating the privacy of these records and that they shall be used for making a hiring decision only. The ARC recommends the following wording:

This confidential record was provided by accessing the PRD and the use of such record is only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. This record shall not be divulged to those persons not directly involved in the hiring decision. This record shall remain secure at all times.

In the event a pilot holds a position within an air carrier in which he or she is permitted to (1) retrieve data of pilots for the purposes of making a hiring decision, (2) input data, or (3) be the air carrier's PRD sponsor, the existing sponsor<sup>7</sup> would provide the pilot a unique login for that air carrier, therefore allowing a delineation between the retrieval or input of data and that pilot's role as a pilot with their own record. This delineation will provide an additional safeguard to keep the data of each pilot as private as possible, and will emphasize that data retrieval would be for making a hiring decision only. For these reasons, it is important to separate the unique login from the concept of essentially allowing the pilot additional electronic permissions while the pilot holds a position at an air carrier in a hiring capacity. The emphasis is to separate the unique login used by a pilot to access his own records from a distinct and different login used by that pilot to retrieve or input data to another pilot's records, if applicable. The PRD ARC further recommends pilots not input their own data to the extent possible, understanding this will be a scalable recommendation. As far as Public Law 111-216 permits, the ARC recommends any intentional inaccurate manipulation of data in a pilot's record result in a civil monetary fine as a deterrent.

In addition, the PRD ARC acknowledges the law only provides for an initial records check to be completed for a new-hire pilot. This is an important distinction, as it applies to air carrier mergers and pilot absences. The ARC strongly urges the FAA to conclude, as it did, that a merger does not create a new requirement for the acquiring air carrier to have to access the PRD. Further, the Public Law does not permit access to the database for this purpose. In a merger, the pilots are transferred from one certificate to another, not newly hired. At the time the pilot was hired, the initial hiring decision was made utilizing either PRIA or the new PRD, and therefore the Public Law has been complied with. With regard to absences, if a pilot returns to work after a furlough or an extended period of personal leave, military leave, medical leave, or other authorized absence, PRD law does not require or provide authority for an air carrier to access the PRD. The ARC urges the FAA to make clear and specific regulations regarding proper PRD use based on these recommendations.

The PRD ARC envisions the FAA will maintain a record of the initial access of a pilot applicant's record for the purposes of providing proof of compliance with Public Law 111-216, regardless of whether the pilot was eventually hired. This record shall contain (1) the unique login that accessed the records, (2) the time and date stamp, and (3) the actual record as it appeared at the time of original access. This record of access shall be maintained for a time

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<sup>7</sup> It is understood that the sponsor could possibly be the same as the pilot in this case.

period required by the applicable laws and alleviate the air carrier's to maintain copies to show compliance with Public Law 111–216. The Public Law is clear that the record shall only be accessed and used to assess the qualifications of the individual in deciding whether to hire the individual as a pilot.

At the PRD ARC meetings, there was much discussion regarding the reasons an air carrier would need to retain the PRD record after a hiring decision has been made. The ARC reviewed the reason a PRIA record is retained (it is the only copy available to prove compliance) and how the PRD, as an electronic database stored at the FAA, would alleviate the necessity for the record to be maintained at the air carrier, as the FAA will have a detailed record. If the FAA determines the air carrier is permitted or required to retain a copy, we recommend an air carrier only be required and permitted to retain the data for 5 years, after which the data is expunged.

## FAA

The PRD ARC acknowledges the specific instances laid out in Public Law 111–216 that provide PRD access to the FAA. The ARC has no objections to these instances, which concern (1) redacted information in a summary form to explain needs for change in regulations or policies, (2) information that corrects a condition that compromises safety, (3) information to carry out a criminal investigation or prosecution, and (4) compliance with 49 U.S.C. § 44905 regarding threats to civil aviation.

In addition, the PRD ARC concludes the FAA has a duty as the entity required to maintain these records<sup>8</sup> to provide an avenue to correct inaccuracies in records or the improper recording of records, but only if these records are shown to be in fact improper or inaccurate and all other remedies have been exhausted. The ARC does not intend to limit a pilot's ability to seek correction of an inaccuracy from the air carrier that entered the data. This is why it is important to place time limits on air carriers and the FAA to correct possible improper recording or inaccurate records so a pilot's record is always as current and correct as possible. The ARC recommends that the FAA Administrator delegate responsibility for maintaining accurate information in the database, including air carrier data, to a branch within the FAA, and also allow for an NTSB administrative law judge (ALJ) to remove or correct information when so ordered or instructed. This topic is further addressed in the discussion of ARC charter objective 3.a.7.

## “Others”

The PRD ARC concluded there are two “others” needing access to the PRD: designated agents (DA) and part 125 operators. Part 125 operators are distinguished as “others” because they are required only to input data to the PRD.

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<sup>8</sup> Public Law 111–216(i)(5), Requirement to Maintain Records—The Administrator (A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that individual is deceased, and (B) may remove the individual's records from the database after that date.

The PRD ARC recommends designated agents acting on behalf of a specific air carrier shall be permitted to access the PRD for the purpose of providing records to said air carrier. The recommendations laid out in the section of this recommendation regarding air carriers shall apply to designated agents.

The PRD ARC additionally recommends a DA shall not be permitted to permanently retain these records in any fashion. It must only retrieve these records for the purposes of providing them to those individuals at the air carrier that are directly involved in a hiring decision. All limitations previously prescribed shall apply to these records, including but not limited to specific single login numbers and consent/verification page acknowledgement. Moreover, the ARC acknowledges there is an FAA PRIA Guidance handbook that addresses the relationship between a DA and an air carrier.

The PRD ARC recommends part 125 operators shall input data to the PRD as described in the discussion of ARC charter objective 3.a.2. The ARC further concluded part 125 operators shall comply with the above recommendations as laid out in the air carrier section of this objective regarding access and safeguards, as applicable. Regarding the sponsor role for part 125 operators, the position is one necessary for compliance with part 125.25.

#### **Additional “Others” Contemplated**

The PRD ARC concludes the above groups are to be permitted access as described to the PRD. As a general safeguard, the ARC recommends limiting database access by additional “others” the law did not intend to capture. The ARC considered additional aircraft operators when defining “others” and concluded part 91 aircraft operators should not be required to input data to the PRD.

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.

Records of FAA certificate actions, including airman checkrides, 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.

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. 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. This topic is further discussed and memorialized in the discussion of PRD ARC charter objective 3.a.10.



## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) PRD access shall be electronic through the use of a specific login tied to *each* individual regardless of reason for access.
- 2) A pilot who desires access to their individual record shall be provided a process to access their record via postal mail for a period of time during the transition until a fully operational PRD is in place or at a time determined by the FAA, whichever is later.
- 3) Pilot access shall include the ability to (1) view their individual record, (2) grant consent to specific air carriers to access the PRD for the purposes of allowing that air carrier access and evaluation of their record to make a hiring decision, and (3) dispute any inaccuracies in their record.
- 4) All requirements to input or retrieve records shall apply to all pilots, including those holding management positions.
- 5) The FAA limits pilot access to the PRD to those holding or having held a commercial license, ATP license, or other equivalent license that may subsequently be accepted by the FAA. This inherently provides a safeguard to the database, as it will limit access to pilots qualified to gain employment by those air carriers required to access the database.
- 6) A pilot shall be given access to the data stored about himself in the database for his lifetime. This is to include times where a pilot might not be able to exercise the rights of the required licenses for reasons such as being unable to hold a valid medical certificate or suspension or revocation of the license.
- 7) There shall be no requirement for a pilot to gain access if he or she so chooses, although the PRD ARC recognizes that for the pilot to be initially hired by any part 121 or 135 air carrier, the pilot would need to take the steps necessary to provide electronic consent.
- 8) The pilot shall be the gatekeeper to the hiring air carrier's access to his or her records. The pilot must authorize a specific air carrier to access his or her PRD record.
- 9) The PRD shall not permit an air carrier to use it as a recruiting tool.
- 10) Each authorization shall have a duration associated with it to further safeguard against an open-ended access of these records and prevent having a pilot log in repeatedly to reauthorize.
- 11) An air carrier should be unable to access a pilot's record if (1) consent by the pilot was never granted, (2) a time period of 120 calendar days elapses from consent date by the pilot, (3) the pilot electronically withdraws consent, or (4) the air carrier has already accessed the pilot's record.
- 12) Only part 121 and 135 air carriers shall retrieve data, and access shall be limited to those involved in the hiring decision.
- 13) Upon notification to the FAA that an air carrier is surrendering its certificate, that air carrier's access shall be terminated, including all unique logins associated with that air carrier.



- 14) AFS-620 shall be responsible for providing the precertification/designator number to those in the FAA maintaining the PRD, and upon the issuance of a final certificate it shall further report the change for correction to the PRD.
- 15) The air carrier provide the FAA one individual to receive the “keys” to the database for authorization of further individual logins necessary to comply with PRD requirements. This individual shall be one of the air carrier’s choosing who holds a position as required by part 119.65 for a part 121 air carrier and by part 119.69 for a part 135 air carrier. It will be their role to delegate, if applicable, the requirements of accessing and inputting PRD data for their air carrier. If the sponsor chooses to delegate the responsibilities of the PRD, he or she will issue single logins for each additional individual needed for compliance, allowing tracking of who accessed or inputted data. An air carrier will determine the number of persons allowed login credentials to the PRD, although it is recommended to keep this number to a minimum to keep the database as secure as possible..
- 16) The database shall have a function that provides for consent by the air carrier’s employee or designated agent prior to the air carrier accessing records for evaluation of an individual pilot. This consent shall have a statement with the following acknowledgements that (1) the individual is accessing records on behalf of said air carrier, (2) the records are to be used solely for the purposes of assessing the qualifications of the pilot to make a hiring decision, (3) the records will be kept secure and viewed only by those persons authorized to be a part of the hiring decision, (4) once the hiring decision has been made, a copy (paper or read-only electronic) of the PRD record may be kept provided the air carrier takes such action to ensure confidentiality of such records. Prior to the pilot’s record being displayed, they must consent to these statements. This statement page shall occur for *each* individual pilot’s record that an air carrier accesses and, if applicable, *each* time for the same pilot.
- 17) The database specify the pilot applicant information needed by an air carrier accessing the database for retrieval to properly capture the correct pilot’s record. The pilot’s unique certificate number and full name would be sufficient.
- 18) Any time a PRD record is printed, as an additional safeguard, the FAA shall print a notice on the header and footer of each page of a pilot’s record in the database delineating the privacy of these records and that they shall be used only for making a hiring decision. The PRD ARC provides the following recommendation for such wording:

This confidential record was provided by accessing the PRD and the use of such record is only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. This record shall not be divulged to those persons not directly involved in the hiring decision. This record shall remain secure at all times.
- 19) In the event a pilot holds a position within an air carrier in which he or she is permitted to (1) retrieve data of pilots for the purposes of making a hiring decision, (2) input data, or (3) be the air carrier’s PRD sponsor, the existing sponsor<sup>9</sup> would provide the pilot a unique login for that air carrier, therefore allowing a delineation between the retrieval or

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<sup>9</sup> It is understood that the sponsor could possibly be the same as the pilot in this case.

input of data and that pilot's role as a pilot with their own record. This delineation will provide an additional safeguard to keep the data of each pilot as private as possible. For these reasons, it is important to separate the unique login from the concept of essentially allowing the pilot additional electronic permissions while the pilot holds a position at an air carrier in a hiring capacity. The emphasis is to separate the unique login used by a pilot to access his own records from a distinct and different login used by that pilot to retrieve or input data to another pilot's records, if applicable.

- 20) Pilots shall not input their own data to the extent this is possible, understanding this will be a scalable recommendation. As far as the Public Law 111–216 permits, the PRD ARC recommends any inaccurate manipulation of data in a pilot's record result in a civil monetary fine as a deterrent.
- 21) A merger does not create a new requirement for the acquiring air carrier to have to access the PRD. Further, that Public Law 111–216 does not permit the access to the database for this purpose.
- 22) If a pilot returns to work after a furlough or an extended period of personal leave, military leave, medical leave, or other authorized absence, Public Law 111–216 does not require or provide authority for an air carrier to access the PRD.
- 23) The FAA makes clear and specific regulations regarding proper PRD use based on these recommendations.
- 24) The FAA shall maintain a record of the initial access of a pilot applicant's record for the purposes of providing proof of compliance with Public Law 111–216, regardless of whether the pilot was eventually hired. This record shall contain (1) the unique login that accessed the records, (2) the time and date stamp, and (3) the actual record as it appeared at the time of original access. This recording shall be maintained for a time period required by the applicable laws and alleviate the responsibility of the air carrier from maintaining copies to show compliance with Public Law 111–216.
- 25) The record shall only be accessed and used to assess the qualifications of the individual in deciding whether to hire the individual as a pilot.
- 26) If the FAA determines the air carrier is permitted or required to retain a copy of a record, an air carrier shall only be required and permitted to retain the data for 5 years, after which the data is expunged.
- 27) The FAA has a duty as the entity required to maintain these records<sup>10</sup> to provide an avenue to correct inaccuracies in records or the improper recording of records.
- 28) DAs acting on behalf of a specific air carrier are permitted to access the PRD for the purposes of providing records to said air carrier.
- 29) DAs shall not be permitted to permanently retain these records in any fashion.

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<sup>10</sup> Public Law 111–216(i)(5), Requirement to Maintain Records—The Administrator (A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that individual is deceased, and (B) may remove the individual's records from the database after that date.

- 30) DAs must only retrieve these records for the purposes of providing them to those individuals at the air carrier that are directly involved in a hiring decision. All limitations previously prescribed shall apply to these records, including but not limited to specific single login numbers and consent/verification page acknowledgement.
- 31) Part 125 operators shall input data to the PRD.
- 32) As a general safeguard, limit database access by additional “others” that the law did not intend to capture. Part 91 aircraft operators shall not be required to input data to the PRD.

## OBJECTIVE

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**3.a.4—Methods for timely transfer (“promptly”) of relevant data to the database on an ongoing basis.**

## CHALLENGE

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With the creation of the PRD, all entries are permanent and will remain attached to the pilot until his or her death. Therefore, the PRD ARC must not only consider the timely transfer of relevant data into the database, but also ensure a way to correct the record exists if an error is made. Under PRIA, any training and discipline data dating back more than 5 years is not sent to the new hiring air carrier. The ARC must ensure timely entry of relevant information such as training records, discipline, and termination data. As a matter of procedural due process and fundamental fairness, the ARC must also ensure data may be removed from the database if discipline is entered and eventually overturned after (1) internal reconsideration of the disciplinary decision, (2) implementation of an internal review mechanism by the air carrier or other reporting employer, or (3) review and reversal by a third-party dispute resolution process.

## BACKGROUND

There is currently no requirement for part 121 air carriers and “others” to report data or discipline into an FAA database. Section 203 of Public Law 111–216, however, requires this process, and the FAA requires the PRD ARC to define “promptly” and to develop methods for the timely transfer of relevant data to the database on an ongoing basis.

Each part 121, 125, and 135 air carrier that may be included in the PRD has the ability to enter the required information within the timelines recommended by the PRD ARC. This is critical to ensure industry confidence in the system they will use for future hiring decisions.

## **DISCUSSION**

The PRD ARC discussed the word “promptly” and what that means to both ARC participants and the constituents represented such as 121 air carriers, 135 air carriers, and “other” operators. The ARC quickly learned the meaning varies depending on the context in which it is used. Further, the ARC felt that when applying “promptly” to the PRD, there are two distinct types of data required: disciplinary action and training records. Each type would be included and each would be treated differently. The ARC felt these are two distinct events; as such, training records do not need to be entered in the same timeframe as disciplinary action. Accordingly, the ARC recommended a different definition of “promptly” as it applies to training records and disciplinary action.

Further analyzing discipline as it applies to the timely transfer of relevant data to the database, the overarching concern for PRD ARC participants was to ensure entries into the PRD are correct. Discharge or disciplinary action assessed by air carriers and others may be imposed under various rationales and standards.

Some may impose discipline under the employment-at-will theory, under which standards for discipline or termination are loosely defined and a large degree of managerial prerogative exists. Conversely, some disciplinary action is guided by provisions in collective bargaining agreements, and more specifically, just cause provisions in those agreements. Whether “just cause,” “justifiable cause,” “proper cause,” “obvious cause,” or simply “cause,” these provisions exclude disciplinary action based upon mere whim or caprice, but are intended to include traditional causes of discipline and discharge in the air carrier industry, practices which develop in the day-to-day relations between management and labor, and the decisions of courts and arbitrators. Also, many air carriers use a probationary employee system in which new employees do not have seniority rights and are therefore limited in their ability to appeal discipline or discharge by the air carrier. Management traditionally has broad discretion when dealing with probationary pilots.

Discipline could come from the air carrier, or enforcement action could come from the FAA. The PRD ARC discussed this at length and determined that the FAA has a defined process through their compliance and enforcement program for imposing enforcement action, but the air carriers will vary greatly on how they apply discipline. A different timeline may therefore be needed for each entity when it comes to entering disciplinary action into the database. The discussion also led the ARC to the removal of discipline from the database when overturned, reversed, or arbitrated, or through other means for the reversal of a disciplinary action against a pilot. The ARC felt, in the interest of fundamental fairness, that whatever the timeline for entering discipline into the database, a more expeditious method should be encouraged for removal of that disciplinary action from the database.

Other factors considered when making a determination as to what constitutes a timely transfer of information include a timeframe that allows for (1) encouraging the resolution of differences when disciplinary action is contemplated, (2) the consideration of mitigating and other factors that can be fully considered before entries are made, and (3) recognizing that many collective bargaining agreements between air carriers and labor have provisions allowing a challenge to disciplinary action imposed.

The PRD ARC identified two concerns that arise when disciplinary action is subsequently overturned. These concerns were raised because the ARC participants realized careers and livelihoods are at stake, and incorrect or mistaken entries relating to training records or disciplinary action may lead to adverse consequences to a flight crewmember going through a hiring process that would trigger PRD review.

The PRD ARC's first concern is that disciplinary action subsequently overturned be reflected in the database in a prompt manner. The ARC's second concern is that disciplinary action subsequently overturned result in total expungement from the database of the specific disciplinary action at issue.

As to the first concern, in the context of the circumstances surrounding discipline reversal and the knowledge available to an air carrier or other employer leading up to that reversal, "prompt" means 7 calendar days. For policy reasons, this is also supported by the presumption that an action deemed unjust by a reviewing entity, whether it is a supervisor, neutral arbitrator, or judge, be rectified without undue delay. Out of concern for procedural due process and fundamental fairness, it makes sense that disciplinary action subsequently overturned be rectified swiftly and justifies a higher degree of attentiveness on the part of air carriers and "others."

As to the second concern, air carriers and others must recognize that if a disciplinary action is subsequently overturned there must be total expungement of the matter from the database. For example, consider an air carrier or other person who takes disciplinary action against an employee that is later internally reversed based upon an appeal through an internal review process. In that case, the air carrier or other person must ensure there is no entry of the matter in the database to ensure total expungement of disciplinary action subsequently overturned. The current FAA policy would not allow an entry into the database for enforcement action until after the appeal process was either upheld or overturned. If the appeal was upheld, the FAA would make the entry into the database.

The following items are the events that must be entered:

- Training records the air carrier would enter,
- Discipline the air carrier administered,
- An appeal of that discipline,
- Overturning of the discipline (for example, air carrier expungement of the underlying entry),
- FAA-administered enforcement action, and
- An employee's date of hire.

The following are the only events that would trigger an entry into the database:

- 1) Training records are not as critical as discipline. Therefore, to help accommodate small air carriers that may lack sophisticated systems or have few personnel, the PRD ARC felt the "promptly" requirement would be met by the end of the calendar month following completion of the training event.

- 2) Air carrier discipline must be entered between 30 and 45 days. At many air carriers, an internal process to overturn or overrule the initial discipline may exist, and the PRD ARC felt it needed to allow time for that process to work. Hopefully, if an agreement is reached, the data would never have to be entered. Also, from a safety standpoint it would be extremely difficult for a pilot to be hired by another air carrier within that 30-day window.
- 3) If the process in number 2 does not prevent the entry and is formally appealed, that appeal must be annotated in the database next to the record of the discipline that this event is under appeal. The annotation must occur within 7 days.
- 4) If the discipline is overturned, the record of that discipline must be removed from the database within 7 days.
- 5) FAA-issued enforcement action must be recorded within twenty four hours of the event occurring. The PRD ARC felt that if the FAA was imposing enforcement action it is serious and must be recorded immediately. The ARC's understanding of FAA-imposed enforcement action is that in all cases the enforcement action would not be entered until final determination has been made and the appeal process was complete.

An employee's date of hire is a critical piece of information for the database. Once the PRD is accessed for the hiring decision, the air carrier cannot enter the PRD again to use the data. By requiring the air carrier to enter the date of hire, that action would automatically restrict access by the air carrier to enter the PRD again. There was a long discussion of when the date of hire actually occurs. For some air carriers, the hire date is conditional—meaning it occurs upon completion of training—while at others it is the first day of training. Using the process that allows each air carrier to determine that date and enter that date into the database eliminates the need for the PRD ARC to define a specific date of hire that may not apply to all air carriers.

## RECOMMENDATIONS

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The PRD ARC recommends the following definitions for the term “promptly” as it relates to the following six events:

- 1) Training records required to be entered into the PRD shall be entered no later than the month after the month of training event completion. For example, a training event on February 1 or February 21 must be entered by March 31 of the same year.
- 2) Discipline, disqualification, or termination imposed by an air carrier involving pilot performance (as defined in the discussion of PRD ARC charter objective 3.a.8) directly related to the execution of aeronautical duties shall not be entered into the PRD until 30 calendar days after the disciplinary determination is made by air carrier management and the disciplinary penalty is imposed by the air carrier, but no later than 45 days after the disciplinary determination.
- 3) Air carrier-imposed discipline, disqualification, or termination, if appealed by the pilot, must be annotated in the database within 7 days of the air carrier being notified of the appeal's initiation.

- 4) Once final, the entire record of overturned discipline, disqualification, or termination must be completely removed from the database in a swift manner within 7 days of the reversal and preferably sooner.
- 5) FAA certificate action for pilot performance, up to complete revocation of certificate, must be entered into database within 24 hours of the final action regarding the certificate.
- 6) The date the employee is hired or separated from employment must be entered into the PRD within 7 calendar days.

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## OBJECTIVE

### 3.a.6—Establishing a “written consent; release from liability” process.

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## CHALLENGE

Section 203 of Public Law 111–216 carries over the same provisions found in PRIA regarding: (a) obtaining the written consent of the pilot before the pilot’s records can be released to hiring air carriers, and (b) the limitations on liability and preemption of State laws to protect air carriers that either request or provide records pursuant to the statute. The statutory provisions apply while PRIA remains in effect, after the PRD is implemented, and during the transition period. The protections accorded under the statutory provisions must also be effective with respect to information entered into the PRD that will remain there for each pilot’s lifetime.

## BACKGROUND/DISCUSSION

The PRD ARC considered the statutory language, the legislative history, and the few judicial decisions interpreting the applicable provisions. The ARC is cognizant of the statutory provisions and recognizes that Congress sought to protect employees with the consent requirements and to protect air carriers with the limitation on liability provisions.

The PRD ARC is also aware that the FAA has issued model forms (FAA forms 8060–10, 10A, 11, and 11A) that air carriers may use when requesting a pilot’s records under PRIA from the FAA and previous employers. These model forms all require the signature of both the pilot and the requesting air carrier, thus obtaining the consent of the pilot to the disclosure of his records. The FAA has also issued forms that enable a pilot to request a copy of the records being submitted.

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## RECOMMENDATIONS

The PRD ARC recommends that—

- 1) Air carriers, pilot applicants, and the FAA should continue to utilize the existing paper consent and immunity forms while PRIA is phased out during the 5-year transition period to a fully operational PRD, in accordance with our recommendations pertaining to Historical Records in the discussion of PRD ARC charter objective 3.a.10.
- 2) The FAA provides a process by which pilots can offer digital or electronic consent when the PRD is fully operational, in accordance with the PRD ARC’s recommendations in the discussion of ARC charter objective 3.a.5.

- 3) Should air carriers wish to continue requesting and maintaining paper records of consent and release forms, that practice will be permitted.

## OBJECTIVE

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**3.a.7—Developing a common process for the air carriers to handle disputes by pilots concerning the accuracy of data provided by the air carriers and expected response/resolutions times.**

## CHALLENGE 1: PROCESSES FOR CORRECTION OF CERTAIN INACCURACIES AND REMOVAL OF IMPROPERLY ENTERED INFORMATION

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The challenge presented is to provide sufficient and appropriate procedures that ensure (1) individuals have the opportunity to correct any inaccuracies contained in the records, and (2) any improperly entered information (such as discipline that was “subsequently overturned,” or records not authorized to be entered into the PRD by § 203 of Public Law 111–216 and its implementing regulations) are promptly removed. A further challenge is to include a process for FAA records regarding certain inaccuracies.

## DISCUSSION

The legislation requires several things. First, it requires the FAA to establish and maintain the database. The FAA is obliged to ensure the database is maintained in accordance with the statutory requirements. Certain information is required to be entered and certain information is prohibited from being entered or maintained. While air carriers have independent statutory obligations to enter (and remove) the appropriate data, if the FAA is informed that an air carrier is failing to comply with the statute or has gone out of business and is thus unable to comply, the FAA is ultimately responsible for ensuring the integrity of the database and its maintenance in accordance with the applicable legal requirements.

To fulfill these responsibilities, the PRD ARC suggests the FAA Administrator delegate responsibility to a particular branch within the FAA to review pilot claims that data has been entered in the PRD contrary to legal requirements. Some matters may be quickly and easily resolved. For example, if discipline has been “overturned” after an air carrier has ceased operations, a pilot may present a copy of an arbitrator’s decision to the FAA confirming that action and the FAA can have any such record removed. Pilots should be provided with a right of appeal with a process comparable to that provided under NTSB appeal procedures, according to 14 CFR part 821, to resolve any claims of data entered in violation of the statute. The appeal process contemplated in this paragraph does not entitle a pilot to challenge PRD Jeopardy Events.

Second, the PRD ARC recognizes that § 203 of Public Law 111–216 leaves in place existing appeal processes that pilots may use to challenge certain air carrier and FAA actions. Collectively bargained grievance-arbitration procedures exist at some air carriers through which employer-imposed discipline, disqualification, and other decisions may be challenged. The ARC believes that allowing and encouraging the use of such mutually agreed-upon procedures for PRD disputes is an efficient and effective use of resources. We urge the FAA to confirm in its regulations that air carriers and labor unions have the authority to confer jurisdiction upon



neutral arbitrators, System Boards of Adjustment, or other decisionmaking bodies to resolve disputed PRD issues. The FAA should confirm that resolution of such issues, including findings about the proper recording of data or claimed inaccuracies in data, are final and conclusive for purposes of § 203. In situations where there is not a collectively bargained grievance-arbitration procedure, or where such procedure does not cover a disputed PRD issue, the FAA should establish appropriate procedures to ensure the accuracy of records entered by an air carrier in the PRD. Likewise, the FAA should establish appropriate procedures to ensure the accuracy of records entered by the FAA into the PRD. Where necessary, such review should be pursuant to a process comparable to that provided under NTSB independent review procedures.

Third, § 203 of Public Law 111–216 recognizes the inevitable nature of mistakes or inaccuracies in the data being provided or entered. It contemplates a process by which pilots may notify air carriers of such errors, provide a statement explaining the nature of the inaccuracy, and seek to have them corrected. We refer to this process as the Comment and Correction Procedure (CCP). The errors contemplated in the CCP process are inadvertent ones, such as typographical errors, mixed-up records, or faulty data entry. For example, a pilot could use the CCP process to question an inaccurately entered medical certification date or medical certification class. A pilot could not use the CCP process to question an Aviation Medical Examiner’s decision to deny a medical certification.

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) The FAA should confirm in its regulations that it has a legal responsibility to ensure data entered and maintained in the PRD complies with the law. Where a pilot complains that data has been entered in violation of § 203 of Public Law 111–216, or has not been removed as required by § 203 of Public Law 111–216, the FAA should provide a procedure to fairly consider and remedy such actions. The FAA Administrator should delegate responsibility to a particular branch within the FAA to review pilot claims that data has been entered in the PRD contrary to legal requirements. Pilots should be provided with a right of appeal through NTSB appeal procedures, according to 14 CFR part 821, to resolve any such claims not resolved at the agency review level.
- 2) The FAA should confirm in its regulations that air carriers and labor unions have the authority to confer jurisdiction upon neutral arbitrators, System Boards of Adjustment, or other decisionmaking bodies to resolve disputed PRD issues. The FAA should make clear that any such decisions resolving disputed PRD issues are conclusive, final, and binding under § 203 of Public Law 111–216. The FAA should establish procedures to resolve the accuracy of records entered (or to be entered) into the PRD for pilots at air carriers lacking such procedures. Where necessary, such review should be through NTSB appeal procedures.
- 3) The FAA should establish a CCP to enable pilots to notify air carriers or the FAA of mistakes or inaccuracies in the data being entered and seek to have those errors corrected. This process would provide a vehicle to facilitate the correction of inadvertent mistakes, such as typographical errors, mixed-up records, or faulty data entry.

- 4) The following should be the electronic process for CCP disputes:
  - a. The pilot logs into the PRD to review his or her records and identifies an inaccuracy. This inaccuracy could be found in the FAA or air carrier-provided data.
  - b. The pilot would be able to select a Services or Help button within the PRD screen. This selection would take the pilot to a page within the PRD website where they would be able to choose a CCP button.
  - c. A drop-down menu will allow the pilot to choose a category: (1) FAA information (such as incorrect certificates, ratings, or medical dates), or (2) air carrier information (such as disciplinary actions or particular training records). The site will proceed to a list of applicable information and the pilot will select the record in question. The pilot will then enter a free-form explanation of the dispute and provide information to correct the inaccuracy in the record.
  - d. Once the pilot submits the request for review, the initial data provider (either the FAA or the air carrier) will be electronically advised of the dispute, with an additional electronic confirmation sent to the pilot. This will allow for the pilot to receive a confirmation that the dispute is in progress.
  - e. The information provider will have 7 calendar days to acknowledge the dispute on the PRD website.
  - f. The record in question will be flagged until the dispute resolution process is resolved, allowing other individuals authorized to view the pilot's record to see that a particular record is in the dispute process. The dispute resolution process shall be no longer than (1) a timeline established within the respective company manual covering such data, (2) a timeline within a collective bargaining agreement, or (3) 30 calendar days.
  - g. Once the dispute is resolved, both the data provider and the pilot must acknowledge the resolution via the PRD and the dispute flag will be cleared. The data provider shall complete this task within 7 calendar days of the dispute's resolution.
  - h. If the record is found to be—
    - i. Inaccurate, the data provider shall remove all inaccurate data and no record shall remain showing any current or prior disputed records. Nothing herein limits the data provider from maintaining its records outside the PRD.
    - ii. Accurate by the data provider, the pilot shall, at his or her option, be able to keep the disputed comments within his or her record. The disputed flag will be removed to show the dispute process has been completed.
- 5) The above dispute process shall comply and run in parallel with the timelines, as applicable, as stated in the discussion of PRD ARC charter objective 3.a.4 as it relates to the applicable non-FAA data appeals.

- 6) A pilot is not required to use the CCP process for disputes over data entered in violation of § 203 of Public Law 111–216, or when there is a collectively bargained or other available procedure to challenge air carrier-imposed discipline or disqualification, or other PRD disputes. Although a pilot is not required to use the CCP process in such circumstances, the pilot may use this avenue to submit written comments and flag the record during the other appeal process.
- 7) Notwithstanding the above process, the FAA, as the entity required by law to maintain the PRD, has an overall responsibility to ensure each record contained within is accurate. Therefore, the FAA shall have the ability to correct a record when it is shown to the FAA that such record is, in fact, improper or inaccurate.
- 8) The FAA should provide clear guidance in its regulations to the data provider as to how to handle disputes. In addition, the PRD regulations must place time limits on air carriers and the FAA to correct possible improper recording or inaccurate records so as to ensure a pilot's record is always as current and accurate as possible.

## **CHALLENGE 2: LIMITED REVIEW PROCESS**

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Section 203 of Public Law 111–216 requires that data entered into the PRD remain there for pilots' lifetimes. The public interest in fostering air carrier safety, as well as the pilot interest in ensuring their records are fairly represented, both require that the data entered into the PRD be accurate. The 5-year look-back provision of PRIA provided a limited period of time in which data would be provided. Under PRIA, a pilot who believed a reported qualification event was erroneous was assured that after 5 years, such data would no longer be provided and that he or she would no longer be at risk of being harmed by its transmission. Moreover, certain adverse actions are subject to appeal procedures. FAA enforcement actions are appealable through the NTSB review process in 14 CFR part 821. FAA civil actions may be appealed under 14 CFR part 11. Failed checkrides given by FAA examiners pursuant to 49 U.S.C. § 44709 (§ 709 rides) that result in FAA enforcement action are appealable under the NTSB review process.

However, there is no established review procedure for a pilot to challenge the reported failure of a PRD Jeopardy Event by an air carrier's designated check airman. The PRD ARC recognizes the vast number of PRD jeopardy Events administered each year and has no desire to provide a vehicle for pilots to challenge every such reported adverse result. The ARC is concerned about the isolated circumstances in which a reported result of a PRD Jeopardy Event is seriously flawed and risks a miscarriage of justice to the affected pilot. The ARC is not seeking to provide a vehicle for pilots to challenge check airman judgment. The ARC's challenge is to identify a very limited avenue of review to prevent permanently marring the record of an otherwise innocent and competent pilot, but not open the floodgates of review over the plethora of reported PRD Jeopardy Events.

### **DISCUSSION**

The PRD ARC considered various ways to provide a limited avenue of appeal for such cases. It considered the following possibilities:

- 1) Allow such review only at the FAA's discretion;

- 2) Allow such review upon a showing of evidence that the PRD Jeopardy Event was seriously flawed, such as a simulator malfunction that interfered with the process;
- 3) Recommend that the FAA delegate the authority to resolve any such claims to a neutral review body such as a training review committee, a labor-management review panel, an arbitrator or a System Board of Adjustment. Where such bodies are established by collective bargaining agreement, the parties to that agreement would establish the processes to allow for such review;
- 4) Allow a pilot to present threshold evidence of a seriously flawed PRD Jeopardy Event to an ALJ. Allow the pilot to pursue an appeal through a review procedure with a process similar to that of the NTSB appeal process if the ALJ determined that sufficient evidence existed of a serious flaw to the PRD Jeopardy Event.

The PRD ARC decided these concerns would best be addressed by presenting them to the FAA, enabling it to implement a limited review process.

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) The FAA should implement a limited appeal process to enable the review by an air carrier's designated check airman of the report of a failed PRD Jeopardy Event which is seriously flawed and would result in a miscarriage of justice to the affected pilot if not corrected.
- 2) The FAA should confirm in its regulations that any enforcement action taken as a result of a failed § 709 ride that is appealed and overturned will have the effect of overturning the underlying reported failed § 709 ride, and that such report will be promptly removed from the PRD.

## OBJECTIVE

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**3.a.8—Developing standard definitions for common terms to be used in the database records (see appendix B for more information).**

## OBJECTIVE

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**3.a.10—Determining methods to initially load the database with historical data.**

## CHALLENGES

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First, a practical and readily achievable system must be developed for reporting “historical records” that would—

- 1) Continue to provide hiring air carriers with all useful records on pilot applicants.
- 2) Minimize the formidable logistical challenges and economic costs of transmitting and loading decades of records pertaining to an estimated 90,000 or more pilots.
- 3) Streamline the process so the FAA's implementation of the PRD will not be delayed.

Second, a procedure must be quickly initiated while the PRD is being fully implemented that would prevent any pilot applicant from circumventing PRIA by failing to disclose prior jobs to hiring air carriers.

## **BACKGROUND**

### **The Statutory Provision**

Section 203(4)(B) of Public Law 111–216 mandates that air carriers and other persons that have employed pilots shall transmit to the PRD records that (i) are generated on or after August 1, 2010 (the date of enactment), and (ii) were maintained by them on August 1, 2010, pursuant to § (h)(4) of PRIA.

In turn, § (h)(4) of PRIA requires air carriers to maintain PRIA-designated pilot records for at least 5 years after an event is recorded.

Accordingly, at a minimum, air carriers would need to transmit to the PRD all pilot records generated on or after August 1, 2005.

### **Existing record keeping practices of air carriers**

Until the passage of the PRD statute, the FAA had no need to require air carriers, operators, and other persons to use a standardized, universal format for recording and storing pilot records. As long as the air carrier or operator’s records contained all the key items of information required under PRIA and the respective FARs, the air carrier or operator could record events and store data in whatever manner best suited their internal needs at a particular point in time. Consequently, “historical” records of air carriers and operators vary widely in their content, scope, and size, as well as in the medium in which they have been stored.

### **Potential gap in Pilot Applicant’s Records under PRIA**

Under current PRIA practices, a pilot applicant who has had an unsuccessful, usually short-term, tenure at a prior air carrier or operator can cover up any training failures at that prior employer by not disclosing that period of employment on future job applications.

## **DISCUSSION**

In formulating the above recommendations, the PRD ARC’s primary goal was to fulfill Congress’ directive that the PRD be structured to allow hiring air carriers fast access to a prospective pilot’s “comprehensive record.” Obtaining an applicant’s comprehensive record, of course, is achievable only when the hiring air carrier is aware of all the air carriers for which the applicant has worked as a pilot.

At the same time, the PRD ARC members were mindful of the congressional directive that the PRD was solely intended to “facilitate pilot hiring decisions.” Loading the PRD database with hundreds of thousands of non-uniform records of stale events involving tens of thousands of pilots who are unlikely to seek employment at another air carrier would neither improve the pilot hiring process nor enhance safety.

In the same vein, the PRD ARC concluded that while it may be technologically “possible” to transmit and eventually load all historical records into the PRD, doing so was neither practical nor advisable. To the contrary, the logistics and costs of loading most existing historical records into the PRD would greatly delay the startup of the PRD, produce a PRD that was populated with incompatible data, and impose needless and significant costs on the air carriers.

Accordingly, for the reasons described below, the PRD ARC concluded that the fastest and most practical approach to ensure the complete disclosure of the relevant portions of a pilot applicant’s record would be to blend together the respective advantages of the PRIA and PRD systems in a process by which PRIA would be gradually “phased out” while the FAA gradually “phased in” the PRD.

**Requiring part 121, 125, and 135 air carriers to transmit basic employment history data within 60 days of the PRD launch date would immediately close the one significant gap in the PRIA system.**

Since PRIA regulations took effect in February 1997, hiring air carriers have found that the records provided by former employers of a pilot comprehensively present the applicant’s 5-year history at that employer. In almost all instances, the records obtained from prior employers contain the pilot’s checkrides and other key training events, any disciplinary actions relating to his or her performance as a pilot, and required records concerning releases from employment. In those relatively few instances where a “gap” in the records sent has existed or the prior employer has failed to provide records, the hiring air carrier has postponed the hiring decision or the pilot applicant’s first day of service while the applicant and the hiring air carrier pursue the missing records.

However, there is one “gap” that can occasionally occur without easily coming to the attention of the hiring air carrier. In relatively isolated instances, some pilot applicants have chosen not to disclose to a prospective hiring air carrier the names of *all* of the employers at which the pilot has worked during the prior 5 years. This intentional failure to disclose was most likely to occur after a pilot had “washed out” of another air carrier’s training program during the first months of employment. Even a relatively lengthy gap in a pilot’s employment history might not arouse suspicion on the part of a subsequent hiring air carrier. This is particularly true because so many pilots have endured multiple furloughs and other periods of unemployment during the long economic downturn in the air carrier industry since 2001.

Fortunately, such intentional refusals to disclose periods of employment appear to have been infrequent. Moreover, these gaps can easily be filled in by requiring air carriers and other persons to report key identifying information about all persons they have employed as pilots since August 1, 2005—5 years prior to the enactment of § 203 of Public Law 111–216 on August 1, 2010. Once loaded into the PRD, these employment history records would serve as “pointers” for any hiring air carrier. The hiring air carrier would then be armed with the complete list of all employers from whom it should request PRIA records or view PRD records. Further, simply requiring this employment history data be entered into the PRD will likely prompt even the most evasive applicant to report all episodes of employment, as the pilot would be aware that any deception would be quickly uncovered.

The data download needed to fill gaps of undisclosed periods of employment could be achieved rather quickly and at relatively little cost. The PRD ARC believes that part 121, 125, and 135 air carriers could readily generate lists of all pilots they have employed since July 31, 2005. To ensure accuracy, the list should include a pilot's—

- Complete name,
- FAA certificate or license number, and
- Date of birth or other secondary identifier.

The PRD ARC considered requiring air carriers to report whether they still employed the pilot. If the reporting air carrier no longer employed the pilot on the date the report was transmitted, one possibility would be to require that the former air carrier report the date that employment ended and whether the separation from employment was the result of retirement, resignation, termination, or furlough with right of recall. However, in the interest of quickly installing the abbreviated employment history data in the PRD, the ARC concluded that additional details regarding the tenure of the employment would not be necessary. Simply “pointing” the potential hiring air carrier to all the employers for which the pilot had previously worked would be sufficient to elicit all the required records pursuant to PRIA. The records produced by the prior air carriers and operators would show the dates of employment.

The PRD ARC members believe this employment history data could be provided to the FAA by air carriers and other persons within 60 days of the initial PRD implementation (“launch date”). By the 90th day after the launch date, the pilot's employment history data—*excluding the pilot's date of birth*—should be available for review by hiring air carriers, provided the applicant has given consent. The hiring air carrier could then utilize that information to identify all former employers from which it should be requesting PRIA records.

**Loading other historical pilot records into the PRD is neither practical nor useful. It would produce a massive database of convoluted, non-standard, incompatible, and generally irrelevant records.**

The PRD ARC members are deeply respectful of the congressional directive that the PRD database should include all pilot records maintained at an air carrier on the date of enactment, August 1, 2010, and for 5 years prior. At the same time, a review of air carriers' current and past systems for storing pilot records demonstrates the enormous technical and financial challenges involved in converting and uploading existing historical records to the PRD database.

First, the PRD ARC would note that pilot records have been stored in a variety of mediums over the preceding decades.

Air carriers currently employ pilots whose tenures may date back as far as the late 1970s, or as recently as 2010. For long-term pilots, their records may have been recorded and stored in a variety of mediums:

- Digital—in a wide array of formats,
- Paper—typed,
- Paper—handwritten,



- Microfiche, or
- Scanned.

Second, the volume of historical records that would need to be uploaded to the PRD is staggering and may not have been fully detailed to Congress prior to enactment of § 203.

According to the Bureau of Transportation Statistics, as of December 2009, there were 74,800 pilots currently working in the U.S. air carrier passenger and cargo industries, plus thousands more pilots who have worked for an air carrier since August 2005 but were on furlough or otherwise unemployed as of December 2009. The combined total could easily surpass 90,000 commercial pilots, and would probably be much higher after the pilots of smaller operators are included.

Assuming a pilot's average length of service is a minimum of 10 years (and at some major air carriers, the average is more in the range of 15 to 20 years), the total number of years of historical pilot records to be input to the PRD would be 900,000 years' worth of records.

The PRD ARC members had the opportunity to review hard copies of a sampling of individual pilots' records, dating back as far as the early 1980s. In one instance, the air carrier's records were relatively short, with just four pages of records containing all training and first-class medical certifications during a 20-year career period. However, at a second air carrier, the "training jacket" for just one pilot for one year in the 1990s was composed of nearly 20 handwritten pages. At a third air carrier, the first 2 months of initial operating training for a new hire pilot alone ran seven pages long.

Overall, a conservative estimate for a pilot with ten or more years of seniority at an air carrier would likely include a minimum of 80 pages of records. Multiplying 80 pages of records by 90,000 pilots, the total volume of paper to be scanned, uploaded, and indexed into the PRD would easily approach 7,200,000 pages—and very likely a much higher number. That volume of material, especially if submitted in PDF format, might easily "clog" the electronic pipelines needed to fill the PRD. In addition, smaller air carriers may lack the equipment and resources required to convert records to an electronic format.

Third, the contents of historical records vary widely and frequently contain materials far outside the scope of the PRD.

While air carrier records on pilots must satisfy FAA minimums, no standard format or content for those records exists. Generated over a course of several decades under different management and storage mediums, the variation in size and content is hardly surprising. In reviewing hard copies of historical records, the PRD ARC found many variations, including—

- Some older training records simply record whether the pilot had a satisfactory or unsatisfactory checkride event. Others include each individual maneuver or procedure that occurred during the checkride. Consequently, a one-line entry in a pilot's records at one air carrier can equate to a two-page entry for a pilot at different air carrier.



- Without a “key” or other “index” of explanations, even digital versions of historical records are not readily understood. Different nomenclatures have arisen at each air carrier, often with unique meanings. For example, one air carrier used a grading scale of “1 to 5,” with “5” being the highest, but at a second air carrier, a grade of “5” was a failure. Commonplace acronyms at one air carrier may be meaningless when read by training check airmen at another air carrier.
- One air carrier’s training record included the number of hours of pay the pilot earned while in the training event.
- Another air carrier’s training records included a list of the countries for which the pilot had been issued a visa.
- Some training records contain medical information, including leaves of absence and the pilot’s weight.
- Among older paper records, the documents are often handwritten and frequently illegible.

Fourth, the cost of scanning and uploading historical data would be significant.

In many instances, older paper records of training events would likely need to be retrieved from storage, individually scanned into a PDF or similar format, and then uploaded to the PRD. For an air carrier with 5,000 incumbent or former pilots averaging 80 pages each of records, there might be the need to scan and/or electronically transmit 400,000 pages of records. Further, each pilot’s record would need an “index” or “key” so the future reader could correctly decipher the meaning of the record. Depending on how rapidly the FAA would want the records “downloaded” to the PRD, an air carrier with 5,000 pilots would probably need to assign 10 or more clerical employees to the project, with total costs easily exceeding \$1 million.

The cost burden could be even more significant for small air carriers, which includes the majority of part 135 air carriers. In many of these smaller operations, individual pilots fly multiple aircraft types, leading to higher number of records per pilot to be entered into the database. Additionally, these small operations are unlikely to have administrative staff to manually input the data and are even more unlikely to have sophisticated electronic means to enter the data automatically. The relative cost burden to small air carriers would be considerable.

Fifth, the PRD ARC considered, but ultimately rejected, any requirement that part 91 operators enter either future or historical records into the PRD.

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 staffs 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.

Sixth, alternatives to submitting the existing historical records would encounter legal and logistical obstacles.

The PRD ARC members considered alternatives to transmitting air carriers' actual physical historical records to the FAA. One possible alternative would be to have the FAA adopt a model "questionnaire" of data fields on the history of a pilot's training career that an air carrier would then fill in and return to the FAA. That approach might work well for "future events," as air carriers would know in advance that events occurring after the launch date must be recorded in that format. However, for events that have already occurred and been recorded, there would be significant drawbacks to this approach.

In the legal arena, the FAA has previously taken the position, with regard to PRIA, that air carriers must transmit an actual record and not a summary. Quoting from an FAA Chief Counsel Policy Memorandum dated May 28, 1997: "PRIA explicitly requires an air carrier to transfer the records of a prospective applicant, not merely answer a questionnaire."

Further, in general, a record is a "contemporaneous" memorialization of an event. Whether a 2011 summary of an event that took place 10 or 20 years earlier meets that "contemporaneous" test is questionable.

Especially where the voluminous records of a long-serving pilot had to be analyzed, questionnaire preparation would require professional staff personnel (probably a pilot or training records official) at much higher costs than clerical personnel, and would likely lead to subjective variations in the data entered. Further, the net result would be a redacted document which might create concerns of its own.

#### **Most historical records loaded into a PRD would never be accessed by hiring air carriers.**

From a cost-benefit analysis, the PRD ARC members concluded that most of the historical records that air carriers could provide would never be accessed by hiring air carriers. The overwhelming majority of the pilots at major and national air carriers will never apply for new jobs elsewhere. Currently, at three major air carriers, average tenure exceeds 15 years of service, with even the most junior pilot earning \$80,000 or more. Voluntary turnover at those air carriers, except for retirements, is virtually nonexistent, as their pilots have no reason to apply for probationary pilot positions with entry-level salaries at other air carriers.

Consequently, since the incumbent pilots at most major air carriers rarely apply to new air carriers, almost all of their "historical records" would simply be stored at the PRD until death without being accessed by other air carriers. The benefits to public safety would be negligible.

**Pilot records of training events that occurred more than 5 years prior to a pilot being interviewed add little or no value to the hiring decision process.**

As noted earlier, § 203(4)(B) of Public Law 111–216, read in conjunction with § (h)(4) of PRIA, effectively requires air carriers to maintain all applicable pilot records they had as of August 2005. However, pilot recruiters report that as a practical matter, events that occurred 5 or more years prior to the interview have little or no correlation to the pilot’s current capabilities and future performance.

For example, if a pilot was encountering a problem with a particular piloting skill before 2006, then by 2011 one of two things has likely occurred: (a) the pilot has acquired the skill and become a successful pilot, or (b) if the problem continued to recur, the pilot has either moved on to another occupation or his training record has been so seriously blemished that other air carriers will not consider him.

Further, an inordinate volume of records can actually denigrate the quality of the pilot hiring process. If a hiring air carrier had to interpret and evaluate decades of outdated, irrelevant entries, it would be harder for the reviewer to identify key events. Limiting the time period of records for review to 5 years will actually improve the quality of the evaluation process.

**A “phaseout” of PRIA, and “phase-in” of the PRD approach would ensure that hiring air carriers have the complete record of the pilot applicant’s performance on a timely basis without imposing excessive and unnecessary costs on air carriers and operators.**

As noted earlier, most hiring air carriers have found that PRIA requests provide a complete background on a pilot’s performance during the preceding 5 years. The one possible “gap” is where the applicant fails to disclose the name of prior air carriers and operators where he or she has worked. However, by quickly implementing the “employment history data” proposal, that shortcoming in PRIA would be quickly rectified.

At the same time, the PRD ARC has concluded that the variations in recording methods and content of current air carrier records would make it impossible to create a uniform and reasonably comparable system database of “historical data.” Attempting to “squeeze” historical records that may have been produced 20 years ago to somehow fit into the same format as future database entries would be a logistical and financial morass that would only result in mismatched and incompatible records of limited usage to the hiring air carriers. Accordingly, the ARC recommends that the FAA adopt an approach that takes advantage of the best elements of both PRIA and the PRD.

For “future records”—those records covering events occurring after the launch date of the PRD—the PRDARC recommends the FAA adopt a standardized report form for all reporting air carriers to utilize. This will ensure uniformity of the information on each pilot.

For “historical records”—those records covering events occurring before the launch date—the PRD ARC concludes those records could best and most cost-effectively be obtained through existing PRIA request procedures.

The PRD ARC recommends that PRIA be gradually phased out as the PRD is phased in. Under this scenario, hiring air carriers would always be required to request a pilot's records for the preceding 5 years. For example, air carriers would upload future records starting on January 1, 2014. Effective, January 1, 2015, records for the year 2014 could then be accessed directly from the PRD by the hiring air carrier. Records for the 4 years preceding January 1, 2014 would have to be obtained via a PRIA request. As time passes and the PRD gradually garners more records, the time period covered by a PRIA request would progressively diminish; by January 2017, the hiring air carrier could obtain 3 years of records from the PRD and only 2 years of records from PRIA requests to former employers. Effective January 2019, only the PRD would be utilized and the FAA Administrator would exercise the authority under § 203(a) to terminate PRIA.

In conclusion, the PRD ARC believes that our recommendations on historical records and “phasing out” PRIA while “phasing in” the PRD would accomplish the safety goals envisioned by Congress in a practical and optimal method, while minimizing the cost and augmenting the uniformity of the database.

Further, the PRD ARC members are of the opinion that § 203 of Public Law 111–216 vests the FAA Administrator with the necessary authority to blend the respective advantages of PRIA and the PRD by implementing our recommendations regarding historical records. Specifically, § 15(B) reads:

(B) EFFECTIVE DATE—The regulations shall specify the date on which the requirements of this subsection take effect and the date on which the requirements of subsection (h) [PRIA] cease to be effective.

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) Within 60 days of the initial PRD implementation (“launch date”) by the FAA Administrator, all part 121, 125, and 135 air carriers and operators shall transmit to the FAA the full names, dates of birth, and certificate numbers of all persons whom they employed as a pilot at any time after July 31, 2005.
- 2) Starting 90 days after the launch date, hiring air carriers shall be able to obtain from the FAA a list of all the air carriers and operators for which a pilot applicant has worked since July 31, 2005. The pilot applicant must have provided the required proof of consent to the FAA. Only the pilot's name and certificate number will appear on the list provided to the hiring air carrier. The date of birth will not appear.
- 3) All pilots will be provided access to their employment history data on the same date that the hiring air carriers can access the data.
- 4) All reportable events occurring after the launch date are termed “future events.” Part 121, 125, and 135 air carriers and operators shall promptly transmit those reports of future events directly to the PRD.

- 5) During a trial period following the launch date, the FAA will populate the PRD with future events reported by air carriers and operators, but hiring air carriers will not be able to access those reports—other than the employment history data—until the FAA completes its beta testing of the PRD and determines that the database is fully operational and secure. The PRD ARC anticipates that the trial period will be completed within 1 year of the launch date and that the FAA Administrator will open the PRD for full access by hiring air carriers on a “full operation date” to be later determined
- 6) As soon as feasible during the trial period, but prior to the full operation date, all pilots shall have access to view the records their current and prior employers have transmitted to the PRD.
- 7) During the 1-year trial period, hiring air carriers will obtain the pilot applicant’s records of “future events” occurring during the trial period directly from the reporting air carriers or operators as part of their PRIA request. After the “full operation date,” hiring air carriers will only obtain records of “future events” directly from the PRD database.
- 8) Records of reportable events that occurred within the 5 years preceding the PRD request, but prior to the PRD launch date, are termed “historical records.” Hiring air carriers shall obtain historical records directly from previous employers pursuant to the provisions of PRIA.
- 9) Part 91 operators should be exempt from transmitting records of “future events” into the PRD. Hiring air carriers and operators shall file any requests for records from part 91 operators only under PRIA.
- 10) Five years after the launch date, the FAA Administrator will exercise his or her authority under § 203(a) and promulgate a date after which PRIA will cease to be in effect, except for requests made to part 91 operators. After the PRIA termination date, hiring air carriers will only obtain an applicant’s pilot records from the PRD.
- 11) During the period between the full operation date and the PRIA termination date, there will be a gradual “phaseout” of PRIA requests and a gradual “phase-in” of requests to the PRD.
- 12) The PRD ARC members recognize that § 203 of Public Law 111–216 gives the FAA Administrator the discretion to implement the recommendations regarding “historical records.”

## OBJECTIVE

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**3.b—The ARC shall consider scalability of its recommendations to address the needs of small businesses and “others” that employ pilots.**

## BACKGROUND

The PRD ARC considered scalability of its recommendations to address the needs of small businesses and “others” that employ pilots. This consideration was addressed throughout the process through the inclusion of the Aircraft Owners and Pilots Association, the National Air Transportation Association, and the National Business Aviation Association as ARC members.

## **DISCUSSION**

For more information, see the Executive Summary.

## **OBJECTIVE**

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**3.c—The ARC will develop recommendations to Title 14 Code of Federal Regulations (CFR) part 121; (CFR) part 125; (CFR) part 135; and other associated regulations as may be required to comply with the intent of section 203 of the Act.**

## **CHALLENGE**

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The PRD ARC recognizes the challenge of capturing the necessary regulations to implement and maintain the PRD. The ARC further acknowledges that the PRD will affect certificated airmen and air carriers addressed in numerous parts of Title 14, Code of Federal Regulations.

## **BACKGROUND**

This is the first time the FAA is required to maintain an electronic database of pilot records. The FAA chose to keep PRIA as a self-executing statute and developed an AC to provide guidance for PRIA compliance.

## **DISCUSSION**

AC 120-68<sup>11</sup> was revised numerous times since 1997. The PRD ARC found PRIA compliance has led to great inconsistencies in the records provided. We have examined examples of PRIA documents provided to hiring employers where more data than required—or conversely, too little data—has been provided. For example, some employers provide financial data or other personal information while others provide only a few years of data instead of the full 5 years as required. In order to best communicate the requirements of the PRD, specific regulations for this new statute should be established and will be crucial to its success.

The complexity and similarities of the law for the various users dictates that the regulations need to be simply located, and maintained in one specific part rather than scattered throughout 14 CFR. This will make the requirements as clear and easily complied with as possible for all users. The PRD ARC envisions a pointer to the new PRD part where applicable in the specific parts it is addressing as a cross-reference.

The PRD ARC finds, in addition to the above reasoning, the new specific part will also provide ease of use to the FAA and users in the future, when clarifications are made to the PRD or laws that govern the PRD change.

The PRD ARC envisions a structure similar to part 120, which consolidated various parts in the drug testing sections of 14 CFR. The handling of PRIA over the years further confirms that the PRD regulations should be separated into their own part. PRIA has been treated as a self-executing statute where only an AC was provided.

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<sup>11</sup> Most current version is AC 120-68E, effective July 2, 2010.

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) The FAA dedicates a separate part of 14 CFR to address the PRD in its entirety.
- 2) The FAA provides a pointer to this new part where applicable in the specific parts it is addressing.
- 3) The FAA makes clear in the regulations as to what is appropriate data in the PRD.

As for the actual technical organization of the new part concerning the PRD, we have no specific guidance other than what is otherwise contained in our report with regard to content covered.

## 3.0 GLOBAL RECOMMENDATIONS

### CHALLENGE

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**To determine how many years of previous air carrier data regarding a pilot applicant is valuable in making a hiring decision.**

#### *BACKGROUND/DISCUSSION*

The PRD, as a hiring tool, is meant to provide useful information on a pilot's ability and historical performance. In seeking to provide helpful and relevant information to hiring air carriers, the PRD should provide a comprehensive set of information from both FAA records and records maintained by air carriers. Air carriers should be able to retrieve and review the most relevant information for making hiring decisions.

The PRD ARC understands this recommendation could require the FAA to seek a technical amendment of the legislation from Congress. However, the ARC strongly believes that defining the timeframe of air carrier data received from the PRD has no negative impact on safety. In fact, limiting the air carrier data timeframe to only the preceding 5 years allows the hiring air carrier to focus on the most recent and relevant information in a pilot's career. Historical data is further addressed in the discussion of ARC charter objective 3.a.10.

### RECOMMENDATION

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The PRD ARC recommends that the hiring air carrier should be required to request air carrier data only from the preceding 5 years. For example, if ABC Air requests PRD data for pilot applicant John Doe on January 20, 2020, ABC Air will only receive the data entered into John Doe's record after January 19, 2015. (This 5-year timeframe does not apply to data under § 203(i)(2)(A) of Public Law 111–216.)

### CHALLENGE

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**To ensure that PRD regulations apply to any employee who holds a position with an air carrier where pilot ratings are required, or where the employee has the ability to serve as a pilot at that air carrier.**

#### *BACKGROUND*

Air carriers exist in a variety of conditions that create terms and policies unique to them. Pilots may have union or association representation. There may be distinctions between “line pilots” and “management pilots,” and concepts such as probationary employment, upgrades, downgrades, and transitions. The PRD does not and should not recognize these industrial terms and concepts.

#### *DISCUSSION*

The primary safety interest of establishing the PRD is to input certain data regarding pilots and disseminate that information to an employer for the purpose of making a hiring decision. The goal is to prevent a pilot from being able to hide serious safety issues or past employment from a



prospective employer. If a position requires pilot qualifications or permits duty as a pilot, the same safety considerations exist regardless of any title or status a particular air carrier assigns to that position, and PRD regulations should apply.

## RECOMMENDATION

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The PRD ARC recommends that the FAA ensures PRD regulations apply to any employee who holds a position with an air carrier where pilot ratings are required, or where the employee has the ability to serve as a pilot at that air carrier. For example, if the vice president of operations position at ABC Air requires that employee to hold pilot certificates and ratings similar to those held by its pilots, or if the position provides the possibility to perform pilot duties, PRD data must be accessed and evaluated as part of the hiring process for that employee, and any PRD-type data generated by the employee must be entered into the PRD.

## CHALLENGE

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**To protect voluntary safety programs.**

### BACKGROUND

There are a variety of voluntary safety programs sponsored by the FAA in which the FAA, air carriers, and pilots participate. These programs have been very effective in enhancing aviation safety. The key to their success is the ability of all three stakeholders to discuss de-identified information in a non-punitive atmosphere.

### DISCUSSION

The PRD ARC recognizes the importance of voluntary safety programs and the positive effect they have had in aviation safety. The ARC wants to ensure that data and information derived from these programs is not entered into the PRD. This would have a chilling effect on these programs, and therefore harm their safety effectiveness. The only exception to this would be for the PRD Jeopardy Events that the ARC is recommending be entered into the PRD. Despite the fact that PRD Jeopardy Events may be associated with an AQP training program, they do not involve disclosure of de-identified data or information. The ARC has also intentionally limited the information that would be entered from PRD Jeopardy Events to a SAT/UNSAT outcome so that there is no deleterious effect on the training program.

## RECOMMENDATION

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The PRD ARC recommends that the FAA ensures any data derived from voluntary safety programs such as the Aviation Safety Action Program, Flight Operational Quality Assurance, a Line Operations Safety Audit, AQP (with the exception of PRD Jeopardy Event outcomes of SAT/UNSAT), or similar type programs not be permitted to be entered into the PRD.

## CHALLENGE

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**To define a point where a hiring decision has been made for PRD purposes only.**

### BACKGROUND

The PRD will offer immediate electronic access to information. Under PRIA, the process was much slower. An air carrier that wanted information had to submit a request by mail and wait for the information to be gathered and mailed back. This created a practice where, to avoid impeding an air carrier's ability to train pilots in a timely fashion, PRIA documents were not required to be reviewed until prior to the pilot "entering service." Once operational, the PRD will render this practice unnecessary. Allowing the practice to continue would risk a situation occurring in which a pilot could fail PRD Jeopardy Events prior to entering service, leave that air carrier, not have the data entered into the PRD, and move on to the next air carrier unnoticed.

### DISCUSSION

The PRD ARC feels that the immediate availability of PRD data can be a safety enhancement if properly implemented. It also feels that Congress was clear in its intent that this data be used only for hiring decisions. Therefore it is necessary to define a point in the hiring process where, for purposes of the PRD, a hiring decision has been made. This will identify when PRD access to the records of a pilot applicant by an air carrier is no longer permitted, and when an air carrier must enter into the PRD that an applicant is now employed at that air carrier and must now begin entering PRD data for this new employee. If the hiring decision was negative, no further access or input is necessary. The ARC feels that a reasonable point in the hiring process to define where a hiring decision has been made is prior to the commencement of any training for the new employee. A "hiring decision" at any point in time following commencement of training could fail to capture passed or failed jeopardy events, and would pose safety and security risks by training an individual whose PRD data has not yet been accessed.

The PRD ARC suggests "PRD Hire Date" as a new term to differentiate from existing terms commonly used by air carriers, such as "Date of Hire," "Seniority Date," "Pilot Date of Hire," and "Date of Entry into Service." The ARC wants to be absolutely clear that "PRD Hire Date" only has meaning with regard to air carrier access to data and commencement of entry of employee data. It not intended to affect the meaning of similar-sounding terms.

## RECOMMENDATIONS

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The PRD ARC recommends that—

- 1) The FAA identify a point in the hiring process where an air carrier has made a "hiring decision" and therefore is no longer permitted to access PRD data for a pilot applicant. At this point, the air carrier must begin entering PRD data for this employee.
- 2) This point in the hiring process should be termed the "PRD Hire Date," a term that must be used only for the specified purposes, and must not interfere with air carriers' normal business practices, such as commencement of compensation, insurance, or seniority.
- 3) The PRD Hire Date should be prior to the pilot commencing any type of pilot training for that air carrier.

## 4.0 DISSENTING REPORTS

### DISSENTING OPINION OF THE AIR TRANSPORT ASSOCIATION, THE CARGO AIRLINE ASSOCIATION, THE NATIONAL AIR DISASTER ALLIANCE/FOUNDATION AND THE REGIONAL AIRLINE ASSOCIATION

#### PARTIAL DISSENT OF THE NATIONAL BUSINESS AVIATION ASSOCIATION<sup>12</sup>

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##### SUMMARY

The Air Transport Association, Cargo Airline Association, National Air Disaster Alliance/Foundation, and Regional Airline Association respectfully, but vigorously, dissent from the ARC's proposed recommendations for implementing several key aspects of the Pilot Records Database ("PRD").

The dissenters wish to emphasize that we do support many of the ARC recommendations. We agree with the majority's concern, for example, that the information entered into the PRD should be accurate. However, the majority interprets several provisions of the PRD statute (also referred to herein as "Section 203") in a narrow manner that would inevitably minimize the disclosure of "negative" aspects of a pilot applicant's record, thereby handicapping the usefulness of the PRD. This is inconsistent with the statute's purpose and congressional intent.

At the outset, it should be noted where the fault lines are in the split among eleven organizations represented on the ARC Committee. The first fault line is based on the "membership" of the respective organizations. The membership of the dissenting organizations is comprised of:

- A. Carriers that will be providing the data to the PRD and using the PRD records when hiring pilots.
- B. Passengers who will be transported by those newly hired pilots.

Understandably, the dissenting organizations want the information reported into the PRD to be not only accurate, but also "**comprehensive**": including both the positive and the negative aspects of a pilot's record. That way, the pilot's employment history can be fully reviewed and evaluated before the pilot is put into service flying passengers and cargo.

Conversely, the membership of most of the ARC's "majority" organizations is comprised of pilots. Given the composition of their membership, it is not surprising that the majority organizations have read the PRD statute in a manner that limits the negative information that would be entered into the PRD.

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<sup>12</sup> The National Business Aviation Association ("NBAA") joins in the portion of the dissenting Opinion regarding Objective 3.a.6: Establishing a Written Consent, Waiver of Liability Process. In all other respects, the NBAA endorses the ARC's recommendations.

The second fault line lies in our respective approaches to the existing law, the 1996 Pilot Records Improvement Act (“PRIA”). Most of the provisions of Section 203 are lifted “*verbatim*” directly from the existing PRIA statute. Further, the limited congressional history on Section 203 does not contain any indication that Congress wanted to change course and constrict the flow of information that hiring carriers currently receive from the FAA and former employers under PRIA. To the contrary, Congress specifically required that the FAA construct the PRD to:

“enable airlines seeking to hire a prospective pilot to have...access to a pilot’s **comprehensive** record.” (emphasis supplied)  
(House Report 111–284 at page 4).

Consequently, our understanding of Section 203 is that Congress wanted to augment the information that hiring carriers already receive via the PRIA. Congress favorably cited the NTSB recommendation that “**additional data**...would be beneficial for airlines to fully evaluate a pilot applicant.” (emphasis supplied) (House Report 111-284 at page 4.) The dissenting organizations view Section 203 as building upon, and expanding, the scope of the existing PRIA provisions. The dissenters adopt the position that the scope of the information provided to hiring carriers – including releases from employment and disciplinary matters – should be just as inclusive in response to a PRD request as it currently is in response to a PRIA request.

In contrast, the majority organizations often treated Section 203 as a new concept and rarely acknowledge the successful practices that have evolved in 14 years of PRIA experience. As detailed below, the majority claims to be acting to protect pilots from threats to their privacy. However, they cannot cite any examples where pilots have been wronged during the past 14 years. If the FAA were to accept the majority’s undocumented, abstract concerns and adopt their recommendations, negative information regarding disciplinary matters, terminations, and performance that hiring carriers have routinely obtained about pilot applicants for the past 14 years under PRIA would **not** be entered into the PRD. In our view, this weakens the pilot records system and is inconsistent with Congress’ mandate.

Among the ARC majority’s recommendations that we oppose are:

- A. With regard to disciplinary and termination events, limiting the information to be entered into the PRD to merely “data points” or “checked boxes,” rather than the full letters of termination or suspension that describe the event and the basis for the prior employer’s actions. Such letters are routinely provided today pursuant to PRIA requests and enable the prospective hiring carrier to have a full understanding of an event. Further, in 1997, the FAA specifically ruled that a “questionnaire” is not a substitute for the actual record.
- B. Ignoring the statutory and regulatory provisions that all action taken regarding a pilot’s “release from employment” should be entered into the PRD.
- C. Narrowing the definition of the term “Performance of a Pilot” [as used in Section 203] such that negative information regarding theft, fraud, dishonesty, racial discrimination, sexual harassment, and off-duty alcohol misconduct would not go into the PRD.
- D. Proposing a significant limitation on the broad liability protection (immunity) granted employers in both the PRIA and Section 203, while creating a new substantive right for pilots not included in the statute – a hearing process for pilots to challenge the outcomes

of checkrides and disciplinary matters. The net effect of these two proposals would be to “chill” former employers and co-workers from submitting negative information, notwithstanding its accuracy.

While the overwhelming majority of pilot applicants have “clean records” and are of high moral character, the ARC majority’s interpretations of several key aspects of the committee’s charter would, as a practical matter, defeat the 1996 congressional directive that former employers provide reliable pilot records on negative events to hiring air carriers in order to:

“help **weed out** those few pilots who undermine the excellent performance and reputation of the pilot community as a whole.” (emphasis supplied)  
(House Report 104-684 at p.6)

The ARC majority’s recommendations would hinder, not further, the congressional goal of “weeding out” unsuitable pilot candidates by providing their comprehensive record to future employers. The majority recommendations:

- (a) Would make it easier for the small number of pilots who have committed documented acts of racial discrimination, sexual harassment, off-duty alcohol or drug misconduct, theft, fraud and/or dishonesty that resulted in disciplinary action or termination to shield such information from a prospective air carrier employer.
- (b) Inhibit the ability of prospective employers to gauge the character of pilot applicants, an important feature of pilot licensing. (14 C.F.R. §61.153(c) requires that a person be of good moral character to be eligible for an ATP certificate).
- (c) Improperly expands the scope of information regarding the performance of a pilot that Congress exempted from disclosure. The only example cited by Congress of information that need not be disclosed to hiring carriers involved customer relations: “how the pilot interacts with customers.” (House Report 105-372 at p 3.) Congress never suggested that more serious conduct with significant workplace ramifications, such as fraud, dishonesty, racial discrimination, sexual harassment, and off-duty substance abuse, should not be disclosed to hiring carriers.
- (d) Ignores the clear directive of Section 203 (b)(i)(2)(B)(i) and the related FARs requiring carriers to report to the PRD each and every action taken concerning release from employment, without regard to whether pilot performance was involved.
- (e) Forces current and past employers and their employees who want to provide prospective air carriers with the comprehensive record of a pilot’s misconduct to step outside the PRD system, thereby forfeiting the legal immunity protection of Section 203 and PRIA. Absent immunity from retaliatory lawsuits for themselves and their employees, many former employers would understandably be reluctant to disclose negative events regarding the pilot.
- (f) Offers no explanation why it ignored Congress’ directive in Section 203(b)(i)(7) that pilots could seek to correct inaccuracies in their records by filing written comments. Instead, the majority, without any legal authority, proposes that the FAA create an elaborate administrative hearing process, so that pilots can challenge the “fairness” of almost any checkride.

In greater detail, the dissenting organizations take issue with the following three subsections of the ARC report.<sup>13</sup>

## **DISSENTING ORGANIZATIONS' OBJECTIONS**

### **Objectives 3.a.2 and 3.a.9.**

#### **Challenge 2: Disciplinary action and releases from employment**

Most, but not all, of the dissenters' disagreements with the majority's recommendations relate to Challenge 2 in the section on Objectives 3.a.2 and 3.a.9. (See pages 21–25 of the ARC Report.) Those two objectives deal with the scope of the information to be reported to and kept in the PRD. While we agree with the ARC's resolution of Challenges 1, 3, 4 and 5 under those joint objectives, we find that the proposals set forth in Challenge 2, covering Disciplinary Action and Releases from Employment, are contrary to the PRD statute, congressional intent, current practices under PRIA, and sound employment policies.

#### **A. "Check boxes" are inadequate substitutes for Letters of Termination or Suspension.**

The dissenters object to the majority's refusal to retain the current standard practice under PRIA by which former and current employers transmit to the PRD the full Letters of Termination and/or Suspension describing the reason why they disciplined or terminated a pilot applicant. It is those documents which constitute the heart of the carrier's "record" of the event, and which would be of the greatest use to prospective employers. Fortunately, relatively few pilot applicants have been the subject of Terminations for cause. But when that does occur, the current practice under PRIA is that the full letter of termination, letter of charge, or letter of suspension is sent from the former employer to the prospective hiring carrier for its review and evaluation.

Unfortunately, the majority proposes that in the future, former/current air carrier employers merely *check a box* stating either that the pilot had been subject to (a) termination, or (b) disciplinary suspension. (See charts at end of Challenge 2 at page 24 of the ARC report.)

The majority's proposal that "checked boxes" substitute for the full record is directly contrary to prior FAA directives regarding the PRIA. In AGC-220 Memorandum of May 28, 1997, the FAA specifically ruled that forms:

"cannot be used in lieu of transferring records between carriers. This is because PRIA explicitly requires an air carrier to transfer the records of a prospective applicant, not merely answer a questionnaire." (as quoted in FAA Air Transport Division, AFS-200 Policy Memorandum of May 27, 1998).

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<sup>13</sup> The National Air Disaster Alliance/ Foundation ("NADA/F") objects to other subsections of the ARC Report beyond just the three subsections discussed in this dissenting opinion. NADA/F has filed a separate dissent addressing those additional subsections.

Section (b)(i)(1) of the PRD statute specifically mandates that the hiring carrier “shall access and **evaluate**...information pertaining to the individual [applicant].” (Emphasis supplied). Merely looking at a “checked box” in the PRD would not give future employers any relevant information regarding the event that led to the discipline or termination. Without a comprehensive description of the actual event, there would be nothing for the hiring air carrier to “evaluate”.

Further, the dissenters would point out that section 7 of the PRD law gives the pilot the right to review his or her records and submit written comments to correct any inaccuracies. However, the pilot’s right to submit comments would be restricted since there would not be any descriptive record of the event to comment upon. And if the pilot did file comments, while the PRD only contained a “checked box” from the former employer, that would leave the hiring carrier with only the applicant’s account of the event. [There will be additional discussion of Section 7 later in this dissent.]

**B. Disciplinary events to be reported under the term “Performance as a Pilot” should include Dishonesty, Fraud, and potentially illegal activities.**

The majority concluded that employer action resulting in the Disciplinary suspension or Termination of a pilot should only be reported into the PRD if the underlying events directly involve the pilot’s “performance of *aeronautical duties*.” (See recommendations 2 and 4 under Challenge 2 on page 28 of the ARC report, as well as the Definition of Disciplinary Action in Appendix B.)

At the outset, the dissenters would note that the term “performance of *aeronautical duties*” does not appear in either the PRIA or Section 203. That term is a creation of the majority. The actual phrase used in the statute is “performance *as a pilot*.” The “performance as a pilot” limitation was added into the PRIA - and only into one portion of the PRIA - by Congress in 2000. The legislative history of the 2000 amendment contains no discussion of the term “performance as a pilot.”

The only guidance provided by Congress regarding the scope of information that it viewed as exempt from disclosure appears in the earlier 1997 House Report 105-372 on “Clarifications to Pilot Records Improvement Act of 1996.” In that 1997 House Report, the authors noted that they wanted all information regarding the “competency of the individual as a pilot” disclosed. There was only one example provided in the House Report of “other information” that was considered to be outside the scope of a pilot’s competency: “*how the pilot interacts with customers*.” (House Report 105-372 at p.3)

Without explanation, the majority has taken this benign example involving just customer service, and expanded the non-disclosure exemption to cover a host of potentially illegal conduct including: “sexual harassment, theft or dishonesty, fraud...[and] drug or alcohol misconduct that is not separately reportable.” (See Recommendation 4 on page 28.)

Nowhere in the legislative history did Congress ever suggest that potentially illegal conduct was something that it wanted hidden from prospective employers. It is a stretch to accept the proposition that pilots - or any other type of worker – can competently perform their jobs when they are lying, committing fraud, or sexually harassing co-workers. Serious misconduct of that



nature should certainly be included in a pilot applicant's "comprehensive" record. As an example of problem that the majority recommendations would create, the dissenters would suggest the following hypothetical:

- i. Captain "A" drinks alcohol during the 8 hours preceding departure of a flight.
- ii. First Officer "B", while aware of Captain A's drinking, lies about what happened in a misguided attempt to protect the captain.
- iii. The air carrier suspends First Officer B for lying about the event.

Under the majority's interpretation, since the first officer was not actually performing aeronautical duties when questioned, his disciplinary suspension should not be reported to the PRD. This defies logic since the first officer was covering up a misdeed that could have threatened passenger safety.

Finally, the Federal Aviation Regulations speak to the high ethical standards that the FAA requires of all individuals who wish to be pilots. To be eligible to for an air transport pilot certificate, 14 C.F.R. § 61.153 mandates that a person must: "(c) **Be of good moral character.**" (emphasis supplied.)

### **C. All actions taken regarding Release from Employment and Termination must be reported to the PRD.**

The majority concluded that actions regarding Releases from Employment, including Terminations, should only be reported into the PRD if they directly involve the pilot's "performance of aeronautical duties." (See Recommendations 2 and 4 under Challenge 2 on page 28 of the ARC report.)

However, the "performance as a pilot" limitation – regardless of how one interprets the meaning of that term - only appears in the sections of the PRD statute dealing with "other [carrier] records." The preceding section of the PRD statute does not contain any such limitation. Further, to the extent that others might perceive any conflict in the statutory provisions, the dissenters believe that the congressional directive to provide hiring carriers with the pilot applicant's **comprehensive record** dictates that any statutory ambiguity be resolved in favor of full disclosure.

Turning to the relevant sections of the PRD statute, Section 203 (b)(i)(2)(B)(i) provides for the reporting of records pertaining to the individual pilot that air carriers are already required to maintain under the Code of Federal Regulations (C.F.R.) Specifically, the (2)(B)(i) provision addresses the pilot records (other than records relating to flight time, duty time or rest time) maintained by air carriers and operators under Federal Aviation Regulations (F.A.R.) set forth in 14 C.F.R. §§ 121.683, 121.111(a), 121.219(a), 125.401, and 135.63(a)(4) .

Most of the records required to be maintained by air carriers under the FAR sections cited above involve aeronautical experience, currency, proficiency checks, and training events. By definition, those categories of records involve the pilot's performance as a pilot and therefore are not a subject of our dispute with the ARC majority.



However, the FARs also contain a requirement to retain records concerning “release from employment” in 14 C.F.R. §§ 121.683(a)(2), 125.401(a)(2) and 135.62(a)(4)(ix). These employment records are usually generated in conjunction with events that have no relation to the pilot’s performance as a pilot. In relevant part, these three regulations provide that each air carrier or operator shall –

Record each action taken concerning the release from employment or physical or professional disqualification of any flight crewmember. (emphasis supplied)

In most instances, a pilot’s employment at an air carrier ends as a result of actions or events that are *completely unrelated* to the pilot’s job performance or professional disqualification. Fortunately, only a very tiny percentage of pilots are terminated for cause, either performance or non-performance related. Rather, the overwhelming majority of pilots leave employment at an air carrier because of:

- (a) Involuntary furlough resulting from economic conditions or their carrier ceasing operations, (during the past 10 years since September 11<sup>th</sup>, 2011 involuntary furloughs have been the primary factor in pilots leaving their airline.)
- (b) Voluntary retirement,
- (c) Voluntary resignation, usually to go to another job, or
- (d) Medical disability.

Further, section (2)(B)(i) of the statute does not contain the qualifying language found in the subsequent section 2(B)(ii) dealing with “other records.” More specifically, section (2)(B)(ii) addresses “other records pertaining to the individual’s performance as a pilot.” (emphasis supplied.) However, the language of section (2)(B)(i) dealing with C.F.R. records, refers only to “records pertaining to the individual,” **without** “the performance as a pilot” limitation.

When Congress amended the PRIA in 2000, it only added the “performance as a pilot” qualifier to the PRIA section addressing “other records” of air carriers. The qualifier was not attached to the comparable section of PRIA dealing with FAR mandated records, including releases from employment. The congressional decision to not attach the “performance as a pilot” qualifier to section (2)(B)(i) C.F.R. records reflected dual realities.

First, to the extent that section (2)(B)(i) FAR records address FAA required training and qualification records, those intrinsically relate to the pilot’s performance of his/her piloting duties. Adding the “performance as a pilot qualifier” would have been redundant.

Second, if only those “releases from employment” that resulted from a pilot’s performance as a pilot were to be reported, virtually none of the “release from employment” records required to be maintained under the FARs would be reported to the PRD and/or to other carriers under PRIA. As explained above, most of these “release from employment” records involve furloughs, retirements, and voluntary resignations. Reading into section (2)(B)(i) the “performance as a pilot” qualifier would effectively nullify the congressional directive to include records under 14 C.F.R. §§ 121.683(a)(2), 125.401(a)(2) and 135.62(a)(4)(ix).

The ARC majority relies, in part, on congressional record pronouncements from 1997 to argue that congress wanted the “performance as a pilot” limitation to be applied to all records – both the CFR required records in section (b)(i) as well as the “other records” in (b)(ii). However, the fatal flaw in the majority’s reasoning is that the 1997 congressional language on which they rely predates the “performance as a pilot” amendment by 3 years!

When Congress amended the PRIA in 2000, it only added the “performance as a pilot” limitation to section (2)(b)(ii) dealing with “other records.” Congress could have, but did not, attach that limitation to section (2)(b)(i) dealing with the FAR required records. There is no evidence that the congressional choice to only attach the “performance as a pilot” limitation to “other records” was an error or mistake of legislative drafting. As explained above, the congressional determination was a logical choice.

Finally, the dissenters would take issue with the majority’s assertion that the FAA changed its Advisory Circular directives regarding Releases from employment “without explanation” in 2007. The majority fails to note that in the prior year, 2006, the FAA Flight Standards Division had issued its first PRIA Enforcement Guidance for FAA Inspectors. *FAA Order 8000.88* (March 14, 2006). During the preceding nine years since the PRIA took effect in February 1997, there had not been any official guidance for Principal Operations Inspectors. Parties on both sides had been informally seeking such official Guidance for years, but the press of other FAA responsibilities had delayed the issuance of the Enforcement Guidance.

However, in the 2006 publication on Enforcement, the FAA came down clearly in favor of limiting the “performance as a pilot” exclusion to other records. Regarding the FAR required records outlined in section (2)(B)(i) the Guidance stated:

a. Records pertaining to the individual that are maintained by an air operator...including: “records of each action taken concerning the release from employment...” (Order 8000.88 at page 7). The “performance as a pilot” limitation was not attached to that requirement.

But, when discussing “other records” of an air carrier, the Enforcement Guideline did add the “performance as pilot” limitation:

“b. Other records pertaining to the individual’s performance as a pilot that are maintained by an air carrier.” (Order 8000.88 at page 8.)

Once that official Enforcement Guidance was published in 2006, the FAA Advisory Circular (AC No. 120-68 D, 11/07/07) was adjusted the following year to conform to the Enforcement Guidance.

#### **D. The majority suggestion of a newly created exception to Release from Liability must be rejected.**

Finally, in Challenge 2, the majority posits, without any statutory or factual examples, an undeveloped theory for limiting the “immunity” or “release from liability” provisions of the PRD statute. (See discussion on page 25 as well as recommendation number 5 on page 26.) Inexplicably, this radical change to liability protections was not incorporated into the discussion of Charter Objective 3.a.6 which addresses “Release from Liability.” However, the dissenters will lay out our opposition to this recommendation in the next section.

#### **Dissenter’s Recommendations**

1. That the PRD should be constructed so it can store, and users can retrieve, letters and other documents relating to all releases from employment, as well as those disciplinary suspensions involving performance as a pilot.
2. That the FAA require the air carriers to report to the PRD all records regarding actions taken concerning the release from employment or physical or professional disqualification of any flight crewmember.
3. That the pilot suspensions involving actions such as theft, dishonesty, fraud, off-duty alcohol and drug misconduct, sexual harassment, and racial discrimination should be reported to the PRD.

#### **Charter Objective 3.a.6**

##### **Establishing a Written Consent, Release from Liability Process**

#### **Overview**

In regards to Release from Liability/ Immunity, the PRIA and the PRD statute give prior employers – and their managers and other workers – **near absolute privilege** from key categories of lawsuits when they provide negative information about a pilot’s record to prospective hiring air carriers via the PRD. The categories of suits barred by the release from liability include those “in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise.”

The prior employers - *and their managers, agents and co-workers* – can only be sued where the provider:

- a. Knows the information contained in the record was false, and
- b. The record was maintained in violation of a criminal statute of the United States.<sup>14</sup>

Congress’ decision to grant carriers - and their employees – such broad immunity under the PRIA was intended to further its goal of a full, frank and open exchange of information between carriers. With the passage of PRIA, management pilots and check airmen recognized that everything they put into a pilot’s record might eventually be disclosed to another airline. Without the strong release from liability provision and the insulation it provides them from

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<sup>14</sup> Unlike other sections of the PRD statute which were largely lifted verbatim from the PRIA, the Release from Liability provision was incorporated via conforming amendments. For convenience, the PRIA provisions and the PRD conforming amendments are merged together and set forth in Appendix A at the end of the dissenting opinion.

retaliatory lawsuits, these key safety figures might easily be inhibited from fully reporting a pilot applicant's professional shortcomings. The result could be whitewashed records – exactly what Congress wanted to avoid.

The dissenting organizations stress that Congress did not make any significant substantive changes to the privacy, consent or the immunity provisions of PRIA when it enacted the PRD statute. In addition, the ARC majority proffered no evidence of carriers abusing the present consent or release from liability systems, and the dissenters are unaware of any such instances in the 14 years that the PRIA has been in effect.

### **Objection to the Majority's Creation of a New Exemption from Immunity**

The ARC majority spent significant time and attention on protecting the privacy rights of the pilots. Approximately 25% of the text of the ARC report is devoted to protecting the pilot – and the related issue of removing negative information from a pilot's record. Unless otherwise noted in this opinion, the dissenting organizations endorse most of the privacy recommendations and reaffirm the importance of pilot's legitimate privacy protections.

However, the ARC majority – although willing to devote approximately 17 pages of the text of the report to the issue of pilot rights – chose to “whittle” the discussion of the protections afforded to carriers, check airmen and other employees in the “Written Consent and Release from Liability” provisions to barely one page. Further, the majority:

- A. Refused to mention, much less reaffirm, the Release from Liability/ Immunity protections for carriers and their employees of PRIA and Section 203.
- B. Removed all discussion of the existing caselaw regarding immunity.
- C. Most notably, in an unrelated section of the ARC report, sought to create an undefined, unsubstantiated “exception” or “loophole” in the release from liability which would create grave uncertainty about the extent of the privilege, and leave prior employers – and their managers and other crewmembers – potentially exposed to lawsuits if the prior employer forwarded negative information about a pilot's disciplinary or termination records to the PRD in direct conflict with the PRD statute.

In particular, in Objective 3.a.2, dealing with the design and construction of the PRD, the majority – with little discussion, no examples, and no legal citations – unilaterally proposed a new exception to immunity:

“Information beyond the statutory scope that is entered into the PRD by an air carrier may void the release of liability provisions.” (Recommendation 5 to Challenge 2 on page 28)

No justification for creating this “loophole” in the Release from Liability was provided by the majority. The PRD statute, like PRIA before, comprehensively deals with immunity and exceptions. There is no need or room for further recommendations here as discussed in the next section of this opinion.

Nor does the majority provide any boundaries of the potential scope of the loophole. However, given the undefined nature of the term “information beyond the statutory scope,” coupled with the majority’s assertion that matters such as “dishonesty,” “theft” and “sexual harassment” are outside of the scope of information that can be provided to the PRD, the potential for confusion is inevitable. It is easy to envision multiple circumstances in which an individual pilot, with a negative event that she would like to conceal, would claim that information on that event being entered into the PRD was not immunized and must be removed or redacted.

For example, if a carrier had disciplined a pilot for “lying” about an airborne event, the pilot would undoubtedly assert that any allegations regarding her dishonesty is “beyond the scope of the statutory provision.”

Faced with the prospect of lengthy and expensive litigation about which events are “immunized” or “privileged,” and which ones are not, many employers would probably chose to either “cleanse” the record and/ or not report the event at all into the PRD. Further, check airmen and other individual managers, faced with *personal liability*, might feel “chilled” in the exercise of their responsibilities. The result could be “whitewashed” records.

### Statutory Background and Case law

Section 203 carries over the same provisions found in the Pilot Records Improvement Act (“PRIA”) regarding (a) obtaining the written consent of the pilot before the pilot’s records can be released to hiring carriers; and (b) the limitations on liability and preemption of state laws to protect air carriers and other persons that either request or provide records.

When it enacted PRIA in 1996, Congress sought to: (a) mandate the exchange of information regarding pilot applicants between air carriers, while (b) ensuring that the privacy of pilots would be protected and their records released only with their prior written consent, and (c) insulating air carriers and other “persons”, as well as their agents and employees, from lawsuits “from pilots upset about evaluations in their records.” House Report 104-684 at p. 6. (July 16, 1996).

The House Committee strove to satisfy the dual and equally compelling obligations to “protect the airlines from frivolous lawsuits while preventing an airline from ruining a good pilot’s career because of some manager’s personal vendetta.” (Id at 6)

Addressing the subject of protecting the carriers and other “persons” who either provide or request records, as well as their employees and agents, the 1996 House Committee drafted the limitations on liability provision very broadly, stating its goal as:

“[N]o action or proceedings, in regard to the sharing of pilot records or the information in those records, may be brought by or on behalf of an individual who is seeking a position with an air carrier. An exception to this provision would apply only if an air carrier knowingly provided false information with respect to a pilot’s record. This exception is narrowly drawn to allow lawsuits only where the airline actually lies about the pilot. While similar statutes in other areas use the phrase ‘knows or should have known’, the reported bill limits the exception to the situation where the airline actually knew that the information it was transferring was false.” (Id at 7)

As reported out of the House Committee in 1996, the exception to immunity from lawsuits was limited to situations where the record being provided contained information that the “person knows is false.” However, after being amended in the Senate, the final PRIA law further strengthened the immunity provision by limiting lawsuits to situations where the record contained information that:

- (a) the person knows is false; and
- (b) was maintained in violation of a criminal statute of the United States.  
(emphasis supplied.)<sup>15</sup>

In drafting the immunity provision, a key concern of the congressional authors was to protect individual management officials, check airmen, fellow pilots, and co-workers from lawsuits brought by disgruntled pilots whose performance they have, of necessity, critiqued. Under current state tort and employment laws, as well as various federal statutes, individual employees may be even more vulnerable to retaliatory lawsuits than the air carrier or other corporate entity.

This exposure of individual employees was subsequently highlighted in Sheppard v. Freeman, 14 IER 801 (CA CT APP 1998). In 1994 (prior to the passage of the PRIA) Sheppard, a Southwest Airlines first officer sued Southwest after he was discharged for flunking the airline’s mandatory captain upgrade checkride. Since his discharge had been upheld in arbitration, Southwest was quickly dismissed from the lawsuit.

However, Sheppard continued to pursue his case against five fellow employees – four check airmen, and one flight attendant. He maintained that they had “falsely reported to Southwest that he was incompetent.” (14 IER at 801) The plaintiff alleged that their role in his check ride events constituted conspiracy, interference with contract and prospective economic advantage, intentional infliction of emotional distress, and libel.

In dismissing most...*but not all*...of the state law claims against the employees, the California Appellate Court concluded that exposing carrier employees to suits for participating in FAA mandated reporting activities would be detrimental to public safety:

“[T]he employee evaluation and reporting system which led to Sheppard’s termination from Southwest would appear to advance both corporate and public interests in safety. (49 U.S.C. § 44701(d).) Allowing coworkers to suffer liability would be anomalous under such circumstances.” Sheppard, 14 IER at 803.

Under the current PRIA law, if similar pilot performance events had been reported to another carrier pursuant to a job application, the co-workers are absolutely protected from any liability for damages arising if the pilot was not hired.

Other instances where an air carrier and/or its employees have been sued for criticizing a pilot’s competency and/or performance include:

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<sup>15</sup> Under 49 U.S.C. § 46310, an air carrier or officer, agent or employee of an air carrier who files a false report/record, falsifies or alters a report/record, or falsifies/conceals a material fact in a record or report can be imprisoned up to five years and subject to fines as set for in Title 18 of the US Code.

- Gay v. Affourtit, 1991 WL 190584 (SDNY 1991), 61 F.3d 83 (2d Cir. 1995). A Pan Am captain, who was fired after he allegedly let a flight attendant briefly fly the airplane, sued six fellow Pan Am pilots who participated in the disciplinary and arbitration process. Four years after Pan Am had ceased operations, the suit against his now unemployed coworkers continued.
- Robinson v Northwest Airlines, 175 LRRM 3306 (D.MN 2004). Pilot sued Northwest Airlines and its Director of Labor Relations for defamation after the company official sent a letter to a company retained psychiatrist, as part of a company ordered fitness for duty mental health examination. Pilot had corresponded with the FAA, alleging safety violations and copied Osama Bin Laden on his correspondence.

A broad grant of immunity goes hand in hand with legislative mandates to compel the disclosure of important personnel information. When a legislative body determines that the public interest would be furthered by the mandatory disclosure of confidential, potentially defamatory personnel information, a frequent legislative precondition is to cloak the person/corporation providing the information with immunity.

For example, in the context of state unemployment compensation laws, where the state wants to protect state coffers and employers from paying unemployment compensation to workers who were discharged for cause, most states grant absolute privilege to any information which the employer provides. In Arsenault v. Allegheny Airlines, 485 F.Supp. 1373 (D.MA. 1980), the plaintiff applied for unemployment benefits. The airline then informed the state agency that the Arsenault had been fired for theft. Since the criminal charges had been dropped, Arsenault sued Allegheny for defamation. The court however, granted summary judgment to Allegheny citing the Massachusetts state code provision that:

All information transmitted to the director of the Department of Employment Services...shall be absolutely privileged and shall not be made the subject matter or basis in any action of slander or libel in any court of the Commonwealth.  
485 F.Supp. at 1379

Given the broad grant of immunity in PRIA and the release forms authorized by the law, there have been very few reported suits brought by pilots since the passage of PRIA over 14 years ago...and probably no more than two or three opinions. Notably, in one of the rare opinions addressing the PRIA, the Colorado Supreme Court held that the limitation of liability provision extended not just to the printed personnel records, but also to “verbal interchange...concerning the applicant and the records provided.” Sky Fun 1 v. Schuttloffel, 17 IER Cases 1447 (CO Supreme Ct. 2001) at 1452. Rejecting the plaintiff pilot’s claim that his prior employer’s “verbal statements” to a prospective hiring carrier were not covered by PRIA’s immunity clause, the Colorado court ruled:

“[W]e hold that the limited liability provision of the Act prevents suits based on the pilot records provided to a potential employer, including **the personnel records, and oral statements** made in connection with explaining the circumstances and contents of such records. This interpretation carries out the Act’s purpose of protecting public safety in matters of air commerce” Sky Fun, 17 IER at 1452. (emphasis supplied.)

### Dissenter's Recommendations

1. That the FAA reaffirm that the release from liability provisions of the PRD protect air carriers, their agents, and the employees of the carriers and agents from lawsuits unless they provide records: (a) containing information that they know is false, and (b) maintained in violation of a criminal statute of the United States.
2. That the FAA maintain the substantive content of current FAA forms. Carriers, applicants, and the FAA should continue to utilize consent and immunity forms similar to those currently employed under PRIA. Carriers could also continue to utilize their own carrier specific immunity clauses that applicants are required to execute.

### Charter Objective 3.a.7

**Developing a common process for the air carriers to handle disputes by pilots concerning the accuracy of data provided by the air carriers and expected response/resolutions time.**

### Challenge 2: Limited Review Process

Just as it did with the Release from Liability provisions, the majority has taken the straightforward provision enacted by Congress and twisted it into a maze of regulatory obstacles, administrative hearings, and newly created “rights,” that could ensnare air carriers, pilots, unions, and the FAA in years of disputes over whether a check ride – or other jeopardy event - was “fairly” graded. As discussed below, Congress only vested the FAA with the authority to determine whether the grade for the check ride was “accurately recorded.” Delving into the “fairness” of how the check ride was administered would entangle the FAA and check airmen in a morass of unnecessary litigation.

In enacting the PRIA, congress recognized that given the hundreds of thousands of PRIA requests that would be made to air carriers, it was inevitable that inaccurate information would eventually be transmitted. Accordingly, it provided the applicant pilot with a relatively quick, uncomplicated, two step method for the pilot to correct any inaccuracies before a hiring decision was made.

First, Section 9 of the PRIA gave all pilots, applicants or not, the right to review the records that were maintained by either their current or former air carriers.

Second, under Section 8 of the PRIA, hiring air carriers were directed to give the applicants:

“a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision.”

This dual approach of having the pilot (a) review the records of the prior employer, and (b) file comments with the hiring employer, was carried over into the new PRD statute. Section 7 provides in relevant part:

(7) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS AND CORRECT INACCURACIES –

...the Administrator, upon receipt of a written request from an individual-



- (A) shall make available ...to the individual all records...pertaining to the individual; and
- (B) shall provide the individual with a reasonable opportunity to submit written comments to correct inaccuracies contained in the records.

Following these basic, uncomplicated steps would – in almost all cases involving true inaccuracies - almost always lead to a quick resolution of the matter. As correctly noted by the majority, inadvertent entry of inaccurate information, “such as typographical errors, mixed up reports, or faulty data entry” needs to be corrected in the PRD. For example, if pilot Susan R. Anderson found that the check ride of pilot Susan B. Anderson had been mistakenly entered into Susan R’s record, Susan R could simply provide the proper documentation, e.g. her Certificate Number, and date of her last correct check ride to her employer or the FAA. Then either the employer or the FAA could adjust Susan R’s records in the PRD.

Even in the extreme example cited by the majority – where an air carrier deliberately refuses to remove a disciplinary record after an arbitrator has overturned the termination – the inaccuracy could easily be rectified by providing the FAA Administrator with a copy of the Arbitrator’s Award as the PRIA and PRD statute contemplate. As noted during the ARC’s deliberations over this issue, the FAA could sanction the recalcitrant carrier for refusing the removed overturned discipline, and/or remove the challenged events from the PRD.

Had the majority report stopped its recommendations on the subject of “inaccurately recorded” events at this point, the dissenting organizations would not have had any reason to object. However, the majority ultimately reveals that it wants to do much more than just correct “inaccuracies.” Instead, the majority wants the FAA to create yet another avenue to remove negative information from a pilot’s record. While professing that they have “no desire to provide a vehicle for pilots to challenge every such reported adverse result,” (ARC report at page 62), the majority proceeds to build precisely such a car for every disappointed pilot to jump into and drive.

To explain the differences between the viewpoint of the majority and that of the dissenting Organizations, it might be useful to invoke an analogy to college grading. If a student takes a course, and the professor gives her a grade of “B” for the course, but the professor mistakenly reports the grade to the Registrar’s office as a “D”, the college should afford the student a process to correct the inaccuracy and have the “D” removed and the “B” entered into her transcript by the Registrar.

However, if the professor really did give the student a grade of “D,” and reported it to the Registrar’s office as a “D,” then there is no “inaccuracy.” The student may have felt the “D” was an “unfair” grade – e.g. because she was tested on material that the professor had said would not be on the final exam, or the professor refused to let her reschedule the exam when she was sick. Nonetheless, the Registrar’s office has accurately recorded the grade. And the “fairness” of the grade is not an issue for the Registrar to resolve...even if it is a “permanent mark” on the student’s transcript.

In our view, the FAA Administrator’s role with regard to the PRD is akin to that of the college Registrar. The FAA Administrator must ensure that the result of “sat” or “unsat” (the “grade”) given to the pilot (the “student”) by the check airman (the “professor”) was accurately recorded

in the pilot's PRD account ("the transcript"). If it was not accurate, then the FAA Administrator must take steps to remove the incorrect record. However, the FAA Administrator ought not get into resolving allegations of whether the check ride was fairly graded or administered.

Yet it is the role of "fairness" judge that the majority wants the FAA Administrator to assume. Under the majority's misnamed "Limited Review" process, a pilot who flunked a checkride would actually be accorded nearly "**unlimited** review" to question the "fairness" of any testing event. With the stated, albeit vague, goal of having the FAA Administrator assure that a pilot's record are "fairly represented," the majority vests all pilots with the right to an FAA hearing. All the disappointed pilot would need to do would be to assert that she failed a checkride or other "jeopardy event" because of what she perceived to be a "miscarriage of justice" or a "serious flaw" in the process.

One need only read a scattering of arbitration awards or NTSB orders dealing with failed checkrides or other jeopardy events to recognize the wide scope of "serious flaw" allegations that disappointed pilots make about testing events: "biased" checkairmen; refusals to give more training time; family and/or medical complications; and incorrect instructions by the check airman for a maneuver during the check ride. Further, it should be noted that arbitration proceedings on failed check rides or upgrades frequently last for days, involve the testimony of multiple witnesses, and require both side to provide copious notes and records regarding the event. Moreover, the litany of arbitration awards and NTSB orders indicate that a review process exists elsewhere and the FAA should not commit substantial resources to duplicate existing processes.

In addition, the dissenters would point out that US air carriers each year administer between 100,000 and 150,000 checkrides and other "testing" events. If pilots chose to challenge only ½ of 1% of the checkrides, the FAA would need to handle 750 cases per year.

Finally, the dissenters would point out that the majority does not suggest any statutory authority for the creation of this new appeal process. To the contrary, implementing the majority's proposal would likely entail such issues as (a) expanding the jurisdiction of the Railway Labor Act System Boards; (b) renegotiating collective bargaining agreements to cover the new dispute process; (c) amending the Federal Aviation Act; and (d) determining the applicability of the Administrative Procedures Act.

### **Dissenter's Recommendation**

3. That the FAA follow the congressional directive and handle any inaccuracies in the PRD by affording all pilots the dual rights to "review" and file comments on any inaccuracies regarding their records. These comments should be stored in the PRD along with the disputed records of the carrier.

## APPENDIX A TO DISSENTERS' OPINION

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For readers' reference:

The 2010 PRD law replaces in its entirety section (h) of PRIA, which contains almost all of the existing PRIA law. This replacement of section (h) will not take effect until a future date to be specified in forthcoming regulations.

However, the 2010 PRD law did not repeal section (i), the Limitations on Liability and Preemption portion of PRIA. Rather, the PRD statute made some conforming amendments to section (i). It also added a provision barring pilots who refuse to sign a consent form from suing a carrier that refuses to hire them.

For the ease of reading, the 2010 amendments are merged into the existing section (i)...which PRD redesignated as (j) and (k).

LIMITATIONS ON LIABILITY; PREEMPTION OF STATE LAW (with 2010 PRD changes in red)

### (j) LIMITATIONS ON LIABILITY; PREEMPTION OF STATE LAW.

(1) LIMITATION ON LIABILITY. No action or proceeding may be brought by or on behalf of an individual who has applied for or is seeking a position with an air carrier as a pilot and who has signed a release from liability, as provided for under section (h)(2) or (i)(3) against—

(A) the air carrier requesting the records of that individual under subsection (h)(1) or accessing the records of that individual under subsection (i)(1);

(B) a person who has complied with such request;

(C) a person who has entered information contained in the individual's records; or

(D) an agent or employee of a person described in subparagraph (A) or (B); in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal or State law with respect to the furnishing or use of such records in accordance with subsection (h) or (i).

(2) PREEMPTION. No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (h) or (i).

### (3) PROVISION OF KNOWINGLY FALSE INFORMATION.

Paragraphs (1) and (2) shall not apply with respect to a person who furnishes information in response to a request made under subsection (h)(1) or who furnished information to the database established under subsection (i)(2), that—

(A) the person knows is false; and

(B) was maintained in violation of a criminal statute of the United States.

**(4) PROHIBITION ON ACTIONS AND PROCEEDINGS AGAINST AIR CARRIERS.**

**(A) HIRING DECISIONS.** An air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

**(B) ACTIONS AND PROCEEDINGS.** No action or proceeding may be brought against an air carrier by or on behalf of an individual who has applied for or is seeking a position as a pilot with the air carrier if the air carrier refused to hire the individual after the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute a release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

**(k) LIMITATION ON STATUTORY CONSTRUCTION.** Nothing in subsection

(h) or (i) shall be construed as precluding the availability of the records of a pilot in an investigation or other proceeding concerning an accident or incident conducted by the Administrator, the National Transportation Safety Board, or a court.

## **NATIONAL AIR DISASTER ALLIANCE / FOUNDATION (NADA/F)**

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July, 2011

*NADA/F* MISSION: To raise the standard of safety, security, and survivability for aviation passengers, and to support victims' families.

*NADA/F*, a non-profit organization, with thousands of members worldwide, represents survivors, family members, aviation professionals, and the traveling public. All who support our Founding Mission and Goals are welcome to be members.

### **Dissenting Opinion:**

#### **FAA Pilot Records Database Aviation Rulemaking Committee (PRD ARC)**

The following *NADA/F* members participated in the Working Group and support this Dissent:

**Glenn Johnson**, also a family member and Officer of Victims of Pan Am flight 103; lost his daughter Beth

[Johnsonvpaf103@comcast.net](mailto:Johnsonvpaf103@comcast.net)

**Erin H. Perry**, *NADA/F* Board Member, also a family member from CO3407; lost her brother Jonathan,

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**Matthew Ziemkiewicz**, *NADA/F* President, lost his sister Jill on TWA800 [mrz329@verizon.net](mailto:mrz329@verizon.net)

**Gail A. Dunham**, *NADA/F* Executive Director, also UA585 family member [GADunham@aol.com](mailto:GADunham@aol.com)

The following is submitted to be included as a DISSENT Addendum and a permanent Addendum to the FAA PRD ARC Report, as submitted to the FAA Administrator, Associate Administrator, and to be included in the official PRD Report docket. It is the position of the *NATIONAL AIR DISASTER ALLIANCE/FOUNDATION (NADA/F)* that many of the report recommendations are less than the legislation requires, and considerably less than current PRIA requirements, and will limit the scope and use of the Pilot Records Database. The PRD report recommendations do not address the Safety challenges and/or the economic impact of a carrier that fails to conduct a comprehensive pilot background check of pilots', before they are hired; including: skills, training, certifications, successful and non-successful training records, disciplinary actions not overturned, employment history, NDR (National Driver License Registry), professionalism, and a criminal background check.

*NADA/F* concurs with the Dissents filed on behalf of RAA Regional Airline Association, ATA, Air Transport Association, CAA, Cargo Airline Association, and *NADA/F* the *NATIONAL AIR DISASTER ALLIANCE/FOUNDATION*.

## ***DISSENT #1 - PRD GOALS***

### ***PRIA >>> PRD***

#### ***Pilot Records Improvement Act, 1996, to Pilot Records Database. 2010***

*NADA/F* recommends that the FAA move forward to design the electronic Pilot Records Database (PRD) using data that is presently in PRIA, and stated in PL 111-216, H.R. 5900 Legislation. The FAA should also look for ways to expand this resource so that the PRD will be a comprehensive tool for air carriers to access for hiring decisions. PRIA has worked very well for almost 15 years, and has been legally tested from the PRIA legislation through Amendments and case law. Using PRIA and the legislation requirements as a guide, and with FAA funding, possibly the PRD could be implemented ahead of schedule. It could increase the level of safety to have a comprehensive PRD up and running, as soon as possible. (*NADA/F* is not suggesting that thousands of PRIA pages be uploaded to PRD, as PRIA could be used for up to a five year phase in of the PRD.)

Correct Title of the PRD report should be Pilot Records Database. This is not a singular database.

That is also the title in the legislation.

## ***NADA/F Summary of the Pilot Records Database***

*NADA/F* Dissents with the Executive Summary, and offers the following Summary.

On July 29, 2010, the House passed H.R. 5900, the Airline Safety and Federal Aviation Administration Extension Act of 2010. The legislation included a 60-day extension for FAA funding, and, the Airline Safety and Pilot Training Improvement Act. The Bill was signed into law on August 1, 2010 by President Barack Obama creating Public Law No: 111-216, a date significant to our organization as August 1, 2010 was the 15<sup>th</sup> Anniversary of the incorporation and founding of *NADA/F*.

H.R. 5900 is defined as: “*The strongest aviation safety legislation in decades.*” (Congressional testimony)

Section 203 of H.R. 5900 mandates that the FAA construct a Pilot Records Database (PRD). FAA Administrator J. Randolph Babbitt established the PRD Aviation Rulemaking Committee (ARC) using his authority under Title 49 of U.S. Code (49 U.S.C.)(5) on February 3, 2011.

The Pilot Records Improvement Act (PRIA) was passed in 1996 as part of that FAA Re-authorization bill. PRIA was promoted and passed by *NADA/F* Founding Members, including other legislation in that bill for the Aviation Disaster Family Assistance Act, and specific language for “**one level of safety**” for aviation.

**PRIA – Pilot Records Improvement Act passed the U.S. House 401 to 0 in 1996** and required airlines, before hiring a pilot, to request the records of that pilot from the FAA, the National Driver Register (NDR), and the pilot's previous employers. This was designed to ensure that airlines would be able to make informed hiring decisions.

NTSB Testimony Dec. 13-14, 1995: *“Between 1987 and 1994, there were reportedly at least 7 fatal accidents involving scheduled airlines and pilot error where the pilot had demonstrated problems but the airline was not required to check the pilot’s records before making the hiring decision. ... The NTSB investigated each of the 7 accidents, and in 4 of the cases... recommended that airlines be required to check a pilot’s previous performance before hiring that pilot.... NTSB testified that commercial aircraft accidents are so rare that to have four in seven years attributable, even in part, to a single cause should be – for everyone – conclusive evidence of a serious problem.”* (Report 105-372, 105<sup>th</sup> Congress, October 31, 1997 for additional information).

**PRIA records have been kept manually, on paper**, by the FAA for almost 15 years. PRIA has worked very well, as long as the airlines provided necessary information to the FAA, obtained the FAA PRIA records, checked the NDR record, other background sources, and actively checked with prior employers about a pilot's training, proficiency, and professionalism.

H.R. 5900 and Section 203 direct the FAA Administrator **to establish an electronic pilot records database** to include certain pilot records for the air carriers to use the records only to assess the pilot qualifications to decide whether or not to hire that individual. Congressional intent supports the legislation for a comprehensive Pilot Records Database. The specifics show that this could be a smooth transition from PRIA requirements to the PRD electronic records. The legislation also requests ways to improve PRIA, with the word “others” and additional language.

We view the PRD as an opportunity to improve and expand on PRIA, to truly support aviation safety. It is long overdue to go from paper reports to an electronic database, with more information quickly available for prospective aviation employers. The PRD could attest to the quality of the pilot competency, flight experience, and professionalism in a comprehensive record. The PRD needs to provide accurate facts and data. It was determined through the NTSB investigation of CO3407 (2-10-09) that the pilot provided false and omitted information on his application about training failures. We must use these lessons learned from tragic circumstances and have an obligation to prevent them in the future. The PRD should control data so that pilots cannot fail to report previous employers and training. Increasing the lookback from five years to ten years will make it more difficult for a pilot applicant to cover-up failed tests, or ignore an employer that did not work out well. Most records in the PRD should be held a lifetime, and air carriers should be able to request access for a five or ten-year lookback, when the PRD is phased in.

## ARC PRD Process Issues

The ARC PRD met from February 8, 2011 through June 29, 2011, with eight meetings of three days each. The first written PRD draft was April 15, 2011, and progress was slow on the written drafts. The last day of the meeting important sections were being introduced for the first time, without time to read in advance, and some discussed only a sentence or paragraph at a time, without looking at that paragraph in the context for that section.

The PRD process was more majority/minority, and no discussion about levels of consensus. The definition of consensus does not include majority/minority. The minority was told to turn in their Dissent/Minority Report long before the draft final report was completed. The DISSENTS and Recommendations that *NADA/F* makes in this Dissent were raised, and some important recommendations were stated the first week. Two legal requests were left unanswered.

The Final Report was available June 30, 2011 and Dissents are due by July 15, 2011. The ARC Chair stated that ARC members could only offer corrections to Dissent statements.

Thank you to the FAA staff who participated in the meetings. They kept their objectivity, and the group needed their guidance. Thank you also for the PAI Consultant for her hard work. She did the work of many people, accurately and efficiently, and kept up with a very heavy work load.

## Specific Dissents of Executive Summary

Executive Summary states: “ARC brought together subject matter experts, from **eleven associations, representing all types of commercial aviation operations and pilots**. The purpose of the ARC is to provide the Administrator recommendations based upon the expertise of the aviation community, including what the industry believes would be the best practices to make the PRD a useful tool in the enhancement of aviation safety.”

*NADA/F* was one of those eleven associations invited by the Administrator to participate. *NADA/F* represents air crash survivors, family members and the traveling public – very important and integral people in the aviation community. Additionally, family members pressed hard to pass this historic safety legislation into law, certainly not to benefit themselves, but to support “one level” of the highest safety standards in aviation, for you, your family and friends, and the traveling public.

With our limited resources *NADA/F* representatives attended all meetings, stayed informed as an ARC PRD team, and we are fully invested in the PRD to improve aviation safety and to comply with the legislation. We came to the ARC PRD with an open mind and not preconceived goals.

The report also states: “This gave the ARC the ability to run every idea through the filter of ‘Is this going to be valuable to those who make a hiring decision?’” The ARC PRD majority decided that the PRD is just one tool and that air carriers will need to rely on other sources of information to supplement the information pertinent to making a pilot hiring decision. The PRD report recommends less data than previously has been included I PRIA.



As noted in the ARC PRD Final Report, there is a distinct need to clarify several erroneous statements that we believe misled some aspects of this ARC. Nothing in the Charter limits participants as “commercial aviation operations and pilots,” as stated. The Charter states, “U.S. Aviation Community,” and “other appropriate specialties as determined by the FAA.” Another example denotes the purpose of the ARC is to determine what some members of the industry believe to be best practices; a suggestion that is not listed in the Charter. Additionally there is nothing in the Charter that would limit and selectively filter the ARC PRD participant’s reasoning.

We found the majority pilot recommendations to be narrow in scope, restrictive in time lines, and some participants even wanted the FAA to become involved in resolving legal disputes between the pilot and the airline. One recommendation attempts to create more avenues of litigation if a pilot disagrees with a check ride evaluation, or other PRD entries. Their ARC recommendations would result in having less information in the PRD database than in the PRIA records. It became clear during this process that several ARC members had exceptional flight experience, however, little experience with database management and development.

The PRD report concludes that “less is more” and “will enhance safety for decades to come.”

NADA/F disagrees with that conclusion. We find no statistical or scientific basis that less of a pilot background check enhances safety. It is NADA/F’s opinion that the legislation could improve safety, if the FAA complies with the legislation; but the ARC should have looked for ways to work together to expand and improve this important legislation.

Lastly, pilots in the ARC PRD perceived the PRD as punitive, either directly or indirectly, and the pilots focused on possible negative perceptions of the PRD data that could be entered into the PRD, thus, excluding potentially relevant records for fear that it may mar a pilots record and candidacy for employment. This resulted in slanted conclusions and biased perspectives within the ARC meetings and the Final Report.

## **DISSENT #2**

### **Pilots, “Others” and Five-Year Lookback**

**Flight Engineers.** The Executive Summary shared discussion about Flight Engineers, and assumes that if Congress intended to preclude any or all of Flight Engineer types, then they would have been specific, so the PRD Report assumes FAA can work with Congress to clarify, and references Federal Regulations.

We disagree. This seems an example of “over-engineering”.

### **NADA/F RECOMMENDS that Flight Engineers be included in the PRD Records Database.**

H.R. 5900, Section 201 Definitions (a)(4) “flight crewmember” as defined in Code of Federal Regulations, Part 1 of title 14, which defines **crewmember as, “A person assigned to perform duty in an aircraft during flight time.”** Therefore, our recommendations are for the PRD to be inclusive, and include Flight Engineers. The FAA should also include phase in of additional pilot groups such as Part 91, and possibly government pilots that fly government employees to

their destination. Government employees may want some of the same safety legislation to apply to their flights.

**Scalability, “Others” and Part 91.** The ARC PRD assumes that because they had a representative of AOPA, NATA and NBAA that they sufficiently addressed scalability. NADA/F disagrees. It appears the PRD report does not define “others.” The majority decided to not include Part 91 because of: *“the reduced number of required checkrides to those employed at Part 91 operation. With ‘company check rides’ not being a requirement of these operations, there would be little for the employer to add to the PRD that would not already be inputted by the FAA. It would also not be useful, or practical for these operators to access the database when hiring a pilot, as the typical pilot hired in such an operation is entry-level, with little data available, and in any event will be flying a private aircraft.”*

NADA/RECOMMENDS and agrees that all Part 121 and Part 135 will be fully included in the new PRD.

NADA/RECOMMENDS that Flight Engineers be included in the PRD Records Database.

NADA/RECOMMENDS that government agencies also have the option of complying with the PRD.

NADA/F understands that the military does not provide information to the FAA and does NOT comply with PRD, but different government agencies may find it helpful to provide information and access information from PRD. When they are hiring pilots, federal, state and local government agencies may want to access PRD rather than only relying on a pilot application. In the future the PRD may be the most efficient and comprehensive resource for pilot hiring.

**NADA/RECOMMENDS that Part 125 air carriers be required to enter pilot training information and whatever is required for the PRD, and be required to access PRD when they are hiring.** A consistent policy is less confusing, especially with air carriers holding multiple Part certificates. Consistency has an advantage of protecting immunity for the air carrier and of course the FAA.

The PRD report recommendation is for Part 125 to be one way to input data. The majority said not to include Part 125 because some are not “air carriers.” The ARC PRD majority definition of “air carrier” seems to narrow the definition to strictly an “airline”.

Definition of “air carrier” is *“a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.”* (Title 49, Subtitle VII, Part A subpart I, chapter 401, § 401012)

**NADA/F RECOMMENDS** that the FAA consider Part 91 air carriers as “others” for possible PRD participation. **Some Part 91 are already a higher classification and participate in PRD, however, there may be other air carriers in that same classification that should also be in PRD for consistency.** If Part 91 has a reduced number of check rides then perhaps they should comply with PRD for greater oversight.

When the PRD database content is defined it would be helpful to provide that information to Part 91, and perhaps other aviation companies, and they would have a guideline for organizing their own pilot records. Encourage air carriers to utilize these PRD guidelines as they may be included in PRD in the future, and guidelines will help them prepare. A private software company or two may also come up with suggested software to improve pilot records for small air carriers. (Scalability)

Part 91 emergency helicopters have had a terrible safety record. The NTSB has made many safety recommendations and the pilot experience and training screening may need to be improved. The PRD may be that tool to be expanded for individual sectors or all of Part 91.

Sports teams, companies like Quest Diagnostics, some corporate jets and other Part 91 operators may benefit from being included in the PRD, to input their pilot information and access PRD when they are hiring. How many Part 91 air carriers are subject to FAA fines for improper operating procedures? Participation in PRD may help them raise their standards.

The U.S. has had very few commercial aviation disasters in the past ten years from Part 121 and Part 135, however, we still average over one fatal air crash per day in the U.S. A system safety analysis may conclude that air carriers and the FAA need the PRD process to better screen pilots for hiring.

In fact, that may be the case today.

#### **Five- Year Look back, or longer timeline**

The ARC report states that a “5-year rolling timeframe was appropriate and fully adequate to assume that all relevant pilot data be provided.” The ARC also stated they “cannot identify any legislation justification for the maintenance of lifetime records.”

**NADA/F disagrees.** There is no statistical or scientific basis for these conclusions.

If the FAA phases in a ten year lookback for PRD, then the FAA will be better able to determine if a longer timeline is helpful, and the FAA can recommend amendments in the congressional report and legislative review process after 18 months, and every three years.

**NADA/F RECOMMENDS** that the FAA continue to use the 5-year look back as they phase in PRD from PRIA, however, we recommend to increase the lookback after PRD has replaced PRIA, or sooner. That will prove helpful toward improving aviation safety. We recommend increasing the five year look back to six years, and then seven, until PRD provides a ten year lookback. Pilots will be well informed that a longer look back is being phased in.

Similar to when PRIA was passed in 1996, there continues to be a statistical problem in 2008 that pilots have not received adequate background checks of their flight training and experience. A comprehensive PRD that provides clear, comprehensive, accurate, historical pilot records attempts to close that gap. It might be helpful to ask the NTSB to prepare a report of fatal crashes for the past five years where pilot error is listed as a probable cause of the investigation, and provide pilot background information.

Yes, some records are for a lifetime. For example, school transcripts exist for a lifetime, and other professionals such as doctors have state and federal records with a longer look back. The look back timeframe may increase from five years to ten years, but records should be maintained in the PRD for a lifetime, unless the FAA later determines they are not necessary.

The PRD should achieve a significant enhancement in safety over the current PRIA, partly because of the quick access to the data. However, NADA/F does not agree that safety will be significantly enhanced by the recommendations in the Report to provide less background information.

### **DISSENT #3.**

#### **Congressional Intent**

*NADA/F RECOMMENDS* that the facts do illustrate a clear Congressional Intent that strongly support the Legislation as written to create a comprehensive pilot records database.

The PRD report stated that the ARC members did not feel qualified to interpret Congressional intent, nor did they feel it was their task to do so, but rather that of the FAA. The PRD report stated the ARC did not limit itself to any individual, or group perceived interpretation of what Congress was asking the FAA to do. Therefore, the ARC deliberated from a position that, while not unconcerned with Congressional intent, was primarily based upon what they felt would be their “best practices.”

*NADA/F* does not agree with the PRD recommendations to change the legislation, and eliminate, change or amend key provisions, and we disagree with some recommendations that are far outside of the PRD legislation and ARC Charter.

*NADA/F* Disagrees with the report under the PRD ARC process that assumed there was no obvious Congressional intent.

*NADA/F* states as Congress stated, that H.R.5900 is “*historic safety legislation*,” and the actions and words from the U.S. House and U.S. Senate do show Congressional intent to support the legislation.

#### **History of passing H.R. 5900 and PL No. 111-216**

**Feb 12, 2009** – CO3407, crash in Buffalo New York – 50 fatalities – Continental Connection operated by Colgan Air, Inc.

**May 11-15, 2009** – CO3407 family members attended the NTSB Public Hearing and began lobbying for aviation safety legislation, to prevent a similar disaster so that others would not have a similar experience. Many family members made over 30 trips to D.C. since May 2009.

**October 2009** – U.S. House passed H.R. 3371 by a vote of 409 – 11 for the initial version of the stand-alone aviation safety legislation.

**March 2010 – U.S. Senate took much of H.R. 3371, passed by 93-0 and rolled it into its FAA Reauthorization Bill**

**July 29, 2010 – U.S. House attached H.R.3371 to H.R. 5900, their FAA extension, passed by voice vote.**

**August 1, 2010 – Public Law No: 111-216 was signed into law by President Barack Obama.**

The Pilot Records Database Section 203 was originally introduced by U.S. Senate Commerce Committee as part of its FAA Bill July 2009, and House rolled it verbatim into HR 3371. The Section 203, Pilot Records Database was reviewed by Senate and House through many meetings for over a year before passing.

NADA/F has participated in FAA Rulemaking for over ten years, and proud of the legislation that CO3407 family members passed. One member of our ARC PRD team, Erin Perry, is CO3407 family member. Erin also brings a professional expertise with databases and records management to the working group.

NADA/F requested that the Congressional Testimony be included in the PRD report under “Supporting Documents,” but our request was disregarded and ignored. Therefore,

NADA/F has provided a copy of the Congressional Testimony, as part of our Dissent, in appendix D.

**Remarks from the Congressional Testimony show clear Congressional intent:**

*“The bill before us tonight contains the strongest aviation safety legislation in decades. It was introduced after many hearings, roundtable discussions, and with the input from the families of those who perished in the Colgan accident in Buffalo, the pilot groups, airlines, the National Transportation Safety Board, the Dept of Transportation’s Inspector General, and many Members of Congress.”*

*“...We have been working in a bipartisan manner to produce a comprehensive ... bill.”*

*“Regional airlines have been involved in the last 7 fatal U.S. airline accidents and pilot performance has been implicated in 4 of those accidents.....This legislation strengthens pilot training... and requires the FAA to create and maintain an electronic pilot records database. The database will allow an airline to quickly access an applicant’s comprehensive record for hiring purposes only.”*

*“We are finally at a point where 1.8 million Americans each and every day who board a craft – and more than 400,000 of whom are on regional carriers – **will be assured one level of aviation safety.**”*

**(The words “One level of Safety” were also in the 1996 legislation including the creation of PRIA, and “One level of Safety” was frequently mentioned during House and Senate Hearings for H.R. 5900.)**

*“..We are now at a point of making an extraordinary difference in the history of aviation safety.”*

*“The opening paragraphs of the FAA Act of 1958 say, ‘Safety shall be maintained at the highest possible level.’ Not the level the airlines can afford. Not the level the airlines want. Not the level that the airline executive choose to provide. **The highest possible level.** That is where we go with this legislation.”*

*“Establishing a pilot records database to provide airlines with fast, electronic access to a pilot’s comprehensive record.”*

*“We view these safety provisions as just a preview of a very strong comprehensive aviation package that this Congress will deliver for the American public in a matter of weeks.”*

*“... this is the strongest aviation safety bill that we are about to pass in decades. I urge my colleagues to support this legislation.” (Bill passed with overwhelming support).*

PRIA was passed in 1996 because pilot records had not been checked, which resulted in multiple fatal aviation disasters, and in 2010 we also find a record of preventable aviation disasters, especially CO3407, where a pilot did not disclose his complete flight history, and background records were not adequately checked, or were not readily available. The statistics from 1996 and 2010 are similar. **We MUST get it right this time.**

#### **DISSENT #4**

##### **Comprehensive**

NADA/F RECOMMENDS that the PRD is intended to be a **Comprehensive** Pilot Records Database.

We believe that the following definition applies to all aspects of the PRD.

The word **comprehensive** is used throughout the Congressional Testimony and **specifically in the legislation:** H.R. 5900, Section 216, Flight crewmember screening and qualifications.

- (a) (2) (A) MINIMUM REQUIREMENTS Prospective Flight crewmembers – Rules issued under paragraph (1) **shall ensure that prospective flight crewmembers undergo comprehensive pre-employment screening, including an assessment of the skills, aptitudes, airmanship, and suitability of each applicant for a position as a flight crewmember in terms of functioning effectively in the air carrier’s operational environment.**

The ARC PRD avoided using the word “comprehensive” and the majority insisted that the PRD was not meant to be “comprehensive.” “Comprehensive” is used in the PRD report by another writer in Section 10.

**Charter Objective 3.a.1 – Examining alternatives for where the data (from three sources) will be maintained and alternatives for which organization entity will have responsibility for PRD maintenance and reporting.**

NADA/F would like to add that per the legislation there are three sources of information:

- From the air carrier,
- From the NDR – National Drivers License Registry, and
- From the FAA.

The FAA has handled privacy of the records very well through PRIA. FAA will still be the government agency responsible for the Pilot Records Database and nothing should be construed as hindering the FAA from doing their work with the PRD, and nothing construed to stop the FAA from expanding and improving the PRD, and expanding immunity where needed. Air carrier use of the PRD is only to access and evaluate a pilot's professional record for hiring purposes. NADA/F continues to support the FAA and willing to assist any way that we can be helpful.

**Charter Objective 3.a.2. and 3.a.9**

**(2) Determining what information is required to be kept in the new system (9) Determining a suitable structure for data tables to maintain training, qualifications, employment actions, and national driver record data records required by this legislation.**

**Challenge 1: Pilot training, qualifications, proficiency and professional competence**

**NADA/F Comments**

Thank you to the FAA for the beginning design work that they have done on the PRD content. Clearly the PRD could be a comprehensive database tool to provide more information in a standardized way and incorporate PRIA mandates, which are also reiterated in the PRD legislation.

This section of the report that addresses Objective 3.a.2 and 3.a.9. emphasizes maximizing air safety, but that the PRD is *“not to be implemented to cause unintended adverse safety consequences,”* NADA/F disagrees with a very narrow view of what could be included with Training Records due to some ARC members' perception of “unintended consequences” when including comprehensive training records. In brief, legislation recommends entering PRIA data to the PRD, and the records in PRIA are legally sound, as proven over its nearly 15 year history. Thus, the “Fear” of unintended consequences is moot.

When creating and implementing the PRD it is imperative to recognize that air carrier have different training methods, and that PRD will have not only AQP training records, so the legislation is applicable to training records past, present and future.



## **DISSENT #5**

### **Training Comments and Evaluations**

The report assumes that including comments from training records is negative to safety.

NADA/F disagrees.

**NADA/F RECOMMENDS** that the FAA decide how to include detail from the training records, and recommend nothing significantly less than PRIA. Airline professionals will access the PRD and we feel they will understand approved industry related comments. Comments and evaluations are required in the legislation:

*“(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;*

*(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and*

*(III) any release from employment or resignation, termination, or disqualification with respect to employment.”*

The focus should not be on a rare anomaly, or perceived anomaly, but what is needed for now and the future to create the comprehensive pilot records database. We are not recommending scanning thousands of pages from PRIA, but PRD training records need to be comprehensive with some of the comments and evaluations.

The guest from a large airline presented a comprehensive screening program for hiring pilots, however, today smaller new airlines may not invest the time and money into such a thorough pilot screening program. Airlines also go out of business.

**NADA/F RECOMMENDS that the FAA maintain: start and completion dates that reflect training, qualifications, proficiency and professional competence, keep comments where applicable, and maintain those records indefinitely, or until the pilot is deceased and then archived.** The lookback for air carriers may only be five years, and gradually increase to ten years, but records should be kept by the FAA indefinitely to facilitate investigations requirements. There is a wide variety of statute of limitations that affect official record retention, especially when involved with minors.

Any “burden” of improving the pilot’s records will be less of a burden to the air carriers with the advantage of a comprehensive pilot record.

This section of the PRD report also introduces a theme throughout the report “(only) *Reporting events that accurately reflect a pilot’s actual aeronautical performance is consistent with the statutory goal of furthering public safety.*” NADA/F disagrees with the very narrow defined view from the pilots of “aeronautical performance.” Our Dissent to 3.a.2. Challenge 2 is later in this report.



The legislation requires “*employment actions*” in the PRD, and the desire is a professional pilot, professional in many ways. Employment actions should include start and completion dates for active employment, furloughs, and approved leaves of absence. Start and end date of suspensions should be included, and of course if a disciplinary action is reversed that is totally eliminated from the PRD.

AQP Advanced Qualification Programs and Voluntary Safety Reporting Programs are different and VSP would probably not be in the PRD.

The PRD report states that they reviewed prior accidents, however, there appears to be no record of reviewing recent air crash investigation and pilot background checks about their proficiency. Pilots said their ARC PRD recommendations would prevent another CO3407, however, their recommendations leave the door wide open for same problems that caused CO3407 with inadequate pilot records information.

## **DISSENT #6**

### **Challenge 2: Disciplinary action and releases from employment**

The *NATIONAL AIR DISASTER ALLIANCE/FOUNDATION (NADA/F)* concurs with the RAA, Regional Airline Association, ATA, Air Transport Association, and CAA, Cargo Airline Association.

*NADA/F* Dissents from the PRD report **3.a.2. Challenge 2** and the pilot’s narrow definition of “*disciplinary action.*” This is a huge step down from PRIA. Nothing in the legislation confers to eliminate disciplinary action from the PRD; in fact, legislation requires disciplinary actions in the PRD: “*any disciplinary action taken with respect to the individual that was not subsequently overturned; any release from employment or resignation, termination, or disqualification with respect to employment*”.

**3.a.2. Challenge 2, Recommendation 4) “That the following are examples of conduct that does not involve a pilot’s aeronautical duties and would not meet this definition of disciplinary action:**

- **violation of an employer’s dependability or**
- **attendance policy;**
- **failure to meet an employer’s appearance or grooming standards;**
- **insubordination;**
- **violation of the duty of loyalty;**
- **sexual harassment;**
- **theft or dishonesty;**
- **fraud;**
- **interpersonal conflict;**
- **failure to conduct oneself appropriate with the public, customers, or vendors;**
- **violations of company policy that do not involve the pilot’s aeronautical duties;**

- **drug and alcohol misconduct that is not separately reportable under Section 203.”**

The majority is trying to create a separate group of employees whose employment record would exempt pilots from company policies and federal laws reporting to the PRD, and hide critical information from the air carriers. These cited examples display behaviors and potentially patterns of behaviors that certainly influence a pilot’s professional performance.

How many jobs today exempt employees from any report of discipline for those infractions?

Pilots are fortunate that if first offense, the air carrier often allows remediation and an apology.

Many companies are not that generous.

*NADA/F* disagrees with the legal conclusion that air carriers will lose immunity if they (FAA or air carrier) “*overreach*” by entering any of the above data--data that has been part of the PRIA record. PRIA has been legally tested for almost 15 years, and *NADA/F* is opposed to this perceived legal threat.

We disagree with the conclusion that pilot infractions in Recommendation 4) do not influence pilot performance, and do not impact pilot and airline employee professionalism. We disagree with the legal conclusion that federal and/or state laws governing the above should be disregarded for a special class of employees that report to the FAA PRD.

We disagree with the legal opinion, and the majority of the PRD group who approve that “Challenge 2” is Congressional intent. Customer service may be mentioned, but we do **not** agree that Congress intended to exclude theft, sexual harassment, drug, alcohol abuse, etc.

Yes, these infractions do impact job performance. That is why the practices are not accepted in the workplace today. Recommendation 4) goes far outside of labor laws today, especially in the twenty-two “Right to Work” states.

If a person working on a General Motors assembly line is disciplined for the above, they may well lose their job. Certainly, a pilot who is trusted more than any other employee with the airline resources and passenger lives should be professional all the time.

FAA Administrator Randy Babbitt stated: ***“Civil aviation accounts for more than 11.5 million jobs that produce \$396 billion in wages for skilled Americans -- a large percentage of the U.S. economy.*”**

*NADA/F* wants the airline industry to stay in business and prosper, and infractions such as those in Recommendation 4) hurt the airline brand name and reputation. **Millions of airline employees are working hard every day, and do not want their airline disparaged by pilots who are assuming immunity in their pilot record for these serious infractions.**

Example: For decades, many airlines have a policy that employees in the company uniform may not be seen in a public area drinking wine, beer or liquor. Pilots should not be exempt from discipline in their PRD if they violate this or any other company policy.

The FAA is legally trusted to oversee the aviation industry to provide the safest transportation possible.

The FAA should oversee alcohol and drug abuse records, and the FAA cannot be expected to ignore those infractions and more out of the FAA PRD pilot database.

**NADA/F RECOMMENDS** that an air carrier may report Discipline Pending to the FAA for the PRD when they feel it is appropriate, but promptly. We see no need for a required 30 - 45 day wait. A pilot could get another job during that time, especially since they are recommending that Part 125 and Part 91 not be required to access the PRD for hiring consideration. In time, Parts 121 and 135 will have instant access to the PRD, so there should be no required wait time. If the discipline involves a suspension or sanction that should be entered.

NADA/F also supports that airlines have different policies, and some have a “zero tolerance” for some infractions. You cannot force airlines to all have the same response for some infractions. Therefore, the air carriers make their own determination when to report to the PRD there is Discipline Pending, and when the discipline decision is made, enter in the PRD the results of Discipline, and for what.

The Discipline Involving Pilot Performance draft for PRD is incomplete. It should have date of action, action type: discipline, disqualification, or termination, and infraction, sexual harassment, violation of policy #, and file closed date. If there is no suspension and the decision is made that the “discipline pending” was in error, then that event is deleted promptly from the PRD (within 36 hours).

If a pilot has one Discipline noted for Sexual Harassment, or other infraction, and a date of final decision that is helpful information for the long term. Disciplines should be included when the PRD increases the look back over five years. The legislation did not exempt the PRD from accurate discipline information.

### **“Pilot Rant” March 25, 2011**

A pilot at a major air carrier had an open “mike” and was heard by air traffic control and other pilots, and recorded, with a wild, verbal, sexist attack, rant and rave, full of words that were “beeped.” This is an enormous embarrassment to the employees of the airline. The airline allowed the pilot to attend sensitivity training as remedy and return to his job.

For context, the pilot was actively flying the plane during the time of this rant; his rant was a diversion for every flight that heard him and shared the same air traffic control frequency, yet some ARC pilots feel strongly that this incident had nothing to do with his aeronautical duties because the pilot flew from the departure city to arrival destination and passengers landed without harm at their destination.

NADA/F disagrees. Narrowly defining only “aeronautical functions” may take laborious and time consuming court proceedings. Additionally, some of the ARC pilot's interpretation of “aeronautical functions” or “performance as a pilot” is too narrow for what the air carriers and passengers expect of an airline pilot. The “Pilot Rant” and subsequent discipline is an example of, first, specific discipline that was imposed on a pilot due to his on-duty actions, and, second,

discipline that should be included in the PRD. PL 111-216 notes that the PRD should be comprised of records noting: “the training, qualifications, proficiency, or professional competence of the individual...” as well as, “any disciplinary action taken with respect to the individual that was not subsequently overturned.”

While it is always important to safely depart and arrive at a destination, it is equally important how the pilot is able to fly the plane in accordance with rules and guidelines as well as maintain professionalism throughout his or her flight and duty time. Failing to record egregious, and potentially less egregious, lapses in how a pilot performs, not just if he or she takes off and lands the plane safely does not enhance the safety for the crew and passengers and may have a negative effect on general crew resource management. Importantly, passengers’ expectations of having a well trained, proficient, and professional pilot flying their aircraft are important too.

These behaviors most certainly do affect pilot and aircrew coordination and aviation safety. The attributes reflected in the exclusions carved out by 3.a.2. Challenge 2 are very harmful to crew resource management and aircrew coordination which have been cited as causal factors in a majority of recent air disasters. The FAA has been a major proponent of air crew coordination training and the advancement of CRM. To permit a pilot who had these disciplinary episodes in his or her background to be hired and flying without the knowledge of his or her employer would be a significant detriment to the employer’s ability to ensure CRM. This lack of disclosure would endanger the lives of passengers. The NTSB and the FAA have both stated that CRM and aircrew coordination are among the most important improvements that pilots can make to enhance their performance on the flight deck.

It is important to note that all these behaviors which the pilots’ unions seek to exclude from required records disclose would preclude such an individual from being selected as a United States military pilot. The military has determined that the character, leadership and wiliness to follow guidance and regulations are all indicative of qualities of professional pilots needed for safe flight operations, especially such behaviors as harassment, insubordination, theft and dishonesty, fraud and interpersonal conflict—none of this is tolerated in the ranks of military pilots.

Persons with such disciplinary problems are not only unable to professionally coordinate and interact with other pilots and in the cockpit. Such persons are likely unable to recognize and admit their own limitations and unlikely to examine and improve their own performance.

There is no job in America in which sexual harassment of any kind is or should be tolerated. To permit a pilot to hide any discipline for harassment--sexual or otherwise-- from an employer is tantamount to permitting obfuscation of a crime. In most places and in most circumstances harassment can amount to criminal behavior. An employer needs to know about such past behaviors and discipline. The same is true for fraud, theft or dishonesty. It is incomprehensible that a pilot entrusted with a plane and with the lives of others both on the plane and on the ground, would expect that he or she would not have to disclose fraud, theft or dishonesty.

### CHALLENGE 3: Expungement of FAA legal enforcement actions

*NADA/F RECOMMENDS* that serious legal enforcement actions against pilots are reported to the FAA and subsequently to the PRD, and that those serious infraction records should be kept indefinitely.

*NADA/F RECOMMENDS* that the FAA could reinstate the 5-year expungment policy for enforcement actions that are considered less serious, with the understanding that when PRIA has been closed and the PRD is in place, that the look back policy may increase until the PRD has ten years or more of look back records.

*NADA/F RECOMMENDS* that the FAA make these determinations, and if needed, the FAA makes recommendations during the periodic reviews required by legislation.

*NADA/F* would hesitate to rely on a 20-year old Privacy Act, enacted when records were usually kept on paper. The rights to privacy have been defined through case law and more during the past two decades. Fortunately, privacy has not been a problem with PRIA. Privacy is not a constitutional right, but still very important to people.

### DISSENT #7

### CHALLENGE 4: National Driver Register (NDR) Records

*NADA/F RECOMMENDS* that air carriers comply with PL 111-216, H.R. 5900, and, with signed release, obtain the required motor vehicle driving record of a prospective pilot employee. For consistency, it is important that this is required. The intent of the legislation is clear.

The FAA checks the NDR records when they receive an updated medical report for a pilot, which is a check every six months or one year. **Legally the FAA is only allowed to check two areas –**

**DUI = driving under the influence, and DWI = driving while intoxicated.**

**The FAA is also allowed to only check NDR for the last three years.**

**When the air carrier checks the NDR records, they receive information about seven additional infractions, and possibly a longer look at the NDR history, so the air carrier is able to access a more comprehensive NDR record.** The FAA and air carrier separate NDR checks are important because the air carrier receives more information and up to date.

There are severe consequences for a pilot who is not honest when asked during his physical if he has a DUI or DWI. **We do not know how many pilots may not be honest while self-reporting during the physical, and without that information there is no statistical or scientific conclusion that there is no need for an air carrier to also check the NDR.** The FAA also has no information about the seven other areas of the NDR that the air carrier will receive.

The cost for air carrier to check NDR records is small compared to the possible safety advantage.

The air carrier could forward their NDR records to the FAA for the PRD when they receive the information if there is a question or problem. The air carrier is required to check the NDR, and not required to check only once as pre-employment.

Compliance with this legislation will not change or duplicate the existing system for the FAA checking NDR.

*NADA/F disagrees with the ARC PRD statement about air carriers checking NDR: “strongly believe such approach would not serve to improve air safety.”*

*NADA/F disagrees with the ARC PRD majority statement: “In rejecting the interpretation that air carriers directly access the NDR records, the PRD ARC acknowledges that an air carrier-requested search of the NDR could produce some driving violation in addition to the DUI and DWI violations. However, the ARC concluded that the value of this additional information was “de minimis.” The ARC conclusion that the air carrier would only be required to do a “one-time” search on their pilots is incorrect. The legislation has not defined one or more times, but the FAA can make that determination.*

The pilots have gone so far as to say about the air carrier check of the NDR: *“There is no justification for imposing expensive and unduly burdensome requirements on air carriers without enhancing air safety in any way.”* Again, no statistical or scientific basis has been presented or discussed to support this conclusion.

There is no basis to conclude that the air carrier NDR check will *“reduce the effectiveness of the current process.”* Nothing is changing the current FAA NDR check, which only allows DUI and DWI verification.

We disagree that *“Requiring NDR data to be entered into the PRD is unwise as a matter of policy.”*

We do not believe this will *“unduly burden the industry.”* The industry may learn that this is an important step in the background check of a prospective or currently employed pilot.

With the NDR check required it might be inaccurate to state there will be no immunity. When the information is then shared with the FAA it is additional check for accuracy, and the pilots always have the opportunity to report any and all inconsistencies in their PRD.

The person from the air carrier that checks the NDR and forwards the information to the FAA would probably be the same person authorized to have access to the PRD. This person would check the NDR response for accuracy compared to the information the air carrier already has. Competence with checking NDR records has been proven.

The accuracy of the NDR database continues to improve, and when there is a mis-match, it is corrected.

The goal of a comprehensive pilot records database should include air carrier information from the NDR.

**NADA/F RECOMMENDS** that the FAA takes no action to change the law, and design the PRD to accept this information when the requirement is effective for the airlines. During the next two years, we can expect improvements in the NDR technology and accessibility.

#### **CHALLENGE 5: Drug and Alcohol Testing Information**

**NADA/F RECOMMENDS** that the FAA and all air carriers continue to recognize that alcohol and substance abuse are very serious offenses. We agree with **Executive Order Number 12564 from 1986**, as referenced by the majority, that **“Job performance is greatly affected by substance abuse.” “The court found the interest of providing safety to the public outweighed individual rights of privacy.”**

*NADA/F disagrees with the majority that “thorough oversight by FAA-licensed medical professionals over drug and alcohol testing results, and not overburdening the PRD and potential hiring air carriers with information that is fully addressed through other regulatory requirements for air carriers and persons.”*

If air carriers go out of business, then the PRD cannot depend on other persons to maintain these important records about drug and/or alcohol abuse. Air carriers new to using the PRD may not know they are expected to go to numerous other sources for important information.

The purpose of the PRD is to be a Comprehensive Pilot Records Database.

**NADA/F RECOMMENDS** that the FAA working with the air carriers, continue to oversee drug and alcohol testing and oversight of individuals in rehabilitation programs, and also send a summary of that information to be held in the PRD. We recommend lifetime retention of these records in the PRD, and that these drug and alcohol records **not** to be expunged with only two and five-year retention.

These *NADA/F* recommendations will not interfere with EAP, rehabilitation programs, self-reporting or peer or supervisor reporting.

**NADA/F RECOMMENDS** that drug and alcohol reporting be accomplished by the FAA and air carriers, with the present policies, until the FAA recommends amending those policies, and the FAA to enter into the PRD with a date of occurrence, note of positive drug test, refusal to submit to a drug test, violation of alcohol misuse, or refusal to submit to an alcohol test, or other coding that the FAA feels is more appropriate. We believe that drug and alcohol abuse are too important to not report in the PRD.

**Charter Objective 3.a.3 and 3.a.5 – The ARC will specifically identify the best methods to enable air carriers, “others” and individual pilots to use the Pilot Records Database (PRD). This includes: 3) determining who will have access to the information and what methods will be used to make the information accessible; 5) establishing a process with safeguards to limit the use of the database strictly to those making hiring decisions.**

Many of the Recommendations in this long section are outside the scope of the ARC Charter, and the scope of 3.a.3. and 3.a.5. Moreover, we noted our specific Dissent to some of these 32 Recommendations.

## **DISSENT #8**

### **Archive PRD when pilot is deceased**

**Footnote:** *“The Administrator (A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that individual is deceased; and (B) may remove the individual’s records from the database after that date.”*

**NADA/F RECOMMENDS** that upon death the PRD record for that pilot be **removed from the PRD and kept in an ARCHIVE**. This may be helpful for security purposes, or in the event of an aviation disaster, there will be a Federal Air Crash Investigation and pilot records are part of that investigation.

The legislation states that an air carrier may access the PRD only for hiring purposes, however, compliance with a federal investigation is not an option – everyone must comply.

## **DISSENT #9**

### **Who will have access?**

*PRD ARC Recommendation 5) “The the FAA limit pilot access to the PRD to those holding or having held a commercial license, airline transport pilot license (ATP), or other equivalent license that may subsequently be accepted by the FAA. This inherently provides a safeguard to the database, as it will limit access to pilots qualified to gain employment by those air carriers required to access the database.”*

*PRD Recommendation 12) “That only part 121 and 135 air carriers shall retrieve data and access shall be limited to those involved in the hiring decision.”*

**NADA/F RECOMMENDS** that the FAA **not** be required to limit the PRD to only Part 121 and 135. This is a group of commercial pilots with very few fatal crashes in the past ten years. The FAA needs to be able to make decisions now and in the future about expanding the PRD to best serve Aviation Safety. The FAA has defined which pilots will be included in the PRD, and the FAA will insure pilot access to his/her PRD record.

**For consistency, we recommend that Part 125 be included to input data and required to access the PRD for hiring purposes.**

**The PRD is to be a comprehensive pilot records database, and if we view this from a SAFETY goal – recognizing that we have over one fatal plane crash a day in the U.S. – then the FAA should consider including additional pilot groups from Part 91, or including all of Part 91.**

Re; Part 91 the ARC PRD states, *“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.”*



NADA/F views that if a number of fatal crashes are coming from a particular group that the FAA should require that group to be included in the PRD, by inputting pilot data and required to check PRD for hiring purposes. Some information may be minimal, but very important to have that accurate information.

If a classification has a larger number of air crashes then a hiring air carrier should not be forced to rely only on a logbook in 2012 and beyond. Increased participation in the PRD, over time, will increase air carrier requests to participate in the NDR.

NADA/F believes it is not a “burden” to require PRD participation from a classification of pilots that are demonstrating an unsafe record of flights. A safety management system may take a closer look at fatal flights and what Part or certification they represent. Clearly, we know that many aviation crashes are General Aviation, and the GA pilots will be in the Registry, not the PRD, but within Part 91 are medical helicopters and other classifications that appear to have a higher rate of fatal crashes. Today there is very little hiring at the major airlines, however, in time when there is hiring it may be important to have some Part 91 participation in the PRD for hiring purposes.

PRD ARC Recommendation 9) *“That the PRD shall not permit an air carrier to utilize it as a recruiting tool.”*

This is not necessary, as an air carrier may only access the PRD for hiring purposes, with the pilot consent, and FAA per the legislation, is able to charge for providing the PRD service.

PRD ARC Recommendation 16) (4) *“...Once the hiring decision has been made a copy (paper and/or read-only electronic) of the PRD record may be kept provided the air carrier takes such action to ensure the pilot’s privacy and confidentiality of such records. Prior to the pilot’s record being displayed, they must consent to these statements. This statement page shall occur for each individual pilot’s record that an air carrier access and if applicable each time for the same pilot.”*

And through

(20): *“.. As far as the law permits, the PRD ARC recommends as a result of any inaccurate manipulation of data in a pilot’s record to have a civil monetary fine as a deterrent.”*

And through,

26) *“That if the FAA determines the air carrier is permitted or required to retain a copy, an air carrier shall only be required and permitted to retain the data for five years and thereafter be expunged.”*

**NADA/F RECOMMENDS** that the FAA cannot be expected to police the air carrier to see if they only printed one copy, or police their personnel files to be sure the PRD report is destroyed within five years. The air carrier personnel may have other policies. Air carriers understand these are confidential records for hiring purposes only. The FAA will decide where the PRD will be most efficient, most accurate, and comply with privacy laws.

## **DISSENT #10**

### **Outside the scope of this ARC Objective - “safeguard to limit the use of the database”**

*PRD ARC Recommendation 22) “That if a pilot returns to work after a furlough or extended period of personal leave, military leave, medical leave, or other authorized absence, PRD law does not require or provide authority for an air carrier to access the PRD.”*

**NADA/F RECOMMENDS** that beginning and end dates of furlough, military, and “other authorized leaves” be part of the PRD record. This is a part of the pilot’s professional record of employment.

## **DISSENT #11**

### **Copies of the Requests and Replies for PRD Record**

*PRD ARC Recommendation 24) “That the FAA shall maintain a record of the initial access of a pilot applicant’s record for the purposes of providing proof of compliance with this Act regardless of whether the pilot was eventually hired. This record shall contain (1) the unique login that accessed the records, (2) the time and date stamp, and (3) the actual record as it appeared at the time of original access. This recording shall be maintained for a time period required for the applicable laws and **alleviate the responsibility of the air carrier from maintaining copies to show compliance with the Act.**”*

**NADA/F RECOMMENDS** that the FAA not be expected to do work between the employee and the air carrier, and cannot be responsible for a “complete and accurate snapshot” of every request for exactly what was sent to whom and when. The FAA will probably have a file of when the PRD was accessed for information about that individual pilot, with date of request and name/ID of air carrier. This Recommendation 24 is an expensive burden for the PRD. What “applicable laws” would these be?

If pilots want the air carrier to be able to demonstrate copies of exactly what the air carrier received then the air carrier keeps a copy of what they received, and when, in their confidential personnel files.

The FAA should not be limited to the ARC definition of “others” (from the legislation) as ONLY a DA=Designated Agent by the air carrier. The FAA needs authority to make decisions for the long term to provide a comprehensive pilot records database.

### **Charter Objective 3.a.4 – Methods for timely transfer (“promptly”) of relevant data to the database on an on-going basis.**

**NADA/F AGREES** that PRD entries are permanent and that the PRD may in time provide a look back of more than five years. There has been with PRIA, and will continue to be with PRD, a recognition that air carriers may access the PRD only for hiring purposes, and that pilots have access to correct records. Recommendations for reporting training, discipline and termination, overturned discipline, FAA certificate action, date of hire and separation and date of the end of employment seem to be in order.

**However, we DISSENT from Recommendation 2,**

**Please see Dissent #2, for 3.a.2. Challenge 2.**

### **Pilot Discipline Records**

*3.a.4. Recommendation 2) “Discipline, disqualification, and termination imposed by an air carrier involving pilot performance..... directly related to the execution of aeronautical duties shall not be entered into the PRD until 30 calendar days after the disciplinary determination is made by airline management and the disciplinary penalty is imposed by the air carrier but no later than 45 days after the disciplinary determination.”*

Pilots definition of “aeronautical duties” is limited to getting passengers to their destination, and does not include: ‘violation of an employer’s dependability or attendance policy; failure to meet an employer’s appearance or grooming standards’ insubordination’ violation of the duty of loyalty; sexual harassment; theft or dishonesty; fraud; interpersonal conflict; failure to conduct oneself appropriate with the public; customers, or vendors; violations of company policy that do not involve the pilot’s aeronautical duties; drug and alcohol misconduct that is not separately reportable under Section 203.”

The 3.a.4. Recommendation 2 **takes this a step further with “after the disciplinary determination is made,”** which is not a reasonable expectation.

The air carrier must be able to make their own determination, per their own company policies, and in compliance with state and federal laws about what actions will result in a Disciplinary Notice. Air Carriers should be free to make that entry to the PRD as their discretion, and promptly make a final entry when the discipline has been decided, or withdrawn.

### **Charter Objective 3.a.6. Establishing a “written consent; release from liability” process**

NADA/F agrees with the Dissent from RAA, Regional Airline Association, ATA, Air Transport Association, CAA, Cargo Air Association. That Dissent should have been in the PRD Report.

The PRD Report does not respond to the specific “Written consent; and release from liability” specified in the Charter Objective.

**Charter Objective 3.a.7 – Developing a common process for the air carriers to handle disputes by pilots concerning the accuracy of data provided by the air carriers and expected response/resolutions times.**

## **DISSENT #12**

### **Pilot and air carrier dispute resolution**

NADA/F agrees with the Dissent from RAA, Regional Airline Association, ATA, Air Transport Association, CAA, Cargo Air Association.

NADA/F *RECOMMENDS* that Section 3.a.7 Challenge 1 and 2 are DELETED from the PRD ARC.

This section is outside the scope of the Objectives defined in the FAA Charter. The recommendations expect the FAA to be the arbitrator between the air carrier and pilot if a pilot disagrees with his check ride evaluation or more. This recommendation attempts to eliminate immunity that has been law with PRIA and should continue to be immunity for the FAA and air carriers.

PRIA has provided a process for pilots to correct possible errors in their PRIA record for almost 15 years, and the system has worked very well. The pilots will continue to have the process to correct possible mistakes in their PRD record, and the benefit of a quick electronic response.

**Charter Objective 3.a.8. Developing standard definitions for common terms to be used in the database records; employment actions, and national driver record data records required by this legislation.**

*NADA/F* feels this section is incomplete and not specific to the objective.

**Charter Objective 3.a.10 – Determining methods to initially load the database with historical data.**

*NADA/F RECOMMENDS* that Section 10 has very good specific recommendations for moving from *PRIA to PRD*.

**Charter Objective 3.b. The ARC shall consider scalability of its recommendations to address the needs of small business and “others” that employ pilots.**

The ARC did not discuss scalability in the PRD Report, except to recommend less information in the PRD.

*NADA/F RECOMMENDS* that a comprehensive pilot records database will help scalability, and smaller companies. It is very important that the PRD not be minimal information that forces smaller companies to go to many other sources, unfamiliar to a company first accessing and inputting data into the PRD.

The FAA will charge for PRD records, but the costs will be low compared to the value of an air carrier accessing a comprehensive pilot records database, which will be a useful tool for evaluating the hiring of a potential pilot, and meeting requirements of the legislation.

*NADA/F RECOMMENDS* that each airline receive authorization to complete a criminal background check, through another government agency -- or possibly the FAA -- or that another agency could provide the background check for a fee, and only advise if there is adverse information. The applicant would sign a consent and release to initiate the process. Some larger airlines may do this NCIC check already, or they may have completed the background check from a commercial service, and possibly some of these databases individually. This database is always improving and becoming an excellent source of information, especially for hiring pilots and others in sensitive positions. It is possible that the aviation industry is not aware of how helpful NCIC is and how its use is increasing. **Small air carriers may be helped by being able to go fewer places for comprehensive pilot records.**

*NADA/F* wants the airlines to prosper, and not to face public humiliation if there is a crash and people learn that the pilot should not have been flying the plane. For example, knowing that pilots are not in the “Megan’s Law” list or on the Terrorist Watch List are just some examples. Noting that there are no criminal records for an applicant, and more, will be helpful.

Of course, any positives will be verified on a confidential basis, if there are positives.

The National Crime Information Center (NCIC) is a branch of the Federal Bureau of Investigation (FBI), providing an online access for authorized individuals about crimes, and in some cases information on criminals. All information that is provided from many criminal justice agencies is designed to be accessible only to authorized users. The following steps are made for those users that are authorized to obtain the information.

1. Search through the database of the NCIC that consists of 19 different files. Seven of the files contain records for property, such as boats, guns, license plates and vehicles. There are 11 files that consist of records about individuals such as the convicted sexual offender registry, identity theft, immigration violators and missing persons. The database also contains some images that are associated with NCIC, records to assist other agencies in identifying people or even property. There is also an Interstate Identification Index that contain automated criminal history record information and is accessible through the network’s database.
2. Enter a record into the NCIC. This has to be conducted by a criminal justice agency, and then in return, this information is accessible to other law enforcement agencies nationwide.
3. Ensure that the security has been put in place; the NCIC has established certain measures to ensure the integrity and the privacy of the data is not breached. All the information passing through the network is encrypted to deter unauthorized access. All users of the system are authorized and authenticated to ensure the proper levels of access. So make sure of the proper clearance and certification to gain access to the records.

It might be best to think ahead now, rather than later, about ways to implement use of the NCIC for pilot hiring.

**Charter Objective 3.c– The ARC will develop recommendation to Title 14 Code of Federal Regulations (CFR) part 121; (CFR) part 125; (CFR) part 135 (CFR); and other associated regulations as may be required to comply with the intent of Section 203 of the Act.**

Following the legislation will be the easiest way to develop the Regulations, and there is sound operational and legal history for compliance with PRIA to move to PRD.

***PRIA >>> PRD***

Respectfully Submitted,

Glenn Johnson,	PRD Primary Member, <i>NADA/F</i> Founding Member
Erin Perry	PRD Alternate Member, <i>NADA/F</i> Board Member
Matt Ziemkiewicz,	<i>NADA/F</i> President
Gail A. Dunham	<i>NADA/F</i> Executive Director

## FATAL AVIATION ACCIDENTS THAT INVOLVED PILOTS WITH PRIOR SAFETY PROBLEMS WERE CITED IN PASSING PRIA LEGISLATION<sup>16</sup>

Date	National Transportation Safety Board	Flight and Location	Fatalities	Cause and pilot history
11/15/1987	NTSB/AAR-88-09a	Continental Air Carriers 1713 Denver, Colorado	28	The plane crashed on takeoff due to the captain's failure to have deiced a second time after a delay before takeoff. This resulted in a loss of control during rapid takeoff rotation by the first officer. The first officer had shown significant shortcomings during the training. The carrier was unaware that a previous employer had discharged the first officer for inability to pass a flight check ride.
1/19/1998	NTSB/AAR-94-05	Trans-Colorado Air Carriers 2286 (Continental Express); Bayfield, Colorado	9	The plane went below minimum descent altitude then struck terrain. The captain had used cocaine prior to this flight. The first officer's record prior to his employment with this carrier and during his training indicated deficiencies in performing instrument procedures. Records of both pilots revealed prior traffic violations and accidents and a previous aircraft accident for the captain. The carrier was unaware that both pilots had received warning letters from the Federal Aviation Administration (FAA).
2/19/1998	NTSB/AAR-88-16	Air Virginia, Inc. (American Eagle) Cary, NC	12	The plane crashed shortly after takeoff because of the pilots' failure to maintain a proper flight path because of the first officer's inappropriate instrument scan, the captain's inadequate monitoring of the flight, and the crew's response to a perceived fault in the airplane's stall avoidance system. Company records showed instances of substandard performance by the copilot, who was flying the plane at the time of the accident.

<sup>16</sup> GAO-02-722 Aviation Safety – Better Guidance and Training Needed on Providing Files on Pilots' Background Information, August 2002. pp. 71-72 Available at [http://www.google.com/search?hl=en&source=hp&biw=1416&bih=845&q=GAO-02-722&oq=GAO-02-722&aq=f&aqi=&aql=undefined&gs\\_sm=e&gs\\_upl=1860l8719l0l10l10l0l4l4l0l28l1l1249l0.3.3l6](http://www.google.com/search?hl=en&source=hp&biw=1416&bih=845&q=GAO-02-722&oq=GAO-02-722&aq=f&aqi=&aql=undefined&gs_sm=e&gs_upl=1860l8719l0l10l10l0l4l4l0l28l1l1249l0.3.3l6)

Date	National Transportation Safety Board	Flight and Location	Fatalities	Cause and pilot history
10/28/1989	NTSB/AAR-90-05	Aloha Island Air 1712 Molokai, Hawaii	20	The captain continued flight under visual flight rules at night into instrument meteorological conditions that obscured rising mountainous terrain. The captain's FAA records showed one previous incident attributed to a brake malfunction and the suspension of his commercial pilot certificate for 180 days for not meeting required flight-time requirements and tests.
4/22/1992	NTSB/AAR-93-01	Tomy International 22 (Scenic Air Tours)	9	The captain decided to continue visual flight into instrument meteorological conditions that obscured rising mountainous terrain and failed to properly use available navigational equipment to remain clear of the Island of Maui. The carrier was unaware that the captain had been dismissed by five previous carriers for misrepresentation of qualifications and experience, failure to report for duty, disciplinary action, poor training performance, and work performance below standards.
12/1/1993	NTSB/ AAR-89-01	Express II 5719 Hibbing, Minnesota	18	An excessively steep landing approach, a lack of proper crew coordination, and a loss of altitude awareness contributed to the plane's descending short of the runway at night. The carrier did not adequately address previously identified deficiencies in the captain's airmanship and crew resource management.  Deficiencies included multiple check ride failures, difficulties during transition and upgrade training, letters of complaint and reprimand for his behavior toward company employees, allegation of sexual harassment toward female employees, and a reputation among first officers as an intimidating captain

Date	National Transportation Safety Board	Flight and Location	Fatalities	Cause and pilot history
12/13/1994	NTSB/AAR-95-07	Flagship Air Carriers  (American Eagle 3379)  Morrisville,  North Carolina	15 fatal  5 survivors	The plane crashed short of the runway during an instrument landing approach. The captain improperly assumed that the engine had failed and subsequently failed to follow approved procedures for engine failure, single-engine approach and go-around, and stall recovery. The carrier did not identify, document, monitor, or remedy deficiencies in the pilot's performance and training at the previous carrier.

## APPENDIX A TO DISSENTER'S OPINION

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Additional Comments in Support of the Dissent of the National Air Disaster Alliance and Foundation.

July 15, 2011

I write to add my concern to that of the National Air Disaster Alliance and Foundation with regard to the PRD Report 3.a.2 Challenge 2. I served for many years in the federal government, including 6 years as a prosecutor in the U.S. Department of Justice and six years as the Inspector General of the U.S. Department of Transportation. I have personal experience with the Pilot Record Improvement Act of 1996. The PRIA followed a series of problems and concerns I saw firsthand as the Inspector General. We investigated many instances where information concerning pilots' performance, behavior and even arrests or other run-ins with the law was not being reported to employers. Therefore it was impossible for a pilot's full and complete record to be transferred with them from one employment to another. The full intent of PRIA was to require and accomplish such reporting of all such disciplinary actions and conduct.

While in the Department of Transportation the instances we investigated in which pilots had failed to disclose prior problems included sexual harassment, spouse abuse, harassing behaviors, alcohol abuse, prescription medicine abuse and financial fraud. Because there was not clear guidance in the regulations some pilots used any ambiguity as an excuse to fail to report such instances. I do not suggest that the abusive pilots or those seeking to hide such actions and behaviors comprise the majority of pilots. I find most pilots are professional, honest and dependable and do not use or abuse alcohol, prescriptions or other substances. Indeed, every week I trust my life to professional pilots as I board planes to do my job or for other travel. But, there are a small number of pilots who have in the past abused our trust by using loopholes in any regulatory language to fail to disclose disciplinary actions against them.



These behaviors most certainly do affect pilot and aircrew coordination and aviation safety. The attributes reflected in the exclusions carved out by 3.a.2. Challenge 2 are very harmful to crew resource management and aircrew coordination which have been cited as causal factors in a majority of recent air disasters. The FAA has been a major proponent of air crew coordination training and the advancement of CRM. To permit a pilot who had these disciplinary episodes in his or her background to be hired and flying without the knowledge of his or her employer would be a significant detriment to the employer's ability to ensure CRM. This lack of disclosure would endanger the lives of passengers. The NTSB and the FAA have both stated that CRM and aircrew coordination are among the most important improvements that pilots can make to enhance their performance on the flight deck.

It is important to note that all these behaviors which the pilots' unions seek to exclude from required records disclose would preclude such an individual from being selected as a United States military pilot. The military has determined that the character, leadership and wiliness to follow guidance and regulations are all indicative of qualities of professional pilots needed for safe flight operations, especially such behaviors as harassment, insubordination, theft and dishonesty, fraud and interpersonal conflict—none of this is tolerated in the ranks of military pilots.

Persons with such disciplinary problems are not only unable to professionally coordinate and interact with other pilots and in the cockpit. Such persons are likely unable to recognize and admit their own limitations and unlikely to examine and improve their own performance.

There is no job in America in which sexual harassment of any kind is or should be tolerated. To permit a pilot to hide any discipline for harassment--sexual or otherwise-- from an employer is tantamount to permitting obfuscation of a crime. In most places and in most circumstances harassment can amount to criminal behavior. An employer needs to know about such past behaviors and discipline. The same is true for fraud, theft or dishonesty. It is incomprehensible that a pilot entrusted with a plane and with the lives of others both on the plane and on the ground, would expect that he or she would not have to disclose fraud, theft or dishonesty.

Thank you for permitting me to share my views and for your kind consideration.

Respectfully submitted,

The Honorable Mary Schiavo

Former Inspector General of the U.S. Department of Transportation

Former pilot

Former Professor of Aviation and Public Policy at the Ohio State University

Aviation Attorney

## APPENDIX A—PRD ARC MEMBERS

Mr. Roger Cohen, Regional Airline Association (RAA)

Mr. Robert DeLucia, RAA

Mr. Mark J. Detroit,  
Cargo Airline Association

Ms. Gail Dunham, National Air Disaster Alliance/Foundation (NADA/F)

Mr. Joe A. (Jay) Evans, National Business Aviation Association

Captain Joseph W. Grimes,  
Air Transport Association

Captain Juliana Haacke, International Brotherhood of Teamsters, Airline Division (IBT—AD)

Ms. Kristine Hartzell, Aircraft Owners and Pilots Association

Mr. John Herron, IBT—AD

Captain Vannakay Hurnevich, National Air Carrier Association (NACA)

Ms. Lorna John, FAA, Office of the Chief Counsel, Regulations Division

Mr. Glenn P. Johnson, Jr., NADA/F

Ms. Suzanne L. Kalfus, Air Line Pilots Association (ALPA)

Mr. Van Kerns, FAA, Flight Standards Service (AFS)

Mr. Russ Leighton, *Chair*, Coalition of Airline Pilots Associations (CAPA)

Mr. Ray Levesque, FAA, Quality, Integration, & Process Division

Mr. Felix Lococo, FAA, Flight Standards District Office Wichita, Kansas

Mr. William Lusk, CAPA

Ms. Lindsey C. McFarren, National Air Transportation Association

Mr. Mark C. Mulkey, FAA, US Airways Certificate Management Office

Captain Paul Nelson, ALPA

Mr. Jack O'Hare, *Designated Federal Official*, FAA, AFS

Mr. George R. Paul, NACA

Ms. Erin H. Perry, NADA/F

Mr. Alan Roy, CAPA

Mr. Matthew Ziemkiewicz, NADA/F

## APPENDIX B—DEFINITIONS

Term	Definition
Air Carrier	See §201(a)(2). “The term air carrier has the meaning given that term in section 40102 of title 49, United States Code.”
Check Airman Comment	A subjective written statement usually provided as part of a dialogue about a training or evaluation event that without context may be misleading.
Date of Service as a Pilot	The date an individual begins performance of pilot duties, including the operation of an aircraft. Also the date before which an air carrier must have accessed and evaluated the information in the PRD.
Disciplinary Action	<p>Action that (1) is taken by an employer; (2) imposes an adverse penalty on the pilot, such as a suspension without pay; (3) involves the individual’s performance as a pilot, which means it has to do with the pilot’s performance of aeronautical duties; and (4) has not been subsequently overturned.</p> <p>Discipline means any action taken against the pilot for pilot performance reasons up to termination and/or revocation.</p>
Disqualification	The term “disqualification,” for the purposes of this Section [203(b)(2)(B)(ii)(III)], refers to a specific determination by an air carrier that a pilot’s actions in performing aeronautical duties raised concerns of sufficient magnitude such that those actions demonstrated a failure to possess the ability to perform the duties of a pilot. Such “disqualification” does not refer to the removal of a pilot from active flying duties for, among other things, purposes of investigation, training, loss of currency, medical issues, or lack of medical fitness.
For Instructional Purposes Only (FIPO)—Not to Be Maintained as a Permanent Record	Used for marking written communications not intended to be maintained or entered into the PRD but made solely for educational purposes.
Hiring Decision	The process by which an air carrier and its designated individuals determine whether to hire an individual as a pilot.

Term	Definition
Overturned Discipline	<p>(Also referred to as “Subsequently Overturned Discipline”) means “disciplinary action” as defined in this section that has been reconsidered and found not warranted under the surrounding facts and circumstances. “Overturned Discipline” includes action (1) unilaterally reversed by the employer; (2) taken in a good-faith settlement agreement between the employer and pilot, or between the employer and the pilot’s union or other representative; (3) ordered by an arbitrator or other individual given authority to review employment disputes; (4) rendered by a panel or System Board of Adjustment; or (5) taken by a court or other appeal or review process.</p> <p>A finding by an individual or entity with authority to review an employment dispute that such discipline has been “overturned” shall be considered a conclusive determination that such discipline may not be entered into the PRD or, if already entered, must be “promptly removed.” Such discipline shall also be deemed overturned if an individual or entity with authority to review an employment dispute finds that the action that was the subject of the discipline either (1) did not occur; or (2) was not the pilot’s fault. Such “disciplinary action” that is struck down or reversed as previously described, is “overturned” for purposes of the PRD regardless of whether the pilot seeks or obtains damages or other make-whole relief.</p> <p>“Disciplinary action” that has been reviewed by an individual or entity with authority to review employment disputes that is sustained with a reduced penalty shall be correspondingly changed in the PRD. For example, if a termination related to pilot proficiency is reduced to a 90 day suspension, the termination shall be removed from the PRD, and the 90 day suspension entered into it.</p>
Pilot	An individual holding or having held a commercial certificate, airline transport pilot (ATP) certificate, or other equivalent certificate that may subsequently be accepted by the FAA.

Term	Definition
PRD Hire Date	<p>The earlier of:</p> <p>1) The date when the hiring process has resulted in a decision to hire a PRD-covered applicant, or 2) The date training commences.</p> <p>The air carrier no longer has access to the PRD data for this applicant following the PRD Hire Date. On the PRD Hire Date the employer must begin entering data regarding the employee per the PRD regulations.</p>
PRD Jeopardy Event	<p>An event (training, qualification, proficiency, or professional competence) which is measured against objective and common standards and required for the issuance or maintenance of a certificate, rating, or qualification, that is reportable as SAT or UNSAT to the PRD.</p>
Release from Employment	<p>Any event ending employment as a pilot with an air carrier.</p>
Satisfactory (SAT)	<p>The result assigned to a PRD Jeopardy Event representing completion to established standards.</p>
Sponsor	<p>The individual at an air carrier who vouches for the identity and valid need for access of the individual who is being given credentials to access the PRD. This individual shall be an individual as required by each air carrier and for a part 121 air carrier this individual is one required under part 119.65; for a part 135 air carrier this individual is one required under part 119.69; and for a part 125 air carrier this individual is one required under part 125.25.</p>
Unsatisfactory (UNSAT)	<p>The result assigned to a PRD Jeopardy Event representing completion not in accordance with established standards.</p>

## APPENDIX C—ACRONYMS

§ 709 ride	checkride given by FAA examiners pursuant to 49 U.S.C. § 44709
14 CFR	Title 14, Code of Federal Regulations
AC	Advisory Circular
AFS	FAA Flight Standards Service
AFS–620	AFS Aviation Data Systems Branch
ALJ	administrative law judge
ALPA	Air Line Pilots Association
AQP	Advanced Qualification Programs
ARC	aviation rulemaking committee
ATP	airline transport pilot
BAC	blood alcohol content
CAPA	Coalition of Airline Pilots Associations
CCP	Comment Correction Procedure
DA	designated agent
DUI	driving under the influence
DWI	driving while intoxicated
EAP	employee assistance programs
EIS	enforcement information system
FAA	Federal Aviation Administration
FE	flight engineer
FR	Federal Register
House bill 5900	The Airline Safety and Federal Aviation Administration Extension Act of 2010, signed into law as Public Law 111–216 by President Barack Obama August 1, 2010.
IBT–AD	International Brotherhood of Teamsters, Airline Division

LOE	line operational evaluation
MRO	medical review officer
NACA	National Air Carrier Association
NADA/F	National Air Disaster Alliance/Foundation
NDR	National Driver Register
NTSB	National Transportation Safety Board
PIC	pilot in command
PRD	Pilot Records Database
PRIA	Pilot Records Improvement Act of 1996
Public Law 111–216	The Airline Safety and Federal Aviation Administration Extension Act of 2010
RAA	Regional Airline Association
SAP	substance abuse professional
SAT	satisfactory
Security Branch	FAA Security and Hazardous Materials Branch
SIC	second in command
SOR	State of record
SSER	System Safety and Efficiency Review
UNSAT	unsatisfactory

## APPENDIX D—SUPPORTING DOCUMENTS

### EXHIBIT 1, EXAMPLE OF LETTERS SENT TO PILOTS

REDACTED



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Mike Monroney Aeronautical Center  
Civil Aerospace Medical Institute (CAMI)  
Aerospace Medical Certification Division

P.O. Box 25080  
Oklahoma City, OK 73125-9914

August 2009

Ref: PI#  
MID#  
App

Dear Mr. :

Review of your July , 2009 report of FAA medical examination reveals the need for additional information regarding your indicated history of an alcohol-related offense.

Before we can establish your eligibility you will need to submit the following:

1. Complete copies of all court records associated with the offense (must include the police/investigative reports and Blood/Breath Alcohol Content [BAC]), and all records associated with any care, treatment, or assessments/evaluations for alcohol abuse or related disorders.
2. A detailed statement from you regarding your past and present patterns of alcohol use and of the circumstances surrounding the offense.
3. A complete copy of your current driving record from the Department of Motor Vehicles from any state that you have held a driver's license.

If your records reveal you refused the BAC test or your BAC was above .14999, in addition to the above records please submit complete copies of a current evaluation from a certified Substance Abuse Specialist, or Addictionologist in accordance with the enclosed guidelines. Please note that evaluation must address your complete alcohol related history of usage and all offenses, and should include copies of all testing performed with a final diagnosis.

All expenses incurred in establishing eligibility for medical certification are the responsibility of the airman, not the FAA.

Following receipt and review of the above information, we will notify you whether additional information is indicated.

Please note that your medical certification has not been denied at this time; however, if no reply is received within 30 days from the date of this letter, we will have no alternative except to deny your application in accordance with Title 14 of the Code of Federal Regulations (CFRs), Section 67.413.



Page 2 of 4

To aid us in locating and expediting review of your file, please submit the aforementioned data in one mailing with the above reference number(s) and your complete name on any correspondence or reports.

Sincerely,

 for

Warren S. Silberman, D.O., M.P.H.  
Manager, Aerospace Medical Certification Division  
Civil Aerospace Medical Institute

Enclosures

cc:

lmb

## **GUIDELINES FOR INITIAL ASSESSMENT OF AIRMEN WITH HISTORY OF MISUSE OF DRUGS OR ALCOHOL**

When the presence of a drug or alcohol problem is in question in an applicant for airman medical certification, it is the responsibility of the Office of Aviation Medicine to determine whether a history of substance abuse or dependence does exist; and if it does, whether there is satisfactory evidence of recovery.

If it is determined that a problem does exist, the Federal Aviation administration requires that the applicant submit an evaluation by a professional who has had special training in diagnosis and/or treatment of addiction. This would include certified substance abuse counselors, psychologists or psychiatrists, other physicians with special training in addictive disorders, and members of ASAM (American Society of Addiction Medicine).

The report should contain adequate information to determine whether a problem exists, including significant negatives. This should include, though not necessarily be restricted to the following information that may be related to substance misuse.

### **PERSONAL:**

Anxiety, depression, insomnia  
Suicidal thoughts or attempts  
Personality changes (argumentative, combative)  
Loss of self esteem  
Isolation

### **SOCIAL:**

Family problems  
Separation  
Divorce  
Irresponsibility  
Abuse, Child/Spousal

### **LEGAL:**

Alcohol-related traffic offenses  
Public intoxication  
Assault and battery

### **OCCUPATIONAL:**

Absenteeism or tardiness at work  
Reduced productivity  
Demotions  
Frequent job changes  
Loss of job

**MEDICAL:**

Blackouts  
Memory problems  
Stomach, liver or cardiovascular problems  
Sexual dysfunction

**ECONOMIC:**

Frequent financial crises  
Bankruptcy  
Loss of home  
Lack of credit

**INTERPERSONAL ADVERSE AFFECTS:**

Separation from family, friends, associates, ect.

**ADDITIONAL FACTORS:**

Tolerance  
Withdrawal  
Loss of control  
Preoccupation with use  
Continued use despite consequences

When appropriate, specific information about the quality of recovery should be provided, including the period of total abstinence. Summary, appraisal, etc., with final diagnoses in accordance with standard nomenclature is of particular significance.

Further information may be required, including treatment and traffic records, psychological testing, as well as other medical and laboratory records (random drug testing, liver profile, etc.). It may be appropriate for the evaluator to interview or contact a significant other in the process of this evaluation.

## NADA/F DOCUMENT FROM DISSENT

## H6424

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(1) have sufficient flight hours, as determined by the Administrator, to enable a pilot to function effectively in an air carrier operational environment; and

(2) have received flight training, academic training, or operational experience that will prepare a pilot, at a minimum, to—

(A) function effectively in a multi-pilot environment;

(B) function effectively in adverse weather conditions, including icing conditions;

(C) function effectively during high altitude operations;

(D) adhere to the highest professional standards; and

(E) function effectively in an air carrier operational environment.

(c) FLIGHT HOURS.—

(1) NUMBERS OF FLIGHT HOURS.—The total flight hours required by the Administrator under subsection (b)(1) shall be at least 1,500 flight hours.

(2) FLIGHT HOURS IN DIFFICULT OPERATIONAL CONDITIONS.—The total flight hours required by the Administrator under subsection (b)(1) shall include sufficient flight hours, as determined by the Administrator, in difficult operational conditions that may be encountered by an air carrier to enable a pilot to operate safely in such conditions.

(d) CREDIT TOWARD FLIGHT HOURS.—The Administrator may allow specific academic training courses, beyond those required under subsection (b)(2), to be credited toward the total flight hours required under subsection (c). The Administrator may allow such credit based on a determination by the Administrator that allowing a pilot to take specific academic training courses will enhance safety more than requiring the pilot to fully comply with the flight hours requirement.

(e) RECOMMENDATIONS OF EXPERT PANEL.—In conducting the rulemaking proceeding under this section, the Administrator shall review and consider the assessment and recommendations of the expert panel to review part 121 and part 135 training hours established by section 209(b) of this Act.

(f) DEADLINE.—Not later than 36 months after the date of enactment of this Act, the Administrator shall issue a final rule under subsection (a).

The SPEAKER pro tempore (Ms. TITUS). Pursuant to the rule, the gentleman from Illinois (Mr. COSTELLO) and the gentleman from Wisconsin (Mr. PETRI) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois.

## GENERAL LEAVE

Mr. COSTELLO. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous material on H.R. 5900.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. COSTELLO. Madam Speaker, I yield myself as much time as I may consume.

Madam Speaker, I rise in support of H.R. 5900, the Airline Safety and Federal Aviation Administration Extension Act of 2010.

I want to thank Chairman OBERSTAR and Ranking Member MICA and the ranking member of the subcommittee, Mr. PETRI, for their leadership in bringing this bill to the floor.

For the past few months we have been working in a bipartisan manner with the other body to produce a comprehensive Federal Aviation Administration reauthorization bill before it expires on August 1.

We have reached consensus on a majority of the items from both bills and only a few issues remain, which I believe can be worked out. However, the leaders in the other body said that they could not reach agreement with their Members and therefore we have an impasse. It is unfortunate that we have reached this point after coming so close to working through both bills. Therefore, we have decided to go forward with the bill before us tonight.

H.R. 5900 will provide a 2-month extension of the FAA reauthorization bill through the end of the fiscal year, September 30, 2010, and includes the airline safety and pilot training provisions that we have been able to negotiate with the Senate. In October, the House passed H.R. 3371, the Airline Safety and Pilot Training Improvement Act of 2009, as a stand-alone bill by an overwhelming majority.

Unfortunately, once again, the other body has not acted on this legislation either. Therefore, we are including the safety provisions that we have been able to negotiate with the Senate on the FAA extension.

The bill before us tonight contains the strongest aviation safety legislation in decades. It was introduced after many hearings, roundtable discussions, and with the input from the families of those who perished in the Colgan accident in Buffalo, the pilot groups, airlines, the National Safety Transportation Board, the Department of Transportation's Inspector General, and many Members of Congress.

Throughout 2009, the Aviation Subcommittee held many hearings and roundtables on safety issues and talked about a number of issues concerning the Colgan accident, which culminated in this legislation.

Regional airlines have been involved in the last seven fatal U.S. airline accidents, and pilot performance has been implicated in four of those accidents. This legislation strengthens pilot training requirements and qualifications by increasing the minimum number of flight hours required to be hired as an airline pilot by requiring the Airline Transport Pilot certificate, which is currently only mandatory for an airline captain. The ATP requires a minimum of 1,500 flight hours and additional aeronautical knowledge, crew resource management training, and greater flight proficiency testing.

In addition, the bill also strengthens the ATP qualitative minimum requirements, such as flying in adverse weather conditions, including icing, and requires the FAA to create and maintain an electronic pilot records database. The database will allow an airline to quickly access an applicant's comprehensive record for hiring purposes only.

Finally, H.R. 5900 requires all Internet Web sites that will sell airline tickets to show on the first page of their display the name of the air carrier operating each flight segment of a proposed itinerary. Passing this safety reform legislation now is the right thing to do.

We can no longer delay enacting the strongest safety bill in decades as we work on a final agreement on the greater FAA bill. The Colgan families, many of them who are with us here this evening, have been a powerful driving force behind this legislation, and I thank each of them for their persistence.

For the last 17 months, they have come to Washington, DC over 30 times at their own expense to push for the safety bill and safety improvements. Madam Speaker, it is time for the House and Senate to pass these important safety provisions and get them to the President to be signed into law.

Passing this bill tonight should not distract from our efforts to finish the FAA bill. There are many important provisions in the reauthorization bill, and I am committed to passing a comprehensive FAA reauthorization bill so that we can provide stability to the FAA and our Nation's aviation system by passing a multiyear reauthorization.

With—Madam Speaker, with that I urge my colleagues to support the legislation.

I reserve the balance of my time.

Mr. PETRI. Madam Speaker, I yield such time as he may consume to the senior Republican on the full committee, my colleague, JOHN MICA from Florida.

Mr. MICA. I thank the gentleman for yielding.

First, Mr. PETRI, I want to personally thank you as our ranking member; Mr. COSTELLO, the chair of the Aviation Subcommittee; Mr. OBERSTAR, my partner on the full committee.

□ 2310

The hour is late, both for passage of this extension of our Federal Aviation Administration authorization, and the hour is late for passage of a Federal aviation airline safety bill, commuter safety legislation that we should have passed months and months ago.

First I have to address the airline safety provisions that have been rolled into this extension. I must apologize to those families who have waited so long, those families who experienced personal tragedy beyond what any of us could imagine, the loss of loved ones, the loss of life, and from that tragedy, they went forward and tried to change our Federal laws and our airline safety.

The United States of America is fortunate because we have probably the safest aviation system in the world. Large commercial aircraft, since November of 2001, we have not lost a single aircraft; every day it's a miracle, given all the human elements and possibilities of an accident. However, in

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our service on the committee, we can't just be concerned about safety with large aircraft. Millions of Americans who fly every day and every week cross the land on commuter aircraft. The fatalities in commuter aircraft travel, as we have seen, have been too many, and we have not acted.

When we had the crash in February of 2009, again, from that tragedy families came forward and Members of Congress began the work of trying to craft legislation that would ensure a level of safety for those traveling on commuter airlines, an equal level of safety that everyone else enjoys in other classes of aircraft. I am sad that, again, it took so long, and now we're doing it on the extension, but it should have been done and now it will be done. Without their help, we wouldn't be here even tonight.

I also came tonight to stay a few minutes to thank one of our newer representatives. Imagine being elected to Congress and just a few weeks later, a few neighborhoods away, having a horrible aviation tragedy in your congressional district. That is what Representative CHRIS LEE experienced just a week after taking office. He also turned a tragedy into a personal commitment to pass the legislation which will pass tonight. So I am grateful for his action, and for the men and women and loved ones who, again, turned a tragedy into something that will hopefully prevent tragedies and the heart-break that they have had to suffer.

I am disappointed that we are not passing an FAA bill. I had the honor to chair the Aviation Subcommittee back in 2001 through some very difficult times. Our previous authorization bill expired. On May 15, we introduced legislation, in 2003. We had it on the President's desk, signed, by December 12, 2003, the same year. That bill that I wrote then was only a 4-year authorization, it expired September of 2007. And here we are, the end of July, and we have not passed a reauthorization for 3 years. All of Federal policy dealing with all the aviation issues has not passed. All the projects we must authorize have not passed. All of the eligibility for Federal assistance to our aviation system has not passed. And we have picked out of this legislation tonight that airline commuter safety bill. It is sort of a sad state of affairs.

But again, I pledge to work with folks. We need to pass the rest of the legislation to ensure safety, to ensure that the United States maintains its position in the world not only for airline safety, but technology, and maintains leadership in that important role, provides a pathway for the future, jobs for the future, and safety for the future.

So again, I thank those that have made part of what we wanted possible tonight.

I yield back the balance of my time. Mr. COSTELLO. Madam Speaker, I yield myself 15 seconds just to clarify a point in the RECORD.

Madam Speaker, the gentleman from Florida, the ranking member of the

full committee, is correct. But for the record, it wasn't that we didn't pass the bill. This House of Representatives passed a bill in 2007, passed it again in 2009, and we have been attempting to get the other body to work with us to pass a bill out that can be agreed upon.

Madam Speaker, I am pleased to yield 4 minutes to the gentlelady from New York (Ms. SLAUGHTER), who has been so very helpful to us in crafting this legislation. She has worked with us very closely.

Ms. SLAUGHTER. Mr. COSTELLO, I thank you so much for your kindness in yielding. I thank you even more for your kindness and your persistence, yours and Mr. OBERSTAR's, in bringing us to this moment this evening.

I want to thank Mr. MICA and my neighbor, Mr. PETRI, for their caring and work that they have done as well.

My heart is pretty full tonight because I have watched the families over these 1½ years, watched them with pain etched on their faces that will never go away. We talked a little while ago in my office about the ceremonies of life, who would give you away at the wedding, you miss your father at Christmas time, your mother, your child.

One of the saddest things in the world that happened here today, and I want to call attention to it, was the Eckert family, Karen and Susan, sisters of Beverly, who died in that plane crash. Beverly's husband had died at the World Trade Center. She was somebody we knew very well. She was here a lot, and we got to know her. And then her sisters took up this banner to make sure that this would not happen to other people.

They have learned to live with their tragedy, but what they have been doing all this time is working for us. They have made sure that none of the rest of us will endure this kind of tragedy. I know how grateful I am for them, but everybody in America owes them a debt of gratitude.

On that awful evening in February, with the runway in sight of that airplane, we lost 50 people and we learned that the skies are not as safe as we once thought. Since then, we have learned that regional airline pilots don't require the same training as major carriers with whom they share the skies.

No airline should have ever sent into Buffalo, New York in February two pilots that didn't have the foggiest idea how to fly through ice. We also found out that they were extraordinarily exhausted. They were paid so little that they had to fly to Newark to get their plane and they couldn't even afford a hotel room. One of them slept on the floor of a FedEx plane that night to get to Newark. Others were sleeping in chairs at the post.

□ 2320

How terrible is this that these are the people who are exhausted, underpaid, undertrained, and many of them

with great failures on their records that nobody ever knows about? How tragic for these families that those were the people in charge of the plane that night.

Now, every person on that plane was extraordinarily precious. We love and we miss every one of them. Also, the family who lived in the house where the plane fell, they lost their father. I will tell you that on that plane was one of the world's greatest anthropologists. On that plane was one of the world's greatest musicians. Everybody on that plane had particular talents and gifts and families that they loved. It should never have happened to them. That's why getting to this night is so important to all of us and to all of them—but we know now that crash could have been prevented.

So there are the people I thanked before. In addition is our Transportation Secretary, Mr. LaHood, to whom I want to say we really can't thank you enough.

We all know that progress has been slower than we would have liked, but Mr. COSTELLO is absolutely right. We seem to pass bills over here in a great flurry, working as hard as we can, and then they fall into that black recess on the other side of the Capitol. Today, though, we know we are at the finish line, and with the lessons that we have learned from Flight 3407, we have another opportunity to try to get this right. We must not rest until we get this right.

All of us want to say again to the families who are here, who have been with us, who have exhibited extraordinary patience, who have come at their own expense, who have suffered, that to get to know them and their children has been astonishing. What they have learned from their loss was to turn that into a gain for all of us. Thank you very much for all of the work that you have done. We appreciate it.

I join them to say that I hope no family will ever be confronted with the disaster that this was that could have been avoided.

Mr. PETRI. Madam Speaker, I yield such time as he may consume to the gentleman from New York, CHRIS LEE.

Mr. LEE of New York. Madam Speaker, this has been a long time in coming. We are here today due to a group of individuals, many of whom are here tonight up in the gallery. It is truly amazing. They are the ones who decided to turn their personal tragedies into a mission to overhaul the way our airlines operate in this country and the way the pilots are trained.

It was February 12, 2009, a day, I think, everyone will always remember who is from western New York. Continental Connection Flight 3407 crashed into a home in Clarence Center, New York. This tragedy claimed the lives of 50 people, including a friend of mine, an expectant mother, many of whom who were constituents in my district, and, as I'd mentioned, a number of whom I'd known personally.

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Since the night of the tragedy, I am proud to say that I have made many new friends as I see and peer up into the gallery this evening. The faces of these family members have not only become familiar to me but to many of the people who sit here on the floor tonight.

As a result of their never-ending commitment to ensuring a tragedy like this will never, ever happen again, they have taken their grief and have turned this tragedy into a significant push for meaningful aviation safety reforms that are before us today and which will be a part of the future of the FAA extension. From requiring all pilots to have at least 1,500 flight hours of experience to addressing issues with pilot fatigue and training, these reforms will ensure that no air carrier will ever cut corners. When this law takes effect, each and every person who boards a commercial aircraft in this country will know that there is an experienced, well-trained and prepared pilot in every cockpit. It should never have to have been otherwise.

With no doubt, we are here today because of the hard work of these families and also because of the dedication of many of my colleagues: my good friend, Congressman BRIAN HIGGINS; Congresswoman SLAUGHTER; Ranking Members MICA and PETRI; and of course, Chairmen OBERSTAR and COSTELLO, who took this forward. This has been very near and dear to me, and I appreciate your efforts and what you have done. This has been a long haul. Again, it is truly appreciated. To the staffs of all who have worked tirelessly over the last 17 months, I think they also deserve credit in addition to the families, for all of this, at the end of the day, is going to mean meaningful aviation safety that will benefit all Americans.

It has been nearly 17 months since the crash, and we are finally at a point where 1.8 million Americans each and every day who board a craft—and more than 400,000 of whom are on regional carriers—will be assured one level of aviation safety.

Lastly, our actions today truly validate the families' efforts in coming out to honor their loved ones. I just want to name a few. Kevin Kuwik, Karen Eckert, Susan Bourque, Scott Maurer, John Kausner, and many other family members—way too many to offer here—all have played an incredible role in getting done what we've gotten done tonight.

There were days I didn't think we'd get there, but it gives you hope when you see how both sides have come together to really push through this legislation. They have really turned the tears of sadness into tears of joy. So I am very pleased to be here. These men and women have worked so hard to get to this point. It makes me proud to be a western New Yorker. I really don't think anybody else—any group of families—could have done what this group has done tonight.

With that, I am just pleased that all Americans will benefit from the hard work that these families have done for this country.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE  
The SPEAKER pro tempore. Remarks in debate may not call attention to occupants in the gallery.

Mr. COSTELLO. Madam Speaker, might I inquire as to how much time we have remaining on both sides?

The SPEAKER pro tempore. The gentleman from Illinois has 11¼ minutes remaining. The gentleman from Wisconsin has 9 minutes remaining.

Mr. COSTELLO. Madam Speaker, at this time, I yield 2 minutes to my friend, the gentleman who testified before the subcommittee, who met with us many times to help put this legislation together, the gentleman from New York (Mr. HIGGINS).

Mr. HIGGINS. Thank you, Mr. Chairman.

Madam Speaker, I am pleased to join my colleagues in support of this legislation tonight.

I also want to thank Chairman JIM OBERSTAR, whose commitment to safety across the various modes of transportation is unchallenged.

I want to thank Chairman COSTELLO, Ranking Members MICA and PETRI for their leadership.

I want to thank my western New York colleagues, CHRIS LEE and LOUISE SLAUGHTER, for joining me and all of us in this effort.

I want to thank Representatives JERRY NADLER, TIM BISHOP, MIKE ARCURI, and MIKE MCMAHON. All are from New York, and all of them serve on the Transportation Committee.

As has been mentioned tonight, we are really here for one reason—that is a group that has become known as the “families of 3407.” It is an incredible and courageous group of people. To them, we extend our appreciation, our respect, and our admiration. We know all too well the passage of time will never fully heal the tragedy of their deep personal losses nor will these flight safety provisions, which will be approved at this late hour.

We are here tonight because of these families, families who persevered, who carried themselves over the past 18 months in a most dignified manner. Befitting the cause that they dedicated themselves to and for the people they loved, they became friends with one another. They worked through Congress with both perseverance and persistence but also with patience, and they were guided in their work by the light that still shines from those they loved and lost.

With that, Madam Speaker, I urge my colleagues to support this legislation.

Mr. PETRI. Madam Speaker, I yield myself such time as I may consume.

In May 2009, the House passed H.R. 915, the FAA Reauthorization Act of 2009. Four months ago, the Senate passed its own FAA reauthorization bill, which the House took up, amend-

ed, passed, and sent back to the Senate.

□ 2330

Since that time, staff from both Chambers have been in informal discussions to reconcile the two versions of the bill and bring a negotiated FAA reauthorization to the floor.

While these discussions have led to tentative agreements on nearly all of the provisions, a few controversial issues have stalled progress on a final agreement. Therefore, with the FAA's authorities set to expire on Sunday, we, again, find it necessary to extend those authorities.

Like the 14 earlier extensions, H.R. 5900 would extend the taxes, programs and funding of the FAA, this time through September 30, 2010. This bill will ensure that our National Airspace System continues to operate, and that the FAA continues to fund important airport projects while Congress completes action on a final reauthorization bill.

I remain very disappointed that a few issues in the reauthorization package are holding up final agreement and delaying important safety improvements. That's why I support the inclusion of the bipartisan and bicameral airline safety and pilot training provisions in this clean FAA extension bill.

The airline safety and pilot training provisions are in response to the terrible loss of life resulting from the crash of Colgan Flight 3407 in February of 2009.

Among other improvements, these provisions strengthen pilot screening and training standards, increase flight hour minimums, and require the FAA to conduct a comprehensive study on pilot fatigue.

The FAA is also directed to create a consolidated database of pilot records, and all air carriers will be required to access this database and pre-screen pilot candidates before making hiring decisions.

The families of Continental Flight 3407 must be recognized for their tireless efforts to see this legislation pass. I'm very grateful for their work and their dedication over the past 17 months since that terrible crash.

I want to thank Representative CHRIS LEE, Representative LOUISE SLAUGHTER, and Representative BRIAN HIGGINS for their work in getting these safety provisions enacted.

And I'd also like to thank Chairman OBERSTAR and Ranking Member MICA, as well as my chairman, JERRY COSTELLO.

The airline safety and pilot training provisions were drafted in an open, bipartisan fashion. And we all agree that adding these safety provisions to this extension is the right thing to do, both in memory of those who lost their lives on Flight 3407, and in honor of their families and friends who have dedicated themselves to seeing that the aviation safety improvements are made the law of the land.

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Finally, I want to recognize Ryan Boyce and his hard work and service on the Aviation Subcommittee. Ryan is headed off to law school, and I want to wish him all the best.

I'd urge my colleagues to support H.R. 5900.

I yield back the balance of my time. Mr. COSTELLO. Madam Speaker, I am pleased to yield 2 minutes to the gentleman from Ohio (Mr. BOCCIERI), a valued member of our Subcommittee on Aviation, who is a pilot. His expertise and experience was invaluable in putting this legislation together.

Mr. BOCCIERI. Madam Speaker, Chairman COSTELLO, Chairman OBERSTAR, and Ranking Members PETRI and MICA, we thank you for your leadership on this important issue, and including this legislation in this moving bill through the House of Representatives.

There's an adage that we often say in aviation, that you train like you fly, and you fly as you train. And aviators know that the practice that we do prepares us for situations where we find ourselves in compromised circumstances. And we know that the training that we do prepares us for those emergencies.

But you could take the most experienced air crew, with thousands of hours, hundreds of thousands of hours, put them in an air frame, and if they're not trained in the safety equipment of that aircraft, they will not know how to recover.

And while this accident in February was completely tragic, I'm sad to say that it was completely avoidable if we would have only taken the leadership as we are doing today.

When I reviewed the NTSB's reports, and I found that those pilots were not trained in the safety equipment on their aircraft, I was aghast. I was aghast that the Q400 check pilots that were interviewed, their demonstration or instruction of the aircraft pusher system is not part of the training syllabus for initial or recurrent training on the Q400. These pilots and this airline were cutting corners, and now we're paying the price for this. And those families who died are experiencing the grief and tragedy that was completely avoidable.

Madam Speaker, in the 1970s the NTSB had been telling the FAA to include stall recovery upset training as a part of curriculum for new pilots. Since the 1970s.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. COSTELLO. Madam Speaker, I yield an additional minute to the gentleman.

Mr. BOCCIERI. In 1994 they warned that stall recognition and the recovery techniques are to be included as stick shaker and stick pusher during training. But yet this airline did not include it.

In section 208 of this bill, we will change that, and we will make sure that pilots are having simulator training, and that they're going to recognize

and avoid stalls of aircrafts and recover from stalls as part of their simulator training.

For over 30 years we've been telling the FAA to do this, to make this a part of their curriculum; and nothing has happened. Now Congress has acted to ensure that this tragedy will be avoidable in the future.

I thank the chairman and this committee for its leadership, and for the families, for their unrelenting push to make sure that we hold, not only those who are training pilots, but those who are operating our equipment and flying our loved ones around this continent and others to be as safe as they can. We owe it to them, and this Congress is going to act today on this.

I thank you for your leadership.

Mr. COSTELLO. Madam Speaker, I yield 6 minutes to the gentleman from Minnesota (Mr. OBERSTAR), the distinguished chairman of the full committee, who is recognized as one who knows more about aviation and transportation than anyone in this Congress.

Mr. OBERSTAR. Thank you, Mr. Chairman, for yielding the time.

But more than that, thank you for persistent, vigorous and insightful and creative leadership you've given to the entire reauthorization of FAA, but especially to this particular safety issue. You've given your heart, your soul, your time, your energy; and we're now at a point of making an extraordinary difference in the history of aviation safety.

Our Constitution has a unique provision, unlike that in any other constitution I'm aware of. It prescribes the right of the citizens to petition their government for redress of grievances.

The families of the victims of the Colgan Continental express flight that crashed February 12 of last year have exercised that right with vigor, with persistence, with highmindedness. They know, as the families of all the victims of transportation tragedies, that they can't bring back the lives of those they loved, but they can do something to make sure it won't happen again to others.

I've seen the tears in their eyes that reflect the pain in their hearts. I've experienced their determination never to give up.

I've also stood at the site of the grim tragedy of the Mesaba Airlines commuter crash, only 6 miles from my home in Chisholm, Minnesota; the flight path toward the Chisholm Hibbing Airport in December 1993, where 19 people lost their lives because that aircraft didn't have a ground proximity warning system.

□ 2340

It wasn't required for commuter airlines, because there was a mismatch between pilot and copilot, because there was an inadequacy of training on the one hand and a mismatch of personalities and of skills and of abilities to manage aircraft under unusual circumstances.

I vowed to the families we would make a difference, Congress would act. And we were able to require the regional airlines to have ground proximity warning systems, regardless of the cost to the airlines. That's their problem. They can figure that out. And vowed to move to have more equitable management in the flight deck of matching of pilots and first officers. That was not as successful. Didn't have enough time before, frankly, we lost the majority.

But I also stood with my colleagues on the Pan Am 103 Commission in Lockerbie, Scotland, at the abyss, this trench that was carved in the Earth where that 747 exploded that killed 271 people. And we vowed to each other and to the families of Pan Am 103 to make a difference, to make the airways safer. Our report of 64 recommendations we took in this committee, which I chaired at the time, the Aviation Subcommittee, which Mr. COSTELLO now chairs, 63 of the 64 recommendations, translated them into legislative language in the House and in the Senate, and moved a bill through the House to make aviation safer. We didn't get everything we asked for. We got 98 percent of it.

There was much more yet to be done, and more happened after the tragedy of September 11, 2001. It should not require loss of life and tragedy and pain in the hearts, pain in the lives of people to make these changes for aviation safety and security.

The opening paragraphs of the FAA Act of 1958 says, "Safety shall be maintained at the highest possible level." Not the level the airlines can afford. Not the level the airlines want. Not the level that the airline executives choose to provide. The highest possible level. That is where we go with this legislation.

This bill passed the House last year. We sent a separate safety bill over to the other body when they didn't act. We have cajoled and wheedled and tried and pushed and moved, but holds, and hot holds, and threats of filibuster, and failure to break filibuster, and failure to agree in the other body have held up the entire FAA authorization bill.

The Senate bill had no provision comparable to this safety provision in their bill. The families of the victims, exercising their right to petition the government, broke the logjam, broke the indifference and the resistance in the other body. We are on the verge of a citizen triumph in safety.

Let us all work earnestly to ensure this bill passes the other body, goes to the President, is signed into law, and that never again citizens have to petition to make things right for safety.

Madam Speaker, I rise in strong support of H.R. 5900, the "Airline Safety and Federal Aviation Administration Extension Act of 2010".

## H6428

## CONGRESSIONAL RECORD—HOUSE

July 29, 2010

This bill ensures that aviation programs, taxes, and Airport and Airway Trust Fund expenditure authority will continue without interruption pending completion of long-term Federal Aviation Administration (FAA) reauthorization legislation. Because the long-term bill will not be completed before the current authority for aviation programs expires at the end of this week, H.R. 5900 is needed to extend aviation programs, taxes, and expenditure authority for an additional two months, through September 30, 2010.

The most recent long-term FAA reauthorization act, the Vision 100—Century of Aviation Reauthorization Act (P.L. 108–176), expired on September 30, 2007. Although the House passed an FAA reauthorization bill during the 110th Congress, and again last year, the Senate failed to act until March of this year. The FAA has, therefore, been operating under a series of short-term extension acts, the most recent of which expires on August 1, 2010.

Since passage of the Senate bill in March, we have been working diligently to resolve the differences between the House and Senate bills. To be frank, I had hoped that the House would pass a negotiated, comprehensive, multi-year FAA reauthorization bill this week. We are close to a final package with the Senate, with very few issues left on the table. As it stands now, the negotiated bill would provide the aviation sector with the stability of a multi-year authorization, safety reforms, record-high capital investment levels, several provisions that would accelerate the Next Generation Air Transportation System effort, and a passenger bill of rights.

Unfortunately, the FAA reauthorization bill is hung up in the Senate, primarily over a provision that would significantly increase the number of long-distance flights at Washington National Airport. The Senate provision was included in neither the House-passed nor Senate-passed FAA bills, and it is strongly opposed by Members of Congress and Senators who represent the Washington, D.C. metropolitan region because, they argue, it would create a burden for Washington National Airport by creating congestion at terminals and siphoning passengers away from Washington Dulles International Airport. I also have concerns that the provision, as written, would unduly benefit dominant incumbent carrier, US Airways.

Madam Speaker, on the night of February 12, 2009, a Colgan Air flight operating as Continental Connection Flight 3407 crashed in Buffalo, New York, killing 50 people. The National Transportation Safety Board (NTSB) investigation that followed rocked the airline industry, stunned the American public, and identified the need to closely examine the regulations governing pilot training and rest requirements, with a particular focus on regional airlines.

In response to this tragedy, the Subcommittee on Aviation held a series of hearings, receiving testimony from the FAA, the NTSB, the Department of Transportation Inspector General, pilots' unions, airline representatives, and the representatives of the Colgan 3407 Families.

With regard to the Colgan 3407 Families, they have been a driving force behind aviation safety reform legislation. In the last 17 months they have come to Washington, D.C., more than 30 times to push for legislation. They have served the American public well. It is

time to let them go home now, to know that they have made a difference, to put closure on this tragedy and to pick up the pieces of their lives. Moreover, safety is our highest priority. Therefore, this extension act includes the airline safety and pilot training provisions that we have been able to negotiate with the Senate. These safety provisions will dramatically upgrade the training and experience necessary to be an airline pilot. Key features of this legislation include:

Requiring all airline pilots to hold an Airline Transport Pilot certificate, which requires a minimum of 1,500 flight hours; the current requirement is 250 flight hours.

Directing the FAA to update and implement new flight and duty time rules for pilots within one year, to more adequately address the results of scientific research in the field of fatigue.

Requiring FAA to ensure that pilots are trained on how to recover from stalls and upsets and that airlines provide remedial training to pilots who need it.

Establishing a pilot records database to provide airlines with fast, electronic access to a pilot's comprehensive record.

Some have argued that these safety provisions are one of the strongest selling points of a comprehensive FAA reauthorization package, and that by moving these provisions separately we may put the larger bill in jeopardy. We believe that moving these safety reforms right now, as part of an extension act, is simply the right thing to do. Moreover, we see no reason why Congress cannot return in September and work through the very few remaining issues in a larger FAA bill. We view these safety provisions as just a preview of a very strong comprehensive aviation package that this Congress will deliver for the American public in a matter of weeks.

I thank Chairman LEVIN of the Committee on Ways and Means for his assistance in ensuring the continued operation of aviation and highway programs. I also thank my Committee colleagues—Ranking Member MICA, Subcommittee on Aviation Chairman COSTELLO, and Ranking Member PETRI—for working with me on this critical legislation.

I strongly urge my colleagues to join me in supporting H.R. 5900.

Mr. COSTELLO. Madam Speaker, as I have said earlier, this is the strongest aviation safety bill that we are about to pass in decades. I urge my colleagues to support this legislation.

I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. COSTELLO) that the House suspend the rules and pass the bill, H.R. 5900.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will remind all persons in the gallery that they are here as guests of the House, and that any manifestation of approval or disapproval of pro-

ceedings is in violation of the rules of the House.

#### MODIFYING DATE THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND APPLICABLE STATES MAY REQUIRE PERMITS

Ms. EDDIE BERNICE JOHNSON of Texas. Madam Speaker, I move to suspend the rules and pass the bill (S. 3372) to modify the date on which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels.

The Clerk read the title of the bill.

The text of the bill is as follows:

S. 3372

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.

Section 2(a) of Public Law 110–299 (33 U.S.C. 1342 note) is amended by striking “during the 2-year period beginning on the date of enactment of this Act” and inserting “during the period beginning on the date of the enactment of this Act and ending on December 18, 2013”.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) and the gentleman from New Jersey (Mr. LOBIONDO) each will control 20 minutes.

The Chair recognizes the gentlewoman from Texas.

#### GENERAL LEAVE

Ms. EDDIE BERNICE JOHNSON of Texas. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and to include extraneous materials on this bill.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Texas?

There was no objection.

Ms. EDDIE BERNICE JOHNSON of Texas. Madam Speaker, I yield myself such time as I may consume.

I rise in support of S. 3372. This piece of legislation has been approved twice by this Chamber. Just last week, H.R. 5301, proposed by my colleague, the gentleman from New Jersey (Mr. LOBIONDO) passed easily on the floor of this Chamber.

Both S. 3372 and H.R. 5301 are mere extensions of an already existing moratorium. This extension is necessary because the Environmental Protection Agency has determined that discharges from vessels under 79 feet in length are not benign. But the agency needs additional time to expand coverage of its permitting program for these smaller vessels, and the EPA needs additional time to set appropriate Clean Water Act requirements to protect the Nation's waters from these type of discharges.

So I urge my colleagues to join me and support S. 3372.