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

Re: *Pilot Records Database, Notice of Proposed Rulemaking (NPRM); Docket No.: FAA-2020-0246*

The Aircraft Owners and Pilots Association (AOPA) is the world's largest aviation membership association representing individuals who collectively operate 85% of all general aviation aircraft in the United States, as well as tens of thousands of members who fly Unmanned Aircraft Systems (UAS), both professionally and recreationally. AOPA respectfully submits this comment in response to the Pilot Records Database (PRD) Notice of Proposed Rulemaking (NPRM).

The more than 600,000 FAA certificated pilots in the U.S. represent a diverse and broad spectrum of pilots that fly for an equally diverse group of operators.¹ However, among this large population, only a narrow and specific group of pilots² and operators are subject to what is known as the Pilot Records Improvement Act (PRIA).^{3,4} On March 30, 2020, the FAA published the PRD NPRM that proposes to replace PRIA with an electronic database for air carriers and other operators to, among other things, verify the information, certification, training and currency of commercial, Air Transport Pilot (ATP), and part 107 certificated pilots they employ.⁵ Additionally, this proposed rule extends required reporting and accessing of PRD information beyond that of existing PRIA requirements. The result will be a significant increased number of pilots and operators who must comply. Many of the individuals this NPRM proposes to apply to are small, sole-practitioner operations, and pilots who have no aspirations of being hired by an air carrier.

AOPA understands and supports the need for accurate and transparent methods for air carrier operators under PRIA to ensure pilot candidates have an accurate record of the training required

¹ https://www.faa.gov/data_research/aviation_data_statistics/civil_airmen_statistics/

² The term "pilot(s)" used for the remainder of this comment is used to broadly describe any individual who currently is, was, and/or is working towards becoming an FAA certificated pilot, unless otherwise noted.

³ Pub. L. 104-264, § 502

⁴ https://www.faa.gov/pilots/lic_cert/pria/background/

⁵ 85 Fed. Reg. 17660

under the Federal Aviation Regulations. However, the PRD NPRM expands beyond what is statutorily required, does not accept industry recommendations, and does not provide a clear process for the lifetime of the pilot to have errors on their record corrected. AOPA's rationale and recommendations are discussed further in this letter.

I. THE PROPOSED PRD PROCESS FOR PILOTS TO REPORT ERRORS AND REQUEST CORRECTIONS TO HIS OR HER PILOT RECORD IS VAGUE AND CAN SUBJECT A PILOT'S RECORD TO A LIFETIME OF INACCURACIES (PROPOSED § 111.255, § 111.260, AND § 111.320)

Whether an individual wishes to become a FAA certificated pilot for pleasure or professional reasons, doing so will require hundreds of flight hours, thousands of hours of studying, and tens of thousands of dollars in flight training costs.⁶ Many of these prerequisites are regulatorily required by the FAA to be recorded and maintained by a pilot for currency, training, and other certification purposes.⁷ As a result, pilots are acutely aware and are taught to maintain meticulous and accurate records, whether made by the pilot or another authorized individual or organization.⁸ Pilots are understandably concerned about being approached by the FAA regarding what may appear to be an incorrect entry in a record required to be kept by the Federal Aviation Regulations, or a potential employer questioning an erroneous practical exam failure. These types of errors can create barriers to employment and insurance coverage. Therefore, those who have access and input to the information on a pilot's record, including the FAA and past employers, are crucial and must be held responsible for correcting any inaccuracies that are brought to their attention. Unfortunately, this PRD NPRM does not provide a clear and adequate process for aggrieved pilots to ensure inaccuracies on their record are corrected. Failure to provide clear guidance and assurance that errors will be corrected will subject a pilot's record to a lifetime of inaccuracies that he or she has spent thousands of hours of hard work and money to earn.

- a. Proposed § 111.255, § 111.260 and § 111.320 are vague and do not provide a clear process or assurance for pilots to correct their pilot record**

AOPA appreciates the FAA's acknowledgement in proposed § 111.255, § 111.260, and § 111.320 that an "air carrier or other operator" has a responsibility to establish a process to resolve errors, respond to written submissions claiming errors, and to correct those errors. However, although the proposed rule allows the pilot to report errors and request corrections,⁹ it provides vague responsibilities on the part of the air carrier for its "documented process" and "reasonable investigation" for resolving disputes with respect to information documented in the PRD¹⁰ (e.g., disciplinary and separation of employment records). Without clear rules, guidance, and protections, inconsistent application of these regulations will create a hodgepodge of

⁶ <https://daytonabeach.erau.edu/college-aviation/flight/flight-course-costs>

⁷ 14 C.F.R. § 61.51

⁸ <https://www.aopa.org/training-and-safety/learn-to-fly/old-pages/logging-cross-country-time/logbooks-and-logging-time>

⁹ Proposed 14 C.F.R. § 111.320

¹⁰ Proposed 14 C.F.R. § 111.260

“documented processes” between multiple operators.¹¹ In addition, subjecting individuals to inconsistent investigations will raise fairness and due process concerns.

Also, there is virtually no requirement for the FAA to remove erroneous or inaccurate information itself, even if the information was demonstrably false. Under proposed § 111.320, a “notation into the individual’s PRD record indicating that certain information pertaining to the individual in the database has been disputed by the pilot” appears to be the limited relief this proposed rule would allow. Nor does it require the FAA to make such a notation, only that a pilot *may* make the request.

The result of the above are that pilots will be severely limited, based on the proposed rule, to have consistent and adequate recourse upon discovering erroneous or inaccurate information. This can subject a pilot to a lifetime of inaccuracies on his or her pilot record that will impact pilot certification and employment opportunities in the future. Pilots with errors in their records must resort to the time and expense of litigation in state court, due to the lack of a remedy in the regulations, and this PRD NPRM fails to address this critical issue.¹²

There is also the real potential for employers to use the PRD in a coercive or retributive manner against current and former employees. From time to time, AOPA’s Legal Services Plan receives calls from pilots alleging that their employers are less than scrupulous with regard to recordkeeping. There are some allegations of outright malicious conduct, and more commonly there are allegations that an employer is unresponsive or less than thorough when correcting or forwarding records through the current PRIA process.

b. Recommended changes to § 111.255, § 111.260, and § 111.320 to ensure the accuracy of an individual’s record in the PRD

Based on the vagueness of the proposed rule and direct feedback from pilots, AOPA recommends that the proposed regulations be modified to make clear that the FAA must itself evaluate and correct inaccuracies in the PRD if the employer is unwilling or unable to do so, consistent with the Privacy Act. Without such a change, even a well-meaning employer that does not have adequate staffing or training to handle disputes about the correctness of information contained in the PRD would seriously disadvantage pilots who would be unable to have the inaccurate records corrected.

AOPA recommends a new section, § 111.320(e) to read: “Notwithstanding the dispute notification in (d) or any other remedy for resolving records issues in this Part, FAA shall, when processing reports by pilots of erroneous or inaccurate information made per (c), remove or correct the erroneous or inaccurate information, consistent with the Privacy Act.”

Alternatively, AOPA recommends a modification to § 111.320(d) to make clear the FAA should not only “enter a notation into the individual’s PRD record indicating that certain information

¹¹ AOPA was unable to find any proposed language in the draft PRD Advisory Circular that addresses or provides guidance for the process for correction of reported errors under proposed §§ 111.255, 111.260, and 111.320.

¹² See *Nelson v. Tradewind Aviation, LLC.*, 155 Conn.App. 519, 111 A.3d 887 (Conn. App., 2015) in which the pilot’s job offer was rescinded in 2008 due to incorrect PRIA information provided by a previous employer, and his case was not finally adjudicated until 2015.

pertaining to the individual in the database has been disputed by the pilot” as provided for in (d) but further must correct the inaccurate information consistent with the Privacy Act.

Finally, AOPA recommends clear and unambiguous regulatory language or guidance related to § 111.255, § 111.260, and § 111.320 be created to ensure a clear and consistent process for pilots to request and obtain a correction to their pilot record.

II. THE PROPOSED PRD EXPANSION TO CERTAIN PART 91 OPERATIONS IS NOT MANDATED AND FAILS TO ACCEPT THE RELATED PRD AVIATION RULEMAKING COMMITTEE (ARC) RECOMMENDATIONS

“This proposal largely is consistent with existing PRIA requirements, with the addition of corporate flight departments.”¹³ AOPA disagrees. Even with the addition of “corporate flight departments,”¹⁴ this proposed rule does not appear to be consistent with PRIA. This proposed rule casts a much wider non-mandated net of applicability than PRIA and will unnecessarily create additional requirements that will negatively impact thousands¹⁵ of small and sole-practitioner part 91 operators.

a. The PRD NPRM unnecessarily includes part 91 operators that were not mandated by Congress

While we understand the FAA’s legislative directive and appreciate the FAA’s work towards designing an electronic system that provides transparency of pilot records, unfortunately, the PRD NPRM unnecessarily includes certain part 91 operations¹⁶ not mandated by the PRD Act.¹⁷

Nowhere in the PRD Act does it mandate the PRD to include part 91 operators. Doing so unnecessarily applies to, and negatively impacts small and sole-practitioner part 91 operators, many with only one or two aircraft. These individuals and small entities will have to comply with a reporting system that is not only costly and complex, but also creates a disincentive to purchase more aircraft or hire additional pilots. The burden of compliance outweighs any potential benefit.

The FAA believes that certain part 91 operations are “gateway operators” to larger part 121 air carriers that should require reporting to and review of PRD records.¹⁸ While it is true pilots who desire to fly for certain air carriers will need to “build” hours to become competitive in being hired, it is inappropriate to consider any specific part 91 operation as a definitive pathway to become part 121 pilots. There are literally hundreds of pathways for individuals to become professional pilots amidst a diverse part 91 operational world. And, all these part 91 operations are just as likely to be terminal career aspirations for the same group of professional pilots.

¹³ 85 Fed. Reg. 17668

¹⁴ Although “corporate flight department” is defined in the PRD NPRM, AOPA could not find a similar definition that is used in the aviation community. AOPA believes these part 91 operations should not be required to report and access the PRD, therefore would make this definition unnecessary.

¹⁵ 85 Fed. Reg. 17700

¹⁶ Specifically, § 91.147 and “corporate flight departments”

¹⁷ Pub. L. 111-216, § 203

¹⁸ 85 Fed. Reg. 17668

Most importantly, expanding the PRD requirements beyond what is currently required in PRIA will not improve safety. Requiring part 91 operators in the PRD NPRM will not provide a complete picture of safety data the PRD is meant to provide to the FAA and air carriers. Many of the part 91 operators included in the PRD NPRM are small and sole-practitioner operated part 91 operators. The result would result in unnecessary self-reporting to the PRD. Similarly, having PRD reporting for other part 91 operations, such as aerial advertising and photographers, pipeline patrol, glider operations, banner towers, agriculture operations, and acrobatic teams,¹⁹ should not be included due to their size and type of operation and not being mandated by the PRD Act.

b. The PRD NPRM fails to accept the recommendation of the PRD ARC

The PRD NPRM also failed to accept the PRD ARC recommendations that comprised of a knowledgeable and diverse membership regarding part 91 operations.²⁰ “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.”²¹

c. Recommended changes to the PRD NPRM to reflect the PRD Act and PRD ARC

AOPA’s Legal Services Plan receives phone calls from small and sole-practitioner part 91 operators for whom PRD compliance would be a heavy and unnecessary burden, as they’d only be keeping records on themselves. These operators often report having trouble obtaining prompt responses from FSDOs when they seek guidance on complying with their LOAs, perhaps due to their small size relative to other operators.

AOPA recommends part 91 operators be excluded the same way the PRD NPRM excludes others such as banner towing, aerial photography, airshow performers, and Living History Flight Experience exemption holders. For example, a § 91.147 commercial air tour, which may only operate nonstop flights that begin and end at the same airport and are conducted within a 25-statute mile radius of that airport, is much more similar to a Living History Flight Experience than it is to a part 121 or 135 operation where the objective is to transport passengers and property from place to place.

¹⁹ 85 Fed. Reg. 17671

²⁰ Pilot Records Database Aviation Rulemaking Committee Report, 2011, https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/PRDARC-2032011.pdf.

²¹ AC 120-68E has similar language as AC 120-68H but now recognizes § 91.147 operators have a requirement to request drug and alcohol testing records of an applicant.

III. THE PRD MUST NOT REQUIRE INDIVIDUAL PILOTS TO BE CHARGED A FEE FOR ACCESSING HIS OR HER PRD RECORD (PROPOSED § 111.40)

AOPA strongly supports and agrees the cost to maintain the PRD should not be borne on the individual pilot. The requirements to become a FAA certificated pilot for pleasure or professional reasons may require hundreds of flight hours, thousands of hours of studying, and tens of thousands of dollars in flight training costs.²² Adding yet another financial cost will only provide another barrier to encourage younger individuals to become interested in aviation for pleasure or as a profession.

Since the PRD NPRM proposes to include all pilots who have commercial and ATP certificates (and part 107 remote pilots), regardless if they intend to fly for an operator who must comply with the PRD requirements, it is likely a portion of those individuals will have little to no access to technology or internet availability that will allow them to access their record. AOPA strongly recommends the FAA provide a procedure for those individuals to request and obtain a physical copy of their PRD record.

IV. THE PRD MUST EXCLUDE VOLUNTARY SAFETY REPORTS FROM THE PILOT'S PRD RECORD (PROPOSED § 111.245)

AOPA appreciates the FAA's adoption of the PRD ARC recommendation to exclude data related to voluntary safety reports from a pilot's PRD record. AOPA's Legal Services Plan receives a notable volume of calls every year from pilots navigating FAA voluntary safety reporting systems ranging from ASAP to NASA ASRS. The airmen involved almost invariably credit the voluntary reporting systems as an appropriate way to add to the conversation about safety in the NAS and address any issues expeditiously without fear of disciplinary or enforcement action. These events might otherwise go unreported, and it is critical that the protections in place for voluntary safety reporting systems are not undermined by the PRD.

V. THE PRD MUST PROVIDE ACCESS TO PILOT RECORDS FOR ALL INDIVIDUAL PART 61 CERTIFICATED PILOTS (PROPOSED §111.10)

The PRD NPRM proposes only part 61 commercial and ATP pilots and part 107 remote pilots will have access to their pilot record in the PRD. However, there are numerous student, sport, recreational, and private pilots with commercial aspirations who should have access to their own PRD records but would not be able to prior to earning a commercial certificate, after considerable cost to the student.

AOPA strongly recommends that the holder of any FAA-issued pilot certificate be given the opportunity to access their PRD record. Doing so would also provide for complete access and transparency to one's pilot record.

²² <https://daytonabeach.erau.edu/college-aviation/flight/flight-course-costs>

AOPA appreciates the FAA's hard work towards improving aviation safety and hopes it will continue this work by carefully considering all of the PRD NPRM responses with safety and the future growth of the next generation of pilots and aviation professionals in mind. Please feel free to contact me at 202-737-7950 if you have any questions.

Sincerely,



Christopher J. Cooper
Director, Regulatory Affairs

The Aircraft Owners and Pilots Association (AOPA) is a not-for-profit individual membership organization of General Aviation and UAS Pilots and Aircraft Owners. AOPA's mission is to effectively serve the interests of its members and establish, maintain and articulate positions of leadership to promote the economy, safety, utility, and popularity of flight in General Aviation aircraft and UAS. Representing two-thirds of all pilots in the United States including several thousand UAS operators, AOPA is the largest civil aviation organization in the world.