

Fact Sheet for the Chairman, Select
Committee on Aging, House of
Representatives

November 1989

AVIATION SAFETY

Information on FAA's
Age 60 Rule for Pilots



RESTRICTED—Not to be released outside the
General Accounting Office unless specifically
approved by the Office of Congressional
Relations.

547041

RELEASED



Resources, Community, and
Economic Development Division
B-236944

November 9, 1989

The Honorable Edward R. Roybal
Chairman, Select Committee on Aging
House of Representatives

Dear Mr. Chairman:

On March 22, 1989, you requested that we provide data on the Federal Aviation Administration's (FAA) regulation prohibiting individuals 60 years or older from piloting large commercial aircraft--commonly known as the "Age 60 Rule." As we agreed with your staff, we are providing information on (1) the history of the Rule; (2) exemption requests, including the number filed and granted; (3) the number of "special issuance" medical certificates granted to air transport pilots under the age of 60; and (4) studies on the Age 60 Rule. To supplement this information, we also are providing in appendixes I and II, a list of the major court cases FAA has identified that involve the Age 60 Rule.

In summary, we found that FAA has not changed its policy on the Age 60 Rule since its adoption 30 years ago. While the regulation has received the support of some members of the airline industry and the aeromedical field, opposition has resulted in legal challenges, studies on the medical validity of the Rule, and 67 petitions from pilots for exemption, none of which FAA has granted to date. Opponents allege, among other things, that FAA has been inconsistent in granting pilots exemption from certain medical requirements but not from the Age 60 Rule. In defending its policy, FAA states that the regulation is consistent with its mandate to promote the highest level of safety. Various groups have conducted studies on the Age 60 Rule, but according to FAA, none of these studies has identified an alternative that ensures the same level of safety. However, since controversy still surrounds the regulation, FAA plans to fund a study of the relationship between age and accident rates in fiscal year 1991.

FAA adopted the Age 60 Rule in 1959 because of the increasing number of older pilots and the potential effects this might have on public safety as the airline industry made the transition to turbojets. The Rule applies only to pilots flying large commercial planes, not to commercial pilots on small commuter aircraft (i.e., planes with fewer than 30 seats) or to private pilots. Section 1 provides additional details on the history of the Age 60 Rule.

According to existing FAA records, since the Age 60 Rule was adopted, 418 pilots have submitted 67 petitions requesting exemptions. With the exception of a few that are awaiting action, FAA has denied all petitions. The agency recognizes that the Rule imposes an arbitrary age for prohibiting individuals from piloting large commercial aircraft. However, according to FAA, it has been unable to specify alternative medical and performance standards establishing a physiological age--rather than a chronological age--that would afford a level of safety equal to that provided by the Age 60 Rule. Section 2 contains additional details regarding exemption requests.

Although FAA has not exempted anyone from its Age 60 Rule, in special circumstances it issues medical certificates to pilots with physical and psychological conditions that normally would be disqualifying. These certificates, known as "special issuances," are issued if FAA believes the medical conditions, such as cardiovascular disorders and recovered alcoholism, would not adversely affect these pilots' ability to fly safely. From 1960 through 1988, FAA issued 1,301 such certificates for class I medical certification, of which 65 percent, or 844, were for alcoholism and 23 percent, or 302, were for cardiovascular conditions. As of January 1, 1989, there were 605 active class I special issuances for alcoholism and 104 active class I special issuances for cardiovascular conditions. FAA estimates that there are approximately 40,000 active air transport pilots holding class I medical certificates. A medical certificate indicates that a pilot is medically fit to perform the duties authorized by the class applied for without endangering air safety. Class I medical certificates are required for air transport pilots who fly large commercial aircraft, although other types of pilots may also apply for them. Section 3 provides more information regarding special issuances.

FAA and others have conducted various studies on the Age 60 Rule. FAA concluded from these studies that the Rule was appropriate and should not be changed. Also, the National Institute on Aging, in a congressionally mandated study on the Age 60 Rule issued in 1981, was unable to determine any medical significance to age 60, but found that age-related changes in health and performance could adversely affect aviation safety. The Institute recommended that FAA retain the Age 60 Rule and undertake a program to collect the necessary medical and performance data in order to determine whether the Rule could be relaxed. Section 4 summarizes studies on the Age 60 Rule.

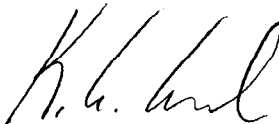
The Rule has been legally challenged, but the courts have upheld both the validity of FAA's implementation of the Rule and FAA's justification for not granting exemptions.¹ In a different context, airline employees have challenged some airline employment practices on the basis of age discrimination. Although the Age 60 Rule has been discussed in those cases, its validity under the Age Discrimination in Employment Act of 1967 has never been at issue.

The information in this fact sheet was obtained from FAA's Office of Aviation Medicine, Office of Flight Standards, and Chief Counsel's Office, Washington, D.C. Data on exemption petitions were obtained from the Office of Rulemaking and FAA's Public Docket Room. FAA officials informed us that these files on Age 60 Rule exemption petitions may be incomplete because of their age and former recordkeeping procedures. We reviewed all existing files available in those offices to compile our exemption data. The data on medical certification, medical certification exemptions, and special issuances were obtained from the Civil Aeromedical Institute in Oklahoma City, OK. Our work was conducted between May and August 1989.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from the date of this letter. At that time, we will provide copies to the Secretary of Transportation, the FAA Administrator, and other interested parties. If you have questions about this fact sheet, please contact me at (202) 275-1000.

Major contributors to this fact sheet are listed in appendix III.

Sincerely yours,



Kenneth M. Mead
Director, Transportation Issues

¹In a recent case, the 7th Circuit Court of Appeals remanded a petition for exemption to FAA because the agency had not set forth a sufficient factual or legal basis for denying the petition.

CONTENTS

	<u>Page</u>
LETTER	1
SECTION	
1	6
HISTORY OF THE AGE 60 RULE	
The Age 60 Rule	
Development of the Rule	
Challenges to FAA's Policy	
Current Status	
2	11
REQUESTS FOR EXEMPTION FROM THE AGE 60 RULE	
Procedures for Exemption Petitions	
FAA's Justification for Denying Exemption Requests	
Examples of Denied Petitions	
3	14
"SPECIAL ISSUANCE" MEDICAL CERTIFICATES	
Medical Certification	
Special Issuances	
4	17
STUDIES ON THE AGE 60 RULE	
FAA's Reexamination of the Medical and Scientific Validity of the Age 60 Rule	
NIA Study on the Age 60 Rule	
Steps by FAA in Response to NIA Recommendations	
APPENDIX	
I	20
LEGAL CHALLENGES TO THE AGE 60 RULE	
II	21
ADEA LITIGATION RELATED TO THE AGE 60 RULE	
III	22
MAJOR CONTRIBUTORS TO THIS FACT SHEET	
TABLE	
3.1	16
Special Issuances Granted to Applicants for Class I Medical Certificates	

ABBREVIATIONS

ADEA	Age Discrimination in Employment Act of 1967
ALPA	Air Line Pilots Association
ANPRM	advance notice of proposed rulemaking
BFOQ	bona fide occupational qualification
EEOC	Equal Employment Opportunity Commission
FAA	Federal Aviation Administration
GAO	General Accounting Office
ICAO	International Civil Aviation Organization
NIA	National Institute on Aging

SECTION 1

HISTORY OF THE AGE 60 RULE

THE AGE 60 RULE

The Federal Aviation Administration (FAA) imposes an upper age limit on pilots of large commercial aircraft regulated by 14 C.F.R. Part 121.¹ Commonly known as the "Age 60 Rule," 14 C.F.R. 121.383(c) prohibits individuals aged 60 years or older from serving as captain or cocaptain (first officer) of these aircraft.² Although the Rule is the responsibility of the Office of Flight Standards Services rather than the Office of Aviation Medicine, FAA's basis for the Rule is medical. FAA argued in 1959, and still argues, that certain physiological and psychological functions deteriorate with age and that it is not possible to predict accurately whether an individual might be suddenly incapacitated. FAA believes that the Rule is consistent with its responsibility mandated by the Congress to ensure ". . . the highest possible degree of safety in the public interest." Consequently, the Age 60 Rule has not been amended since it was issued on December 1, 1959, and became effective on March 15, 1960.

The Rule does not apply to commercial pilots who fly planes operating pursuant to 14 C.F.R. Part 135, which governs small aircraft that have a seating capacity of fewer than 30 passengers and a payload of less than 7,500 pounds. Most commuter and taxi operator aircraft fall within the purview of Part 135. Noncommercial pilots, such as private and student pilots operating under 14 C.F.R. Part 91, also are not subject to the Age 60 Rule.

The Rule does not prohibit pilots over the age of 60 from serving in other capacities with an airline, for example, as flight engineers, flight instructors, or pilots for small commercial aircraft operating under Part 135. For this reason, FAA does not view the Age 60 Rule as a mandatory retirement policy.

¹Part 121 applies to air carrier operations involving airplanes with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds. Pilots who fly planes covered by Part 121 operations must hold an air transport pilot certificate.

²Section 121.383(c) states that "no certificate holder may use the services of any person as a pilot on an airplane engaged in operations under this Part [121] if that person has reached his 60th birthday. No person may serve as a pilot on an airplane engaged in operations under this Part [121] if that person has reached his 60th birthday."

DEVELOPMENT OF THE RULE

The Age 60 Rule grew out of FAA's concern for public safety. According to FAA, the use of pilots aged 60 and over in air carrier operations presented a safety hazard. FAA further stated that certain important physiological and psychological functions progressively deteriorated with age, that significant medical defects attributable to this degenerative process occurred at an increasing rate as an individual grew older, and that sudden incapacity due to such medical defects became more frequent in any group reaching age 60. 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.

In determining this rule, FAA reasoned that accidents among older pilots, although not a problem at the time, could become one. In 1947, there were no pilots aged 60 or over serving on air carriers, but by 1959, there were 40, and FAA predicted that the number would increase significantly, to 250 pilots over the next 8 years.

Aging per se was not the cause of concern for FAA, but rather the increasing frequency of medical conditions likely to be associated with sudden incapacity or impairment of judgment, specifically heart attacks and strokes. Because FAA knew of no measurements to determine the extent of deterioration in physiological and psychological functions that comes with age, the agency ruled that a cut-off age was necessary.

Over the years, in response to public controversy and Congressional interest, FAA has periodically reexamined the Age 60 Rule to determine whether it could be amended or whether exemptions could be granted (see sec. 3 for more details on exemptions and sec. 4 for alternatives to the Age 60 Rule that FAA has proposed). The agency has consistently concluded, however, that no method or "psychophysiologic age index" adequately assesses the decrement in skill caused by individual age-altered physiological functions or their cumulative effect. Thus, while FAA recognizes that the Rule imposes an arbitrary age for prohibiting individuals from piloting large commercial aircraft, it has repeatedly rejected proposed amendments and exemptions to the Rule because of the lack of any viable alternative.

FAA also believes that the Rule does not violate the Age Discrimination in Employment Act of 1967 (ADEA), which forbids age discrimination in employment decisions. ADEA Section 4(f)(1) creates an exception to this statutory prohibition when "age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business." Although the Age 60 Rule has been discussed in a number of cases involving airline employment practices, including mandatory retirement for test

pilots and flight engineers, its validity under the ADEA has never been at issue. A list of these cases is in appendix II.

CHALLENGES TO FAA'S POLICY

When the Age 60 Rule went into effect, the reaction from the airline industry was divided. The Air Transport Association, representing the major air carriers, favored the Age 60 Rule and believed that it was a reasonable and judicious age limit. The Civil Aviation Medical Association also supported the Rule. The opponents, who argued the Rule was discriminatory, included the Aircraft Owners and Pilots Association, National Business Aircraft Association, and Air Line Pilots Association (ALPA). Such groups, as well as pilots affected by the Age 60 Rule, have challenged the regulation by legal, legislative, and other means.

Legal Challenges

After the Age 60 Rule was first promulgated, ALPA sued FAA,³ claiming that the Rule (1) was outside the rulemaking power of the Administrator; (2) could not be promulgated without a hearing, as required by either the Constitution or the Administrative Procedure Act; (3) was not reasonably related to safety concerns; and (4) was arbitrary. The Court of Appeals rejected all of the arguments and upheld the Rule's validity.

In addition, pilots have challenged FAA's policy of denying all requests for exemption from the Age 60 Rule. In the four Federal Courts of Appeals where this policy was tested, FAA's position was upheld. However, recently, in Aman v. FAA, 856 F.2d 946 (7th Cir. 1988), the Federal Court of Appeals for the Seventh Circuit vacated several exemption denials. It remanded these cases to FAA because FAA had "failed to set forth a sufficient factual or legal basis for its rejection of the petitioners' claim that older pilots' edge in experience offsets any undetected physical losses." On remand, FAA denied the exemption petitions, and the cases are pending in the Seventh Circuit Court of Appeals. The case history is discussed in greater detail in section 2. Appendix I contains a list of cases challenging the Age 60 Rule.

Public Hearings

ALPA, an opponent of the Age 60 Rule, requested that FAA hold public hearings on the issue. In October 1970 and March 1977, FAA held two public hearings to establish a basis for revocation of the Rule. Both times, the revocation request was denied. At the hearings, the Aerospace Medical Association and the Committee on

³ALPA v. Quesada, 182 F. Supp. 595 (S.D. N.Y. 1960), aff'd, 276 F.2d 892 (2d Cir. 1960), 286 F.2d 319 (2d Cir. 1961), cert. denied, 366 U.S. 962 (1961).

Aerospace Medicine of the American Medical Association supported the Rule.

Legislative Action

Opponents of the Rule have also sought legislative remedies. The House Select Committee on Aging held hearings on March 21, 1979, and the House Subcommittee on Aviation, Committee on Public Works and Transportation, subsequently held hearings on July 18 and 19, 1979. The result was Public Law 96-171, which directed the National Institutes of Health to conduct a yearlong study to determine whether mandatory retirement for certain pilots at age 60 or any other age was warranted. The National Institutes of Health assigned this study to the National Institute on Aging (NIA). Section 4 contains further information on the NIA study and FAA's response.

Age 60 Exemption Panel

One outcome of the hearings held by the House Select Committee on Aging in 1985 was the Age 60 Exemption Panel, comprising the Director of National Institute on Aging, a professor of medicine, and a professor of human factors engineering. The panel developed a medical and neuropsychological battery of tests, or protocol, that would be voluntary for pilots who wished to continue flying after age 59 and would identify those who were at high risk. The panel intended the data collected from these pilots to be used as a basis for further modification of the Age 60 Rule.

The protocol that was developed consisted of two parts: (1) a battery of medical evaluations--including medical (and smoking) history, total physical examination, blood pressure, chemical screen profile, urinalysis, chest x-ray, resting electrocardiogram, and exercise tolerance test--and (2) comprehensive flight proficiency tests, including a written test on specific aircraft systems and applicable information from FAA's regulations and Airman's Information Manual, and a flight simulator test of perceptual-motor skills and response rates.

FAA argued that the protocol did not establish a level of safety equivalent to that provided by the Age 60 Rule and was incapable of thoroughly determining the decline in physical and mental states that characterizes the aging process.

CURRENT STATUS

In 1980, ALPA, after fighting the Age 60 Rule for two decades, officially reversed its position and now supported the Rule, stating that no study to date reliably demonstrated which pilots over the age of 60 are medically fit to continue flying safely. An executive board meeting held in May 1989 reaffirmed this new policy.

The International Civil Aviation Organization (ICAO) also supports the Rule. ICAO, whose members include the United States, provides for the adoption of international standards and recommended practices regulating air navigation. In 1978, ICAO adopted an age 60 policy for its members. In making this decision, ICAO noted that negative findings were no assurance that a potentially incapacitating disease did not exist. It believed that an age-related limit was a necessary precautionary measure in the interest of flight safety.

Since controversy still surrounds the Age 60 Rule, FAA announced in May 1989 that it plans to fund a detailed study correlating age with accident rates. This study, planned for fiscal year 1991, will cover the years 1976 through 1990 and will involve merging National Transportation Safety Board and FAA safety and medical data bases on specifically identified classes of individuals. FAA will also evaluate protocols that might be used to assess the degradation of pilot performance beyond the age of 60 on an individual basis.

SECTION 2

REQUESTS FOR EXEMPTION FROM THE AGE 60 RULE

Any interested person may petition the FAA Administrator for a temporary or permanent exemption from any FAA rule, including the Age 60 Rule, if the individual believes he or she is qualified. Since 1960, when the Rule went into effect, many pilots have petitioned the Administrator for exemption, adducing arguments of excellent health and experience, discrimination, and potential economic hardship. To date, however, FAA has denied all exemption petitions.

PROCEDURES FOR EXEMPTION PETITIONS

According to procedures contained in 14 C.F.R. Section 11.25, a pilot desiring exemption from the Age 60 Rule must submit a petition to the FAA Rules Docket Office that

- identifies the rule from which exemption is sought and the nature and extent of the proposed relief;
- contains any additional information, views, or arguments available to support the action sought;
- includes reasons why the granting of the request would be in the public interest and a statement of how it would benefit the public as a whole; and
- includes reasons why the exemption would not adversely affect safety or would provide a level of safety equal to that provided by the rule.

After being assigned a docket number, the petition is sent to the Office of Rulemaking for consideration. This office sends the petitioner a letter of acknowledgement, which requests further information if the original petition does not follow the requirements of Section 11.25. It also informs the petitioner that a summary of the request will appear in the Federal Register for public comments unless the petitioner requests that it be withheld and FAA approves that request. The public comment period is 20 days unless extended by the agency. The Office of Rulemaking considers all comments in forming its decision. It then sends a letter to the petitioner either granting the exemption or denying it. Letters of denial contain a brief explanation for the denial.

FAA'S JUSTIFICATION FOR DENYING EXEMPTION REQUESTS

According to existing agency records, FAA has received 67 petitions for exemption on behalf of 418 petitioners since the

implementation of the Age 60 Rule in 1960.¹ Arguments by the petitioners include (1) superior health, (2) unblemished flying records, (3) age discrimination, and (4) potential economic hardship for either themselves or their employer.

Except for a few that are pending FAA action, no petition has been granted relief by FAA. Over the years, FAA has consistently argued that no physiological and psychological standards would provide a level of safety equal to that provided by the Rule. According to FAA, aging is a subtle event that is difficult to monitor.

EXAMPLES OF DENIED PETITIONS

Petitioner 1: Denied, Nov. 8, 1960. Two days after the Age 60 Rule went into effect, the petitioner sought to have it amended to "allow time to study so-called unsafe physical conditions." FAA denied the request because the petitioner offered no supporting evidence and thus the petition did not present a basis sufficient to warrant further rulemaking procedures at that time.

Petitioner 2: Denied, April 28, 1967. The petitioner claimed that his excellent health and exemplary flying record entitled him to an exemption from the Rule. As reasons for granting him an exemption, he cited (1) the lack of conclusive evidence of a causal relationship between age and any specific accidents or incidents, (2) the inconsistency of the Rule, and (3) the Rule's discriminatory nature. FAA, in its denial, recognized that not all persons who reached the age of 60 would present the same risk to safety, but said that no medically sound means existed to identify which individuals would be most likely to suffer an incapacitating attack. FAA claimed that the Rule would not deprive the petitioner of gainful employment because he could continue flying other kinds of aircraft.

Petitioner 3: Denied, November 20, 1979. A corporation that decided to operate its Learjet (with 30 seats or fewer) under the regulations of 14 C.F.R. Part 121 rather than Part 135 petitioned on behalf of a pilot employee. The corporation's argument was that (1) loss of the pilot's services would financially burden the company; (2) Part 135 regulations imposed no age limit, but if the corporation relinquished its Part 121 certificate and operated under Part 135, it would effectively waste all the expense and effort it had spent in obtaining the Part 121 certificate; and (3) the Age 60 Rule violated every federal and state program guaranteeing equal rights, opportunities, and employment. FAA denied the petition, stating that the Rule's validity had been sustained by the courts and that the petitioner did not offer adequate justification to support the granting of an exemption.

¹Several petitions were made on behalf of more than one pilot.

Petitioner 4: Denied, July 1, 1982. The Pilots Rights Association petitioned on behalf of a pilot, arguing that (1) the pilot had more than 40 years of aviation experience; (2) medical science had advanced since the adoption of the Rule, thereby enabling the selection of pilots who could continue flying safely without risk of incapacitation; and (3) FAA had a policy of issuing special medical certificates to those who were disqualified from flying because of conditions such as diabetes, psychosis, or drug abuse, but were under age 60. The petitioner offered three examples from which standards could be developed to permit pilots to continue flying after reaching the age of 60. FAA stated that (1) the three examples did not establish a basis for exemption, (2) no other sufficient standard existed, (3) the Rule's validity had been upheld by the courts, and (4) ICAO had recognized the need for an age 60 policy for its member states. FAA therefore concluded that the petitioner had not justified the granting of an exemption and denied his petition.

Petitioner 5 (Group Petition of 39 Petitioners): Denied, September 8, 1987, and May 26, 1989. The petitioners argued two points: (1) It is possible to determine whether a pilot is fit to continue flying. The petitioners presented as support the medical/neuropsychological protocol developed by the Age 60 Exemption Panel. (2) Older pilots who satisfy the protocol and existing operational tests are safer than the average pilot because performance improves with experience. This experience at least offsets and may even outweigh any increased risk of incapacitation or skill deterioration. The petitioners added that the loss of experienced pilots due to the Age 60 Rule was resulting in a shortage of pilots, which was forcing the airlines to lower their standards and hire less experienced and less qualified pilots.

FAA found that the protocol developed by the Age 60 Exemption Panel did not provide the same level of safety as the Age 60 Rule and denied the petition. The 7th Circuit Court of Appeals reviewed FAA's denial and upheld the agency's decision on the medical issues. However, the Court remanded the petition after finding that FAA had not clearly articulated its reasons for denying an exemption based on the petitioners' argument that performance improves with age.

On remand, FAA denied the exemption, stating that once a pilot achieved 5,000 hours of flight time, additional time would not significantly improve pilot performance. FAA maintained that the accident rate among pilots begins to increase at age 50 and is highest for pilots who are 60 years or older. The petitioners have appealed this second denial, and the case is currently pending in the 7th Circuit.

SECTION 3

"SPECIAL ISSUANCE" MEDICAL CERTIFICATES

Pilots who oppose the Age 60 Rule argue that because FAA in special circumstances issues medical certificates to pilots with medical conditions that normally would be disqualifying, FAA should also grant exemptions from the Age 60 Rule. They argue that FAA is being inconsistent in promulgating its regulations, since the basis for both the Age 60 Rule and 14 C.F.R. Part 67, the regulations for obtaining a pilot medical certificate, is medical. They further point out that, over the years, FAA has become more lenient in granting special medical certificates to pilots with medical conditions.

MEDICAL CERTIFICATION

Airmen must meet medical standards and certification requirements stipulated in 14 C.F.R. 67 by periodically passing a medical evaluation from an FAA-approved aviation medical examiner. FAA issues three classes of medical certificates, with class I having the most stringent standards and class III the least. To exercise the privileges of an air transport pilot certificate, which is required for those who fly large commercial aircraft, the pilot must have at least a class I certificate; to exercise the privileges of a commercial pilot, which is the minimum requirement for piloting small commercial aircraft, the pilot must have at least a class II certificate; and to exercise the privileges of a private or student pilot, the pilot needs at least a class III certificate. Each classification involves five categories of fitness, covering visual, hearing (ear, nose, and throat), cardiovascular, neurological/mental, and other requirements. No age limit is imposed for any class. Therefore, pilots over the age of 60 may obtain a class I medical certificate if they meet all its requirements. However, because of the Age 60 Rule, they cannot use the certificate to operate aircraft covered under 14 C.F.R. Part 121.

SPECIAL ISSUANCES

If a pilot does not meet all the requirements for the medical certificate he is seeking, he may apply for special consideration by the Federal Air Surgeon. After conducting a comprehensive physical examination of the applicant and evaluating the applicant's medical history--including the type of treatment, medication, and prognosis--the Federal Air Surgeon may authorize a special issue of medical certificate if he is satisfied that the pilot's medical conditions--including cardiovascular disorders or a history of alcoholism--would not adversely affect the pilot's ability to fly safely.

Before 1982, because of 14 C.F.R. Section 67.19(d), pilots with certain medical conditions had to use the agency's exemption process to be specially considered for medical certification by the Federal Air Surgeon. Such conditions included

- myocardial infarction,
- angina pectoris,
- psychotic and other behavioral disorders,
- alcoholism and drug dependency,
- epilepsy and some disturbances of consciousness, and
- diabetes requiring medication.

In 1982, FAA made an administrative change by eliminating Section 67.19(d) through rulemaking. The change allowed the Federal Air Surgeon to grant "special issuance" medical certificates to those pilots with any disorder, including the conditions mentioned above, that the Federal Air Surgeon believed did not adversely affect air safety.

FAA believes that granting special issuances does not contravene its mandate to protect public safety because the agency closely monitors the medical developments of pilots with special issuances. For example, FAA often requires more frequent medical exams for those holding special issuances and sometimes bars the pilot from certain functions. FAA maintains that a pilot with a special issuance is no more of a threat to air safety than a pilot with a regular, unrestricted medical certificate. Furthermore, FAA claims its criteria for granting special issuances are stricter for class I medical certificates than for class III certificates.

From 1960 through 1988, FAA has granted 1,301 class I medical certificates to pilots with one of the medical conditions mentioned above, of which 65 percent, or 844, were for pilots who had successfully undergone a recovery program for alcoholism and 23 percent, or 302, were for pilots with cardiovascular conditions. Of these 1,301 certificates, 462 were exemptions granted from 1961 to 1980 and 839 were special issuances granted from 1982 to 1988. Sixty-five percent (or 309) of the exemptions were granted for alcoholism, and 13 percent (or 60) were granted for cardiovascular conditions. Sixty-four percent (or 535) of the 839 special issuances were for alcoholism, and 29 percent (or 242) were for cardiovascular conditions. No exemptions were granted in 1981 and the first part of 1982, when FAA was involved in a legal suit over the validity of the exemption process for Part 67.

According to FAA, as of January 1, 1989, there were 605 active class I special issuances for alcoholism and 104 active class I special issuances for cardiovascular conditions. FAA estimates that there are approximately 40,000 active air transport pilots holding class I medical certificates.

Table 3.1 details the number of special issuances granted since the 1982 amendment, covering the years 1982 through 1988. Because FAA was not able to itemize by year the different medical conditions for which exemptions were granted, exemption data for the years 1960 to 1980 were not included in this chart.

Table 3.1
Special Issuances Granted to Applicants
for Class I Medical Certificates

<u>Medical condition</u>	<u>Number of special issuances granted</u>						
	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Valve replacements	0	0	0	2	3	5	2
Pacemaker	0	0	0	0	1	0	0
Coronary artery bypass surgery/coronary artery disease	9	2	3	36	26	15	20
Angioplasty	0	2	3	7	10	9	16
Myocardial infarction (w/no bypass surgery)	1	2	3	17	14	20	14
Neurological ^a	2	2	6	6	10	6	2
Psychiatric ^b	1	1	0	3	2	3	0
Drug dependence	0	1	0	3	3	0	8
Alcoholism	37	73	81	90	87	88	79
Diabetes	0	0	0	1	0	0	2
Total	<u>50</u>	<u>83</u>	<u>96</u>	<u>165</u>	<u>156</u>	<u>146</u>	<u>143</u>

^aNeurological includes carotid artery conditions, stroke, disturbance of consciousness, and convulsive reactions.

^bPsychiatric includes schizophrenia, paranoid states, psychoses, and personality disorders.

Source: FAA, Civil Aeromedical Institute, Oklahoma City.

SECTION 4

STUDIES ON THE AGE 60 RULE

FAA regularly reexamines the Age 60 Rule because the agency needs to evaluate medical and scientific advances that might affect the Rule and because exemption requests and challenges to the Rule continually occur. FAA also conducts medical research on the human factors affecting aviation safety, since FAA is responsible for promoting the flight safety of civil aircraft in air commerce. Since 1960, one study--by NIA--resulted in FAA's taking preliminary rulemaking action to assess the feasibility of amending the Age 60 Rule.

FAA'S REEXAMINATION OF THE MEDICAL AND SCIENTIFIC VALIDITY OF THE AGE 60 RULE

As FAA files dating from the 1970s through the present indicate, FAA officials have prepared option papers that considered alternatives to the Age 60 Rule. Some alternatives that FAA has considered are

- granting exemptions to individual pilots whenever it can be shown medically that the petitioners will be able to adequately perform beyond the age of 60;
- changing the age limitation to a higher age, such as 62 or 65; and
- maintaining the Age 60 Rule as it currently exists and granting no exemptions until FAA identifies test methods that can measure degradation in performance and adequately identify individuals subject to incapacitation.

FAA has consistently followed the third alternative.

In rejecting alternatives to the Age 60 Rule, FAA has relied on both internal studies and studies by other agencies and organizations dealing with gerontology, degenerative diseases, physiological and psychological changes, and the pilot population in comparison with the general population. The major studies include the Thousand Aviators Study, originated by the Department of the Navy, 1940s-1980s; the Georgetown Clinical Research Institute study, 1960s; the Lovelace Foundation studies, 1960s; Study of the Age 60 Rule, by R. L. Bohannon, 1969; Psychophysiological Effects of Aging: Developing a Functional Age Index for Pilots, by S. J. Gerathewohl, 1970s; A Reassessment of the Rationale for the Establishment of Federal Aviation Regulation, 14 CFR 121.383(c), by Goddard and Associates, 1979; and The Influence of Total Flight Time, Recent Flight Time and Age on Pilot Accident Rates, by R. Golaszewski, 1983.

According to FAA, these studies have not identified an alternative that ensures the same level of safety as the Age 60 Rule. FAA has argued that in spite of advances made in medical diagnosis and treatment and in primary prevention techniques, the incidences of death and disability from degenerative diseases increase with age. FAA further states that the deterioration of mind and body is often subtle, rather than evident, and affects the highest intellectual and motor skills.

NIA STUDY ON THE AGE 60 RULE

In addition to these studies, a congressionally mandated study by NIA, Report of the National Institute on Aging Panel on the Experienced Pilots Study, was completed in 1981. The Panel was unable to determine any medical significance to age 60, but found that age-related changes in health and performance could adversely affect aviation safety. The NIA study recommended that

- the present age limit for air carrier pilots-in-command and first officers be retained,
- FAA or another federal agency undertake a systematic program to collect necessary medical and performance data in order to determine whether the Rule could be relaxed, and
- the Age 60 Rule be extended to all pilots engaged in carrying passengers for compensation or hire--specifically, to commuter pilots flying under 14 C.F.R. Part 135 operations.

STEPS BY FAA IN RESPONSE TO NIA RECOMMENDATIONS

In response to the NIA study, FAA published an Advance Notice of Proposed Rulemaking (ANPRM) on July 8, 1982, proposing a program to gather data on whether persons aged 60 or older could safely serve as pilots of airplanes operated under 14 C.F.R. Part 121 and announcing that FAA was considering applying the Rule to flight engineers. The ANPRM was a means to obtain comments on the possibility of allowing select pilots to continue flying large commercial aircraft until he or she reached the age of 62. FAA said that it would strictly monitor this select group to determine whether the Rule could be expanded to allow all pilots over age 60 to fly.

The ANPRM did not cover NIA's third recommendation, which was to expand the Age 60 Rule to cover all pilots engaged in carrying passengers for hire, especially commuter pilots operating under 14 C.F.R. Part 135. According to an FAA official who worked on the ANPRM, FAA believed that including these pilots was not necessary

at that time because age did not show up as a factor in commuter plane accidents.

FAA placed a withdrawal of the ANPRM in the Federal Register on April 12, 1984, because it believed that, in the absence of validly selective tests, no sufficient means existed for collecting medical and performance data on airline pilots over the age of 60. There were two issues. First, according to FAA, collecting quantitative medical and performance data on airline pilots over age 60 under conditions of actual operational stress and fatigue would introduce an unacceptable safety risk, thereby making the paying public "guinea pigs." Second, if the test involved service by 60-year-old pilots flying large commercial aircraft, exemptions would be required for these individuals. According to FAA's Office of the Chief Counsel, if FAA granted these exemptions, then it would be almost impossible to justify denying exemptions to pilots not in the test.

FAA also determined that it was not appropriate to proceed with rulemaking to propose an upper age limit for flight engineers at that time. The divergent comments FAA received on this issue led the agency to conclude that the data available were not sufficient to warrant extending the Age 60 Rule to flight engineers.

LEGAL CHALLENGES TO THE AGE 60 RULE

Air Line Pilot Ass'n. v. Quesada, 182 F. Supp. 595 (S.D. N.Y. 1960), aff'd, 276 F.2d 892 (2d Cir. 1960), 286 F.2d 319 (2d Cir. 1961), cert. denied, 366 U.S. 962 (1961).

Chew v. Quesada, 182 F. Supp. 231 (D.D.C. 1960).

O'Donnell v. Shaffer, 491 F.2d 59 (D.C. Cir. 1974).

Poe v. Butterfield, 12 Aviation Cas. (CCH) 18,293 (D.D.C. 1974).

Starr v. FAA, 589 F.2d 307 (7th Cir. 1978).

Rombough v. FAA, 594 F.2d 893 (2d Cir. 1979).

Gray v. FAA, 594 F.2d 793 (10th Cir. 1979).

Keating v. FAA, 610 F.2d 611 (9th Cir. 1979).

Aman v. FAA, 856 F.2d 946 (7th Cir. 1988).

ADEA LITIGATION RELATED TO THE AGE 60 RULE

Houghton v. McDonnell Douglas Corp., 413 F. Supp. 1230 (E.D. Mo. 1976), rev'd, 553 F.2d 561 (8th Cir. 1977), cert. denied, 434 U.S. 966 (1977).

Western Air Lines v. Criswell, 472 U.S. 400 (1985), aff'g, 709 F2 544 (1983), aff'g, 514 F. Supp. 384 (C.D. Cal. 1981).

Hoefelman v. Conservation Comm'n, 541 F. Supp. 272 (W.D. Mo. 1982), aff'd, 718 F.2d 281 (8th Cir. 1983).

Johnson v. American Airlines, 531 F. Supp. 957 (N.D. Tex. 1982), aff'd, 745 F.2d 988 (5th Cir., 1984), cert. denied, 472 U.S. 1027 (1985).

Trans World Airlines v. Thurston, 547 F. Supp. 1221 (S.D. N.Y. 1982), aff'd & rev'd in part, 713 F.2d 940 (2nd Cir. 1983), aff'd & rev'd in part, 469 U.S. 111 (1985).

Gathercole v. Global Assoc., 560 F. Supp. 642 (N.D. Cal. 1983), rev'd, 727 F.2d 1485 (9th Cir. 1984), cert. denied, 469 U.S. 1087 (1985).

Monroe v. United Air Lines, 565 F. Supp. 271 (N.D. Ill. 1983), rev'd, 736 F.2d 394 (7th Cir. 1984), cert. denied, 470 U.S. 1004 (1985).

EEOC v. El Paso Natural Gas Co., 626 F. Supp. 182 (W.D. Tex., 1985).

EEOC v. Boeing, 843 F.2d 1213 (9th Cir., 1988), cert. denied, 102 L. Ed 2d 212, 109 S. Ct 222 (1988).

MAJOR CONTRIBUTORS TO THIS FACT SHEET

RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION,
WASHINGTON, D.C.

Victor S. Rezendes, Associate Director, Transportation Issues
Thomas J. Barchi, Assistant Director, Aviation Safety
Robert W. Shideler, Assignment Manager
Martha Y. M. Chow, Evaluator-in-Charge
Sharon Butler, Writer-Editor

Office of the General Counsel

Michael G. Burros, Attorney

(341222)

Requests for copies of GAO reports should be sent to:

**U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877**

Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

**United States
General Accounting Office
Washington, D.C. 20548**

**Official Business
Penalty for Private Use \$300**

**First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100**