



**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

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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.<sup>1</sup>

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<sup>1</sup> 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

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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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