

FORDHARRISON FH SOLUTIONS GROUP

Mastering PRD Requirements

Protecting Your Airline from Legal Risks

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AGENDA

1. Review of PRD Deadlines
2. Overview of PRD Record Reporting Obligations
3. Most Common Compliance Mistakes and Challenges
4. FAA Compliance Action
5. PRIA/PRD Resources
6. Questions



REVIEW OF PRD DEADLINES

- PRD regulations were effective **August 9, 2021**
 - Transition from old PRIA requirements to PRD
- Applications to use PRD were due **September 8, 2021**
- Deadline to begin using PRD to evaluate records was **June 10, 2022**
- Had to begin reporting to PRD records created on or after **June 10, 2022**
- Deadline to upload historical records created on or after January 1, 2015 was **June 12, 2023**
- Deadline to upload historical records created before January 1, 2015 was **September 9, 2024**
- Deadline for full transition to PRD was **September 9, 2024**

PRD RECORD REPORTING OBLIGATIONS

1. Verification of motor vehicle driving record search and evaluation
2. Training, qualification and proficiency records
3. Drug and alcohol testing records
4. Final disciplinary action records
5. Final separation from employment (and other employment history) records
6. Historical records

1. VERIFICATION OF DRIVING RECORDS SEARCH AND EVALUATION

- Simple confirmation that the pilot's motor vehicle records were pulled and reviewed
- Must be documented in the PRD within 45 days of the pilot's date of hire
- No substantive motor vehicle information should be reported to the PRD



2. TRAINING, QUALIFICATION AND PROFICIENCY RECORDS

- Records establishing compliance with FAA-required training, qualification and proficiency events
- **Comments by check pilot or evaluator are reportable**
- Records establishing compliance with employer-required training, checking and testing related to pilot performance
- **Training conducted pursuant to an ASAP recommendation is not reportable**

3. DRUG AND ALCOHOL TESTING RECORDS

Records that are Entered:

1. Confirmed alcohol results of .04 or greater
2. Verified positive drug test results
3. Documentation of refusals to test (includes adulterated tests)
4. Documentation of other testing violations
5. SAP reports
6. All follow-up and return-to-duty tests
7. Information from prior employers on drug/alcohol violations
8. Records of negative, canceled and low alcohol (<.039) tests

4. FINAL DISCIPLINARY ACTION RECORDS



- Report only written warnings, suspensions, **terminations**
- Only if related to pilot performance
 - Must relate specifically to the completion of the core duties and responsibilities of a pilot in maintaining safe aircraft operations
 - *Lorenzon* and *Griffith* FAA Office of Chief Counsel interpretation letters are helpful
- Only if it is a final record
 - Must not be subject to a pending dispute (grievance, charge, lawsuit)
- Only if it was not subsequently overturned
 - Must be an express finding that either (1) the event did not occur or (2) the pilot was not at fault for it to be overturned
- Must report whether there are documents relevant to the discipline
 - Just a checked box – records not uploaded
- Must be reported within 30 days of becoming final

5. FINAL SEPARATION RECORDS

- These are part of the pilot's "employment history records"
- Includes name, certificate number, PRD date of hire, assignment to duty history, PRD records complete date, and no additional records to report date
- Report and categorize type of separation by the following types (only):
 1. Termination – pilot performance
 2. Termination – professional disqualification
 3. Other-employer-initiated separation not due to pilot performance
 4. Other-physical/medical disqualification
 5. Other-resignation
 6. Other-retirement
 7. Other [free-form text box]



5. FINAL SEPARATION RECORDS

- Separation is reportable regardless of whether it relates to pilot performance
- Separation is reported only if/when it is a final record
 - Must not be subject to a pending dispute (grievance, charge, lawsuit)
- Separation record is reportable only if it was not subsequently overturned
 - Must be an affirmative finding that either (1) the event did not occur or (2) the pilot was not at fault for it to be overturned
- Must report whether there are documents relevant to the separation
 - Just a checked box – records not uploaded
- Must be reported within 30 days of becoming final

6. HISTORICAL RECORDS

- All PRIA/PRD reportable records between August 1, 2005 (August 1, 2010 for some carriers) must be uploaded to PRD
- Historical records are the same kinds of records as those currently reportable to the PRD:
 1. Verification of motor vehicle driving record search and evaluation
 2. Training, qualification and proficiency records
 3. Drug and alcohol testing records
 4. Final disciplinary action records
 5. Final separation from employment (and other employment history) records
- All historical records should now be in PRD, as deadline expired on September 9, 2024

COMPLIANCE MISTAKES AND CHALLENGES

- Terminations due to pilot performance must be reported as BOTH disciplinary record and separation record (when final)
- **Disciplinary and separation records are reportable even if they are overturned by an arbitrator UNLESS the arbitrator expressly concludes the event did not occur or the pilot was not at fault**
- Relevant documents are not uploaded to the PRD, rather, they are provided outside the PRD, typically by email
- Do not report the discipline or separation to the PRD until it is no longer subject to challenge – i.e., until it is final

COMPLIANCE MISTAKES AND CHALLENGES

- Be careful to accurately report the type of separation
- Carefully evaluate what constitutes “pilot performance” (to trigger disciplinary action reporting or that type of separation)
 - FAA Comments to the Regulations Advise:
“Overall because good judgment by the pilot is a critical part of safe aircraft operation, pilot performance could include events other than those strictly related to a pilot’s level of skill in operating the aircraft”
- Refer to the *Lorenzon* and *Griffith* FAA Office of Chief Counsel interpretation letters for guidance here



COMPLIANCE MISTAKES AND CHALLENGES

- Reporting resignations in lieu of termination
 - Most challenging PRD issue for carriers because not clearly addressed
 - Advisory Circular states: *“If a pilot resigns from his/her position with an operator for reasons that are unrelated to the pilot’s performance of core duties and responsibilities associated with operating an aircraft safely, the air carrier or operator must enter the final date of employment ... and indicate that the pilot resigned.”*
 - FAA Comments to Regulations suggest it may be reported as a resignation, noting there would “likely” be associated reportable discipline in the PRD and then states: *“Reporting entities should accurately construe the separation from employment action in the PRD.”*
 - Recommend reporting consistent with your employment records
 - Be sure to check the box that relevant documents are available
 - Relevant documents could include draft termination letter that was not issued

COMPLIANCE MISTAKES AND CHALLENGES

- How to capture and report post-termination settlements
 - A settlement agreement requires removal of PRD-reportable disciplinary or separation record only if the agreement **invalidates** that action
 - There must be language in the settlement agreement that the parties agree either (1) the event did not occur or (2) the pilot was not at fault.
 - FAA Comments to the Regulations provide *“The FAA fully expects employers to act in a manner consistent with the PRD Act by not engaging in conduct that would wipe the pilot’s record clean in order to pass him or her onto another unsuspecting carrier.”*
 - ALPA is pushing language in settlement agreements that categorize terminations in a favorable way for pilots (not due to pilot performance) and control PRD reporting.

COMPLIANCE MISTAKES AND CHALLENGES

- PRD Reporting Timeline for Disciplinary and Separation Records
 - No later than 30 days after action is final
 - Challenge is assessment of when action is “final”
 - Note there is provision within the PRD for disputes and corrections
- Disputes and Corrections of PRD Records
 - If receive notice any separation record reported to PRD was **overturned**, the record must be corrected within 10 days
 - If discover or are informed of an error or inaccuracy in information reported to the PRD, that must be corrected within 10 days
 - There is a process under which pilots can dispute records in the PRD with the entirety of the dispute documented within the PRD

FAA COMPLIANCE ACTION

FAA Notice of PRD Compliance Oversight (March 31, 2023)

- FAA inspectors will surveil for PRD compliance
- For 121 carriers surveillance “must begin” by **June 30, 2023**
- Notice standardizes the surveillance and enforcement that will occur under this initiative
- Instigated because of some carriers are not:
 - registering to use the PRD
 - uploading historical records into PRD
 - reviewing current records in PRD
 - uploading new records into PRD

PRIA/PRD RESOURCES

- PRD Regulations (14 CFR §111)
- FAA Comments to the Final Regulations
- FAA Advisory Circular (AC 120-68J)
- *Lorenzon* and *Griffith* FAA Office of Chief Counsel Advisory Letters
- PRD User Guides
- FAA webinars

https://www.faa.gov/regulations_policies/pilot_records_database

Questions?



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Thank you!

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