



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

**ORDER
1110.144**

Effective Date:
September 27, 2006

SUBJ: Age 60 Aviation Rulemaking Committee

1. PURPOSE. This order establishes the Age 60 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. DISTRIBUTION. This order is distributed to the director level in the Offices of Rulemaking; International Aviation; Chief Counsel; Flight Standards; Aerospace Medicine; Budget.

3. BACKGROUND.

a. Section 121.383(c) of Title 14 of the United States Code (the Age 60 Rule) prohibits any air carrier from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday. The Federal Aviation Administration (FAA) adopted the Age 60 Rule in 1959. Part 121 covers operations of large commercial passenger aircraft, smaller propeller aircraft with 10 or more passenger seats, and common carriage operations of all-cargo aircraft with a payload capacity of 7500 pounds.

b. In November 2006, the International Civil Aviation Organization (ICAO) will adopt Amendment 167 to increase the "upper age limit" for pilots up to age 65 provided another pilot is under age 60. Non U.S. certificated pilots over age 60 currently fly into the United States and are given relief to the age 60 limit that exists under FAA regulations and ICAO standards through operating specifications (Ops Specs). Foreign pilots are not prohibited from flying into the United States with an over-age-60 pilot provided current FAA regulations and ICAO requirements for an under-age-60 pilot in command are met. When the new ICAO standard becomes effective in November, we will have to amend current Ops Specs issued to foreign air carriers to permit operation with either pilot over age 60 provided the other pilot is under age 60.

c. There is also proposed Congressional action regarding the Age 60 rule.

4. OBJECTIVES AND SCOPE OF THE COMMITTEE. The Age 60 ARC will provide a forum for the U.S. aviation community to discuss the new ICAO standard, make recommendations as to whether the U.S. should adopt that standard, and determine what actions would be necessary if FAA were to change the regulation to meet the new ICAO standard. The Age 60 ARC will make recommendations to the Administrator through the Associate Administrator for Aviation Safety.

5. COMMITTEE PROCEDURES.

- a. The Associate Administrator for Aviation Safety will issue more specific taskings, including deliverable dates.
- b. The committee provides advice and recommendations to the Associate Administrator for Aviation Safety. The committee acts solely in an advisory capacity.
- c. The committee will discuss and present information, guidance, and recommendations that the members of the committee consider relevant to disposing of issues. Discussion will include, but is not limited to, the following:
 - (1) Operational objectives, recommendations, and requirements.
 - (2) Recommendations for rulemaking necessary to meet objectives.
 - (4) Guidance material and the implementation processes.
 - (5) Global harmonization issues and recommendations.

6. ORGANIZATION AND ADMINISTRATION.

- a. The FAA will set up a committee representing the various parts of the industry and Government. The committee may set up specialized work groups that will include at least one committee member and invited subject matter experts from industry and Government, where necessary.
- b. The Associate Administrator for Aviation Safety will have the sole discretion to appoint members or organizations to the committee. The committee will consist of members of the aviation community, including pilot unions and airlines. The FAA will provide participation and support from all affected lines-of-business.
- c. The Associate Administrator for Aviation Safety will receive all committee recommendations and reports.
- d. The Associate Administrator for Aviation Safety is the sponsor of the committee and will select industry co-chairs from the membership of the committee. Also, the Associate Administrator will select the FAA-designated representative for the committee. Once appointed, the co-chairs will:
 - (1) Determine, in coordination with the other members of the committee, when a meeting is required.
 - (2) Arrange notification to all committee members of the time and place for each meeting.

(3) Draft an agenda for each meeting and conduct the meeting.

e. A Record of Discussions of committee meetings will be kept.

f. Although a quorum is desirable at committee meetings, it is not required.

8. MEMBERSHIP.

a. The committee will consist of approximately 12 members, selected by the FAA, representing pilot unions, airlines, and FAA.

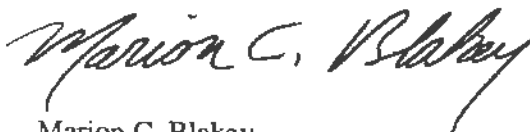
b. Each member or participant on the committee should represent an identified part of the aviation community and have the authority to speak for that part. Membership on the committee will be limited to promote discussions. Active participation and commitment by members will be essential for achieving the committee objectives and for continued membership on the committee. The committee may invite additional participants as subject matter experts to support specialized work groups.

9. PUBLIC PARTICIPATION. The Age 60 ARC meetings are not open to the public. Persons or organizations that are not members of this committee and are interested in attending a meeting must request and receive approval in advance of the meeting from the industry co-chairs or the designated Federal representative.

10. AVAILABILITY OF RECORDS. Under the Freedom of Information Act, 5 U.S.C. § 522, records, reports, agendas, working papers, and other documents that are made available to or prepared for or by the committee will be available for public inspection and copying at the FAA Office of Aerospace Medicine, 800 Independence Avenue, SW., Washington, DC 20591. Fees will be charged for information furnished to the public according to the fee schedule published in Title 49 of the Code of Federal Regulations part 7.

11. PUBLIC INTEREST. Forming the Age 60 ARC is determined to be in the public interest to fulfill the performance of duties imposed on FAA by law.

12. EFFECTIVE DATE AND DURATION. This committee is effective September 27, 2006. The committee will remain in existence until March 27, 2007, unless sooner terminated or extended by the Administrator. The first tasking will be completed within 60 days of the effective date of this Order.



Marion C. Blakey
Administrator

S110
ARC**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation regulations (14 CFR part 71) to establish Class E airspace at Williamsburg, KY. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, dated September 16, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 16, 2006, and effective September 16, 2006 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5—Williamsburg, KY [NEW]

Williamsburg—Whitley County Airport, KY (Lat. 36°47'42" N, long. 84°11'158" W)

That airspace extending upward from 700 feet above the surface within a 6.5-radius of Williamsburg—Whitley County Airport.

* * * * *

Issued in College Park, Georgia, on October 6, 2006.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. 06-8847 Filed 10-24-06; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121**

[Docket No. FAA-2006-26139; Notice No. 06-17]

Age 60 Aviation Rulemaking Committee; Request for Comments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: In November 2006, the International Civil Aviation Organization (ICAO) will adopt an

amendment to increase the "upper age limit" for airline pilots up to age 65 provided another crewmember pilot is under age 60. On September 27, 2006, Administrator Blakey established an Aviation Rulemaking Committee (ARC) on the Age 60 issue. One of its tasks is to recommend whether the United States should adopt the new ICAO standard. The FAA and the ARC are requesting comments from the public about whether the FAA should adopt the ICAO standard and any issues surrounding adopting or not adopting the standard.

DATES: Send your comments on or before November 15, 2006.

ADDRESSES: You may send comments [identified by Docket Number FAA-2006-26139] using any of the following methods:

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- **Fax:** 1-202-493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Tilton, Federal Air Surgeon, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202-267-3537.

SUPPLEMENTARY INFORMATION:

Comments Invited. The FAA invites interested persons to participate in this request for comments by submitting written comments, data, or views. The most helpful comments clearly explain

the reason for any position, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Background

Section 121.383(c) of Title 14 of the United States Code (the Age 60 Rule) prohibits any air carrier from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday. The FAA adopted the Age 60 Rule in 1959. Part 121 covers operations of large commercial passenger aircraft, smaller propeller aircraft with 10 or more passenger seats, and common carriage operations of all-cargo aircraft with a payload capacity of 7500 pounds.

In November 2006, the International Civil Aviation Organization (ICAO) will adopt Amendment 167 to increase the "upper age limit" for airline pilots up to age 65 provided another crewmember pilot is under age 60. The Age 60 ARC provides a forum for the U.S. aviation community to discuss the new ICAO standard, make recommendations as to whether the United States should adopt that standard, and determine what actions would be necessary if FAA were to change the regulation to meet the new ICAO standard. As part of the ARC's review and recommendation, it and the FAA are soliciting comments from the public on whether the FAA should adopt the ICAO standard and any issues surrounding adopting or not adopting the standard.

Issued in Washington, DC, on October 19, 2006.

James R. Fraser,

Acting Federal Air Surgeon.

[FR Doc. E6-17851 Filed 10-24-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 170

[Docket No. 2002P-0122] (formerly 02P-0122)

Conventional Foods Being Marketed as "Functional Foods"; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on the regulation of certain conventional foods that companies are marketing as "functional foods." The purpose of the hearing is for the agency to share its current regulatory framework and rationale regarding the safety evaluation and labeling of these foods, and to solicit information and comments from interested persons on how FDA should regulate these foods under the agency's existing legal authority.

DATES: The public hearing will be held on Tuesday, December 5, 2006, from 9 a.m. to 4:30 p.m. Persons who wish to request an opportunity to make an oral presentation must submit a notice of participation by November 14, 2006. All other persons must submit a notice of participation by November 28, 2006. Persons who request an opportunity to make an oral presentation also must submit either the full text of the oral presentation, or a comprehensive outline or summary of the oral presentation, by November 28, 2006. Written or electronic comments (i.e., submissions other than notices of participation and the text, comprehensive outline, or summary of an oral presentation) may be submitted until January 5, 2007. The administrative record of the hearing will remain open until January 5, 2007.

ADDRESSES: The public hearing will be held at Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., Harvey W. Wiley Auditorium, College Park, MD 20740 (Metro stop: College Park on the Green Line).

Submit electronic notices of participation to <http://www.cfsan.fda.gov/~comm/register.html>. Submit written notices of participation and the written full text, comprehensive outline, or summary of any oral presentation to Isabelle Howes, U.S. Department of Agriculture Graduate School, 600 Maryland Ave., SW., suite 270 Washington, DC 20024-2520. To submit a notice of participation orally, or to submit a notice of participation or the full text, comprehensive outline or summary of the oral presentation by e-mail or by fax, see **FOR FURTHER INFORMATION CONTACT**.

Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

Instructions: All submissions and comments received must include the agency name and docket number found in brackets in the heading of this document. All submissions and comments received may be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For additional information on submitting comments, see the "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at <http://www.fda.gov/ohrms/dockets/default.htm>, approximately 30 days after the hearing.

FOR FURTHER INFORMATION CONTACT:

To submit a notice of participation orally, by fax, or by e-mail: Isabelle Howes, U.S. Department of Agriculture Graduate School, 202-314-4713, FAX: 202-479-6801, or e-mail:

isabelle_hawes@grad.usda.gov. For all other questions about the meeting, to request onsite parking, or if you need special accommodations due to a disability: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1714, e-mail: Juanita.Yates@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

FDA is responsible for ensuring that all foods in the American food supply (other than meat products, poultry

November 29, 2006

The Honorable Marion Blakey
Administrator
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20571

Dear Administrator Blakey:

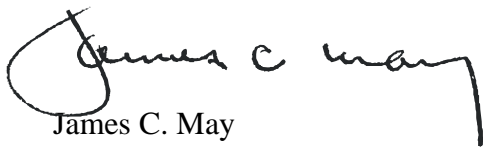
On behalf of the Age 60 Aviation Rulemaking Committee (ARC), we are pleased to provide you with a copy of the ARC's report, which was written to fulfill the initial tasking of September 27, 2006. This report is a summary of industry views on whether to adopt the new ICAO standard, and issues associated with the implementation of such a change.

We recognized from the start that the "age 60" issue is a contentious one for our industry with key stakeholder groups firmly entrenched in opposing positions. Our report includes compelling arguments from both sides and Age 60 ARC members are prepared to present their findings in person should you so desire.

In spite of the contentious subject matter, ARC members held several very productive meetings where a range of issues related to implementation of the new ICAO standard were identified. It is evident from those discussions, and our report, that the impact of a change will vary significantly from airline to airline.

We trust that this report will prove helpful in your decision-making process. We, and our fellow Age 60 ARC members, stand ready to offer any additional assistance as needed.

Sincerely,



James C. May
Air Transport Association of America, Inc.
Co- Chair



Duane E. Woerth
Air Line Pilots Association
Co-Chair

Enclosure



Age 60
Aviation Rulemaking Committee

**REPORT TO THE FEDERAL AVIATION
ADMINISTRATION**

November 29, 2006

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EXECUTIVE SUMMARY

The Federal Aviation Administration (FAA) established the Age 60 Aviation Rulemaking Committee (ARC) to make recommendations on whether the FAA should adopt the International Civil Aviation Organization (ICAO) age standard and what actions the FAA would have to take if it adopted the standard. To determine whether it would recommend adopting the ICAO standard, the ARC created two working groups: one to prepare a position paper on adopting the ICAO standard and one to prepare a position paper on not adopting the ICAO standard. Each working group presented its position to the ARC for discussion.

The Adopt ICAO Standard Working Group recommended the FAA immediately adopt the ICAO age standard and increase the upper age limit for pilots in the cockpit to 65 years of age, provided another pilot in the cockpit is under 60 years of age. In providing its recommendation, the working group found that—

- ICAO Amendment No. 167 provides a catalyst and a rationale for immediate change,
- ICAO conducted an international survey of flight safety data and found no evidence to support an upper age limit of 60 years of age for commercial pilots,
- Medical and aging experts agree there is no medical rationale for the Age 60 Rule,
- Experience that comes with age is a positive factor,
- The success of real world operations (foreign airlines around the world, U.S. corporate aviation operators, and U.S. operators flying under part 135 of Title 14, Code of Federal Regulations) attest to the safe operation of pilots of 60 years of age.
- Socioeconomic conditions favor a change to the Age 60 Rule,
- In the past, the FAA has granted waivers to certificate holders without compromising safety,
- A pilot shortfall is pending and will be exacerbated by the Age 60 Rule,
- Legislation is pending on Capitol Hill to increase the upper age limit to 65 years of age, and
- Labor politics and pilot surveys are not an appropriate way to determine public policy.

The Do Not Adopt ICAO Standard Working Group recommended the FAA not adopt the new ICAO standard because—

- ICAO did not conduct a safety risk analysis to evaluate the impact of the change in the standard on safety,
- The new ICAO age 65 standard arbitrarily replaces one age limit with another,

- There is no criterion-based process for determining pilot fitness to fly past 60 years of age,
- No mitigations have been offered that would provide for an equivalent level of safety if the ICAO standard were adopted over the existing Age 60 Rule,
- The new ICAO standard would reduce the current U.S. airline safety standard,
- The FAA will be in compliance with the new ICAO standard on November 23, 2006, without changing the existing regulations because the standard does not preclude the FAA (or any ICAO State) from setting a lower maximum age limit, and
- Before initiating a rulemaking that could change the Age 60 Rule, the FAA should conduct a safety risk assessment with the participation of airline, pilot, and aeromedical representatives.

The ARC requested that the FAA publish a notice requesting public comments on whether the FAA should adopt the ICAO standard to ensure it adequately addressed all the issues. The FAA received a total of 5,575 unique submissions to the docket as of November 28, 2006, representing 17,906 comments.

During its deliberations, the ARC working groups requested and received information from numerous sources for evaluation, including the Aerospace Medical Association.

While reviewing both positions papers, the ARC also evaluated the impact on the industry and the FAA of adopting the ICAO standard and heard from and considered information from both working groups. The ARC members found that some air carriers do not have concerns over implementation issues, while other air carriers have significant concerns. Issues raised that would need to be considered if a new age standard were adopted include the following:

- The timeframe required for FAA rulemaking action;
- Economic and operational issues such as the impact on retirement plans; salary and benefits; training costs; planning, scheduling, and bidding software; pilot staffing; air carriers with second officers; and augmented flight deck crews; and
- Reinstatement rights for pilots.

The ARC members had divergent views on the following issues:

- Safety implications and whether a safety risk assessment needs to be conducted; and
- Whether age discrimination currently exists with respect to the Age 60 Rule.

The age 60 issue remains contentious for the commercial aviation industry. The ARC members, while collaborating to identify many issues, were unable to reach a consensus on whether or not the FAA should adopt the ICAO standard.

However, the ARC is able to provide the Administrator with the following recommendation:

Any change to the Age 60 Rule should be prospective. If preventing reinstatement is outside the scope of the Administrator's authority, Federal legislation may be required to protect companies and unions from lawsuits that may arise challenging the prospective nature of the change, such as reinstatement of employment, seniority, and/or crew position.

ABOUT THE AGE 60 AVIATION RULEMAKING COMMITTEE

The Federal Aviation Administration (FAA) Administrator established the Age 60 Aviation Rulemaking Committee (ARC) on September 27, 2006, to (1) provide a forum for the U.S. aviation community to discuss the new International Civil Aviation Organization (ICAO) standard, (2) make recommendations as to whether the United States should adopt that standard, and (3) determine what actions would be necessary if the FAA were to change the regulation to meet the new ICAO standard.

The ARC consists of 17 members, selected by the FAA, representing pilot unions, airlines, the aeromedical community, and the FAA. Membership on the committee is limited to promote discussions. However, the committee members may invite additional participants as subject matter experts to support specialized working groups. The ARC members are listed in Appendix 1 to this report.

The ARC will remain in existence until March 27, 2007, unless sooner terminated or extended by the Administrator.

The initial tasking for the ARC is to make recommendations (1) as to whether the FAA should adopt the ICAO standard, and (2) about what actions would be necessary if the FAA were to change the regulation to meet the new ICAO standard.

The first tasking was to be completed within 60 days of the effective date of the ARC.

BACKGROUND

HISTORY OF THE AGE 60 RULE

In the late 1950s, some major airlines began to unilaterally institute forced pilot retirement at age 60. In 1958 and 1959, pilots filed grievances against their airlines on the forced retirement age, and in each case, a neutral arbitrator decided in favor of the union over the airline. However, American Airlines, Inc. (American), founder and chief executive officer C.R. Smith refused to reinstate three pilots who brought the grievance against American, which provoked a strike against American and a 21-day walkout. Mr. Smith wrote Federal Aviation Agency Administrator Elwood R. Quesada urging the Federal Aviation Agency to declare age 60 as a federally mandated retirement age for pilots.

On June 27, 1959, the Federal Aviation Agency issued a notice of proposed rulemaking titled “Maximum Age Limitations for Pilots,” in which it proposed that no individual who has reached his 60th birthday may be used or serve as a pilot on any aircraft engaged in air carrier operations. This proposal became effective March 15, 1960, in Civil Air Regulation Amendment No. 40–22. In issuing the Age 60 Rule (currently § 121.383(c) of Title 14, Code of Federal Regulations (14 CFR)), the agency found that establishment of a maximum age of 60 for pilots used by air carriers was necessary for safety in air commerce and was in the public interest. The agency also noted that a number of pilots were flying past the age of 60 and the number was expected to increase in the coming years.

Although there had not been any age-related incidents or accidents, the Federal Aviation Agency expressed concern that there could be a safety hazard presented by using these older pilots. In support of its position, the agency cited progressive deterioration of certain important physiological and psychological functions with age. The agency also stated that significant medical deficiencies attributable to this degenerative process occur at an increasing rate as age increases and that sudden incapacity due to such medical defects becomes significantly more frequent in any group reaching age 60.

Other concerns expressed by the Federal Aviation Agency included the loss of the ability to perform highly skilled tasks rapidly; resist fatigue; maintain physical stamina; perform effectively in a complex and stressful environment; apply experience, judgment, and reasoning rapidly in new, changing, and emergency situations; and learn new techniques, skills, and procedures.

During this process, the agency accepted comments but did not hold hearings or present medical data for public or peer review.

The Federal Aviation Agency, however, applied limited medical information relating to the general population. Numerous medical experts noted that the airline pilot population is a select group. The use of general population medical information, therefore, has been contested as inappropriate. The Federal Aviation Agency attorneys objected to placing the new retirement age in medical standards and it is regulated as an operational rule.

Since its inception, there have been numerous attempts to change the Age 60 Rule through the exemption process and judicial challenges. All attempts have been unsuccessful. The FAA has consistently held that the Age 60 Rule is an operational and safety rule and that no one has offered an alternative that provides an equivalent level of safety. The courts have consistently upheld the FAA's authority to implement and enforce the Age 60 Rule and the legal basis for its establishment. The courts have not ruled on the merits of this issue and have not ruled on age 60 as an appropriate age for mandatory retirement of commercial airline pilots under 14 CFR parts 121 and 135.

ICAO ANNEX 1 HIGHLIGHTS

ICAO Standards and Recommended Practices have been developed over the years and are published as annexes to the Convention on International Civil Aviation ("Chicago Convention"). The standards are not mandatory for an ICAO member State, but any State departing from a standard must inform ICAO of this intent so that the other contracting States are notified. However, no contracting State is required to provide any notice of its intent regarding recommended practices. Annex 1—Personnel Licensing, chapter 2, contains the general rules concerning age limits for pilots. Before November 23, 2006, the ICAO standard prohibited individuals from serving as pilot-in-command in air transport operations if they had attained their 60th birthday. A number of ICAO member States filed differences with this age limit, either raising or eliminating it.

In 1994, the ICAO Air Navigation Commission (Commission) tasked the Aviation Medicine Section to review the upper age limit for pilots. The Commission determined that even though the upper age limit is part of the general licensing requirements and not the medical provisions, the medical aspects of the upper age limit were very important. The Aviation Medicine Section contacted the chief medical officers of 12 selected ICAO member States to ask their opinion on the relevance or necessity of an upper age limit. The majority of chief medical officers considered an age limit, even an arbitrary one, necessary. The Aviation Medicine Section then sent out an official ICAO letter to all contracting States requesting information on the upper age limits in force. This letter elicited a high response and showed that many contracting States already had adopted an upper age limit above 60 years of age and that some States had no upper age limit.

The Aviation Medicine Section presented the State responses to the letter to the Commission in 1995. At the same time, the Joint Aviation Authorities (JAA) were about to introduce a new upper age limit of 65 years of age for European pilots. Because of the JAA's actions, the Commission decided to postpone its own actions on the upper age limit so it could evaluate the European experience. The new JAA regulation adopting age 65 went into effect July 1, 1999.

On December 31, 2003, ICAO circulated another letter to its 189 contracting States and select international organizations that included a questionnaire about older pilots as part of its deliberations on whether to amend the upper age limit for airline pilots with the intent to harmonize the ICAO provisions with the regulations in force in many States.

The questionnaire was aimed at the States that allowed pilots to fly beyond 60 years of age and solicited demographic and operational information. One hundred eighteen States responded to the survey. A majority of respondent States (83 percent) indicated an international age limit above 60 years of age would be appropriate for airline pilots. Of those, 72 States indicated 65 years of age would be appropriate in multicrew operations. A few States, including some major contracting States, wanted no age limit at all. A minority of respondent States (16 percent) indicated a preference to maintain the current ICAO upper age limit, citing the possible safety risks and a lack of convincing data that flying after age 60 is safe.

Many countries around the world, including JAA member States, had experience with pilots flying beyond 60 years of age. The data included 15,000 pilot-years of experience and indicated no safety risk and only minor health problems with pilots between 60 and 64 years of age. The Aviation Medicine Section also reviewed existing international literature and medical studies on older pilots and flight safety. The results of its surveys and literature review were presented to the Commission. The Flightcrew Licensing and Training Panel (FCLTP) were meeting at the same time. One member of the FCLTP suggested that the issue of the upper age limit be added to its agenda. The chief of the Aviation Medicine Section and the chief of the Personal Licensing and Training Section advised against adding the issue to the agenda at a meeting of the Commission because—

- The FCLTP had a full agenda and would not be able to take on an additional major issue;
- The FCLTP did not have the expertise relevant to the medical aspects, including physical and mental, of the task;
- The Commission considered the medical aspects of the age limit to be of primary concern and designated the task to be conducted by the Aviation Medicine Section; and
- The Aviation Medicine Section had worked on the task for several years and was close to completing it.

Despite this recommendation, the FCLTP accepted the task on its agenda but limited its discussion to the operational aspects of the standard. The FCLTP reviewed the following three questions:

1. Are the existing provisions still valid from an operational point of view?
2. If there is a need to amend the existing provisions, should new provisions be based on a specific age and why?

3. Are any additional operational provisions required in the ICAO Standards and Recommended Practices to support an increase or deletion of the upper age limit?

The FCLTP working group concluded that it did not have the expertise or information to make a formal safety assessment of the issue and accepted the recommendations of the ICAO Aviation Medicine Section. The FCLTP restricted itself to stating that it could find no indication of reduced flight safety in the States where a higher upper age limit had been implemented, agreeing that a transition to a criterion-based process for determining pilot fitness would require extensive additional research and take a number of years, and agreeing that many States allow pilots to fly past 60 years of age with no evidence of reduced levels of safety. The FCLTP concluded that until there is an alternative safety basis for determining pilot fitness, an age discriminant would be the simplest means of achieving a harmonized ICAO standard.

The FCLTP proposed that the current ICAO age standard be revised from 60 to 65 years of age in multicrew operations, provided the second pilot is below 60 years of age. This caveat, as noted in the ICAO report, was a compromise for the purposes of unity and not a reflection of the medical necessity of having one pilot under 60 years of age. It also proposed that all pilots over 60 years of age undergo a medical assessment every 6 months. Finally, the working group proposed that the upper age limit be revised to 65 years of age only until a satisfactory alternative is developed in the long term for determining a pilot's continued fitness. The working group recognized that its recommendations simply resulted in the replacement of one age limit with another.

As a result, on November 23, 2006, ICAO revised the upper age limit in the Standards and Recommended Practices to Annex 1—Personnel Licensing as follows:

2.1.10.1: A Contracting State, having issued pilot licenses, shall not permit the holders thereof to act as pilot-in-command of an aircraft engaged in international commercial air transport operations if the license holders have attained their 60th birthday or, in the case of operations with more than one pilot, where the other pilot is younger than 60 years of age, their 65th birthday.

2.1.10.2: **Recommendation.** A Contracting State, having issued pilot licenses, should not permit the holders thereof to act as co-pilot of an aircraft engaged in international commercial air transport operations if the license holders have attained their 65th birthday.

Note. Attention is drawn to 1.2.5.2.3 on the validity period of Medical Assessment for pilots over the age of 60 who are engaged in commercial air transport operations.

1.2.5.2.3: When the holders of airline transport pilot licenses-aeroplane, helicopter, and powered-lift, commercial pilot licenses-aeroplane, airship, helicopter and powered-lift, and multi-crew pilot licenses-aeroplane, who

are engaged in commercial air transport operations, have passed their 60th birthday, the period of validity specified in 1.2.5.2 shall be reduced to six months.

No ICAO member State has notified ICAO that it will impose a different age limit on foreign pilots flying foreign aircraft into their national airspace. A few States will retain the 60 years of age standard.

RECENT LEGISLATIVE HISTORY (H.R. 65 AND S. 65) TO AMEND THE AGE RESTRICTIONS FOR COMMERCIAL AIRLINE PILOTS

In January 2005, Representative Jim Gibbons (R–NV) and Senator James Inhofe (R–OK) introduced H.R. 65 and S. 65, identical bills that tied pilot retirement age to the age at which beneficiaries receive their full Social Security Administration benefits.

On November 18, 2005, the Senate Commerce, Science, and Transportation Committee approved by voice vote a substitute amendment to S. 65, requiring the FAA to implement the new ICAO standard within 30 days of ICAO’s adoption of that standard. The amendment also includes a provision that any change to the Age 60 Rule would not provide the basis for a claim of seniority made by any pilot seeking reemployment following the pilot’s previous termination or cessation of employment as required by § 121.323(c). The amendment includes a study of the safety record of older pilots and a report back to Congress.

On July 18, 2006, the Senate Transportation Appropriations Subcommittee adopted the 2007 Transportation, Treasury, Housing, and Urban Development (TTHUD) appropriations bill, which included a provision similar to the amended S. 65 as part of Chairman’s Mark. The full Senate Appropriations Committee approved the TTHUD bill on July 20, 2006.

The House has not moved on H.R. 65, and the House version of the TTHUD bill passed June 14, 2006, does not contain any provision related to amending the age restriction for pilots.

INDUSTRY VIEWS

GENERAL

This section provides information on industry views and opinions on a number of issues surrounding the Age 60 Rule. To determine whether the ARC should recommend adopting or not adopting the ICAO standard, it prepared a position paper on each side. These papers, which present the ARC members' arguments for or against adopting the ICAO standard, are summarized below and can be found in their entirety in Appendixes 2 and 3 to this report. Each working group also provides additional information in the Appendixes not referenced directly in the report, identified as being provided by the appropriate working group.

Where appropriate, ARC members have endorsed a position. Several ARC members elected to remain neutral or not take a position.

WORKING GROUP SUMMARY: ADOPT THE ICAO STANDARD

Following is a summary of the Adopt the ICAO Standard Working Group's position paper, which is provided in its entirety as Appendix 2.

Currently, the Age 60 Rule (or the Rule) prohibits air carriers from using the services of any person as a pilot on an airplane engaged in part 121 operations if that person has reached his or her 60th birthday. The Age 60 Rule is an arbitrary policy whose time has passed. As discussed below, the FAA should immediately increase the upper age limit for commercial pilots to 65 years of age.

Background

The Age 60 Rule was adopted in 1959 to solve a contractual labor dispute. The medical data did not support revising the FAA's medical standards to require pilots to stop flying at 60 years of age so the Rule was created as an operational standard. However, unsubstantiated medical claims have still been made to justify keeping the Rule in place, despite the distinct lack of data to support such assertions. Medical and aging experts agreed then as they do now: there is no medical justification for the Age 60 Rule. It is time for a change.

This arbitrary Rule could not be enacted today. It did not go through a thorough vetting process, there were no public hearings, and there is no evidence that anyone in Congress or the media scrutinized its implementation. Today, U.S. pilots are flying safer, more user-friendly aircraft than they did in 1959. Training is better, and pilot performance is higher. Moreover, life expectancy is more than 10 years longer in 2006 than it was in 1959, and pilots as a group are among the healthiest Americans. If there was ever a rationale for this policy, it certainly is not justified in 2006. Today, this policy amounts to simple age discrimination, as most pilots and the Air Line Pilots Association (ALPA) believed it was in 1959.

Finally, we agree with medical and flight safety experts who have studied the Age 60 Rule and have conclusively found that experience is the best indicator of how a pilot will perform when there is a crisis in the cockpit. Therefore, the ICAO standard improves safety by keeping the most experienced pilots in the air for up to an additional 5 years.

The FAA Should Immediately Adopt the ICAO Age 65 Standard

The Adopt the ICAO Standard Working Group recommends that the FAA revise its current Age 60 Rule by adopting ICAO Amendment No. 167 to increase the upper age limit for pilots to 65 years of age, provided another pilot in the cockpit is under 60 years of age.

For domestic operations, the FAA should consider waiving or amending the over-under provision and allow both pilots to be over 60 years of age. Eliminating the over-under provision would streamline many implementation issues and benefit the industry.

The working group further recommends that the FAA initiate the regulatory process necessary to implement these changes immediately upon receipt of the ARC Report.

Key Factors Considered in Adopting the Pro-Change Position

1. ICAO Amendment 167 provides a catalyst and a rationale for immediate change.
 - Beginning November 23, 2006, foreign pilots over 60 years of age will be allowed to fly in U.S. airspace; unless the FAA changes the Age 60 Rule, U.S. pilots will still be forced to retire at 60 years of age.
 - If foreign pilots over 60 years of age are deemed safe to fly in U.S. airspace, then there is clearly no rational explanation for applying a different standard to U.S. pilots.
 - One level of safety, two sets of rules: This is a double standard that cannot be tolerated.
2. ICAO conducted an international survey of flight safety data and found no evidence to support an upper age limit of 60 years of age for commercial pilots.
 - ICAO recognizes that pilot performance, longevity, and health have improved dramatically, along with the aircraft, systems and the aviation operational environment.
 - ICAO surveyed existing flight safety data which was conducted both in the United States and abroad and came to the conclusion that a “higher upper age limit is compatible with safe flying.” They based their findings on “[d]ata compiled from 64 States, accumulated experience with well over 3,000 older pilots and totaling at least 15,000 pilot-years.”
 - The risk analysis conducted by ICAO concluded that the risk of two older pilots becoming medically incapacitated at the same time is “thus one per trillion hours, a risk so low that it can safely be disregarded.”

- Only 18 members States indicate they will retain age 60 as their national age limit. None indicate they will refuse to allow or support the new ICAO standard of 65 years of age.

3. Medical and aging experts agree that there is no medical rationale for the Age 60 Rule.

- The Aerospace Medical Association (AsMA) clearly states the unified position of the aerospace medical community:

“On review of the existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to support restriction of pilot certification based on age alone.”

- The U.S. Equal Employment Opportunity Commission (EEOC) “finds the Rule to be discriminatory and does not believe that a chronological age limitation is a Bona Fide Occupational Qualifier (BFOQ) for any pilot.”
- The EEOC has virtually eliminated age limits for pilots in all facets of U.S. aviation with the exception of part 121 commercial airline pilots. The EEOC contends that “the way to determine if someone should continue to do the job is to use our modern-day avenues: physical and mental fitness, not a calendar.”
- In a November 15, 2006, letter to the FAA Administrator, the EEOC said it “strongly encourages the FAA to lift the Age 60 Rule.” It also stated “[w]e support raising the age limit for part 121 pilots to age 65” and that it opposes “the adoption of the requirement that pilots over age 60 be paired with pilots under age 60.” See Appendix 4 to this report for a copy of the EEOC comment.
- The National Institute on Aging (NIA) supports a change in the Age 60 rule. In a study conducted by Johns Hopkins University, NIA reported that chronologic age by itself has little bearing on safety performance.
- AARP, the Seniors Coalition, EEOC, and other aging experts find the Rule to be a clear case of age discrimination.

4. Safety

- The following survey of recent, relevant flight safety studies was conducted on the issue of pilot aging as a safety factor, as well as other comments:
 - 1991: *Lubner, et.al.* In general aviation, older pilots were at less risk than younger pilots for both accidents and violations.
 - 1994: *Baker and Li.* Analysis of flight time, age, and crash rate showed a decrease in crash rate with age, when age correlated with greater experience.
 - 1994: *FAA Hilton Study.* The accident rates of older pilots with a first class or second class airman medical certificate declined from age 40 through the early 60s, but showed a slight increase from age 65 to 69.

- 1997: *McFadden*. Accident rates of U.S. airline pilots declined as pilot experience (total flight hours and recent flight time) and age increased.
 - 1999: *Rebok, et. al.* There appear to be no significant age differences in the pilot performance factors contributing to [general aviation] crashes.
 - 2001: *Baker, et.al.* The percent of crashes involving poor decisions or pilot error declined with age.
 - 2002: *Li, et.al.* In a longitudinal study of pilots aged 45 and older, neither crash circumstances nor the prevalence and patterns of pilot errors changed significantly with age.
 - 2003: *Li, et.al.* These researchers followed a cohort of pilots for 11 years (pilots were between the ages of 45 and 54 at the start of the study). They found that there was no significant age-related increase in crash risk, but that the risk of a crash decreased by about half among pilots with a total flight time of more than 5,000 hours.
- Additional studies and their conclusions are referenced in the supporting documentation at the end of this paper. As referenced above, safety is not a function of age. In fact, the experience that comes with age is a positive factor.
 - The success of real world operations (at airlines around the world, U.S. corporate aviation operators, and part 135 operators) all attest to the safe operations of pilots over the age of 60. The Adopt ICAO Standard Working Group believes the safety concerns of those opposing a rule change are overstated.

5. Socio-economic conditions favor a change in the Rule.

- A change in the Rule would help solve economic and public policy challenges that pilots and the traveling public face because of dramatic changes in the industry post 9/11.
- A change in the Rule would ease the pension burden without requiring any additional expenditure from the Federal Government or related agencies.
- A change in the Rule would save the Pension Benefit Guaranty Corporation (PBGC) (that is, the Federal Government) almost \$1 billion per year according to a recent study by airline economist Darryl Jenkins.¹
- A change in the Rule is not expected to have any appreciable effect on air carrier liability insurance rates.²

¹ A Cost Benefit Analysis of S. 65 and Reforming the Age 60 Rule on the Federal Government, by Darryl Jenkins, dated July 24, 2006, provided to members of the U.S. Congress and other interested parties. See Appendix 5 to this report for a copy of this report.

² Based on the results of an informal ATA survey of insurance providers.

6. In the past, FAA has granted waivers to certificate holders without compromising safety.

- Icelandair, Cargolux, and Corse Air were all granted waivers in the early 1990s. There were no accidents or incidents related to age.
- In the mid 1990s, part 135 pilots were required to shift to part 121 standards. Pilots over 60 years of age were allowed to fly for an additional 5 years from 1994 to 1999. Again, there were no accidents or incidents related to age.
- Recently, air traffic controllers eligible for performance-based waivers to 56 years of age have been given waivers up to and including 61 years of age.
- Finally, former Professional Air Traffic Controllers Organization controllers are being rehired with no age restrictions if they were originally hired before 1972.
- Waivers should be issued to individual pilots as a transitional step, pending a final change to a new U.S. age standard.

7. A Pilot shortfall is pending and will be exacerbated by the Age 60 Rule.

- There is a pilot shortage forecasted to be as great as 30,000 by 2017.
- In next 5 years, 9,047 airline pilots will be forced to retire based on the Age 60 Rule.
- These pilots are primarily veterans who have suffered in the post-deregulation industry.

8. Legislation is pending on Capitol Hill to increase the upper age limit to 65 years of age.

- A provision similar to S.65, which would require the FAA to adopt ICAO Amendment No. 167, is attached to the fiscal year 2007 Senate Transportation Appropriations Bill.
- The legislation has strong support from the Chairman of the Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies Subcommittee, who authorizes and appropriates the FAA's budget, along with the chairs of committees dealing with pensions, energy, and numerous other critical aviation issues.
- If the FAA does not amend the Rule administratively, the congressional push for change has significant momentum and will continue.

9. Labor politics and pilots surveys are not an appropriate way to determine public policy.

- Without safety, medical, or economic justification, the Age 60 Rule has become little more than a jobs program for younger pilots.
- This is simply not a good rationale for keeping a rule in place that has not been amended or modified in nearly a half a century.

Conclusion

The Adopt ICAO Standard Working Group agrees with the findings of ICAO, the AsMA, and other entities that an age-based pilot retirement rule has no medical justification. If there is no medical justification, then there can be no safety rationale for keeping the Age 60 Rule in place.

Moreover, the FAA cannot possibly exclude U.S. pilots from an operational standard change that will allow foreign pilots to work and fly in the United States past the 60 years of age and claim it is based on a safety guideline. A decision to do so treats U.S. pilots over 60 years of age as less safe than their foreign counterparts. The working group feels certain that there is no data to support such a claim, yet that is the only conclusion one can logically reach from such a decision.

Long ago, when the rule was first being debated, ALPA opposed the change to age 60. In its flagship publication (The Airline Pilot, October 1959) it stated that “[t]he proposed Regulations (the age 60 rule) constitute arbitrary action unrelated to safety purposes and based on incomplete and inaccurate information. No incident or accident in commercial airline transportation has ever been attributed to the chronological age of an airline pilot even though pilots 60 years of age and over have been flying on the commercial airlines for many years.” Forty-seven years later that statement still rings true.

It is the position of the Adopt the ICAO Standard Working Group that the FAA should immediately adopt ICAO Amendment No. 167 to increase the upper age limit for pilots to 65 years of age, provided another pilot in the cockpit is under 60 years of age. We also recommend the following:

- The over-under provision, of one pilot being under 60 years of age if the other is over 60 years of age, be dropped in favor of a uniform move to 65 years of age for both pilots.
- The FAA, if it finds international operators need more time before an age change is adopted, should move to immediately amend the pilot retirement to 65 years of age for U.S. domestic operations only.

The Adopt the ICAO Standard Working Group position is endorsed by the following ARC members:

- Joseph “Ike” Eichelkraut, Southwest Airlines Pilots’ Association
- Paul Emens, Airline Pilots Against Age Discrimination
- Leslie Carr, Southwest Airlines Co.
- Pete Russo, JetBlue Airways Corporation

WORKING GROUP SUMMARY: DO NOT ADOPT THE ICAO STANDARD

Following is a summary of the Do Not Adopt the ICAO Standard Working Group's position paper, which is provided in its entirety as Appendix 3.

Background

In 1994, the ICAO Air Navigation Commission tasked the Aviation Medicine Section to review the upper age limit for pilots. Of the chief medical officers contacted from 12 selected ICAO member States, one chief medical officer responded that an age limit, even an arbitrary one, was necessary. One chief medical officer responded that a system without an age limit would be an "administrative nightmare." Others noted that a system based on the results of a medical exam would increase the hostility of pilots toward their medical examiners and diminish the quality and reliability of the medical assessment.

Before November 23, 2006, the ICAO standard prohibited individuals from serving as pilot-in-command in air transport operations if they had attained their 60th birthday. In December 2003, ICAO distributed a seven question "Questionnaire About Older Pilots." ICAO conducted this survey as part of its deliberations on whether to amend the upper age limit for airline pilots with the intention of harmonizing the ICAO provisions with the regulations in force for many States.

Only 112 of 185 States responded to the questionnaire. A majority of the respondents (83 percent) indicated that an international age limit above 60 years of age would be appropriate for airline pilots. Of those, 72 States indicated that an upper age limit of 65 years of age would be appropriate for multicrew operations and 6 States preferred no upper age limit. A minority of the respondents (16 percent) indicated a preference to maintain the current ICAO upper age limit of 60 years of age, citing possible safety risks and a lack of convincing data that flying after 60 years of age is safe. It was unclear how the nonresponders to the survey would react to any change in the ICAO age 60 standard.

The Air Navigation Commission of ICAO considered the results of this limited questionnaire at a meeting of its FCLTP in early 2005. A working group of the FCLTP considered the age issue and arrived at a number of conclusions. Among them was that the working group did not have the expertise or the information to make a formal safety assessment of the issue, as requested. It also agreed that a transition to a criterion-based process for determining pilot fitness to fly beyond the age of 60 would require extensive additional research that would take a number of years. Developing a non-age-related safety basis for continued pilot medical certification would place a significant economic burden on governments and industry in the various States.

As a result of the survey and after deliberations of the Air Navigation Commission, ICAO will implement Amendment No. 167. This amendment will be applicable November 23, 2006, and will allow airline pilots in multicrew operations to continue flying until 65 years of age, provided that no other pilot has attained 60 years of age and that all pilots over 60 years of age undergo a medical assessment every 6 months. The

standard does not require States to allow any pilots to fly past 60 years of age; it merely permits States to do so.

Currently there is legislation pending in Congress. It is important to note that previous attempts to change the Age 60 Rule were rejected by the full Senate in October 2001, and June 2003. The House of Representatives has never had a floor vote on the issue. The House committee of jurisdiction on the current bill did not hold a hearing, mark-up, or vote on the merits of H.R. 65. The failure of the House and Senate to pass stand-alone bills with floor votes indicates there is not widespread support in Congress to change the Age 60 Rule.

The FAA Should Not Adopt the New ICAO Age Standard

The Do Not Adopt the ICAO Standard Working Group recommends that the FAA should not adopt the new ICAO standard's maximum pilot age of 65 years of age. The standard does not adequately address safety issues involved in extending pilot operating age and does not provide an equivalent level of safety to the FAA's current regulatory standards. No compelling safety argument in favor of increasing the maximum age limit has been advanced by its proponents.

It is the working group's view that the new ICAO standard was adopted through an inadequate process. There was no structured, detailed opportunity to solicit information regarding experiences or problems associated with pilots flying beyond 60 years of age. There was no safety risk analysis of the effect of a change to the standards, only a cursory review of studies done by other organizations was conducted. The FCLTP was unable to perform such an analysis because of a lack of both appropriate information and expertise. This new standard bears no evidence of rigorous examination or appropriateness. It amounts to rewarding those States that are not in compliance with the current ICAO age standard by adopting a lesser rule those States are willing to meet. This is truly a worst-case example of regulating to the lowest common denominator. The FCLTP recognized that the new standard simply resulted in the replacement of one age limit with another age limit.

Since the Age 60 Rule was enacted in 1960, it has proven to provide a safety margin for aging pilots in air carrier operations. ALPA initially opposed the adoption of this regulation when it was established in 1960 and continued to work to change the regulation until 1980, when ALPA reversed its position and began supporting the regulation. This reversal was due in part to the fact that the FAA defended the regulation as a safety-based rule. Being unable to prove the rule unsafe, ALPA changed its position and for the past 26 years has supported this regulation. In today's world, a safety risk assessment must be conducted as part of any regulatory proposal to demonstrate an equivalent or better level of safety. This should include a thorough safety study of operations involving pilots who fly past 60 years of age. See Appendix 6 for a list of foreign airlines flying with pilots beyond 60 years of age. There has not been such an equivalence demonstrated, and ICAO did not take the time or expend the resources to do this.

A regulatory change also would require an economic impact evaluation to determine the economic cost of a regulatory change. This would necessitate a study of the impact not only on the operators but the pilot community as well. A recent study by airline economist Darryl Jenkins concluded that a change to the Age 60 Rule would save the PBGC (that is, the Federal Government) almost \$1 billion annually. The Do Not Adopt the ICAO Standard Working Group refutes that assertion via the report in Appendix 7, “Fatal Flaws Invalidate Conclusions by Jenkins’ Report on the Age 60 rule,” authored by Drew Keith, Allied Pilots Association. The Do Not Adopt the ICAO Standard Working Group also provides in Appendix 8, a chart that handily refutes the notion that extending the retirement age will address a supposed, future pilot shortage. A pilot shortage was also predicted in the 1990s, but the number of furloughed pilots actually increased during that time of airline growth.

The current U.S. Federal Aviation Regulations will be in compliance with the ICAO standard effective November 23, 2006. ICAO’s new standard does not establish a minimum age limit for pilots, only a maximum. The ICAO standard does not require States to permit pilots to fly beyond 60 years of age; it merely permits States to allow this practice.

The FAA is required to ensure that no degradation of safety occurs with any alteration to its regulations. The Do Not Adopt the ICAO Standard Working group believes that because of the FAA’s stated desire to make the safety management system process the cornerstone of all safety endeavors, a safety risk assessment should be conducted by the agency before making any change to the current rule.

Following is a selection of text from the ICAO Safety Management Manual, Doc 9859 AN/460, first edition 2006, which helps explain the importance of the Safety Management System:

“Safety is the state in which the risk of harm to persons or of property damage is reduced to, and maintained at or below, an acceptable level through a continuing process of hazard identification and risk management.”

“2.1.1 The responsibility for safety and effective safety management is shared among a wide spectrum of organizations and institutions, including international organizations, State regulatory authorities for civil aviation, owners and operators . . . industry and professional associations Generally, these responsibilities fall into the following areas:

- a) defining policies and standards affecting safety
- b) allocating resources to sustain risk management activities
- c) identifying and evaluating safety hazards
- d) taking action to eliminate hazards or reduce the associated level of risk to what has been decided as being an acceptable level of risk.”

FAA Administrator Blakey made the following remarks in early November 2006 before the International Safety Forum in Washington, D.C.: “It comes down to managing risk. You have to know the hazards — the consequences of what can hurt us. Then you must assess the likelihood that it will happen — the risk. And then, of course, the severity. The purpose of a safety management system is to provide a systematic way to eliminate, mitigate, or manage risk and to provide assurance that those actions are effective.”

Safety risk analysis is aimed at eliminating hazards or reducing them to acceptable levels. The safety risk analysis is a “closed loop, real world” process rather than an “ivory tower” process, which relies on the experience and judgment of subject matter experts. Five fundamental steps in the safety risk analysis process are to (1) plan and organize the safety risk analysis team; (2) perform hazard identification and analysis; (3) conduct the risk assessment; (4) document team decisions in a report; and (5) validate and monitor the actions taken as a result of the risk assessment.

The Do Not Adopt the ICAO Standard Working Group’s view is that the FAA has determined and long held that the establishment of a maximum pilot flying age is a necessary safety measure. If that safety measure were to be altered, it is essential that an equivalent level of safety be maintained. A safety risk analysis should be performed with the assistance of the airline, pilot, and aeromedical communities to aid the FAA in determining how to implement such a change if the agency decides to adopt the ICAO standard. **If, as the Adopt ICAO Standard Working Group alleges, there is no safety component to the Age 60 Rule, the safety risk analysis process will produce strong evidence to support that position.**

Each State within ICAO is sovereign and has the ability to enact its own regulations that are applicable to its unique operations and operating environment. The United States has filed a number of differences with ICAO because ICAO standards are not appropriate or are in conflict with 14 CFR. That is the prerogative of the United States and a duty and responsibility of the FAA, which is charged with maintaining the highest possible safety standards. When ICAO standards do not meet FAA safety requirements — which this new standard does not — or do not demonstrate at least an equivalent level of safety, they must be rejected. In the interests of safety, the U.S. traveling public expects and demands such performance on the part of the FAA. Likewise, it would be inappropriate to make a change to this important rule based solely on political, economic, or legal factors. The United States has one of the best safety records; one that is admired throughout the world. It must maintain the highest standards of safety that the world has come to expect.

Conclusions

The FAA should not adopt the new ICAO standard’s maximum pilot age of 65 years of age because—

- **ICAO did not conduct a safety risk analysis to evaluate the impact of the change in the standard on safety.** Before initiating a rulemaking that could change the Age 60 Rule, the FAA should conduct a safety risk assessment with the participation of airline, pilot, and aeromedical representatives.

- The new age 65 standard arbitrarily replaces one age limit with another.
- There is no criterion-based process for determining pilot fitness to fly past 60 years of age.
- No mitigations have been offered that would provide for an equivalent level of safety if the ICAO standard were adopted over the existing Age 60 Rule.
- Adoption by the FAA of the new ICAO standard would reduce the current U.S. airline safety standard.
- The FAA will be in compliance with the new ICAO standard on November 23, 2006, without changing the existing regulations because the standard does not preclude the United States (or any ICAO State) from setting a lower maximum age limit.

The Do Not Adopt the ICAO Standard Working Group position is endorsed by the following ARC members:

- Jim Kaiser, American Airlines, Inc.
- Keith Champion, Allied Pilots Association (American)
- John Lux, ALPA (Federal Express)
- Terry McVenes, ALPA International
- Bill Dressler, ALPA (Express Jet)
- Konstantinos “Dino” Atsalis, ALPA (Delta)

PUBLIC COMMENTS TO DOCKET NO. FAA–2006–26139

In an attempt to ensure the ARC adequately addressed the issues, it requested the FAA publish a notice and accept public comments on whether the FAA should adopt the ICAO standard and, if so, what issues it would have to address. The notice requesting comments was published in the Federal Register on October 25, 2006 (71 FR 62399), and comments were accepted until November 15, 2006; however, the ARC continued to review comments after the close of the comment period. The ARC notes that anyone can provide a comment to the docket and that during its review of the comments it did not independently verify the comments it received; each comment was taken at its face value. However, the ARC ignored duplicate comments provided by the same individual, comments submitted to the wrong docket, and comments with no data.

As of November 28, 2006, the ARC received a total of 5,719 submissions to the docket. Of those submissions, 126 are duplicates of other submissions,³ 16 were submitted to the wrong docket, and 2 contained no data. Therefore, 5,575 unique commenters provided

³ There are numerous comments to the docket submitted by the same commenter. Some of these comments address unique issues and therefore are not considered duplicates. Accordingly, it could not be assumed that each comment submitted by the same commenter is a duplicate of another submission by that commenter. Because of the large number of commenters and the short timeframe, a thorough comparison of all commenter submissions was not possible. It is possible that there are more duplicate comments.

17,906 comments on whether the FAA should adopt the ICAO standard.⁴ The following table provides the number of unique commenters by type of commenter.

Type of Commenter ⁵	Number of Unique Commenters
Individual (not necessarily pilot)	3,821
Pilot	1,589
Pilot (Retired)	136
Pilot Union or Pilot Association	11
Air Carrier	9
Other	6
Air Carrier Association	3
Total number of unique commenters	5,575

The following table provides the number of commenters and whether they support or oppose the adoption of the ICAO standard or offered a comment with no opinion.

Commenter's General Position	Number of Unique Commenters
Supports Adoption of the ICAO standard	4,037
Opposes Adoption of the ICAO standard	1,506
Provided comment with no opinion	32

The following table provides a breakdown of the number of comments received by issue in descending order from most to least number of comments.

Issue	Number of Comments
Supports Adoption of ICAO Standard - General	4,046
Opposes Adoption of ICAO Standard - General	1,527
Supports Adoption - Current rule treats foreign and U.S. pilots disparately	1,322

⁴ Each issue that an individual commenter addresses is captured as a comment. Accordingly, a single commenter could have numerous comments.

⁵ A commenter was only categorized as a pilot if he or she so indicated.

Issue	Number of Comments
Supports Adoption - Current rule constitutes age discrimination	1,093
Supports Adoption - Pilots with more experience offer a safety benefit	868
Opposes Adoption - Safety would be negatively impacted	834
Supports Adoption - Examinations and proficiency checks offer adequate safeguards against degradation of abilities	669
Supports Adoption - Current rule is unfair	614
Supports Adoption - Medical/scientific data does not justify restriction based on age alone	570
Opposes Adoption - Degradation of cognitive skills/performance	553
Supports Adoption - Current rule is outdated/archaic	553
Supports Adoption - Life expectancy and health generally, and for pilots specifically, has increased since adoption of the existing standards	551
Supports Adoption - Pilot compensation and retirement benefits have been devalued	442
Supports Adoption - Current rule is arbitrary	401
Supports Adoption - Current rule offers no safety benefit/is not safety-based	386
Supports Adoption - Initial promulgation was and opposition to change is political/economic, not safety-based	373
Supports Adoption - Age 65 standard will align with retirement/pension benefits ages	354
Opposes Adoption - Safety concerns should take precedence over economic issues	338
Supports Adoption - Adoption of ICAO standard would save the Government money or bring in revenues	286
Supports Adoption - Allowing foreign pilots over 60 conflicts with the position that the Age 60 Rule is safety-based	236
Supports Adoption - Operations involving pilots over age 60 in other ICAO States or non-airline operations demonstrate safety	192
Opposes Adoption - Older pilots are more subject to the effects of fatigue on long/overnight trips	181
Opposes Adoption - Increasing the retirement age will economically harm junior	154

Issue	Number of Comments
pilots	
Opposes Adoption - Requirement that second pilot be under age 60 demonstrates lack of safety	136
Opposes Adoption - Lack of significant statistical data demonstrating safety	134
Opposes Adoption - Lack of study into effects of adoption	120
Opposes Adoption - No criterion-based process for determining fitness exists	113
Medical standards should be raised if ICAO standard adopted	101
Supports removal of age limit altogether	98
Opposes Adoption - Replaces one arbitrary limit with another	93
Opposes Adoption - The United States is not facing a pilot shortage	83
Opposes Adoption - Increased employment expenses (salary, sick leave, disability)	77
Supports Adoption - No air carrier accident has been attributed to pilot age	67
Supports Adoption - Technological improvements have increased safety and lowered human resource demands	51
Supports Adoption - Provides additional earning capability	39
Other Comment With No Opinion	33
Supports Adoption - In-flight incapacitation does not represent a significant safety risk	31
Opposes Adoption - Lack of medical opinion supporting adoption	27
Opposes Adoption - Will require modification of crew scheduling software/procedures	24
Opposes Adoption - Reopening of contracts	23
Opposes Adoption - Reemployment issues	21
Supports Adoption - Improved training methods have increased safety and lowered human resource demands	17
Opposes Adoption - Impacts seniority of first officers over age 60	15
Adequate time to implement must be provided if ICAO standard adopted	12

Issue	Number of Comments
Frequency of medical examination should be increased if ICAO standard adopted	12
Opposes requiring second crewmember below age 60	12
Opposes Adoption - Impacts other regulations	9
Supports Adoption - The United States is facing a pilot shortage	5

The ARC reviewed the summary of comments and used the input during its deliberations. See Appendix 9 for a summary of the comments broken down by commenter affiliation and issue commented on. Appendix 9 also includes a table of the U.S. Senators and business and associations that commented on the issue and a copy of their comments provided to the docket.

STATEMENT OF THE AEROSPACE MEDICAL ASSOCIATION

The Aerospace Medical Association (AsMA) is the largest, most representative professional organization in the fields of aviation, space, and environmental medicine, with more than 3,200 members from over 70 countries. The ARC received the following information from the AsMA.

The AsMA recognizes there are many factors to be considered in determining any age restriction for air transport pilots (ATP) but firmly believes the policy should be based on operational rather than medical considerations because aging is not an illness. Although there are normal physiological changes that come with aging, those changes do not necessarily degrade a pilot's ability to function in the cockpit.

A number of studies regarding aging pilots have been done over the past 25 years. However, because there have been no ATPs over 60 years of age, it would be extremely tenuous to extrapolate these findings from younger pilots to older pilots. (The data was taken from ATPs below 60 years of age and from pilots over 60 years of age who fly general aviation or commuter/air taxi operations.)

A number of nations do allow ATPs over 60 years of age to continue flying as ATPs (see Appendix 6 to this report), but there is no comprehensive data on how they have fared. There is one study by Japan Air Lines (JAL) published several years ago in which it was reported that there were no accidents or incidents due to illness or aging among this cohort of pilots more than 60 years of age. Based on informal discussions with medical directors from overseas airlines, AsMA believes other airlines have had the same experience as has been reported by JAL.

One could argue that older pilots are at greater risk because of an increased incidence of heart disease or stroke. However, for younger pilots there are increased risks for

incapacitating illnesses such as bleeding peptic ulcer disease or migraine headaches. Thus, to assume all the risks reside in older pilots would be misleading.

Previous studies have demonstrated statistically that ATPs (and military pilots) fare much better than the general population in practically all disease categories.

There has never been a U.S. air carrier ATP accident assigned to medical causes. Certainly incidents have occurred in-flight that did threaten flying safety, but these are very rare events, and when they do occur, the illness is almost always not incapacitating.

Given this information and the fact that there are two pilots in the cockpit, it would seem reasonable to assume the risk of a significant medical event during a critical phase of flight would imperceptibly threaten flying safety. The risk is vanishingly small.

AsMA believes that age should not be the sole criterion for disqualifying an ATP from cockpit duty.

In addition, the current FAA medical standards and its current policy of a medical examination for ATPs every 6 months is reasonable and should be continued if the FAA adopts the ICAO standard. Although some would argue that more tests should be added for these older pilots, Dr. Russell Rayman, Executive Director of AsMA, does not believe this would in any way enhance flying safety. Most, if not all, screening tests would not reveal information indicating imminent, sudden incapacitation. Therefore, adding more tests would not provide useful information and could in fact be harmful to the pilot because of the problem of false-positive results.

IMPLEMENTATION ISSUES OF ADOPTING THE ICAO STANDARD

If the FAA were to adopt the ICAO standard, there would be numerous implications for the FAA and industry. While industry understands the FAA does not get involved in its internal operations and contract negotiations, these are issues that would impact implementing the new ICAO age standard in the United States and should be considered by the FAA in determining whether to adopt the standard.

The ARC notes that some air carriers do not have concerns over implementation issues, while others have significant concerns.

FAA ACTIONS

The FAA would have to initiate a rulemaking activity to change the current regulations if it decides to adopt the ICAO standard. The FAA also would have to review the impact of the new regulation on other regulations.

IMPLEMENTATION TIMING

The FAA should consider providing all operators a range of sufficient time to develop policies and procedures, revise crew scheduling software, and negotiate changes to collective bargaining agreements to ensure compliance with the new standard. Some operators will be able to implement a new rule immediately while others with more complex operations will require additional time. Therefore, the rule should enable those air carriers that are able to implement the change quickly the ability to do so but also ensure that air carriers with more complex issues are given adequate time to implement the changes.

Safety

All ARC members recognize that the FAA's primary mission is safety and that the industry remains committed to maintaining the highest level of safety. Members of the ARC have widely varying views on the safety impact of the change. Some ARC members have maintained that safety may be compromised by having older pilots in the cockpit, while others maintain that by keeping the most experienced pilots in the cockpit, safety is enhanced. The detailed views of safety implications are contained in the respective position papers. (See Appendixes 2 and 3 to this report.)

Medical

During ARC meetings, the Executive Director of AsMA, Dr. Russell Rayman, stated that he believes that existing medical standards and the FAA's current policy of medical examination for ATPs every 6 months is reasonable and should be continued.

Section 121.437(b) allows pilots other than the pilot-in-command to fly with a commercial pilot certificate. First officers are authorized to fly domestically with a second-class airman medical certificate and an annual exam. The ICAO change that took effect on November 23, 2006, requires pilots over age 60 flying internationally to have an ICAO class I medical assessment or the equivalent every 6 months. Therefore, pilots over age 60 flying internationally with an FAA second-class airman medical certificate will need to have their examination renewed every 6 months to be in compliance with the ICAO requirement, but they may still fly domestically with an annual exam. It should be noted that the FAA second-class airman medical certificate is not considered equivalent to an ICAO class I medical assessment in some countries because the FAA second-class airman medical certificate examination does not include an electrocardiogram. Airlines that allow their first officers to fly with a commercial pilot certificate will need to check with the countries into which they fly to determine if the first officer's FAA second-class airman medical certificate is acceptable. The FAA does not intend to change the periodicity requirements for its second-class airman medical certificate examination.

ECONOMIC AND OPERATIONAL

The FAA should consider the impact on an air carrier's operations, its pilot employee group, and the industry as a whole. While contractual items are of concern to some airlines and pilot groups, it is important to understand that not all airlines/pilot groups are equally affected. Accordingly, many contractual/operational issues should be addressed under the provisions of the Railway Labor Act as is the case for all such contractual issues. No airlines or pilot groups should be limited by other airline or pilot groups on issues specifically related to contractual terms.

For some airlines, the following have been identified as potential contractual issues:

- Benefits
- Disability
- Insurance
- Pay
- Retirement
- Scheduling
- Seniority
- Staffing

Economic

Identifying the following economic impacts does not replace the rigorous economic impact analysis the FAA has to complete during the rulemaking process. Each airline will have to identify its costs.

Impact on Retirement Plans

There are two categories of retirement plans: defined benefit plans and defined contribution plans. In defined benefit plans, the plan document defines the amount of benefit a pilot will receive at retirement. This amount is usually defined as an annuity payable for life beginning at normal retirement age, and pilots usually can select from various payment plans. Defined contribution plans define the amount an employer will contribute to the plan, which is often a percentage of the pilot's pay, and individual accounts are maintained for each pilot. The amount payable at retirement is dependant on the account balance and usually is payable in a lump sum.

A pilot's normal retirement age is not linked to the Age 60 Rule but is defined under a pilot group's collective bargaining agreement. If the FAA were to adopt the new ICAO standard, the normal retirement age at these airlines would not automatically change but would have to be renegotiated with each pilot group.

The full cost impact has not been determined. The change would affect the airline as well as the pilot group. The impact would vary depending on the structure of the retirement and benefit plans. The parties to the collective bargaining agreement would have to determine their impact.

An individual pilot could benefit greatly under a defined contribution plan. Those individuals holding defined contribution plans would benefit substantially by having more working years in their careers through contributions and compounding of assets. (See Appendixes 10 and 11 to this report for more information on defined benefit plans and defined contribution plans provided by the Do Not Adopt ICAO Standard Working Group and the Adopt ICAO Standard Working Group, respectively.)

Salary and Benefit Costs

If the new ICAO standard were adopted, some air carriers could be faced with pilots having higher aggregate seniority and therefore higher average wage rates. This would increase the direct operating costs of the air carrier as well as its pension plan expenses. Older airlines with high-longevity employees would be at a competitive disadvantage to younger airlines with newly-hired employees.

The new standard also could require air carriers to have higher reserve pilot manning requirements to resolve 60/65 split conflicts that could occur and cover the increased number of sick days used as a pilot ages, which could result in higher costs to the air carrier.

There could be increased costs from extending disability benefits beyond 60 years of age, depending on the circumstances between airlines and pilot groups.

It has been industry experience with pilots who are over 60 years of age who continue as flight engineers that their use of sick leave increases dramatically. The ARC acknowledges there could be reasons other than medical that could drive that increased usage.

Training Costs

Implementing the new ICAO standard would have a mixed impact on an air carrier's training program. In some situations, adopting the ICAO standard could stimulate seat movement of some pilots that would increase training costs. Alternatively, there could be a reduction in training costs because of reduced pilot movement, including movement from one fleet type to the next or from first officer to captain.

The new ICAO standard also could impact initial operating experience flights and line checks because a check airman over 60 years of age may not be able to give an initial operating experience flight or line check to a pilot over 60 years of age. This could limit the flexibility of training assignments for some airlines.

Additional Income Earning Opportunity for Pilots

The change would provide an additional 5 years of earning potential for pilots.

Operational

Planning, Scheduling, and Bidding Software

All air carriers would have to modify their planning, scheduling, and bidding software. The new ICAO standard would impact an air carrier's scheduling process because pilots over 60 years of age cannot be assigned or scheduled together. The difficulty of modifying the software varies significantly between air carriers. Some air carriers may have to invest in new, potentially costly software.

Pilot Staffing

At some airlines, the new ICAO standard could limit an air carrier's ability to reassign a pilot over 60 years of age, depending on the airline's pilot demographics. It also could require an air carrier to have more reserve pilots, which would increase its costs.

For some air carriers, under the new ICAO standard, once a pilot reaches 60 years of age it is possible that retirements could become unpredictable. An air carrier might expect more short notice retirements once a pilot reaches 62 years of age because he or she will be able to receive Social Security Administration benefits.

If the FAA, through its analysis, determines that 65 years of age is safe, some of the ARC members believe the FAA should consider the option of two pilots over the age of 60 being allowed to operate on domestic routes, but not international routes. This could mitigate the over-under issues domestically where ICAO does not apply. However, other members of the ARC do not support this alternative solution as it could further add to the implementation concerns the group has already expressed.

Air Carriers With Second Officers

Some air carriers currently employ pilots over 60 years of age as second officers. If the FAA were to adopt the ICAO standard, these air carriers would be faced with the following options:

- *Retrain all second officers over 60 years of age.* Retraining and allowing these previously affected age 60 second officers to return/reclaim captain and/or first officer positions could disrupt operations and substantively increase training obligations at these air carriers. Each training cycle is expected to take an average of 75 days, would tie up that carrier's training facilities, and reduce or delay training for other pilots. Allowing over age 60 second officers to subsequently train for captain or first officer could also produce over manning in certain crew positions and under manning in others. This option can be complex, expensive, and operationally disruptive.
- *Pay the over age 60 second officers pass-over pay.* This option would be operationally viable but expensive for affected air carriers. Paying second officers as captains or first officers would create a compensation windfall for the second officers as air carriers choose to avoid the additional costs and implications of retraining them by just paying them at the higher compensation pay rate.

Any change to the Age 60 Rule should apply to captains/first officers continuing as captains/first officers. Second officers who were transitioned to second officers as a result of the previous application of the Age 60 Rule may be retrained and phased into their former positions if agreed to per collective bargaining agreements or seniority. Prospective application of the rule as it pertains to second officers transitioned to second officers because of a previous application of the Age 60 Rule is another alternative that could mitigate costs and risks.

Augmented Flight Deck Crews

The FAA and industry need a clear interpretation of the ICAO standard as it applies to augmented flight deck crews. Is the standard intended to say that only one member of the flightcrew can be over 60 years of age regardless of the phase of flight? If so, this will be a significant issue on augmented flights greater than 8 hours flight time. If the standard intends that only one pilot on an augmented crew can be over 60 years of age, this will further impact flightcrew manning on augmented flights with four or more pilots; this would result in even higher manning levels and increased costs to the air carriers. Even if the standard allows two pilots over 60 years of age on an augmented crew, as pilots over 60 years of age move into the captain and first officer positions on augmented crews, the 60/65 split could result in a reduction of landing experience for first officers over 60 years of age paired with captains over 60 years of age.

REINSTATEMENT

Members of the ARC agree that for reinstatement, the rule should be prospective. If this is outside the scope of the Administrator authority, Federal legislation may be required to protect companies and unions from lawsuits that may arise challenging the prospective nature of the change, such as reinstatement of employment, seniority, and/or crew position.

If reinstatement rights for pilots already retired were included, it would have a tremendous impact on air carriers. Any element of retroactivity would add more complexity to the issue and make it almost impossible for any agreement on implementation issues.

AGE DISCRIMINATION

The ARC members had divergent views on the issue of age discrimination. Some ARC members believe—

- The establishment of any age (even age 65) that forces an employee to terminate employment runs contrary to the fundamental protections offered by the Age Discrimination in Employment Act of 1967 (ADEA)⁶. To date, the courts have deferred to the FAA's Age 60 Rule as part of the FAA's rulemaking and enforcement authority in the area of commercial aviation;
- Depending on the reasons articulated by the FAA if they changed the Age 60 Rule to age 65, there may be problems/issues created under ADEA that have not been previously realized; and
- Notwithstanding the above, there are current age discrimination issues for air carriers that employ pilots over 60 years of age as second officers. These issues and concerns are addressed more fully in the implementation section of this report.

Other ARC members believe—

- Use of a maximum age, just like a minimum age, is a safe and proven methodology for ensuring that only healthy and competent individuals are permitted to pilot aircraft;
- The courts have consistently abstained from taking any action that would undermine the FAA's Age 60 Rule. Nevertheless, changing the age limit to a

⁶ The EEOC states in its comment to the docket (provided in Appendix 4 to the Report) that the Age 60 Rule runs counter to the narrow scope of the BFOQ defense and the fact-specific, case-by-case analysis it requires. The EEOC "supports raising the age limit for part 121 pilots to age 65 for a specific time period as a reasonable interim step in the process of eventually eliminating age as a determinative factor in the employment of airline commercial pilots."

year greater than 60 will likely do little, if anything, to abate the ongoing court challenges to the FAA's maximum pilot age rule; and

- Elimination of any maximum pilot age, which is the expressed goal of the age discrimination opponents, will almost assuredly result in more stringent health and cognitive abilities testing, which will adversely impact pilots of all ages, not just those approaching retirement age.

CONCLUSION

The Age 60 Rule clearly remains a contentious issue for the commercial aviation industry. It has broad reaching implications for individual pilots and the companies that employ them.

RECOMMENDATION

While ARC members collaborated to identify many issues associated with adoption of the new ICAO standard, polarized views limited the ARC's ability to reach consensus on recommendations.

The ARC agreed to the following recommendation for consideration:

Reinstatement: Any change to the Age 60 Rule should be prospective. If preventing reinstatement is outside the scope of the Administrator's authority, Federal legislation may be required to protect companies and unions from lawsuits that may arise challenging the prospective nature of the change, such as reinstatement of employment, seniority, and/or crew position.



Age 60
Aviation Rulemaking Committee

**REPORT TO THE FEDERAL AVIATION
ADMINISTRATION**

APPENDIXES ONLY

November 29, 2006

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APPENDIX 2: Age 60 Aviation Rulemaking Committee Adopt the ICAO Standard Working Group Position Paper

APPENDIX 3: Age 60 Aviation Rulemaking Committee Do Not Adopt the ICAO Standard Working Group Position Paper

APPENDIX 4: U.S. Equal Employment Opportunity Commission Comment To The Docket (Comment No. FAA–2006–26139–5461), Provided by the Adopt the ICAO Standard Working Group

APPENDIX 5: A Cost Benefit Analysis of S. 65 and Reforming the Age 60 Rule on the Federal Government, by Darryl Jenkins, dated July 24, 2006, provided to members of the U.S. Congress and other interested parties, Provided by the Adopt ICAO Standard Working Group

APPENDIX 6: IFALPA Letter Dated October 12, 2006, International Carrier Pilots Flying Beyond Age 60, Provided by the Do Not Adopt ICAO Standard Working Group

APPENDIX 7: Fatal Flaws Invalidate Conclusions of Jenkins Report on the Age 60 Rule, Rebuttal and Analytical Review, by Drew Keith, Director of Industry Analysis, Allied Pilots Association, September 2006, Provided by the Do Not Adopt ICAO Standard Working Group

APPENDIX 8: ALPA Chart on Furloughed Pilots, Provided by the Do Not Adopt the ICAO Standard Working Group

APPENDIX 9: Federal Aviation Administration Summary Of Comments To Docket No. FAA–2006–26139, Age 60 Aviation Rulemaking Committee, In Affiliation/Issue Order and Comments to the Docket Received from U.S. Senators and Businesses and Associations

APPENDIX 10: In Focus, The FAA Age 60 Rule, Provided by the Do Not Adopt the ICAO Standard Working Group

APPENDIX 11: Defined Contribution Plans, Provided by the Adopt the ICAO Standard Working Group

APPENDIX 12: Comments to the FAA Aviation Rulemaking Committee In Support of Replacing the FAA Age 60 Rule With the New ICAO Upper Age Standard By Dr. Claus Curdt-Christiansen, Provided by the Adopt the ICAO Standard Working Group

APPENDIX 13: Letter of Understanding No. 2 Between the Air Line Pilots in Service of Air Canada Regional, Inc., as Represented by the Air Line Pilots Association, International and Air Canada Regional, Inc., Regarding Age 60 Captain, Provided by the Adopt the ICAO Standard Working Group

APPENDIX 14: Increase in Mandatory Retirement Age: An Impact on Pilot's Retirement and Insurance Benefits, Provided by the Do Not Adopt the ICAO Standard Working Group

APPENDIX 15: Allied Pilots Association Opposes Changes to Age 60 Rule, Provided by the Do Not Adopt the ICAO Standard Working Group

APPENDIX 16: Selected Sections of Air Transat Collective Agreement November 1, 2005, to April 30, 2010, Provided by the Adopt ICAO Standard Working Group

APPENDIX 17: Aerospace Medical Association (AsMA) Aviation Rulemaking Committee/Age 60 Paper, Submitted to the ARC by Dr. Russell Rayman, Executive Director AsMA, Provided by the Adopt ICAO Standard Working Group

APPENDIX 18: States That Will Retain Age 60, Provided by the Adopt ICAO Standard Working Group

APPENDIX 19: Airline Pilots Against Age Discrimination Letter to the Administrator dated November 23, 2006, Provided by the Adopt ICAO Standard Working Group

APPENDIX 20: Southwest Airlines Pilots' Association and Southwest Airlines Co. Final Committee Report November 3, 2006, Provided by the Adopt ICAO Standard Working Group

APPENDIX 21: Pilots Could Fly on Until they Reach 70 by David Learmount on www.flightglobal.com, Provided by the Adopt ICAO Standard Working Group

APPENDIX 22: Southwest Airlines Co. Retiring Pilot Costs, Provided by Adopt ICAO Standard Working Group

APPENDIX 23: Airline Professional Association Teamsters Union Local 1224 Letter to the ARC dated October 18, 2006, Provided by the Do Not Adopt the ICAO Standard Working Group

APPENDIX 24: International Brotherhood of Teamsters Letter to the ARC dated November 9, 2006, Provided by the Do Not Adopt the ICAO Standard Working Group

APPENDIX 25: U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Aviation, Statement for the Committee Hearing Record, Submitted by Airline Division, International Brotherhood of Teamsters,

on the Federal Aviation Administration's Age 60 Rule, dated July 19, 2005,
Provided by the Adopt ICAO Standard Working Group

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APPENDIX 1: Age 60 Aviation Rulemaking Committee Members

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Name	Affiliation/Title
Jim May <i>ARC Co-chair</i>	ATA, President and CEO
Duane Woerth <i>ARC Co-chair</i>	ALPA, President
Fred Tilton, M.D. <i>Designated Federal Official</i>	FAA, Federal Air Surgeon
Konstantinos “Dino” Atsalis	ALPA (Delta), Chairman, Delta MEC Legislative Affairs Committee
Michael Bauer	Air Wisconsin Airlines Corp., Manager of Pilot Training
Leslie Carr	Southwest Airlines, Regulatory Attorney
Paul Cassel	FedEx Express, Vice President — Flight Operations
Keith Champion	APA (American), Chairman, Legislative Affairs Committee
Bill Dressler	ALPA
Joseph “Ike” Eichelkraut	SWAPA (Southwest), President, SWAPA
Paul Emens	Pilots Against Age Discrimination, Founder/Government Liaison
Jim Kaiser	American Airlines, Flight Operations Quality Control
John Lux	ALPA (FedEx), FedEx MEC Huper Chair
Michael D. New, Ph.D	Delta Air Lines, Director, Flight Safety
Russell B. Rayman, M.D.	Aerospace Medical Association, Executive Director
Pete Russo	JetBlue, Director Government and Academic Liaison
Terry McVenes	ALPA, Executive Air Safety Chairman

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APPENDIX 2:
Age 60 Aviation Rulemaking Committee
Adopt the ICAO Standard Working Group Position Paper

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Position: The FAA Age 60 Rule is a dated operational standard, not supported by medical evidence.

The Age 60 Rule should be updated immediately to reflect the more modern upper age standard of 65 that will be in place throughout most of the world by November, 23 2006.

This is a working paper prepared by a sub-group (Pro-Change Working Group) appointed by the FAA Age 60 Aviation Rulemaking Committee (ARC) charged with presenting a favorable argument for changing the Age 60 Rule. The paper will provide both a rationale and substantial supporting documentation for the Administrator to adopt International Civil Aviation Organization (ICAO) Amendment 167 to increase the upper age limit for pilots up to age 65 provided another pilot is under age 60. The group considers this paper to be a “living document;” it will be updated with additional information and documentation as the group prepares for its formal presentation to the ARC on October 27, 2006.

Introduction

The fall of 2006 finds the Federal Aviation Administration (FAA) at a pivotal point in the 47-year history of the Age 60 Rule. ICAO will introduce a new upper age limit of 65 for commercial airline pilots on November, 23, 2006. By international agreement, the FAA must allow foreign pilots in command to work and fly in U.S. Airspace after November. If the FAA follows long-standing policy, it would adopt the new 65 standard for foreign carrier pilots but not for our own pilots working for carriers flying the American flag. At the same time, pending legislation in the Senate Transportation Appropriations Bill would instruct the FAA to adopt the new international standard of 65 for all pilots, including Americans. We assert in this paper that the Senate proposal is the policy that the FAA should adopt.

The FAA Age 60 Rule is an arbitrary policy whose time has passed. Section 121.383(c) of Title 14 of the United States Code (the Age 60 Rule) was adopted in 1959. The Age 60 Rule prohibits any air carrier from using the services of any person as a pilot, and prohibits any person from serving as a pilot, on an airplane engaged in operations under Part 121 if that person has reached his or her 60th birthday. Pilots are flying safer, more user-friendly aircraft in 2006. Training is better. Pilot performance and efficiency is higher. Life expectancy is more than ten years longer in 2006 than it was in 1959, and pilots as a group are among the healthiest Americans. If there was ever a rationale for this policy, it certainly is not justified in 2006. Today this policy amounts to simple age discrimination, the same as we and Air Line Pilots Association (ALPA) believed it did in 1959.

November 2006: A Turning Point

With the international community coalescing around the new ICAO Standard, the FAA should take the opportunity to modernize this archaic and arbitrary standard and replace it with a policy that more correctly fits the needs of our current aviation system. Further, we contend that the rule, although clearly an operational standard, is not a medical or safety standard and should not be positioned as such. Although the overall assertion of this group aligns with the assertion of

the Aerospace Medical Association (1) that there is no medical or scientific evidence to support any age-based standard, the new standard proposed by ICAO generally aligns with current retirement and pension ages and is thus a significant step forward. The new 65 standard will improve safety by allowing the airlines to keep our nation's most experienced pilots in the cockpit for an additional five years. It also correctly addresses the socio-economic, labor and political needs of our nation's airlines, pilots and the traveling public.

Background

From the very onset, the FAA Age 60 Rule was a product of powerful labor politics masked in a veil of safety. In the late 1950s, some major airlines began to unilaterally institute forced pilot retirement at age 60. In 1958-59, pilots filed grievances on the forced retirement policy against TWA, Western and American Airlines, all represented by the Air Line Pilots Association (ALPA), which correctly opposed age-based retirement at that time. In each case a neutral arbitrator decided in favor of the ALPA union over the airline.

American Airlines founder and CEO, C. R. Smith, refused to reinstate three pilots who had brought the grievance at the carrier, which provoked ALPA to call for a strike against American. A 21-day walkout ensued but Smith refused to reinstate the pilots.

Following the walkout, Smith wrote General Elwood "Pete" Quesada (2), the FAA's first administrator and a long-time friend, urging the FAA to declare age 60 as a federally-mandated retirement age for pilots. The FAA issued a Notice of Proposed Rulemaking on "Maximum Age Limitations for Pilots" on June 27, 1959. Unspecified "medical uncertainties" about pilot health after age 60 was the primary basis for the proposed rule. Written comments were accepted, but no public hearing was held. No medical data was ever presented for public or peer review. No study outlined the safety record of older pilots. On December 5, 1959 an FAA news release announced that a new rule setting a maximum age limit of 60 for commercial airline pilots would go into effect March 15, 1960.

In 1967, Congress passed the Age Discrimination in Employment Act (ADEA), making age-based discrimination illegal. The Secretary of Labor declared the Age 60 Rule to be a Bona Fide Occupational Qualifier (BFOQ), effectively shielding the rule from age discrimination suits.

The airline industry went through extraordinary growth in the 1960s and 1970s. Piloting was a glamorous and high-paying profession. Lucrative pensions became a salve to pilot complaints about forced retirements. In the wake of this unprecedented growth, with a surplus of pilots and with improved pensions, ALPA reversed its position and began to support the Age 60 Rule in 1979.

At the same time, Congress began to turn an eye toward the aging policy. In 1979, the House Aviation Subcommittee recommended overturning the Age 60 Rule, but intense lobbying by ALPA reduced the legislation to a study by the National Institute on Aging (NIA), Institute of Medicine (IOM). In 1981, the NIH Panel reported on IOM findings "...That on purely medical grounds, age 60 is not an age of special significance with respect to the occurrence of either acute events or subtle changes that may adversely affect pilot performance."

Since then, there have been many attempts to change the policy in Congress. Until recently, ALPA and its parent union AFL-CIO have successfully deflected any legislative change with substantial lobbying efforts.

Economics of the Aviation Industry

Since the terrorist attacks of September 11, 2001, the utility of and rationale for the Age 60 Rule has changed, like so many other parts of the aviation industry. A devastating downturn in the aviation economy led to layoffs, downsizing and consolidation. A chilling effect on many pilots has been the loss of defined benefit pension plans, the very plans which had initially and significantly eased the sting of forced retirement at 60. Part of the bargain between airlines and pilots was traditionally high salaries and generous pension benefits to compensate with a shorter than normal career. Through the recent years of bankruptcies and economic decline, pilots have taken significant hits on salaries, and defined benefit pension plans have largely gone the way of the dinosaur.

Impact on Airline Pensions

In 2006, Congress passed pension reforms that provided specific relief to airlines from their pension obligations. The legislation gave two airlines in bankruptcy, Delta and Northwest, 17 years to fulfill their pension obligations; American and Continental received 10 years to sort out their pension problems. Part of the bargain struck in this deal was an understanding that the airline industry would move to a defined contribution pension system. With this in mind, keeping the current Age 60 Rule in place is quite problematic for pilots and their unions. Retirement at 60 will also have a chilling effect on the ability of pilots to save for their retirement with 401(k) plans. With an additional five years of earning power and an additional five years to save for their retirement, pilots whose pension funds have essentially disappeared would be able to save substantial additional funds toward their retirement.

The pension bill, although generous to companies, still leaves many pilots short-changed. Because the Pensions Benefit Guarantee Corporation (PBGC) defines “normal” retirement age as 65, it has calculated the payout for pilot benefits over a longer expected lifespan. Simply put, retirement at 60 means a lower monthly payment for pilots. The Air Line Pilots Association (ALPA) proposed legislation, introduced by Sen. Daniel Akaka (D-HI), which would have directed the PBGC to redefine “normal” retirement age for commercial pilots at 60 years of age. The legislation was added to the Senate version of the pension bill, but was stripped from the final bill. Critics contended that it was too costly and some key members of the House-Senate Conference Committee were unhappy with the notion of “carving in” another distinct group for exception.

Updating the Age 60 Rule to 65 would help ease the pension burden without costing the federal government one dime. The additional five years of work would be a bridge to more complete Social Security, Medicare and pension benefits. It would allow pilots to save more for their retirement by giving them additional time to contribute to 401(k) accounts. Retirement at 65 would provide a true win-win, allowing pilots to save additional dollars while adding revenue to

federal coffers due to delayed PBGC payments and the addition of Social Security, Medicare and tax revenues.

Impact to the Federal Government

The savings to the federal government provided by updating the Age 60 Rule to meet the new ICAO standard of 65 would be significant. A recent economic study found the savings to the government would be in excess of \$900 million a year and approximately \$10 billion over a period of more than a decade. JetBlue Airways, Southwest Airlines Pilots' Association and Airline Pilots Against Age Discrimination (APAAD) requested the study from Darryl Jenkins, former director of the Aviation Institute at George Washington University, a noted airline economist and author.

The report examined two positive impacts that extending the Age 60 Rule will have on the federal government. Data on pending pilot retirements of approximately 8,808 pilots was collected from the Air Line Pilots Association (ALPA), Southwest Airlines and JetBlue Airways. Jenkins considers these retirement numbers "to be conservative; American Airlines, the largest domestic carrier, is not included in these figures; neither were non-ALPA pilots flying under Federal Aviation Regulations, Part 135 included due to lack of data." Jenkins' study concluded that, "While extending the mandatory retirement rule for commercial airline pilots from age 60 to age 65 would cost the federal government nothing, the benefits are extensive... This reform comes to us at a unique time as the world is moving toward a standard of 65 with the implementation of the new International Civil Aviation Organization standard. It would seem logical at this point to give American pilots the same ability to fly until age 65 and allow the federal government to reap the roughly \$10 billion in savings for other important aviation priorities."

Current Legislative History

In January 2005, Representative Jim Gibbons (R-NV) and Senator James Inhofe (R-OK), introduced legislation that would have tied pilot retirement age to the age at which beneficiaries receive their full Social Security benefits. The Senate Commerce Aviation Subcommittee in July 2005 held a hearing at which both Subcommittee Chairman Conrad Burns (R-MT) and full Commerce Committee Chairman Ted Stevens (R-AK) questioned then-Federal Air Surgeon Dr. Jon Jordan about why some foreign pilots were able to fly commercial airliners into U.S. Airspace over the age of 60 when American pilots were not able to do so. Dr. Jordan correctly pointed out that international obligations (referring to the Chicago Convention) required the U.S. to do so.

Unhappy with this response, the Commerce Committee began investigating the recent report made by ICAO which paved the way to their decision to recommend that states raise the upper age limit for pilots. On November 18, 2005, the Commerce Committee favorably approved a substitute amendment to S.65 offered by Chairmen Burns and Stevens, which required the FAA to implement the new ICAO standard within 30 days of ICAO's adoption of that new standard. The Amendment was approved by the committee on a voice vote. The amendment also called for a study of the safety record of older pilots and to report its findings back to Congress.

On July 18, 2006, the Senate Transportation, Treasury, Housing and Urban Development Appropriations Committee amended its version of the Department of Transportation's 2007 spending bill (TTHUD) to include essentially the same provision. The full Senate Appropriations Committee approved the legislation two days later. The House-passed TTHUD bill has no such provision, but the Senate language enjoys the full support of the House authorizers. It currently awaits final disposition in the lame duck session of Congress.

Some of the most influential leaders of House and Senate and important committee chairs support the S. 65 provision and its inclusion in the transportation appropriations bill. Key supporters of the legislation include the Chairs of both the House and Senate Transportation authorizing committees, the Senate Appropriations Chairman, and the Chairman of the Senate Transportation Appropriation committee. Additional cosponsors include the Chairmen of both Senate committees responsible for labor and pension issues, Finance and Health Education Labor and Pensions. The Chairman of the Environment and Public Works Committee co-authored the legislation with the Chairman of the Commerce Committee and the Chairman of the Aviation Subcommittee.

The Age 60 Rule is an Operational Regulation

As we have heard in the opening ARC discussions, the FAA considers the Age 60 Rule to be an operational (safety) regulation, not a medical one. We are puzzled at this contention, because the group fails to see how the Age 60 Rule can address operational safety concerns without a medical rationale. Despite the assertion that the regulation is operational, the FAA continues to defend the Age 60 Rule using exclusively medical arguments, a situation unique in the realm of the FAA regulations.

The Age 60 Rule is codified in the FAA's regulations as 14 CFR 121.383(c), residing in Part 121 where certification criteria and operating rules for major air carriers are set forth. This authority derives from Section 601 of the Federal Aviation Act of 1958 (FAAct), the FAA's enabling legislation. Section 601 empowers the Administrator to set minimum standards and establish operating rules and regulations to promote safety of flight in air commerce. By contrast, regulations governing pilot certification appear in 14 CFR 61 and regulations governing medical certification in CFR 67, both of which are enacted under Section 602 of the FAAct. Section 602 empowers the Administrator to issue airman certificates (pilot licenses and medical certificates) specifying the capacity in which holders thereof are authorized to serve. This difference - enactment under Section 601 versus Section 602 - is significant with regard to the legal implications of operational regulations versus pilot certification or medical certification regulations.

Any rule or order of the Administrator, except those enacted pursuant to Section 602, is reviewable only in the United States Courts of Appeals. In these appeals (including the Age 60 Rule, enacted under Section 601), the burden of proof rests with the petitioner/appellant. By contrast, petitioners/appellants challenging orders, rules, or regulations under Section 602 dealing with issuance or renewal of airman certificates, where medical opinions of pilot health and fitness are pertinent, appeal not to the courts but rather to the National Transportation Safety

Board (NTSB). In these appeals, unlike those in the courts, the burden of proof rests with the FAA rather than the petitioner/appellant; none of the FAA's prior rulings and/or findings are binding on the NTSB. In proposing, enacting, and later defending the Age 60 Rule, the FAA cited its authority under Section 601. By justifying the Age 60 Rule using Section 601 rather than Section 602, where medical considerations bearing on the capacity of pilots to serve would logically belong, the first FAA Administrator made certain that the Rule would be forever subject to deferential review in the circuit courts whose judgments would favor the FAA.

Court challenges have been tried. Not surprisingly, because the Age 60 Rule exists as an operational (safety) rule, not a medical standard, all have failed. If the rule is to be changed it must be done administratively or through legislation.

Medical and Flight Safety Literature Finds No Justification for the Age 60 Rule

The Aerospace Medical Association (*Aviation, Space, and Environmental Medicine*, Vol. 75, No. 8, August 2004) clearly states the position of the aerospace medical community: "On view of the existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to support restriction of pilot certification based on age alone."

The Aerospace Medical Association is the world's premier group of aviation medical professionals. Their journal (ASEM) enjoys worldwide recognition as a top-quality, peer-reviewed scientific journal. The Civil Aviation Safety Subcommittee of the Aviation Safety Committee of the Aerospace Medical Association undertook a comprehensive study of Age 60-related literature in order to recommend a position statement for their organization. This was an extremely important step for that organization, and one that was undertaken seriously and with extreme regard for non-partisan scholarship. The members of the subcommittee are some of the foremost aviation safety researchers of today, holding prestigious academic appointments and conducting rigorous aviation safety research. Their conclusion was not reached lightly. They examined all the pertinent medical literature bearing upon the Age 60 Rule and found the following:

"Overall, the scientific record has not resulted in a clear specification of the relationship between age, cognitive function, and pilot performance. Nor have any theoretical models linking age, cognitive abilities, and specific aspects of pilot performance emerged from the research as the basis for understanding the relationships or making predictions about pilot age."

They examined literature covering all areas: physiological and perceptual motor skills, pilot performance and cognitive skills, memory, attention, simulator performance, flight performance, and expertise. Their findings were summarized thus:

1. The scientific literature does not unanimously support age-related declines in all aspects of pilot performance.
2. The majority of studies reveal that performance in all areas show declines with age.
3. Cognitive skills show age-related declines with the possible exception of time-sharing tasks, and memory skills show declines with age with the possible exception of aviation-relevant tasks.

4. In several studies, the effects of expertise, while associated with fewer declines than expected with age, showed clear decline.
5. Flight simulator studies and studies of the relationship between flight experience and pilot performance have shown declining performance, no changes in performance, and ambiguous results.

Despite these study results, AsMA was still able to state: “On view of the existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to support restriction of pilot certification based on age alone.”

How can they state this when so many studies indicate age-related functional decline?

AsMA noted the following:

- o Performance on measures of most (but not all) cognitive functions decline with advancing age.
- o The group of average effects may not predict the performance of any specific individual.
- o It cannot be concluded that any observed “declines” in laboratory testing are predictive of changes in performance in the cockpit.

They also noted that “the decision to use 60 years of age as an upper limit for commercial air transport operations was arbitrary. Currently, there is equal lack of justification for setting the age limit at 55 years or at 65 years.”

And, importantly, they considered the best outcome measure of all: actual flight performance. Here’s what they found:

“While sudden incapacitation is often cited as a major concern in efforts to amend the Age 60 Rule, its frequency and impact on flight safety suggests that, in contrast to many human factors causes of airline accident (i.e., judgment, decision making, and communication), pilot incapacitation does not pose a significant risk. In part, this is due to the fact that flight safety, in the event of pilot incapacitation, is typically assured by the presence of two qualified pilots, captain and first officer, either of whom can take over operation of the aircraft should the other become incapacitated.”

We know that in the United States there have been only two crashes resulting from pilot incapacitation: Ardmore, OK in 1962 and Burbank, CA in 1966. Since the advent of the “Two Communication Rule” and the institution of shoulder harnesses in the early 1970s there have been no crashes as a result of pilot incapacitation, though it is recognized that pilots become incapacitated and even die in the cockpit every year. When these unfortunate events occur, the other pilot takes control of the aircraft and lands it safely so that the incapacitated pilot can receive medical attention.

Flight Safety Studies

Mark Twain said “There are lies, damn lies and statistics.” This has been the primary drawback of the use of safety studies showing statistics on pilot accident rates. Here is the seminal fact regarding safety: Never in the recorded history of aviation has there been an accident caused by pilot incapacitation brought on an age-related medical condition.

Despite the futility of using selected statistics, this Working Group agrees with ICAO’s assertion that the data taken in toto should compel the FAA to raise the upper age limit. The following is a survey of recent, relevant flight safety studies conducted on the issue of pilot aging as a safety factor. We will work with the FAA to provide a comprehensive set of relevant studies and data that will be assembled and available for review by the ARC.

- o 1991: Lubner, *et.al.* In general aviation, older pilots were at less risk than younger pilots for both accidents and violations.

- o 1994: Baker and Li. Analysis of flight time, age, and crash rate showed a decrease in crash rate with age, when age correlated with greater experience.

- o 1994: FAA Hilton Study. The accident rates of older pilots with a Class II or Class III medical certificates declined from age 40 through the early 60s, but showed a slight increase from age 65-69.

- o 1997: McFadden. Accident rates of US airline pilots declined as pilot experience (total flight hours and recent flight time) and age increased.

- o 1999: Rebok, *et. al.* There appear to be no significant age differences in the pilot performance factors contributing to [general aviation] crashes.

- o 2001: Baker, *et.al.* The percent of crashes involving poor decisions or pilot error declined with age.

- o 2002: Li, *et.al.* In a longitudinal study of pilots aged 45 and older, neither crash circumstances nor the prevalence and patterns of pilot errors changed significantly with age.

- o 2003: Li, *et.al.* These researchers followed a cohort of pilots for 11 years (pilots were between 45 and 54 at the start of the study). They found that there was no significant age-related increase in crash risk, but that the risk of a crash decreased by about half among pilots with a total flight time of more than 5,000 hours.

Additional studies and their conclusions are referenced in the supporting documentation at the end of this paper. The results of these are clear to medical experts: “On review of the existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to support restriction of pilot certification based on age alone.”

If the FAA Age 60 Rule Is Not About Safety, What Is It About?

Virtually everything in aviation has changed for the better over the last 47 years. Aircraft are safer, more efficient and far easier to fly. Training and performance testing has improved due to better curriculums and simulators that are better than actual aircraft in measuring performance. People are living longer, healthier lives. Human fitness has improved. The Age 60 Rule, conceived halfway back to the age of biplanes, remains trapped in a bygone era when jet airliners were in their infancy.

Labor Politics

Outside interests have certainly had an impact on the Agency's policy regarding change. Airlines may have conflicting views on the policy; some favor change, some oppose, and most remain passionately neutral. Unfortunately unions and other pilot groups have been all over the map on the rule. The Air Line Pilots Association (ALPA) has opposed any change since roughly 1980. This was not always so, as this pilot union once fought fiercely to have the rule amended early after its adoption. This effort ended after about 20 years, when unions had achieved lucrative pensions and a tax rulemaking protecting those pensions. At that point, the rule became the status quo.

The fly in the ointment, however, was that solid pensions did not cover all pilots. Pilots who lost their pensions (many, also their jobs) in the aftermath of deregulation were forced to start over. Many needed more years of employment to regain what they lost. The Age 60 Rule precluded that. Other pilots flew for carriers without defined benefit pensions. Those pilots have always felt the need to work longer in their chosen career to ensure a good retirement. The Age 60 Rule precluded that as well. Post 9/11, pressures have mounted. Most airlines have frozen or terminated their defined benefit plans. Many pilots are depending on the Pension Benefit Guaranty Corporation (PBGC) for retirement funding with their incomes alarmingly reduced.

Carriers like Southwest and JetBlue, who never had defined benefit plans, have grown tremendously. Their pilots, many of whom always wanted more years of productive earning power, now are a bigger piece of the total airline pilot group.

While some pilots wish the rule to remain so that their seniority advancement is not slowed, others are acutely aware that a solid retirement is, in a defined contribution world, dependent on working. With actuarial lifetimes longer, it will take a larger accumulation in a defined contribution plan to ensure an adequate retirement fund for the duration of that lifetime.

Pilots appear to be about evenly split between those favoring retention of the rule and those wishing a change. The recent trend shows movement toward support for changing the rule, borne out by recent surveys, polls and votes.

All these numbers lead us, however, to the following question: Why are opinion polls and votes among pilot groups a factor at all in this public policy decision? We believe the issues should be decided by answering two more appropriate public policy questions:

- Is a change in the policy safe? And;
- Is the current policy discriminatory?

Clearly the answer to both questions is “yes.”

Age Discrimination

America’s top aging advocates agree; the Age 60 Rule is simple, blatant age discrimination. AARP has long supported a change in the Age 60. In a letter of support for S.65 they say that “The bill is an important step in recognizing that pilots should be judged on bona-fide occupational qualifications and not on false assumptions that fitness for duty corresponds to a pilot’s age.”

Sen. Larry Craig (R-ID), then-Chairman of Senate Aging Committee said at a 2004 hearing on the Age 60 issue, “The time has come to retire the mandatory rule that requires pilots to retire at age 60... Public safety is clearly the most important policy consideration in evaluating mandatory retirement rules. But those of us who study this issue know there has been a dynamic increase in longevity and a trend toward healthy aging over the past half century.” Craig went on to say, “The mandatory retirement rules for pilots were established in 1959... I believe that we now need to look for ways to enable healthy and able airline pilots to continue to pilot commercial aircraft.”

The Seniors’ Coalition says: “In a world where we are all living longer, healthier, and more productive lives, the time has come to eliminate this discriminatory age restriction and adopt a set of proficiency and skill protocols to determine a pilot’s licensing.”

EEOC Finds Age 60 Rule Age Discriminatory

The Equal Employment Opportunity Commission (EEOC) is unable to mandate a change in the FAA’s Age 60 Rule. If it were able to do so, the Age 60 Rule would not be an issue today. Nevertheless, the EEOC has been active in commenting on regulatory changes and pending legislation connected with the Age 60 Rule.

The EEOC in late September 2006 filed an age discrimination suit against Exxon Mobil, seeking a permanent injunction against the company’s mandatory age 60 retirement modeled after the FAA rule.

In support of efforts to amend the rule, the EEOC has submitted letters and other documents to both the FAA and Congress.

In 2001, the EEOC commented on S. 361 (“To establish age limitations for airmen,”) saying, *“the Commission does not believe that a chronological age is an appropriate proxy for the*

qualifications of any pilot.” The commission seeks elimination of any age limit and believed “that raising the age to 65 would be a reasonable interim step to elimination of age as a factor in employment of pilots.”

In 1995, commenting on the FAA’s plans to impose an age limit on Part 135 pilots, the EEOC did not mince words: *“The ADEA prohibits employment discrimination against individuals at least 40 years of age. Under the ADEA, it is unlawful for an employer to have a maximum age limitation for its employees unless the employer can establish that the age limitation is a bona fide occupational qualification (BFOQ)...The EEOC does not believe that a chronological age limitation is a BFOQ for any pilot...many experts have testified that Class I medical testing is fully sufficient to identify health or performance problems for pilots regardless of age.”*

In the mid 1980s, the EEOC established a dedicated litigation unit to challenge non-air carrier companies that relied on the Age 60 Rule as justification for mandatory age-based retirements for their corporate and test pilots. This unit essentially eliminated age restrictions in corporate aviation. The sole exception was this nation’s air carrier pilots.

The ICAO Position: 65 is a Suitable Upper Age Limit for Flight Crew Members:

On November 23, 2006, the International Civil Aviation Organization (ICAO) will adopt a new international upper age limit for commercial airline pilots of 65 years of age. ICAO paired this new standard with a precautionary measure, the so-called “over and under” provision. This requires that in the two-person cockpit environment of most modern commercial aircraft, if there is a pilot over 60 the other pilot must be under 60.

ICAO did not come to this decision lightly. ICAO has produced two studies of data on over-60 piloting from Member States during the past 11 years. The 2004 ICAO study reported that, “Based on data compiled from 64 States, accumulated experience with well over 3,000 older pilots and totaling at least 15,000 pilot-years, a higher upper age limit is compatible with safe flying.” The report states that the risk of two older pilots becoming medically incapacitated at the same time is “a risk so low that it can safely be disregarded.”

Both studies concluded that a majority of Member States either already had, or intended to, increase the forced retirement age for airline pilots above age 60. The second of these surveys found that age 60 was the exception and not the standard, so the ICAO proceeded to implement a new, generally accepted, age 65 limit.

Findings of the ICAO Flight Crew Licensing and Training Panel

The following were the findings of ICAO’s Flight Crew Licensing and Training Panel (FCLTP) in February 2005 concerning “the curtailment of privileges of pilots who have attained their 60th birthday.” The FCLTP Working Group broadly agreed with the conclusion of the Aerospace Medical Association, as stated in the Association’s position paper of 15 January 2004 that there is insufficient medical evidence to support restriction of pilot certification based on age alone. It also agreed that a transition to a criterion-based process for determining pilot fitness to fly beyond the age of sixty would require extensive additional research, and that this could take a

number of years and place a significant economic burden on the safety regulation authorities and the industry to develop a non-age safety basis for confirming/denying pilots continued medical certification.

As many Member States had already applied an age restriction higher than age 60 with no evidence of reduced levels of safety, and given the inherent additional safety factor achieved in multi-pilot operations, there was potential leeway to increase the maximum age limit for pilots in multi-pilot operations. A further safety cushion can be achieved by requiring one of the pilots to be under age sixty, and until there existed an alternative safety basis for determining pilot continued fitness with age, an age discriminator was the simplest means of achieving a harmonized Standard for Contracting States. The recommendation of the FCLTP:

2.1.2 The working group recommended that the current upper age limit for pilots be revised from sixty to sixty-five provided that:

- a) it applied only in the case of multi-crew operations;
- b) the second pilot in a multi-crew operation was below the age of sixty;
- c) all pilots over the age of sixty underwent a medical assessment every six months; and
- d) the recommended revised upper age limit of sixty-five was used until a satisfactory alternative basis was developed in the long term for determining a pilot's continued fitness.

2.1.3 The working group recognized that these recommendations simply resulted in the replacement of one age limit with another limit. It was, however, of the opinion that the recommendations reflected current practice in many Contracting States and that, provided the additional conditions were applied, the recommendations were fully justified.

As a consequence of the recommendations of the FCLTP, the ICAO polled its Member States and received a consensus to raise the age limit standard to 65 effective November 23, 2006. On that date, foreign pilots over the age of 60 will have unfettered access to United States airspace. Unless the FAA acts to adopt ICAO Amendment 167 to increase the upper age limit, American pilots will be among the very few in the world who would still be statutorily terminated at age 60.

Conclusion

It is the position of the Pro-Change Working Group that the FAA should immediately adopt ICAO amendment 167 to increase the upper age limit for pilots up to age 65 provided another pilot is under age 60. Congress should be so notified. The group agrees with the findings of ICAO, Aerospace Medical Association and other entities that an age-based rule has no medical justification. We further agree that if there is no medical justification, then there can be no safety rationale for keeping the Age 60 Rule.

Most importantly, the group feels that the FAA cannot possibly exclude American pilots from an operational standards change which allows foreign pilots to work and fly in the U.S. past the age of 60—and claim it is based on a safety guideline. A decision to do so leads this group to

conclude that the FAA feels that American pilots over 60 are less safe than their foreign counterparts. The group feels certain that there is no data to support such a claim, yet that is the only conclusion one could reach from such a decision.

Age 60 Supporting Documentation

1. **February 5, 1959:** Maj. Gen. C.R. Smith, CEO of American Airlines letter to Lt. General Elwood “Pete” Quesada, the first Administrator of the new FAA, stating that ALPA at American “is unwilling to agree to the company’s policy concerning retirement of air line pilots at age 60. Smith writes “It may be necessary for the regulatory agency to fix some suitable age for retirement.”
2. **June 27, 1959:** NPRM Maximum Age Limitations for Pilots. FAA gives public notice of proposed age rules that will restrict airline piloting to 60.
3. **December 5, 1959:** FAA news release announces new rule will go into effect March 15, 1960. In Q & A section of announcement: Question: Has it been demonstrated that age is a factor in the occurrence of air carrier accidents? Answer: No. Fortunately there are very few air carrier accidents, also, at present, very few air carrier pilots in the older age brackets....”
4. *ALPA v. Quesada, 1960:* ALPA files first of many unsuccessful law suits to overturn Age 60 Rule.
5. **1967:** Congress passes the Age Discrimination in Employment Act (ADEA). Secretary of Labor declares Age 60 Rule to Bona Fide Occupational Qualifier (BFOQ).
6. **1979:** House Aviation Subcommittee recommends overturning the Age 60 Rule but intense lobbying by ALPA reduces the legislation to a study by National Institute on Aging (NIA), Institute of Medicine (IOM).
7. **July 18-19, 1979:** Captain J.J. O’Donnell, President of ALPA, acknowledges, during testimony before the House Public Works and Transportation Committee, that ALPA’s reversal “... is economics to those who object to the change in the regulation.”
8. **1981:** NIH Panel reports on IOM findings “..that on purely medical grounds, age 60 is not an age of special significance with respect to the occurrence of either acute events or subtle changes that may adversely affect pilot performance.”
9. **1981:** EEOC rescinds the Department of Labor declaration of the Age 60 Rule as a Bona Fide Occupational Qualifier (BFOQ).
10. **October 22, 1990:** T. Franklin Williams Declaration in *EEOC vs Lockheed Corp*; In response to FAA refusal to follow NIH Panel recommendations, Director of the NIA, Williams, declares in congressional testimony, on October 15, 1985, it is NIH/NIA policy that medical science can adequately identify disability and protect public safety. (no need for a blanket age rule).
11. **November 24, 1984:** Letter to Dr. Stanley Mohler from Dr. Frank Austin, Federal Air Surgeon; “There is no medical basis for the Age 60 Rule. I believe this and Admiral Engen believes this. ... It’s an economic issue.”
12. **1991:** Letters from Dr. Jeffrey Koonce, November 14, 1991 and Dr. Stanley Mohler, November 8, 1991 to Captain Sam Woolsey: On March 16, 1986 Representative Edward Roybal, Chairman of the House Select Committee on Aging held a secret meeting

with senior representatives of FAA. “The high spots of the discussions included the statement by the FAA attendees that there is no longer a medical basis for the regulation, but that the FAA is reluctant to make exceptions or delete the regulation because FAA personnel do not want to burden the airlines administratively with a new personnel task of integrating the over 60 years of age pilots.”

13. **October 14, 1993:** Chairman of EEOC, Tony Gallegos letter to FAA Office of Chief Council; “...The EEOC does not believe that a chronological age limitation for commercial pilots is a BFOQ because pilot skills and health can be assessed accurately on an individual basis, regardless of age.”

14. **October 1994:** Age 60 Study, Part III Consolidated Database Experiments (Hilton Studies Final Report). “Our analyses provide no support for the hypothesis that the pilots of scheduled air carriers had increased accident rates as they neared the age of 60. Most of the analyses indicated a slight downward trend with age.....”

15. **December 1995:** FAA issues “Commuter Operations and General Certification and Operations Requirements” imposing age 60 rule on pilots operating 10-30 seat aircraft. These same pilots had been permitted to fly, without age restrictions, under Part 135 operations. Beginning January 1, 1996 the FAA allowed those pilots, already past their 60th birthday, to continue to fly under part 121 until the end of 1999. **Hundreds of pilots continued under this exemption to the Age 60 Rule up to age 71 without accident.** (CAMI reports 2 & 4 March 13, 2001)

16. **February 15, 1996:** ICAO publishes working paper on survey of Member States on Upper age limits for flight crew members. “Conclusion: 6.1 There is currently a clear trend amongst Contracting States towards increasing the upper age limit for commercial pilots. 6.2 As a consequence, the Secretariat holds the opinion that an amendment to [annex 1] with a view to increasing the upper age limit for airline transport pilots and commercial pilots may be warranted.”

17. **July 11, 1999:** *Chicago Tribune* article reports findings from a study by **Northwestern University on accidents and incidents involving only airline pilots from 1/1/90 to 6/11/99. “Although the U.S. forces airline pilots to retire years earlier than those in many developed countries, FAA statistics show that older pilots are among the safest in the skies.”**

18. **March 13, 2001:** Statement by L. Nicholas Lacey, FAA Director of Flight Standards before Senate CS&T Committee; Lacey reports on a series of 4 studies by the FAA Civil AeroMedical Institute (CAMI). He informs the committee that “...these analyses support the hypothesis that a “U-shaped” relationship exists between the age of [professional pilots] and their accident rate-meaning the rate of accidents is higher for a young person, then as the person ages the rate declines, levels off....and then shows an increase as the person reaches retirement age.”

19. **January 2002:** Dr. Jon Jordan, Aviation Medicine Report on CAMI findings:

- a. CAMI #2, a re-analysis of the Chicago Tribune study of July 1999, “The CAMI report reached a conclusion similar to that reached in the newspaper’s study...” (favorable data for airline pilots 60-73 was ignored);
- b. CAMI #3 reports that “...while an overall “U”-shaped trend was found there was no statistically significant difference in accident rates for pilots aged 55-59 & 60-63;”
- c. CAMI #4 reports “...An overall “U”-shaped trend was found, with pilots aged 60-63 having a statistically higher accident rate than pilots aged 55-59. However, all of

- the accidents involving pilots over 60 occurred in Part 135 operations. Pilots flying under Part 135 have historically had a higher accident rate and this difference could have influenced the overall distribution when the data are combined. *Therefore, no definitive conclusions about the relationship of age to accident rates for pilots engaged in commercial operations can be drawn solely on the basis of the study.*”
20. **May 2004:** CAMI Final Report finds “...the *a priori* test found that the accident rate for the 60-63 age group was not significantly different from the accident rate for the 55-59 age group.”
 21. **November 24, 2004:** ICAO Working Paper, Upper age limits for flight crew members: pg. C-11 “These data indicate that a higher upper age limit is compatible with safe flying.”
 22. **April 1, 2005:** Report from ICAO Flight Crew Licensing and Training Panel: “The working group recommended that the current upper age limit for pilots be revised from 60 to 65.It agreed that the proposed amendment should become applicable on 23 November 2006.”
 23. Jenkins Economic Study finds S.65 would represent significant savings to the federal government. Study finds that raising pilot retirement age to 65 would save nearly \$1 billion per year based on delayed PBGC payment, additional social security and tax revenues.
 24. *Fort Worth Star-Telegram* Op Ed, “U.S. should let pilots stay in the air until age 65, By Capt. Joseph "Ike" Eichelkraut: Unresolved issues in airline pension reforms could be settled by allowing pilots to work until 65 to maximize payout benefits from PBGC pensions and avoiding the five-year gap before collecting full Social Security and Medicare benefits.
 25. **Legislative History 109th Congress:**
 - a. Introduction of S.65 “Dear Colleague.”
 - b. H.R. 65 introduced 1/4/2005.
 - c. S.65, introduced 1/24/2005.
 - d. S. 65 as amended and favorably reported by the Senate Commerce Committee November 17, 2005 (Senate Report 109-225) to reflect the ICAO changes.
 - e. H.R. 5576, Sec. 114 (Senate Report 109-293) as amended by the Senate Transportation, Treasury Housing and Urban Development Appropriations Committee July 18, 2006 and approved by the Senate Appropriations Committee July 20, 2006.
 - f. Testimony of JetBlue to the Senate Commerce Committee Subcommittee on Aviation, July 19, 2005.
 - g. Testimony of Airline Division, International Brotherhood of Teamsters to the Senate Commerce Committee Subcommittee on Aviation, July 19, 2005.
 - h. Letter from 12 U.S. Senators to FAA regarding the Age 60 ARC.
 26. Convention on International Civil Aviation, signed at Chicago on 7 December, 1944.
 27. **1992/1993:** FAA Letters to Cargo Lux (November 25, 1992), Corse-Air (January 6, 1992), Icelandair (November 8, 1993). Notification of waivers for over-60 pilots.
 28. Captain Robert Perry letter and list of pilots.
 29. Survey of Part 135 pilots granted five-year waiver, list with names and flight time.

30. **March/April 2000:** IACP newsletter article “Dodging the Age 60 Rule,” description of oldest commercial pilot, retiring from waiver at 71.
31. **April 29, 2005:** *Washington Times* article “FAA Offers Waivers to Aging Controllers,” describes new age waivers for air traffic controllers.
32. **January 2005:** *FAA Intercom*, “Age Waivers Granted for Air Traffic Controllers,” FAA newsletter blurb about new age waivers.
33. O’Donnell (ALPA) Economic Quote: Captain O’Donnell (ALPA President, July 1979), quote from congressional testimony.
34. **April 2, 2001:** EEOC letter to Office of Management and Budget, Letter restates EEOC view that chronological age is inappropriate as a determinant of airline pilots to work. Age should be raised to 65 as an interim step.
35. **July 2006:** United Brotherhood of Teamsters support letter for amending the Age 60 Rule.
36. **August 22, 2006:** *Chicago Tribune* news article, “Great Record. Tip Top Health. Too Old.” Supportive article re: older pilots, loss of pensions, ICAO change, Age 60 Rule.
37. “Air Accidents, Pilot Inexperience, and Disease-Related In-flight Sudden Incapacitation”
Israel Air Force Aeromedical Center; Reprint by Aerospace Medical Association, received for review 1986.
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APPENDIX 3:
Age 60 Aviation Rulemaking Committee
Do Not Adopt the ICAO Standard Working Group
Position Paper

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The FAA Should Not Adopt the New ICAO Standard

Introduction

The International Civil Aviation Organization (ICAO) currently has a standard limiting the age of a pilot-in-command or second-in-command to 60 years of age. A number of contracting States have filed differences with this age limit; some have raised it, others have lowered it, and still others have eliminated it altogether.

ICAO State Survey

In December, 2003, ICAO distributed a seven-question "Questionnaire About Older Pilots." In distributing the questionnaire, ICAO noted that the European Joint Aviation Authorities (JAA) had introduced the possibility for airline pilots to continue their flying career until the age of 65 years, with limitation to multi-crew operations provided that no other flight crew member has attained the age of 60. Other States, with certain restrictions or special conditions, allow airline pilots to continue flying for a limited number of years after age 60. ICAO conducted this survey as part of its deliberations on whether to amend the upper age limit for airline pilots with the intention to harmonize the ICAO provisions with the regulations in force for many States.

The questionnaire was aimed at those States that allowed pilots to fly past age 60 and solicited demographic and operational information. One question allowed limited response regarding States' experiences with pilots flying past age 60 and the last question solicited age and operational limitations that would be considered appropriate.

There were 112 States that responded to the questionnaire. A majority of the respondents (83%) indicated that an international age limit above 60 years would be appropriate for airline pilots. Of those, 72 States indicated that an upper age limit of 65 years would be appropriate for multi-crew operations and six States preferred no upper age limits. A minority of the respondents (16%) indicated a preference to maintain the current ICAO upper age limit of 60 years, citing possible safety risks and a lack of convincing data that flying after age 60 is safe.

ICAO Air Navigation Commission Deliberations

The Air Navigation Commission of ICAO considered the results of this brief, limited questionnaire at a meeting of its Flight Crew Licensing and Training Panel (FCLTP) in Montreal, Canada in January and February, 2005. The panel review was limited to the following three questions:

- a) Are the existing provisions still valid from an operational point of view?
- b) If there is a need to amend the existing provisions, should the new provisions be based on a specific age, and why?

- c) Are any additional operational provisions required in ICAO Standards and Recommended Practices (SARPs) to support an increase or deletion of the upper age limit?

The Commission also agreed to allow the panel to provide a safety assessment in support of its views on the subject.

A working group of the FCLTP considered the age issue and arrived at a number of conclusions. Among them was that they did not have the expertise or the information to make a formal safety assessment of the issue, as requested, and they agreed that a transition to a criterion-based process for determining pilot fitness to fly beyond the age of 60 would require extensive additional research which would take a number of years. Developing a non-age related safety basis for continued pilot medical certification would place a significant economic burden on government and industry in the various States.

The working group also agreed that many States already allowed pilots to fly past age 60 with no evidence of reduced levels of safety and noted that multi-pilot operations provide an additional safety factor that can be further increased by requiring one of the pilots to be under the age of 60.

The working group finally concluded that until there is an alternative safety basis for determining pilot fitness as they age, an age discriminant would be the simplest means of achieving a harmonized ICAO Standard.

The working group recommended that the current ICAO upper age Standard for pilots be revised from 60 to 65 provided that it applied only in the case of multi-crew operations and the second pilot would be below age 60. They also recommended that all pilots over the age of 60 undergo a medical assessment every six months. They finally recommended that the revised upper age limit of 65 be used only until a satisfactory alternative basis is developed in the long term for determining a pilot's continued fitness.

The working group did recognize that their recommendations simply resulted in the replacement of one age limit with another.

ICAO Amendment to Annex 1, Personnel Licensing

As a result of the survey and after deliberations of the Air Navigation Commission, ICAO will implement an amendment (Amendment 167) to the Standards and Recommended Practices related to the upper age limit for pilots contained in Annex 1 – Personnel Licensing. The amended Standard will allow airline pilots in multi-crew operations to continue flying until the age of 65 provided that no other pilot has attained the age of 60 and that all pilots over age 60 undergo a medical assessment every six months. This amendment will be applicable November 23, 2006. It should be noted that the Standard does not “require” States to allow any pilots to fly past age 60, it merely permits States to do so.

Background and History on the FAA Age 60 Rule

The FAA Age 60 rule became effective March 15, 1960. It prohibits a pilot who has attained 60 years of age from serving as a pilot in air carrier operations. As stated in the preamble of the rule, the FAA Administrator found “that establishment of a maximum age of 60 for pilots utilized by air carriers in air carrier operations is necessary for safety in air commerce and is in the public interest.” There is nothing that has occurred in the intervening years that effectively changes that finding.

In discussing the reasons for the rule, the FAA noted that a number of pilots were then flying past age 60 and the number was expected to increase dramatically in the coming years. The FAA expressed concern that there would be a safety hazard presented by utilizing these older pilots. The Agency cited a progressive deterioration of certain important physiological and psychological functions with age. The Agency also cited that significant medical defects attributable to this degenerative process occur at an increasing rate as age increases, and the sudden incapacity due to such medical defects becomes significantly more frequent in any group reaching age 60.

The FAA was also concerned about other factors that result simply from aging alone and that are applicable, in varying degrees, to all individuals. According to the FAA, these factors relate to loss of ability to perform highly skilled tasks rapidly, to resist fatigue, to maintain physical stamina, to perform effectively in a complex and stressful environment, to apply experience, judgment and reasoning rapidly in new, changing and emergency situations, and to learn new techniques, skills and procedures.

While noting that degradation of individual capabilities varies significantly within individuals, there is no way to accurately or reliably measure such degradation.

There have been many attempts to change the Age 60 rule over the years. These efforts have come through two avenues: petitions for exemption and judicial challenges in the federal court system. While there have been many petitions to the FAA for an exemption to the Age 60 rule, none have been granted. The FAA has consistently and strongly argued that this is a safety rule and none of the petitions presented an argument that could provide at least an equivalent level of safety to the existing rule.

In judicial challenges, the courts have consistently upheld the FAA’s authority to implement and enforce the Age 60 rule and the legal basis for its establishment. This position has been upheld as high as the Supreme Court in a case recently brought by several older pilots with the backing of their airline.

Should the FAA adopt the New ICAO Standard?

The FAA should **not** adopt the new ICAO Standard's maximum pilot age of 65 and there are numerous reasons to support this position. The Standard does not adequately address safety issues involved in extending pilot operating age and certainly does not provide an equivalent level of safety to FAA's current regulatory standards. No compelling safety argument in favor of increasing the maximum age limit has been advanced by its proponents.

The current ICAO Standard, prior to November 23, 2006, does not permit pilots to act as pilot-in-command in international operations after attaining age 60. Many States allow their pilots to fly past age 60. The upper age limits vary from 62 to 63, 65, 72, or, for some States, there are no upper age limits. Some of these States have operational restrictions that apply when a pilot is over age 60. Typical of these is the requirement to operate in a multi-crew environment and if one pilot is over age 60, the other must be younger.

The proponents of allowing U. S. pilots to fly past age 60 cite, as part of their argument, the vast number of international pilots allowed to fly into this country through agreements with the FAA. The FAA does grant operational specifications to foreign carriers to permit pilots over age 60 to fly into the United States. However, the FAA does not maintain any data as to the number of such foreign pilots they allow under those specifications.

The International Federation of Air Line Pilots' Associations (IFALPA) represents over 100,000 pilots in 95 countries worldwide. IFALPA obtained information from Member Associations pertaining to the current industry practices regarding the ages of pilots engaged in line operations. It is noteworthy that in many of the countries of origin of these carriers, the maximum licensing age for pilots engaged in commercial operations is greater than the age to which these pilots currently operate. At least four major international airlines outside the United States have retirement provisions less than age 60 in their agreements. A number of other international airlines have their pilots retire at age 60 regardless of national regulations or ICAO Standards. Of those international airlines whose national regulations allow flying past age 60, perhaps fewer than 75 pilots do so.

Another reason why the FAA should not adopt the new ICAO Standard allowing pilots to fly past age 60 pertains to the process by which the Standard was adopted. As noted above, the ICAO survey of member States showed that the majority allowed pilots to operate past age 60. There was no structured, detailed opportunity to solicit information regarding experiences or problems associated with pilots flying beyond age 60. There was no safety risk analysis of the effect of a change to the Standards. In fact, the Personnel Licensing and Training Panel was unable to perform such an analysis because of a lack of both appropriate information and expertise. This Standard bears no evidence of rigorous examination or appropriateness. It amounts to rewarding those States that are not in compliance with the current ICAO age standard by adopting a lesser rule which

those States are willing to meet. This is truly a worst-case example of regulating to the “lowest common denominator.”

In fact, the Flight Crew Licensing and Training Panel (FCLTP) recognized that the new Standard simply resulted in the replacement of one age limit with another age limit. They felt, however, that since so many States were operating to the new age limit, then, with some additional operating conditions, it must be a reasonable Standard.

In their deliberations on the new ICAO Standard, the FCLTP discussed a criterion-based process for determining pilot fitness to fly beyond age 60. However, adoption of such a precaution was discarded because the transition to such a process would require extensive additional research that was deemed too expensive and would take too many years to accomplish.

Each State within ICAO is sovereign and has the ability to enact its own regulations that are applicable to its unique operations and operating environment. The United States has filed a number of “differences” with ICAO because ICAO Standards are not appropriate or are in conflict with Federal Aviation Regulations. That is the prerogative of the United States and a duty and responsibility of the FAA which is charged with maintaining the highest possible safety standards. When ICAO Standards do not meet FAA safety requirements – which this new Standard does not – or do not demonstrate at least an equivalent level of safety, they must be rejected. The traveling public expects and demands such performance on the part of the FAA.

FAA is Currently in Compliance with the New ICAO Standard

The current U.S. Federal Aviation Regulations will be in compliance with the ICAO Standard effective on November 23, 2006. This is so because ICAO’s new Standard does not establish a minimum age limit for pilots, only a maximum. The ICAO Standard does not require Contracting States to permit pilots to fly beyond age 60; it merely permits States to allow this practice.

Since the Age 60 rule was enacted in 1960, it has proven to provide a safety margin for aging pilots in air carrier operations. There have been no “age related” accidents in the 46 year history of the FAA rule. In order to change the regulation, there would have to be a demonstration of an equivalent level of safety with any new regulatory proposal. There has not been such an equivalence demonstrated with any proposal to allow pilots to operate past age 60.

In a rulemaking action, a safety risk assessment must be conducted to demonstrate an equivalent safety level. This should include a thorough safety study of operations involving pilots who fly past age 60. ICAO did not take the time or expend the resources to do this.

If FAA were to allow pilots to fly to age 65, as ICAO will allow, a regulatory change would be necessary. Such a change would require an economic impact evaluation to

determine the economic cost of a regulatory change. This would require a study of the impact not only on the operators but the pilot community as well.

It would certainly not be appropriate to make a change to this important rule based solely on political, economic, or legal factors.

As noted previously, proponents of the new ICAO standard have in the past petitioned the FAA and pursued legal recourse to achieve a regulation that would permit flying past age 60. Should the FAA opt to permit pilots to fly until their 65th birthday, there can be little doubt that the same proponents will continue their petitions and judicial proceedings in an effort to extend that arbitrary age even further.

Conclusion

The FAA should not adopt the new ICAO Standard's maximum pilot age of 65:

- ICAO did not conduct a safety risk analysis to evaluate the impact of the change in the Standard on safety,
- The new Age 65 Standard arbitrarily replaces one age limit with another,
- There is no criterion-based process for determining pilot fitness to fly past Age 60,
- An equivalent level of safety cannot be shown with the increase in retirement age that would result with the adoption of the ICAO Standard over the existing Age 60 rule,
- Adoption by FAA of the new ICAO Standard would reduce the current U.S. airline safety standard, and
- FAA will be in compliance with the new ICAO Standard on November 23, 2006, without changing its regulations because the Standard does not preclude the FAA (or any ICAO State) from setting a lower maximum age limit.

APPENDIX 4: U.S. Equal Employment Opportunity
Commission
Comment To The Docket
(Comment No. FAA-2006-26139-5461),
Provided by the Adopt the ICAO Standard
Working Group

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of the Chair

November 15, 2006

Federal Aviation Administration
Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, S.W.
Nassif Building
Room PL-401
Washington, D.C. 20590-0001

Re: Docket Number FAA-2006-26139

To Whom It May Concern:

As Chair of the U.S. Equal Employment Opportunity Commission (Commission or EEOC), I am writing in response to the Federal Aviation Administration's (FAA) request for comments concerning its regulation commonly referred to as the Age 60 Rule. 14 C.F.R. § 121.383(c). The Age 60 Rule bars individuals who have reached their sixtieth birthday from serving as pilots or copilots in flight operations governed by Part 121 of the FAA's rules, typically commercial flights. On October 25, 2006, the FAA published a request in the Federal Register for comments about whether the United States should adopt an amendment that the International Civil Aviation Organization (ICAO) will adopt in November 2006 to increase the "upper age limit" of airline pilots to age 65 provided another crewmember pilot is under age 60. 71 Fed. Reg. 62399.

EEOC's Position on the Age 60 Rule

The Commission has long been concerned about the impact of the Age 60 Rule on pilots and copilots.¹ The Commission enforces the Age Discrimination in Employment Act of 1967, as

¹ The Commission's longstanding interest in the Age 60 Rule is demonstrated in public comments, testimony and statements beginning as early as 1981, including: Testimony of Constance L. Dupre, Associate General Counsel, EEOC, Panel on the Experienced Pilots Study, National Institute on Aging, National Institutes of Health, May 27, 1981; EEOC's Final Interpretations of the Age Discrimination in Employment Act of 1967, 49 Fed. Reg. 47724 (1981); EEOC comments on the FAA's Advanced Notice of Proposed Rulemaking at 47 Fed. Reg. 14692 (1982); Testimony of former EEOC Chair Clarence Thomas before the House Select Committee on Aging, October 1985; August 12, 1986 letter from former Chair Clarence Thomas to former FAA Administrator Donald Engen urging the FAA to grant a petition by 39 pilots for exemptions from the Age 60 Rule so that they could participate in a controlled study envisioned by the National Institute of Aging panel; EEOC comments in response to the FAA's request for comments at 58 Fed. Reg. 21336 and 33316 (1993); and EEOC comments on the FAA's Notice of Proposed Rulemaking at 60 Fed. Reg. 16230 (1995). As recently as 2005, in response to the Office of Management and Budget's request for comments concerning the planned testimony of John L. Jordan, Federal Air Surgeon, before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Aviation, on the Age 60 Rule, the EEOC reiterated its longstanding opposition to any rule on pilots or co-pilots that limits an individual's ability to operate aircraft due solely to age and without regard to ability to safely pilot aircraft.

amended, 29 U.S.C. § 621 *et seq.* (ADEA) and also has responsibility under Executive Order 12067 to coordinate the federal government's enforcement of laws, Executive orders, regulations, and policies that require equal employment opportunity without regard to race, color, religion, sex, national origin, age or disability. 43 Fed. Reg. 28967 (1978). The Executive Order requires FAA to coordinate with EEOC to ensure that its rules are consistent with the Commission's interpretation of the ADEA.

The ADEA prohibits employment discrimination against individuals at least 40 years of age. Under the ADEA, it is unlawful for an employer to have a maximum age limitation for its employees unless the employer can establish that the age limitation is a bona fide occupational qualification (BFOQ) "reasonably necessary to the normal operation of the particular business." 29 U.S.C. § 623(f)(1). An EEOC regulation sets forth what an employer must prove to establish that age is a BFOQ:

That (1) the age limit is reasonably necessary to the essence of the business and either (2) that all or substantially all individuals excluded from the job involved are in fact disqualified, or (3) that some of the individuals so excluded possess a disqualifying trait that cannot be ascertained except by reference to age. If the employer's objective in asserting a BFOQ is the goal of public safety, the employer must prove that the challenged practice does indeed effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact.

29 C.F.R. § 1625.6(b)(2006).²

The Age 60 Rule runs counter to the narrow scope of the BFOQ defense and the fact-specific, case-by-case analysis it requires. Pilot skills and health can be assessed accurately on an individual basis, regardless of age, thus eliminating the need for dependence on a maximum age limit. The FAA itself relies on individualized testing as a basis for issuing medical certificates to people of all ages, including those age 60 and above, who serve as pilots in non-Part 121 flight operations. Moreover, Part 121 pilots are currently required to undergo physical examinations and cockpit-performance tests every six months. These tests would allow airlines to monitor the health and reaction time of pilots 60 and over, just as they currently monitor the health of pilots under 60. In Commission litigation challenging pilot age limits imposed by employers whose flight operations are not governed exclusively by Part 121, the EEOC's experts have testified that Class I medical testing is fully sufficient to identify health or performance problems that may surface for pilots regardless of age.³ These experts have also testified that, to the extent further testing may be desirable, cardiac stress tests, enhanced blood work-ups, and neurological screening could be added to the standard battery of Class I tests for all pilots.

² The Supreme Court cited the EEOC's standard with approval in *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 416-17 (1985) (affirming a judgment that Western Airline's mandatory retirement rule for flight engineers did not qualify as a BFOQ).

³ Different types of pilot certification require different levels of medical certification, with a Class I medical certification having the most rigorous requirements.

Furthermore, even as early as 1993, a report prepared for the Civil Aeromedical Institute of the FAA supported the conclusion that the Age 60 Rule for pilots was not defensible as a BFOQ under the ADEA.⁴ The report concluded that there was “no hint of an increase in accident rate for pilots of scheduled air carriers as they neared their 60th birthday.”⁵ Nor has the FAA produced any methodologically sound accident-rate studies showing a statistically significant difference in accident rates by age. In other words, the studies relied on by the FAA to justify the Age 60 Rule have never established a correlation between accident rates and the increased age of the pilots.

The Commission therefore strongly encourages the FAA to lift the Age 60 Rule. Medical and proficiency tests on an individual basis are effective and non-discriminatory ways to ensure that commercial pilots maintain the highest standards of safety at all ages. Moreover, far from being a liability, having older pilots in the cockpit may enhance aviation safety, as the practical experience of these pilots has great value in a profession calling for complex and split-second judgments.

EEOC Comments Concerning Adoption of ICAO Standard

The current request for comments solicits opinions on whether the FAA should adopt the new ICAO standard which increases the “upper age limit” for airline pilots up to age 65 provided another crewmember pilot is under age 60.

We support raising the age limit for Part 121 pilots to age 65 for a specific time period as a reasonable interim step in the process of eventually eliminating age as a determinative factor in the employment of airline commercial pilots. As with age 60, there is no credible medical, scientific or aviation evidence to suggest that concerns for safety require a mandatory retirement age for pilots of 65. Raising the age limit to 65, however, will serve as a useful transitional step, allowing commercial pilots to continue flying beyond age 60 while the FAA plans a full transition to individualized testing of the skills and health of all pilots, regardless of age.⁶

Although we support adoption of the new ICAO age limit of 65, we oppose the adoption of the requirement that pilots over age 60 be paired with pilots under age 60. Studies have shown that the risk to public safety of having two pilots over age 60 in the cockpit is extremely small. As discussed above, medical and proficiency tests are effective and non-discriminatory ways to assure that commercial pilots maintain the highest standards of safety at all ages.

⁴ Age 60 Project, Consolidated Database Experiments, Final Report, March 1993, Hilton Systems Technical Report at 8025-3C(R-2).

⁵ Although this report cautiously recommended raising the age limit to age 63, the then available medical, scientific and aviation data did not support an age 63 limitation under the ADEA.

⁶ The Commission’s position is that age cannot be a BFOQ for commercial or any other pilots because pilot skills and health can be accurately assessed on an individual basis, regardless of age. The Commission has, however, settled litigation after employers have agreed to increase the pilot age limitation to age 65 for the term of the consent decree.

If you would like to discuss these comments further, please contact Peggy Mastroianni, Associate Legal Counsel, at (202) 663-4640, or Carol Miaskoff, Assistant Legal Counsel, at (202) 663-4645.

Sincerely,

A handwritten signature in black ink, reading "Naomi C. Earp". The signature is written in a cursive, flowing style.

Naomi C. Earp
Chair

APPENDIX 5:

A Cost Benefit Analysis of S. 65 and Reforming the Age 60 Rule on the Federal Government, by Darryl Jenkins, dated July 24, 2006, provided to members of the U.S. Congress and other interested parties, Provided by the Adopt ICAO Standard Working Group

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A Cost Benefit Analysis of
S.65 and Reforming the Age 60 Rule
on the Federal Government

By

Darryl Jenkins
July 24, 2006

Summary

The purpose of this report is to perform a cost benefit analysis of the impact on the federal government of extending the mandatory age 60 retirement rule for pilots flying part 121 aircrafts to the age of 65, as proposed in S. 65. This study has been prepared at the request of JetBlue Airways, Southwest Airlines Pilots' Association and Airline Pilots Against Age Discrimination (APAAD), representing pilots from across the entire industry who jointly retained my services as a consultant for the project.

My examination reveals that passage of S. 65, which would extend airline pilot retirement age to 65, would have significant positive economic benefits to the federal government. Savings to the federal government would be in excess of \$900 million a year over a period of more than a decade. The present value of this cash flow is approximately \$10 billion over the period of this study from 2007 - 2021.

In making this estimate I have used conservative methodology. The actual results are probably well in excess of this estimate.

Background

The past five years have seen devastating results to pilot retirement funds. The reader is referred to GAO reports number GAO-06-630 and GAO -05-945 for detailed explanations of the problems relating to pilot pensions.

Pilots expecting to retire with certain benefits available to them have seen their future standard of living slashed to fractions of what they expected. The United States government has seen a number of large airlines default on their pensions with the result of the Pension Benefit Guaranty Corporation (PBGC) being required to take over these obligations.

The GAO reports concluded that the pension problems of the legacy airlines are structural or long-term and will plague the industry for years to come. It is not unreasonable to conclude that more airlines will end up using bankruptcy laws to get out of large under funding of their defined pension benefits.

In order to overcome some of the shortfalls in future benefits to these pilots, it has been suggested that changing the pilot's mandatory retirement from age 60 to age 65 would have benefits to both the pilots by giving them additional time to increase retirement funds and to the federal government by delaying the benefits paid to these pilots.

In putting together this study, I have conducted a literature review and concluded that there is no available medical evidence that mandates that a pilot is not able to fly beyond age 60. The position of the Aerospace Medical Association in its

January 2004 review of the Age 60 Rule is that “Upon review of the existing evidence, the Aerospace Medical Association concludes there is insufficient medical evidence to support restriction of pilot certification based upon age alone.” In essence, the age 60 mandatory rule is not based upon any available medical evidence and is an arbitrary restriction.

The important fact about changing this rule is that it allows the pilots to increase their future retirement funds without recourse to additional federal monies.

Cost Benefit Methodology

A cost benefit analysis is a relatively simple and widely used technique for deciding whether to make a change. To use the technique, simply add up the value of the benefits of a course of action, and subtract the costs associated with it. In performing this analysis I will calculate the net present value of the benefits. The net present value of the benefits are calculated as the present value of the benefits minus the present value of the costs. Future costs and benefits are discounted at the 30-year treasury bill rate. Some of the literature argues for usage of the ten-year treasury rate. In fact, the difference is trivial and therefore insignificant.

Cost Analysis

I have researched the literature relating to regulations and held discussions with people familiar with this project and am unable to find any costs associated with this change other than the printing of the regulation and loading the information into a website. A significant part of the economic case for this change is that there is no cost associated with it. It is free to the federal government.

Benefit Analysis

In calculating the benefits, I will examine two positive impacts that extending the age 60 retirement rule will have on the federal government. In considering these impacts, I will rely on data from the Airline Pilots Association (ALPA), Southwest Airlines and JetBlue Airways that approximately 8,808 pilots will be retiring in the next five years. This amounts to an average of approximately 1,762 pilots retiring a year during this five year period. I then assume that rate to be constant into the future. I refer to this group as a cohort—a group of people with common characteristics¹.

It is this cohort (those 55 and older) that is used for the calculations. It is assumed that each year an equal number of pilots will be retiring and coming into the cohort. Therefore the numbers remain constant over the time interval

¹ <http://dictionary.reference.com/browse/cohort>

being studied. It is possible to do these same calculations for all of the pilots, but I chose the conservative approach. While the actual numbers will show some variance around the 1,762 retirements per year, the very conservative nature of this report dilutes this entirely. In making all of these assumptions, I have used as my reference the classic text by the Rand Corporation, *Analysis for Public Decision* by E. S. Quade².

In addition, I consider these numbers to be conservative as American Airlines, the largest domestic carrier, is not included in these figures. Additionally, pilots flying under Federal Aviation Regulations, Part 135 are not included. Part 135 aircraft pilots are not considered in this report as I do not have any of their confidential data. Part 135 refers to the rules and regulations relating to the smaller regional/commuter airlines. Part 121 refers to the larger legacy airlines and low-cost carriers (LCCs). It is probable, therefore, that the actual number of retirements over this time period is much larger than represented in our sample.

I also consider it conservative to extrapolate these numbers into the future as it is well known that the airlines have laid off their younger pilots in the years after the tragic events of 9-11 in 2001 while they were cutting back on service to reduce costs. For the most part, the current pilot cohorts are among the most experienced of any group since deregulation, so we can anticipate that retirements will either hold constant or accelerate. Thus, the numbers that I calculate are to be considered lower limits

Direct Benefits

The first benefit I will refer to is the direct benefit. This is the elimination of five years for each pilot, the payment of PBGC benefits and the elimination of the federal government paying out Social Security benefits. I will show that this benefit is approximately \$50,000 per pilot per year. This is money that the government will save by not paying benefits.

Indirect Benefits

The second benefit (indirect benefit) is the money that the U.S. government will accrue because the pilot is still working. While there is some variance between what pilots earn at different airlines, I use as an average \$140,000 for pilots at age 55. This is \$10,000 higher than the weighted industry average, but still a conservative number because these are the most senior pilots at the height of their earning ability.

By only calculating the age 55 cohorts, I ignore the accumulated savings from all age groups younger than age 55 in order to be conservative. But the actuarial conclusion is that younger pilots (below age 55) will give the federal government larger indirect benefits because their indirect benefits to the federal government

² Quade, E.S. *Analysis for Public Decisions*, The Rand Corporation, 1989.

will have more years to accumulate interest. The additional accrued interest is an enormous number far in excess of anything calculated in this paper.

Analysis

I will begin my examination by looking at what the government would be paying an age 60 pilot who would receive benefits from the PBGC. I estimate this amount to be \$29,649. In addition, this pilot would receive approximately \$19,644 a year from Social Security. These numbers are included in Table One which calculates the total direct savings.

	YEAR
PBGC	29,649
Social Security	19,644
Total Individual Benefit	49,293
Total	434,172,744

Table One

As can be seen from Table One, the aggregate annual savings is approximately \$434 million achieved by permitting pilots to work beyond age 60, until age 65.

The annual indirect savings is shown in Table Two.

	YEAR
Annual Income	140,000
Loss of Income Tax	35,000
Loss of FICA and Medicare	
Employee's contribution 8%	11,200
Employers Contribution 8%	11,200
Total Individual Income Lost to the Government	57,400
Total	505,579,200

Table Two

From Table Two we see that the annual savings is approximately \$505 million. Table Three adds up these two figures.

Direct Benefits	\$434,172,744
Indirect Benefits	\$505,579,200
Total	\$939,751,944

Table Three

I take this future income stream and discount it using the 30-year treasury rate to find its present value. I discount this over 15 years, which is the appropriate time frame for a discount rate this low. These calculations are shown in Table Four.

In calculating the present value, I use conservative methods in that the discounting takes place at the end of the period, even though the benefits accrue throughout the year.

Year	Amount
2007	939,751,944
2008	939,751,944
2009	939,751,944
2010	939,751,944
2011	939,751,944
2012	939,751,944
2013	939,751,944
2014	939,751,944
2015	939,751,944
2016	939,751,944
2017	939,751,944
2018	939,751,944
2019	939,751,944
2020	939,751,944
2021	939,751,944
Present Value	-
	10,092,508,974

Table Four

Conclusion

While extending the mandatory retirement rule for commercial airline pilots from age 60 to age 65 would cost the federal government nothing, the benefits are extensive. The decision rule in doing a cost benefit analysis is simply that the results are positive. It is generally accepted that a sensitivity analysis be performed. In this case it was not necessary nor were any of the analytics performed even remotely necessary. If only one pilot were to take advantage of this, the numbers would work because the cost is zero. This is among the most lop-sided cost benefit analyses I have ever seen. There is simply no economic reason to **not** make these changes.

This reform comes to us at a unique time as the world is moving toward a standard of 65 with the implementation of the new International Civil Aviation Organization standard. It would seem logical at this point to give American pilots the same ability to fly until age 65 and allow the federal government to reap the roughly \$10 billion in savings for other important aviation priorities.

About the Author

Darryl Jenkins, author of the *Handbook of Airline Economics*, is an airline analyst with more than 30 years of experience in the aviation industry. Recently he has been a visiting professor at Embry Riddle Aeronautical University. Jenkins also served as director of the Aviation Institute at George Washington University for over 15 years. As an independent aviation consultant, Jenkins has worked for the majority of the world's top 50 airlines. In addition, he has consulted for the FAA, DOT, NTSB and other government agencies as well as many foreign countries. Jenkins also is the author of several aviation books and is a regular commentator for major media including ABC, CBS, NBC, MSNBC, CNN, FOX, and major print publications.

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APPENDIX 6: IFALPA Letter Dated October 12, 2006,
International Carrier Pilots Flying Beyond Age 60,
Provided by the Do Not Adopt ICAO Standard Working
Group

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12 October 2006

Members of the FAA Age 60 Aviation Rulemaking Committee
% Captain Duane E. Woerth
Co-Chairman, FAA Age 60 Aviation Rulemaking Committee
1625 Massachusetts Ave., NE
Washington, DC 20036
USA

RE: International Carrier Pilots Flying Beyond Age 60

Dear ARC Members:

I write to you as the President of the International Federation of Air Line Pilots' Associations (IFALPA). By way of background, IFALPA represents over 100,000 pilots in 95 countries worldwide and was formed in 1948 in response to the formation of the International Civil Aviation Organisation (ICAO). IFALPA is one of only two organizations that have permanent observer status on the Air Navigation Commission of ICAO.

While I am sure you are aware of the impending implementation of ICAO Amendment 167, which increases the upper age limit for pilots to age 65 provided that another pilot in the crew is under age 60, Captain Woerth felt that it might be of interest and use in your deliberations to understand what the current industry practices are regarding the ages of pilots actually engaged in line operations. Accordingly, he requested that I provide to you some factual background information on this issue.

Below you will find a cross section of major international airlines whose pilots are represented by Member Associations of IFALPA as well as the current age limits observed by the crews operating on behalf of these carriers. It is noteworthy that in many of the countries of origin of these carriers the maximum licensing age for pilots engaged in commercial operations is greater than the age to which these pilots currently operate. This information was obtained directly from the relevant IFALPA Member Association that represents the pilots of the respective airlines indicated, and is, to the best of my knowledge, current as of the date of this letter.

Aeromexico: currently no pilots flying beyond age 60; some smaller companies in Mexico have pilots flying up to age 65.

Air France: currently no pilots flying beyond age 60.

Air New Zealand: currently approximately 20 pilots flying as First Officer beyond age 60 in international operations; domestic pilots allowed to fly beyond age 60.

Alitalia:	currently no pilots flying beyond age 60.
British Airways:	pilots normally retire at age 55 with no pilots currently flying beyond age 60.
Cathay Pacific:	pilots retire at age 55 but can extend by mutual agreement to age 60; currently no pilots flying beyond age 60.
Iberia Airlines:	currently no pilots flying beyond age 60.
Japan Air Lines:	pilots may fly up to age 63, and currently there are 18 pilots flying over age 60.
Korean Air Lines:	currently no pilots flying beyond age 60.
KLM:	pilots retire at age 56, but by mutual agreement with the company can fly to age 60; currently no pilots flying beyond age 58; some smaller companies in the Netherlands have pilots flying beyond age 60.
Lufthansa:	currently no pilots flying beyond age 60; some smaller companies in Germany have pilots flying up to age 65.
Mexicana:	currently no pilots flying beyond age 60; some smaller companies in Mexico have pilots flying up to age 65.
Qantas:	pilots normally retire at age 55, but can work beyond 55 by mutual agreement and normally retire at age 60; there is no retirement age in Australia so there are approximately 20 pilots working beyond age 60.
SAS Airlines:	about 35 total pilots in all three countries in SAS flying beyond age 60; some smaller companies in all three countries have pilots flying beyond age 60.
Singapore Airlines:	currently no pilots flying beyond age 60.
South African Airways:	currently pilots may fly to age 63.
TAP Air Portugal:	currently no pilots flying beyond age 60.

Members of the FAA Age 60 Aviation Rulemaking Committee

12 October 2006

Page 3

I trust this information will be of some value during your deliberations. If I can be of further assistance please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, reading "Dennis J. Dolan". The signature is written in a cursive, flowing style. The first name "Dennis" is written with a large, prominent 'D'. The middle initial "J." is written in a smaller, more compact script. The last name "Dolan" is written with a large, prominent 'D' and a long, sweeping tail that extends to the right.

Captain Dennis J. Dolan
President

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APPENDIX 7: Fatal Flaws Invalidate Conclusions of
Jenkins Report on the Age 60 Rule, Rebuttal and
Analytical Review, by Drew Keith, Director of Industry
Analysis, Allied Pilots Association, September 2006,
Provided by the Do Not Adopt ICAO Standard Working
Group

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Fatal Flaws Invalidate Conclusions of Jenkins Report on the Age 60 Rule

Rebuttal and Analytical Review

*A Cost Benefit Analysis of S.65 and Reforming the Age 60 Rule
on the Federal Government*

Drew Keith, Director of Industry Analysis

Allied Pilots Association

September 2006



Executive Summary

Currently, Federal Aviation Regulations (FARs) place an age limitation on commercial airline pilots of 60 years. Commonly referred to as the “Age 60 Rule,” this limitation requires commercial airline pilots to retire from their respective airline pilot jobs upon turning 60 years old. Recently, a document entitled *A Cost Benefit Analysis of S.65 and Reforming the Age 60 Rule on the Federal Government* by Darryl Jenkins dated July 24, 2006 was circulated among members of Congress and other interested parties. The Jenkins analysis reached the conclusion that an increase in the commercial pilot age limitation from 60 to 65 years would result in a net “benefit” to the United States federal government of \$10 billion or more over the next 15 years.

While the Allied Pilots Association (APA) strongly believes the Age 60 Rule is primarily a safety issue – and not one of economics – we feel compelled to respond to the Jenkins analysis because of its many errors. ***The proposed change to the Age 60 Rule will not achieve any economic benefit to the United States federal government.*** The Jenkins analysis is so materially flawed that it should have no place in the debate on the merits of the Age 60 Rule.

Jenkins makes fundamental mistakes in three primary areas: 1) Jenkins attempts to quantify lost wages due to early retirement from an individual pilot perspective, but then improperly extrapolates those findings as applicable to the federal government, 2) Jenkins misunderstands the structure and obligations of the Pension Benefit Guaranty Corporation, and 3) Jenkins does not understand the payment of retirement benefits from the Social Security system.

Specifically, the flaws in the Jenkins analysis of benefits (savings) to the government include the following:

- Jenkins assumes that the individual airline pilot job – and hence earnings and taxes paid on those earnings – vanish when the pilot retires. This is simply untrue. Planes do not fly without pilots in the cockpit. When one pilot retires, another pilot takes his/her place. The total number of airline pilot jobs, total wages and total taxes paid *to the government* are largely unaffected by the existence of a commercial pilot age limitation / retirement age.
- Jenkins assumes the Pension Benefit Guaranty Corporation (PBGC) is both insolvent *and* an obligation of the federal government. Neither assumption is true.
- Jenkins confuses the timing of retirement payments from Social Security with the amount a retiree will receive. Those who elect to begin receiving Social Security retirement benefits early (age 62 – not age 60 as Jenkins assumes) receive a *lesser* monthly amount. In other words, the amount (value) of the benefit paid to retirees by Social Security is not affected by when an individual retiree elects to begin receiving Social Security benefits.

When the Jenkins Analysis is corrected for these and other errors, there is no economic benefit to the United States federal government from a change to the Age 60 Rule.

Overview

The document entitled *A Cost Benefit Analysis of S.65 and Reforming the Age 60 Rule on the Federal Government* by Darryl Jenkins dated July 24, 2006 (hereafter the “Jenkins Analysis”) has been provided to the Allied Pilots Association (APA) after having been circulated among members of Congress and around the industry. The Jenkins Analysis was prepared at the request of JetBlue Airways, Southwest Airlines Pilots’ Association (SWAPA), and Airline Pilots Against Age Discrimination. Not surprisingly, each of these organizations is publicly supporting a change to the current mandatory pilot retirement age. A copy of the Jenkins Analysis is attached (see **Exhibit A**).

The Jenkins Analysis attempts to establish the net present value of the cost or benefit, *as it pertains solely to the United States federal government*, of changing the current age limitation from 60 to 65 years for airline pilots of certificated air carriers operating under Federal Aviation Regulations (FAR) Part 121. The Jenkins Analysis concludes that raising the pilot age limit from 60 to 65 years, conservatively, will save the United States federal government “roughly \$10 billion” over the study period (2007 – 2021).

While the Allied Pilots Association strongly believes the Age 60 Rule is primarily a safety issue – and not one of economics – we feel compelled to respond to the Jenkins Analysis because of its many errors. ***Any proposed change to the Age 60 Rule will not achieve any measurable economic benefit to the United States federal government.*** The Jenkins Analysis is so materially flawed that it should have no place in the debate on the merits of the Age 60 Rule.

The Jenkins Analysis Refuted

The Jenkins Analysis attempts to establish both “Direct Benefits” and “Indirect Benefits” (direct and indirect net savings) to the federal government resulting from a five-year increase in the commercial pilot age limitation. Several significant errors and incorrect assumptions completely invalidate the Jenkins Analysis of both the direct and indirect savings and the resulting conclusion. These errors and a detailed rebuttal follow.

FLAWS RELATED TO THE “DIRECT BENEFIT” SAVINGS ANALYSIS:

Jenkins Analysis: The largest portion of the “Direct Benefits” stated to accrue to the United States federal government (hereafter “the government”) is from incremental savings to the PBGC.

APA: *The PBGC is a federal corporation that finances its operations independent of the government. The government is not obligated for any shortfall the PBGC might someday experience; thus, there are no “savings” to be obtained for the government.¹ Jenkins also*

1. The assumption that: 1) the PBGC will become insolvent, and 2) the government (taxpayers) will *at some point* assume the PBGC trustee plan obligations, is debatable. However, within the Jenkins Analysis study period, this scenario is unlikely.

incorrectly assumes all retiring pilots participate in a pension plan insured by the PBGC – a substantial number do not. In fact, two of the sponsors of the Jenkins Analysis, SWAPA and JetBlue, have no defined benefit pension covered by the PBGC. Thus, there could be no savings for these pilots even if the PBGC obligations fell to the federal government.

Jenkins Analysis: The remaining portion of the “Direct Benefits” expected to accrue to the government is from incremental savings to Social Security.

APA: *First, the retiring pilots’ jobs are not eliminated due to retirement of a particular group of senior pilots. Other pilots “move up” to fill the vacated jobs, and these pilots typically make more than the FICA Maximum Taxable Amount. The upward movement all down the chain of pilot jobs effectively preserves the gross wages subject to FICA taxes.*

Second, the per-pilot amount shown in the Jenkins Analysis is invalid. Social Security benefits cannot begin until age 62 at the earliest. If benefit payments are elected at age 62, they are at a reduced rate in order to meet the actuarial equivalent of beginning benefit payments at age 65 (or the Full Retirement Age – increases to age 67 over the study period). Thus, while the timing of Social Security benefit payments may be variable, there are ultimately no savings to the government as a result of when a person begins receiving retirement benefits.

Jenkins Analysis: The “Total Individual Benefit” (Direct Benefit “savings” per pilot) is multiplied by the total number of pilots retiring over the next five years, which then becomes the “Direct Benefits” annual savings amount, beginning immediately.

APA: *Even if there were any “Direct Benefits” – which there are not – present value theory is based upon current, or near-term, cash flows being worth more than later-term cash flows. (A dollar received today is worth more than one received tomorrow.) Assuming all the cash flow from “savings” occurs immediately, rather than layering the anticipated “savings” as they are expected to occur (one fifth of the retirees each year), skews the present value calculation materially too high.*

Although there are no “Indirect Benefits” either, Jenkins makes the same error in calculating the “Indirect Benefit” annual savings amount.

FLAWS RELATED TO THE “INDIRECT BENEFITS” SAVINGS ANALYSIS:

Jenkins Analysis: The “Indirect Benefit” begins with the assumptions that when a pilot retires, the pilot’s job, the associated earnings and the taxes paid on those earnings vanish into thin air.

APA: *The total number of airline pilot jobs is not driven by any commercial pilot age limitation. Planes do not operate without pilots in the cockpit. When a pilot “retires,” another pilot moves up to fill the vacancy at approximately the same rate of pay, and that replacement pilot will continue to pay taxes on that earned income. The loss of wages and taxes paid due to the Age 60 Rule may affect a unique, individual pilot, but not the entire airline industry and not the U.S. work force from which the government collects payroll taxes. Jenkins makes the classic*

analytical mistake of forgetting the premise of his original thesis – determining the cost or benefit of the proposed change as it pertains solely to the United States federal government rather than an individual pilot or particular group of pilots.

Jenkins Analysis: Jenkins infers that every pilot who retires from their airline job at age 60 never earns another taxable dollar.

APA: *The Jenkins Analysis contains no provision for income earned “post-retirement” by commercial airline pilots. Many pilots can and do work for a number of years after retiring from commercial airline pilot jobs. For every year after age 60 (the current age limit) that any “retired” pilot earns taxable wages in some other occupation, those taxes would become a net benefit to the U.S. government. We do not have sufficient data at this time to estimate the size of this net benefit, but it cannot be ignored.*

Jenkins Analysis: The “annual indirect savings” calculation overstates the employee’s and employer’s contribution to Social Security (FICA).

If there were an actual job, wage and tax loss due to the pilot age limitation – which there is not – Jenkins’ calculation uses 8.0% when the combined FICA and Medicare tax level is 7.65%. In addition, the Jenkins Analysis does not take into account the FICA Maximum Taxable Amount, and simply multiplies the entire assumed annual income (\$140,000) by the 8.0% rate (the current FICA Maximum Taxable Amount is \$94,200). Combined, this has the effect of overstating the FICA portion of the per-pilot indirect “savings” calculation by more than 40% within the Jenkins Analysis.

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Analysis Review, Adjustment & Recalculation

To ease the comparison and understanding of where adjustments are required, this review will follow the same format utilized by the Jenkins Analysis. If desired, the reader is invited to compare the tables of Exhibit 1 (the Jenkins Analysis) side-by-side with these corrections.

The Jenkins Analysis begins by presenting the total direct savings (Direct Benefits) on an annual basis in Table One. The necessary adjustments are shown as well.

Table One - Direct Annual Savings		
	Annual Amount in \$	
	Jenkins Analysis	APA Adjustment
APA Adjustments are in Red		
PBGC	29,649	0¹
Social Security	19,644	0²
Total Individual Benefit	49,293	0
Multiplied by "Retiring" Pilots³	8,808	8,808
Total "Direct" annual savings	\$ 434,172,744	\$ 0

1. There are no savings to the government related to the PBGC – see Overview.

2. Full Social Security benefits cannot begin until age 65 or later. Benefit payments beginning before the full retirement age are at a lower amount to achieve actuarial equivalency; therefore, there are no net savings to the government - see Overview.

3. A substantial number of the “retiring” pilots have no pension insured by the PBGC. Not adjusted due to the PBGC and Social Security basis being \$0. Plus, if benefits existed, the number of pilots should be accounted for as they are expected to retire rather than all at once.

As a result, there are no “Direct Benefits” to the United States federal government related to raising the age limit of FAR Part 121 air carrier pilots from age 60 to 65.

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The Jenkins Analysis presents the total annual indirect savings (Indirect Benefits) in Table Two. Inherent in this calculation are the invalid assumptions that 1) the airline pilot job disappears with a retiring pilot, and 2) each and every pilot “retiring” at age 60 never earns any additional taxable wage income.

Table Two - Indirect Annual Savings			
APA Adjustments are in Red			
		Annual Amount in \$	
		Jenkins Analysis	APA Adjustment
Annual Income Lost¹		140,000	0
Loss of Income Tax¹		35,000	0
Loss of FICA & Medicare²			
Employee's contribution	8.00%	11,200	0
Employer's contribution	8.00%	11,200	0
Total individual income lost to the government		57,400	0
Multiplied by "Retiring" Pilots³		8,808	8,808
Total "Indirect" annual savings³		\$ 505,579,200	\$ 0

1. Jenkins assumes that the job vanishes with the retiring pilot, which generates the lost income tax assumption of \$35,000. This is an invalid assumption as it pertains to the government.

2. If there were any Indirect Benefit, given this set of assumptions, the correct FICA and Medicare rates must be used, and the FICA maximum taxable amount must be considered. Medicare taxes are levied on total annual wage income.

3. The Jenkins Analysis simply uses the gross number of “retiring” pilots beginning in year one. If any Indirect Benefits existed, the retiring pilots should be accounted for as they are expected to retire.

As a result, there are no “Indirect Benefits” to the United States Federal Government related to raising the age limit of FAR Part 121 air carrier pilots from age 60 to 65.

Table Three of the Jenkins Analysis simply adds the Direct Benefits and the Indirect Benefits to establish a Total (annual) “benefit.” The adjusted Table Three is presented below:

Table Three - annual savings			
Adjustments are in Red			
		Annual Amount in \$	
		Jenkins Analysis	APA Adjustment
Direct Benefits	\$	434,172,744	\$ 0
Indirect Benefits	\$	505,579,200	\$ 0
Total (all years)	\$	939,751,944	\$ 0

The Jenkins Analysis culminates in Table Four, which presents the annual amounts for the study period that are then discounted at the “30-year treasury rate” (rate not specified – calculates to be 4.50% - effective rate quoted as of Aug. 15, 2006) to achieve a present value “benefit.” Since there are no benefits, there is no cash flow stream of savings to value. Thus, the adjusted present value is \$0.

Table Four - Present Value			
Adjusted values in Red		Annual Amount in \$	
	Jenkins Analysis	APA Adjustment	
Year			
2007	939,751,944	\$	0
2008	939,751,944	\$	0
2009	939,751,944	\$	0
2010	939,751,944	\$	0
2011	939,751,944	\$	0
2012	939,751,944	\$	0
2013	939,751,944	\$	0
2014	939,751,944	\$	0
2015	939,751,944	\$	0
2016	939,751,944	\$	0
2017	939,751,944	\$	0
2018	939,751,944	\$	0
2019	939,751,944	\$	0
2020	939,751,944	\$	0
2021	939,751,944	\$	0
Present Value	\$ 10,092,508,974	\$	0

The potential savings to the government calculated by the Jenkins Analysis are vastly overstated. There is no measurable benefit to the government.

CONCLUSION

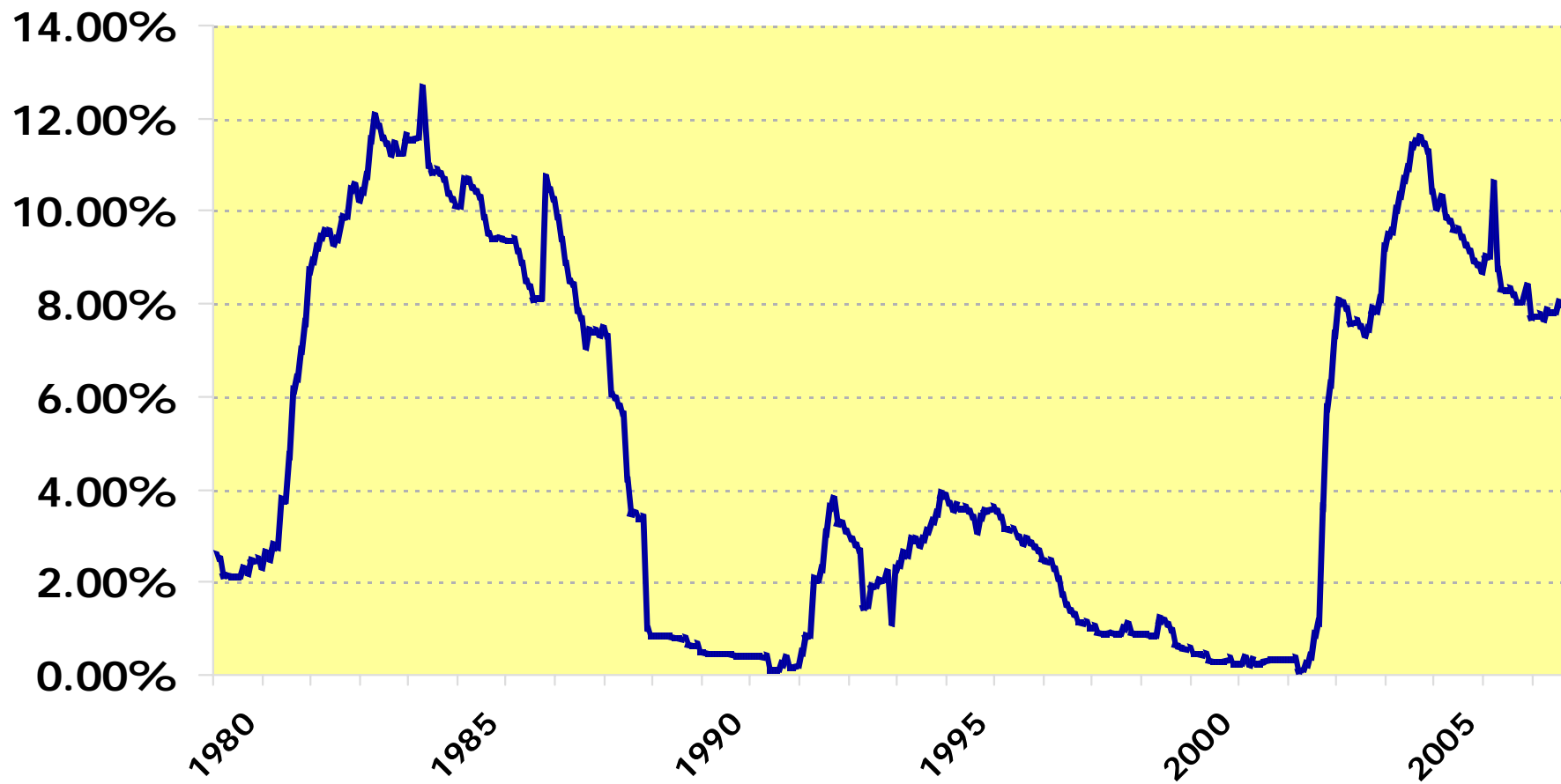
When the Jenkins Analysis is corrected for its many errors, we find no measurable economic benefit to the United States federal government from an increase in the current commercial pilot age limitation. As such, the Jenkins Analysis is so materially flawed that it should have no place in the current debate on the merits of the Age 60 Rule.

APPENDIX 8: ALPA Chart on Furloughed Pilots,
Provided by the Do Not Adopt the ICAO Standard
Working Group

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Percentage of Furloughed Members 25 Years



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APPENDIX 9: Federal Aviation Administration Summary
Of Comments To Docket No. FAA-2006-26139, Age 60
Aviation Rulemaking Committee,
In Affiliation/Issue Order and
Comments to the Docket Received from U.S. Senators
and Businesses and Associations

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SUMMARY OF COMMENTS IN AFFILIATION/ISSUE ORDER

Please see the separate document titled “Federal Aviation Administration Summary of Comments to Docket No. FAA–2006–26139, Age 60 Aviation Rulemaking Committee, in Affiliation/Issue Order,” dated November 29, 2006, for the complete summary of comments to the docket.

COMMENTS FROM U.S. SENATORS AND BUSINESSES AND ASSOCIATIONS

The following U.S. Senators and businesses and associations provided comments to the docket. Copies of these comments are provided following the table, in comment number order.

Commenter	Comment No.
Lynden Air Cargo	285
Southwest Airlines Co.	297
Senators Wayne Allard, Johnny Bakson, Sam Brownback, Conrad Burns, Larry Craig, John Ensign, Mike Enzi, Charles E. Grassley, James M. Inhofe, Rick Santorum, Ted Stevens, and John Warner	305
AARP	728
The Seniors Coalition	800
EL-AL Airlines	989
Regional Air Cargo Carriers Association	1,150
Airline Pilots Against Age Discrimination	1,792
The Galaxy Corp	1,977
Professional Pilots Federation	2,283
Civil Aviation Medical Association	2,467
JetBlue Airways Corporation	2,536
Ameriflight	2,750
AARP	4,953
U.S. Equal Employment Opportunity Commission	5,346

Commenter	Comment No.
Miami Air International, Inc.	5,468
Ameristar Air Cargo, Inc.	5,511
US Airways, Inc., and America West Airlines, Inc.	5,514
Northwest Airlines and Northwest Airlines Air Lines Pilots Association	5,546
British Air Line Pilots Association	5,598
Alaska Air Carriers Association	5,722

Lynden Air Cargo

Comment No. FAA-2006-21639-285

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Comments re: Docket FAA-2006-26139
Age 60 Aviation Rulemaking Committee: Request for comments

Lynden Air Cargo, LLC welcomes the opportunity to comment to the FAA and the Aviation Rulemaking Committee (ARC) with regard to increasing the upper age limit for airline pilots to age 65 and adopt the ICAO standard. We are concerned that the heavily weighted labor content of the ARC will overwhelm the arguments from the industry and prevent a common sense approach to this regulation.

It is unfortunate the arguments over the years relating to the age-60 issue have been politicized by both management and some labor groups that are using a safety argument to disguise selfish economic motives. At its inception, the age-60 regulation was based on the desire of some carriers to shed itself of its higher salaried senior pilots and lower its operating costs. Now, junior pilots, who represent a majority of the labor force in most companies, want to see the senior pilots retire in order to make room for their own advancement. Attempts were made to justify the age limit by using the safety argument, but complete or adequate scientific data have never supported that position.

There is no evidence to justify continually imposing an arbitrary age limit for airline pilots based on safety. The FAA permits pilots under the age of 60 to fly with known medical conditions but refuses to allow a pilot with no known medical condition to continue flying past his 60th birthday. With annual and biannual medical examinations a prerequisite for any pilot to maintain their license, the risk is no greater for someone over 60 than it is for a 30-year old.

We will soon have foreign pilots over the age of 60 piloting commercial airplanes in the same airspace as U.S. pilots flying the same equipment. This not only is comical in the eyes of the rest of the world, but borders on absurdity that our FAA would approve or support this kind of ridiculous situation. What makes the over 60 year old foreign pilot safe while the same aged U.S. pilot is not safe? What is even more ridiculous is that if the FAA does not adopt the ICAO rules, a US pilot who is over 60 can go to work for a foreign carrier that is flying into the US, but that same pilot is barred from flying for a US carrier in the same airspace. It is time for the FAA to join ICAO and recognize the age-60 rule is not valid.

Lynden Air Cargo is an FAR Part 121 operator that operates L382G aircraft, the civilian version of the C-130, in specialized niche markets. In these specialized markets, our safe operations are critically dependent on pilot experience. The arbitrary loss of our most experienced pilots through the age-60 rule severely impacts our business by limiting our areas of operation and causing unnecessary delays. In fact, for our operation, as long as the pilot maintains health and proficiency, there is no question that the years of experience operating in the Alaska environment makes this pilot a safer pilot.

LAC requests the FAA to raise the pilot age limit to 65 as long as there is a co-pilot in the cockpit under 60 to match the ICAO standard. It is important the FAA regulations remain consistent with the international community and do not place U.S. carriers at a disadvantaged or in a discriminatory position. It is time to make the change.

Michael Hart
President
Lynden Air Cargo, LLC

Southwest Airlines Co

Comment No. FAA-2006-21639-297

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March 6, 2006

Captain Joseph "Ike" Eichelkraut, President
Southwest Airlines Pilots' Association
1450 Empire Central Dr., Suite 737
Dallas, Texas 75247

Dear Ike,

On behalf of Southwest Airlines, we are pleased to offer our continued support for repeal or amendment of the Age 60 Rule.

The SWAPA Board of Directors and the membership have consistently endorsed elimination of the FAA's mandatory age-60 limitation. As a Company we have provided legal briefs to the courts as well as testimony to congressional committees in order to complement the activities of SWAPA on this issue.

We have done so because we believe that our pilots are among the nation's best and that their intense training, testing and dedication to high standards do not arbitrarily end at age 60. Our experience with Southwest pilots matches the expectation for pilots worldwide under the International Civil Aviation Organization's proposal set to become the standard later this year.

Southwest Airlines supports the efforts of SWAPA and other organizations or individuals to allow pilots to fly commercial jet aircraft beyond age 60. We believe current training, safety and medical requirements can be maintained to ensure the protection of our Customers, our Employees and the general public.

SWAPA is hereby authorized to use this letter of support for the purpose of communicating your views, and those of Southwest Airlines, to our elected representatives.

Best personal regards,



Herbert D. Kelleher
Chairman of the Board



Gary C. Kelly
Vice Chairman and CEO



Colleen C. Barrett
President and COO

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U.S. Senators—

Wayne Allard,
Johnny Bakson,
Sam Brownback,
Conrad Burns,
Larry Craig,
John Ensign,
Mike Enzi,
Charles E. Grassley,
James M. Inhofe,
Rick Santorum,
Ted Stevens, and
John Warner

Comment No. FAA–2006–21639–305

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United States Senate
WASHINGTON, DC 20510

September 28, 2006

The Honorable Marion Blakey
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Dear Administrator Blakey:

On November 23, 2006 the International Civil Aviation Organization (ICAO) will adopt a new worldwide standard of age 65 for commercial airline pilot retirement. We fully support this new standard and agree that it should be adopted in the U.S. as well.

Although we were sorry to see that the U.S. was only one of four countries to disagree with the adoption of this new standard, we are encouraged that you have decided to convene an Aviation Rulemaking Committee (ARC) to explore changes in the Age 60 rule for U.S. Pilots.

It is our understanding you have said that the FAA will not promulgate a rule to adopt the ICAO standard for American pilots this fall without a Congressional mandate. We understand international law dictates that the U.S. must allow foreign pilots over age 60 to work and fly in our airspace; it is our hope that as you revise the rule for foreign pilots to meet the new ICAO standard that you will insist American pilots are afforded the same right to work until 65.

As co-sponsors of S.65, we have worked tirelessly this session to provide the FAA with legislative guidance that would afford U.S. pilots the same right that you will be required to give foreign pilots this fall. We are hopeful that Congress will pass this legislation prior to adjourning sine die this year.

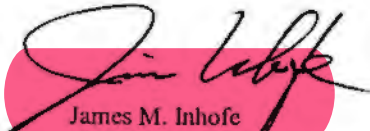
At the same time, you have assembled the ARC to advise you on changes to the rule. We will watch this process carefully and look forward to seeing the ARC report. We hope you appreciate that a finding which leads to a rule allowing foreign pilots to work and fly in the U.S. to age 65 without affording U.S. pilots the same privilege will not sit well with the American people and most Members of Congress.

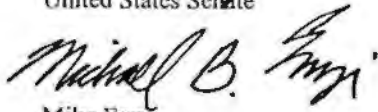
In the process of adopting the new standard, ICAO studied more than 3,000 over-60 pilots from 64 nations, totaling at least 15,000 pilot-years of flying experience and found the risk of medical incapacitation "a risk so low that it can be safely disregarded." A recent economic study shows that allowing pilots to fly to age 65 would save almost \$1


billion per year in added Social Security, Medicare, and tax payments and delayed Pension Benefit Guarantee Corporation (PBGC) payments. The Aerospace Medical Association says that "There is insufficient medical evidence to support restriction of pilot certification based upon age alone." American Association of Retired Persons, Equal Employment Opportunity Commission, the Seniors Coalition, and the National Institute of Aging of NIH all agree that the Age 60 Rule is simply age discrimination and should end. We agree.

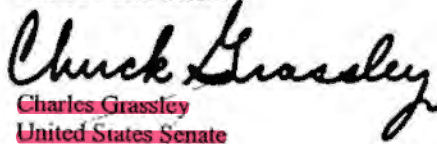
As you begin the ARC, we ask that you do everything in your power to ensure American pilots are given the same opportunity as foreign pilots to work and fly in their own country.

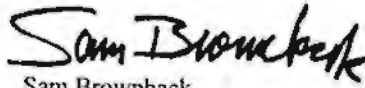
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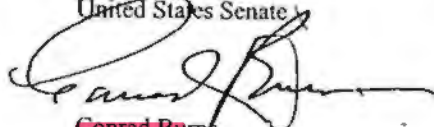

James M. Inhofe
United States Senate



Mike Enzi
United States Senate

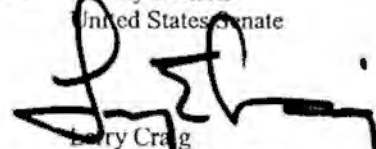

John Warner
United States Senate

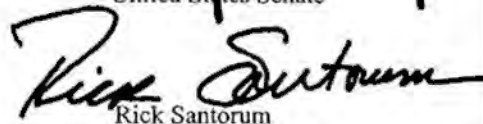

Charles Grassley
United States Senate

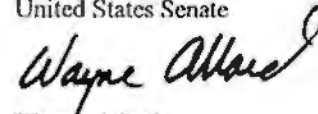

Sam Brownback
United States Senate


Conrad Burns
United States Senate


Johnny Isakson
United States Senate


Larry Craig
United States Senate


Rick Santorum
United States Senate


Wayne Allard
United States Senate


Ted Stevens
United States Senate


John Ensign
United States Senate

AARP

Comment No. FAA-2006-21639-728

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March 16, 2006

The Honorable James M. Inhofe
United States Senate
453 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Inhofe:

On behalf of the more than 36 million members of AARP, I write in support of S. 65, legislation that amends the current Federal Aviation Administration's (FAA) age restrictions for pilots. AARP is the largest organization representing the interests of Americans age 50 plus, who have a vital interest in remaining actively engaged in our nation's workforce. About 45 percent of the AARP membership is employed either full or part-time, and we strongly believe they should not face arbitrary barriers to their continued employment.

S. 65 increases the mandatory retirement age for airline pilots from age 60 to the full retirement age, as defined by the International Civil Aviation Organization. The bill is an important step in recognizing that pilots should be judged on bona-fide occupational qualifications and not on false assumptions that fitness for duty corresponds to a pilot's age.

AARP believes that the competency of a worker should be judged on ability, skill, and proficiency, not on arbitrary age limits. We have therefore long opposed any law, regulation, or regulatory guidance that imposes a mandatory retirement age, including the Federal Aviation Administration's rule requiring airline pilots to retire at age 60. In reality, there is no evidence that pilots over age 60 are less competent than other pilots. We should therefore reject this age limitation. Instead, we should encourage older workers to continue to contribute their skill and experience in the workforce.

AARP applauds your leadership on this important issue. If you have further questions, please contact me or Sarah F. Pierce of AARP's Federal Affairs department at (202) 434-3767.

Sincerely,

A handwritten signature in black ink that reads "David P. Sloane". The signature is written in a cursive, flowing style.

David P. Sloane
Senior Managing Director
Government Relations and Advocacy

Cc: The Honorable Ted Stevens (R-AK), Chairman of the Senate Committee on Commerce, Science, and Transportation;
The Honorable Daniel K. Inouye, Ranking Minority Member of the Senate Committee on Commerce, Science, and Transportation

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The Seniors Coalition

Comment No. FAA-2006-21639-800

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THE SENIORS COALITION

Working for a Responsible America

July 18, 2006

The Honorable Ted Stevens
Chairman, Committee on Commerce, Science and Transportation
U.S. Senate
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Stevens:

On behalf of the more than 4 million members of the Seniors Coalition, I write in support of S. 65. This legislation amends the current Federal Aviation Administration's (FAA) age restrictions for airline pilots and will provide pilots of US air carriers with the same right to work in the United States as foreign pilots will have under the International Civil Aviation Organization (ICAO) standards which take effect November 23, 2006.

This is a fairness issue, not a safety issue, there is no evidence that pilots over age 60 are any less safe, or that US pilots are less safe than foreign pilots. The FAA from 1995 to 1999 granted waivers to US pilots over 60 years of age who were flying aircraft with between 10 and 30 seats, they would not do this if they considered it to be an issue of safety.

Countries such as Australia, Brazil, Canada, New Zealand have no mandatory retirement age and yet maintain an excellent safety record. The Seniors Coalition believes in basing employee competency on proficiency and skill as these countries have done rather than on a Chronological Age, but recognizes that age 65 is less restrictive than age 60 and therefore supports this legislation.

The numerous bankruptcies within the airline industry have lead many airline employees to seek additional employment. At age 60 retirements they find that they do not have immediate access to Social Security or Medicare benefits. We are keenly aware of the economic contributions of the older workers, and of their fulfillment in working. Often they mentor younger workers helping them to become more productive. We therefore are opposed to mandatory retirement for airline pilots at age 60. When the sole discriminate is based upon age it is Age Discrimination. We support a pilot's choice to continue working and contributing their experience and skill to the cockpit.

Sincerely,

Mary Martin
Chairman of the Board
The Seniors Coalition

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EL-AL Airlines

Comment No. FAA-2006-21639-989

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423529

EL VALON

FAX NO. 001-202-493-2251

Oct, 25, 2006

Dr. Fred Tilton
Federal Air Surgeon
F.A.A. / Ministry of Transportation
800 Independence Ave.
Washington D.C
U.S.A

FAA-2006-26139-989

Dear Dr. Tilton,

It was wonderful meeting you again at Ottawa during C.A.M.A's Annual meeting.
Enclosed is a recent letter received from Capt. Bob Engelman – United Airlines.

I find it more appropriate to relay information directly to you, since you are in the rule making position, as well as head or part of ARC.

El-Al, Israil and Arkia - the major airlines in the state of Israel have around 750 pilots out of which 15% are between ages 60 to 65, at the present time.

In the past 12 years, around 110 airlines pilots retired at term (age 65).

Our statistics show the following morbidities among our pilots:-

Age group:

30 – 40 - flu, rare case of syncope, incidents of sports injuries: skiing, running, bike riding, motorcycle riding, etc.

40- 50: Rare cases of I.H.D., Ophthalmological problems like C.S.R, retinal detachment; rare cases of D.V.T due to prolonged immobilization and lack of fluid intake; less sport accidents, rare cases of skin cancer (M.M), rare cases of colon cancer, one case of induced epilepsy.

50-60 This group represents the majority of medical problems:
I.H.D, HTN, P.A.F colon cancer, prostate cancer initial type II N.I.D.D.M, rare cases of T.A skin Disorders; B.C.C.S, M.M, Keratosis. rare cases of Hypothyroidism, Hyperthyroidism and other rare cases like Acoustic Neuronoma, Lymphoma M.S., Initial stages of Parkinson's disease & Alzheimer's disease, rare psychiatric changes including depression, rare cases of anxiety, chronic fatigue.
Ophthalmological problems - retinal detachment, C.S.R, Glaucoma, Cataracts.

Most of pilots grounded due to medical problems are in the age group of 50 - 58.

It seems, that by age 60, for some reason – most of those with medical problems are already out of the system.

Among the pilots at the high end (60 – 65), who are still flying for those who had medical problems and "survived" certification by special issuance and close medical follow up, there is no recurrence of the original problem, and they are very well controlled.

When there is a problem during recurrent flight training and simulator checks - both = performance wise, or regarding C.R.M. these pilots are referred to psychological cognitive testing and/or psychiatric evaluation.

Luckily, we do not have Alcohol or drug abuse problems among our pilots.

Based on our experience, I could not discriminate pilots over age 60 carrying positions as airline pilots.

I would recommend (and that is what we do here):

- 1) Preventive medicine education by lectures of Airline medical directors (M.D.'s, A.M.E.'s) to their pilots and Aircrew personnel.**
- 2) More rigorous screening periodical medical check -ups, Eg. - in addition to the routine medical exams:**
 - 1) Full blood chemistry and C.B.C (every check-up),**
 - 2) P.S.A above age 50 (once a year)**
 - 3) Colonoscopy above age 50 (every 5 Yrs) – more frequently for high risk patients.**
 - 4) Stress E.C.G once a year**
 - 5) Tonometry & Fundus by ophthalmologist**
 - 6) Other tests deemed necessary if pilot presents with family history or gene related risk factors, or other risk factors.**

Over the years we have learnt that our special issuance cases with all their follow-up requirements, are the least prone to sudden incapacitation when an exacerbation is detected, they are either grounded or promptly retreated successfully.

When we began extending active duty in airlines from 60 to 65 - we initially required captains to have full periodical medical check-ups every 4 months and that was done for a political and medico - legal reason. Today all 60 - 65 Y.O airline pilots are back to 6 month intervals.

We are at a stage of considering ages 65 - 67 as first officers - based on simulator performance and results of medical check-ups.

Sincerely,



Dr. AVINOAM BARLEV M.D.
SEN. A.M.E., A.T.P.
CAA LICENCE no. 12849
FAA LICENCE no. 15765-9

Avi Barlev, M.D., SEN, AME- FAA,CAA,TCA
Aircrew medical consultant ELAL & ISRAIR airlines
Medical Director of Aviation Medicine Dept- Medical Med. Institute
Medical Director, Aviation Medicine/ Airline Lic.- Mor Medical Institute

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Regional Air Cargo Carriers Association

Comment No. FAA-2006-21639-1150

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30 October 2006

COMMENT: Docket No. FAA-2006-26139
Age 60 Aviation Rulemaking Committee

The Regional Air Cargo Carriers Association (RACCA) represents more than 50 cargo airlines, chiefly regulated by 14 CFR Part 135, who operate over 1,000 airplanes serving smaller communities throughout the United States and internationally. Our members provide “air feeder” service extending next-day and other package delivery options by major integrators such as DHL, FedEx, and UPS to communities and island nations where service by large air carrier cargo jets is not practicable – and other high-priority cargo services to small communities, such as medical laboratory samples, pharmaceuticals, and even organs for transplant.

Whereas the proposed change to the current “age 60” rule does not affect most of our members directly, it clearly has downstream consequences as set forth below. RACCA supports the proposed change for the following reasons:

1. We have not seen any evidence to support a need to end the careers of pilots with good mental acuity and general health, when they reach age 60. Whereas this might have been more appropriate a half-century ago when virtually all pilots smoked and pilots were generally less health-conscious than they are today, current life-expectancy and health statistics support a significant increase in the age limit. For example, in the relatively short period from 1970 to 2003, Centers for Disease Control statistics show an average increase in life expectancy of more than five years – with significantly greater increases if statistics for earlier periods are included.
2. Terminating the careers of airline pilots at age 60 denies the industry and its customers of a wealth of skill and practical experience, at a time when the supply of experienced pilots in the United States is dwindling – and in the process we decrease the opportunity for other crewmembers to fly with, and learn from, these experienced captains.

Regional Air Cargo Carriers Association
Comment: Docket No. FAA-2006-26139
30 October 2006
Page 2

3. Extending the “cutoff” age from 60 to 65 will result in a short term slowing of progress up the aviation ladder from entry level jobs into fast, complex regional and trunk airline jets – and in turn will ease the increasingly acute shortage of qualified entry level pilots in our RACCA’s part of the industry, while allowing more time for the knowledge and experience of those at intermediate levels to mature.

Regional Air Cargo Carriers Association strongly supports the proposed increase in the pilot age limit to age 65, believes it is in the overall best interest of the aviation industry and flying public, and will probably have a long-term positive effect upon safety.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Hazlet, Jr.", with a stylized, cursive script.

John W. Hazlet, Jr.
RACCA FAR 135 Committee

Airline Pilots Against Age Discrimination

Comment No. FAA-2006-21639-1792

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It is absolutely essential that the Age 60 Rule be changed.

ICAO pilots will soon (November 23rd) be flying into our country, over the age of 60. The new standard is 65. Since when are American pilots second-class citizens to foreign pilots in our own airspace? That is intolerable! If such an age split is to be allowed, then we must warn our citizens that older (unsafe?) pilots will be flying into our airspace and flying code-share trips with US airlines.

ALL other commercial private industry pilots in American aviation are not subject to age restrictions. They fly aircraft as demanding and, in many cases, more demanding than airline pilots do. Why, if we operate similar equipment in the same operating environment, are airline pilots treated differently?

Age waivers have repeatedly been allowed (on a temporary basis) to help airline companies but pilots are never allowed waivers to continue their careers. Two sets of standards like this is unfair.

Age limits, allegedly for safety, have been waived for air traffic controllers. Instead of retiring at age 56, they can now work to 61. Pilots are allowed no such waivers to their age 60 rule, even when healthy and proficient.

PATCO air traffic controllers are being hired back OVER the age of 60. They are not subject to any age limitations. How can they be allowed to work beyond the alleged safety age of 56 when pilots are not waived and allowed the same right?

Pilots under 60 (age 59 even!) with head trauma, alcoholism and HIV are given cognitive testing to prove they can return to the flight line. Yet a healthy pilot at the age of 60, with no 'issues' is not allowed to fly past 60 under any circumstances. That defies logic.

The rule is almost a half-century old, without any modification or amendment. This rule is OLD, almost back to biplanes and certainly to the very dawn of the jet age. Time for an update!

Health, aircraft and the operating environment have all improved but the age remains unchanged.

Longevity is 10 years longer than it was in 1959, but the retirement age remains unchanged.

Careers begin later and end at 60 - but with increased longevity our Defined Contribution retirement plans are expected to last us well into our '80s or even '90s. That's a tough thing to achieve.

The EEOC believes the Age 60 Rule is age discrimination? How is it that the federal government is allowed to discriminate against the nation's most experienced pilots? The EEOC has eliminated such age restrictions in American commercial aviation - with the exception of the airlines (because it is not allowed to sue or dictate to another federal agency).

The AARP believes the rule to be age discrimination.

The Federal Air Surgeon has said there is "no medical justification" for the Age 60 Rule. If there is no medical justification for it, why does it exist?

Common sense says, after almost fifty years and with all the changes in aircraft, air traffic control procedures and equipment and with the huge strides we've made in health and longevity - that this rule is due for a change.

Align the Age 60 Rule with the new world standard. Bring it into the light of the 21st century.

Paul Emens
C-Founder/Government Liaison
Airline Pilots Against Age Discrimination

The Galaxy Corp.

Comment No. FAA-2006-21639-1977

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This comment concerns the proposed age 60 rule change. It has been no secret that those pilots about to retire would like to extend the age rule to 62 or even 65. I am going to put it straight on the line folks. I fly with many of the pilots you have heard from regarding this issue. This is nothing personal, they are all great people. BUT and this is big....As these pilots approach age 60 they begin to lose their "edge". I can only explain it this way. On many 6 hour flights, the older Captns' will routinely tell a story about their past not 1, not 2 but as many as THREE times. NOT because they LIKE the story....Because they do not remember telling it in the first place! Now this may sound amusing, but if you dig into what is causing this, you will see my point. Another problem MANY of the older pilots have is a loss of hearing. While it may not be caught in the quiet room of the FAA Dr. during a hearing test, I cannot tell you how many times, I have had to repeat myself when asking for "flaps" or "gear down".

My friends, a 30 plus year as an airline pilot is long enough. Please do not threaten any ones safety by increasing the workload for the younger pilots in the industry.

In the end, I suppose the rule change isn't really about safety however. No....I see you all passing this proposal, because, you either have a "pilot" friend, or some monetary matter will justify it. I however think that it is an unwise rule change.

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Professional Pilots Federation

Comment No. FAA-2006-21639-2283

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Professional Pilots Federation

Ben M. Yetman, President

P.O. Box 1116 Grapevine, TX 76099

Fax (817) 481-5187 INTERNET: 70641:1413@compuserve.com

www.ppf.org

Docket Management Facility, US Department of
Transportation,
400 Seventh Street, S.W., Nassif Building, Room PL-401,
Washington, DC 20590-0001.

Docket Number FAA-2006-26139

To Whom It May Concern:

The Federal Aviation Act of 1958 states that "It is the intent of this legislation that the Administrator shall discharge his rulemaking powers in a *fair and impartial manner* to promote the public interest and provide for the national defense...

Congressional intent was subverted in 1959 when the FAA placed the age 60 rule under section 601 of the Federal Aviation Act of 1958, a code section immune from independent administrative review.

The FAA decided not to adopt the rule as a licensing restriction, which would have seemed more logical, considering that the minimum age limit appears under Part 61, and that the only justifications ever propounded for the rule were medical in nature. Under Title 4 of the FAA act, Parts 601 and 602 are most relevant to the age 60 rule. Under Part 601 the FAA could enact such reasonable rules and regulations, or minimum standards, governing such practices, methods and procedures as the Authority may find necessary to provide adequately for safety in air commerce.

Under Part 602(b), on the other hand, "ability to perform" is the controlling criteria, and the FAA is required to issue such certificate to "any person" who seeks one if it finds ...that such person possesses the qualifications for and...is physically able to perform the duties pertaining to, the position...sought...containing such terms and conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other measures as the Administrator may determine to be necessary to assure safety in air commerce.

The minimum age for an ATP license, required of an airline captain, (23) appears under section 602, but the Administrator placed the age 60 rule under section 601 where exemption denials would avoid independent administrative review.

It is a partial, however acceptable, correction of an injustice to adopt the imminent ICAO standard of 65. No chronological age limit would be better.

The Age 60 Rule, as it is known, promulgated in 1959 and implemented in 1960 is long overdue for overhaul.

Bert M. Yetman
President
Professional Pilots Federation

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Civil Aviation Medical Association

Comment No. FAA-2006-21639-2467

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CIVIL AVIATION MEDICAL ASSOCIATION

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A. Diane Catterton, M.D.

The Civil Aviation Medical Association Position Regarding the Age 60 rule

October 22, 2006

The Civil Aviation Medical Association (CAMA) has been in existence for over 50 years. The organization represents the most experienced practitioners of Civil Aviation Medicine in the USA. CAMA's membership is also represented in over 40 countries.

Members of our association have been following the age 60 rule since the rule was first implemented on March 15, 1960. The age 60 rule was applied to part 121 operations, affecting aircraft that carry more than ten passengers. The age 60 rule requires that pilots retire at the age of sixty regardless of their skill, experience or medical fitness.

The medical aspect of mandatory retirement has been discussed at length by many experts. As early as 1981, a report from the National Institute of Aging Panel on the Experienced Pilot Study concluded that, "The Age 60 rule appears indefensible on medical grounds. Age sixty represents no medical 'breakpoint' in the progressive deterioration that comes with age. There is no convincing medical evidence to support age sixty, or any other age, for mandatory pilot retirement."

The age-adjusted cardiovascular mortality rate has fallen by 40% in the United States over the last 30 years. Between 1960 and the year 2000, life expectancy in the USA has increased by 15%.

Rebok, et. al. in Aviat Space Environ Med 2002 May; 73(5):466-71 concluded that, "The Age 60 Rule was not based on any scientific data showing that airline pilots aged sixty and older were any less safe than younger pilots, and there is evidence to indicate that the choice of age 60 was actually based on economic rather than safety considerations."

Another study undertaken by the National Institute of Health (NIH) and the Institute of Medicine in 1981 intended on



CAMA

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A. Duane Catterson, M.D.

CIVIL AVIATION MEDICAL ASSOCIATION

shedding light on the Age 60 rule controversy concluded that, "there existed no medical basis for the rule".

In a recent CAMA program, a lecture entitled, "The Aging Pilot," presented by Dr. Paul Bryman, a Geriatric Medicine Specialist and nationally recognized expert in Alzheimer's dementia, stated that, "the incidence of dementia in age sixty to sixty-nine year olds is less than 5%. This means that 95% of those over sixty years of age have no cognitive impairment. The argument must also be made that pilots represent a subset of the population that has regular medical care, and therefore a lower incidence of untreated medical problems, meaning that they are, in fact, healthier than the general population. The incidence of dementia may be much lower in pilots who see a physician at least every six months and therefore have a low incidence of untreated hypertension."

According to Li, Guohua et al, in a study that looked at age, flight experience and risk of crash involvement in a cohort of professional pilots (American Journal of Epidemiology, Vol. 157, No. 10, pages 874-880, May, 2003). They concluded that, "chronologic age by itself has little bearing on safety performance."

The choice of age sixty was arbitrary and unscientific. Furthermore, retiring pilots at age sixty has been medically unsubstantiated through four decades of research. The rule is now over forty-five years old and we must take into account the great advances of preventive medicine in regard to improving the health of the aging population. This has resulted in a delay of premature morbidity and mortality relative to that which was seen in the 1960s. Furthermore, the human interaction with the aircraft is much different than it was in the 1950s and 1960s. Advances in aircraft design, cockpit automation, redundant equipment, air traffic management, crew resource management and better understanding in human factors has made air travel safer over the decades.

The safety of the aging pilot is well documented by pilots who fly regularly over the age of sixty safely in countries outside the USA. The safety record has been excellent leading to the ICAO council adopting a new standard to increase the upper age limit for airline pilots from age sixty to sixty-five. It becomes applicable on 23 November 2006 for multi-crew operations.



CIVIL AVIATION MEDICAL ASSOCIATION

In conclusion, the Civil Aviation Medical Association supports the ICAO position and recommends that the FAA abandon the Age 60 rule.

CAMA

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JetBlue Airways Corp.

Comment No. FAA-2006-21639-2536

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November 2, 2006

Docket Management Facility
US Department of Transportation
400 Seventh Street, S.W.,
Nassif Building, Room PL-401
Washington, DC 20590-0001

RE: Age 60 Aviation Rulemaking Committee; Request for comment
Docket No. FAA-2006-26139; Notice No. 06-17

To Whom It May Concern:

On behalf of the more than 11,000 Crewmembers of JetBlue Airways, New York's low fare, hometown airline, I respectfully submit these comments pursuant to the notice in the Federal Register dated October 25, 2006 (71 F.R. 62399).

Mandatory commercial pilot retirement at age 60 has been a requirement of the Federal Aviation Administration ("FAA") almost as long as there has been an FAA. In fact the rule allegedly has its origins in a handshake agreement between two ex-military friends, FAA Administrator Pete Quesada and American Airlines CEO C. R. Smith. The rule was intended to require the early retirement of senior captains that the airline did not wish to train in new jet aircraft. The year was 1959.

In 1959, The Airline Pilot Association ("ALPA") opposed the rule as unfair and discriminatory. However, as time elapsed, and the ALPA membership became statistically younger, this view changed and ALPA has supported a mandatory age 60 retirement for the last 26 years. ALPA's position supporting age 60 retirement has always been based upon the safety argument, which is similar to the FAA's stance: pilots become less physiologically able to fly as they age, and performance declines as a result. Many attempts to overturn the rule through court proceedings, exemptions and legislation have been vigorously opposed by pilot unions and FAA medical and legal staffs and all attempts to date have failed.

In 2004, the effort to pass a new law directing the FAA to extend pilot retirement failed in the Senate by only a few votes. Recently, momentum has grown around S-65, airlines, unions and lawmakers have staked out positions once again.

History:

FAA medical staff has not acknowledged a specific age at which a commercial pilot should be deemed medically unsuitable to continue his or her career. However, the age of 60 has worked well to eliminate age-related accidents, because there is no data available to indicate a later age should be the standard. At the direction of Congress, the

FAA has sponsored several age-related safety studies in the past decade, with varying degrees of success in analyzing the data available. The main problem is that over-60 commercial flying data is scarce, due to the 47-year ban enforced by the FAA.

The science is not limited to FAA studies. In general, most countries do not mandate retirement at 60, and ICAO studies, encompassing over 15,000 over-60 pilot hours flown, show that the pilots in the above-60 bracket are among the safest of all age groups. Also, for most of the period of large transport age restriction, smaller transports were not so regulated, and these FAR Part 135 pilots were permitted to fly beyond 60, with no alarming safety concerns or occurrences. In addition, pilots of Part 91 and Part 135 corporate aviation aircraft have never had age restrictions imposed by the FAA. In all of the data that is available, nothing has ever identified an age-related safety concern.

Life expectancy has risen dramatically over the past 47 years, and career expectations have grown commensurate with this change. In 1959, a 60 year old male pilot could expect to live another 15 years, whereas in 2005 that expectation is over 20 years. In response to these demographic developments, the US Government has raised the Social Security retirement age to 65 and within the next decade it will rise to 66 and then 67. Medicare benefits begin at age 65. In addition, most airlines have reduced or eliminated fixed-benefit pension plans which were originally designed to carry pilots and their families through the gap between early mandatory retirement and full Federal benefits. So pilots are healthier, live longer, and are faced with diminished earnings opportunities.

The lack of a definitive safety threat, coupled with the social and economic need of pilots to fly longer, have resulted in some interesting recent developments. ALPA has grown to international status, and now represents pilots in Canada. In a recent contract negotiation for Air Canada Jazz pilots, ALPA agreed to allow pilots to fly to age 65. This was done because Canada is among the vast majority of countries that does not limit pilots to age 60. In fact, the US, France and China are the only developed nations that still mandate the age 60 retirement for pilots.

Present:

ICAO, the International Civil Aviation Organization, represents the countries of the world in attempting to standardize aviation regulations. It recently surveyed constituent countries and found a near universal desire to raise the retirement age. On Nov 23, 2006, ICAO plans to implement a standard regulation making 65 the world-wide commercial pilot retirement age. The FAA has responded to the need for other countries to operate with older pilots by permitting foreign pilots over age 60 to operate foreign commercial aircraft into US airports and within US airspace despite the simultaneous ban on similarly situated US pilots.

The most recent effort to change the rule for US pilots has been spearheaded by a group of pilots who formed an organization called APAAD, or Airline Pilots Against Age Discrimination. APAAD has been joined by two airlines, Southwest and JetBlue, and one pilot union, SWAPA, which represents Southwest pilots. Opposing the change are

ALPA and APA, the Allied Pilots Association which represents American Airlines pilots. An association representing all FAA flight surgeons has come out in support of repealing the age 60 rule, citing improved health and longevity of airline pilots.

Recently, the following developments have occurred:

- An ALPA survey in the summer of 2005 showed that the union membership was severely split, 55%-45% in favor of retaining the current rule. Interestingly, ALPA distributed statistics on the survey results, showing that by age of the pilot responding, the older a pilot was, the more he was in favor of working past 60. Younger pilots were mostly in favor of having older pilots continue to retire at 60.
- ALPA Board of Directors voted to continue to support the age 60 rule, based upon survey results.
- The Senate and House of Representatives have both formed alliances behind influential aviator-legislators and produced bills to force FAA to repeal the age 60 rule. Neither of these bills, HR-65 and S-65, has come up for a floor vote to date.
- The Senate Aviation Subcommittee held hearings and voted out a bill to change the retirement age. The bill simply states that when ICAO changes the retirement age this fall, the FAA has 30 days to bring the US into compliance. All of the proposed bills state that no pilot who has been forced to retire under the old rule has a right to get his or her former job back as a result of the new law. The Senate Subcommittee bill also stipulates that a pilot flying over age 60 must fly with a pilot who is less than 60 years old.
- JetBlue has worked with SWA/SWAPA, as well as APAAD, Congress, and other groups, to promote changing the rule. JetBlue has retired only a few pilots in our brief history, and most of these pilots have remained on the flying list and perform Part 91 (ferry) flights, simulator training and course development for the airline.

2006 is a critical year for this long overdue reform. JetBlue has based its stance on our value structure, which rejects the arbitrary termination of our most talented and experienced crewmembers without any medical or operational foundation. We are a growing, yet still small, airline, and we thrive on the mentoring and counsel of our senior aviators. The five values that guide our airline leads us to the following conclusions regarding the mandatory age 60 retirement:

Safety: There is no safety record or evidence that indicates pilots should stop commercial flying at age 60.

Caring: None of the dozen pilots forced to retire from JetBlue went willingly, nor were they physically or mentally ready to stop flying.

Integrity: We rely on regulations governing aircrew training and evaluation, as well as medical qualification, to certify our pilots for flight. Those pilots who cannot maintain

these strict requirements are given every manner of assistance, before giving up flying duties.

Fun: Senior pilots enjoy flying and should not be arbitrarily deprived of their livelihood.

Passion: We are a young airline, and we hire pilots with various experience levels and flight histories. We look to our senior pilots to instill us all with their passion for aviation and customer service. Our company thrives on their passion for excellence.

For these reasons, JetBlue Airways supports the immediate repeal of the age 60 retirement rule. If this takes place, JetBlue intends to offer a return to active flying to all retired pilots who are still medically qualified, and are below the age of 65. Retraining will be provided. Since flying with an under-60 pilot is required, the crew scheduling software will have to be modified to assure full compliance with any new regulatory regime.

Thank you for the opportunity to submit these views for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Land". The signature is fluid and cursive, with the first name "Robert" and last name "Land" clearly distinguishable.

Robert C. Land
Senior Vice President for Government Affairs and
Associate General Counsel

Ameriflight

Comment No. FAA-2006-21639-2750

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2 November 2006

COMMENT: Docket No. FAA-2006-26139
Age 60 Aviation Rulemaking Committee

I strongly support the move to increase the maximum age for airline pilots to 65. I believe the age 60 limit is an obsolete rule, based upon out-of-date assumptions, that is due (if not over-due) for change.

Clear evidence exists that pilots are generally in better health today than they were decades ago when the age 60 limit was imposed. Their mental acuity is now retained over a longer period of their total life span as well. They tend to be more health conscious, more careful regarding their diets and exercise, and receive better medical care. It is generally acknowledged that health, mental, and physical capacity issues associated with this change would not compromise safety.

Another factor in the decision to increase the age limit is the currently-dwindling supply of experienced pilots in this country. Large numbers of airline pilots are being lost at the peak of their abilities because of compulsory age-60 retirement. The supply of new pilots is also shrinking because of decreased flight school and military pilot training activity. Meanwhile, hiring by the major airlines, and particularly by regional carriers, continues at a rapid pace. This in turn results in heavy demand at the entry level for pilots engaged in revenue service, and – in my opinion – progress that is more rapid than optimum up into the ranks of flight crews in fast, demanding, high performance jet aircraft.

I believe implementation of the age 65 limit will allow pilots in the lower ranks of airline aviation more time to gain experience and mature, and that this is an important safety benefit of the proposed change.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Richards", with a stylized flourish at the end.

Gary Richards
President

AMERIFLIGHT, INC.
4700 Empire Ave.
Hangar 1
Burbank, CA 91505
(818) 847-0000

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AARP

Comment No. FAA-2006-21639-4953

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429057

DEPT. OF TRANSPORTATION
DOCKET
2006 NOV 14 A 11:59

November 14, 2006

The Honorable Marion Blakey
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Attn: FAA-2006-26139 -4953

Dear Administrator Blakey:

This letter is in response to the Federal Aviation Administration (FAA) request for comments on changing the Age 60 rule for U.S. pilots. AARP urges elimination of the outdated and discriminatory age limit which requires that commercial airline pilots cease flying at age 60. At the very least, the FAA should conform to the new standard adopted by the International Civil Aviation Organization (ICAO) that will allow pilots to fly until they are 65 if there is another pilot younger than age 60 in a two-pilot operation.

AARP is a nonprofit, nonpartisan membership organization that helps people aged 50+ maintain independence, choice, and control in ways that are beneficial and affordable to them and to society as a whole. With more than 37 million members, AARP is the largest organization representing the interests of Americans age 50 and older and their families. Nearly half of AARP members are working either full-time or part-time, and they have a vital interest in remaining on the job or finding work without facing age discrimination by their employers.

Older pilots should be judged on ability, not age.

AARP has long opposed the FAA's Age 60 rule as well as any law or regulation imposing an upper limit on how long an individual can continue in a job. Older workers should be judged on the basis of their individual competence and ability, not on inaccurate and stigmatizing stereotypes. AARP has testified before Congress and the FAA in opposition to the Age 60 rule; filed amicus curiae briefs in the federal courts; filed comments in FAA rulemakings; and supported the efforts of individual pilots seeking exemptions from that rule. AARP has formally supported pending legislation to raise the age limits to 65 because it represents an important step toward recognizing that pilots should be judged on their skills, not on assumptions about age.

The Age 60 rule is discriminatory because age, rather than knowledge, skills, or experience, determines who can fly as a commercial airline pilot. Airline industry observation indicates that older, experienced pilots are often *more* capable and less subject to human error than are their younger counterparts. Airlines already test individual pilots regularly for their fitness to fly through medical certification and flight simulator exercises. Eliminating the age limit would not require additional medical exams, line or simulator checks, or operational restrictions. The FAA's rigorous medical and operational performance standards screen out pilots of all ages who are unhealthy or poor performers, ensuring that commercial pilots of all ages are among the healthiest and most capable pilots employed.

Requiring commercial airline pilots to stop flying at age 60 affects not only individual pilots, but the U.S. workforce as a whole.

Airline pilots who reach age 60 are likely to leave their employers when they can no longer fly. They may retire or they may search for another job. If they look for work, former airline pilots will likely face obstacles to finding a new job; it takes older displaced workers longer to find work than it does for younger workers. The average duration of unemployment in 2005 was 25.9 weeks for jobseekers aged 60 or older and 17.5 weeks for jobseekers ages 16-59. Older workers who lose their jobs are more likely to drop out of the labor force. Twenty-six percent of workers ages 55-64 who were displaced between 2003 and 2005 left the workforce. This compares to 12 percent of workers ages 25-54. Older displaced workers who get jobs are more likely to experience earnings losses than younger job finders. Among workers ages 60-64 who had been displaced between 2001 and 2003 and rehired as of January 2004, the average drop in weekly earnings was 31 percent.

If they decide to retire, former pilots may face a significant drop in their retirement income. As the FAA is aware, a number of airline defined benefit pensions have defaulted in recent years, resulting in their takeover by the Pension Benefit Guaranty Corporation (PBGC). As a result, pilots have been hit with pension cuts twice: first, because the maximum annual benefit the PBGC pays is \$47,659, much less than most pilots have earned; and, second, because benefits are further reduced for those who retire earlier than age 65. The reduction in what a pilot was expecting to collect in pension benefits before the PBGC takeover can be greater than 50 percent. In addition, those under age 62 are not yet eligible for Social Security benefits and consequently do not have a secure source of retirement income immediately available if they leave the work force. Furthermore, retired pilots who start collecting Social Security at age 62 will collect smaller monthly benefits than they would if they waited until full retirement age to collect—age 66 for persons turning 60 this year.

At the same time older workers experience roadblocks to finding work, policymakers predict there will be shortages of workers in the general economy as the boomers retire. This projected shortage includes airline pilots. The demand for pilots is expected to

increase as the economy grows because there is likely to be more need for air travel.¹ Add to that expected growth in retirements among airline pilots and navigators – a projected increase of 173 percent during the period 2003 through 2008 – and there is likely to be a scarcity of qualified pilots within the next five to ten years.² Eliminating the age 60 rule would help mitigate the expected smaller pool of experienced pilots and help maintain healthy growth in the economy.

At the very minimum, the FAA should adopt the age 65 standard approved by the international aviation community.

New standards adopted by the International Civil Aviation Organization (ICAO), effective later this month, provide that a non-U.S. commercial pilot may continue to fly on two-pilot flights until age 65 as long as there is another pilot younger than age 60. While AARP believes the current Age 60 rule should be eliminated, U.S. commercial airline pilots should be afforded, at the very minimum, the same right to work that foreign pilots will receive in U.S. airspace.

Conclusion

The age 60 rule should be eliminated: it discriminates against pilots on the basis of age and no job qualification justifies its existence. Erasing the age 60 limit would alleviate the financial hardships faced by pilots forced prematurely from the cockpit as well as benefit the economy by allowing seasoned pilots to fly and continue to contribute to their and the U.S.'s economic well-being.

AARP appreciates the willingness of the FAA to re-examine its obsolete policy forcing otherwise qualified pilots from the controls at age 60. It is long past the time to eliminate this archaic rule adopted nearly a half century ago. At the very least, we urge the FAA to conform with the new ICAO standard as a first step to eliminating arbitrary age-based mandatory retirement for commercial airline pilots.

If you have any further questions, please do not hesitate to call me, or contact Amy Shannon of our Federal Affairs staff at 202/ 434-3760.

Sincerely,



David Certner
Legislative Counsel and
Director of Legislative Policy
Government Relations and Advocacy

¹ BART ELIAS, CONG. RESEARCH SERV., AGE RESTRICTIONS FOR AIRLINE PILOTS: REVISITING THE FAA'S "AGE 60 RULE" 14 (June 23, 2005).

² *Id.*, citing Arlene Dohm, *Gauging the Labor Force Effects of Retiring Baby Boomers*, 123 MONTHLY LABOR REVIEW NO. 7, 17-25 (July 2000).

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U.S. Equal Employment Opportunity Commission

Comment No. FAA-2006-21639-5346

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of the Chair

November 15, 2006

Federal Aviation Administration
Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, S.W.
Nassif Building
Room PL-401
Washington, D.C. 20590-0001

Re: Docket Number FAA-2006-26139

To Whom It May Concern:

As Chair of the U.S. Equal Employment Opportunity Commission (Commission or EEOC), I am writing in response to the Federal Aviation Administration's (FAA) request for comments concerning its regulation commonly referred to as the Age 60 Rule. 14 C.F.R. § 121.383(c). The Age 60 Rule bars individuals who have reached their sixtieth birthday from serving as pilots or copilots in flight operations governed by Part 121 of the FAA's rules, typically commercial flights. On October 25, 2006, the FAA published a request in the Federal Register for comments about whether the United States should adopt an amendment that the International Civil Aviation Organization (ICAO) will adopt in November 2006 to increase the "upper age limit" of airline pilots to age 65 provided another crewmember pilot is under age 60. 71 Fed. Reg. 62399.

EEOC's Position on the Age 60 Rule

The Commission has long been concerned about the impact of the Age 60 Rule on pilots and copilots.¹ The Commission enforces the Age Discrimination in Employment Act of 1967, as

¹ The Commission's longstanding interest in the Age 60 Rule is demonstrated in public comments, testimony and statements beginning as early as 1981, including: Testimony of Constance L. Dupre, Associate General Counsel, EEOC, Panel on the Experienced Pilots Study, National Institute on Aging, National Institutes of Health, May 27, 1981; EEOC's Final Interpretations of the Age Discrimination in Employment Act of 1967, 49 Fed. Reg. 47724 (1981); EEOC comments on the FAA's Advanced Notice of Proposed Rulemaking at 47 Fed. Reg. 14692 (1982); Testimony of former EEOC Chair Clarence Thomas before the House Select Committee on Aging, October 1985; August 12, 1986 letter from former Chair Clarence Thomas to former FAA Administrator Donald Engen urging the FAA to grant a petition by 39 pilots for exemptions from the Age 60 Rule so that they could participate in a controlled study envisioned by the National Institute of Aging panel; EEOC comments in response to the FAA's request for comments at 58 Fed. Reg. 21336 and 33316 (1993); and EEOC comments on the FAA's Notice of Proposed Rulemaking at 60 Fed. Reg. 16230 (1995). As recently as 2005, in response to the Office of Management and Budget's request for comments concerning the planned testimony of John L. Jordan, Federal Air Surgeon, before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Aviation, on the Age 60 Rule, the EEOC reiterated its longstanding opposition to any rule on pilots or co-pilots that limits an individual's ability to operate aircraft due solely to age and without regard to ability to safely pilot aircraft.

amended, 29 U.S.C. § 621 *et seq.* (ADEA) and also has responsibility under Executive Order 12067 to coordinate the federal government's enforcement of laws, Executive orders, regulations, and policies that require equal employment opportunity without regard to race, color, religion, sex, national origin, age or disability. 43 Fed. Reg. 28967 (1978). The Executive Order requires FAA to coordinate with EEOC to ensure that its rules are consistent with the Commission's interpretation of the ADEA.

The ADEA prohibits employment discrimination against individuals at least 40 years of age. Under the ADEA, it is unlawful for an employer to have a maximum age limitation for its employees unless the employer can establish that the age limitation is a bona fide occupational qualification (BFOQ) "reasonably necessary to the normal operation of the particular business." 29 U.S.C. § 623(f)(1). An EEOC regulation sets forth what an employer must prove to establish that age is a BFOQ:

That (1) the age limit is reasonably necessary to the essence of the business and either (2) that all or substantially all individuals excluded from the job involved are in fact disqualified, or (3) that some of the individuals so excluded possess a disqualifying trait that cannot be ascertained except by reference to age. If the employer's objective in asserting a BFOQ is the goal of public safety, the employer must prove that the challenged practice does indeed effectuate that goal and that there is no acceptable alternative which would better advance it or equally advance it with less discriminatory impact.

29 C.F.R. § 1625.6(b)(2006).²

The Age 60 Rule runs counter to the narrow scope of the BFOQ defense and the fact-specific, case-by-case analysis it requires. Pilot skills and health can be assessed accurately on an individual basis, regardless of age, thus eliminating the need for dependence on a maximum age limit. The FAA itself relies on individualized testing as a basis for issuing medical certificates to people of all ages, including those age 60 and above, who serve as pilots in non-Part 121 flight operations. Moreover, Part 121 pilots are currently required to undergo physical examinations and cockpit-performance tests every six months. These tests would allow airlines to monitor the health and reaction time of pilots 60 and over, just as they currently monitor the health of pilots under 60. In Commission litigation challenging pilot age limits imposed by employers whose flight operations are not governed exclusively by Part 121, the EEOC's experts have testified that Class I medical testing is fully sufficient to identify health or performance problems that may surface for pilots regardless of age.³ These experts have also testified that, to the extent further testing may be desirable, cardiac stress tests, enhanced blood work-ups, and neurological screening could be added to the standard battery of Class I tests for all pilots.

² The Supreme Court cited the EEOC's standard with approval in *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 416-17 (1985) (affirming a judgment that Western Airline's mandatory retirement rule for flight engineers did not qualify as a BFOQ).

³ Different types of pilot certification require different levels of medical certification, with a Class I medical certification having the most rigorous requirements.

Furthermore, even as early as 1993, a report prepared for the Civil Aeromedical Institute of the FAA supported the conclusion that the Age 60 Rule for pilots was not defensible as a BFOQ under the ADEA.⁴ The report concluded that there was “no hint of an increase in accident rate for pilots of scheduled air carriers as they neared their 60th birthday.”⁵ Nor has the FAA produced any methodologically sound accident-rate studies showing a statistically significant difference in accident rates by age. In other words, the studies relied on by the FAA to justify the Age 60 Rule have never established a correlation between accident rates and the increased age of the pilots.

The Commission therefore strongly encourages the FAA to lift the Age 60 Rule. Medical and proficiency tests on an individual basis are effective and non-discriminatory ways to ensure that commercial pilots maintain the highest standards of safety at all ages. Moreover, far from being a liability, having older pilots in the cockpit may enhance aviation safety, as the practical experience of these pilots has great value in a profession calling for complex and split-second judgments.

EEOC Comments Concerning Adoption of ICAO Standard

The current request for comments solicits opinions on whether the FAA should adopt the new ICAO standard which increases the “upper age limit” for airline pilots up to age 65 provided another crewmember pilot is under age 60.

We support raising the age limit for Part 121 pilots to age 65 for a specific time period as a reasonable interim step in the process of eventually eliminating age as a determinative factor in the employment of airline commercial pilots. As with age 60, there is no credible medical, scientific or aviation evidence to suggest that concerns for safety require a mandatory retirement age for pilots of 65. Raising the age limit to 65, however, will serve as a useful transitional step, allowing commercial pilots to continue flying beyond age 60 while the FAA plans a full transition to individualized testing of the skills and health of all pilots, regardless of age.⁶

Although we support adoption of the new ICAO age limit of 65, we oppose the adoption of the requirement that pilots over age 60 be paired with pilots under age 60. Studies have shown that the risk to public safety of having two pilots over age 60 in the cockpit is extremely small. As discussed above, medical and proficiency tests are effective and non-discriminatory ways to assure that commercial pilots maintain the highest standards of safety at all ages.

⁴ Age 60 Project, Consolidated Database Experiments, Final Report, March 1993, Hilton Systems Technical Report at 8025-3C(R-2).

⁵ Although this report cautiously recommended raising the age limit to age 63, the then available medical, scientific and aviation data did not support an age 63 limitation under the ADEA.

⁶ The Commission’s position is that age cannot be a BFOQ for commercial or any other pilots because pilot skills and health can be accurately assessed on an individual basis, regardless of age. The Commission has, however, settled litigation after employers have agreed to increase the pilot age limitation to age 65 for the term of the consent decree.

If you would like to discuss these comments further, please contact Peggy Mastroianni, Associate Legal Counsel, at (202) 663-4640, or Carol Miaskoff, Assistant Legal Counsel, at (202) 663-4645.

Sincerely,

A handwritten signature in black ink, reading "Naomi C. Earp". The signature is written in a cursive, flowing style.

Naomi C. Earp
Chair

Miami Air International, Inc.

Comment No. FAA-2006-21639-5468

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“Age 60 Aviation Rulemaking Committee, Request for Comments”

The Federal Aviation Administration is tasked with the promotion and regulation of aviation for the United States. This task covers all aviation from Part 91 to Part 121 scheduled flag carriers. The Administration is a non-political entity and as such is required to be a non-partisan in the matters of labor and management.

There are three main opponents to the age 60 extension rule:

1. The Airline Pilots' Association (ALPA), which has voiced opposition to the extension. The voting majority of the union sees the extension as an impediment to their reaching the rank of captain. These younger pilots fail to realize that the extension would afford them a longer work life and a greater monetary return. The president-elect of ALPA is on record that he personally supports the extension, but is bound to represent the majority of ALPA's members.
2. The second group in opposition is some airlines' management. It is basic economics to want to rid the labor force of those pilots who receive the highest pay and the longest vacations.
3. The third group in opposition is those who believe the presence of pilots over 60 would degrade safety. I quote Mr. Nick Sabatini (AVR-1), who states "The One Level of Safety Program, clearly showed no medical incidents related to pilots flying over sixty." In the program 200 pilots were retained over sixty when Part 135 carriers converted to Part 121 rules. Mr. Sabatini is a highly respected F.A.A. official and his position is clear. Pilots over sixty do not degrade safety.

The F.A.A. must make their decision based on facts and fairness. There is no medical evidence to deny the extension. It would be grossly unfair to allow foreign air carrier pilots to operate into the United States airports over the age of 60 and not allow U.S. Pilots the same liberty. A denial of the age 60 extension would clearly be the wrong decision.

Sincerely,

D. Ross Fischer
Chief Executive Officer
Miami Air International, Inc.
P. O. Box 660880
Miami, FL 33266-0880

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Ameristar Air Cargo, Inc.

Comment No. FAA–2006–21639–5511

Ameristar's file submitted to the docket is protected and can not be copied and inserted into this file. To review that comment, please use the following link to the docket:

http://dmses.dot.gov/docimages/pdf99/429817_web.pdf

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US Airways, Inc., and America West Airlines, Inc.

Comment No. FAA-2006-21639-5514

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U·S AIRWAYS

November 15, 2006

Docket Management Facility
U.S. Department of Transportation
400 Seventh Street SW
Nassif Building, Room PL-401
Washington, DC 20590-0001

To Whom It May Concern:

Re: **Age 60 Aviation Rulemaking Committee Request for Comment**
(Docket Number FAA-2006-26139)

By Notice dated October 25, 2006, the Federal Aviation Administration (“FAA”) invited comments to be utilized by the Aviation Rulemaking Committee (“ARC”) in deciding whether the United States should adopt the upper age limit changes to age 65 for flight deck officers being implemented by the International Civil Aviation Organization (“ICAO”). The following comments represent the combined views of US Airways, Inc. (“US Airways”) and America West Airlines, Inc. (“America West”)(hereinafter the “Carriers”).

As an initial proposition, the Carriers take no view on whether the upper age limit retirement rule currently in effect in the United States should be raised. We believe that the input to the ARC should come from the unions that represent the flight deck officers. In the case of the Carriers, the Airline Pilots Association (“ALPA”) represents flight deck officers for both US Airways and America West.

While the Carriers take no formal position on whether the mandatory retirement age should be raised, the Carriers are concerned that the ICAO proposal of permitting a split cockpit of one flight deck officer over Age 60 and one under Age 60 is a flawed proposal that should be rejected.

The Carriers submit that to raise the age of mandatory retirement from 60 years to 65 years, and then immediately “penalize” the older flight deck officers by requiring them to only fly with younger pilots – under 60 – could be interpreted by the flying public as suggesting that pilots older than 60 are somehow not fully equal, in terms of skill and acumen, to younger pilots. Moreover, it is unclear how both pilots would be required to maintain current FAA medical licenses, but then one pilot would somehow still be considered not as fit or able to operate an aircraft. It would seem that such a distinction could undermine the very purpose associated with the FAA medical program applicable to all flight deck officers.

One significant concern to the Carriers would be the cost associated with implementing a different system than is currently in effect today. The Carriers have each

made significant investments in crew scheduling software allowing the Carriers to staff flight deck officers in support of over 3,000 daily flights stretching from Europe to Hawaii. If the Carriers were forced to now add additional variables to the myriad of operational, human, and regulatory factors that already must be computed in order to ensure sufficient deployment of flight deck officers to handle the daily flight schedule, it is likely that the Carriers would face significant short-term and on-going costs associated with the new regulation.

Moreover, when operational delays occur because of exogenous factors, the Carriers ability to recover would be impeded as the Carriers could easily have willing and able flight deck officers, but be barred from pairing them because one is age 64 and the other one is age 61. Such an outcome would only further delay passengers in the immediately affected airport/region, as well as downline passengers.

While the above discussion is not intended as an exhaustive list of all the issues surrounding the mixed age flight deck officer issue, we believe that it provides a sample of the potential downsides associated with the ICAO proposal. We hope the ARC finds our comments useful as they complete their work.

We are again appreciative of the opportunity to comment, and reaffirm our view that the Carriers will follow the lead of ALPA, with the caveat that the Carriers cannot support a proposal that is discriminatory as to certain flight deck officers.

Respectfully Submitted,

/s/ Howard Kass

Howard Kass
Managing Director and Associate General Counsel

Benjamin T. Slocum
Director and Assistant General Counsel

Northwest Airlines and Northwest Airlines Air Line Pilots Association

Comment No. FAA-2006-21639-5546

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**In the matter of age 60 rulemaking
(14 CFR Part 121)**

**JOINT COMMENTS OF
NORTHWEST AIRLINES, INC.
AND NORTHWEST ALPA**

Communications with respect to this document should be sent to:

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Chairman, Master Executive Council
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sascha.vanderbellen@nwa.com

November 15, 2006

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

**In the matter of age 60 rulemaking
(14 CFR Part 121)**

)
)
) **Docket FAA-2006-26139**
)
)
)

**JOINT COMMENTS OF
NORTHWEST AIRLINES, INC.
AND NORTHWEST ALPA**

Northwest Airlines, Inc. ("Northwest") and the Northwest Air Line Pilots Association, Int'l ("Northwest ALPA") hereby jointly submit these Comments in response to the FAA's Notice concerning whether to extend the upper age limit for pilots to age 65, provided another crew member pilot is under age 60. (71 Fed. Reg. 62399 (October 25, 2006)).

Northwest and Northwest ALPA are opposed to making any changes to the age 60 rule at this time. The current age 60 rule has been in place for nearly 50 years, and has served safety and the public interest well. The FAA has been called upon repeatedly to revisit the issue – and in each case declined to change the age 60 rule. Now, suddenly in response to a change in the ICAO standards this November, FAA is considering abandoning its longstanding age 60 regulation, and instead following ICAO's age 65/60 rule. As FAA is well aware, ICAO provides *minimum* baseline standards that international carriers must meet

to gain reciprocal access to the navigable airspace of other countries. The FAA can and does impose more stringent safety standards for U.S. carriers.

Compare, 14 C.F.R. Part 121 and 14 C.F.R. Part 129. The FAA should follow the same methods and procedures it always has in considering a major substantive rulemaking change, and not be swept along by the tide with ICAO.

Apart from the lack of any medical data to support this change, Northwest and Northwest ALPA are concerned that the rulemaking change under consideration would have a number of adverse consequences:

1) **Adverse Impact on Safety of the Traveling Public.** The FAA should not change the Age 60 regulation to adopt the new ICAO standard.

- ICAO did not conduct a safety risk analysis to evaluate the impact of the change in the standard on safety;
- The new age 65/60 standard arbitrarily replaces one age limit with another;
- There is no criterion-based process for determining pilot fitness to fly past age 60;
- No mitigations have been proffered that would provide for an equivalent level of safety if the ICAO standard were adopted over the existing age 60 rule;
- Adoption by FAA of the new ICAO standard would reduce the current U.S. airline safety standard; and
- FAA will be in compliance with the new ICAO standard on November 23, 2006, without changing the existing regulations because the Standard does not preclude the FAA (or any ICAO State) from setting a lower maximum age limit.

Each State within ICAO is sovereign and has the ability to enact its own regulations that are applicable to its unique operations and operating environment. The United States has filed a number of “differences” with ICAO because ICAO standards are not appropriate or are in conflict with

Federal Aviation Regulations. That is the prerogative of the United States and a duty and responsibility of the FAA which is charged with maintaining the highest possible safety standards. When ICAO standards do not meet FAA safety requirements – which this new standard does not – or do not demonstrate at least an equivalent level of safety, they must be rejected. The safety of America's traveling public expects and demands such performance on the part of the FAA. Likewise, it would be inappropriate to make a change to this important rule based solely on political or economic factors. The United States has one of the best safety records; one that is admired throughout the world. We must maintain the highest standards of safety that the world has come to expect from us.

- 2) **Increased pilot scheduling complexity.** Northwest pilots currently build monthly schedules and then modify those schedules by bidding from a comprehensive list of trips (patterns) that are available for their specific aircraft type/position ("category"). There are 56 categories of pilots at Northwest. Within each category, trips are awarded and assigned by sophisticated automated systems and/or manual systems in a manner which adheres to governmental and labor contract scheduling rules. Under the proposed 65/60 rule, if the Captain's position on a specific flight is awarded to a pilot who is age 60 or greater, then the First Officer's position on that same flight cannot be awarded to a pilot who is age 60 or greater. This will add significant additional complexity to the scheduling

process and provide both Northwest and its pilots with less scheduling flexibility.

- 3) **Increased exposure to flight delays and cancellations.** The proposed 65/60 rule will place further restrictions on already limited pilot re-scheduling flexibility – a key tool to avoid delays and cancellations. This is particularly problematic at down-line stations where there is no reserve pilot availability.

- 4) **Require expensive and lengthy reprogramming of Northwest automated programs related to pilot scheduling:**

- Monthly schedule construction and bidding program (Carmen).
- Crew management system (CMS).
- Mutual trip trading program.
- Open trip award/assignment program.
- Rescheduling program (Crew Solver).

- 5) **Require an increase in crew scheduling staff to manage the scheduling complexities.** Additional staff will be necessary to conduct scheduling activities after enactment of a new rule and before automated processes can be developed for handling the new rules. Additional staff may be required permanently if automation cannot be developed to construct and manage all of the additional scheduling complexities.

- 6) **Increase long-range planning complexities and expense.** Creating two separate pools of pilots over and under age 60 will impose additional burdens and expenses. The proposed rule would require monitoring the number of over age 60 pilots in each equipment type to ensure staffing levels of under age 60 pilots across both the Captain and First Officer

seats remain larger than over age 60 pilots. In sum, the proposed rule has a heavy potential to drive unnecessary crew surpluses, shortages, and expenses to maintain age balance across two separate pools of pilots.

Conclusion

Northwest and Northwest ALPA oppose change to the FAA's longstanding age 60 rule as a reactionary response to the new ICAO rule. The FAA's Part 121.383 rule should be amended only after careful study – and not as a mere “rubber stamp” of the new ICAO rule. Moreover, such a decision is even less amenable to a legislative solution than one by the expert agency Congress has charged with responsibility for flight safety. The FAA has extensive aero medical data relating to the safety of flight operations. That and other data, as necessary, should be thoroughly studied by the FAA and form the basis for any changes to existing FARs. Medical standards for pilots over age 60 have not been established or thoroughly explored. Any move to advance the age needs to also include a discussion about whether the medical standards for age 60+ pilots are different than those for under age 60 pilots.

Respectfully Submitted,

/s/ Captain Dave Stevens
Chairman, Master Executive Council
NWA Air Line Pilots Association
7900 International Drive Suite 875
Bloomington, MN 55425

/s/ Tim Campbell
Vice President System Operations
Control & Flight Operations
Administration
NORTHWEST AIRLINES INC.
2600 Lone Oak Point
Eagan, MN 55121

/s/ Alexander Van der Bellen
Managing Director, Government
Affairs & Associate General
Counsel
NORTHWEST AIRLINES INC.
901 15th Street, NW, Suite 310
Washington, DC 20005

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British Air Line Pilots Association

Comment No. FAA-2006-21639-5598

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BALPA

7th August 2006

FAA
400 7th Street
S.W.PL-401
Washington DC
20590

FAA-2006-26139-5598

2006
AUG
12
12:00
PM
FBI
WASHINGTON
DC

Dear Sir,

As you will be aware ICAO through its SOPRP no. 167 intends to lift the permissible retirement age for aircraft commanders to 65 on 23rd November 2006, a move supported by the overwhelming majority of ICAO nations. It is our understanding, and also that of our aviation regulator and operators, that nations which have filed a difference with the ruling will be bound by ICAO to accept over flight and landing from foreign registered carriers and their pilots from the operative date.

BALPA of course respects your right to apply your own national standards as you see fit, but we would ask that you allow us the temporary relief to allow our national standards and legal provisions to be applied. Please, let us explain.

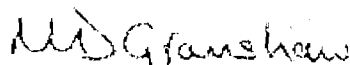
Given that the UK will become bound by The European Age Discrimination Directive from 1st October 2006, a default national retirement age of 65 will become the norm. For pilots this will be the effective age for retirement at all grades. The only impediment to this taking place immediately is the over flight bans of aircraft commanders aged 60 or over currently enforced by your country.

We believe that in the transition period between then and the implementation of the new ICAO standard it should be possible by a relaxation of your current ban on over flight to allow a small number of pilots who will be over 60, but under 65 on 1st October 2006 to retain their positions.

This would then allow those UK airlines with operation over or into your country to utilise those pilots who can work up to the national default age but who are restrained from doing so by current over flight bans.

We have the support of UK operators. We hope that your authority can grant our request and would be happy to discuss with you the detailed issues which arise.

Yours faithfully



Captain Mervyn Granshaw
Chairman

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Alaska Air Carriers Association

Comment No. FAA-2006-21639-5722

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431096

ALASKA AIR CARRIERS ASSOCIATION
2301 Merrill Field Drive, Unit A-3
Anchorage, AK 99501
Phone: 907-277-0071
Fax: 907-277-0072

November 15, 2006

Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, SW
Nasif Building
Room PL-401
Washington, DC 20590

Re: **Docket FAA-2006-26139, Age 60 Aviation Rulemaking Committee**

The Alaska Air Carriers Association (AACA) representing more than 73 air carriers operating in Alaska supports a change to enhance safety in FAR Sect. 121.383(c) of Title 14, allowing pilots to continue flying until age 65.

Similar to situations found in the Lower 48 states, members of AACA continue to experience the effects of a nationwide pilot shortage. Companies are being forced to terminate their most experienced and capable pilots based solely upon age. This alarming situation has dire safety consequences as the current pilot pool experience level becomes increasingly diluted. Keeping experienced pilots flying is an important issue for Alaskan air carriers operating in remote locations in inclement conditions.

Government forecasts predict 60% of pilots flying today will retire by 2010, in direct contrast to the prediction that air traffic will double by 2007. Compound these issues with the fact that there is no new supply of pilots to fill the widening gap. Where once the military supplied our industry with trained and experienced pilots—that supply has been greatly reduced to 50% of its level ten years ago. Moreover, the nation's flight schools are not able to produce enough qualified pilots to meet the need. An extension of the mandatory requirement age from 60 to 65 will give us an opportunity to begin quality pilot recruitment programs to fill the approximate 1,300 decrease in number of pilots in Alaska over the last ten years.

Research into historical documentation finds that no scientific evidence was used nearly 50 years ago during the implementation of the original regulations; and no medical justification is being used today. People are generally healthier and working longer than they were during the 1960s era. The median age of our nation's workforce has risen from age 28 in 1970 to age 40 today. Already at least 44 other countries have re-evaluated their pilot retirement rules and increased the age to 65.

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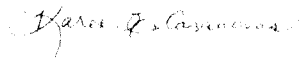
Denotes executive committee

Page Two
Age 60 Aviation Rulemaking Committee
The Alaska Air Carriers Association

It's time for the Federal Aviation Administration (FAA) to take a powerful step toward aviation safety. Keep our pilots with the most experience and knowledge in the flight deck, where they can share their wealth of knowledge with less-experienced pilots.

We appreciate the opportunity to comment on this issue.

Sincerely,



Karen E. Casanovas
Executive Director
The Alaska Air Carriers Association

cc: Senator Ted Stevens
Senator Lisa Murkowski
Congressman Donald Young

APPENDIX 10:
In Focus, The FAA Age 60 Rule,
Provided by the Do Not Adopt the ICAO Standard
Working Group

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IN FOCUS

The FAA Age 60 Rule

March 1, 2005

In previous issues of *IN FOCUS* we covered several topics related to Age 60, including the history of the FAA Age 60 Rule, safety issues, the process the FAA uses when considering changes to a regulation, and the potential effects that raising the age limit might have on operational requirements and medical certification standards.

We shift gears in this issue of *IN FOCUS* to take a closer look at the potential impact that a change in the Age 60 Rule could have on pilots' benefits, specifically retirement benefits.

Defined Benefit Plans Versus

Defined Contribution Plans

Before examining how a change in the Age 60 Rule might affect pilots' benefits, it is worthwhile to distinguish between the different types of retirement plans. Generally speaking, retirement plans can be divided into two main categories: defined benefit plans and defined contribution plans.

In defined benefit (DB) plans, the plan document defines the amount of benefit the pilot will receive at retirement. This benefit is usually defined as an annuity payable for the life of the pilot beginning at "normal retirement

age" based on a formula consisting of a percentage multiplier, credited service, and final average earnings. When a pilot retires, he can select from various optional forms of payment provided by the plan. Some DB plans allow pilots to receive all or part of their benefit as a lump sum.

Over the years, ALPA has negotiated an NRA of 60 in most of our DB plans. . . .

Therefore, . . . any increase in the age limit under the Age 60 Rule would not automatically result in a change to the definition of normal retirement age in a pilot's retirement plan because each pilot group would have to negotiate a change to their plan's definition.

Defined contribution (DC) plans, in contrast to DB plans, define the amount the employer will contribute to the plan (often as a percentage of the pilot's compensation). Individual accounts are maintained for each pilot. The amount of benefit ultimately payable at retirement is completely

dependent on the account balance at that time and is generally payable in a lump sum equal to that account balance.

DB Plan Protections Against Increases in Normal Retirement Age

The normal retirement age (NRA) is not linked to the FAA rule. Rather, the NRA is defined under a pilot group's collective bargaining agreement, and any change to it cannot be made without ALPA's consent.

Over the years, ALPA has negotiated an NRA of 60 in most of our DB plans. The exceptions are the

Allegheny and Piedmont defined benefit plans, which do not state age 60 as the normal retirement age under the plan. Therefore, with the exception of the Allegheny and Piedmont DB plans, any increase in the age limit under the Age 60 Rule would not automatically result in a change to the definition of normal retirement age in a pilot's retirement plan because each pilot group would have to negotiate a change to their plan's definition.

Furthermore, normal retirement age is taken into account in the federal pension law that protects pensions. Under the Employee Retirement Income Security Act of 1974 (ERISA), there is an "anti-cutback" rule that protects benefits that have been "accrued" under DB plans. The definition of accrued benefit includes the age at which the benefit can be paid. The accrued benefit also includes the plan's early retirement factors for pilots who retire prior to age 60. So even if ALPA agreed to increase the NRA in a DB plan, the new normal retirement age could not be applied to a pilot's accrued benefit at the time of the change; it could only be applied to benefits accrued in the future.

Defined Benefit Plan Funding and Normal Retirement Age

As you are probably aware, many employers, and airlines in particular, are having problems funding their defined benefit plans. DB plans must comply with the minimum funding requirements of ERISA. Currently, under ERISA, there are two sets of minimum funding rules. One is referred to as the "regular ERISA minimum funding requirement," and the other is called the "deficit reduction contribution" (DRC).

DB plans are always subject to the regular ERISA minimum funding rules, which

provide for the long-term funding of an ongoing plan. These calculations are based on the provisions of the plan as well as many actuarial assumptions. The assumptions include mortality, retirement, termination, disability, pay projection, investment return on plan assets, etc. When the funding (based on a specific definition of funding in ERISA) of a DB plan drops below a certain level, that plan is subject to the DRC. The DRC requires increased plan contributions that are designed to improve the funding level of the plan in a much shorter timeframe than the regular ERISA minimum funding requirement.

The current DB plan funding crisis facing several airlines and other employers is due to the impact of the DRC rules. A drop in the value of assets combined with very low interest rates has caused the funding level of many plans to decrease dramatically. The current low interest rates require plans to measure their liabilities, for purposes of the funding level that triggers the DRC, using a very low mandated interest rate. Since the interest rate is used to discount the expected future benefit payment stream from the DB plan, the lower the interest rate, the higher the present value (liability) associated with those future payments. The resulting "underfunding" is required to be paid off over a period of three to seven years under the DRC rules, instead of a much longer period provided under the regular ERISA minimum funding requirement.

This "perfect storm" scenario—a dramatic decline in the value of assets, low interest rates, and rapid payment schedule under DRC rules—has led to the termination of the US Airways DB plan, the United pilots' agreeing not to oppose

termination of their DB plan in bankruptcy court, and the Delta pilots' agreeing to freeze their plan.

Some people see a change in the NRA as a way out of this funding crisis. However, due to the anti-cutback rule discussed earlier, a change to the definition of normal retirement age would not have a dramatic impact on ERISA's minimum funding requirements. Because an increased normal retirement age could only be applied to benefits earned in the future, and could not be applied to benefits already accrued under the plan, all accrued benefits would still be payable unreduced at age 60. The DRC calculation is based primarily on accrued benefits. As a result, a change in normal retirement age would have very little impact on the DRC. Although we would expect the plan costs to be reduced over time, the effect on short-term funding requirements would be minimal.

History of ERISA Limitations on Benefits from DB Plans

Since employers generally receive a tax deduction for contributions they make to DB plans, the government imposes certain limitations on the benefits that can be paid from these plans. This is essentially a method by which the government controls the amount of lost tax revenue due to DB plans.

There are two limitations that can come into play in DB plans. One is a limit on the amount of compensation that can be

used in calculating benefits from a "qualified" plan. This is often referred to as the "401(a)(17) limit" because that is the section of the Internal Revenue Code (IRC) that specifies the limitation. The term "qualified" refers to the tax qualification of the plan that allows the employer's contributions to be deducted.

The other is a limit on the dollar amount of benefit that can be paid from a qualified DB plan. This is often referred to as the "415(b) limit" or, the "415 limit" because that is the section of the IRC that specifies this second limitation. It is also referred to as the "defined benefit dollar limit."

The amount of the defined benefit dollar limit has changed over the years since ERISA was first enacted. Originally it was set at \$75,000 per year in 1974 with annual inflation indexing. By 1982, the indexed defined benefit dollar limit had grown to more than \$136,000. Congress, in an attempt to raise tax revenue, passed the Tax Equity and Fiscal Responsibility Act (TEFRA) in 1982. TEFRA reduced the defined benefit dollar limit to \$90,000. The Tax Reform Act of 1986 (TRA '86) provided for a reduction in the defined benefit dollar limit if benefits began prior to Social Security normal retirement age (SSNRA).

ALPA was able to get a special exemption for pilots in this legislation. Under that special exemption, pilots were able to receive the full defined benefit dollar limit at age 60. As a result, ALPA was able to achieve a protection against

The Tax Reform Act of 1986 provided for a reduction in the defined benefit dollar limit if benefits began prior to Social Security normal retirement age (SSNRA). . . . ALPA was able to get a special exemption for pilots in this legislation.

a reduction of up to seven years for pilots with a SSNRA of 67. By 2002, the defined benefit dollar limit under TRA '86 had been indexed up to \$140,000. In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act (EGTRRA), which increased the defined benefit dollar limit to \$160,000 beginning in 2002. EGTRRA also provided that the new \$160,000 defined benefit dollar limit would only be reduced for payments beginning prior to age 62 instead of SSNRA. As a result of the changes made by EGTRRA, which are still in effect today, the special pilot provision only provides for two years of protection against reductions of the defined benefit dollar limit. With the indexing provisions of EGTRRA, the defined benefit dollar limit has grown to \$170,000 in 2005.

Impact of a Change in the Age 60 Rule on ERISA Limitations on Benefits from DB Plans

The effect of the special pilot provisions related to the defined benefit dollar limit was diminished by EGTRRA because non-pilots can now receive the full limit as early as age 62. If the age limit under the FAA Age 60 rule is increased to age 62 or higher, the pilot exemption will no longer apply. The real impact on pilot benefits would be minimal, however, because very few pilots have an accrued age 60 benefit in excess of the age 60 defined benefit dollar limit for non-pilots. Table 1, "The Effect of Increasing Mandatory Retirement Age on DB Dollar Limit" (see page 5), shows the 2005 pilot defined benefit dollar limits under existing law as well as if the Age 60 Rule were increased to age 62 or higher. As you can see, the new age 60 defined benefit dollar limit for 2005

would be \$145,642, which is still greater than the accrued benefits currently being generated by qualified ALPA pilot DB plans.

As noted earlier, the 401(a)(17) limit provides for a limitation on the compensation that can be used in calculating benefits from qualified DB plans. For 2005 that limit is \$210,000. Based on the benefit formulas for pilot DB plans at ALPA carriers, this compensation limit is more restrictive than the defined benefit dollar limit. The highest current ALPA pilot DB plan formula provides for a 65% of final average earnings benefit payable at age 60. If we apply the 65% formula to this maximum \$210,000, we get a maximum benefit of \$136,500, which is well below the \$145,642 defined benefit dollar limit for non-pilots at age 60. Therefore, with some rare exceptions, the benefits under ALPA pilot DB plans would not be affected by a decrease in the defined benefit dollar limit at age 60 or age 61.

Increased Longevity and Retirement Benefits

Graph 1, "Projected Increased Longevity," on page 6, shows life expectancy at various ages based on five different mor-

For more information on Age 60, visit crewroom.alpa.org and click on the "IN FOCUS: The FAA Age 60 Rule" link. If you have a specific question or would like to submit your comments on the Age 60 Rule, please send an e-mail to: age60communications@alpa.org.

tality tables developed from annuity payment information from 1951 to 2000. As we might expect, life expectancy has been improving over time. Let's focus on a 60-year-old pilot. Based on the bottom line representing the "1951 Group Annuity Table," a 60-year-old pilot was expected, on average, to live until age 78. The top line is the "RP-2000 Mortality Table for Healthy Annuitants with Large Benefit Amounts." Under this more recent mortality table, a 60-year-old pilot would be expected to live, on average, until age 84.

As longevity increases, retirement benefits take on a more prominent role. The average person who retired at age 60 in 1951 needed retirement benefits to last for 18 years. By 2000, a person who retired at age 60 needed retirement benefits to last for 24 years on average. That's a six-year increase in life expectancy, or 33%. But since that is an average, it implies that about half of the people live longer and half die sooner. DB plans that pay annuity benefits eliminate "mortality risk" because benefits

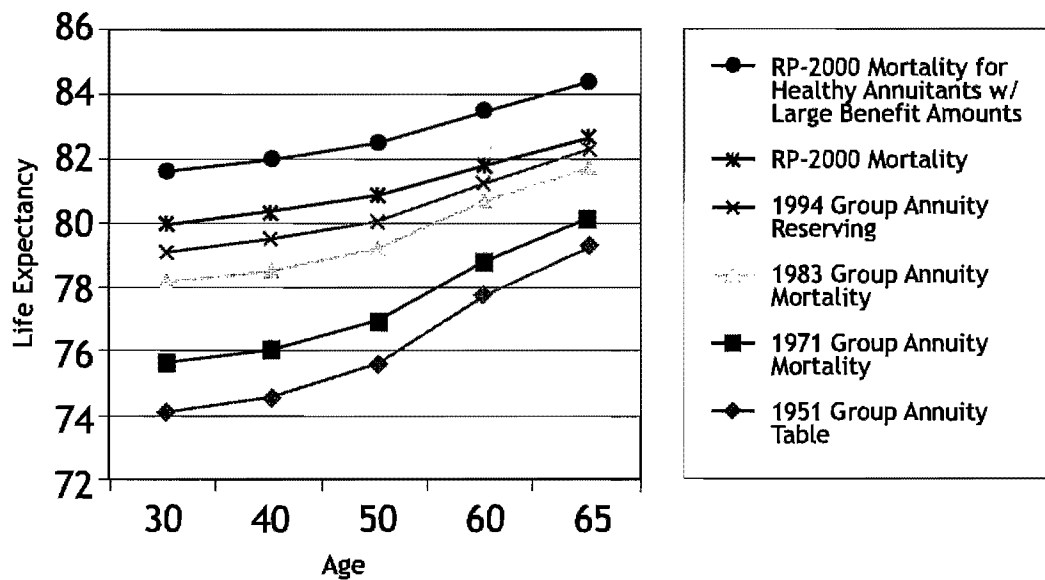
Effect of Increasing Mandatory Retirement Age on DB Dollar Limit

	Dollar Limit Under Pilots' Qualified DB Plan if Mandatory Retirement Age	
Pilot's Age at Retirement	Remains at Age 60	Is Increased to Age 62-65*
65	\$170,000	\$170,000
64	\$170,000	\$170,000
63	\$170,000	\$170,000
62	\$170,000	\$170,000
61	\$170,000	\$157,216
60	\$170,000	\$145,642
59	\$135,136	\$135,136
58	\$125,577	\$125,577
57	\$116,859	\$116,859
56	\$108,891	\$108,891
55	\$101,593	\$101,593
54	\$94,895	\$94,895
53	\$88,736	\$88,736
52	\$83,061	\$83,061
51	\$77,824	\$77,824
50	\$72,982	\$72,982

*Dollar Limit for pilots would be the same as non-pilots.

Table 1

Projected Increased Longevity



Graph 1

are paid until the participant (and possibly a beneficiary) dies. As a result, a dollar of annuity benefit payable to the person who retired at age 60 in 2000 was worth more (in terms of an actuarial present value analysis) than a dollar of annuity benefit payable to the person who retired at age 60 in 1951. That also means that a dollar of annuity benefit payable to the person who retired at age 60 in 2000 required higher employer contributions than a dollar of annuity benefit payable to the person who retired at age 60 in 1951 (all other things being equal). DC plans and DB plans that pay lump sums essentially shift this mortality risk to the participant—when the money is gone, payments stop.

Wage Concessions and Retirement Benefits

Since retirement benefits from both DB plans and DC plans are generally based on compensation, decreases in wages usually result in lower retirement benefits. DC plans usually base

employer contributions on a percentage of compensation. The dollar amount of the contribution to these plans decreases as compensation decreases. The impact on DB plans is usually more gradual. Most DB plan formulas are based on final average earnings. Final average earnings is usually defined as the average of the 36 (or sometimes 60) highest consecutive months of compensation out of the last 120 (or some other number) months. This mechanism tends to dampen the impact of compensation decreases for a few years in DB plans, but the impact can still be substantial over the long term. The reduction in retirement benefits, combined with the increase in life expectancy, will make it more likely that some pilots will have insufficient retirement earnings.

Health Benefits and the Age 60 Rule

Some pilot groups have negotiated post-retirement health benefits. An in-

crease in the retirement age would generally make those benefits somewhat less expensive since there would be fewer years over which they would be paid. Some post-retirement health benefits cease at Medicare eligibility — age 65. If the retirement age was raised to age 65, this would essentially eliminate those benefits entirely for pilots who continued to work to age 65. But at the same time, those pilots (and their

dependents) would remain in the active health program. Since health claims tend to increase with age, increasing the retirement age to 65 would likely increase the average claims for actives. This would mean higher costs for the employer and active pilot (assuming there is a cost-sharing arrangement), which would offset any savings for post-retirement coverage.

In Summary...

There is no simple answer to how a change in the Age 60 Rule would affect pilot benefits and the costs associated with them. The combination of contractual and federal pension law protections means that a change in the Age 60 Rule would have a limited impact on the benefits payable from DB plans. Additionally, it would have to be negotiated and could only be effective with respect to future accruals.

Furthermore, even if ALPA agreed, on an airline-by-airline basis, to changes in the NRA for future benefits in defined benefit plans, such changes would not have a dramatic impact on the current funding requirements for these plans. The ultimate cost of the DB plans would be reduced, but the short-term impact on costs would be minimal due to the DRC part of the funding rules. A change in the Age 60 Rule would not be enough to solve the current defined benefit plan funding crisis.

Government limits on benefits from DB plans have changed over the years. Due to changes in the limits with respect to non-pilots, as well as the effect of the compensation limit, the special pilot rule that ALPA was instrumental in obtaining no longer means as much as it did in the past. As a result, a change in the Age 60 Rule would not have a significant impact on the defined benefit dollar limit.

Increases in longevity (or life expectancy) have elevated the importance of retirement planning and the dollar value pilots derive from their retirement plan. In DB plans that pay annuities, pilots bear no risk for outliving the funds available for retirement, because the employer is responsible for funding those benefits (unless, of course, the plan is terminated, which occurred at US Airways, Eastern, and Pan Am, among others). DC plans and DB plans that pay lump sums shift this "mortality risk" to the pilot. As time goes on, we expect medical improvements to continue to increase longevity, making retirement benefits even more important.

continued on page 8

In Summary (continued from page 7)

Wage concessions can also translate into retirement concessions. That's because retirement benefits are based on compensation. DC plans are affected on a year-to-year basis as contributions (defined as a percentage of compensation) decrease with compensation decreases. Wage decreases applied to DB plans often mean a period when final average earnings (used in calculating benefits) remain static, instead of increasing.

Health benefits could also be affected by changes to the Age 60 Rule. Post-retirement health benefits would be paid over a shorter period if pilots work longer, producing cost savings to the employer. But active pilots working beyond age 60 would increase the cost of the active medical program. The net effect depends on many different factors.

**Coming up in the next issue of
*IN FOCUS—The FAA Age 60 Rule . . .***

We will discuss the effect of the Age 60 Rule on pilot career earnings.

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APPENDIX 11: Defined Contribution Plans, Provided by the Adopt the ICAO Standard Working Group

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DEFINED CONTRIBUTION PLANS: THE FUTURE

Those wishing to maintain the Age 60 Rule have written about the harm amending the rule might or could do to Defined Benefit plans. The reality, however, is that the vast majority of Defined Benefit plans have been frozen or terminated. There are few remaining Defined Benefit plans. Most Defined Benefit plans have been replaced by Defined Contribution plans.

Some six years ago, ALPA President Duane Woerth described Defined Benefit plans as “dinosaurs” and said the future belonged to Defined Contribution plans. That future is now.

The simple fact is that employees, including pilots, whose retirement is a Defined Contribution plan, are far better off with a longer career.

Defined Contribution plans are very simple. A fixed amount is contributed by the employee. That employee’s employer often matches the contribution or a percentage of it. The more years one contributes, the more money is in the fund and the larger the retirement fund grows through appreciation.

A pilot with a Defined Contribution plan, flying to age 65, gains in five ways:

1. Five more years of income.
2. Five more years of contributions (employee and employer).
3. Five more years of appreciation.
4. Avoidance of withdrawals at 60, thus letting the investment grow.
5. Ability to wait until full Social Security retirement (at 65 or 66), rather than having zero SS income (60-61) or reduced income (at 62).

This nation’s pilots have suffered tremendously post 9/11. Many with decades of service have lost their retirement funds and have been relegated to receiving vastly reduced payouts from the PBGC. Many of these pilots are the same ones who went through the industry upheavals and bankruptcies of the post-deregulation world. Many are Vietnam veterans.

These pilots deserve better than a PBGC retirement.

Amending the Age 60 Rule to the ICAO world standard of 65 would allow airline pilots, the majority of whom now have Defined Contribution retirement plans, to build for their families’ future.

Paul Emens
Airline Pilots Against Age Discrimination (APAAD)

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APPENDIX 12:
Comments to the FAA Aviation Rulemaking Committee
In Support of Replacing the FAA Age 60 Rule With the
New ICAO Upper Age Standard
By Dr. Claus Curdt-Christiansen,
Provided by the Adopt the ICAO Standard Working
Group

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Comments to the FAA Aviation Rulemaking Committee in Support of Replacing the FAA Age 60 Rule with the New ICAO Upper Age Standard

25 October 2006

By Claus Curdt-Christiansen, MD, DAvMed
Former Chief of Aviation Medicine Section, ICAO, Montreal (1994 – 2005)
E-mail: curdt3@yahoo.ca

Abstract

During my eleven-year tenure as Chief of Aviation Medicine Section at ICAO, I conducted a comprehensive survey of international flight safety data and found no evidence to support the notion that age-related conditions in older pilots compromise aviation safety. Data from a large number of contracting States, reflecting about 15 000 pilot-years of airline experience, indicated no safety risk and only minor health problems with pilots between 60 and 64 years of age. Moreover, there were indications in the scientific literature that more experienced pilots are operationally safer than their less experienced younger colleagues.

Based on these findings, which are as valid in the United States as they are in the rest of the world, the ICAO Air Navigation Commission considered an upper age limit of 65 years for airline pilots to be compatible with a continued high level of flight safety and recommended to the ICAO Council that the current Standard be amended and a new higher upper age limit be adopted. In the beginning of 2006 the Council adopted the amendment, and the new Standard, allowing air line pilots, engaged in multi-crew operations, to continue flying until age 65, will become applicable worldwide on 23 November 2006.

Introduction

The Introduction contains two sections: The ‘Chicago Convention’ and The Upper Age Limit for Pilots. The first section provides the interested reader with relevant information about the regulatory background for international cooperation within the field of civil aviation, and the second section outlines the various stages of the development of the amendment to the upper age Standard in Chapter 2 of Annex 1 to the Convention.

The ‘Chicago Convention’

On the 7th of December 1944, the United States of America together with 51 other countries signed the *Convention on International Civil Aviation*. As this event took place in Chicago, the convention is usually referred to as the ‘Chicago Convention’. The primary purpose and aim of this Convention, as stated in the Preamble (p.1), is to ensure “that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.”

The Chicago Convention contains 96 articles. Pursuant to article 37, “each contracting State shall undertake to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. To this end, the International Civil Aviation Organization (ICAO) shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with : ... d) Licensing of operating and mechanical personnel; ... and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.”

Although obligating the contracting States to adopt uniform regulations and to collaborate with regard to aviation safety, regularity and efficiency, the Convention allows in article 38 “any State which finds it impracticable to comply in all respects with any such international standard” or “which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard” to depart from the international Standards, provided ICAO is informed thereof so as to allow ICAO to inform the other contracting States of this departure from the international norm. This applies to Standards only, such as the Standard setting an upper age limit for pilots-in-command of airliners. The Recommendation that sets an upper age limit for co-pilots is a Recommended Practice only and, consequently, no contracting State is obligated to adhere to it or to inform ICAO of any departure from it.

With regard to the Standards, it is important to note that contracting States are sovereign countries and, consequently, are free to implement more stringent requirements for their national license holders if, for whatever reason, they want to do so. They cannot, however, impose these national requirements on foreign pilots flying aircraft on foreign registry without notifying ICAO of this departure from the international standards. In addition, each contracting State has the right to refuse to recognize, for the purpose of flight above its own territory, licenses granted to any of its own nationals by any other State. With regard to the new Standard concerning the upper age limit for pilots, which will become applicable on 23 November 2006, no contracting State has notified ICAO of its intention to impose a different, lower upper age limit on foreign pilots flying foreign aircraft into its national airspace.

The Upper Age Limit for Pilots

The Standards and Recommended Practices (SARPs) mentioned above, have been developed by ICAO over the years and are published in the Annexes to the Convention. There are today 18 such Annexes. Annex 1 - *Personnel Licensing* contains six chapters, of which Chapter 2 deals with the general rules concerning licenses and ratings for pilots, including the age limits, both upper and lower. Chapter 6 deals with the medical provisions for licensing.

In 1994, the ICAO Air Navigation Commission tasked the aviation medicine section, at the time headed by me, with a review of the upper age limit for pilots. Although the upper age limit always has been and still is part of the general requirements for personnel licensing (Chapter 2 of Annex 1) and not of the medical provisions for licensing (Chapter 6 of Annex 1), the Commission considered the medical aspects of the upper age limit of such importance that they decided the medical section was to handle this particular task.

My first step was to send out a letter to the chief medical officers of 12 selected States, asking their opinion about the relevance or necessity of an upper age limit. All but one considered an age limit, even an arbitrary one, to be necessary. One of the CMO's wrote in his reply that a system without an age limit would be "an administrative nightmare" and others warned against a system where the result of a medical examination rather than the date on a birth certificate would end the career of a pilot, as it would increase the hostility of some pilots against their medical examiners and thus diminish the quality and reliability of the medical assessment.

I then produced a State letter (i.e. an official ICAO letter submitted to the governments of all contracting States), requesting information about the upper age limits in force. This State letter elicited an unusually high number of replies, indicating a pronounced interest in this particular aspect of the licensing requirements. As it turned out, many contracting States had adopted an upper age limit above 60 years; some had no upper age limit at all.

The replies to the State letter were presented to the Air Navigation Commission in 1995. At the time, the Joint Aviation Authorities (JAA) in Europe were about to introduce a new upper age limit of 65 years for European airline pilots, so the Commission decided to wait and see what the European experience would be. It did, however, take several years, until 1. July 1999, before the Joint Aviation Requirements, including a new upper age rule, came into force and implementation began in the European States, and it was not until 2003 that the task of revising the upper age limit was taken up again by ICAO.

A new State letter was circulated to the 189 contracting States of ICAO and to selected international organizations, resulting in an all-time high response rate of 118 replies. An overwhelming majority of the responding States wanted an upper age limit above 60 years, a small minority preferred to maintain the current age limit of 60 years while a few, including some major contracting States, wanted no age limit at all.

Many countries around the world, including the JAA States, had experience with older pilots (i.e. 60 years or older) flying airliners, together about 15 000 pilot-years of experience. These States all indicated only positive experience. Together with a review of existing international literature on "older pilots" and flight safety, these results were presented to the Air Navigation Commission in 2003. At the same time, the Flight Crew Licensing and Training Panel (FCLTP), a group of licensing specialists from contracting States, were meeting in Montreal. One member of the Panel suggested that the issue of the upper age limit should be added to the agenda.

Both I, as chief of the Aviation Medicine Section, and the acting chief of the Personnel Licensing and Training Section, advised against this at a meeting of the Air Navigation Commission. We did so for several reasons: the FCLTP had a very full agenda as it was and would not be able to take on an additional major issue as the upper age limit for pilots; the FCLTP had no expertise relevant to the medical, including the physical and mental, aspects of this task; for many years, the Air Navigation Commission had considered the medical aspects of the upper age limit to be the primary or most important ones and had designated the revision of the upper age limit as a medical task to be conducted by the Aviation Medicine Section; and finally, the Aviation Medicine Section had worked on this task for several years and was close to completing it. Even so, the Air Navigation Commission accepted this addition to the FCLTP's agenda but limited this item to the operational aspects of the upper age limit Standard.

As it turned out, the FCLTP found itself unable to conduct its own revision of the upper age limit for pilots and restricted itself to stating that it could find no indication of reduced flight safety in the States where a higher upper age limit had been implemented; that an age limit was necessary; and that it would support the recommendations already contained in the working paper presented by the Aviation Medicine Section. When reviewing this working paper in 2004, the Air Navigation Commission also considered the FCLTP's recommendations and, based on these two documents, it authorized a State letter with a proposal to amend the upper age limit for pilots to be circulated to all contracting States.

As expected, a large majority of the replies received from contracting States expressed agreement with the proposed amendment. A few States disliked the proposal and indicated their preference to either maintain the current upper age limit or have no age limit at all, but none of these States informed ICAO that it was unwilling to accept the amendment once it was adopted.

Consequently, the new upper age limit of 65 will become applicable by 23 November 2006 and will then be the international upper age limit in force around the world as well as the national upper age limit in most countries. A few countries, however, will maintain a limit of 60 years for their own nationals.

Most importantly, after the ICAO Council adopted this amendment earlier this year, none of the 189 contracting States has informed ICAO that it will not accept this new international Standard.

ALPA's Objections

The Role of FCLTP

In its position paper of 12 October 2006, entitled "The FAA Should Not Adopt the New ICAO Standard", ALPA emphasizes the role of the Flight Crew Licensing and Training Panel in the deliberations of the Air Navigation Commission, resulting in the proposal of the amendment of the Standard concerning the upper age limit for pilots. As outlined above, the involvement of the FCLTP was late in the development of the amendment proposal, short-lived, and of little importance apart from its support to the amendment proposal as presented in the medical working paper. In my opinion, the contribution of the FCLTP does not deserve the emphasis given to it by ALPA.

“Should the FAA adopt the New ICAO Standard?”

In the ALPA position paper of 12 October 2006, several reasons are given for the United States *not* to adopt the ICAO international Standard:

1. No compelling safety argument in favor of increasing the maximum age limit [from 59 to 64 years] has been advanced by its proponents.
2. A vast number of international pilots are allowed to fly into US airspace but the FAA does not know how many.
3. The International Federation of Airline Pilots (IFALPA) has found that in many countries, the maximum licensing age for pilots currently engaged in commercial operations is greater than the age to which these pilots actually operate.
4. Some international airlines have their pilots retire at age 60 regardless of national regulations or ICAO Standards.
5. ICAO did not solicit information regarding experience or problems associated with pilots flying beyond age 60 (at least not in a structured and detailed way.)
6. ICAO did not perform a safety risk analysis of the effect of a change of the Standard.
7. The FCLTP lacked appropriate information and expertise to analyze the effect of the amendment.
8. The new Standard amounts to rewarding those States that are not in compliance with the current ICAO upper age Standard by adopting a lesser rule which these States are willing to meet – a worst-case example of regulating to the “lowest common denominator.”
9. The new Standard is simply the replacement of one limit with another limit.
10. ICAO has not adopted a criterion-based process for determining pilot fitness to fly beyond age 60.
11. When ICAO Standards do not meet FAA safety requirements or demonstrate at least an equivalent level of safety, it must be rejected.
12. FAA is currently in compliance with the new ICAO Standard.
13. In order to change the FAA ‘Age 60 Rule’, an equivalent level of safety must be demonstrated.

14. ICAO did not take the time to or expend the resources to do a thorough safety study of operations involving pilots above 60.
15. It would not be appropriate to make a change to this important rule based solely on political, economic or legal factors.

These 15 points are repeated in a slightly different phrasing in the Conclusion of the ALPA position paper with the addition of a consequential statement that “Adoption by FAA of the new ICAO Standard would reduce the current US airline safety standard”.

In the following I shall provide comments to each of the ALPA statements:

1. Although there are several good reasons to change the Standard as has now been done, such as social, economical, and operational reasons, there is no safety argument, compelling or otherwise, to do so. It may, however, be reasonable to assume that the more experienced, older pilots are operationally safer than their less experienced younger colleagues.

Scientific research is outside ICAO’s remit, so no attempt has been made by ICAO to calculate to what degree age-reduced physical and mental powers are offset by greater experience or at what age or experience level this becomes a relevant consideration, but a scientific study by Li and Baker (1994), involving US commuter pilots, indicates that older pilots are safer than younger ones, suggesting that experience is a positive factor.

In a more recent study (2003), involving over 3300 US commuter and air taxi pilots, the same researchers found no age-associated crash risk; on the contrary, the risk of a crash decreased by half among pilots with a total flight time above 5000 hours, i.e. with more experience.

The new upper age limit may or may not increase flight safety; it is, however, highly unlikely to decrease it.

2. This may be true, but seems irrelevant to the argument.
3. Regulators normally try to make rules and regulations as liberal as possible so as to permit everything that does not need to be restricted or prohibited. That many pilots retire at age 60 in countries where the law allows them to continue flying until a higher age is the obvious consequence of the fact that most airline companies employ pilots to fly internationally or at least to be available company-wide for international scheduling, and the current international upper age limit is 60 and has been so since 1962, first as a Recommendation and since 1972 as a Standard.

Furthermore, airline companies, as all other companies, need to know when the older employees retire, so as to be able to plan succession and recruit and train a suitable number of new young employees. A contractual retirement age corresponding to the international upper age limit is a frequently used and very reasonable solution to this problem.

4. (See 3).
5. This is not a true statement. By means of a well structured questionnaire, developed by the Aviation Medicine Section, ICAO obtained information from a high number of contracting States of their experience with older pilots. Based on the data obtained, which reflect about 15 000 pilot-years of airline experience and indicate no safety risk and only minor health problems with pilots between 60 and 64 years of age, the Air Navigation Commission decided to recommend to the ICAO Council that the new upper age limit be adopted as fully compatible with a continued high level of flight safety.
6. A thorough analysis consisting of a comprehensive review of the relevant international scientific literature was undertaken followed by questionnaires to contracting States seeking information about real-life experience with older pilots (i.e. pilots 60 years and above) from countries in all parts of the world where airline pilots are allowed to continue their careers after age 60. The final proposal was made, based on the information obtained from these two categories of sources.
7. The FCLTP is not a study group composed of scientists and researchers. However, worldwide experience, compiled by ICAO, indicates that older pilots, at least up to age 65 years and possibly beyond, have no increased risk of being involved in accidents.
8. This statement seems based on a misunderstanding of the purpose of ICAO and the role of the international Standards. ICAO is a specialized agency of the United Nations. It is employed and governed by its 189 contracting States through a tri-annual session of the General Assembly and, on a day-to-day basis, by the Council whose 36 members, representing 36 contracting States, are elected by the General Assembly. The Organization carries out the will of its 189 employers as originally expressed in the Chicago Convention and subsequently in various Assembly Resolutions.

The primary aim and purpose of the Organization is “to ensure the safe and orderly growth of international aviation throughout the world”. As an international regulator, ICAO sets Standards and Recommended Practices (SARPs) for implementation in its contracting States.

SARPs are adopted to ensure a high level of aviation safety; they are developed with due consideration of the relevant rules and other provisions already implemented in States with the best safety records. When there is indication that an existing Standard does not reflect the true demands of safe aviation in the real world, it has to be revised and, possibly, amended.

This was the case with the upper age Standard. Many contracting States with excellent safety records had for years allowed older pilots to continue flying. These older pilots were restricted to the national airspace of their country or to flying on mutual agreement between neighboring States as the international ICAO Standard did not allow unrestricted international flying. Consequently the ICAO Standard had to be revised.

The Standard was closely examined, and based on literature studies and questionnaire surveys, ICAO came to the conclusion that the current upper age limit is unduly restrictive and that the new Standard is more reasonable. At the end of the day, the 189 contracting States must approve of the amendment; therefore it has to be carefully phrased so as to be likely to meet with their approval.

For this reason, the requirement that the other pilot(s) in the cockpit must be younger than 60 was incorporated into the Standard although, from a purely technical, medico-statistical point of view, it is unnecessary as the statistical likelihood under the current medical provisions of two pilots between 60 and 64 becoming medically incapacitated during the same flight is so remote that it can be safely disregarded.

9. This is true. Both 60 and 65 years are limits that are, to a large extent, arbitrary. Neither can be proven by medical considerations alone to be the only appropriate retirement age for airline pilots and reasonable arguments exist for a figure smaller than, or greater than, 65.

There is no doubt, however, that in many contracting States, including the United States, the health of the population, especially the cardiovascular health, has markedly improved since the upper age limit was introduced. For pilots, whose general health can be anticipated to follow population trends, in-flight cardiovascular incapacitation is therefore less likely today in any age group than it was 45 years ago.

Further, in-flight incapacitation training was made mandatory some thirty years ago, and for multi-pilot operations (the change in the ICAO Standard applies only to such operations) this has reduced the risk of an accident following an event of in-flight incapacitation.

Finally, increased automation and computer-based prevention of excursions from a safe flight profile make modern aircraft easier to control single-handedly than

was the case with the aircraft in common use in the 1960's. In 1959, when the upper age limit was introduced in the United States, both the health of the American population and the quality of the aviation industry in which pilots operated were very different from what they are today.

10. The current medical requirements (in Chapter 6 of Annex 1) and the prescribed examinations constitute a criterion-based process for assessing fitness to fly, applicable also to older pilots. A criterion-based process, developed solely for determining the time for retirement, i.e. a process without an age criterion, may well become a reality in the future, but currently it seems unreasonable to use ICAO's limited resources on the development of a process most of the contracting States do not wish to implement.
11. It has been shown beyond reasonable doubt that the new upper age Standard provides for a level of safety at least equal to that of the current 'Age 60 Rule'.
12. The "Age 60 Rule" is still in force in the United States, and this rule is a departure from the new ICAO upper age Standard soon to become applicable worldwide, including in the United States.

It is, however, correct to state that the United States, although obligated by the Chicago Convention to adopt the international Standards (art. 37), is allowed to depart from an international Standard if it finds it impracticable to comply in all respects with it or if it deems it necessary to differ from it in a particular respect (art. 38).

There is little reason to believe that the United States will find it impracticable to comply with the new ICAO Standard and there is no evidence to suggest that the general state of health - morbidity and mortality - of American airline pilots; their access to medical care when needed; their socio-economical situation in general and their living conditions in particular; and the quality of their frequent flight physicals are so much poorer than those of the airline pilots in the rest of the world, that a departure from the international Standard is necessary in order to secure flight safety through a lower maximum upper age for American pilots.

13. (See 11).
14. This is not a true statement. (See 6).
15. It would be inappropriate not to change the upper age limit if there are good political, economic and/or legal reasons to do so and it can be shown (as ICAO has done) that this is possible without any adverse effect on flight safety.

Conclusion

To the final, consequential ALPA Statement it can be said that the level of flight safety in the United States, although very high, is not higher than the level achieved in countries such as Japan and the European JAA States where the upper age limit has been 65 for several years now and where many older pilots continue their career beyond age 60.

Aligning the FAA regulations with the international Standards, also with regard to the upper age limit for airline pilots, will help bring global regulatory uniformity within the field of civil aviation a step closer; will strengthen the international cooperation between the United States and ICAO's 188 other contracting States; and will benefit American pilots and airlines, possibly also the American public. Last but not least, the high level of flight safety, for which the United States is known, will be maintained or perhaps even further increased.

APPENDIX 13:

Letter of Understanding No. 2 Between the Air Line
Pilots in Service of Air Canada Regional, Inc., as
Represented by the Air Line Pilots Association,
International and Air Canada Regional, Inc.,
Regarding Age 60 Captain, Provided by the Adopt the
ICAO Standard Working Group

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Letter of Understanding No. 02

Letter of Understanding

Between

The Airline Pilots in the service of Air Canada Regional Inc.

as represented by the

Air Line Pilots Association, International (the "Association")

And

Air Canada Regional Inc. (the "Company")

RE: AGE 60 CAPTAIN

WHEREAS the parties recognize that Air Canada Regional Inc., employs Captains over the age of 60 or who shall reach the age of 60 during the currency of this Letter of Understanding, and

WHEREAS the parties agree that, at a pilot's discretion, he may fly up to the age of 65, and

WHEREAS it is recognized that there are current Federal Aviation Administration restrictions for Captains over the age of 60 to fly into the United States of America,

THEREFORE, the following conditions will apply to Captains between the ages of 60 and 65 (referred to in this Agreement as the Age 60 Captain) where the Pairings in a Position held by the Age 60 Captain contain any transborder flying:

1. The Age 60 Captain must bid a monthly Block, which consists solely of domestic Pairings and will be excluded from bidding Reserve Duty Periods.
2. The Company will take all reasonable steps to ensure that the monthly Bid Package with respect to any Age 60 Captain's Position provides sufficient domestic Pairings for bidding purposes.
3. An Age 60 Captain unable to hold a Block containing solely domestic Pairings will be assigned a Reserve Block. If more than one Age 60 Captain exists in a Position, then the Seniority of the Age 60 Captains shall govern when assigning an Age 60 Captain a Reserve Block.
4. The Company may assign domestic Pairings out of Seniority to Age 60 Captains assigned a Reserve Block. When assigning domestic Pairings to Age 60 Captain(s) the rights of

"passing" and "call last" shall only exist amongst the Age 60 Captains in order of Seniority. The Age 60 Captain will not have the ability to "pass" domestic Pairings to non Age 60 Captains.

5. An Age 60 Captain who is not frozen under the provisions of Section 5-12 (GENERAL PROVISIONS GOVERNING VACANCIES) and is assigned a Reserve Block in accordance with paragraph 3 above shall be guaranteed for pay purposes a minimum monthly guarantee equal to the monthly block average for his Position.
6. If, after a consecutive six month period, an Age 60 Captain cannot hold a domestic Flying Block (Full Blockholder) he/she will be required to choose one of the following options or, at the Company's discretion, will remain in his/her current Position with respect to the provisions of paragraphs 1 to 5 above:
 - a) The Age 60 Captain will bid a Captain Position Vacancy that will allow the Pilot to hold a domestic Flying Block (Full Blockholder). The Age 60 Captain will be entitled to provisions of Section 21-3 (INVOLUNTARY MOVE), or
 - b) If another equipment type exists on the Base that will allow the Age 60 Captain to hold a domestic Flying Block (Full Blockholder), the Age 60 Captain shall be awarded a Captain Position created on that equipment by the Company. The filling of this Position shall not cause a corresponding displacement of the junior pilot in the Position, or
 - c) The Age 60 Captain will remain in his Position and will Bid as a First Officer and will be awarded a First Officer Flying Block (Full Blockholder). In this case the Age 60 Captain will be paid as a Captain. The awarding of the First Officer Flying Block shall not cause a corresponding displacement of the junior First Officer in the Position. This practice shall continue on a monthly basis until the Age 60 Captain is able to hold a domestic Captain Flying Block (Full Blockholder) in his Position, or
 - d) The Age 60 Captain will remain in his Position and agrees to waive the provisions of Section 8-40.05 (ii) (DRAFTING). In this case the Age 60 Captain will be paid as a Captain.

In the case of c) and d) above the Age 60 Captain will not be restricted from bidding any Captain Position Vacancy that allows the Pilot to hold a domestic Flying Block (Full Blockholder). In addition, the Age 60 Captain will not be restricted from bidding any First Officer vacancy.

7. In the event of the Federal Aviation Administration restrictions are altered during the currency of this Letter of Understanding the definition of Age 60 Captains shall be amended accordingly.

8. This Letter of Understanding shall form a part of the Collective Agreement and shall run concurrently with the Collective Agreement.
9. For greater clarity, all other provisions of the Collective Agreement Shall apply.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this 20th day of March 2002.

For AIR CANADA REGIONAL INC.

Kevin Howlett
Vice-President, Labour Relations and
Corporate Safety

Captain Grant Warner
Vice-President, Flight Operations

Colin Copp
Director, Flight Operations

Robert Demchuk
Manager, Human Resources

For the AIR LINE PILOTS
ASSOCIATION, INTERNATIONAL

Duane E. Woerth, President, ALPA

Captain B. K. Shury
Chairman, ALPA ACR Negotiating
Committee

Captain Nick DiCintio
MEC Chairman, ACR

Michael Balogh
Contract Administrator, ALPA

Albert "Bert" Leger
Contract Administrator, ALPA

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APPENDIX 14: Increase in Mandatory Retirement Age:
An Impact on Pilot's Retirement and Insurance Benefits,
Provided by the Do Not Adopt the ICAO Standard
Working Group

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Increase in Mandatory Retirement Age: Impact on Pilots' Retirement and Insurance Benefits

Q1: Defined Contribution Plans (401(k) Plans, Money Purchase Pension Plans).

How will an increase in the mandatory retirement age impact benefits under my company's qualified defined contribution retirement plan (DC plan)?

A1: As long as you continue working after age 60, the company must continue to make company contributions to your account, you will continue to be eligible to make employee contributions to your account, and your account assets will continue to be invested, all in the same manner, and subject to the same rules and procedures, as apply to actively-employed participants under age 60. While you continue working, you will not be able to take distributions from your account unless the plan explicitly allows for in-service distributions.

Q2: Defined Benefit Plans. How will an increase in the mandatory retirement age impact benefits under my company's qualified defined benefit retirement plan (DB plan)?

A2: Although the exact impact will need to be determined separately for each DB plan, the following principles will apply generally:

(a) In most pilot DB plans, age 60 is specified as the normal retirement age under the plan (except for the Piedmont pilots' plan, see (b) below). A plan's normal retirement age is the age at which the full amount of your accrued benefit may begin without actuarial reduction. An increase in the mandatory retirement age will not automatically change the plan's normal retirement age; that may be accomplished only through collective bargaining. If the company and ALPA do not agree to increase the plan's normal retirement age, then full benefits may begin, without actuarial reduction, if you retire at age 60 (or older). Even if the company and ALPA do agree to increase the plan's normal retirement age, the benefits you earned under the plan *before* that plan amendment will not be subject to actuarial reduction if you retire at age 60 (or older). Only benefits you earn *after* the plan amendment may be subject to actuarial reduction if you retire before the plan's new normal retirement age. This protection is ensured by ERISA's "anti-cutback rule," which provides that a plan amendment cannot have the effect of reducing benefits that a participant has already earned. The anti-cutback rule also applies to protect your pre-amendment early retirement benefits. Thus, if the company and ALPA agree to increase the plan's early retirement age, then you will still be able to retire early and receive the early retirement benefits you accrued before the plan amendment, at an age and in an amount determined under the plan's early retirement provisions in place before the plan amendment.

(b) In the DB plan covering Piedmont pilots, the plan's normal retirement age is defined as the FAA mandatory retirement age, rather than age 60, and the plan's

earliest early retirement age is defined as 10 years before normal retirement age. An increase in the mandatory retirement age, therefore, would automatically change the plan's normal and early retirement ages. We are presently reviewing the impact of this automatic change on benefits earned prior to the change.

(c) If the mandatory retirement age is increased to an age above age 62, then for pilots who choose to retire between age 60 and 62, the increase in the mandatory retirement age will have the effect of reducing the dollar limit on annual DB plan benefits under section 415(b) of the Internal Revenue Code. The reduction will impact only a few pilots since rarely would a pilot's DB plan benefit exceed the reduced limit.

Section 415(b) imposes a dollar limit (\$175,000 for benefits that begin in 2006) on the amount that may be paid annually to a retiree from a DB plan. For most non-pilot employees, the full dollar limit applies to retirement benefits that begin between age 62 and 65. If payment begins before age 62, the full dollar limit is actuarially reduced from age 62, and if payment begins after age 65, the dollar limit is actuarially increased from age 65. At ALPA's urging, Congress adopted a special rule for commercial airline pilots in recognition of the FAA age 60 rule. Under the special rule, the full dollar limit is available to a pilot whose benefit begins when he retires at the FAA mandatory retirement age. If the mandatory retirement age is increased to age 62 or older, this special rule will no longer provide a higher dollar limit to a pilot than for a non-pilot. For example, if the full dollar limit applicable at age 62 is \$175,000, the dollar limit applicable to a pilot who chooses to retire at age 60 rather than at the new, higher mandatory retirement age, would generally be \$149,925, reflecting an actuarial reduction of two years. This is the same dollar limit that would apply to a non-pilot retiring at age 60.

(d) Most DB plans don't allow you to begin drawing retirement benefits while you continue working. If you continue working after the plan's normal retirement age, however, you may be entitled to continue accruing credit for your additional years of service or you may be entitled to an actuarial increase on the benefit you had accrued up through normal retirement age. Your rights will depend on the terms of your plan, among other things.

(e) If your DB plan was frozen prior to an increase in the mandatory retirement age, the increase should have little or no impact. Even if the plan is amended to increase the plan's normal retirement age, ERISA's anti-cutback rule ensures your right to receive your frozen accrued benefit, upon normal or early retirement, at an age and in an amount determined under the terms of the plan in place before the amendment.

(f) If your DB plan was terminated in a distress termination prior to an increase in the mandatory retirement age, the increase should have little or no

impact. We are presently reviewing this matter with the Pension Benefit Guaranty Corporation.

(g) In response to an increase in the mandatory retirement age, the DB plan's actuary might increase the age at which it assumes pilots will actually retire. This, in turn, could lower the amount the actuary determines annually to be the employer's required minimum funding contribution to the plan.

Q3: Medical Benefits and Life Insurance. How will an increase in the mandatory retirement age impact benefits under my company's medical plans and life insurance programs?

A3: As long as you continue working past age 60, you will continue to be covered for medical and life insurance benefits in the same manner as other actively-employed pilots. If medical benefits and life insurance benefits are provided to retired pilots, they will not be available to you until you actually retire.

Q4: Disability Benefits. How will an increase in the mandatory retirement age impact benefits under my company's disability benefit plan?

A4: If your plan provides that disability benefits will terminate no later than age 60 because that is presently the mandatory retirement age, it is likely that the plan will need to be amended. Among other possibilities, the amendment could allow benefits to continue until the new mandatory retirement age. It is likely that any amendment would apply only to individuals who become disabled after the effective date of the amendment.

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APPENDIX 15: Allied Pilots Association Opposes
Changes to Age 60 Rule, Provided by the Do Not Adopt
the ICAO Standard Working Group

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Allied Pilots Association opposes changes to “Age 60” Rule

Background: Section 121.383(c) of the Federal Aviation Regulations prohibits “...any person from serving as a pilot on an airplane engaged in operations under Part 121 if that person has reached his/her 60th birthday.” The FAA adopted the Age 60 Rule in 1959.

Over the past 40 plus years, the Age 60 Rule has come under frequent attack. Most of these attacks have been from organizations that claim they represent “rank and file” pilots. Recently, Senator James Inhofe (R-OK) successfully attached S.959, “Changing Age 60,” to the FAA Reauthorization bill. The bill has been referred to the Committee on Commerce, Science and Transportation. A mirror version of the bill, H.R. 1063, has also been referred to the House Subcommittee on Aviation.

APA Position: The APA, along with the Air Line Pilots Association (ALPA), opposes this bill and has opposed any changes to the Age 60 Rule since its inception.

Medical Fundamentals. The medical underpinnings of the Age 60 Rule are indisputable. First, the risks of incapacitation and decrements in performance increase with age. Second, medical science has yet to develop a regimen of reliable tests that can identify older pilots who are, or might become, incapacitated or whose performance will decline below an acceptable level.

Challenges to the Age 60 Rule. This ruling has been challenged at the FAA, in circuit court and at the U.S. Supreme Court; all challenges have failed. The FAA has stated repeatedly that any change to the Age 60 Rule must maintain or raise the current level of safety.

Membership Support. In the last survey on the Age 60 Rule, a substantial majority (83 percent) of APA’s members responding indicated they support the status quo.

Opposing Position. The key opposing argument is fourfold: (1) the rule violates age discrimination laws; (2) 60 is an arbitrary number; (3) flying qualifications should be based on competency and health; and (4) shortage of pilots.

Bottom Line. The Age 60 Rule has worked effectively for more than 40 years. It was not established to enhance pilot careers by allowing them to move up the seniority ladder faster, nor should it be changed to allow a small group of pilots to fly longer to meet their financial goals. The Age 60 Rule makes sense and is in place to protect America’s flying public.

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APPENDIX 16: Selected Sections of Air Transat
Collective Agreement November 1, 2005, to April 30,
2010, Provided by the Adopt ICAO Standard Working
Group

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COLLECTIVE AGREEMENT

between



and

**FLIGHT CREW MEMBERS
of
AIR TRANSAT A.T. INC.**

as represented by



AIR LINE PILOTS ASSOCIATION

**November 1, 2005
April 30, 2010**

26. RETIREMENT AGE

Retirement is compulsory at age sixty-five (65). However, since aviation regulations in certain countries prohibit pilots who have reached age sixty (60) from acting as Captains, the parties agree as follows:

26.1 Pairing Assignments

To the greatest degree possible, the list of pairings available to Captains as a whole shall include a sufficient number that can be carried out by Captains aged sixty (60) or more. During monthly bidding via the PBS system, these Captains shall restrict themselves to such pairings.

26.2 Position Assignments

26.2.1 The Company is not required to comply with a request for a change in aircraft type received from a Captain who will reach age sixty (60) within three years of his obtaining the position. The date the position is obtained is deemed to be the date it is effective when positions to be filled are posted.

26.2.2 The parties agree that they shall renegotiate the provisions of this chapter, including the salary guarantee, should it be impossible to meet the number of hours required under section 13.3.1.

26.2.2.1 If the regulations in effect at the time of signing this Collective Agreement should change to extend to other countries served by the Company, or

26.2.2.2 Because of operation constraints, a sufficient number of pairings is not available for Captains aged sixty (60) or over.

40. TERM OF THE COLLECTIVE AGREEMENT

The term of this Collective Agreement shall be fifty-four (54) months, starting on the first (1st) day of November 2005 until the thirtieth (30th) day of April 2010.

It shall be renewed automatically, without amendment unless one or other of the parties advises the other, in writing, within the one hundred and twenty (120) days preceding the legal expiry date, of its intention to modify or amend the Collective Agreement.

Once notice of negotiation has been given hereunder, the provisions of the Collective Agreement shall continue to apply until ratification of a new Collective Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of each party have signed this 3rd day of February, 2006.

FOR
AIR TRANSAT A.T. INC.

FOR
AIR LINE PILOTS ASSOCIATION (ALPA)

Allen B. Graham
President-Chief Executive Officer

Duane Woerth
President, ALPA

Simon Lavoie
Vice President, Flight Operations

Martin Gauthier
Chairman, Master Executive Council
TSC – ALPA

Suzanne Viens
Vice President, Human Resources

Percy Toop
Contract Administrator

Jean-François Lemay
Legal Advisor

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APPENDIX 17: Aerospace Medical Association (AsMA)
Aviation Rulemaking Committee/Age 60 Paper,
Submitted to the ARC by Dr. Russell Rayman, Executive
Director AsMA, Provided by the Adopt ICAO Standard
Working Group

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Aerospace Medical Association



President
Richard T. Jennings, M.D., M.S.
301 University Boulevard
Galveston, TX 77555-1150

320 South Henry Street
Alexandria, VA 22314-3579
Phone: 703-739-2240
Fax: 703-739-9652
www.asma.org

Executive Director
Secretary-Treasurer
Russell B. Rayman, M.D., M.P.H.
Association Home Office

AVIATION RULEMAKING COMMITTEE/AGE 60

The aerospace medicine community recognizes that there are many factors to be considered in the determination of any age restriction for air transport pilots (ATPs). We firmly believe that policy should be based upon operational rather than medical considerations because aging is not an illness. Although there are normal physiological changes that come with aging, they do not necessarily degrade a pilot's ability to function in the cockpit. Nevertheless, I would draw the following to your attention:

- a) A number of studies regarding the aging pilot have been done over the past 25 years. However, because there have been no ATPs over 60 years of age, it would be extremely tenuous to extrapolate these findings from younger pilots to older pilots. (The data was taken from ATPs below age 60 and from pilots over age 60 who fly general aviation or commuter/air taxi operations.) A number of nations do allow ATPs over age 60 to continue as ATPs but there is no comprehensive data on how they have fared. I know only of one such study by Japan Air Lines (JAL) published several years ago. They reported no accidents or incidents due to illness or aging among this cohort of over age 60 pilots. In my informal discussions with medical directors from overseas airlines, it is my impression that their experience has been the same as JAL.
- b) One could argue that older pilots are at greater risk because of an increased incidence of heart disease or stroke. However, there are also increased risks for younger pilots with incapacitating illnesses such as bleeding peptic ulcer disease or migraine headaches. Thus, to assume that all the risks reside in older pilots would be fallacious.
- c) Previous studies have demonstrated statistically that ATPs (and military pilots as well) fare much better than the general population in practically all disease categories.
- d) To my knowledge, there has never been a U.S. air carrier ATP accident assigned to medical causes. Certainly incidents have occurred inflight that did threaten flying safety, but it is my impression that these are very rare events and when they do occur, the illness is almost always not incapacitating.
- e) Given this information and the fact that there are two pilots in the cockpit, it would seem reasonable to assume that the risk of a significant medical event during a critical phase of flight would imperceptibly threaten flying safety. In my opinion, the risk is vanishingly small.
- f) It is the opinion of the Aerospace Medical Association (and mine personally) that age alone should not be the sole criterion for disqualifying an ATP from cockpit duty.

If this ARC does recommend agreement with the new ICAO policy (allowing one pilot to be over age 60 as long as the other is less than age 60), the question will come forward whether or not the Federal Aviation Administration (FAA) medical standards or the periodicity of medical examinations for ATPs should be changed. In my opinion, neither should be changed. The current FAA medical standards and its current policy of a medical examination for ATPs every 6 months is reasonable and should be continued. Although some would argue that more tests should be added for these older pilots, I do not believe this would in any way enhance flying safety. Most if not all screening tests would not reveal information indicating imminent sudden incapacitation. Therefore, adding more tests would not provide useful information and could in fact be harmful to the pilot because of the problem of false-positive results.

Respectfully submitted,

Russell B. Rayman, M.D.
Executive Director
Aerospace Medical Association

AEROSPACE MEDICAL ASSOCIATION
THE INTERNATIONAL LEADER FOR EXCELLENCE IN AEROSPACE MEDICINE
78th ANNUAL SCIENTIFIC MEETING, MARRIOTT & SHERATON HOTELS
MAY 13-17, 2007 NEW ORLEANS, LA

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APPENDIX 18: States That Will Retain Age 60, Provided by the Adopt ICAO Standard Working Group

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- States that will retain an age 60 retirement:
 - Algeria
 - Brunei
 - China
 - Cuba
 - France
 - Gabon
 - Iran
 - Kuwait
 - Lesotho
 - North Korea
 - Pakistan
 - Tunisia
 - Uruguay
 - USA
 - Uzbekistan
 - Albania
 - Vanuatu
 - Yemen

Source: International Civil Aviation Organization
23 November 2006

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APPENDIX 19: Airline Pilots Against Age Discrimination
Letter to the Administrator dated November 23, 2006,
Provided by the Adopt ICAO Standard Working Group

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Airline Pilots Against Age Discrimination

Stan Sutterfield
Chairman
Southwest

Gary Cottingham
Communications
US Airways

Dan Scott
Webmaster
Ryan

ADVISORY BOARD

Mickey Oksner
Southwest

Dan Hill
Delta

Paul Emens
Southwest

Bob Lavender
FEX

Billy Walker
JetBlue

Dean Steele
Southwest

Jesse Ashcraft
Comair

Alan Fishback
CAL

Jim Moscardini
ATA

**Robin Wilkening, MD,
MPH**
Medical Advisor

Kathy Schindelar, JD
Legal Advisor

Gayle Siegert, MBA
Consultant

Dear Administrator Blakey,

November 23, 2006

Today, Thanksgiving Day, the world standard for retirement at age 65 takes effect. Sadly, US pilots are not allowed to take advantage of the new standard.

While pilots over age 60 from around the world may now fly in our airspace, our own nation's pilots are treated as second-class citizens - forced to retire at 60, regardless of health or competency.

This is a situation that simply cannot be allowed to stand.

Regardless of other issues such as age discrimination, pensions, airline industry travails, past waivers for over 60 pilots, health exemptions but never exemptions for age, studies that conclude age is not a justification for age 60 retirement or the conclusion of AsMA, which also says that age should not be a determining factor, the issue is really very simple:

Are foreign pilots somehow safer than the pilots of the United States?

Other nations have been flying pilots over age 60 internationally for many years. You are aware of this. Now they are coming to the United States, flying in our airspace, into our airports and carrying our citizens. If they are unsafe, then the government, airlines and unions need to warn the public.

If those pilots are safe, which real-world experience shows to be true, then US pilots over 60 must be accorded the same right to fly in their own nation's airspace.

Our group consists of many pilots, across a spectrum of air carriers and contains union members (ALPA, IBT, APA and SWAPA) and non-union members. APAAD represents the many pilots around the country who feel that after almost a half-century, the Age 60 Rule is long overdue for change.

While we prefer to see an airline pilot's retirement based on competence and health, as is the case for most workers, APAAD recognizes that compromise is often necessary. We urge you to adopt the new ICAO standard of Age 65.

Sincerely yours,

Stan Sutterfield, Chairman

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APPENDIX 20: Southwest Airlines Pilots' Association
and Southwest Airlines Co. Final Committee Report
November 3, 2006, Provided by the Adopt ICAO
Standard Working Group

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To: Captain Greg Crum, V.P. Operations, SWA
Captain Joseph Eichelkraut, President, SWAPA
From: Joint Committee on Age 60 Contract Issues
Date: November 3, 2006
Subj: Final Committee Report

Southwest Airlines Company and the Southwest Airlines Pilots' Association established a joint committee to conduct a thorough review of the entire contract with regard to a change in the retirement age mandated by the Federal Aviation Regulations.

Based upon this review, Southwest Airlines can immediately operate in accordance with the anticipated change the day after the change takes effect. The review reflects less than 10 minor issues that will need to be addressed in conference between the parties. The committee is confident that any potential conflicts in the pairing of crew members can be identified and resolved. The total impact of change in the mandatory retirement age on Southwest Airlines will be negligible, in both cost and operations.

The issues identified will not prevent immediate implementation of such a regulation change, and will be resolved in our normal cooperative fashion.

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APPENDIX 21: Pilots Could Fly on Until they Reach 70
by David Learmount on www.flightglobal.com, Provided
by the Adopt ICAO Standard Working Group

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Pilots could fly on until they reach 70

By David Learmount

JAA medical committee sees nothing against fit crew

The European Joint Aviation Authorities medical committee has agreed that there is "no medical reason" why airline pilots should not be permitted to continue flying until they reach 70 years of age. The finding has been revealed as an International Civil Aviation Organisation resolution permitting pilots to fly to age 65 was implemented last week.

Speaking at Flight International's Crew Management Conference in Brussels last week, aviation medical consultant Dr Ian Perry said that the JAA medical committee has agreed that a fit 70-year-old should not be prevented from commanding a commercial air transport aircraft on medical grounds.

At the conference, the chairman of the Singapore Civil Aviation Medical Board, Dr Jarnail Singh, who also chaired the ultra-long-range task force and is a member of the Flight Safety Foundation crew alertness committee, said that in examinations of factors affecting crew fitness to work on ultra-long-range flights - such as Singapore-New York non-stop - pilot age was determined not to be an issue.

Perry, meanwhile, said that while airlines find clinical diagnosis of chronic fatigue "difficult to accept", if an accident is fatigue-related the airline is responsible for it. While making it clear that such events were rare, he revealed that the reduced freedom of movement imposed on long-haul pilots by the need to lock cockpit doors has resulted in flightcrew sleeping on the floor behind the pilot seats.

The US Federal Aviation Administration has set up a forum to investigate if US commercial pilots should be allowed to fly past the age of 60, in line with the new ICAO rules.

ICAO has increased the upper age limit for pilots to 65, provided that one of the pilots in the cockpit is under 60. Medical experts and FAA personnel will be joined by representatives from airlines and pilot unions in the Age 60 Aviation Rulemaking Committee to examine whether the USA should follow suit.

<http://www.flightglobal.com/Articles/2006/11/28/Navigation/177/210768/Pilots+could+fly+on+until+they+reach+70.html>

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APPENDIX 22: Southwest Airlines Co. Retiring Pilot Costs, Provided by Adopt ICAO Standard Working Group

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**SOUTHWEST AIRLINES
EXTENDED PILOT RETIREMENT AGE COST STUDY
(Additional Costs Due to Training Only)**

Assumptions:

- 1. Pilot salaries as a trainee are not included as part of study.**
- 2. Rule extending retirement age from 60 to 65 is effective January 1, 2007.**
- 3. Actual Southwest projected retirement data is used for study.**
- 4. No early retirements, resignations, etc. during the study period.**
- 5. Replacement pilots would be integrated into existing New-Hire and Upgrade Training class schedules.**
- 6. Class footprints remain the same as today and are not affected by impending FAA rule changes for training that is likely to occur during the study period.**
- 7. Flight Instructor daily rate = \$335.00.**
- 8. Check Pilot conducting simulator proficiency checks daily rate = \$1041.78**
- 9. First Officer who is displaced during First Officer Operating Experience daily rate = $\$110.89 \times 7 \text{ trips for pay} \times 4 \text{ days} = \$3104.92 + 4 \text{ days of Per Diem (80 hours)} \$172.00 = \$3276.92$**
- 10. Captain who is displaced during Captain Operating Experience daily rate = $\$168.01 \times 7 \text{ trips for pay} \times 3 \text{ days} = \$3528.21 + 3 \text{ days of Per Diem (58 hours)} \$124.70 = \$3652.91$**
- 11. Retirement forecast; 2007 = 141, 2008 = 133, 2009 = 108, 2010 = 142, 2011 = 161 for a 5 year total of 544 Captains.**
- 12. 544 pilots retired will be replaced by 544 First Officers who will Upgrade to Captain and 544 new First Officers will be hired to replace those that Upgraded.**
- 13. Initial New Hire and Upgrade classes will have 20 trainees. Therefore, over the period 2007 thru 2011 there will be a total of 544 pilots / 20 pilots = 27 classes (approx).**

Per Class Costs:

New Hire Initial Training (20 First Officers)

Ground School 22 days X 1 class = 22 days X \$335.00 = \$7370.00

Flight Training 7 days X 10 periods = 70 days X \$335.00 = \$23450.00

Proficiency Check 1 day X 10 periods = 10 days X \$1041.78 = \$10417.80

LOFT Training 1 day X 10 periods = 10 days X \$335.00 = \$3350.00

Operating Experience 20 pilots X \$3276.92 = \$65538.40

COST PER CLASS = \$110126.20 X 27 classes = \$2,973,407.40

Upgrade Training (20 Captains)

Ground School 7 days X 1 class = 7 days X \$335.00 = \$2345.00

Flight Training 5 days X 10 periods = 50 days X \$335.00 = \$16750.00

Proficiency Check 1 day X 10 periods = 10 days X \$1041.78 = \$10417.80

LOFT Training 2 days X 10 periods = 20 days X \$1041.78 = \$20835.60

Operating Experience 20 pilots X \$3652.91 = \$73058.20

COST PER CLASS = \$123406.60 X 27 classes = \$3,331,978.20

TOTAL COST

TO REPLACE THE RETIRING PILOTS = \$6,305,385.60

APPENDIX 23: Airline Professional Association
Teamsters Union Local 1224 Letter to the ARC dated
October 18, 2006, Provided by the Do Not Adopt the
ICAO Standard Working Group

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AIRLINE PROFESSIONALS ASSOCIATION Teamsters Union Local 1224

Affiliated with International Brotherhood of Teamsters

2754 Old State Route 73 Wilmington, Ohio 45177
(937) 383-2500 Fax (937) 383-0902

October 18, 2006

Air Transport Association
President James May
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Air Line Pilots Association
President Captain Duane Woerth
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20004

RE: APA TEAMSTERS LOCAL 1224 INPUT TO AGE 60 AVIATION RULEMAKING COMMITTEE

Gentlemen:

I correspond to convey the opinion of the Executive Board and the membership of Teamsters Airline Professionals Association Local 1224, regarding the proposed change to the FAA Age Sixty Rule. After thorough consideration of all the issues associated with this Rule, we are opposed to a change in the Age Sixty Rule as proposed by some members of Congress.

The most important point I convey to you is the opinion of our rank-and-file members. We consist of about seven hundred pilots – consummate professionals – who provide express delivery service on a contract basis for DHL. We have conducted three polls of our members specific to this issue. In one poll, seventy-three percent (73%) of our members opposed any change to the Age Sixty Rule. In a previous poll, seventy-two percent (72%) opposed raising the mandatory retirement age for pilots to the Social Security retirement age when the original form of this legislation was proposed. Last month, a third-party firm conducted a random polling of our members that included one hundred and twenty-five pilots, of which ninety-eight percent responded. In that poll, seventy-six percent (76%) of our members oppose to the most recent attempt by some members of Congress to change the Age Sixty Rule. Eighteen percent of our members support the changes proposed.

When considering the abundant evidence before you, we ask you to place the professional opinion of pilots that have first hand experience with the short-term and the long-term consequences of pilot fatigue and aging, particularly for those of us who operate through the night. We wish you success in your deliberations and in advising the FAA and Congress about whether the FAA should adopt ICAO's new standard; and if so, how. I welcome the opportunity to testify before your Committee. Thank you.

Respectfully,

David R. Ross
President

Airline Professionals Association,
Teamsters Local 1224

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**APPENDIX 24: International Brotherhood of Teamsters
Letter to the ARC dated November 9, 2006, Provided by
the Do Not Adopt the ICAO Standard Working Group**

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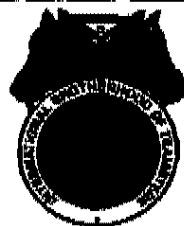
HP LASERJET FAX

p. 1

INTERNATIONAL BROTHERHOOD of TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



C. THOMAS KEEGEL
General Secretary-Treasurer

202.624.6900
www.teamster.org

November 9, 2006

Aviation Rulemaking Committee (ARC)
Fax 703-412-9105

To whom it may concern:

On the issue of Age 60 change, this facsimile is to advise you that the International Brotherhood of Teamsters is neutral as to any change.

Sincerely,

A handwritten signature in black ink, which appears to read "Don Treichler", is written over a horizontal line.

Don Treichler, Director
Teamsters Airline Division

cc: James P. Hoffa, General President

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APPENDIX 25: U.S. Senate Committee on Commerce,
Science, and Transportation, Subcommittee on
Aviation, Statement for the Committee Hearing Record,
Submitted by Airline Division, International Brotherhood
of Teamsters, on the Federal Aviation Administration's
Age 60 Rule, dated July 19, 2005, Provided by the Adopt
ICAO Standard Working Group

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U.S. SENATE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

SUBCOMMITTEE ON AVIATION

Federal Aviation Administration's Age 60 Rule

Statement for the Committee Hearing Record

Submitted by Airline Division, International Brotherhood of Teamsters

25 Louisiana Avenue NW, Washington, D.C. 20001, 202-624-8741

July 19, 2005

The International Brotherhood of Teamsters, Airline Division, represents 40,000 aviation employees, including over 7,000 air transport pilots (“ATPs”). Our organization supports changing the Age 60 Rule, and urges Congress to pass S. 65 and H.R. 65, legislation introduced by Senator James Inhofe and by Congressman James Gibbons respectively.

The Federal Aviation Regulation 14 C.F.R. § 121.383(c), commonly referred to as the Age 60 Rule, is a simplistic rule for a complex problem. The Age 60 Rule, enacted in December 1959 and effective in March 1960, was the subject of controversy then, and has remained so throughout the past 45 years. From its inception, the Rule has been the focus of numerous inconclusive studies, several subsequent rulemaking proceedings, many court battles, and occasional legislative attempts to overturn or modify it.

Once again, the Age 60 Rule is in the spotlight. A confluence of events in the aviation industry (e.g., 9/11, fuel prices, chronic industry mismanagement, etc.) that have resulted in bankruptcies, wage concessions, the freezing of pensions and/or the transfer of pension plans to the Pension Benefit Guaranty Corporation (“PBGC”), and the resultant unexpected loss of income for pilots who face retirement in the immediate or near future, have refocused attention on the issue of forced retirement for pilots flying under Part 121.

The Teamsters Airline Division supports the proposed legislation, which would permit pilots to fly until age 65. At the same time, however, we advocate that the legislation be amended to include two additional components: (1) pension protection for those pilots retiring or required to retire at age 60 for medical or other reasons (such protection could be temporary and designed to phase out over period of 10 to 15 years), including adjustments to PBGC and Social Security rules to accommodate the new mandatory retirement age; and (2) an independent longitudinal study of the correlation between aviation safety and pilot age.

The Age 60 Rule was promulgated in response to the air carriers' desires and needs rather than any demonstrable safety concerns. Fifty years later, however, this issue is no longer relevant except to explain the Federal Aviation Administration's ("FAA") dogged reluctance to modify the Rule. The Committee should instead consider: (1) the meager scientific evidence cited to support the Age 60 Rule when it was first issued; (2) the lack of credible evidence used to defend the Rule throughout its many legal, legislative, and regulatory challenges; and (3) the FAA's continued intransigence in view of emerging scientific evidence regarding aging and cognition. The FAA's policy is undermined by its highly selective, inconsistent, and specious application of the scientific literature.

An objective review of pertinent literature makes it clear that age is neither a valid nor reliable predictor of a pilot's ability to fly a transport aircraft safely. Rather, the pilot's individual health and cognitive status, as well as training, skill, experience, and demonstrated proficiency, best determine suitability for active ATP status. Even the FAA's own Civil Aeromedical Institute ("CAMI") investigators, after having conducted an extensive review of selective literature from 1990 to 1999, noted, "the vast majority of the scientists who have subsequently reviewed and commented on the issues associated with the continued use of chronological age suggest that *there are better alternatives*." (Schroeder, et al, 2000) (emphasis added). "Better alternatives" would surely result in equal, if not superior, safety effects.

Opponents have alleged that the Age 60 Rule was issued in response to a "suggestion" from then-chairman of American Airlines, C.R. Smith, to then-FAA Administrator, General Elwood Quesada, that "[I]t may be necessary for the regulatory agency to fix some suitable age for retirement. (Smith letter dated February 5, 1959). The Professional Pilots Federation ("PPF") claimed in a 2002 petition for exemption that "the age 60 rule was not initiated as a

safety measure” but rather “to force Smith’s older pilots into early retirement.” The FAA has denied these allegations. The General Accounting Office (“GAO”) reported in 1989 that according to the FAA, the Rule was a response to FAA concerns that “the use of pilots aged 60 and over in air carrier operations presented a safety hazard” and “this concern emerged as major airlines, whose practice was to allow senior pilots the option of flying the newest and largest aircraft, were making the transition to turbojets.” The “FAA reasoned that accidents among older pilots, although not a problem at the time, could become one.” (GAO, 1989). Interestingly, the GAO also stated that it was not age as such that caused the FAA concern, but rather the increased frequency of impairing medical conditions associated with aging.

Schroeder, Harris, and Broach (2002), based on their review of the historical literature, reported that several factors drove the promulgation of the Age 60 Rule. These included an aircraft accident involving a 59 year old pilot and a new generation turbo-jet aircraft, the supposed difficulties older pilots had experienced in transitioning to the new generation jet aircraft, the growing numbers of older pilots, and the increased incidence of coronary heart disease in older adults, resulting in a greater probability for sudden incapacitation in older pilots. They also noted that the FAA was concerned with the “subtle consequences of age” that might have a negative impact on pilot performance and judgment.

The Airline Pilots Association, International (“ALPA”) has agreed, at least for the past 25 years, with both the FAA’s account of the Rule’s origin and its scientific validity. In its comments to the docket on the PPF petition for exemption filed in October 2002, ALPA argued that the PPF’s claims regarding the Rule’s origin “are neither relevant *nor supportable*” and that “even if the Rule’s origin were questionable, those questions would have been cured by the Agency’s later proceedings.” (Emphasis added.) Ironically, ALPA’s support of the Rule is at

odds with its original position on the issue; it was ALPA who filed the first legal case against the Age 60 Rule because it strongly opposed the Rule for 20 years.

When ALPA sued the FAA, it claimed that the Rule: “(1) was outside the rulemaking power of the Administrator; (2) could not be promulgated without a hearing, as required by either the Constitution or the Administrative Procedure Act; (3) *was not reasonable related to safety concerns*; and (4) was arbitrary.” ALPA v. Quesada, 182 F.Supp. 595 (S.D.N.Y. 1960), aff’d, 276 F.2d 892 (2d Cir. 1960), 286 F.2d 319 (2d Cir. 1961), cert. denied, 366 U.S. 962 (1961) (emphasis added); (GAO, 1989). The courts rejected ALPA’s arguments.

ALPA’s remarks to the 2000 Age 60 docket notwithstanding, ALPA’s official publication, *Airline Pilot*, recently included a historical synopsis that suggests the Rule had little to do with safety and more to do with accommodating the carriers’ desires to rid themselves of older pilots. (Francis, 2005). In 1958, ALPA signed its first jet contract, with National Airlines. According to Francis, air carriers wanted to transition into jet flying quickly and minimize the cost by using younger military pilots who already had jet training and experience. FAA regulations did not limit a pilot’s age, so several carriers implemented their own mandatory retirement age. (Holbrook, 1974). When American, TWA, and Western airlines attempted to force pilots into retirement at age 60, these policies were challenged via the grievance process. (Francis, 2005). The arbitrator in each case ruled in favor of the pilots.

American ignored the arbitrator’s ruling and continued to enforce mandatory retirement at age 60, which helped lead to a pilot strike from December 20, 1958 through January 10, 1959. American finally capitulated, met the pilot’s strike demands, and agreed to reinstate three captains who were forced to retire. After the strike, American delayed reinstating the pilots, and its chairman wrote a private letter to the FAA administrator suggesting the need for a statutory

retirement age. American also conducted a study of their pilots (which reported that older pilots required more training than younger pilots to transition from propeller to jet aircraft) to substantiate the need for a mandatory retirement age. FAA attorneys, however, recommended that the study not be used to justify age limits, and advised instead that the FAA use medical criteria to justify the Rule. (Francis, 2005).

ALPA maintained its opposition to the Rule until 1980, arguing for 20 years that an individual pilot's mental and physical abilities, rather than an arbitrary age limit, should determine fitness for flight. ALPA also insisted that the Age 60 Rule was discriminatory, posed an economic hardship for pilots, was based on faulty evidence, and that subsequent medical evidence refuted the FAA's premise for the Rule. In 1971, ALPA engaged the services of four internationally recognized physicians to testify at a public hearing in opposition to the medical claims made by the FAA. (Holbrook, 1974). By 1980, however, ALPA's interests had shifted, and it decided to support Age 60 "*in view of its relevance to contract items such as retirement benefits.*" (Francis, 2005) (emphasis added). ALPA also acknowledged that as the number of younger pilots increased proportionally in its ranks, the importance of overturning the Rule diminished since these younger members were interested in advancing their careers by moving more quickly into the left seat. (Francis, 2005).

In testimony before this Committee on July 19, 2005, ALPA, speaking in opposition to the proposed legislation, asserted that the Age 60 Rule is based on "two fundamental principles of medical science that are indisputable . . . the risks of incapacitation and unacceptable decrements in performance increase with age" and "medical science has not developed a regimen of reliable tests that can be administered effectively to determine which aging pilots will become incapacitated, or whose performance will decline to an unacceptable level." (Woerth, 2005).

Both of these arguments reflect those put forth by the FAA. Both are misleading.

While the risk and incidence of incapacitation and performance decrement increases with age, these outcomes are not inherently linked to aging as is implied. Research on aging suggests that the cognitive decline and performance impairment associated with aging is actually more a functional outcome of chronic disease, especially cardiovascular disease, than age *per se*. This relationship between disease and physical and cognitive decline is well established, and in fact, was recognized by the FAA's own medical experts in the early 1960s (Balke, 1963; Spieth, 1964; & Wentz 1964).

Another argument the FAA offers is the relationship of pilot age to accidents based on several studies (Broach, 1999; Golaszewski, 1983, 1991, 1993; Kay, Hillman, Hyland, Voros, Harris & Deimler, 1994) that have been roundly criticized for methodological and analytical flaws. Notably, none of these studies were published in peer-reviewed journals, but were still referenced in the FAA's testimony before this Committee on July 19, 2005, and the FAA reiterated another often cited justification for the Rule: "There is no absolute, scientific formula that may be readily applied" to determining a pilot's fitness for duty after age 60.

The assertion by the FAA and supporters of the Age 60 Rule that medical science has not developed a "regimen of reliable tests" to identify pilots at risk for incapacitation or who might be cognitively impaired is at best disingenuous. Medical science has come a long way since 1959. The medical certification requirements and proficiency testing protocols for ATPs are rigorous and certainly sufficient to identify pilots at risk for incapacitation and impaired performance. The system is effective; the record speaks for itself.

In fact, the FAA and ALPA extolled the validity and reliability of the medical tests and proficiency evaluations imposed by the FAA and air carriers when they testified in April 2000

before the Subcommittee on Aviation in the U.S. House of Representatives on issues arising out of the crash of Egypt Air. At that hearing, ALPA pointed out that “Airline pilots are certainly the most frequently tested and monitored professionals in the world, in regard to physical and mental health as well as professional performance and competence.” (Woerth, 2000). Further, in arguing against the need for additional psychological testing as was then being contemplated, ALPA claimed that the existing medical and proficiency evaluation requirements provided “ample means” to identify impaired pilots. It is illogical and inconsistent to now claim that these same medical and proficiency tests lose all validity and reliability when a pilot reaches age 60. While opinion and self-interest (whether based on membership polls, economic necessity, or political expediency) may change over time, fundamental scientific principles do not.

Considering the relationship between pathology and performance decrement/cognitive decline, the reliability and validity of the FAA’s medical certification program for air transport pilots is certainly important. Since the incidence of pathology increases with age, one would expect that medical disqualifications of pilots would likewise increase with age if the certification process was indeed valid and reliable. Additionally, one would expect that the initial application for a first-class medical certificate would disqualify individuals with underlying health problems and would result in a “healthy worker effect” in this population. Analysis of the FAA medical certification data supports both these hypotheses.

The age-specific denial rates for air transport pilots are compelling evidence that the FAA medical screening process works dependably to purge the ATP population of persons with those pathologies most associated with cognitive impairment or risk for incapacitation. This information is not new. In the late 1960s, the FAA initiated a study to quantify the attributes of medical certification denials in an effort to identify standards that might need amendment, as

well as specific pathologies that might be of special concern in the aviation environment. (Siegel & Booze, 1968). While this initial attempt to analyze medical denial actions does not provide much insight relative to ATPs and the Age 60 Rule, it did lay important groundwork for later FAA studies. For example, Siegel and Booze noted that cardiovascular disease was the most significant medical disqualification factor for aviators. Since several FAA researchers (Balke, 1963; Spieth, 1964; and Wentz 1964) had reported a relationship between cardiovascular pathologies and cognitive decline, Booze's findings were noteworthy and emphasized the importance of careful screening for cardiovascular disease.

In 1974, Booze conducted another study to quantify medical disqualification events. This study was the first in a program established by the FAA to examine and monitor denial actions periodically to identify research direction, needed modifications to standards, and risk determination criteria. The primary purpose was the "enhancement of flight safety through medical program data analysis." In the first two program reports, the FAA reviewed the medical disqualification rates for all pilots (Booze, 1974; Dark, 1980) and in subsequent years (Dark, 1983; Dark, 1984; Dark, 1986; and Downey & Dark, 1992) they focused on the disqualification rates for airline pilots. In every report, cardiovascular disease was identified as the most frequent cause of disqualification; in the most recent analysis (Downey & Dark, 1992) it accounted for 33.5% of the denials. It appears that the FAA's medical protocols have reliably eliminated a significant cause of cognitive decline and impairment in the ATP population. Additionally, in each report, the rate of denial increased with age. In the 1992 analysis, for example, the age specific denial rates per 1,000 pilots were: 25 - 29 years – 1.0; 30 - 34 years – 1.0; 35 - 39 years – 1.0; 40 - 44 years – 2.7; 45 - 49 years – 5.6; 50 - 54 years – 9.7; and 55 - 59 years – 16.2.¹

¹ We were able to obtain raw data from the FAA/CAMI on the number of applicants and denials for first class medicals for 2004. Analysis shows the same trend (i.e., increasing number of disqualifications with increasing age); however, because the raw data

These studies, along with the very small number of incapacitations experienced in air transport operations, confirm that the FAA's medical certification process does reliably screen pilots who are at risk for impairment and incapacitation.

It is ironic that the FAA's preoccupation with cognitive decline and impaired performance seems to be limited to aging pilots (and those who abuse alcohol or drugs) while ignoring fatigued pilots. A robust body of scientific literature clearly establishes a relationship between fatigue and impairment. There is also ample evidence that the current Federal Air Regulations for flight/duty time and minimum rest do not adequately prevent fatigue in air carrier operations. The FAA last addressed the fatigue issue with a Notice of Proposed Rulemaking in 1995. Ten years later, we still wait for FAA action; there has been no disposition of comments, no Final Rule, no change. In the meantime, pilots of all ages continue to fly fatigued and possibly impaired because of excessive duty periods and inadequate rest.

Finally, the FAA's insistence that any change to the Age 60 Rule maintain an "equivalent level of safety" is an impossible test to meet because the point of reference is nonexistent. In this instance, the "equivalent level of safety" is a ruse. Nowhere in the scientific literature, or in any FAA report or document, is there a measure of effect that can be directly attributed to the Age 60 Rule, as opposed to, for example, improved weather forecasting, improved engines, better pilot training, more reliable instrumentation, as so forth. There is no measure of effect – positive or negative – that the Age 60 Rule has had on aviation safety. Absent such a baseline measure, how can one demonstrate that a proposed change to the Rule would provide an equal or greater level of safety?

The Age 60 Rule is not a safety rule. Better alternatives exist to ensure that the active

do not specifically identify air transport pilots, the information does not lend itself to direct comparison with the referenced FAA studies.

ATP population remains healthy and free from impairment that would compromise air safety. The public would be better served if the FAA directed its limited resources towards enhancing these alternatives. While the FAA may legitimately claim that it followed the rulemaking process in issuing the Age 60 Rule, it cannot claim that the scientific and medical evidence conclusively validates the Rule. Nor has the FAA ever proved that the Rule's implementation resulted in a safer aviation environment. The Aerospace Medical Association, in a 2004 position paper and in 2005 testimony before this Committee, argued that there is "insufficient medical evidence to support restriction of pilot certification based on age alone." It is time to modify the Age 60 Rule. S. 65 and H.R. 65 together are an appropriate first step in the right direction.

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information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on July 2, 2009.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 121

[Docket No. FAA-2006-26139; Amendment Nos. 61-123 and 121-344]

RIN 2120-AJ01

Part 121 Pilot Age Limit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Code of Federal Regulations to conform certain regulations with recent legislation raising the upper age limit for pilots serving in domestic, flag, and supplemental operations until they reach their 65th birthday. The legislation, known as the “Fair Treatment for Experienced Pilots Act,” raised the upper age limit from age 60 to age 65. The legislation became effective December 13, 2007. The intended effect of this action is to update the Code of Federal Regulations to reflect the recent legislation.

DATES: These amendments become effective July 15, 2009. Except as otherwise required by statute, affected parties do not have to comply with the information collection requirements in §§ 61.23 and 121.440 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact Lawrence Youngblut, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9630, e-mail lawrence.youngblut@faa.gov. For legal

questions concerning this rule contact Angela Washington, Office of the Chief Counsel, AGC-210, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7556; e-mail angela.washington@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

1. Searching the Federal eRulemaking Portal at <http://www.regulations.gov>;
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking fulfills the mandate of H.R. 4343, the “Fair Treatment for Experienced Pilots Act,” Pub. L. 110-135, hereinafter referred to as the Act.

Background

On December 13, 2007, the President signed into law the Act, which raised the upper age limit for pilots serving in 14 CFR part 121 air carrier operations to age 65. The legislation took effect December 13, 2007. As of that date, § 121.383(c) of the Code of Federal

Regulations (14 CFR 121.383(c)) ceased to be effective. Section 121.383(c) prohibited any air carrier or commercial operator conducting flights under part 121 from using the services of any person as a pilot, and prohibited any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person had reached his or her 60th birthday.

The Act has now been codified at 49 U.S.C. Section 44729. Section 44729 of Title 49 allows a pilot to “serve in multicrew covered operations until attaining 65 years of age,” subject to certain limitations. For the purposes of the Act, “Covered Operations” means “operations under part 121 of Title 14, Code of Federal Regulations.” The Act specifies a limitation for international flights. Pursuant to § 44729(c)(1), “A pilot who has attained 60 years of age may serve as pilot-in-command in covered operations between the United States and another country only if there is another pilot in the flight deck crew who has not yet attained 60 years of age.” Section 44729(c)(2) states that paragraph (c)(1) ceases to be effective “on such date as the Convention on International Civil Aviation provides that a pilot who has attained 60 years of age may serve as pilot-in-command in international commercial operations without regard to whether there is another pilot in the flight deck crew who has not attained age 60.”

Section 44729(e)(1) states “No person who has attained 60 years of age before the date of enactment of this section may serve as a pilot for an air carrier engaged in covered operations unless—

(A) such person is in the employment of that air carrier in such operations on such date of enactment as a required flight deck crew member; or

(B) such person is newly hired by an air carrier as a pilot on or after such date of enactment without credit for prior seniority or prior longevity for benefits or other terms related to length of service prior to the date rehired under any labor agreement or employment policies of the air carrier.”

Section 44729(g)(1) requires that, except as provided by paragraph (g)(2) “a person serving as a pilot for an air carrier engaged in covered operations shall not be subject to different medical standards, or different, greater, or more frequent medical examinations, on account of age unless the Secretary determines (based on data received or studies published after the date of enactment of this section) that different medical standards, or different, greater, or more frequent medical examinations, are needed to ensure an adequate level of safety in flight.”

Section 44729(g)(2) states that “No person who has attained 60 years of age may serve as a pilot of an air carrier engaged in covered operations unless the person has a first-class medical certificate. Such a certificate shall expire on the last day of the 6-month period following the date of examination shown on the certificate.”

Section 44729(h)(1) requires that “Each air carrier engaged in covered operations shall continue to use pilot training and qualification programs approved by the Federal Aviation Administration, with specific emphasis on initial and recurrent training and qualification of pilots who have attained 60 years of age, to ensure continued acceptable levels of pilot skill and judgment.”

Section 44729(h)(2) requires that “Not later than 6 months after the date of enactment of this section, and every 6 months thereafter, an air carrier engaged in covered operations shall evaluate the performance of each pilot of the air carrier who has attained 60 years of age through a line check of such pilot. Notwithstanding the preceding sentence, an air carrier shall not be required to conduct for a 6-month period a line check under this paragraph of a pilot serving as second-in-command if the pilot has undergone a regularly scheduled simulator evaluation during that period.”

This final rule implements congressional legislation by conforming FAA regulations to statutory requirements. It was Congress’ objective to impact rules governing the age limitation requirements (and associated medical certificate and training requirements) of pilots engaged in operations under part 121. However, part 121 contains regulations imposing the same age limitation on check airmen and flight instructors. Specifically, check airmen and flight instructors who have reached their 60th birthday may not serve as pilot flight crewmembers in part 121 operations. Yet, Congress did not specifically amend those requirements. We do not believe that Congress intended that the age limitation imposed on a particular population of pilots should be different than that imposed on check airmen and flight instructors when they serve as pilot flight crewmembers, especially when, prior to the legislation’s enactment, the age limitation was the same for all airmen. To maintain that consistency, the FAA is amending §§ 121.411 and 121.412 to raise the age limit from age 60 to age 65, thus allowing check airmen and flight instructors to serve as pilot flight

crewmembers until they reach the age of 65.

Likewise, part 61 contains similar age restrictions for pilots operating civil airplanes of U.S. registry. Section 61.3(j) prohibits a person who holds a part 61 pilot certificate from serving as a pilot in certain international air services and air transportation operations if the pilot has reached the age of 60. Also, § 61.77(e) prohibits a person who holds a part 61 special purpose pilot authorization from serving as a pilot in certain international air services and air transportation operations if the pilot has reached the age of 60. While part 61 encompasses operations conducted under part 121, it could also include operations governed by parts 125 and 129. These are not “covered operations” pursuant to the Act. Although Congress did not directly mandate amendments to these provisions, the FAA believes Congress clearly intended to implement the ICAO age requirements for pilots operating internationally, allowing them to conduct commercial air transportation operations under certain conditions until the age of 65. The ICAO standard increases the upper age limit for commercial pilots operating two pilot aircraft. In operations with more than one pilot, ICAO standard 2.1.10.1 allows a person to serve as a pilot in command of an aircraft engaged in international commercial air transport operations until his or her 65th birthday if the other pilot is younger than 60 years of age. Again, we do not think it was the intent of Congress to treat that population of pilots who conduct operations under parts 125 and 129 any differently than pilots conducting operations under part 121. Thus, the FAA is also amending the applicable provisions of part 61 to reflect the new upper age limit.

Additionally, the ICAO standard places no limitation on whether a pilot is operating between his or her home state and another country or whether he or she is operating between two international territories. Because we believe Congress intended to implement ICAO standards, we do not think that it intended to limit pilots over the age of 60 from operating between two international territories. However, the crew pairing provision of the Act does not address this scenario. The crew pairing provision states that a pilot over the age of 60 could serve as a pilot in command in covered operations between the United States and another country, assuming there was another pilot as part of the flight deck crew under the age of 60. This provision is not entirely consonant with the ICAO standard. The unintended consequence

under the statute would lead to a contradiction with ICAO standards for international flights, which include those flights between two countries outside of the United States. The FAA believes that one of the primary purposes of the Fair Treatment Act is to harmonize FAA regulations with ICAO standards, and we have amended our regulations to reflect those standards. This rule allows a person over the age of 60 to serve as a pilot in command in covered operations between the United States and another country, and in operations between other countries, if there is another pilot in the flight deck crew under the age of 60.

Good Cause for Immediate Adoption of This Final Rule

Section 4 of the Administrative Procedure Act (APA) (5 U.S.C. section 553(b)(B)) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that notice and public comment to this final rule are unnecessary and contrary to the public interest. This final rule is a result of the Act. Because this rule implements Congressional mandates, good cause exists for the FAA to amend without notice its rules concerning pilot age limits. A legislative mandate of this nature makes it unnecessary to provide an opportunity for notice and comment. Further, good cause exists for making this rule effective upon publication to minimize any possible confusion. In addition, the FAA has determined good cause exists to amend without notice the part 61 and §§ 121.411 and 121.412 provisions regarding age limitations. If we do not correct the language in the CFR, we are likely to receive numerous petitions for exemption, because the published language is not consistent with the statute. Since the FAA would not have safety or policy reasons to deny the exemptions, we have included these amendments in the final rule.

Discussion of Dates

The Act was effective on December 13, 2007. However, pending publication of this rule, the FAA has not enforced the Age 60 rule since December 13, 2007, in a manner inconsistent with the Act. This final rule, which promulgates conforming amendments to the FAA’s regulations as well as other amendments deemed necessary as a result of

Congressional legislation, is effective upon publication in the **Federal Register**.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these conforming regulations.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the information collection requirements in this final rule to the Office of Management and Budget for its review. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

This final rule requires all pilots over the age of 60 who serve in part 121 operations to hold an FAA first-class medical certificate, valid for 6 months. Some pilots who serve as second-in-command (or co-pilots) on certain part 121 operations may hold an FAA second-class medical certificate, valid for 12 months. Pursuant to this rulemaking, those pilots who serve as seconds-in-command must obtain an FAA first-class medical certificate every 6 months instead of the previously required annual second-class medical certificate. Also, all pilots serving in

part 121 operations over age 60 must be evaluated, through a line check, every 6 months. Current regulations only require pilots-in command to be evaluated, through a line check, every 12 months.

The FAA estimates that airlines, pilots, and the FAA will incur additional paperwork burdens (and hence an increase in paperwork costs). Over a 15-year period, total paperwork costs would be approximately \$11.7 million. Total paperwork costs are composed of record keeping costs and reporting costs.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States.

In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final

rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of the Act. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that the Act: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is "significant" as defined in DOT's Regulatory Policies and Procedures because of Congressional and public interest. Accordingly, this final rule has been reviewed by the Office of the Secretary of Transportation and the Office of Management and Budget; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

Total Benefits and Costs of the Act

The following table enumerates the total costs and benefits of the Act over a 15-year period and then summarizes net benefits as the discounted present value of the stream of benefits and costs. Both accounting costs and economic costs are shown. The accounting costs are relevant because they show the distributional effects of the Act—a net transfer from airlines and consumers to pilots. The economic net benefits of the Act suggest that society is better off with the Act than without it.

(BENEFITS) AND COSTS OF CHANGING PILOT MANDATORY RETIREMENT AGE TO 65
[Constant 2007 dollars]

	Sections 61.23, 121.383, 121.411 and 121.412							Sections 61.3(j) and 121.440				
	Salary	Pension contributions	Disability pay	Retirement	Training	Re-programming	Additional pilots scheduling and vacation	Medical certificate	Salary	Line check	Total constant dollar costs ²	DPV total costs ²
Total (Accounting Costs)	\$2,253,407,476	\$155,872,313	\$1,173,427,286	(\$39,887,500)	(\$621,985,624)	\$0	\$51,444,611	\$5,306,821	\$3,818,813	\$31,180,154	\$3,012,584,349	\$1,762,743,114
Total (Economic Costs)	0	0	0	(39,042,500)	(439,768,672)	0	35,917,440	5,060,459	3,818,813	31,180,154	(402,834,306)	(333,614,036)

Notes:

- (1) Results of the accounting and economic costs estimates use different unit costs and therefore show different results in each cost category.
(2) Excludes paperwork costs, which are insignificant relative to the proposed rule's other costs. See section IV for more details on these costs.

It is important to note that negative figures in the above table are benefits of the Act. Because the mandatory retirement age has been increased to age 65, airlines and consumers will incur “real costs” and “transfer payments” totaling \$1.8 billion (present value) over 15 years, but society will have a cost savings or net benefit of \$334 million in terms of real resource use (real costs reflect real resource use, whereas transfer payments are monetary payments from one group to another that do not affect total resources available to society).

In addition to the above quantified benefits, the FAA estimates that the Act will result in an increase in the supply of pilots of approximately 12 percent over 5 years. In particular, there may be a public interest in taking advantage of the experience of pilots aged 60 to 65. In addition, the Act makes FAA regulations consistent with ICAO Amendment 167 by increasing the “upper age limit” for pilots operating in “international commercial air transport operations” up to age 65. Previously,

pilots certificated outside the United States and flying for a foreign air carrier on a non-U.S. registered aircraft, who were over age 60, were permitted to fly into the United States under ICAO standards through operation specifications. FAA has not estimated the value of these benefits because they are unquantifiable.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the agency determines that it would, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. The basis for such determination follows.

The Small Business Administration suggests that “small” represent the impacted entities with 1,500 or fewer employees. FAA identified a total of 48 air carriers that meet this definition, as shown below.

Small Business Exposure to Act

CLASSIFICATION OF BUSINESSES

Operator FAR	Large	Small	Unknown	Grand total
121	55	32	5	92
121/135	1	16	2	19
Grand Total	56	48	7	111
Percentage	50%	43%	6%	100%

Small = 1,500 employees or less

For each of these entities, FAA attempted to retrieve revenue data published in Form 41. The Form 41 financial reports contain financial information on certificated U.S. air carriers. This data is collected by the Office of Airline Information of the Bureau of Transportation Statistics. Consideration was made for the most recent quarterly data available, such that no data is for years prior to fiscal 2005. If data was not available in any quarter, the FAA assigned the last quarterly figures available. FAA also employed sources such as Dun & Bradstreet, Yahoo Finance (<http://finance.yahoo.com/>), Reuters (<http://www.reuters.com/investing>) and the 2006 edition of the World Airspace Database to estimate annual revenues. FAA then compared the annualized accounting costs with annual revenues. Of the 36 entities that FAA found data for, it expects that the projected annualized accounting costs of the Act will be higher than one percent of the

annual revenue for three of them. For the group as a whole, the annualized cost is estimated as 0.17% of annual revenue.

Therefore, as the FAA Administrator, I certify that this Act will not have a significant economic impact on any small entities.

International Trade Impact Statement

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of the Act and determined that it will impose no additional costs on foreign firms, and will make FAA’s upper age limit for

pilots consistent with international standards.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

The requirements of Title II do not apply because the Act is not a mandate, rather it is permissive.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We

determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 61

Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.3 by revising paragraph (j) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

* * * * *

(j) *Age limitation for certain operations* (1) *Age limitation.* No person who holds a pilot certificate issued under this part may serve as a pilot on a civil airplane of U.S. registry in the following operations if the person has reached his or her 65th birthday:

(i) Scheduled international air services carrying passengers in turbojet-powered airplanes;

(ii) Scheduled international air services carrying passengers in airplanes having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat;

(iii) Nonscheduled international air transportation for compensation or hire in airplanes having a passenger-seat configuration of more than 30 passenger seats, excluding each crewmember seat; or

(iv) Scheduled international air services, or nonscheduled international air transportation for compensation or hire, in airplanes having a payload capacity of more than 7,500 pounds.

(2) *Age Pairing Requirement.* No person who has attained the age of 60 but who has not attained the age of 65 may serve as a pilot in command in any of the operations described in paragraphs (j)(1)(i) through (iv) of this section unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

(3) *Definitions.* (i) "International air service," as used in this paragraph (j), means scheduled air service performed in airplanes for the public transport of passengers, mail, or cargo, in which the service passes through the airspace over the territory of more than one country.

(ii) "International air transportation," as used in this paragraph (j), means air transportation performed in airplanes for the public transport of passengers, mail, or cargo, in which the service passes through the airspace over the territory of more than one country.

* * * * *

■ 3. Amend § 61.23 to revise paragraph (a)(1) to read as follows:

§ 61.23 Medical certificates: Requirement and duration.

(a) * * *

(1) Must hold a first-class medical certificate:

(i) When exercising the privileges of an airline transport pilot certificate; or

(ii) If that person has reached his or her 60th birthday and serves as a pilot in 14 CFR part 121 operations.

Notwithstanding the provisions of § 61.23(d)(1)(iii), that person's first-class medical certificate expires, for 14 CFR part 121 operations, at the end of the last day of the 6th month after the

month of the date of examination shown on the medical certificate.

* * * * *

■ 4. Amend § 61.77 to revise paragraphs (b)(3), (e) introductory text, and (g) to read as follows:

§ 61.77 Special purpose pilot authorization: Operation of U.S.-registered civil aircraft leased by a person who is not a U.S. citizen.

* * * * *

(b) * * *

(3) Documentation showing when the applicant will reach the age of 65 years (an official copy of the applicant's birth certificate or other official documentation);

* * * * *

(e) *Age limitation.* No person who holds a special purpose pilot authorization issued under this part, may serve as a pilot on a civil airplane of U.S. registry if the person has reached his or her 65th birthday, in the following operations:

* * * * *

(g) *Age Pairing Requirement.* No person who has attained the age of 60 but who has not attained the age of 65 may serve as a pilot in command in any of the operations described in § 61.3(j)(1)(i) through (iv) unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 121.2 [Amended]

■ 6. Amend § 121.2 by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

■ 7. Amend § 121.383 by removing and reserving paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 121.383 Airman: Limitations on use of services.

* * * * *

(d) No certificate holder may:

(1) Use the services of any person as a pilot on an airplane engaged in operations under this part if that person has reached his or her 65th birthday.

(2) Use the services of any person as a pilot in command in operations under this part between the United States and another country, or in operations

between other countries, if that person has reached his or her 60th birthday unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

(e) No pilot may:

(1) Serve as a pilot in operations under this part if that person has reached his or her 65th birthday.

(2) Serve as a pilot in command in operations under this part between the United States and another country, or in operations between other countries, if that person has reached his or her 60th birthday unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

■ 8. Amend § 121.411 by revising paragraph (e) to read as follows:

§ 121.411 Qualifications: Check airmen (airplane) and check airmen (simulator).

* * * * *

(e) Check airmen who have reached their 65th birthday or who do not hold an appropriate medical certificate may function as check airmen, but may not serve as pilot flightcrew members in operations under this part.

* * * * *

9. Amend § 121.412 by revising paragraph (e) to read as follows:

§ 121.412 Qualifications: Flight instructors (airplane) and flight instructors (simulator).

* * * * *

(e) Flight instructors who have reached their 65th birthday or who do not hold an appropriate medical certificate may function as flight instructors, but may not serve as pilot flightcrew members in operations under this part.

* * * * *

■ 10. Amend § 121.440 by adding paragraphs (d), (e), and (f) to read as follows:

§ 121.440 Line checks.

* * *

(d) No certificate holder may use the services of any person as a pilot in operations under this part unless the certificate holder evaluates every 6 months the performance, through a line check, of each pilot of the certificate holder who has attained 60 years of age. Notwithstanding the foregoing, a certificate holder is not required to conduct for a 6-month period a line check under this paragraph of a pilot serving as a second-in-command if the pilot has undergone a regularly scheduled simulator evaluation during that period.

(e) No pilot who has attained 60 years of age may serve as a pilot in operations under this part unless the certificate holder has evaluated the pilot's

performance every 6 months, through a line check. Notwithstanding the foregoing, a certificate holder is not required to conduct for a 6-month period a line check under this paragraph of a pilot serving as a second-in-command if the pilot has undergone a regularly scheduled simulator evaluation during that period.

(f) The training program provisions of § 121.401(b) do not apply to pilots who have attained 60 years of age and serve in operations under this part.

Issued in Washington, DC, on July 8, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9-16777 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

[Docket No. FDA-2009-N-0665]

New Animal Drugs; Ceftiofur Sodium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Cephazone Pharma, LLC. The ANADA provides for the use of ceftiofur sodium powder for injection as a solution in dogs, horses, cattle, swine, day old chickens, turkey poults, sheep, and goats as therapy for various bacterial infections.

DATES: This rule is effective July 15, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV-104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8197, e-mail: john.harshman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Cephazone Pharma, LLC, 250 East Bonita Ave., Pomona, CA 91767, filed ANADA 200-420 that provides for use of Ceftiofur Sodium Sterile Powder, as an injectable solution, in dogs, horses, cattle, swine, day-old chickens, turkey poults, sheep, and goats as therapy for various bacterial infections. Cephazone Pharma, LLC's Ceftiofur Sodium Sterile Powder is approved as a generic copy of NAXCEL (ceftiofur sodium) Sterile Powder for Injection, sponsored by

Pharmacia & Upjohn Co., a Division of Pfizer, Inc., under NADA 140-338. The ANADA is approved as of May 27, 2009, and the regulations are amended in 21 CFR 522.313c to reflect the approval.

In addition, Cephazone Pharma, LLC, has not been previously listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1) alphabetically add an entry for "Cephazone Pharma, LLC"; and in the table in paragraph (c)(2) numerically add an entry for "068330" to read as follows: