

**EXAMINING THE FEDERAL AVIATION  
ADMINISTRATION'S AGE 60 RULE**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON AVIATION  
OF THE  
COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE  
ONE HUNDRED NINTH CONGRESS

FIRST SESSION

—————  
JULY 19, 2005  
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## CONTENTS

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	Page
Hearing held on July 19, 2005 .....	1
Statement of Senator Burns .....	1
Statement of Senator Pryor .....	15
Statement of Senator Stevens .....	2

### WITNESSES

Eichelkraut, Captain Joseph "Ike", President, Southwest Airlines Pilots' Association .....	23
Prepared statement .....	25
Gibbons, Hon. Jim, U.S. Representative, 2nd District, Nevada .....	2
Hunter, Captain Ralph, President, Allied Pilots Association .....	30
Prepared statement .....	32
Inhofe, Hon. James M., U.S. Senator from Oklahoma .....	3
Jordan, Jon L., M.D., J.D., Federal Air Surgeon, Office of Aerospace Medicine, Federal Aviation Administration .....	6
Prepared statement .....	8
Rayman, Russell B., M.D., Executive Director, Aerospace Medical Association .....	10
Spain, Captain Al, Senior Vice President, Operations, JetBlue Airways Corporation .....	33
Prepared statement .....	35
Woerth, Captain Duane E., President, Air Line Pilots Association, International (ALPA) .....	18
Prepared statement .....	21

### APPENDIX

AARP, prepared statement .....	51
Airline Pilots Against Age Discrimination (APAAD), prepared statement .....	45
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, prepared statement .....	45
Chapman, Thomas B., Legislative Counsel, Government Affairs, Southwest Airlines Co., letter with attachment, dated July 27, 2005, to Hon. Conrad Burns .....	47
International Brotherhood of Teamsters, Airline Division, prepared statement .....	52
Mikelsons, George, Chairman, President and Chief Executive Officer, ATA Holdings Corp., letter, dated July 19, 2005, to Hon. Conrad Burns .....	61
Response to Written Questions Submitted by Hon. Gordon H. Smith to:	
Captain Joseph "Ike" Eichelkraut .....	59
Captain Ralph Hunter .....	57
Captain Al Spain .....	60
Captain Duane E. Woerth .....	58
Yetman, Bert M., President, Professional Pilots Federation, prepared statement .....	50



## **EXAMINING THE FEDERAL AVIATION ADMINISTRATION'S AGE 60 RULE**

**TUESDAY, JULY 19, 2005**

U.S. SENATE,  
SUBCOMMITTEE ON AVIATION,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 3:30 p.m. in room SR-253, Russell Senate Office Building. Hon. Conrad Burns, Chairman of the Subcommittee, presiding.

### **OPENING STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA**

Senator BURNS. We'll call the Committee to order, thank you for coming today and thank you for joining us, and I welcome the witnesses, I would hope that Senator Inhofe is on his way, somewhere, if not, we'll let him make his statement when he gets here.

We're conducting this hearing on the controversial FAA Age 60 Rule. It's our intention to re-visit this issue because of substantial changes in the aviation industry and because of financial struggles many of the carriers are going through. Those struggles have adversely affected many of our pilots. With tensions posing significant problems, it might be time to take a serious look at altering that Rule.

Since 1960, Federal regulations have specified that individuals age 60 and older may not serve as airline pilots on any commercial flight operations. The FAA adopted what is commonly referred to as the "Age 60 Rule" in 1959, because of concerns that a hazard to safety was presented by aging pilots in air carrier operations.

Over the years there have been several attempts to challenge the Rule, but to date no pilot has ever been granted an exemption, and no Federal court has ruled in favor of changing the Rule. Based on this history, it is evident that any change or modification to the Rule will likely require Congressional action.

The Subcommittee is very much aware of the emotion attached to the issue for many pilots. In light of the current financial condition of the airlines and the continuing pension problems, I think it is important that we revisit this issue.

On today's panel we will hear medical testimony along with varied pilots' opinions and experience with the Rule. As with any aviation issue, safety is of the utmost concern, it is with this Senator anyway, but safety should also be based on facts, and not arbitrary or subjective dynamics. I welcome the panels and look forward to the testimony.

Congressman Gibbons from Nevada, thank you very much for coming, and do you have an opening statement, Senator Stevens?

**STATEMENT OF HON. TED STEVENS,  
U.S. SENATOR FROM ALASKA**

Senator STEVENS. I think I have a conflict of interest.

Senator BURNS. No comment. That's how you stay in good stead with your Chairman.

Congressman Gibbons, I look forward to your testimony, thank you for coming today, by the way.

**STATEMENT OF HON. JIM GIBBONS, U.S. REPRESENTATIVE,  
2ND DISTRICT, NEVADA**

Mr. GIBBONS. Thank you, Senator Burns, and Senator Stevens, thank you for allowing me to be here to testify on an issue that is very near and dear to my heart, and personally to millions of current and future commercial airline pilots.

Mr. Chairman, I have worked as a commercial airline pilot for 17 years, and recently I just reached the age of 60. While this bill will not, and nor is it intended, to benefit me personally, I am outraged by the blatant age discrimination that continues to be perpetuated by this FAA Rule. Both the Equal Employment Opportunity Commission and the AARP agree that the Age 60 Rule is a biased, unfair regulation that effectively deprives the flying public of some of the best pilots that our country has to offer.

Senator Inhofe and I have worked for several Congresses to pass legislation that will extend the mandatory pilot retirement age beyond 60. In the current Congress, our legislation would repeal that rule and allow pilots to remain in the cockpit until they reach the age at which they can receive their full Social Security retirement benefits. This comes down to a basic fairness issue.

Current FAA regulations require that commercial airline pilots leave the cockpit 5 years before most are even eligible to receive Social Security benefits. Now, these pilots are only asking that they be able to continue to work in the field that they have been trained for, and worked in their whole lives, until they can get their Social Security benefits. I certainly do not think that this is too much to ask. Especially since there is absolutely no proof to show that a pilot is any less capable at the age of 59 years, 364 days, than a pilot who is 60 years old.

The fact is, several studies have shown that older pilots have better safety records than their younger colleagues, and that pilots 60 years or older, tend to be healthier than their cohorts in the population at large. In addition, 65 year old pilots would still have to go through the same rigorous testing and training that 25 year old pilots do. Now this includes flight physicals twice a year, and EKG heart tests every year. The Federal laws were not intended to micromanage what is the responsibility of the airlines themselves. Unsafe pilots must be detected and relieved of duty by the airline, no matter what age, and safe pilots should be allowed to continue to fly, period. That's the job of airlines.

Historically speaking, let's dispel the myth, right now, that the Age 60 Rule was created to improve airline safety—it wasn't. The FAA Age 60 Rule is an ancient relic of a bygone era in which one

airline in 1959, seeking relief from a labor dispute, curried political favor and forced the implementation of a rule which served to shove its older pilots out the door, period.

It's time for this rule to be overturned, and for the United States to provide the same opportunities as most industrialized nations do. We can look overseas, Mr. Chairman, and in the sky right above this very building, for proof that the Rule is outdated and serves no safety purpose whatsoever.

Over 50 countries allow their commercial airline pilots to fly past age 60, including Canada, Australia, Israel, Japan, and 31 European countries as well. Furthermore, the FAA allows these foreign pilots to fly into, and over the United States. On top of that, the FAA's own pilots are allowed to fly past their 60th birthday. If foreign and FAA pilots are good enough to fly the friendly skies past their 60th birthday, then our own commercial pilots should be able to do so as well.

In closing, I want to reiterate that this legislation, H.R. 65 and Senator Inhofe's legislative bill S. 65, do not in any way require pilots to work past age 60 if they don't want. Nor does it require airlines to rehire any pilot that has had to retire already due to the Rule. Our bill simply brings fairness to our pilots by closing the gap between their forced retirement and their ability to collect Social Security. In a time of failing pensions and soaring passenger numbers, we only want to allow our pilots to provide for their families and to retire with dignity.

Again, I want to thank you, Mr. Chairman and the Ranking Member as well, for allowing me to speak to your Committee on this very important bill, it's my hope that we can repeal this discriminatory age rule as soon as possible. Thank you, Mr. Chairman.

Senator BURNS. Thank you, Congressman, we appreciate—  
[Applause.]

Senator BURNS. No, no, no, no, no. We don't allow outbursts here at all, no matter what your leanings may be. But it's nice to have you here, how's that. Your faces here tell us much more than the noise that you make.

Unfortunately, Senator Rockefeller couldn't make it today, he had some family business to take care of that was unavoidable. He will submit a statement and then we'll go on with the hearing, and I assume he will have some questions for the witnesses today, and if he does, we will handle that in due time.

Senator Inhofe, nice to have you.

**STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman.

Senator BURNS. You're welcome.

Senator INHOFE. Nice to be here with you, and I, let me, first of all, thank both of you, both Chairman Stevens, and Chairman Burns for being the original co-sponsors of this legislation.

I was crossing things off as Jim Gibbons was making his statement, so I've dramatically shortened what I was going to say, but I think that, you know, if you look at it, my preference would not just be 65 years old. I know people who are old at age 50, and I

know people who are good pilots well past 70, I happen to be 70 years old today, I mean, now—not today—I've been 70 years old for quite a while, and I, you know, if you are taking the very stringent proficiency tests and medical tests, there's no reason you can't continue to fly, it is purely arbitrary, if you look at the different organizations, the ICAO, I don't know whether you talked about that or not, but the International Civil Aviation Organization stated in a recent report that there is no medical evidence to support an age restriction of the amount here. Only 25 countries have an age limit of 60 or less, the United States and France are the only developed nations with limits this low, and I don't think either of the Chairmen up there would like that distinction of being the only country joining France in their policies.

[Laughter.]

Senator INHOFE. The news is full of reports of airline pension funds being terminated and turned over to the Pension Benefit Guaranty Corporation, I think the legislation introduced by Congressman Gibbons and me will help alleviate this burden on taxpayers and the airlines.

I want to also say that there are some organizations like the AARP, you'd expect them to be supportive of this, they are supportive of this, and they had quite a statement to make on it. The—if you look back and see how this came about in the first place, and why the ALPA right now is in support of it.

I've talked to a number of the officers in ALPA, they're good people, they're my friends—I make it a point to be friendly with the people I work with, and they are good. Although, if you stop and think about the decision that they made in opposing extending it to age 65—it was a political decision. I mean, there are enough people who want the vertical mobility that would bring them up to an age where they could have a longer career. Now, I think as I recall, the margin was very thin in terms of the pilots' unions in their opposition to this, there are many pilots that are very much for it.

I guess the only other thing I would say is, when you look at what has happened in the past, this Age 60 Rule came in 1959, I believe, wasn't it, Jim? At that time, the life expectancy was 8 years younger than it is today. And if you're going to go by that, and you go by every rule we have with Social Security or any other program that's year to age—they increase that age as time goes on, they haven't increased this in almost 50 years.

And I would at last say, when I was involved in a rally with Congressman Gibbons, I felt—you know, after all, they have a lot more hours than he does—I found out he's got 19,000? Twenty two thousand, and I only have 11,000, so he has twice as many hours as I do, but I've been flying, probably, a few more years.

And I would say this—

Mr. GIBBONS. I wasn't flying without a prop, by the way.

Senator INHOFE. Well, and I'll tell that story, then, I think that's very significant.

At age 65 I was flying a twin—no, I was flying a single-engine plane—down to Tinker Air Force Base when, not just the propeller, Chairman Burns, came off, but the fly wheel and a whole bunch of stuff. This was a four-passenger, single engine airplane. Now, for those in the audience, and you folks certainly are so knowledgeable

in this, you realize if you take 300 pounds off of a single-engine airplane, and you're alone in the airplane, that does something to the airplane.

First of all, I need to determine where the new stalling speed was on that airplane. I found out it was not at 48 knots, it was 120 knots. There's the bad news, the good news is, you take the front end, a prop off of an airplane, you can coast a long ways. So I did, and I was able to make it back to an airport and make a landing—it wasn't pretty, but I'm here today.

Now, I was 65 years old when that happened. My kids right now are good pilots, I was their instructor, all four of them, but I think with the lack of experience, I'm not sure that they would have made it through an incident like that. There's something good that can be said about experience. I had occasion to fly an airplane around the world when I was over the legal age that we have today for commercial pilots, and a lot of things happened on that trip that I had to draw upon a great deal of experience, so I just think that the arbitrary age doesn't work, we have a lot of people who want to continue to work, the three of us are working, the four of us are working past that age, and I think that we should allow others to pursue their profession in the same way. They're good pilots, they're safe pilots and they've passed their tests.

Senator BURNS. Congressman Gibbons, you mentioned countries that allow over-60 pilots. Do they have a mandatory cap at some point?

Mr. GIBBONS. You know, I'm not sure.

Senator BURNS. I'm just wondering.

Mr. GIBBONS. I don't know, I couldn't answer that and tell you with certainty, Senator, because I have not looked at that myself.

Senator BURNS. OK, all right. Mighty fine. Do you have anything for this panel?

You're invited to sit up here and join us during this hearing if you don't have other things to do. We have an interesting line-up for our first panel will be Dr. Jon Jordan, M.D. for Federal Flight Surgeon, Office of Aerospace Medicine, Federal Aviation Administration up next, so you might want to stick around, so you're invited to join us, and thank you for your testimony today.

Mr. GIBBONS. Mr. Chairman, I appreciate that.

Senator INHOFE. Thank you, Mr. Chairman.

Senator STEVENS. Not you Jim, you need to go pass that Highway bill.

Mr. GIBBONS. That's what I'm going to do.

Senator BURNS. You might need something to land on. Anyway, here we go, and we also have Dr. Russell Rayman. Dr. Rayman is Executive Director, Aerospace Medical Association, with us today, and we look forward to hearing their testimony. Dr. Jordan and—that seat sets down a long time, doesn't it? Thank you, gentlemen, for coming today, and we're looking forward to your testimony, Dr. Jordan.

**STATEMENT OF JON L. JORDAN, M.D., J.D., FEDERAL AIR SURGEON, OFFICE OF AEROSPACE MEDICINE, FEDERAL AVIATION ADMINISTRATION**

Dr. JORDAN. Thank you very much, Mr. Chairman, members of the Subcommittee. I'm Jon L. Jordan, I'm the Federal Air Surgeon for the Federal Aviation Administration. And I would like to thank you for the opportunity to appear before you today to discuss the FAA's Age 60 Rule. I am accompanied today by my colleague, Jim Ballough, who is the Director of FAA's Flight Standard Service.

As you know, the Age 60 Rule provides that a pilot may not engage in what are known as Part 121 operations if the pilot has reached his or her 60th birthday. The Rule means that a pilot who reaches age 60 must leave Part 121 operations, but it does not mean that he or she can no longer play an important role in aviation. Many pilots continue to work for Part 121 airlines in the screening, recruitment, and training of pilot applicants, service flight engineers, or fly in non-Part 121 operations or become flight instructors. Or, fortunately for us, the FAA, work as safety inspectors.

Since its adoption in 1959, the FAA has reviewed the Age 60 Rule several times to determine whether new and sufficient evidence exists to warrant a reconsideration of the regulation. In fact, our most recent empirical studies completed in 2004 shows some of the results, that there appears to be a relationship between pilot age and accident rate. The consistency of these findings across three recent empirical studies, suggests that changes to the Age 60 Rule should be approached cautiously.

I must emphasize that before making any change to a safety rule, the FAA must be satisfied that the regulation will maintain or raise the current level of safety. What is clear to us from reviewing public comments and relevant literature concerning the Age 60 Rule is that there is no single right answer. What is also clear is that the question for the FAA is one of public safety, and determining acceptable risk. At this time the FAA cannot be assured that changing the Age 60 Rule will maintain or raise the level of safety.

At some age, every individual reaches a level of increased infirmity, leading to decreased reliability. That age will vary from person to person, but cannot yet be predicted in a specific individual. While science does not absolutely dictate the age of 60 for commercial pilot retirement, that age is within the age range during which sharp increases in disease, mortality, and morbidity occur.

Clearly, there is an anatomic, physiological, and cognitive decline associated with aging, albeit variable in severity and onset among individuals. There is no absolute, scientific formula that may be readily applied. But it's indisputable that, as pilots, as people age, they experience more illnesses and disorders, and suffer more cognitive decline. Cardiovascular disease rises with age steeply, beginning between ages 55 and 65, and while mortality has dropped since 1960, cardiovascular disease remains the most frequent cause of death in pilots and the general population. With these increased incidents of cardiovascular disease in the older population, the risk for unexpected events that could be a threat to safety of flight is increased. Cardiac events, such as heart attacks and heart failure,

for example, during flight, have continued to occur in low, but fairly consistent numbers over the years, and have caused general aviation accidents.

Other health conditions are known to increase in incidents, or to become more complicated with aging. Many present greater difficulties of detection and risk assessment than do cardiovascular disease. Among these are cerebrovascular disease, malignancies, endocrine dysfunction, neurological disorder, psychiatric disorders, including depression, a decline in sensory and motor capabilities. There has been an increasing awareness of the more subtle, adverse conditions affecting performance, such as those related to cognitive functioning.

The Age 60 Rule has served well as a regulatory limit in the U.S. In our view, it remains the best determination that can be made of a time when a general decline in health-related functions and overall cognitive capabilities has reached a level where decrements in a pilot's performance may jeopardize safety. Repeated reviews and studies have not provided sufficient information that would address our concerns about changing the Rule. In addition, several U.S. Courts of Appeals have reviewed the Age 60 Rule, and studies related to the Rule. Uniformly, these courts have denied petitioner's challenges. Also, the FAA has invited the public to provide comments on the viability of the Age 60 Rule. The most recent comment period was opened in September of 2002, in relation to a petition for exemption to the Rule filed by a coalition of U.S. pilots approaching age 60.

Nearly 7,000 comments were submitted during the month-long open comment period. Overwhelmingly, the comments favored retaining the current Age 60 Rule. They cited safety and medical issues most often as reasons for retention of the current rule.

Mr. Chairman, the FAA develops regulations in the context of what is best for public safety. The FAA's primary mission is ensuring the safety of the National Airspace System. The FAA establishes through our regulations, basic safety standards for aircraft and crew members that would ensure the safety of our traveling public. Modifying the longstanding baseline of age 60 in the U.S., requires that the public be shown how such modification would maintain an equivalent level of safety. None of the studies completed since implementation of the Rule provide satisfactory data that conclusively supports changing the Rule. Also, I should note that no medical protocols exist to reliably predict when or whether an over-age 60 pilot might experience a medical event that will jeopardize aviation safety. In some, with inconclusive data, and no practical experience with pilots above age 60, the FAA does not agree at this time with efforts to modify the current age limit for commercial airline pilots. That concludes my prepared remarks, my colleague and I will be happy to answer any questions you may have.

Senator BURNS. Thank you very much, Dr. Jordan, and I might add that your complete statement, or any other information that you want in the record, we'll be happy to include those documents.

[The prepared statement of Dr. Jordan follows:]

PREPARED STATEMENT OF JON L. JORDAN, M.D., J.D., FEDERAL AIR SURGEON,  
OFFICE OF AEROSPACE MEDICINE, FEDERAL AVIATION ADMINISTRATION

Mr. Chairman and members of the Subcommittee:

I would like to thank you for the opportunity to appear before you today to discuss the Federal Aviation Administration's (FAA) Age 60 rule, which provides that a pilot may not engage in what are known as Part 121 operations if the pilot has reached his 60th birthday. 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 7,500 pounds. I am accompanied today by my colleague, Jim Ballough, Director of FAA's Flight Standards Service.

The Age 60 rule represents the FAA's best determination of the time when a general decline in health-related functions and overall cognitive and performance capabilities may begin and reach a level where a pilot's judgment and physical ability may begin to decline, and therefore jeopardize safety. Our rule means that a pilot who reaches age 60 must leave Part 121 operations, but it does not mean that he or she can no longer play an important role in aviation. Many pilots continue to work for Part 121 airlines in the screening, recruitment, and training of pilot applicants, serve as flight engineers, or fly in non-Part 121 operations, or become flight instructors, or, fortunately for us, work as safety inspectors for the FAA.

Since its adoption in 1959, the FAA has reviewed the Age 60 rule several times to determine whether new and sufficient evidence exists to warrant a reconsideration of the regulation. The FAA has also successfully defended the Rule in several administrative and judicial challenges.

FAA has conducted five studies on the relationship of pilot age to accidents between 1999 and 2004. The first four studies were conducted at the direction of the Senate Appropriations Committee, which requested in 1999 that the FAA study and provide data regarding relative accident rates based on pilot age. The FAA's Civil Aerospace Medical Institute (CAMI) conducted a four-part study. The four studies were as follows: (1) an annotated bibliography of the scientific literature (1990–1999); (2) a re-analysis of the *Chicago Tribune* study data (1999) relating pilot age and accident rates; (3) an empirical analysis of accident rates by pilot age for professional pilots holding Air Transport Pilot (ATP) and Class 1 medical certificates between 1988 and 1997; and (4) an empirical analysis of accident rates by pilot age for professional pilots holding ATP or Commercial Pilot and Class 1 or Class 2 medical certificates between 1988 and 1997.

Certain aspects of the analytic methodology used in the third and fourth studies were criticized in the open scientific literature. In response, the first author for those studies, Dr. Dana Broach of CAMI, re-analyzed the accident rate data. That study was published in 2004. The 2004 study used more restrictive criteria to select which accidents to include in the analysis than were used in the previous studies. Taken together, the criteria resulted in an “apples-to-apples” comparison of accident rates for pilots age 60–63, and younger pilots in that the accident and non-accident pilots had the same credentials, worked for the same employers, and operated complex, multi-engine commuter or larger aircraft now covered by Part 121. As in the previous studies, the data were aggregated by age group (in five-year increments) and year, and analyzed with the same statistical technique.

The results of the 2004 study were similar to those reported in the third and fourth empirical studies previously reported to Congress. Overall, accident rate increased with pilot age. The patterns of findings across the three empirical studies are similar—there appears to be a relationship between pilot age and accident rate. The consistency of this finding across the three empirical studies suggests that changes to the Age 60 rule should be approached cautiously.

I must emphasize that before making any change to a safety rule, the FAA must be satisfied that the regulation will maintain or raise the current level of safety. What is clear to us from reviewing public comments and relevant literature concerning the Age 60 rule is that there is no single “right answer.” What is also clear is that the question for the FAA is one of public safety and determining acceptable risk. At this time, the FAA cannot be assured that changing the Age 60 rule will maintain or raise the level of safety.

At some age, every individual reaches a level of increased infirmity leading to decreased reliability. That age will vary from person to person but cannot yet be predicted in a specific individual. While science does not absolutely dictate the age of 60 for commercial passenger pilot retirement, that age is within the age range during which sharp increases in disease mortality and morbidity occur. Clearly, there is a progressive anatomic, physiological, and cognitive decline associated with aging,

albeit variable in severity and onset among individuals. There is no absolute, scientific formula that may be readily applied.

It is indisputable that, as people age, they experience more illnesses and disorders, and suffer more cognitive decline. Cardiovascular disease rises with age, steeply, beginning between ages 55 and 65, and, though mortality has dropped since 1960, cardiovascular disease remains the most frequent cause of death in pilots and the general population. With this increased incidence of cardiovascular disease in the older population, the risk for unexpected events that could be a threat to safety of flight is increased. Cardiac events (e.g., heart attacks, heart failure) during flight have continued to occur in low, but fairly consistent numbers over the years, and have caused general aviation accidents.

Other health conditions are known to increase in incidence or to become more complicated with aging. Many present greater difficulties of detection and risk assessment than do cardiovascular disease. Among these are cerebrovascular disease; malignancies; endocrine dysfunction; neurological disorders; psychiatric disorders, including depression; and decline in sensory and motor capabilities. There has been an increasing awareness of the more subtle adverse conditions affecting performance, such as those related to cognitive functioning.

The "Age 60 rule" has served well as a regulatory limit in the United States. It remains the best determination that can be made of the time when a general decline in health-related functions and overall cognitive capabilities has reached a level where decrements in a pilot's performance may jeopardize safety. The "Age 60 rule" has been repeatedly reviewed to determine whether new and sufficient evidence exists to warrant a reconsideration of the regulation. Studies conducted to date do not present sufficient information that would address concerns about negatively impacting the current level of safety by changing the Rule.

The FAA has invited the public to provide comments on the viability of the "Age 60 rule." The most recent comment period was opened in September 2002, in relation to a petition for exemption to the Rule filed by a coalition of U.S. pilots approaching age 60. Nearly 7,000 comments were submitted during the month-long open comment period. Overwhelmingly, the comments favored retaining the current "Age 60 rule." They cited safety and medical issues most often as reasons for retention of the current rule.

Several U.S. courts of appeals have reviewed the "Age 60 rule," and studies related to the Rule. Uniformly, these courts have denied petitioners' requests for relief from the Rule. In September 2004, the U.S. Court of Appeals for the District of Columbia Circuit refused to review FAA's denial of a petition for exemptions from the Rule. In May 2005, the U.S. Supreme Court refused to hear arguments on the same matter.

In recent years, several bills to revise the age limit for airliner pilots have been introduced. In February 2001, a bill to modify the "Age 60 rule" by increasing the age limit to age 65, was referred to the House Subcommittee on Aviation. In March 2001, a bill to modify the "Age 60 rule" to age 63 was favorably reported by this committee. Neither bill was ultimately enacted. Most recently, legislation was proposed earlier this year that would tie an age limit for air carrier pilots to Social Security retirement-age eligibility.

Modifying the long-standing baseline of age 60 in the U.S. requires that the public be shown how such modification would maintain an equivalent level of safety. The "Age 60 rule" is a long-standing operational rule that pre-dates subsequent studies completed over the years. None of the studies completed since implementation of the Rule provide satisfactory data that conclusively supports changing the Rule. No protocols exist to reliably predict when or whether an over-age-60 pilot might experience a medical event that could jeopardize aviation safety. With inconclusive data and no practical experience with pilots above age 60, the FAA does not agree, at this time, to modify the current age limit for airliner pilots.

Mr. Chairman, the FAA will develop regulations in the context of what is best for public safety. The FAA's primary mission is ensuring the safety of the National Airspace System. We work hard to manage a growth oriented aviation system—and the constraints on the system that growth imposes—in the most efficient and safe way possible. The FAA establishes, through our regulations, basic safety standards for aircraft and crewmembers that will ensure the safety of our traveling public. We construct our regulations very carefully, taking into account as many factors as we can, but ultimately, always making the decision that will best enhance aviation safety. While economic factors are certainly a part of that calculation, I am sure the Committee and our colleagues in industry would agree that safety must be the top priority.

That concludes my prepared remarks. I would be happy to answer any questions the Committee may have.

Senator BURNS. Dr. Rayman?

**STATEMENT OF RUSSELL B. RAYMAN, M.D., EXECUTIVE  
DIRECTOR, AEROSPACE MEDICAL ASSOCIATION**

Dr. RAYMAN. Thank you, Mr. Chairman.

The Aerospace Medical Association appreciates the opportunity to submit this statement to the U.S. Senate Committee on Commerce, Science, and Transportation, Aviation Subcommittee on the important issue of the Age 60 Rule for air transport pilots.

I am Dr. Russell B. Rayman, Executive Director of the Aerospace Medical Association, representing approximately 3,100 physicians, scientists, and flight nurses engaged in the practice of aerospace medicine, or related research.

The Age 60 Rule implemented by the Federal Aviation Administration in 1959, does not allow persons engaged in operations conducted under Part 121 of the Federal Aviation Regulations to serve as a pilot or co-pilot on reaching their 60th birthday. The rule was implemented under the premise that the risk of incapacitation, due to medical causes after 60 years of age, was unacceptably high.

Is there evidence that this is true for air transport pilots? And is there evidence that aging causes a significant performance decrement in the cockpit? Unfortunately, there is no clear answer to either of these questions. The reason being, that there are no studies of air transport pilots who are beyond 60 years of age, simply because none have ever been certified by the FAA.

To answer these questions with reasonable certitude, it would be necessary to study a cohort of air transport pilots who are over age 60 and to compare them with a cohort of air transport pilots below age 60. Since this cannot be done today, the only alternative is to study cohorts of general aviation and commercial pilots, both categories having no age limits. And, indeed, a number of such studies have been accomplished and published in the literature. However, the conclusions of these studies are vexing in their inconsistencies and contradictions. Hence, they do not provide convincing evidence to support, or refute, the Age 60 Rule.

In any event, the validity of these studies comes into question if we attempt to extrapolate the findings derived from general aviation and commercial pilots to air transport pilots, because of significant differences in aircraft and operations. This represents a significant flaw.

We believe, the Aerospace Medical Association, believes that some pilots beyond age 60 could continue to fly without an added risk to flying safety. The challenge is to determine which ones could be safely certified and which ones should be retired. To resolve this dichotomy, studies would have to be designed to determine if, and what, medical tests might be added to the current FAA flight medical examination as a means of monitoring the health of the older pilot. Additional studies would also be needed to determine how older pilots might be tested for significant performance decrement in the cockpit. Such a study would be daunting in terms of scientific design and costs, and most likely would take years to accomplish. In the meanwhile, we would suggest that selected pilots be certified to an arbitrary age beyond age 60, and closely monitored.

Although medical sudden incapacitation is always a possibility—and I might add, at any age—we believe there’s a vanishingly small risk. Even if there were such an occurrence, there is always a second pilot in the cockpit. It might also be added that there has never been a U.S. air carrier accident due to medical causes. And finally, there are about 30 countries, and that number—I might add—is probably low, that permit air transport pilots to fly beyond age 60, and to our knowledge, there has been no adverse affect upon flying safety.

In conclusion, 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. Although studies could be designed to determine which pilots could be certified to safely fly beyond age 60, they would be difficult to design, and would be costly. In the meanwhile, we would recommend that selected pilots be certified to fly beyond age 60, and closely monitored.

Thank you, sir.

Senator BURNS. Thank you. Dr. Jordan, we’ve made significant gains both medically and technologically over the last few years, I was just looking at some figures the other day of just 100 years ago, life expectancy was 47 years old. And, of course, that has steadily increased, I think, ever since, let’s say, World War I. And there’s a growing trend among foreign aviation authorities, of course, and we heard the testimony from Representative Gibbons that they fly over the age of 60, and I’m wondering, have we looked at their records and made any comparisons? We know that over 60 will not, maybe it will not increase our level of safety, but does it decrease according to European records, or those other countries, that allow pilots to fly over 60 years old?

Dr. JORDAN. Sir, I don’t know of any studies that have been conducted using the data that might have been developed by the foreign carriers that do permit pilots to fly over age 60, I think it’s mainly anecdotal and observational in nature, and not specific. It won’t really provide a scientific basis, I think, for concluding that allowing pilots to fly over age 60 is appropriate.

Senator BURNS. Does the FAA grant waivers to pilots of foreign carriers who are over 60?

Dr. JORDAN. Yes, that’s correct.

Senator BURNS. If so, why do you accommodate foreign pilots, but the FAA has never granted an exemption to a U.S. pilot?

Dr. JORDAN. It’s a matter of international concern, and international law, sir. And our current process in terms of dealing with pilots flying into the U.S. who are over age 60, is that according to ICAO rules, a pilot-in-command must be under age 60, but the first officer, for example, can be over age 60, or age 65. Because we follow ICAO rules, we do not permit the pilot-in-command to fly over age 60, but we do permit the first officer to fly over age 60. The first officer would not be in accordance with our rules.

Senator BURNS. Senator Stevens, you have a question?

Senator STEVENS. I’m a little disturbed by that last comment, I didn’t understand, Dr. Jordan—you let the first pilot come in if he’s over 65, but you don’t let a co-pilot come in if he’s over 65?

Dr. JORDAN. Well, the current ICAO rule provides that the pilot-in-command must be under age 60. It's a recommended practice that the first officer be under age 60, and because it's a recommended practice, the Agency does permit pilots to come into the country who are over age 60, but the pilot-in-command has to be under age 60, it's enforced by the Agency.

Senator STEVENS. You do the same thing for Britain?

Dr. JORDAN. Yes, sir.

Senator STEVENS. Is there any country that has an age limit that you do not accept?

Dr. JORDAN. Would you repeat that, Senator?

Senator STEVENS. Is there any country that has an age limit, I take it would be over 65, that you do not accept? Are there any in civil aviation that are over 65?

Dr. JORDAN. Well, the rules would apply equally no matter who the carrier flies for, the company that they fly for. It's going to be applied evenly across the board.

Senator STEVENS. Did I hear you express reservation about those who are over 60 having qualifications to fly?

Dr. JORDAN. The Age 60 Rule is a somewhat arbitrary or discretionary rule, and I think there are those individuals that are probably OK, the problem is in determining who is, and who is not, all right for flying over age 60.

Senator STEVENS. I'm 82 this year, I think I'm in better shape than I was when I was 60. I can run faster, play better tennis, swim better, I'm in better shape, 25 pounds less—aren't the factors that you're talking about related to overall health, rather than age?

Dr. JORDAN. It would be preferable to do that, but I know of no protocol that could be used to make those kinds of distinctions.

Senator STEVENS. But what I'm saying is those who you're talking about in terms of being questionable, over 60, don't they have other health factors, other than age, that would lead them to be disqualified?

Dr. JORDAN. I'm not sure I follow the question, Senator, could you rephrase that?

Senator STEVENS. You're questioning anyone that's over 60 being healthy enough to fly, aren't you?

Dr. JORDAN. I'm still having a little trouble understanding, you said people over age 60 are healthy enough to fly?

Senator STEVENS. My understanding of what you've testified is that those over the age of 60 have some question as to whether they should be allowed to fly, am I misunderstanding you?

Dr. JORDAN. No, I think that's correct, I think anyone over age 60—the problem is we don't, we're unable to sort out those who might be healthy enough to fly from those who are not.

Senator STEVENS. And my question to you is, is that age-related, or just health-related, over 60?

Dr. JORDAN. Well, it's the Age 60 Rule, so it's age-related?

Senator STEVENS. I'm asking you as a doctor, forget about the Rule. People over 60—are you saying that they tend to be unhealthy, so that they shouldn't be able to fly as a commercial pilot?

Dr. JORDAN. I think the problem is knowing who can and who should not fly over age 60.

Senator STEVENS. It seems to me what you're saying is the rule is the rule and you're going to support the Rule, I'm asking you as a doctor whether you agree with that rule?

Dr. JORDAN. I believe that there has to be some arbitrary age limit for pilots. Whether or not it be age 60, or 63, or 65, or 55, I think is a matter of discretion.

Senator STEVENS. Thank you.

Senator BURNS. I have one question for Dr. Rayman—are there other experts in the medical and scientific field—I guess this the question—that share your views on the Age 60 Rule? And have there been no independent studies or analysis to refute the FAA's justification for keeping this rule?

Dr. RAYMAN. Well, as I said, sir, the studies that have been published were dealing with pilots that are not air transport pilots, and we consider that a flaw. But, the Association, which I represent, takes a stand that the age for air transport pilots could be raised to another arbitrary age above age 60. That is the official position of our organization.

Senator BURNS. Would you suggest that—and I would ask that, if the Rule was removed—would you suggest a physical twice a year, rather than the once a year that's required now?

Dr. RAYMAN. I think if the Rule was removed, it would probably be an operational decision and not a medical decision, but we would be very willing to work with whatever body that deliberates this issue to determine if more medical tests should be added—perhaps some should—some countries don't add any tests, they just increase the maximum age to 65 and require no further exams, other than the routine exam. We'd be willing to work with any deliberative body to determine if we ought to add more tests to—medical tests, that is—or tests of cognition, or tests of motor function. I haven't a prepared answer for you on this which tests should be selected, if any, but there's a possibility that we would recommend no further testing.

Senator BURNS. I find it odd that if other countries allow their pilots to fly over the age of 60 that there isn't some sort of a record—not only with their health, but their safety record—as compared, say, to people that are flying between 55 and the age of 60.

Dr. RAYMAN. Well, as you've heard Senator, there are a number of pilots flying for other airlines, but I have seen nothing published regarding a study of their health status, or how well they fared. I do know I've seen no studies or no reports that indicate that these older pilots are unsafe.

Senator BURNS. Dr. Jordan, are there age restrictions on any other modes of transportation?

Dr. JORDAN. Not that I'm aware of, sir, no.

Senator BURNS. Have you got another question? Ask your question, Senator.

Senator STEVENS. Well, let me—both Dr. Jordan and Dr. Rayman, here's my problem—I come from a state where there are very few buses and roads. Over 75 percent of our towns, cities and villages can be reached only by air. We have Part 121 planes, they are subject to the Age 60 Rule, Part 135 is not. There's no limit at all on being a commercial pilot in Part 135. Now, they're flying to the same places, along comes the FAA and says, "We want you

to help us transition the Part 135s into Part 121s because they're safer. They're safer to fly, Part 121s." And we're doing that, the Postal Service asked us to do that. Ten thousand pilots in my state, there are 750 of them that are truly commercial in the sense of being multi-engine commercial operators. Fifty percent of them are over 55—fifty percent of all pilots in Alaska are over 55. Now, the bulk of the aircraft are owned by people doing some type of commercial work. I don't understand a Rule that says, pretty soon we're not going to have enough pilots to fly our planes. And I'm trying to find out what the justification is for the FAA to keep this rule on us, at the same time as they're telling us, "Try to move your people out of the Part 135 operations into Part 121."

Now, have you ever done any studies of those people that are flying the Part 135s that are over-age, and determined whether their accident records were related to age or either medical conditions?

Dr. JORDAN. Yes, sir, several studies have been done, the results of those studies are somewhat conflicting. Studies done by Civil Aerospace Medical Institute in Oklahoma City, would tend to indicate that the accident rate does increase in those operations, based upon age. There is at least one outside study that I'm aware of that would tend to indicate that the accident rate does not increase with age for those pilots. Those studies vary, because the cohorts that are used in determining how the research should proceed, factors related to what licenses the airmen hold, what classes of medical certificates, and precisely what operations they're involved in. And I think that has led to a great deal of confusion in terms of whether there is an increase in accidents in that population. I think overall that there probably is.

Senator STEVENS. The Part 135 pilots and Part 121 pilots take the same physical, for commercial operations.

Dr. JORDAN. Yes, they do, but they're involved in different operations.

Senator STEVENS. That's my point, too, the aircrafts in Part 135 may not be as safe and as modern as the Part 121s are, and we're trying to transition there, but as we transition there, we've got a 60 year age limit. We're going to lose 50 percent of our pilots because they're over 55 within 5 years. I think this bill means a great deal more to my state than anyone else.

What would it take to get some type of studies that you all would rely on in terms of determining whether this rule makes total sense from a medical point of view?

Dr. JORDAN. Over the years a number of studies have been done, but they don't seem to provide us the answers we need to make those changes.

Senator STEVENS. Well, what are the questions you don't have the answers to?

Dr. JORDAN. Well, the questions that we don't have the answers to are in relationship to accidents, I think in those particular operations, the Part 121 operations, and this is largely an outgrowth of the Rule itself, because we don't permit individuals to fly those operations after age 60. So those, you have to use surrogate data, which are data from air taxi operations, private operations, those data have been used in the past, and unfortunately, by-and-large,

most of those studies indicated that accidents do increase with age. And age 60 seems to be the break-point.

Senator STEVENS. Then why don't you apply it to Part 135 planes that carry people commercially?

Dr. JORDAN. We do apply it to Part, well, Part 135 operations being operated under Part 121 rules, which include aircraft of ten or more seats, all of those operations fly under Part 121 rules and are subjected to the Age 60 Rule. But the smaller operations, the age limits do not apply. And I think it's a matter of where you draw the line.

Senator STEVENS. More than nine seats, you mean?

Dr. JORDAN. Yes.

Senator STEVENS. Well, no offense, but this is a conundrum—10 years ago, or even longer—I remember sitting at the table with Barry Goldwater, a similar hearing back when he was here that, what, didn't have the pressure on us now, Alaska, that it does now, because our pilots are aging, and they're not coming up to fly the way they used to in terms of younger pilots coming into Alaska for these operations. I think something has to be done. Thank you, Mr. Chairman.

Senator BURNS. Dr. Rayman, we've been joined with Senator Pryor in the Committee, Senator Pryor, do you have a question for this panel, these are the physicians that are in charge, Aerospace Medicine for the Federal Aviation Administration, do you have any questions for these folks?

**STATEMENT OF HON. MARK PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. I do, Mr. Chairman, if they've answered your questions.

Senator BURNS. And if you have a statement, I'd sure put it in the record for you.

Senator PRYOR. Thank you, I don't have a statement.

Senator BURNS. You have the floor.

Senator PRYOR. Thank you.

I'm sorry I was late joining this meeting, Mr. Chairman, and the panel, but let me just say this, and maybe this is what Senator Stevens was referring to as well. The 60 year rule in my view, has a degree, at least, of arbitrariness to it. Can you all walk through with me, if possible, what is so magic about age 60? If I could just—

Dr. JORDAN. Well, sir, I don't think that there is magic to age 60, I think it is an age at which individuals appear to be developing more frequently, the medical problems that could cause sudden, or even subtle incapacitation, a deterioration in cognitive performance that may become problematic from a safety perspective, but there is a certain amount of arbitrariness or discretion related to age 60, as I mentioned in earlier testimony, some individuals deteriorate in terms of performance and develop medical problems well before age 60, but it seems like it is a logical point at which, with the discretionary approach that you would say that an individual should no longer serve in the highly safety-sensitive responsibilities, particularly in the piloting of aircraft.

Senator PRYOR. Do you all have anything to add to that? Do you have anything to add to that?

Dr. RAYMAN. In a word, I would say that any age that we select today is arbitrary. You won't find any studies that will convince everybody what the proper age should be. If you really want to find out the proper age, you have to do a whole bunch of studies, and these studies would take years to do and would cost a lot of money, and would be very difficult to design. In the meanwhile, we would suggest that pilots, once they reach the age of 60, be permitted to continue flying beyond age 60, albeit it would be another arbitrary age, whichever one is selected, whether it's sixty-three, four, five, or whatever. We feel that there's very little risk in taking this course of action, and these older pilots could be monitored for some period of time, and if we do, indeed, find that there are no safety problems, then more and more pilots could be added on, beyond age 60, and perhaps the arbitrary age could even be lifted even higher.

Senator PRYOR. And I guess what both of you are saying is that it really is an individual test in a sense that for some people, 60 is not as old as it is for other people in terms of physical abilities and mental abilities, *et cetera*, I mean, that's what my life experience tells me, anyway.

Let me ask you both about the International Civil Aviation Organization, I think they call that ICAO? Is that the acronym, is ICAO, which is spelled I-C-A-O, but nevertheless, they looked at the age 60 matter in December of this past year, and they recommended proposing a change in the current standards that would raise the age limit for pilots to 65 in multi-crew situations, are you familiar with this, Senator Stevens?

Senator STEVENS. That is the European rule.

Senator PRYOR. Yes, 65 in multi-crew situations, with a second pilot age 60 or under, I guess, under age 60, and in addition, those over 60 would require medical assessment every 6 months, which I assume is more frequently, probably they would do an annual exam now, I would guess, and they'd recommend if you're over 60 that you do it every 6 months.

Dr. JORDAN. Currently in the U.S., pilots are, in air carrier operations, there's a pilot-in-command, who must be examined at 6 month intervals.

Senator PRYOR. Six months, now, in the U.S., for a pilot-in-command.

Dr. JORDAN. That's correct.

Senator PRYOR. OK, and so, Mr. Jordan if I can, what are your opinions of the ICAO recommendations?

Dr. JORDAN. Well, you know, I think it's the selection of a different, somewhat arbitrary age limit for certain pilots in the cockpit, and I think that ICAO, and actually what's being proposed by ICAO mirrors what's going on, I think, with the Joint Aviation Authority in the European countries. Because those countries, or at least some of those countries, have gone to age 65, but again, that's arbitrarily selected. And without good, scientific foundation, I think that, perhaps, ICAO and the European countries are hedging their bets, so to speak, by requiring the other pilot in the operation be under age 60, so they're very tentatively, I think, changing the po-

sition on age 60. I do need to point out that ICAO has not yet adopted this rule.

Senator PRYOR. Right, that's a recommendation that they've received. Right.

Dr. Rayman, do you have a comment on the ICAO approach?

Dr. RAYMAN. We would be in favor of it.

Senator PRYOR. Let me ask this, too, and this will be the last question, is—just medically speaking—the fact that life expectancy is growing, people are living longer, more active longer, on average, does that factor in and of itself, does that mean that we should examine the Age 60 Rule? Should we consider, as life expectancy grows, that we maybe should go to 62 or 65, I mean, is that—or does that matter at all? Does life expectancy have a bearing on this?

Dr. JORDAN. Well, you know, I think life expectancy, of course, increased life expectancy that we're experiencing, at least in the United States and other developed countries, is very encouraging for all of us, but we still have to contend with diseases that occur at earlier ages, and cardiovascular disease, neurological disorders, psychiatric disorders, cognitive performance is also problematic as an individual ages. Those things have really not changed. What has changed, I think is the delivery of healthcare in advanced nations, more methodologies for treatment of various conditions, whether surgical, medicinal, or otherwise, and I think that has contributed substantially to prolonging the life of people in developed countries.

Senator PRYOR. So, I guess what you're saying is, the fact that people are living longer, doesn't necessarily mean they're more capable of flying aircraft beyond age 60?

Dr. JORDAN. Yes, sir, that's correct.

Senator PRYOR. Dr. Rayman?

Dr. RAYMAN. Well, I would agree with what you just said, certainly people are living longer, but as I said in my testimony, some individuals, pilots, could fly safely—we believe—beyond age 60, and some probably should be retired, and the challenge is to determine which ones are which, and that's our great challenge.

Senator PRYOR. Right.

Mr. Chairman, that's all I have, thank you.

Senator BURNS. Thank you very much. I was just reminded here, Senator Stevens, as a reminder, controllers have an age limit of 56, is that correct, Dr. Jordan?

Dr. JORDAN. That's correct, currently, yes.

Senator BURNS. Now, they have been granted waivers after extensive physical and psychological tests, is that correct?

Dr. JORDAN. Not so much medical or psychological testing, no, I think they've been granted waivers based upon performance, and observations of performance, those controllers that are able to work very busy sectors and seem to do so proficiently, those controllers who are not out sick frequently, those controllers who are not problem employees, so there are a lot of criteria that are being used to grant those exceptions, but they are not medically based.

Senator BURNS. Thank you, that's sort of interesting, and I think it sort of lends to the statement of Senator Stevens as maybe they should base, if they fly over 60, it should be based on the health

of the pilot, rather than on the age. It would seem like that would lend a pretty strong support to his statement.

Dr. JORDAN. Again, I don't think those decisions are currently based, except in a peripheral way, on the medical status of the individual, or—

Senator BURNS. But the same could be said about the proficiency of the pilot, the individual pilot may be a check ride, or whatever, we could make those determinations, or whatever. So, I have no other questions for this panel, I want to thank you for your testimony, though, it's important that we have it, and I would imagine there will be questions from other members of this committee, if they're submitted, could you respond to the Committee and to the individual Senator? We thank you today.

Our second panel is Captain Duane Woerth, President, Air Line Pilots Association International, Captain Joseph Eichelkraut, President, Southwest Airlines Pilots' Association, Captain Ralph Hunter, President of Allied Pilots Association, and Captain Al Spain, Senior Vice President of Operations, JetBlue Airways Corporation. So, we welcome you gentlemen to the Committee today, and we look forward to having your testimony and respond to our questions.

I first call on a familiar face, he's been before this committee before, and I thank him for coming, Captain Duane Woerth, President of the Air Line Pilots Association, International. Thank you for coming.

**STATEMENT OF CAPTAIN DUANE E. WOERTH, PRESIDENT,  
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (ALPA)**

Mr. WOERTH. Thank you, Mr. Chairman. My name is Duane Woerth, I am the President of the Air Line Pilots Association, International and our union is the largest pilot union in the world, it represents more than 64,000 airline pilots of 41 carriers, and it's an honor to be before your committee today to address this Rule.

The Federal Regulation that restricts airline pilots from flying as captains and first officers in Part 121 operations is one of the most historically contentious issues inside the pilot community. For every strongly held opinion that this rule must be changed, there is an equally strong opinion that it remains the same.

As many of you already know, our Association recently completed the most comprehensive information campaign and member survey that our union has ever concluded on a single issue and, by the way Mr. Chairman, I have copies of all of the information and the survey, if you'd like copies of that I would submit it for the record if any Senator wants that.

The results of that survey were presented to the leaders of our 41 pilot groups known as our Executive Board for discussion, and their discussion led to the unanimous vote to simply accept the reported results. No matter their personal views on the issue or the views within the pilot community, the ALPA Executive Board agreed that the information campaign had been exhaustive and balanced, that the members understood the issues at stake, and that the survey results were clear and accurate. While the survey confirmed that our membership is split—I will emphasize that, we have a split membership on this issue—a clear majority did mani-

fest itself. Therefore, the Air Line Pilots Association, today, remains opposed to changing the Age 60 Rule.

So, what exactly did our pilots tell us? Let me share just a few of the statistic nuggets gleaned from the survey, which has less than a 1-percent margin of error. When asked in a straightforward “yes or no” format, 56 percent of ALPA pilots opposed changing the Rule, 42 percent want to change it. When we asked pilots specifically about changing the age to 65, support for maintaining the current rule actually rose to 58 percent, and support dropped to 39 percent. When asked about the support for additional operational or medical requirements, should the Rule be changed, results indicate the opposite, rather the opposition to the Rule would actually grow into the mid-sixties. Only 29 percent support additional or more stringent medical exams, and a mere 23 percent support more line or simulator checks. And only 22 percent support additional operational restrictions, should the Age 60 Rule change.

In a separate survey we conducted earlier in the year, on priorities for ALPA, we asked pilots to rank legislative issues in order of importance, as you said Mr. Chairman, we’ve been before your committee for many issues. At the top of the list were issues the pilots wanted us to fight strongest against—opposing foreign sabotage, passing pension legislation, restricting foreign ownership, and promoting general aviation issues.

The bottom of the list was changing the Age 60 Rule, second from the bottom was keeping it the same. After all that our pilots have been through—terrorism, bankruptcy, furloughs, pay cuts, work world changes—a majority, a small majority, still believes that this rule works.

If you had asked me one year ago to predict what I would be saying today, I would have predicted that a majority of ALPA members would have moved to the other side. That’s why, one of the reasons, we went through all this elaborate survey, because we felt with the terrible loss of pension benefits—and many of the pilots in this room today have lost their pensions—with all of the deep pay cuts we have suffered, I was convinced that the membership was probably going to vote the other way. As it turns out—we did not, incidentally, include our furloughed pilots—5,000 furloughed pilots—who might have been expected to vote strongly to keep the Rule—we didn’t do that, but in spite of that there was a majority who want to keep the Rule.

In my formal testimony, I have included a litany of medical studies, court decisions, and previous Congressional actions to build a strong case for keeping the Rule. I will not elaborate on them here today, but I think much of what has been said holds true. There are a lot of pilots who would like a separate physical for them that would make that test. Today the FAA says they can’t do it, or they haven’t done it, or it’s too costly.

Furthermore, no safety rule operates in a vacuum, or is isolated from the rest of the world’s operating environment we face in the first years of the 21st century—mind-numbing pilot fatigue, and the mental errors it leads to are still one of the largest threats to aviation safety. Sixteen hour domestic duty days—even longer with trans-Pacific operations are facts of life for airline pilots. Irregular

shifts, all-night operations, and significant circadian-living challenges all contribute to pilot fatigue.

Airline piloting is an occupation that is physically punishing. A significant percentage of airline pilots do not make it now to age 60. I'd like to cite a Northwest Airlines example you often meet in the World Club as we head out to Minneapolis and Montana—that's my alma mater, by the way—and 43 percent, we've been doing a check of every single pilot who's retired from Northwest Airlines since 1993. Forty-three percent of the pilots retired do not retire at 60, they retire before 60, either with disabilities, or voluntarily early.

Now, with all of the contract award concessions that have occurred since September 11, especially at our legacy airlines, a higher percentage of pilots are flying more hours, working more days, with longer duty periods than any other time in recent history. Nonetheless, some air carriers want to increase pilot flight and duty time limitations. At least one air carrier who advocates changing the Age 60 Rule, wants this pilot to fly from the East Coast to the West Coast and back, all within one duty period. Now, current safety rules would have to be waived to permit this. I think airline managements who advocate changing the Age 60 Rule should put all of their cards on the table, and tell us what other safety regulations they'd like to change, since we're not going to do this in a vacuum.

Now, no matter what this committee or the full Senate may decide to do with the Age 60 Rule, the current flight and duty time rules affecting pilot fatigue need to be enhanced, not weakened. Mr. Chairman, I believe this issue of pilot fatigue is one of those issues that your committee might want to tackle this year.

As to international standards as to the Age 60 Rule—there are some who cherry-pick the facts and point to several, or many, European nations that have carved out exceptions to ICAO's age 60 standards. The fact remains that the most retirement ages in Europe are governed by contractual language between airlines and pilots' unions. The regulatory standard in France and Italy remains at 60, the Dutch airline, KLM, pilots have negotiated a retirement age of 56, at British Airways, that age is 55.

Let's be clear about this—the state licensing standard has been raised to 65 throughout almost all of Europe. However, the overwhelming majority of airline pilots within Europe still retired before 60, I think that explains some of the questions you had that were kind of self-evident, why aren't there a lot of pilots—most pilots still retire under contracts below 60, even though the licensing standard has been changed as you've noted, and others have noted, to 65 within Europe.

At any rate, you invited me to hear data to offer the pilots profession's perspective on the Age 60 Rule. As is done with any transparent, representative organization should do when faced with a very controversial issue—and believe me, this is as controversial as it gets inside our union. We've learned about it, we've talked about it, we've asked our members, recorded from this fine profession what they believe, the results are in, and we do have a majority—although a small majority—who still want to maintain the Rule. Thank you for inviting me to this committee's hearing.

[The prepared statement of Captain Woerth follows:]

PREPARED STATEMENT OF CAPTAIN DUANE E. WOERTH, PRESIDENT,  
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (ALPA)

Good afternoon, Mr. Chairman and members of the Committee. I am Duane Woerth, President of the Air Line Pilots Association, International (ALPA). Our union—the largest pilot union in the world—represents more than 64,000 airline pilots at 41 carriers. On behalf of ALPA, I appreciate the invitation to appear before the Committee today to present ALPA's views on the mandatory retirement age for airline pilots as specified under the FAA regulation commonly known as the "Age 60 Rule."

The Federal regulation that restricts airline pilots from flying as captains and first officers in Part 121 operations is one of the most historically contentious issues among the pilot community. For every strongly held opinion that this rule must be changed, an equally strong opinion holds that it remain the same. As many of you already know, our Association recently completed the most comprehensive information campaign and member survey that our union has ever conducted on a single issue. The results of that survey were presented for discussion to our Executive Board, which is made up of the leaders of our 41 pilot groups.

Their discussion led to a unanimous vote to accept the reported results, leaving our policy on the Rule intact. No matter their personal views on the issue, or the views within their own pilot communities, the ALPA Executive Board agreed that the information campaign had been exhaustive and balanced, that our members understood the issues at stake, and that the survey results were clear and accurate. Their unanimity makes it possible for me to state for the record today that the Air Line Pilots Association opposes changing the Age 60 Rule, as we have since 1980.

**Results of the ALPA Age 60 Survey**

Since September 2004, when we began this initiative, our members have considered the issue from many angles, weighed the evidence, and expressed their views on the Age 60 Rule candidly and forthrightly. The assessment of ALPA members' views is based on two studies with identical questionnaires. The first was a telephone poll conducted from March 30 through April 4. The second was a web-based survey conducted from April 4 through April 29, 2005. Taken together, the telephone poll data and the two sets of demographically stratified web survey data provide extremely accurate results, with a raw sample margin of error of less than 1 percent, and less than 0.5 percent with sample stratification. We specifically excluded polling our roughly 5,000 furloughed pilots, who would presumably be the strongest supporters of keeping the Rule in place.

The results of the survey show that a majority of ALPA pilots favor maintaining the Age 60 Rule. Consider the following statistics from the survey:

- When asked in a straight-forward yes or no format, "Do you favor changing the FAA Age 60 Rule?" 56 percent of ALPA pilots support maintaining the current rule; 42 percent want it to change.
- When we asked pilots specifically about changing the Rule to age 65, support for maintaining the current rule rose to 58 percent and support for change dropped to 39 percent.
- The more specific we got, the fewer pilots supported change. When given a series of options and asked which they would most support, 54 percent support the current rule, while only 10 percent support increasing the age limit to 62, and only 22 percent support increasing it to 65. Further, fewer than 10 percent support the option of changing the Rule to one that measures physical ability and health on an individual basis, regardless of age. And, fewer than 5 percent support increasing the age limit to higher than age 65 (2 percent), or lifting the age limit completely (3 percent).

Several collateral findings indicate that the majority who oppose a change in the Age 60 Rule could grow even larger—into the low-to-mid-60 percent range or higher—depending on the specifics of any requirements and/or restrictions that might be proposed. We asked pilots whether they support additional operational and/or medical requirements if the Rule is changed. Only 29 percent support additional medical exams, a mere 23 percent support more line/simulator checks, and only 22 percent support additional operational restrictions if the Age 60 regulation is changed.

These results reflect the pilot profession's perspective on the Age 60 Rule. Additionally, numerous court decisions, extensive medical studies, and previous Congress-

sional actions have led to the same conclusion: This rule should be changed only if we can guarantee—beyond all reasonable doubt—that any change will have a positive effect on air safety.

#### **Rationale for Maintaining the FAA Age 60 Rule**

The Age 60 Rule is based on two fundamental principles of medical science that are indisputable. First, the risks of incapacitation and unacceptable decrements in performance increase with age. Second, 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. The issues surrounding the regulation have been studied as thoroughly as any aeromedical matter affecting pilots, and after decades of comprehensive studies and exhaustive review, these two principles are still valid as the underlying basis for the Rule.

The FAA, when it reviewed the most advanced cognitive testing technology, known as CogScreen-AE, concluded that that test “cannot sufficiently identify age-related cognitive function deficits that would impact pilot performance and aircraft safety.” On appeal of this decision in *Yetman v. Garvey* 261 F.3d at 675 (7th Cir. 2001), the Court of Appeals affirmed the FAA’s decision, concluding: “Ultimately, we find that substantial evidence supports the FAA’s finding that CogScreen-AE is not, at this point, an adequate cognitive tool for determining whether an exemption to the Age 60 Rule is warranted.”

Recently, the U.S. Supreme Court let stand a lower court ruling declining to hear a group of pilots’ applications for exemption from the FAA Age 60 Rule in *Butler v. FAA, cert. denied*, 125 S. Ct. 1986 (May 2, 2005).

The Age 60 Rule has also withstood the legal challenge that it constitutes age discrimination. Although the Rule does mandate a chronological age for retirement, the D.C. Circuit Court ruled that it does not violate the Age Discrimination in Employment Act (ADEA). In *Professional Pilots Federation (PPF) v. FAA*, 118 F.3d at 763 (D.C. Cir. 1997), the court held that, “nothing in the ADEA can plausibly be read to restrict the FAA from making age a criterion for employment when it acts in its capacity as the guarantor of public safety in the air . . . therefore, we conclude that the ADEA does not limit the authority of the FAA to prescribe a mandatory retirement age for pilots.”

In late 1979, the House of Representatives rejected a proposal to relax the Rule, and directed the National Institutes of Health to conduct a study to determine if sufficient medical evidence supported the Rule. In August 1981, the National Institute of Aging Review Panel on the Experienced Pilots Study, which was responsible for reviewing the study and submitting a report to Congress, concluded:

“The Panel attaches no special medical significance to age 60 as a mandatory age for retirement of airline pilots. It finds, however, that age-related changes in health and performance influence adversely the ability of increasing numbers of individuals to perform as pilots with the highest level of safety and, consequently, endanger the safety of the aviation system as a whole. Moreover, the Panel could not identify the existence of a medical or performance appraisal system that can single out those pilots who would pose the greatest hazard because of early or impending deterioration in health or performance.”

After the NIA completed its review, the Rule was contested in Federal court and reconsidered by the FAA. In 1989, in response to a directive by the U.S. Court of Appeals for the Seventh Circuit, the FAA reviewed the evidence and reaffirmed its support of the Rule. In the decision, the FAA’s Director of Flight Standards stated:

“Based upon all of the studies discussed, we conclude that an older pilot’s edge in experience does not offset the undetected physical infirmities associated with the aging process. Notwithstanding that most pilots who are approaching or have passed age 60 report that their health is excellent and they do not experience any physical or cognitive limitations which would prevent them from continuing their flying career, the research of aging indicates that there is often a sharp decline in physical and cognitive performance after age 60. There is substantial scientific evidence which indicates that the greater experience of the pilots who have reached or passed age 60 does not outweigh the increased risk of incapacitation or skill deterioration which accompanies seniority.”

Between 1990 and 1994, the FAA sponsored a four-part study, known as the “Hilton Reports,” to review the Age 60 Rule. The part that received the most attention was a study of accident rates as a function of age, and that part concluded that the FAA could cautiously raise the age limit to 63. However, the FAA found some sub-

stantial flaws in the accident study and never adopted its conclusions. The D.C. Circuit upheld the FAA's decision in *PPF v. FAA*, 118 F.3d at 769.

Between 2000 and 2003, the FAA, at the request of Congress, sponsored an updated four-part study conducted by the Civil Aerospace Medical Institute (CAMI). The CAMI study claimed that no necessary relationship existed between the accident rate and pilot age, but in 2004 an update to the original CAMI study analyzed the general methodology used in accident studies and concluded that the data are prone to errors and misinterpretations, thus calling into question the results.

Advocates for changing the Rule point out that many countries have an upper age limit beyond 60, and a few have no upper age limit at all. Some countries have modified their regulations for licensure purposes as one way to address their pilot staffing needs. However, this is not a need in the United States, where more than 6,000 ALPA pilots are currently furloughed because of the financial state of the airline industry.

Pilots for many of the major airlines in Europe actually retire before the age of 60, some as young as 55. This corresponds with a large percentage of pilots for the major U.S. carriers who actually retire before age 60 for medical or other reasons. Also, regardless of the local regulatory requirement, at most European national carriers, their collective bargaining agreements govern the retirement age, which in most cases is less than 60, and pilots older than 60 are generally limited to the second-in-command position.

These examples substantiate the FAA's determination that the Age 60 Rule is reasonable and within an acceptable range of risk for commercial air transportation operations and has proven to be an effective safety regulation. The results of the ALPA Age 60 survey reaffirm the Association's policy in support of the FAA's position.

Mr. Chairman, let me conclude my statement by saying that commercial aviation is the safest form of transport in human history. I am proud of the role that ALPA pilots have played in achieving that reality. We cannot take that reality for granted, however. We must do all we can to defend and preserve our safety record—and resist all attempts to change safety regulations simply to boost profit margins. The Age 60 Rule is a safety regulation and should not be changed or repealed unless and until the FAA—not ALPA or any other pilot organization—is convinced, based on sufficient and conclusive evidence, that such action would not have a negative effect on safety.

Thank you for this opportunity. I will be happy to answer any questions you may have.

Senator BURNS. Thank you, Captain, we appreciate your coming today.

Captain Joseph Eichelkraut?

**STATEMENT OF CAPTAIN JOSEPH "IKE" EICHELKRAUT,  
PRESIDENT, SOUTHWEST AIRLINES PILOTS' ASSOCIATION**

Mr. EICHELKRAUT. Chairman Burns—

Senator BURNS. President of Southwest Airlines Pilots' Association, sorry about that, I'm—we look forward to your testimony and thank you for coming.

Mr. EICHELKRAUT. Thank you, Chairman Burns and Chairman Stevens, Senator Pryor.

Senator BURNS. You might want to pull that microphone up, everybody wants to hear you.

Mr. EICHELKRAUT. Thank you for the opportunity to testify on the Age 60 Rule. Mr. Chairman, I commend you and Chairman Stevens for your leadership in becoming original co-sponsors of S. 65, which would end the Age 60 Rule, and the 45 years of age discrimination it has engendered.

At Southwest Airlines, we view the Age 60 Rule as a solution in search of a problem. It is a government-imposed restriction without a justifiable medical or safety explanation, and the Rule is more indefensible now than it has ever been.

In today's economically strained aviation industry, it seems that companies can renege on pension promises made to their pilots, leaving them without a livelihood and with reduced retirement benefits at age 60, and our government won't let these pilots, many of whom are the safest, most experienced pilots in the skies, keep working until they are eligible for Social Security or Medicare benefits. No one on this panel in support of changing the Rule is looking for a handout. We are simply asking Congress to tell the FAA to allow us to work, to let us pay into Social Security and our own pension funds, and to retire at 65, our national retirement age.

At Southwest Airlines, we believe safety has never been the real basis for this rule. After all, millions of hours of flight time have been logged by pilots over 60, all over the world, and there has never been a single accident in a two-man crew environment attributed to pilot age. Moreover, the FAA routinely permits pilots of foreign carriers who are over the age of 60 to fly here, but not the U.S. pilot, operating under Part 121.

In a related issue, the FAA maintained, until this year, that safety was the reason why air traffic controllers were forced to retire at 56. In the face of controller shortages, however, the FAA now permits them to work until 61, and says that safety is less of a concern.

So, if it is not about safety, what is the reason? Well, the Age 60 Rule came about in 1959, not due to any public outcry over safety concerns, but as a convenient way to settle a labor dispute regarding forced retirements at American Airlines over training pilots to fly the brand-new Boeing 707 jet aircraft. ALPA successfully challenged, and reversed, these company-imposed retirements. Following this, C.R. Smith, CEO of American Airlines turned to FAA Administrator Pete Quesada, and asked him to make age 60 the federally mandated retirement age for airline pilots. The rule became effective on March 15, 1960.

Today, ALPA supports the Rule, but apparently only for U.S. pilots. If safety were truly a concern for the ALPA leadership, why would they compromise safety principles to negotiate a contract allowing Canadian regional Jazz pilots to fly until the age of 65?

In a display of solidarity, the pilots and management of Southwest Airlines strongly support changing the Rule. In a recent *amicus* brief to the Supreme Court, Southwest Airlines argued that the FAA's rigid implementation of the Rule deprives not only Southwest Airlines, but the flying public, of some of its best pilots. Our founder, and Chairman of the Board, Herb Kelleher summed up his reasons for supporting change by telling a reporter, "It's the right, moral thing to do."

The EEOC opposes the Age 60 Rule, and maintains that it violates the Age Discrimination in Employment Act. In 1981, the National Institutes of Health agreed, saying, "The Age 60 Rule appears indefensible on medical grounds." The American Association of Retired Persons agrees as well.

The fact is, the FAA already has in place the ideal mechanism for ensuring safe pilots at any age. The current system of checks and balances including a fail-safe cockpit with two pilots simply won't fall apart the day a pilot turns 60. And given a chance to work, we know the current system will continue to perform as well.

To retain my license, I must pass semi-annual physicals, administered by an FAA-licensed aero-medical examiner. At 40 years of age, pilots must undergo an annual EKG, which is electronically transmitted to the FAA. We must pass simulator training twice each year, along with flight checks annually. By the way, there is no greater test of cognitive ability than these simulator rides.

Additionally, we are also subject to random in-flight check rides, and random drug screens. There is no other profession in America today examined to this level. A 59-year-old captain arrives at this point in his or her career, having performed successfully for years, and is one of the fittest and best-trained pilots in the skies. Yet, the FAA forces the retirement of hundreds of these pilots every year because of the Age 60 Rule.

The FAA's system is self-purging, and will continue to maintain, or improve, the level of safety the public counts on independently of this rule. Today, simulator failure rates among Southwest pilots are low, as shown on the graph in my written testimony. But as pilots approach age 60, the failure numbers are at their lowest. Experience is a key to this fact. It follows, that as pilots get older, they will be better able to handle complex situations, when airborne, that they may have encountered in simulator training and evaluations.

In 1993, the FAA relates the Hilton study, which backs up this data. The study found a modest decrease of accident rates with age, and no sign of increase in accident rates as pilots near the age of 60. That suggests to me that by retiring these pilots at 60, the overall safety of the flying public is compromised.

Some of you may remember that 16 years ago today, July 19, 1989, United Airlines Flight 232, loaded with 285 passengers and 11 crew members, found itself without hydraulics, unable to turn, and essentially doomed. By using throttle movements to control the paralyzed aircraft, 59-year-old Captain Haynes and his crew were able to get it back to a runway in Sioux City, Iowa. The lives of 186 people were saved by his actions and his experience. In subsequent simulator tests, other crews were unable to repeat this. Al Haynes was forced to retire that year because the FAA told him he was too old.

The Committee has before it a great solution, S. 65, and its House companion H.R. 65 would give pilots over 60 the opportunity to continue flying passengers safely to their destinations, until these pilots reach our national retirement age.

Mr. Chairman, the pilots of Southwest Airlines, and all of those here in uniform today, appreciate your willingness to hold this important hearing, and hope that it will be the first step in moving legislation to change the FAA's antiquated and discriminatory Age 60 Rule once and for all.

[The prepared statement of Captain Eichelkraut follows:]

PREPARED STATEMENT OF CAPTAIN JOSEPH "IKE" EICHELKRAUT, PRESIDENT,  
SOUTHWEST AIRLINES PILOTS' ASSOCIATION

Chairman Burns, Ranking Senator Rockefeller, and distinguished members of the Committee. Thank you for the opportunity to testify today and to present the views of the pilots of Southwest Airlines on the FAA Age 60 Rule. Mr. Chairman, I commend you and Chairman Stevens for your leadership in becoming original cospon-

sors of S. 65, which would end the Age 60 Rule and the 45 years of age discrimination it had engendered.

At Southwest Airlines, we view the FAA Age 60 Rule as a solution in search of a problem. It is a government imposed restriction without a justifiable medical or safety explanation, and the Rule is more indefensible today than it ever has been. In the current economically strained aviation industry, it seems that companies can renege on pension promises made to their pilots, and leave them without a way to make a living and with reduced retirement benefits at age 60. And our government won't let these pilots—many of whom are the safest, most experienced pilots in the skies—keep working until our national retirement age of 65 when they are eligible for Social Security and Medicare benefits. No one on this panel here today in support of changing the Rule is looking for a handout. We are simply asking Congress to tell the FAA to allow us to work, to let us pay into Social Security and our own pension funds, and to retire at an age more in line with current economic and social conventions.

### **Safety or Economics?**

Safety is not now, and never has been the basis for this rule forcing commercial pilots flying under Part 121 to retire before their 60th birthday. As Southwest pilots reach 60, like pilots of other airlines, they are usually the best pilots they have ever been. Pilots age 60 and over fly passengers safely in countries across the globe every day. There are millions of hours of flight time that have been logged by pilots over 60 all over the world, and there has never been a single accident attributed to a pilot's age. In fact, the FAA routinely grants waivers to overseas pilots of foreign carriers over age 60, but not for the U.S. pilot operating under Part 121.

The FAA says the age restriction is only about safety, but recent and past actions on the part of the agency seem to point to economics and politics, rather than safety as the number one consideration on the age question. Similar age restrictions had been placed on air traffic controllers. Until this year, the FAA maintained that safety was the reason why controllers were forced to retire at 56. In the face of shortages of controllers, however, the FAA now permits them to work until 61, and says that safety is less of a concern.

The same logic must have applied when the FAA exempted a group of pilots from the Age 60 Rule between 1995 to 1999, that were flying aircraft carrying between 10 and 30 passengers. Prior to 1995, these passenger operations were conducted under FAR Part 135, but were shifted by the FAA in 1995, to come under compliance of Part 121 operations with its age 60 rule. If the FAA truly believed that the level of safety could not be maintained, then why grant the exception for these pilots to continue flying well past the age of 60? The FAA often cites its duty to ensure air carriers operate with the highest possible degree of safety. But this does not explain why the FAA applies the Age 60 Rule to some, but not to all air carriers operating in the United States.

In a 1991 letter, Dr. Stanley Mohler, then Director of Aerospace Medicine at Wright State University in Dayton, Ohio, references a meeting held in Congressman Edward Roybal's office in the 1980s, on the same subject before us today in this hearing. According to Dr. Mohler, the FAA, represented at the meeting by Administrator Don Engen, Federal Air Surgeon, Frank Austin, and Deputy Federal Air Surgeon, Jon Jordan, stated that there was no longer a medical basis for the Age 60 regulation. He goes on in his letter to say that the FAA was reluctant to delete or make exceptions to the Rule primarily because of administrative burdens it believed would be placed on the airlines. It was pure economics.

### **Background on the Age 60 Rule**

If it is not about safety, then what is the Rule all about? The Age 60 rule came about in 1959, not due to any public outcry over safety concerns, but as a convenient way to settle a labor dispute at American Airlines over training pilots to fly new Boeing 707 jet aircraft. It took longer to train older pilots with no prior jet experience than younger, jet experienced, Korean War veterans, and therefore, it was more expensive to transition the older pilots. There were no safety or medical concerns expressed by either American Airlines or a panel of experts, convened in May 1959 by the Administrator, which recommended that age 55 become the maximum age for jet transition and age 60 become the federally mandated retirement age for airline piloting. The age 55 provisions went away due to comments at public hearings and written comments. The age 60 proposal was never publicly aired per the prescribed rulemaking process nor was there any medical or statistical evidence of reduced performance in older airline pilots. In the Q&A section of the FAA press release that announced the age rule, the first question asks: "Has it been dem-

onstrated that age is a factor in the occurrence of air carrier accidents?" The Answer was, and remains, "No."

The Air Line Pilots Association (ALPA) opposed age-based retirement as a matter of policy, and challenged these company-imposed age-based retirements through the grievance process. In 1958–59, grievances were directed against American Airlines (whose pilots were represented by ALPA at the time), TWA and Western Airlines. In some cases the companies used medical and flight-safety arguments to support their positions; interestingly enough, ALPA succeeded in rebutting these points, which had no scientific or medical evidence back then either. Each of the grievances were decided in favor of the union and against the airline. C.R. Smith, American Airlines founder and CEO, unhappy with the arbitrator's decision, refused to reinstate the three pilots who had brought the retirement grievance. ALPA called for a strike against American. After the 21-day walkout, the company ceded most points to the pilot group and pilots returned to work.

Unable to hold back the pilots through normal collective bargaining, Smith turned to a longtime friend, Elwood R. (Pete) Quesada, who had been appointed Administrator of the newly-created Federal Aviation Administration (FAA). In a letter dated February 5, 1959, Smith asked the FAA to proclaim age 60 as a federally-mandated retirement age for pilots. Quesada obliged by proposing what we now know as the Age 60 Rule. The FAA issued its Notice of Proposed Rulemaking (NPRM) less than 1 month after Quesada received Smith's request. I am unaware of any Congressional or FAA hearing to debate the proposal at the time. The Final Rule, which was modified to pertain only to air carrier pilots, was published on December 5, 1959, and became effective on March 15, 1960. In January 1962, Administrator Quesada retired from the FAA and was elected to American Airline's Board of Directors.

Today ALPA is opposed to allowing U.S. pilots to fly past 60. But they support flying up to the age of 65 for Canadian pilots. If safety were truly a concern of the ALPA leadership, why would ALPA President, Captain Duane Woerth, compromise those safety principles by affixing his signature to an agreement permitting Canadian Regional Jazz pilots to fly until age 65?

#### **Time for a Change**

The 4,700+ pilots of the Southwest Airlines Pilots' Association and the management of Southwest Airlines strongly support changing the Rule. In a recent *Amicus Curiae* brief to the Supreme Court, Southwest Airlines argued that FAA's application of the Age 60 Rule, without consideration of individual pilot abilities, health conditions or medical data is purely arbitrary and not justified; moreover, the FAA's rigid implementation of the Rule deprives Southwest Airlines of some of its best pilots at the peak of their careers. SWA believes that the arbitrary rejection of all age exemption requests disserves the public interest by depriving commercial airlines of leadership and experience in the cockpit. At recent rally outside the Capitol, Southwest Airlines Founder and Chairman of the Board, Herb Kelleher, responded candidly to one reporter's questions, "It's the right, moral thing to do!"

#### **Experts Agree: It's Age Discrimination**

The rule amounts to nothing more than blatant age discrimination and needs to change. The Equal Opportunity Employment Commission (EEOC) agrees. The EEOC opposes the Age 60 rule and maintains that the FAA violates the Age Discrimination in Employment Act of 1968 (ADEA) because it unjustifiably applies a different standard to pilots over age 59 than younger pilots doing the same job. In fact, The EEOC has successfully forced private corporations to eliminate rules that required their pilots to retire at 60.

The American Association of Retired Persons agrees as well. In a letter of support to Senator James Inhofe for S. 65, they state ". . . Older workers, like all workers, should be judged on the basis of their individual competency and ability to do the job. There is no evidence that pilots over 60 perform worse than younger pilots. Indeed, there is reason to believe that lengthy experience is a good predictor of pilot competence."

The NIH agrees too. In 1981, The National Institute on Aging of the National Institutes of Health agreed saying, "The Age 60 Rule appears indefensible on medical grounds," and "There is no convincing evidence to support age 60, or any other specific age for mandatory pilot retirement."

#### **Safe Cockpits at Any Age**

The FAA has stated that unless it can be assured that the level of safety is maintained or improved, it cannot support a change to the current age 60 rule. But this condition stated by the FAA is already and inherently attained by their own existing procedures—procedures which are the gold standard around the world. The FAA al-

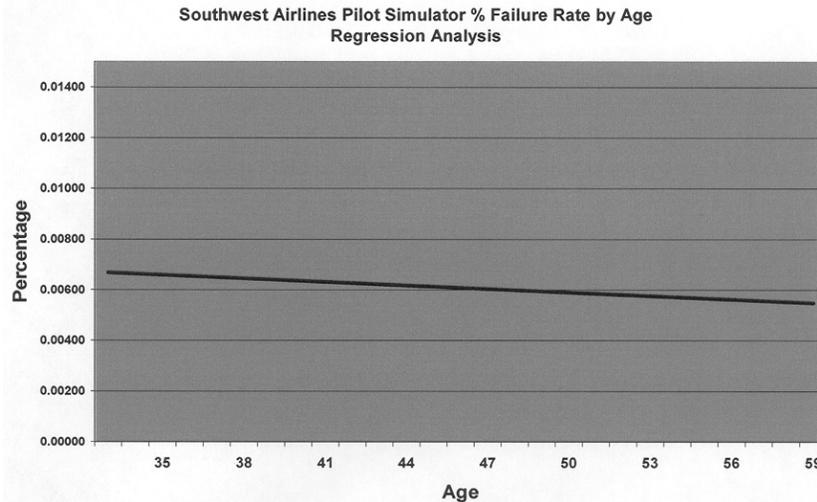
ready has in place the ideal mechanisms for ensuring safe pilots at any age, regardless of whether they are 35, 45, 55 or, frankly, 65 years old. The current system of checks and balances does not simply fall apart the day a pilot turns 60; given the chance to work, we know that the current system would continue to perform as well. In a perfect world, this system coupled with the choice of the pilot, would dictate when the proper age for retirement has been reached.

Let's review the current system in place. To retain my license, and fly as a pilot for Southwest Airlines, I must pass semi-annual flight physicals administered by a qualified (FAA-licensed) aero-medical examiner (AME). When a pilot turns 40 years of age, he must undergo an annual EKG every other flight physical, which is electronically transmitted by the AME directly to FAA headquarters where a computer program alerts if parameters dictate.

Pilots must also successfully pass semi-annual simulator training and flight checks designed to evaluate the crewmember's ability to respond to various aircraft emergencies, and/or competently handle advances in flight technology and the Air Traffic Control (ATC) environment. Captains must demonstrate, twice yearly, complete knowledge of systems and procedures, safe piloting skills, and multi-tasking by managing emergency and normal flight situations, typically in instrument flight conditions conducted in advanced simulators. There is no greater test of cognitive ability and mental dexterity than these simulator rides. Flight crews are also administered random in-flight check rides by FAA inspectors and Southwest check airmen. Further, we are subject to random alcohol and drug testing at any time while on duty.

There is no other profession in America today examined to this level. The 59 year old Captain arrives at this point in his career having demonstrated successful performance following years of this kind of scrutiny. This pilot is one of the fittest, and best trained pilots in the skies. Yet the FAA forces Southwest and other airlines to retire hundreds of their best every year because of the age 60 rule. These are the checks and balances that are in place today for every pilot: two pilots in a failsafe cockpit, twice yearly medicals, annual training, annual simulator evaluations, annual flight evaluations, Federal inspectors, computer-verified EKG's, and Chief Pilot supervision. The list goes on and on. The system works now. The system is self purging. It will continue to maintain the level of safety the FAA banks on every day, and says that it needs in order to consider a change in the current rule.

Today, simulator failure rates among Southwest pilots are low. But as pilots approach age 60 the failure numbers are at their lowest. The graph below shows this.



Experience is the key in this fact. As pilots get older, they know how to better handle the extreme situations they may have encountered in simulator checks. The mean failure rate declines at an even rate from a pilot's thirties through his fifties. Of course, because of the Age 60 rule, I don't have data to show that this trend would continue throughout a pilot's sixties, but I suspect it would.

In 1993, the FAA itself released the Hilton Study, which backs up the simulator data above. The study found that "The data for all groups of pilots were remarkably

consistent in showing a modest decrease in accident rate with age [and] no sign of increase in accident rates as pilots near age 60.” That would suggest to me that by retiring these pilots at 60, the overall safety of the flying public is compromised.

Commercial flying, under Part 121 passengers requires a pilot and co-pilot, at least in the large commercial aircraft which SWA flies. It is uncommon for one of the pilots to become ill during flight, but not unheard of. In such cases, the other pilot is present to safely conduct the flight to a conclusion, at which point, a replacement is obtained before continuing. Most of the illnesses encountered during the flight regime encompass pressurization changes or incompatible food ingestion (the latter is probably the greatest source of illnesses flying on line). Less frequent are the unwanted physiological responses to pressure changes, but the most common is an inability to neutralize pressures in the sinuses or Eustachian tubes (ears) during climbs and descents.

### **Why Change Now?**

Safety has never been anything more than a pretense for the Rule. Political opposition to change is strong and comes from respected organizations like the FAA and ALPA. Age discrimination laws have been in place for decades and haven’t forced a change in the Rule. Why should Congress act to change it now?

The Rule has clearly been about economics all along. And economics are the reason to change the Rule now. The airline industry is changing. Airline pension funds are migrating rapidly from defined benefit (DB) to defined contribution plans (DC). At Southwest Airlines, my retirement benefits are quite like those that most Americans fortunate enough to have retirement benefits also have. I have a 401k plan that my company pays a defined contribution to every year. All but a handful of airlines now have similar benefits.

U.S. Airways and United pension funds were terminated and taken over by the PBGC this year. Delta, Northwest and Continental—essentially all DB plans—are at risk, and are likely to add significantly to the Federal Government’s unfunded pension liability. Pilots at these airlines have already lost significant portions of their retirement, and face uncertain futures with a gap in retirement and healthcare benefits to carry them over to Social Security and Medicare age—which we all know is going up not down (as ALPA would like it to for pilots).

Working to 65 would help these pilots close that gap. DC plans also offer pilots, and all Americans, an opportunity to maximize retirement savings at little cost to the government, and no risk to the PBGC or the corporations. DC plans offer older legacy carrier pilots the only opportunity to recover from the loss of their defined benefit plans. But pilots must be able to work until full Social Security retirement age, as S. 65 allows, to maximize these benefits. This will have a net positive impact on the Federal budget, and will have a net positive impact on the safety of the flying public by keeping our most experienced pilots in the air for an additional few years.

### **Breaking Records Past 60**

Today, it seems that sixty-plus year old pilots are breaking world aviation records with regular frequency. Just last summer the world was thrilled when *SpaceShip One* became the first manned commercial vehicle to slip the surly bonds of earth. The craft was piloted by 63-year-old test pilot Mike Melvill, who had a very physical challenge bringing that ship safely back to Earth. Then, we all watched this Spring, when 60-year-old Steve Fossett became the first to complete a nonstop, solo airplane flight around the world.

Fossett and Melvill are clearly top pilots, out there “pushing the edge of the envelope.” Under the current FAA rules however, neither would be allowed to fly a Boeing 737 for my airline.

Today, July 19, is a fateful day in aviation history. Many of you will remember that sixteen years ago today, July 19, 1989, United Airlines Flight 232 took off from Denver, CO. Captain Al Haynes reported to air traffic control that his DC-10 loaded with 285 passengers and 11 crew, were without hydraulics and unable to turn the aircraft, and essentially doomed. By using throttle movements to control the paralyzed aircraft, Capt. Haynes and his crew began to slowly turn and control the aircraft, and were able to get it to a runway in Sioux City, IA. Although 110 people were killed that day, the deaths of 186 people were averted due to the experience of fifty-nine year old Captain Al Haynes and his crew. In subsequent simulator tests other DC-10 crews were unable to repeat the effort of the crew of Flight 232. Investigators concluded that, in its damaged condition, it was not possible to land the aircraft on a runway. Al Haynes was forced to retire that year, not because he had been in a crash, but because the FAA told him he was too old.

**Congress Should Act Now**

The Committee has before it the solution to the problem. S. 65, introduced by Sen. James Inhofe of Oklahoma, and its House companion, H.R. 65 introduced by Rep. Jim Gibbons (R-NV) would give those pilots the right to continue to work, safely flying passengers to their destinations should they chose to do so. In fact, it is our belief that safety is actually compromised by requiring our most experienced pilots to retire at the peak of their careers.

Mr. Chairman, the pilots of Southwest Airlines, and all those here in uniform today, appreciate your willingness to hold this important hearing, and hope that it will be the first step in moving legislation to change the FAA's antiquated and discriminatory Age 60 Rule once and for all.

Thank you.

Senator BURNS. Thank you very much, Captain. Now we'll hear from Captain Ralph Hunter, President, Allied Pilots Association. Thank you for coming today.

**STATEMENT OF CAPTAIN RALPH HUNTER, PRESIDENT,  
ALLIED PILOTS ASSOCIATION**

Mr. HUNTER. Chairman Burns, Chairman Stevens, Senator Pryor, thanks for the opportunity.

I am Captain Ralph Hunter, President of the Allied Pilots Association, representing the approximately 13,000 pilots of American Airlines, the world's largest passenger airline. On behalf of our members, I thank you for this opportunity to testify before this panel in strong support of the current Age 60 Rule that governs the mandatory retirement age for commercial airline pilots.

In the course of debating a significant change to air transportation regulations, our goals should be—first, do no harm. Maintaining or increasing the current level of aviation safety must be the primary test by which any new regulation is judged. Economic and personal considerations should not be disregarded, but the annals of aviation and aerospace history overflow with examples of the false economy that results by giving safety a backseat to other issues.

Safety concerns gave birth to the Age 60 Rule, and in the absence of compelling evidence for change, the Federal Government's continuing commitment to aviation safety demands the retention of this important regulation. I would submit that much of the current support for increasing the mandatory retirement age of airline pilots is an economic argument masquerading as an age discrimination argument. Along with most of our Nation's commercial pilots, APA pilots have also suffered the financial pains of an industry in turmoil. Despite this deep concern, we should not contemplate a change to the current retirement rule in the absence of clear and convincing evidence that safety is not compromised. Mandatory retirement ages are not discriminatory when tied to a *bona fide* occupational qualification.

Both the U.S. Court of Appeals, and the U.S. Supreme Court have repeatedly denied challenges to the Age 60 Rule based on this doctrine. Many other professions responsible for the public's health and safety, such as law enforcement, firefighting, air traffic control, and even the military impose some form of mandatory retirement age. Recognizing this important public policy, Congress passed an exemption to the Age Discrimination in Employment Act in 1996, allowing state and local governments to set mandatory retirement

ages as low as 55 for public-safety employees. It's simply good public policy for individuals in safety-sensitive professions to conclude their careers before the natural process of aging becomes a problem.

We all recognize that whenever mandatory retirement is based on a fixed chronological age, some workers may well be physically capable of continuing their careers for some unknown period. However, current medical technology does not provide a safe and reliable method to make that determination, and the use of a fixed, chronological age has proved to be a fair and effective standard. Even the opponents of the Age 60 Rule tacitly admit this fact by merely requesting an increase—and not elimination—of the mandatory retirement age.

The question then becomes what is the appropriate age for a pilot to retire before the inevitable effects of aging become too high risk? This question has been repeatedly asked, studied, and answered over the Rule's 46-year history. While opponents of the Age 60 Rule would accuse the FAA of ancestor worship, the reality is that as recently as 1994, the FAA made a significant rule change for certain commercial flight operations that actually reduced the retirement age for some pilots as part of its One Level of Safety program.

One of the most recent and comprehensive surveys of the medical basis for the Age 60 Rule was published in January of 2004, by the Aerospace Medical Association. I've included the report as an attachment with my written remarks. Let me quote a few of the key findings from the AsMA study, "Physiological studies consistently show age-related declines in hearing, vision and motor skills. Pilot cognitive performance has been shown to generally decline with age. A recent simulator study of age and pilot performance found that increased age was significantly associated with decreased aviator performance. Increased pilot experience does not appear to alter the typical age-related declines found in many cognitive skills."

While opponents of the Age 60 Rule regularly cite this same report as concluding that there's insufficient medical evidence to support pilot restrictions based strictly on chronological age, the study also demonstrates how incredibly difficult and expensive it would be to develop another set of criteria. Quoting from the study's summary, "A transition to a criterion-based process for determining a pilot's fitness to fly beyond age 60 would require extensive additional research. The economic burden on the FAA and corporations to develop a non-age safety basis for denying pilots continued employment could be significant."

Despite the report's support for a shift away from an age-based retirement standard, it presented no viable alternative with a substantiated capability to maintain the current level of aviation safety, with available medical technology. It's significant to note that a majority of commercial airline pilots support the existing policy. More than 80 percent of APA members supported the Age 60 Rule in a survey we conducted a few years ago. The Air Line Pilots Association recently re-affirmed its support for age 60 retirement, and the FAA has stated its desire to maintain the status quo. I believe it would be a grave error to disregard the voices of those closest

to the trenches in this debate. We are frequent observers of the very real impact of aging on pilot skills. While we know that nothing magical occurs at age 60 years and 1 day, to make a previously competent pilot unsafe, we're also keenly aware of the inevitable impact of aging on pilot skill, and the near impossibility of clearly defining the acceptable limit of that decline with current medical technology.

Our position is firm—the Age 60 Rule is a well-established safety regulation substantiated by medical science, and re-affirmed repeatedly by the FAA and the courts. Despite the apparent arbitrariness of using a fixed, chronological age, the Rule has actually performed its mission quite effectively for more than 46 years. We concede that there very well may come a day when conclusive data exists that supports a replacement for the Age 60 Rule. However, that data does not currently exist, and the Federal Government's commitment to aviation safety demands that the current rule be retained.

I thank the Committee for the opportunity to speak on behalf of the 13,000 pilots that APA represents, and I'll be glad to answer any questions.

[The prepared statement of Captain Hunter follows:]

PREPARED STATEMENT OF CAPTAIN RALPH HUNTER, PRESIDENT,  
ALLIED PILOTS ASSOCIATION

Mr. Chairman and members of the Committee, I am Captain Ralph Hunter, President of the Allied Pilots Association (APA) representing the approximately 13,000 pilots of American Airlines—the world's largest passenger airline. On behalf of our members, I thank you for this opportunity to testify before this panel in strong support of the so called "Age 60 Rule" that governs the mandatory retirement age for commercial airline pilots.

In the course of debating a significant change to air transportation regulations, our goal should be, "First, Do No Harm." Maintaining or increasing the current level of aviation safety must be the primary test by which any new regulation is judged. Economic and personal considerations should not be disregarded, but the annals of aviation and aerospace history overflow with examples of the false economy that results by giving safety a back seat to other issues. Safety concerns gave birth to the Age 60 Rule, and in the absence of compelling evidence for change, the Federal Government's continuing commitment to aviation safety demands the retention of this important regulation.

I would submit that much of the current support for increasing the mandatory retirement age of airline pilots is an economic argument masquerading as an age discrimination argument. Along with most of our Nation's commercial pilots, APA pilots have also suffered the financial pains of an industry in turmoil. Despite this deep concern, we should not contemplate a change to the current retirement rule in absence of clear and convincing evidence that safety is not compromised.

Let's be perfectly clear on one point—mandatory retirement ages are not discriminatory when tied to a *bona fide* occupational qualification (BFOQ). Both the U.S. Court of Appeals and the U.S. Supreme Court have repeatedly denied challenges to the Age 60 Rule based upon this doctrine. Many other professions responsible for the public's health and safety, such as law enforcement, firefighting, air traffic control, and even the military impose some form of mandatory retirement age. Recognizing this important public policy, Congress passed an exemption to the Age Discrimination in Employment Act (ADEA) in 1996, allowing state and local governments to set mandatory retirement ages as low as 55 for public safety employees. It is simply good judgment for individuals in safety-sensitive professions to conclude their careers before the natural process of aging becomes a problem. We all recognize that whenever mandatory retirement is based upon a fixed chronological age, some workers may well be physically capable of continuing their careers for some unknown period. However, current medical technology does not provide a safe and reliable method to make that determination, and the use of a fixed chronological age has proved to be a fair and effective standard. *Even the opponents of the Age 60 Rule*

*tacitly admit this fact by merely requesting an increase—and not elimination—of the mandatory retirement age.*

The question then becomes, “What is the appropriate age for a pilot to retire before the inevitable effects of aging become too high a risk?” This question has been repeatedly asked, studied, and answered over the Rule’s 46-year history. While opponents of the Age 60 Rule would accuse the FAA of ancestor worship, the reality is that as recently as 1994, the FAA made a significant rule change for certain commercial flight operations that actually *reduced* the retirement age for some pilots as part of its “One Level of Safety” program.

One of the most recent and comprehensive surveys of the medical basis for the Age 60 Rule was published in January of 2004, by the Aerospace Medical Association (AsMA), and I have included their report as an attachment with my written remarks. Let me quote a few of the key findings from the AsMA study:

- “Physiological studies consistently show age-related declines in hearing, vision, and motor skills.”
- “Pilot cognitive performance has been shown to generally decline with age.”
- “[A] recent simulator study of age and pilot performance found that increased age was significantly associated with decreased aviator performance.”
- “Increased pilot experience does not appear to alter the typical age-related decline found in many cognitive skills.”

While opponents of the Age 60 Rule regularly cite this same report as concluding that there is insufficient medical evidence to support pilot restrictions based strictly on chronological age, the study also demonstrates how incredibly difficult and expensive it would be to develop another set of criteria. Quoting from the study’s summary, “A transition to a criterion-based process for determining a pilot’s fitness to fly beyond age 60 would require extensive additional research. *The economic burden on the FAA and corporations to develop a non-age safety basis for denying pilots continued employment could be significant.*” Despite the report’s support for a shift away from an age-based retirement standard, it presented no viable alternative with a substantiated capability to maintain the current level of aviation safety with available medical technology.

It is significant to note that a majority of commercial airline pilots support the existing policy. More than 80 percent of APA members supported the Age 60 Rule in a survey we conducted a few years ago. The Air Line Pilots Association (ALPA) recently reaffirmed its support for Age 60 retirement, and the FAA has stated its desire to maintain the status quo. I believe it would be a grave error to disregard the voices of those closest to the trenches in this debate. We are frequent observers of the very real impact of aging on pilot skills. While we know that nothing magical occurs at age 60 years and 1 day to make a previously competent pilot unsafe, we are also keenly aware of the inevitable impact of aging on pilot skill, and the near impossibility of clearly defining the acceptable limit of that decline with current medical technology.

Our position is firm: The Age 60 Rule is a well-established safety regulation substantiated by medical science and reaffirmed repeatedly by the FAA and the courts. Despite the apparent arbitrariness of using a fixed chronological age, the Rule has actually performed its mission quite effectively for more than 46 years. We concede that there very well may come a day when conclusive data exists that supports a replacement for the Age 60 rule. However, that data does not currently exist, and the Federal Government’s commitment to aviation safety demands that the current rule be retained.

I thank the Committee for the opportunity to speak on behalf of the 13,000 pilots that APA represents, and I will be glad to answer any questions.

Senator BURNS. Thank you, Captain. Now, Captain Al Spain, Senior Vice President of Operations, JetBlue Airways.

**STATEMENT OF CAPTAIN AL SPAIN, SENIOR VICE PRESIDENT,  
OPERATIONS, JETBLUE AIRWAYS CORPORATION**

Mr. SPAIN. Chairman Burns, Senator Stevens, Senator Pryor, on behalf of my 8,500 “crewmembers”, which we call all of our employees at JetBlue, particularly my 1,000 pilots, I would like to thank you for the opportunity to testify today on this issue of mandatory retirement age for airline pilots.

As we've heard, we currently operate under this rule that requires pilots flying under Part 121 of the Federal Aviation Regulations to abandon their cockpit flying duties by their 60th birthday. JetBlue pilots and the leadership oppose the current mandatory retirement age rule for many reasons, but most importantly, it's just simply wrong.

JetBlue, in its five and a half years of operation, has achieved the Department of Transportation rank of a major carrier. We built the company, and we conduct our operations daily based on five simple values: safety, caring, integrity, fun, and passion. Safety is our leading value, and if I thought for one second that changing the mandatory retirement age would negatively impact safety, I would not be asking for a change today.

If safety were the true basis for this rule, we would not be seeing business and world leaders traveling around the world in complex jet aircraft operated by private corporations and international airlines, while being flown by pilots over the age of 60. Yet, today these experienced aviators are safely delivering their passengers to points far and near.

Also, it's interesting that the first commercial vehicle to go into space and return was under the command of a 63-year-old pilot. These over-age 60 pilots also enjoy the support of both the National Institutes of Health and the Equal Employment Opportunity Commission, who find no way to support the Age 60 Rule.

JetBlue would never discriminate in its hiring policies, so in our short life, we have recruited a significant number of pilots in their mid- to late-50s, hired because of their tremendous experience, and their maturity. We've seen four of these pilots—myself included—forced from flying revenue customers under the Age 60 Rule. But what's most important is that these JetBlue pilots, these four pilots, are still flying. Because under Part 91, they still fly the same airliners that they flew before their 60th birthday. Like their younger pilot colleagues, they still take, and pass, their semi-annual FAA flight physical exams. They still attend and successfully complete the FAA-required ground school, and proficiency checks. They're still observed by both FAA inspectors, and JetBlue check airmen. If the Age 60 Rule were based on safety, we simply wouldn't be doing this now. Our corporate values would not allow us to disregard an individual's decades of valuable experience as a result of an arbitrary and outdated rule.

The proposals in S. 65, while not requiring a return to the cockpit for someone over 60, would at least give the opportunity to take this experience, maturity, and safety back into the cockpit at the discretion of the carrier. Additionally, by continuing to fly over age 60, the pilots would be able to earn wages, pay taxes, contribute to their retirement plans, and close the gap between the age at which they stop flying, and the age at which they are eligible for Social Security and Medicare benefits. The current 5-year gap can be quite problematic for pilots forced from the cockpit at age 60.

Simple summary—JetBlue believes that each pilot should be judged on the basis of his or her ability to fly, their competency, and their abilities, not on an unsubstantiated and outdated rule giving a specific date. We strongly support Senator Inhofe and Congressman Gibbons, both fellow pilots, and thank them for their

tireless work on this important issue. We urge the Committee to move to do its part to make S. 65—a bill to amend the age restriction for pilots—the law of the land. Safety is the basis for our concern.

Thank you, Mr. Chairman, for the opportunity to testify.  
[The prepared statement of Captain Spain follows:]

PREPARED STATEMENT OF CAPTAIN AL SPAIN, SENIOR VICE PRESIDENT, OPERATIONS,  
JETBLUE AIRWAYS CORPORATION

Chairman Burns, Ranking Member Rockefeller, and distinguished members of this Subcommittee. On behalf of my 8,500 JetBlue Airways Crewmember colleagues and, in particular, my 1,000 pilot colleagues, thank you for the opportunity to testify today on the important issue of the mandatory retirement age for commercial airline pilots.

Today, under a rule first enacted in 1959 by the Federal Aviation Administration (FAA), pilots flying commercial aircraft under Part 121 of the Federal Aviation Regulations must retire by their 60th birthday. Since its enactment more than forty-five years ago, this rule has been the source of great debate, and at no time has it been of more intense debate than today.

JetBlue and its pilot corps oppose the current mandatory retirement age rule for many reasons. However, as I will explain below, the principle reason is that it is simply wrong.

JetBlue, established in 2000, has already achieved the Department of Transportation (DOT) rank of a “major” carrier—the quickest this status has ever been achieved by an airline in the United States. JetBlue was built on five simple values: Safety, Caring, Integrity, Fun, and Passion—with Safety always first and foremost in all that we do. These five values are the foundation of our airline, and all of the blocks on which JetBlue are built are consistent with these values. With 77 aircraft today, growing to 91 by year’s end, JetBlue’s safety value lights the path for our continued controlled-growth.

In keeping with our safety value and our integrity value, JetBlue has stood on the sidelines and watched as several key pilot leaders have been removed from active flying as a result of the Age 60 Rule. This alone, and not any previous or pending economic impact to our healthy bottom line, is why I am here today. JetBlue has been profitable for 17 successive quarters at a time when 100,000 airline employees have lost their jobs, several carriers are in bankruptcy and others openly discuss bankruptcy. As an officer of JetBlue, a pilot who has been forced to retire under the Age 60 Rule, and as the leader of our pilot corps, this is a wrong that Congress now should right. Both S. 65, along with H.R. 65, are the means by which to do so.

In 1959, the FAA promulgated its rule based on the “medical facts” of the day. It was believed then, and relied upon as the primary basis for the Rule itself, that “significant medical defects” resulted from the progressive deterioration of physiological and psychological functions which occur normally with aging. These supposed “facts” from the last century are anything but accepted facts today, and the Rule based on these “facts” amounts to pure 21st century age discrimination.

The facts of 2005 weigh in favor of eliminating the Age 60 Rule. As far back as 1985, The National Institutes of Health testified before the House Select Committee on Aging that the National Institute of Aging (part of the NIH) could no longer support the FAA’s retention of the Age 60 Rule. Similarly, the Equal Opportunity Employment Commission (EEOC) has held that the FAA Age 60 Rule violates the Age Discrimination in Employment Act of 1968. In the private sector, the EEOC has successfully ensured that private companies eliminate rules that required their pilots retire at age 60.

In the Senate, one of your most distinguished former colleagues, Ohio’s John Glenn, at age 77, flew for 9 days in space. More recently, the first manned commercial vehicle to travel to space and back was piloted by test pilot Mike Melvill, winner of the X Prize, at age 63. Mr. Melvill, despite worldwide acclaim resulting from his historic achievement, would be barred by the law were he to try flying for JetBlue. Further, the American Association for Retired People, on behalf of their 35 million members over age 50, strongly supports H.R. 65 and S. 65.

Throughout the developed world, the United States stands nearly alone by mandating retirement of pilots at age 60, with the notable exceptions of France and China. Most nations permit pilots to fly until age 65, such as Japan and Israel, and the European Joint Aviation Authority recently raised their age limit to 65 for com-

mercial pilots. The International Civil Aviation Organization (ICAO), too, has recommended that member states, including the United States, adjust to a maximum age of 65 for commercial pilots.

All JetBlue pilots, whether age 40 or age 59, must undergo rigorous FAA medical screening procedures to ensure they are fit to fly. This includes a semi-annual physical exam and, after age 40, an annual electrocardiogram. Beyond medical screening, all pilots must successfully pass a simulator training flight check twice yearly. Such testing ensures awareness and thorough knowledge of procedures, systems, piloting skills, and the ability to safely manage emergency scenarios. These tests, which ensure the mental and physical health of pilots, are in addition to random in-flight check rides performed by both FAA inspectors and JetBlue check airmen. Almost no worker in America has more oversight when it comes to their medical ability and competency to fly, and no one has more of an incentive to maintain safety for the flying public than airlines' themselves.

Finally, in the current economic environment faced by most airlines, thousands of pilots have lost their jobs. Equally unfortunate, for many still employed, they have seen their pension plans virtually eliminated. Thus, while not at issue at JetBlue where we have defined contribution plans, many pilots must retire from flying at age 60 and they do not collect Social Security until age 65. The proposals in S. 65 would allow these experienced pilots to continue fly, earn wages and contribute to their pension plans.

In this regard, JetBlue has only had a small number of pilots removed from the cockpit due to the Age 60 Rule. Of our more than 1,000 pilots, these few pilots have all remained employed as active crewmembers, some flying non-revenue flights, some teaching, and some serving as members of our leadership team. JetBlue's values simply cannot allow us to disregard an individual's decades of valuable experience merely because of an outdated rule. Not only does our airline benefit from the wisdom attained through decades of experience, but these pilots remain active contributors to their own retirement savings. This benefits JetBlue, our pilots and all taxpayers.

JetBlue believes that each pilot should be judged on the basis of his or her ability to fly and their competency—not an unsubstantiated rule based on outdated and mistaken medical assumptions. We strongly support Senator Inhofe, and Congressman Gibbons, both fellow pilots, for their tireless work on this important issue, and urge this Committee to make S. 65, a bill to amend the age restrictions for pilots, the law of the land.

Thank you, Mr. Chairman, for today's opportunity to testify.

Senator BURNS. Thank you, Captain. Senator Stevens has an appointment coming up and wants to ask a couple of questions.

Senator STEVENS. Mr. Chairman, thank you very much, let me correct the record, I said there were 750 of our 10,000 pilots were commercial, and over 55—it's 2,000, 2,000 of our 10,000 pilots are commercial and over 55. It's a difficult problem for us.

Let me just ask each of you this, you mentioned a series of polls taken, do you know the average age of those people you polled, Captain Woerth, do you know it?

Mr. WOERTH. I don't have the age of the poll, or the average age, or the median age of the entire pilot group, I could probably get that for you.

Senator STEVENS.—relate the age to the polls?

Mr. WOERTH. Throughout the polling process, especially as to the random telephone poll, was randomly stratified to take out sampling errors that were biased one way or another.

As to the survey, anytime you do a survey, it's voluntary, and we had a high number of participants, particularly over the age of 56, and so we actually had more older people, participating for their own interests that you'd expect in a democratic organization.

Senator STEVENS. How about you, Mr. Eichelkraut?

Mr. EICHELKRAUT. I don't have the exact numbers, sir, but I would believe around 45 or 46 years old is the average age of the respondent.

Senator STEVENS. Captain Hunter?

Mr. HUNTER. I don't have the breakout, sir, the last poll we did was—

Senator STEVENS. Captain Spain?

Mr. SPAIN. In all of our polls with the pilots, we've had about an 80 percent response in our pilot, the thousand pilots we have, the average age is, I believe it's 48.

Senator STEVENS. Captain Hunter, you mentioned in your letter to us that a sizable number of these people are furloughed at the present time, how great is that number?

Mr. HUNTER. We're sitting at just under 3,000 pilots on furlough from American Airlines.

Senator STEVENS. Do you know, Captain Woerth, what the furlough rate is for your organization?

Mr. WOERTH. A little over 5,000 members of ALPA are furloughed.

Senator STEVENS. OK, and pilot fatigue, you mentioned, Captain Hunter, wasn't it?

Mr. HUNTER. That was, I believe it was Captain Woerth that testified.

Senator STEVENS. You, Captain Woerth, you say we've ignored it, ignored that issue?

Mr. WOERTH. No, I'm saying that the Federal Aviation Administration had put forward some notice of proposed rulemaking almost 10 years ago, because it was recognized—they had NASA studies—that they thought the flight time and duty time regulations, particularly as to the length of the duty day, were antiquated and needed revisions, based on a study by NASA. Nothing's really come of that in almost 10 years, and what I was referring to is, it wasn't just pay concessions that pilots were taking, a lot of the work rules, frankly, were better than FARs had been mitigated, and so many of those pilots—many of those in the room today—are flying more hours, longer hours, and longer duty days, and I certainly think the struggle we've had maintaining even the minimum standards, such as the 16 Hour Rule, which we have a tremendous fight with in and around the FAA, the 16 hours, those kind of hours which are becoming more and more routine, not the exception, are adding to pilot fatigue, so no matter what the age, this isn't just a function of, I'm 57, I feel a little more tired than I did when I was 35, it is an issue even for a 35-year-old, I think fatigue needs to be looked at by the Federal Aviation Administration.

Senator STEVENS. Well, I flew transports in World War II, and I'll tell you, fatigue wears me a hell of a lot more than age does. I'd be very pleased to work with you on a fatigue thing, see if we can't get someone to really take a good long look at that, that is more dangerous to any passenger, in my opinion, than age. Thank you, Mr. Chairman.

Senator BURNS. For the record—the 16 Hour Rule, explain that to me, would you, please?

Mr. WOERTH. Yes, sir, Mr. Chairman, for quite some time there was a controversy over, if it, was 16 hours really a limit, or was that just a scheduling goal, and we finally had to get a ruling, and work with the APA, in particular, on this, it was known as the "Whitlow Letter," a person out of the FAA finally determined at 16

hours you are done, a pilot cannot get back in a cockpit and fly just because the airline was running late, or somebody wants to continue the march, the 16 hours is the real limit. The fact that that's twice the normal day—that might have been a midnight shift going until the middle of the afternoon the next day, thank God we have the Whitlow Letter, but there was still opposition within certain airlines who didn't want to live with that, they wanted even more hours to be flown, or a duty day to be even longer than that.

Senator BURNS. Let me, after you're, say you've been on duty for 16 hours, now is that 16 hours in the air?

Mr. WOERTH. Doesn't have to be in the air, that's from report to release, you might have had a break, you might be in Chicago, you might be in Atlanta—

Senator BURNS. And then you're done until when?

Mr. WOERTH. Well, there's a rest requirement after that that varies depending on the rest of your schedule, but you at least have 10 hours off.

Senator BURNS. I was going to ask you about how many pilots that are laid off now, or that have been furloughed, and you know, there for a little while, we had a big shortage of pilots, in fact, it wasn't very long ago we were having hearings on how to get more trained pilots and get them into the air, and some of those were moving up from local carriers, local service areas, and so I think my question is a little out of whack, but we've been contacted about an agreement that you have with Jazz, a Canadian air carrier, which allows pilots to sign and work until 65. Why are you supportive of this in Canada and not in the United States? I guess you're kind of going with your poll, I understand your position, but why would that be?

Mr. WOERTH. Yes, Mr. Chairman, when we actually merged with pilots in Canada in 1997, we had a major merger when we took over a number of pilots within Canada. Air Canada Jazz was a group of regional carriers that happened to be in that group, there are other Canadian carriers we represented as well.

Part of our merger agreement with the Canadian pilots was stuff that affected, that was set by Canadian law. If it was by Transport Canada, or by the Canadian Parliament, under our merger agreement, they would be able to deal with their government, make the decisions for Canadians, not have the United States laws imposed upon them. As you probably realize, that in Canada, it is one of those nations that does not have the Age 60 Rule, so the state licensing standards of Canada are different. So, I had no trouble recognizing that, and since they're allowed to do it under Canadian law, I wasn't prepared to become involved in an age discrimination suit myself, so, their law permits it, so their contract permits it.

Senator BURNS. We've all been involved in this debate for some time, and I'd like to have your response—all of you—to this. Do you think it's more about economics, or is it more about safety? Yes, sir, Mr. Eichelkraut?

Mr. EICHELKRAUT. It's about economics, sir.

Senator BURNS. How do you base that?

Mr. EICHELKRAUT. Well, I believe that if it were truly about safety, that we'd look at the individual's medical requirements, medical qualifications, and his operational qualifications, and determine

whether or not he's fit to fly Part 121 based on those credentials, not on an age issue.

The economic side of the house is a piece that's very interesting, we come from—I come from a company that has a defined contribution retirement plan, and as such, the longer we can work, the longer we can contribute to it. Some of my compadres up here have varying forms of that, or possibly not that, and a defined benefit plan, and we all know there's stress under that, but I think economically there's some direction being driven by the fact that they have a defined benefit plan, but the contracts between labor and management have wound these contracts into being for such a long time. So, I actually think that there's probably a reluctance to see a real change, because that might force an unwinding of some of these contracts and these issues to be addressed.

Senator BURNS. Anybody else have a comment on that question?

Mr. HUNTER. I would like to.

Senator BURNS. Captain Hunter?

Mr. HUNTER. I think it's an interesting question, Mr. Chairman, because I think it depends on precisely who you ask. I testified, and believe, that this is an economic argument masquerading as an age discrimination argument. I believe very strongly, based on the feedback from my pilots, which have not wavered over the course of the last 14 years that we've been surveying them, have been very close 12 years ago to what they were 2 years ago. I might add, 2 years ago they suffered some pretty significant economic losses, and continued to believe that the Age 60 Rule should remain in place. So, clearly from my perspective it's a safety issue, but I do believe that other arguments are being made for economic reasons.

Mr. SPAIN. Mr. Chairman, I don't think that we're asking for the change based on economics, because our pilots, like Southwest, have a defined contribution plan, and I think we look at it more from a safety aspect and allowing a pilot to fly also, to eliminate just the absolute age 60 as a discriminatory thing, if we participate in testing and get facts and data, we certainly don't mind doing that if we have a way, a mechanism to go beyond the age 60.

Mr. WOERTH. Mr. Chairman, I guess I would say that all of those factors would come into play, and as the Senate deals with so many issues in our country, whether social issues or economic, there's no clear line of demarcation. It is clear to me that, as we broke out our survey of the 41 airlines we represent, certainly those that have recently lost their pensions whether they were at United or US Airways, certainly the values in that pilot group for reasons all of us can understand, were different than for example, Federal Express or different for Delta. I don't really have a baseline that is reliable from our previous national survey, but clearly, and another thing that is clear, Mr. Chairman, when I was 28 and I got hired out of the military, I wasn't paying a lot of attention to this argument, ALPA happened to be on the other side of it. One thing that I've noticed in my many years of being a pilot representative, is that at 40 you need glasses, at 50 you decide to probably think about the Age 60 Rule differently, and clearly our statistics are clear that once you reach age 56, whether you lost your pension or not, pilots feel differently about the Rule, I don't think anybody should be surprised, that's human nature, all the factors that go

through the pilot's mind as he progresses through his career, they weigh all of those things differently. And so we just try to do the best we can being transparent, and represent our members' majority interest, and I thank you for holding this hearing so we can express it.

Senator BURNS. I don't walk on very many airplanes, I just got a letter the other day, I hit two and a half million miles with Northwest, which means the only thing you get done in this job is your wear out airplanes and the seat of your pants, where I don't say hello to the pilots and strike up conversation, because we're going to reauthorize FAA next year, changing technologies means we're going to have to change some ideas in the FAA and controller safety, new technology has given us maybe a little bit of leeway where we can narrow up our separation a little, and operate safely, but I take very seriously the advice of the people, the men and women that are flying those planes, so I talk to them a lot.

Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

Mr. Spain, I'd like to start with you, if I may.

Mr. SPAIN. Sure.

Senator PRYOR. I know that you are advocating changing the Age 60 Rule, and at the same time, as I understand it, you're advocating changing some FAA rules and regs that would allow pilots to fly coast to coast, and back again in the same work period, is that correct?

Mr. SPAIN. What we asked is that we be able to gather facts and data, and get research on specifically, the duty time limitations, and to see what facts and data are, rather than the 8 hour rule, in domestic operations. Yes, sir.

Senator PRYOR. Well, I just wonder if those two positions that you're taking are consistent with keeping the highest possible standard of air safety. In other words, I guess I'm asking, do you think these two policy changes that you're pursuing will enhance air safety?

Mr. SPAIN. I think so, sir, because we're asking for facts and data, we're asking to find a way to get something other than an arbitrary rule in duty time, in flight time limitations. And if we have facts and data, the same thing, in age, finding the facts and data beyond age 60 for airline pilots, which there are none, because no one's flown beyond age 60, and all we ask is a way to do testing under the auspices of an accredited agency, or NASA, or someone, to get the facts and data about duty time limits, exactly what Captain Woerth's talking about. I agree with a duty time limit, I absolutely do. We just don't know what that is, because today in the international flight rules in the U.S. you can fly longer than you can in domestic rules, same airplane, same crew. We'd just like to have the facts and data to make a good decision on whether we should look at a duty time limit rather than a number of flight hours limit, in other words, back to the 16-hour rule we were talking about a while ago.

Senator PRYOR. OK, I appreciate that explanation, but do you understand how an ordinary reasonable person might look at your policies and say you are in favor of an older population flying your

aircraft, and also want them to be able to fly longer in the same duty period.

Mr. SPAIN. Only if we have facts and data to support it.

Senator PRYOR. But in order to get the facts and data—

Mr. SPAIN. We would have to do testing, we'd have to find a way to test.

Senator PRYOR. In other words, you would have let your pilots fly.

Mr. SPAIN. We'd have to find a way to do that, yes, sir.

Senator PRYOR. Let me just ask, sort of the panel, generally, and I'm just going to throw these open, and I'm not saying everybody has to answer, but if you want to, I'd love to hear your answers on this. I want to focus a little bit on the economic ramifications of changing the Rule, and some of you covered this a little bit in your statements, but how would extending the age limit beyond 60 years impact younger and mid-level pilots, in terms of their opportunities for career advancement?

Mr. EICHELKRAUT. What I found is pilots who have not made captain yet or on a narrow-body airplane would like to continue, I think everybody wants the upgrade opportunities. In the near-term that might restrict overtime but it will all equalize itself out. Normally growth opportunities are what get pilots jobs, not retirements. I've always based, promotions come when airlines are successful and grow. They can't rely on pilots to retire to be successful in the airline business.

Senator PRYOR. Anybody else?

Mr. WOERTH. Senator, the question is a good one because it identifies the fact that there might be some differences of opinion based on demographics. And I agree there are, and in fact I think the ALPA survey or poll indicated that to be, in particular, the case. The older guys want the Rule to be extended, and the younger guys want to keep it in place. But there's an assumption in that statement, and it has to do with a static environment. A lot of us joined our airlines with the hopes that it stays solvent, that it continues for years and years that over the years we'll progress up. The advantages of working a little bit longer apply to everyone who is in that static environment, so that an individual might be, in this case, a first officer in our airline, he might have to wait an extra year or two to upgrade him, but on the outside years, he would have the extra number of years to contribute to his personal finances or retirement, those issues. One of the issues that comes along, also with this question is for those people who are furloughed, and raising the age for those individuals, in that case, gives them an opportunity to maybe be employed elsewhere. There's no guarantee that those individuals are ever going back to those carriers they came from, and it gives them an opportunity to work a little longer somewhere else rather than start over.

Mr. HUNTER. Yes, I think it is a very good question, Senator, certainly the facts that, again, it's a question of who you ask the question, and I think one thing we can probably all agree on in our profession is that timing is everything, if you're hired at the beginning of an economic boom, you're destined to have probably a very different career than if you're hired at the tail end of it, and certainly that has been a cycle in the piloting profession as I've observed it,

and I do have 3,000 pilots on furlough and Captain Woerth mentioned this as well, who obviously have a very different view of this issue, because the perception is that this rule negatively impacts their economics as well.

Senator PRYOR. When you talk about negatively impacting their economics, certainly they get their paycheck when they're flying, but what about their pensions? Is this, changing the Age 60 Rule would it impact the pension situation with the airlines?

Mr. WOERTH. The current crisis we're facing in the defined benefit plan which is being looked at in both the House and the Senate, because that crisis is the money that's already earned and already owed, and so no matter what happens later, that does not resolve the debited deduction contributions that are currently required. Certainly, a change in it would not affect their pension, but it would allow people to work longer to recover some of the money they lost. We've also had issues we've tried to deal with. Senator Akaka and others have introduced legislation for the terminated pension plans, relating to pensions plans, the maximum a pilot can receive, which is now \$29,000 as opposed to other workers at \$45,000 could be corrected, and we've always acknowledged that it has been tough for pilots for a long time to have a gap between Social Security and the retirement age, whether they've lost their pension or not. And that's been unfair for pilots for some period of time.

Senator PRYOR. Also, staying on the economics of all this, when pilots right now hit age 60, does that mean they are necessarily out of a job, or do you have places for them elsewhere in the companies? Or the industry?

Mr. WOERTH. Some companies do provide opportunities in the training departments, or other places where they're not flying Part 121 operations and other regulations that allow that, but the union doesn't provide that, it's certainly a management decision, we're not involved with it.

Mr. EICHELKRAUT. There are very limited positions in that regard, I'd also like to bring up the issue that these pilots who are retiring at 60 have been trained in Part 121 operations, and are well versed in that area and that experience they're not allowed to pursue any longer, so are there other jobs in the aviation industry? Certainly there are, you can start over in other places, et cetera, but you certainly aren't doing exactly the same thing you were trained to do, up for sometimes 35 years.

Mr. SPAIN. As I mentioned, we are small and we are growing, and we have the need for the pilots to operate our airplanes under Part 91, things such as maintenance test flights, delivery flights, and positioning flights, and so our pilots who have reached 60 are currently still flying with JetBlue.

Senator PRYOR. The last question I have, and maybe the Chairman covered this, but I missed the answer, is the percentage of pilots who actually hit age 60, I assume a number of them retire, or quit, or move onto something else before they hit age 60, so what type of numbers or what percentage are we talking here?

Mr. WOERTH. Within the ALPA, there's only one group of ours that we've tracked with any confidence, and that's Northwest Airlines, since 1993 to now, has tracked every retirement, and it's the

fourth largest airline in the country involved in wide-body flying and domestic operations, about 43 percent of the pilots retired early, either through medical disability and voluntarily, early. And that is out of 1,700 retirements since 1993.

Senator PRYOR. So, as I understand those statistics, over half—

Mr. WOERTH. Forty-three percent, sir. Fifty-seven percent do retire at the normal age.

Senator PRYOR. Of 60.

Mr. WOERTH. Of 60, and 43 percent actually retire earlier, some disability, some just voluntarily decide to retire.

Senator PRYOR. So, over half actually hit age 60 and are forced to retire.

Mr. WOERTH. Yes.

Senator PRYOR. Thank you.

Senator BURNS. I have one more question, one last question. If the Age 60 Rule is changed, what other legal or regulatory changes should there be? Will this have a ripple effect we have to change in some other areas? Does anyone want to comment on that?

Mr. WOERTH. You've asked the \$64,000 question for most airline pilots. What we've certainly found out in our poll, a lot of us are good old country boys, too. They don't want to buy a pig in a poke, they'd like to know "what am I voting on?" and what they've asked us is, if everything is going to stay the same, that would be one question. But they've watched these hearings previously, and heard what the FAA said, they're going to change something to have an equivalent level of safety, we need to do something, they like to know what that "something" is. And since they don't know, a lot of them would like to work longer. I think that has been clear, but they would like to know that whatever changes the FAA proposes is not a career threat to them, they don't want any additional check rides, they don't want to be an astronaut, they don't want to take an astronaut's physical just to fly to Minneapolis, but they would certainly like to know or have the FAA give some indication what they're thinking about, because right now we don't know what you're thinking about, and that's a concern of those who might change their mind, or those who would continue, they don't know what those changes might be.

Senator BURNS. Yes, sir?

Mr. EICHELKRAUT. Senator, the ICAO is recommending to go to a standard, I know, and one of those requirements they would like to see is go to twice a year medical physicals, of course, the Class One physical they already do in this country, so I wouldn't see a change in that part, what I would suggest though, that it would certainly help in changing this age, it would certainly help us blend with the rest of the world in terms of commerce.

Senator BURNS. Captain Hunter?

Mr. HUNTER. Part of the difficulty in answering that question, Mr. Chairman, is, we'd like to see whatever is necessary to maintain the current level of safety, our difficulty in answering the question well characterizes our concern with changing the Rule in the first place, I don't think we have a good idea about what would need to be changed in order to maintain the level of safety, and that precisely characterizes our difficulty with changing the Rule.

Senator BURNS. Captain Spain?

Mr. SPAIN. I think as I've mentioned before, I'd really like to be able to explore that and get the facts and data to know what else would have to be changed, and we'd have to look at it in some way to see whether it's test flying, whether it's additional medicals, but we need to know what else has to be changed, and the only way to do that we need to go get the facts and data.

Senator BURNS. I look at it like truck driver, CDLs. In other words, if you change it from 60, maybe once you hit that 60 level you would take a look at hours of service, hours in the air, do you require say, the first officer to be under 55, or whatever, and I wonder does it lead to other rules and regulations that we would have to look at in order to extend that age, that's what I'm looking at.

I think maybe, this is an issue that might have to be dealt whenever we reauthorize the FAA next year, and this debate will continue, and we may know more about what the economic conditions are because we have an obligation, I think, I have an obligation to this industry to first, do no harm. And that's certainly what we'll base our decisions on. I appreciate your testimony, and I appreciate you being very candid about it, because I just remarked to Senator Stevens that it's ironic that we have the so-called point-to-point carriers wanting it extended, the legacy carriers are on the other side of the issue, and I'll sort that out one of these days whenever I have a little time. But I thank you, anybody who would like to submit a closing statement, you're welcome to do that. I see that it is almost 5:30, that's not dinner time, but almost is, I've never missed a meal yet, nor do I intend to.

I thank you for your service, and I thank you for testimony and being candid with this committee. Thank you very much.

[Whereupon, at 5:30 p.m., the hearing was adjourned.]

## A P P E N D I X

### PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII

Today, we are once again weighing the pros and cons of changing the commercial airline pilot retirement age in the U.S. This is not a new issue, as the Senate has considered the matter on several occasions over the past 10 years.

We must be very careful before taking steps to change the long standing Age 60 rule, and make certain that any modification does not negatively impact commercial aviation safety in the U.S.

The Age 60 rule has been in effect and worked well since 1959, to ensure that we maintain the highest level of airline safety. The Federal Aviation Administration (FAA) has reviewed the Rule numerous times, and medical and scientific authorities, including the National Institutes of Health (NIH), have studied it repeatedly. To date, no research has conclusively determined that repealing the law would improve aviation safety.

Some contend that extending the Age 60 rule will provide economic benefits to the aviation industry and the individual pilots. Obviously, a rule change would mean that some pilots could extend their earning potential for a few additional years, and given that most have had their benefits cut, I understand and appreciate their keen interest.

However, the Air Line Pilots Association (ALPA), the world's largest pilots union, voted on this issue recently and rejected the proposal, while some of the Nation's major air carriers have expressed concerns about how the change would affect their labor costs.

I believe the current effort to increase the pilot age in the current economic environment is particularly untimely. Ever since September 11, 2001, the major air carriers have faced pronounced financial difficulty and have been forced to furlough thousands of airline pilots. Changing the Age 60 rule has the potential to further disrupt the careers of more junior pilots and could, quite possibly, impact the caliber of America's future aviators.

While some maintain that the Age 60 Rule is discriminatory, the Rule has been reviewed and upheld on numerous occasions by Federal courts, concluding that it does not violate age discrimination employment law.

I appreciate the Chairman's commitment to this issue, and I understand that there are varying medical opinions regarding the appropriate retirement age for commercial airline pilots. However, without concrete evidence that the Rule change would improve safety, absent a true consensus on the issue, I feel that we must leave air safety to the regulatory experts at the FAA.

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### PREPARED STATEMENT OF AIRLINE PILOTS AGAINST AGE DISCRIMINATION (APAAD)

Airline Pilots Against Age Discrimination (APAAD) is a grassroots organization comprised of pilots flying for a variety of airlines engaged in Federal Aviation Regulation, Part 121 operations as well as other interested parties. As the name of our organization indicates, we are opposed to age discrimination. Our goal is to see the elimination of the federally mandated, discriminatory regulation known as the "Age 60 Rule."

Chairman Burns, thank you for revisiting this onerous regulation that has been allowed to continue for some 45 years, denying the traveling public the safest pilots we have to offer, and denying these pilots the right to earn a living in their chosen profession.

It is obvious to those of us who have studied the origination of this rule in 1959, realize that this was a political favor by then FAA Administrator, General Pete Quesada, so that his friend, C.R. Smith at American Airlines, could fire his older pilots. Subsequent Administrators of the FAA have, for some unknown reason, felt compelled to defend the first Administrator's back-office deal.

We have seen a whole industry develop around this notion that the older pilot may not be as safe—wasting an untold amount of resources. The FAA supports its Age 60 Rule based on psuedo-science and theoretical conjecture, and has never proven that the Age 60 Rule enhances public safety!

There have been countless studies and reviews about the Age 60 Rule, inside and outside of the FAA. The following are some examples of these studies.

- FAA report number DOT/FAA/AM 94/22, known as the “Hilton Study.” “The results present a converging body of evidence which fail to support a hypothesis that accident rates increase at or about the age of 60 years.”
- The John Hopkins School of Medicine study: “Age, Flight Experience, and Risk of Crash Involvement in a Cohort of Professional Pilots.” The headline announcing the study results was “Older pilots OK to fly, study shows.” Their conclusion was: “Our study indicates that chronologic age by itself has little bearing on safety performance,” says Susan P. Baker, co-author of the study and Professor of Health Policy and Management at Johns Hopkins’ Bloomberg School of Public Health. “What really matters are age-related changes, such as health status and flight experience.”
- The Aerospace Medical Association (AsMA), after conducting a two-plus year review of the literature concluded; “. . . that there is insufficient medical evidence and/or accident record to support airline pilot restrictions based on age alone.”

We have a real world study from Japan.

- The Japanese Ministry of Transport allowed 159 airline pilots to fly until age 63 to generate data—a study the FAA has refused to conduct here! The study: “A 10-Year Retrospective Review of Airline Transport Pilots Aged 60 to 63 in Japan.” Conclusion: “The review suggests that the aged pilots who are deemed medically qualified by the official notice criteria are flying safely without mishap incidence.”

The FAA had a chance to gather real world data in the United States, when FAR Part 135 pilots past age 60 were grandfathered for 4 years as they operated under FAR Part 121 in 1995.

- Captain Robert Perry, an FAA designated check airman, surveyed a group of these age 60-plus pilots at his airline. These pilots were flying the more rigorous trips in the turbo-props and regional jets. This group, whose oldest was 71, flew over 100,000 accident/incident free hours.

With most of the industrialized world permitting their airline pilots to fly past age 60, the body of anecdotal data overwhelmingly supports the safety of such operations. In fact, the FAA has a double standard when it comes to the Age 60 Rule. The FAA allows age 60-plus United States pilots to fly in FAR Parts 91, 125, and 135 in this country. The FAA also allows age 60-plus foreign airline copilots to fly into this country—which our age 60-plus copilots cannot do.

The FAA relies on its Civil Aerospace Medical Institute (CAMI) reports to justify its position that the Age 60 Rule is safety-based. The curious observation is that CAMI Report 4 shows an accident rate for pilots younger than 30, 2½ times higher than pilots in the age 50 to age 60 group. The obvious question is—If safety is the issue, why is there not an “Age 30 Rule” to prevent younger pilots from flying FAR 121 operations?

The ghost of General Pete Quesada still occupies 800 Independence Avenue. It is time for Congress to exorcise this demon and return sanity to this bureaucratic malaise. It is time for Congress to give the flying public our most experienced aviators and these aviators a chance to earn a living in their chosen profession.

The best safety device on our Nation’s airliners is an experienced pilot!

SOUTHWEST AIRLINES CO.  
 Washington, DC, July 27, 2005

Hon. CONRAD BURNS,  
 Chairman,  
 Senate Subcommittee on Aviation,  
 Commerce, Science, and Transportation Committee,  
 Washington, DC.

Dear Mr. Chairman,

On behalf of Southwest Airlines, I request that this letter and the attached legal brief be made a part of the formal record for the July 19th hearing, convened by the Senate Subcommittee on Aviation to consider the FAA's controversial "Age 60" Rule. The Age 60 Rule requires all commercial pilots employed by Part 121 air carriers to retire at the age of 60, regardless of individual pilot abilities or health conditions.

The attached brief was filed with the U.S. Supreme Court as a "Friend of the Court" in the case of *Butler, et al. v. Federal Aviation Administration*. The Petitioners in the *Butler* case challenged the FAA's rigid application of the Age 60 rule.

As is more fully explained in the brief, Southwest Airlines maintains that the Age 60 rule, coupled with the FAA's practice of automatically denying all pilot requests for exemptions regardless of merit, is arbitrary and unfair to our individual pilots, and it is economically harmful to our company. Exemptions for physically and mentally qualified pilots from the Age 60 Rule should be allowed to accomplish the FAA's dual statutory mandates of maximum safety and optimal efficiency in United States commercial aviation.

We appreciate the Subcommittee's consideration of this important issue. Please feel free to contact us if you have any questions.

Sincerely,

THOMAS B. CHAPMAN,  
*Legislative Counsel, Government Affairs*

cc: Captain Joseph "Ike" Eichelkraut, President, Southwest Airlines Pilots' Association

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NO. 04-1233—IN THE SUPREME COURT OF THE UNITED STATES

*Dallas E. Butler, et al.*, Petitioners, v. *Federal Aviation Administration*, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
 FOR THE DISTRICT OF COLUMBIA CIRCUIT

Brief *Amicus Curiae* of Southwest Airlines Co. In Support of Petitioner

Robert W. Kneisley, Counsel of Record, Southwest Airlines Co.  
 Deborah Ackerman, Vice President/General Counsel.  
 Attorneys for *Amicus Curiae*, Southwest Airlines Co.

This *amicus curiae* brief is submitted on behalf of Southwest Airlines Co.<sup>1</sup> Petitioners and Respondent have consented to the filing of this *amicus curiae* brief, as indicated by the letters submitted with the filing of this brief.

**Interest of *Amicus Curiae***

Southwest Airlines Co. (hereafter "Southwest" or "Southwest Airlines"), the largest commercial airline in the United States in terms of passengers boarded, provides point-to-point, low-fare service to 60 cities in 31 states. In operation since 1971, Southwest currently serves more than 70 million passengers annually with a fleet of over 400 Boeing 737 aircraft operating approximately 2,900 flights daily. Headquartered in Dallas, Texas, Southwest has approximately 31,000 employees nationwide and has one of the best overall customer service records in the U.S. airline industry. With annual revenues exceeding \$6,500,000,000 in 2004, Southwest is a Fortune 500 company and one of the few profitable U.S. airlines.

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<sup>1</sup>This brief was not authored in whole or in part by counsel for a party. See Sup. Ct. R. 37.6. It was authored by in-house counsel for Southwest Airlines Co. In addition, no person or entity, other than Southwest Airlines Co., its members, and its counsel, made a monetary contribution to the preparation or submission of the brief.

Southwest is directly impacted by this case because it employs over 4,500 pilots, many approaching the age of 60. In fact, Michael L. Oksner, a Petitioner in this case, was recently forced to retire from Southwest Airlines when the Federal Aviation Administration (FAA) denied his petition for an exemption from the “Age 60 Rule.” That rule, codified at 14 CFR §121.383(c), requires pilots operating under Part 121 of the FAA’s regulations (*i.e.*, virtually all U.S. commercial airline pilots) to retire on their 60th birthday.

The direction and authority to evaluate this case and to file an *amicus curiae* brief herein came from Herbert D. Kelleher, co-founder and Executive Chairman of the Board of Southwest Airlines.

#### **Summary of Amicus Argument**

Southwest Airlines urges the Supreme Court to grant *certiorari* as requested by the Petitioners in this case, *Butler, et al. v. Federal Aviation Administration, et al.*, D.C. Cir. No. 03-1386 (September 24, 2004). The Petitioners challenge the FAA’s rigid application of its Age 60 Rule, which requires all commercial pilots employed by Part 121 air carriers to retire at the age of 60, regardless of individual pilot abilities or health conditions. The current Age 60 Rule was adopted by the FAA 45 years ago, and is based on obsolete data that has been superceded and refuted by more recent medical findings. This rule, coupled with the FAA’s practice of automatically denying all pilot requests for exemptions regardless of merit, is arbitrary and injurious to Southwest Airlines. Exemptions for physically and mentally qualified pilots from the Age 60 Rule should be allowed to accomplish the FAA’s dual statutory mandates of maximum safety and optimal efficiency in United States commercial aviation. The court below erred in acceding to the FAA’s argument that the case should not even be heard on the merits.

#### **Amicus Argument**

##### *I. The FAA’s Application of the Age 60 Rule Without Consideration of Individual Pilot Abilities, Health Conditions, or Current Medical Data Is Not Justified*

The FAA’s practice of automatically denying all pilot requests for exemption from the Age 60 Rule is not medically justified. The mandatory retirement rules for pilots were established in 1959—45 years ago. Today, FAA data shows that pilots over age 60 are as safe as, and in some cases safer than, their younger colleagues. For example, the FAA released the Hilton Study in 1993, which stated “the data for all groups of pilots were remarkably consistent in showing a modest decrease in accident rate with age [and] no hint of an increase in accident rates as pilots near age 60.”<sup>2</sup> In addition, the National Institute of Aging stated, in 1981, that “the Age 60 Rule appears indefensible on medical grounds” and “there is no convincing medical evidence to support age 60, or any other specific age, for mandatory pilot retirement.”<sup>3</sup> Both medical technology and medical services, as well as the aging process itself, have dramatically improved since 1959. Southwest Airlines is familiar with, and agrees with, these medical studies which have concluded that there is no current health justification for automatically grounding all commercial airline pilots upon turning age 60.

Captain Joseph “Ike” Eichelkraut, President of Southwest Airlines Pilots’ Association, and a pilot with 25 years of experience flying both military and commercial aircraft, testified on the Age 60 Rule before the Senate Special Committee on Aging on September 14, 2004.<sup>4</sup> His testimony explains the many safeguards that are already in place to ensure pilots of all ages are healthy and medically fit to fly:

The FAA already has the ideal mechanisms in place for ensuring safe pilots at any age . . . To retain my license and fly for Southwest Airlines, I must pass semi-annual flight physicals, administered by an FAA licensed medical examiner, that include an annual EKG. I must also demonstrate complete knowledge of safe piloting skills, systems and procedures, and semiannual check rides and advanced simulators.

Pilots must also successfully pass semiannual simulator training and flight checks designed to evaluate the crewmember’s ability to respond to various aircraft emergencies and/or competently handle advances in flight technology and the Air Traffic Control environment . . . There is no greater test of cognitive

<sup>2</sup> Hilton Systems, Incorporated. Kay et al. (1994).

<sup>3</sup> 149 Cong. Rec. 63, S5607 (April 30, 2003) (Statement of Senator Inhofe (for himself, Mr. Stevens, and Mr. Burns) on the Introduction of S. 959, Bill to Abolish the FAA’s Age 60 Rule).

<sup>4</sup> *A Fresh Look At Mandatory Retirements: Do They Still Make Sense? Hearing Before the Senate Special Comm. on Aging*, 108th Cong., 2004 WL 2052540 (F.D.C.H.) (Statement of Captain Joseph “Ike” Eichelkraut, President, Southwest Airlines Pilots’ Association).

ability and mental dexterity than these simulator rides . . . The 59 year old Captain arrives at this point in his career having demonstrated successful performance following years of this kind of scrutiny. FAA studies have verified the superior level of safety exhibited by this senior captain.

The documentary evidence—disclosed in the record of this case—reveals that the FAA’s automatic denial of all age exemptions has no tangible safety purpose. The FAA itself even granted exemptions from the Age 60 Rule in the early 1990s to commercial pilots of foreign carriers. Because the undistorted data of pilot performance shows that older, more experienced pilots have excellent safety records, it clearly is in the interest of both the airlines and their passengers to allow qualified, medically-certified pilots to fly beyond age 60.

*II. The FAA’s Inflexible Application of the Age 60 Rule Undermines U.S. Airline Economics and Disserves the Traveling Public.*

The 1950s-era Age 60 Rule, coupled with the FAA’s rigid implementation of it, arbitrarily deprives Southwest Airlines of some of its best pilots at the peak of their careers. Southwest, which employs over 4,500 highly-skilled professional pilots, believes that the arbitrary rejection of all age exemption requests disserves the public interest by depriving commercial airlines of leadership and experience in the cockpit. This inflexible approach inhibits the industry from achieving maximum safety as well as optimal efficiency in passenger airline operations. The flight experience and training accumulated over the career of a professional pilot approaching the age of 60, along with the investment in training by that pilot’s airline employer such as Southwest, is enormous. Commercial pilots have the potential for years of safe, productive aviating ahead of them beyond their 60th birthday. Many airlines could operate more efficiently, while maintaining the highest standards of safety, if qualified pilots were allowed to continue to fly beyond age 60.

Southwest Airlines Captain Michael L. Oksner, one of the 12 Petitioners in this case, was forced to retire on his 60th birthday, April 5, 2004, because of the FAA’s denial of his individual Age 60 exemption request. Captain Oksner’s safety performance and medical records were unblemished. Southwest believes that he should have been granted an exemption by the FAA to continue flying. The Petitioners in this case, including Captain Oksner, should have their requests for exemption considered on the merits, not arbitrarily denied by the FAA. The Agency should be required to reach its decision on such exemption requests based on the safety performance and medical records of the individual pilots, not on an arbitrary, out-dated standard that the FAA imposes on all pilots regardless of individual abilities. Accordingly, we urge the Court to grant *de novo* review of the Petitioners’ case, and require the FAA to follow a reasoned standard of individual consideration of Age 60 Rule exemption requests, pursuant to the Agency’s statutory power to grant exemptions from its regulations when in the public interest (49 U.S.C. § 44701(f)).

Moreover, the FAA has a statutory duty to consider exemptions in light of paramount safety requirements in air commerce, pursuant to 49 U.S.C. § 40101(a)(1). Without lessening safety, the FAA also has a duty to consider the economic health and efficiency of the Nation’s air carriers pursuant to 49 U.S.C. §§ 40101(a)(6)(A) (the FAA shall consider it in the public interest “to encourage efficient and well-managed air carriers to earn adequate profits . . .”); and 40101(a)(7) (it is in the public interest for FAA to develop and maintain “a sound regulatory system that is responsive to the needs of the public . . .”). Southwest Airlines’ analysis of the issue has concluded that safer and more efficient operations will result from reasoned consideration—instead of arbitrary denial—of age exemption requests. Therefore, Southwest Airlines believes that the Petitioners’ case must be heard, for the sake of both the health of U.S. commercial aviation and the safety of the flying public.

The FAA’s arbitrary no-exemptions policy for commercial airline pilots should be ended, consistent with the public interest in air safety, because it serves no safety purpose. Pilots of smaller aircraft such as those operating under Parts 91 and 125–137, general aviation pilots, and certain test pilots are allowed to fly beyond age 60. In addition, at least 24 nations allow pilots to fly commercial aircraft past age 60.<sup>5</sup> These pilots share the same airways and runways with the large U.S. passenger airlines operating under Part 121. The safe performance of these pilots and others worldwide confirms that the FAA’s asserted claim of a safety basis for its no-exemptions policy for Part 121 pilots is unfounded.

<sup>5</sup>A *Fresh Look At Mandatory Retirements: Do They Still Make Sense? Hearing Before the Senate Special Committee on Aging*, 108th Cong., 2004 WL 2052541 (F.D.C.H.) (Statement of Russell B. Rayman, MD, Executive Director of the Aerospace Medical Association).

### **Conclusion**

For the foregoing reasons, Southwest Airlines urges the Supreme Court to grant *certiorari* to the Petitioners in this case.

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PREPARED STATEMENT OF BERT M. YETMAN, PRESIDENT,  
PROFESSIONAL PILOTS FEDERATION

### **Introduction**

The Professional Pilots Federation (PPF) has, since being established in 1991, represented pilots encumbered by FAR 121.383(c), known as the Age 60 Rule. This Federal Aviation Regulation forces the safest, most experienced pilots from our airline cockpits at 59 years, 364 days, regardless of health or competence. Although the Federal Aviation Administration has held the regulation to be a "safety rule," the evidence has shown that the Rule was promulgated as an economic favor to the airlines. Safety was the only "fortress" which would allow such a Rule to endure for 45 years. 44 or more nations have eliminated age 60 as a pilot retirement age and have no age limit, or 65, relying on medical and practical testing (simulator and en route checks). They have experienced no problems with the over-60 pilots.

### **Airline Crisis**

No one would deny that the American airline industry is suffering one of its worst crises ever. Many familiar airlines have disappeared. Still others are fighting for their very existence, such as legacy carriers US Airways, United Airlines and Delta. American Airlines is struggling to keep its head above financial waters. A 1993 study showed one of these carriers, now in bankruptcy, would save more than \$53,000,000 for each year the age Rule was extended, mostly in training costs for upgrading to replace the retiring captain.

Through collective bargaining agreements, pilots salaries are no longer a factor in the economic maintenance of the Age 60 Rule. After 12 years, a pilot has reached the top of the seniority pay increase scale. Equipment changes and contractual negotiations are his only salary increases. The single economic reason for implementation of an Age 60 Rule has gone the way of the dinosaur.

### **Airline Pensions**

Employee pensions have been hard hit by airline management's striving to cut costs. Pilot pensions, in particular, have been the hardest hit. Employee concessions, negotiated over the past few years, have not been enough to satisfy airline financial losses. Airlines entering bankruptcy are defaulting on underfunded pension plans, in turn placing the substantial financial burden on the Pension Benefit Guaranty Corporation (PBGC). Even this is not an assurance of a comfortable retirement, certainly not the retirement expected after many years of faithful airline employment. In some cases pilots are expected to receive  $\frac{1}{3}$  or less of their anticipated pension, and that may be reduced further by the PBGC policy of reducing payments for early retirement, which pilots are forced to take upon reaching age 60. Those closest to retirement are in the worst position, with no time to recoup losses even if they were allowed to continue their careers. A total restructuring of retirement planning is necessary for those retirees, with the selling of homes, scaling down of living standards, acquiring medical coverage, the expenses of college age children, etc.

Social Security does not help airline pilots at age 60 retirement. In fact they will lose benefits for each quarter year they fail to contribute. In other words, after many years of contributing at the highest possible level, their benefits will decline for each year of noncontributing until Social Security begins. And, of course, Medicare is unavailable until reaching 65. At age 65, that would be 20 quarters of reduced benefit, or hundreds of dollars each month. The only solution to that problem is to find alternate means of work. Not an easy task at age 60.

### **Conclusion**

The answer to this 45-year-old antiquated, illogical, and unfounded problem of FAA forced retirement for pilots is simple. Follow Europe, Australia, Japan, and the rest of the world (the USA used to lead) by allowing pilots to continue their careers at least until full Social Security and Medicare benefits begin, presently age 65. If they choose to retire at 55 or 60, it should be allowed without unnecessary restrictions or undue loss of benefits. Certainly present medical and proficiency standards would still apply.

According to the 1993 study\* titled *Economic Impact of the FAA's "Age 60 Rule"*, if pilots were allowed to continue beyond their 60th birthday, the realized annual savings at one major carrier, now in bankruptcy, would have been:

*Real Permanent Savings:*

Staffing levels: \$2,251,320.00  
Pay differentials: \$16,380,000.00

*Temporarily Deferred Expenditures:*

Training costs: \$34,579,124.00

*Savable/Deferrable in 1993: \$53,210,444.00*

Those savings would have easily exceeded \$250 million over 5 years for just this one carrier, largely through savings in transition training costs—which are available to most carriers.

The Professional Pilots Federation thanks you for the opportunity to allow pilots to be part of the solution, not the problem. We wish to continue supporting our airlines. We wish to continue contributing to Social Security. We wish to continue to bolster the economy of this great country.

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PREPARED STATEMENT OF AARP

AARP appreciates the opportunity to present its views regarding mandatory retirement rules for airline pilots for the record of the July 19 hearing, before the Senate Subcommittee on Aviation.

With more than 35 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.

Protecting and expanding older workers' rights was a founding principle of AARP. Today, AARP is the leading organization advocating for older workers at the Federal and state court levels, before Congress and state legislatures, and before enforcement agencies. AARP works closely with other organizations seeking fair treatment for those in the workforce. In addition, we work with employers to develop policies that enhance opportunities for, and eliminate discrimination against, the ever-increasing number of workers who stay on the job past age 55.

AARP is pleased that the Subcommittee is holding this hearing to take a look at the outdated policies surrounding mandatory retirement for pilots. Elimination of forced retirement based on age is *long* overdue, and it is AARP's hope that today's hearing will lead to the speedy enactment of legislation to end arbitrary age limits for pilots who must retire at age 60.

Discrimination on the job is one of the most common problems faced by older persons today. Employment discrimination based on age, like that based on race and sex, is the result of unfair stereotypical assumptions that ignore an individual worker's ability. Notwithstanding the Age Discrimination in Employment Act (ADEA), age-based employment discrimination remains prevalent. Older workers face sharply limited employment opportunities. In addition to a rapidly increasing unemployment level among older persons, labor statistics indicate that among persons looking for work, older persons have longer periods of unemployment and more difficulty finding jobs.

Congress passed the ADEA, in 1967, to eliminate discrimination on the basis of age and to promote employment of older persons because of an individual's ability to carry out a job's duties. This landmark employment law did not affect airline pilots who are subject to a 1959 FAA rule, requiring they stop flying at age 60. This 46-year-old rule continues to be in effect, even though there is no sound justification for it.

The most frequently articulated argument to justify continuing the age-based employment discrimination for commercial pilots is medical. This argument does not hold water, however. Medical evidence consistently shows that chronological age is a poor determinant of ability, and that capability varies among individuals independent of age. The medical and scientific means exist to test individual fitness for jobs. Regular fitness testing is not a new concept; it is already in force for airline pilots. They are subject to periodic medical certification and successful completion of flight simulator exercises.

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\* *Economic Impact of the FAA's "Age 60 Rule"*, S.D. Woolsey, 1993.

Although the FAA has statutory authority to grant exemptions to the Rule in the public interest, it has never done so. Challenges to the age 60 rule, and to the FAA's refusal to grant any exemptions from it, have been unsuccessful over the years. Perhaps this year the arbitrary age limit will be overturned in favor of sound policy recognizing that years of experience, good judgment, and conformance with objective performance and medical criteria are much better indicators of a pilot's competence. AARP supports S. 65, sponsored by Senator James M. Inhofe and its companion bill. H.R. 65, sponsored by Representative Jim Gibbons. Both bills would link pilot retirement with the normal retirement age under Social Security. S. 65 and H.R. 65 take an important step toward eliminating the mandatory retirement age for pilots.

The current age cap on employment for commercial airline pilots is contrary to the principles of equal opportunity and treatment. Furthermore, it is a waste of valuable skills and experiences. Federal law should not deny capable individuals the right to work based on out-dated, invalid, and discriminatory assumptions about older workers. Mandatory retirement based on age should be eliminated—not just for those whose employment situation is addressed by the hearing today—but for anyone who is subject to arbitrary age limits.

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PREPARED STATEMENT OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
AIRLINE DIVISION

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 at 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 phaseout 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 Aerospace Medical 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 Air Line 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 rule-making 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. Ouesada*, 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; and 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, and 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 percent 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> 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 Aviation 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, and 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 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 toward 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.

<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 do not specifically identify air transport pilots, the information does not lend itself to direct comparison with the referenced FAA studies.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
CAPTAIN RALPH HUNTER

*Question 1.* If a pilot can meet the same requirements when they are over the age of 60 that they met when they were in their 30s, 40s, or 50s, why should he or she no longer be able to operate a commercial passenger aircraft?

Answer. The current medical and performance standards applied to 30, 40, and 50-year old pilots do not provide an adequate test for the physical and cognitive declines due to advancing age. The current testing regime was never designed for this task, and it would be a mistake to assume that it was. In fact, *the central issue* of the entire Age 60 Rule debate is that the current state of medical and performance based testing does not provide a safe, reliable, and comprehensive method to screen for the effects of aging. This salient fact is even acknowledged by the opponents of the Age 60 Rule since they are merely requesting to extend—and not eliminate—the mandatory retirement rule.

Requiring an individual to retire from a chosen profession due to the inevitable impact of aging should never be taken lightly. While aviation safety considerations demand some method of mandatory pilot retirement, science and technology have not yet provided us with the proper tools to identify high risk pilots on an individual basis. Because of the absence of effective screening tools, virtually all of the participants in this discussion agree that some chronological age limit is necessary.

The opponents of the current regulation cannot point to any existing test or screening method that is supported by objective data, and, which would provide a safe and effective replacement for the Age 60 Rule. By arbitrarily increasing the retirement age in absence of such a method, Congress would be exposing the traveling public to an increased and unknown level of risk. Further research is warranted before making any significant change to this important regulation.

*Question 1a.* Would you support additional and more stringent testing and training for pilots 60 years of age that would indicate whether they are able to safely operate a commercial airliner?

Answer. The Allied Pilots Association strongly supports additional research into the effects of aging on pilot health and performance. Both the FAA and the Aerospace Medical Association (AsMA) have cited the critical need for this research in their testimony to the Committee. While numerous studies of pilots have unquestionably shown that aging inevitably degrades performance and increases the risk of incapacitation, no one has yet been able to establish measurable criteria or reliable tests to identify when the level of risk reaches an unacceptable level.

The supporters and proponents of the Age 60 Rule have highlighted a great philosophical divide on how to proceed with any further research in this area. The supporters of the Age 60 Rule advocate the time-tested technique of establishing safe practices and procedures with objective data prior to any implementation in commercial aviation. On the other hand, the opponents of the Age 60 Rule are, in effect, asking Congress to conduct an experiment on the traveling public. By raising the mandatory retirement age first and collecting data later, commercial airline passengers would be exposed to an unknown level of risk. This is no different than introducing a new aircraft, engine, or system into commercial airline service in the absence of adequate testing based upon a sincere belief that safety would not be compromised. This approach is simply not acceptable in aviation.

If further research on aging actually produces safe and reliable medical tests, or performance measurements that conclusively screens for the detrimental effects of aging, then APA would support its use in conjunction with a change to the manda-

tory retirement age. However, such tests do not currently exist, nor are they projected to exist in the near future.

*Question 2.* How many pilots does the Age 60 Rule affect within your airline or association each year?

Answer. Over the next 5 years, approximately 1,950 pilots (about 20 percent of American's active pilots) are expected to retire due to the Age 60 Rule.

*Question 2a.* Of these pilots who are no longer allowed to fly commercial passenger aircraft, are many interested in continuing as a pilot?

Answer. While we have not asked this specific question of this particular group of pilots, it is important to point out that every commercial pilot was aware of the Age 60 Rule when they were hired at their airline. I would also strongly caution against altering an important safety-related rule based upon individual preferences. Maintaining or increasing the current level of aviation safety must be the primary test by which any new regulation is judged. In fact, many of the current FAA regulations governing pilot qualifications, responsibilities, hours on duty, and rest requirements exist to counter the very real personal and economic pressures to operate aircraft in an unsafe manner. Safety concerns were the original basis of the Age 60 Rule, and in the absence of compelling evidence for change, the Federal Government's continuing commitment to aviation safety demands the retention of this important regulation.

*Question 3.* Do many pilots continue working for your airline (or airline you represent) in a different position, or do most enter retirement?

Answer. Most pilots that retire due to the Age 60 Rule do not continue employment at American Airlines. We do not compile data on pilot activities after retirement from American, but we do know anecdotally that some of them do go on to other careers in and out of aviation.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
CAPTAIN DUANE E. WOERTH

*Question 1.* If a pilot can meet the same requirements when they are over the age of 60 that they met when they were in their 30s, 40s, or 50s, why should he or she no longer be able to operate a commercial passenger aircraft?

Answer. The current requirements, by definition, assume that an airline pilot will not fly past age 60, so they do not attempt to identify many of the physical manifestations of the aging process, whether that assessment is done at age 30 or age 59. In the current system, there is no testing required by the FAA, at any age, which would serve to identify cognitive degradation or an increased likelihood of age-related debilitating illness. The bottom line is that the current rule has proven to be safe for over forty years and there is no medical evidence, nor any medical testing protocol, that would suggest that safety would be improved by changing the Rule.

*Question 1a.* Would you support additional and more stringent testing and training for pilots 60 years of age that would indicate whether they are able to safely operate a commercial airliner?

Answer. As I stated in my testimony, ALPA did a comprehensive poll of our members and specifically addressed this issue. Fewer than one-third of our members would support any sort of more stringent medical, proficiency, or operational requirements for pilots over the age of 60.

*Question 2.* How many pilots does the Age 60 Rule affect within your airline or association each year?

Answer. The best data we have is a comprehensive study of Northwest pilots retiring since 1993. I believe that study is representative of most, if not all, U.S. ALPA carriers, and it shows that about 57 percent of retiring pilots are retiring because they have reached age 60. The other 43 percent retire for a variety of reasons, including medical retirement and elective early retirement.

*Question 2a.* Of these pilots who are no longer allowed to fly commercial passenger aircraft, are many interested in continuing as a pilot? Do many pilots continue working for your airline (or airline you represent) in a different position, or do most enter retirement?

Answer. We don't have specific data on what our members do after they leave active airline pilot service, but I know many of them continue in aviation. Some fly for corporate or FAR Part 135 operators, which, incidentally, is a category of operations that has an accident rate almost ten times higher than FAR Part 121 airline operations. Still others take non-flying positions at airlines.

*Question 3.* What were their main reasons for their opposition to a possible rule change?

Answer. Safety. The Age 60 Rule recognizes that subtle declines in cognitive and neuropsychological functions occur during the aging process, and have a potentially adverse impact on the ability of pilots to perform at maximum safety. Moreover, medical science has still not devised a reliable testing protocol that can accurately screen pilots for possible exemption from this safety standard. Until such technology exists, the Age 60 Rule continues to prove both reasonable, and within an acceptable range of risk for commercial air transportation operations. Piloting is a demanding profession, and one of the highest threats to aviation safety is fatigue. Sixteen-hour domestic duty days—even longer with more trans-Pacific international operations—are facts of life for airline pilots. Irregular shifts, all-night operations, and significant circadian rhythm challenges all contribute to decreasing the margins of safety. After what ALPA pilots have been through over the last several years—terrorism, bankruptcy, furloughs, pay cuts, pension terminations, and work rule changes—a clear and sound majority still believe that safety considerations are entirely too important to set aside the Age 60 Rule. As stated at the hearing, this rule should only be changed if it can be guaranteed—beyond all reasonable doubt—that raising the operational age limit for commercial airline pilots will not jeopardize safety standards.

*Question 3a.* Did pilots of all ages oppose the ruling equally?

Answer. No. Age is a factor that greatly affects the position pilots take on the Age 60 Rule. Pilots under the age of 40 opposed changing the Rule by nearly a three-to-one margin (74 percent to 24 percent). In the 41 to 45 grouping, 31 percent said “yes” to an Age 60 Rule change, and 68 percent said “no.” Among pilots age 46–50, 40 percent said “yes,” and 59 percent said “no” to changing the Rule. Additionally, had the nearly 6,000 furloughed ALPA pilots—most of whom fall in these age groups—been included in the polling, support for maintaining the Age 60 Rule would have been even higher.

From this point on, however, the percentages reverse. Among pilots aged 51 to 55, 61 percent indicated they want a rule change, while 37 percent were opposed. The strongest support for a change came from pilots aged 56–60, with 80 percent favoring a change and 19 percent opposed.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
CAPTAIN JOSEPH “IKE” EICHELKRAUT

*Question 1.* If a pilot can meet the same requirements when they are over the age of 60 that they met when they were in their 30s, 40s, or 50s, why should he or she no longer be able to operate a commercial passenger aircraft?

Answer. Southwest Airlines and the Southwest Airlines Pilots’ Association strongly support S. 65, which would end the Age 60 Rule, and allow pilots to retire when they are eligible for their full Social Security Benefits. The Aerospace Medical Association and the International Civil Aviation Authority (ICAO) have both said that there is insufficient medical evidence to support an age-based rule. We believe that pilots should be able to work as long as they are able to pass an FAA Class 1 Medical exam, and meet all the safety criteria and standards in their check rides and simulator tests. If an age restriction is put in place due to political reasons, we feel strongly that, at a minimum, any limit should allow pilots to work until they are eligible for full Social Security and Medicare benefits. This is especially important in the current environment in which airlines are freezing, limiting, or terminating the defined benefit plans that were promised contractually to their pilots. It is equally important for airlines, such as Southwest, offering defined contribution benefits to their pilots so that they may maximize those benefits and their Social Security contributions.

*Question 1a.* Would you support additional, and more stringent testing, and training for pilots 60 years of age that would indicate whether they are able to safely operate a commercial airliner?

Answer. The FAA has safety standards that are the envy of the world. ICAO, in its recent report, recommended that member countries adopt a maximum age restriction of 65 (up from 60) in multi-crew operations, and essentially suggested that the world adopt the FAA standard as the suggested regime of medical and cognitive testing. We know that the checks and balances now in the FAA system are self-purging and believe they are a sufficient test of any pilot’s capabilities. The Class 1 medical exam, which must be passed every 6 months, and the annual EKG test, is a sufficient medical screen to detect health concerns that may arise and create issues in the cockpit. Furthermore, the semi-annual simulator check rides and ran-

dom in-flight check rides, by check airmen, are an excellent screen of piloting skills and cognitive ability at any age.

*Question 2.* How many pilots does the Age 60 Rule affect within your airline or association each year?

Answer. Southwest, being a relatively new airline has not had to deal with many retirements until just recently. In the past 5 years, SWA has experienced only a combined total of 281 pilot retirements, of which, 86 percent stayed beyond their 59th birthday. We currently have 129 active members aged 59 or older, and this will raise the percentage next year to over 92 percent.

*Question 2a.* Of these pilots who are no longer allowed to fly commercial passenger aircraft, are many interested in continuing as a pilot? Do many pilots continue working for your airline (or airline you represent) in a different position, or do most enter retirement?

Answer. Most pilots at SWA who are forced into retirement at 60 would prefer to stay, whether for personal or financial reasons, e.g.—a defined contribution retirement plan which grows both with investments and with added (401k) contributions. Although we do not track the employment activities of retirees, we know that most go on to take jobs in other parts of aviation, whether it is flying for overseas carriers that don't have the restrictive FAA Age 60 rule, or in other parts of commercial aviation that do not require early retirement. There are only 2 management jobs per year, on average, available to Southwest pilots over 60, so this does not represent a substantial employment opportunity for pilots over 60 at our airline.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
CAPTAIN AL SPAIN

*Question 1.* If a pilot can meet the same requirements when they are over the age of 60 that they met when they were in their 30s, 40s, or 50s, why should he or she no longer be able to operate a commercial passenger aircraft?

Answer. JetBlue believes that all pilots should be judged on their individual ability and thus, if at age 60 or 61, just as at age 40 or 50, a pilot is judged competent to fly and medically able to fly, he or she should not be prohibited by law from such flying. The tools are already in place to ensure appropriate standards of safety, medical testing and flight performance for all pilots, regardless of age.

*Question 1a.* Would you support additional and more stringent testing, and training for pilots 60 years of age that would indicate whether they are able to safely operate a commercial airliner?

Answer. Consistent with the answer above, current requirements for Recurrent Ground School, twice-yearly simulator training and check rides, and annual line checks prove the pilots flying and cognitive abilities for the specific aircraft and operation. Maintaining a Class I FAA Flight Physical requires a complete physical two times per year along with an annual EKG.

*Question 2.* How many pilots does the Age 60 Rule affect within your airline or association each year?

Answer. It would vary considerably from year to year, and depends on future hiring trends. However in the near future we would not see more than five (5) to eight (8) pilots per year leaving the cockpit due to the Age 60 Rule.

*Question 2a.* Of these pilots who are no longer allowed to fly commercial passenger aircraft, are many interested in continuing as a pilot? Do many pilots continue working for your airline (or airline you represent) in a different position, or do most enter retirement?

Answer. At JetBlue, all pilots impacted by the Age 60 Rule, thus far, have desired to keep flying. In fact, each of the pilots continues to work at JetBlue and most still do fly tech ops, ferry, or other flights that do not carry revenue passengers, though many of the flights do carry non-revenue passengers. Additionally, many pilots who are approaching age 60 are currently actively searching for jobs. Ironically, if the retirement rule is not changed, these pilots will most likely be flying passengers in business jets, or even business versions of commercial airliners, within the U.S. airspace system, and consistent with the rules of the same FAA that bars their flying commercial airlines.

ATA HOLDINGS CORP.  
*Indianapolis, IN, July 19, 2005*

Hon. CONRAD BURNS,  
 Chairman,  
 Senate Subcommittee on Aviation,  
 Commerce, Science, and Transportation Committee,  
 Washington, DC.

Dear Chairman Burns:

I am writing this on behalf of the pilots of ATA Airlines, Inc. (ATA); a company I founded thirty-two years ago . . . and was the first pilot.

Our pilots recently voted to oppose the mandatory Age 60 retirement law; both in Congress and through their union. They have my unconditional support on this issue. The Age 60 Law was, is and will forever be, capricious and arbitrary. From the executive level of airline management, as well as from the cockpit, I know there is no medical issue justifying it; there never has been.

This law, 14 CFR 121.383(c), is simply age discrimination. It can be defined in other terms.

You will have before you H.R. 65, sponsored by the Honorable Jim Gibbons, and co-sponsored by an impressive list of bipartisan supporters. H.R. 65 will move the mandatory retirement age for airline pilots back to 65. This is still discriminatory, but is at least a first step toward eliminating the age factor entirely, and ultimately judging individual pilots on their ability and performance.

Please support the passage of H.R. 65, its Senate counterpart, S. 65 and any process that will eliminate this arcane rule with the full weight of your most esteemed office.

Sincerely,

GEORGE MIKELSONS,  
*Chairman, President / Chief Executive Officer.*

STATEMENTS IN SUPPORT OF S. 65 AND H.R. 65 \*

Captain Roger Cox, Tempe, AZ.  
 Donald W. Wurster, First Officer, Brownsburg, IN.  
 Paul Turner III, Charlotte, NC.  
 Captain George Simmons, Charlotte, NC.  
 Captain Michael Oksner (Retired), Nassau Bay, TX.  
 Captain Billy Walker, Phoenix, AZ.  
 Captain Pete Russo, Ph.D., System Chief Pilot, JetBlue Airlines.  
 Bob Lavender, Provo, UT.  
 Les Fuchs, Atlanta, GA.  
 Bob Franklin, Federal Way, WA.  
 Captain David J. McKennan, Cooper City, FL.  
 Captain Horace Burnett, Amarillo, TX.  
 Robin Wilkening, M.D., M.P.H., Annapolis, MD.  
 Captain Robert Lawrence Cabeen, St. Charles, Illinois.  
 Captain and Mrs. Frederick W. "Bill" Siegert, Elburn, IL.  
 Robert R. Perry, EMB-120 Check Airman and FAA Designated Examiner,  
 Yarmouthport, MA.  
 Ramon Navarro, Gary L. Cottingham.

STATEMENTS AGAINST S. 65 AND H.R. 65 \*

Jack Heidel, Tennessee.



\*The information and attachments referred to have been retained in Committee files.