

257962

FAA-03-14951-10

14 Creekwood Court
Danville, CA 94526
October 20, 2003

U. S. Department of Transportation (DOT)
Office of Dockets and Media Management
Room PL-401
400 7th Street, S.W.,
Washington, DC 20590

CERTIFIED MAIL - RETURN RECEIPT

SUBJECT: Amendment to Request for Reconsideration

This is an amendment to the request for consideration of the FAA response to my Paperwork Reduction and Data Quality Act complaint filed January 15, 2003. This complaint was assigned DOT Docket No. FAA-2003-14951-1 on April 15, 2003. The complaint requested, *inter alia*, that the FAA remove all four of its Senate Appropriations Committee's directed reports from its CAMI website and post in their place an explanation of their flawed results and the reason for their removal. The purpose of this amendment is to update both the complaint and the appeal with new evidence disclosing the FAA's inappropriate intent and reliance on these flawed studies in its regulatory activities.

On June 10, 2002, the Professional Pilots Federation filed a petition for exemptions on behalf of Dallas E. Butler and nine other members of that organization from the prohibition of 14 C.F.R. § 121.383(c), the so-called age 60 rule. In a letter to Senator John Cornyn (Texas), dated July 30, 2003, more than a year following the petition's submission, the FAA advised that it was, at that time, "in the final stages of responding to [that] petition," and expected the agency's "final response to be issued shortly."¹

In this letter to Senator Cornyn, the FAA cited to the CAMI 4-part study that is the primary subject of my complaint for the proposition that:

... the accident rate for pilots in the 60-63 age group is statistically greater than the accident rate for ... pilots in the 56-59 age group. The results also suggest that the probability of an aviation accident as a function of pilot annual flight hours was related to age. ...²

¹ Letter, Ida Klepper, Acting Director, Office of Rulemaking to The Honorable John Cornyn dated July 30, 2003. Page 1, paragraph 2.

² *Id.*, paragraph 4.

By these statements, the FAA reveals that it considers these four CAMI studies to be influential with respect to its age-60 regulation, to its response to the petition for exemptions from that regulation, and, at least in part, significant in its final determination on the entire age 60 issue.³

By its reliance on these studies in its regulatory activities, the FAA makes these four reports subject to the confirmation, transparency and/or reproducibility standards of the DQAct and OMB guidelines for influential scientific (statistical) materials in agency decisionmaking.

We note, in the scientific context, that in 1996 the Congress, for health decisions under the Safe Drinking Water Act, adopted a basic standard of quality for the use of science in agency decisionmaking. ...

... ..

As suggested in several comments, we have included these congressional standards directly in new paragraph V.3.b.ii.C, and made them applicable to the information disseminated by all the agencies subject to these guidelines: "With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g-1(b)(3)(A) & (B))." ...⁴

In this context, it is not plausible to believe that either the OMB or the Congress contemplated the word "adapt" to sanction abandoning or compromising the fundamental principles of statistical science or practice as done by the FAA in its four CAMI studies.

Further, Ms. Klepper's caveat immediately following her citation to the "findings" of the four CAMI studies:

... However, this study is not absolutely conclusive because medical science and human factors research, in particular, are somewhat imprecise.

is similarly inappropriate - or more so.

As noted in my January 15th complaint, in 1979, the FAA's Federal Air Surgeon stated as official FAA policy the opposite:

Mr. Pepper [Chairman, House Select Committee on Aging]: ... Is it any more impossible to detect a physical incapacity or inability in older people than in younger people?

³ See 67 Fed.Reg. 8452, 8455, 22 February, 2002.

⁴ Id., at 8457-58

Dr. Reighard [Federal Air Surgeon]: *No, the precision in medicine is the same regardless of age.*⁵ [Emphasis added.]

Furthermore, FAA routinely assesses cognitive and performance impairments that result from drug and alcohol addiction as well as physical trauma in airline pilots under age 60 for both denial and award of exemptions from its medical certification standards.⁶ In a 1989 statement to the Government Accounting Office, FAA admitted that it had - since the early 1970s - *granted* exemptions and "special issuance" waivers for, among other conditions, alcoholism and drug dependency, psychotic disorders, epilepsy, stroke, convulsive reactions, schizophrenia, paranoid states, psychoses, and disturbance of consciousness. In 1994, FAA *denied* medical certification to world-renowned aerial demonstration and test pilot "Bob" Hoover. Appealing an adverse administrative law judge decision, FAA prevailed relying exclusively on the results of medical and cognitive testing administered by its own selected experts.⁷

Moreover, in 1966, the FAA admitted to both the Government Accounting Office (GAO) and House Government Operations Committee that air carrier pilots are not represented by general population parameters

... [b]eing a highly select group they are more free of serious pathology than a sample of the general population of similar age. ...⁸

Again, based on its own research, the FAA published identical conclusions for decades. From a series of annual reviews of pilot medical disqualifications beginning for the year 1973 and continuing through at least 1988, FAA declared repeatedly:

Observation of the airline pilot group probably come closest to a true reflection of prevalence of disqualifying disease as is possible to observe. *Prescreening by airline companies before employment and FAA requirements for issuance of a first-class medical certificate result in this group being essentially purged of disease prevalence that contributes to higher [medical disqualification] rates for other non-pilot groups.*⁹ [Emphasis added.]

⁵ Testimony of Dr. Homer Reighard, Federal Air Surgeon during hearings on Age Discrimination Against Airline Pilots before the Select Committee on Aging, House of Representatives, 96th Cong., 1st Sess., March 21, 1979. At 51.

⁶ GAO Fact Sheet, Aviation Safety, Information on FAA's Age 60 Rule for Pilots, GAO/RCED-90-45FS, November 1989. At 15, 16.

⁷ NTSB Order No. EA-4094, Hinson (Administrator, FAA) v. Hoover, Docket SE-13417, February 18, 1994

⁸ Better Management Needed of Medical Research on Aging, House Report No. 2080, Committee on Government Operations, 89th Congress, 2d. Sess., September 26, 1966 at 19.

⁹ e.g., Downey, L.E., Dark, S.J., Medically Disqualified Airline Pilots in Calendar Year 1987 and 1988, FAA Office of Aviation Medicine, AM-90-5, June 1990, at 2.

Moreover, I know of no pending research at or funded by the FAA that can be considered relevant to the imprecise concept of "medical science and human factors research" of either the super-select class of pathology free airline pilots or a maximum age limit for those pilots that was the specific focus of the Senate Appropriations Committee's directive ordering the FAA's CAMI studies:

... whether there was any scientific or medical reason why the United States should not "cautiously increase the retirement age to 63" like other countries have for commercial aviation.¹⁰

In 1995, FAA did contribute \$22,150 toward an ongoing study funded by the National Institutes on Aging (NIA grant No. AG12713) - but for brain-injured or brain-diseased issues in medical certification, not aging or age-related performance and/or risk issues:

... to be able to continue an important performance validation of a critical Office of Aviation Medicine approach to neuropsychological screening of the brain-injured or brain-diseased airman who is applying for aeromedical certification.¹¹

Moreover, the underlying NIA grant application specifically denies any relevance of its study to the age 60 issue.

... As suggested by the reviewers, we now stress the potential importance of our work to general aviation, and make no claim that our proposed work is directly relevant to commercial airline pilots subject to the Age 60 Rule.¹²

This denial of any relevance to the age-60 rule is appropriate because the study did not examine commercial airline pilots subject to the age 60 rule. As designed and performed, neither the study's population, nor its equipment, nor its test protocols were chosen to be or were relevant to either air carrier pilots or their work environment

The only other recent FAA research effort of which I am aware that could have been considered as "human factors research" on/for air carrier pilots and age-60 was abandoned without explanation following a preliminary presentation.¹³ Unlike the non-relevant NIA grant effort, this study was specifically designed and intended to examine air carrier pilots - including older air carrier equivalent pilots - in FAA certified, airline-type, advanced simulators performing complex airline-type maneuvers in an airline type

¹⁰ Department of Transportation and Related Agencies Appropriations Bill, 2000. 106th Cong. 1st Sess., May 27, 1999. S.Rep. 106-55, at 79.

¹¹ Statement of sole source justification accompanying DOT procurement request 5-11692 dated May 24, 1995 for FAA contract No. 95P30661.

¹² Dept. of Health and Human Services Grant Application, Age Related Longitudinal Changes in Aviator Performance, dated February 27, 2001. At 27. (NIA grant No. AG12713)

¹³ FAA/CAMI contract DTFA-02-95 P 35886 titled: PROJECT: Flight Deck human Factors; TASK TITLE: Pilot Performance and Aging, TASK NUMBER AM-A-95-HRR-196.

environment.¹⁴ The thrust of this proposal was to have extended the results of the earlier Hilton Systems study of older (over-age-60) air carrier and air carrier equivalent pilots' performance in the age 60 rule context.¹⁵

As noted, FAA did not pursue this follow-on effort beyond the proposal stage. One possibility could be that such an effort would have replicated the Hilton Systems' findings of no over-60, age related change in pilot performance when that performance was measured digitally. It is instructive to note that, in the Hilton Systems' report, this failure to find age relevant change in deviation scoring for older pilots was a single comment buried in the last four words of a complex sentence buried in the middle of a paragraph beginning with an only half-true statement describing rater-pilot *perception*:

Pilot age was found to be significantly correlated with simulator performance in the experienced subgroup.

Only in the middle of the following paragraph did the researchers concede that the inconsistent rater-pilot *perception* could *possibly* be explained by rater bias:

... it may also be possible that the evaluation rating system ... is more vulnerable to potential "age bias" on the part of the raters.

It is incorrect for the FAA to argue that its unsubstantiated claim of imprecision in medical science and human factors research might mitigate or excuse its inappropriate citation to and reliance on the flawed and misleading 4-part CAMI Reports.

The FAA's letter to Senator Cornyn and its citations to their 4-part CAMI study and human factors research requires that my complaint (together with these requests for reconsideration) be judged according to the Congressionally established standards for the use of science in agency decisionmaking as interpreted by OMB in its agency-wide guidelines of 22 February, 2002.



SAMUEL D. WOOLSEY

Tele: (925) 837-3287

Fax: (925) 837-0846

e-mail: sdwools@earthlink.net

Enclosure: Letter, Ida Klepper to The Honorable John Cornyn, July 30, 2003.

¹⁴ Lyall, E.A., Niemczyk, M.C., The Effects of Age on Pilot Performance: A Research Plan; Report No. RII-95-01, Research Integrations, Inc., Tempe, AZ. November 1995.

¹⁵ Hyland DT, Kay EJ, Deimler JD, Age 60 Project Experimental Evaluation of Pilot Performance, January 1993, CAMI Contract DTFA-02-90-90125. At 4-7.



U.S. Department
of Transportation
**Federal Aviation
Administration**

COPY

AUG 05 2003

800 Independence Ave., S.W.
Washington, D.C. 20591

JUL 30 2003

The Honorable John Cornyn
Occidental Tower
5005 LBJ Freeway, Suite 1150
Dallas, TX 75244

Dear Senator Cornyn:

Thank you for your July 11 letter on behalf of your constituent Mickey Oksner regarding Section 121.383(c) of the Federal Aviation Regulations, commonly referred to as the Age 60 Rule. In accordance with the Age 60 Rule, a person over age 60 cannot serve as a pilot on an airplane operated under 14 CFR part 121.

The Federal Aviation Administration (FAA) is in the final stages of responding to the petition for exemption that Captain Oksner references. We expect the final response to be issued shortly. Once we issue the final response, we will publish a summary of the disposition in the Federal Register.

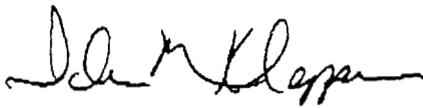
For your information, on December 14, 1995, in a Disposition of Comments and Notice of Agency Decisions (Disposition), the Federal Aviation Administration (FAA) announced its decision not to initiate rulemaking to change the Age 60 Rule. During its review of the Age 60 Rule, the FAA reviewed over 4,000 comments. For the most part, the comments made assertions and expressed opinions, but did not provide the FAA with additional facts or analysis sufficient to support changing the age 60 limit. A U.S. Court of Appeals upheld this agency determination in 1997.

At the direction of the Senate Appropriations Committee, the Federal Aviation Administration conducted a four-part study of all available data for scheduled commercial (and noncommercial, if available) accidents, looking at the relative accident rates for pilots as a function of age. This study is available at: http://www.cami.jccbi.gov/aam-400A/AGE60/60_index.html. The results of the study indicate that the accident rate for pilots in the 60-63 age group is statistically greater than the accident rate for 55-year-old pilots and pilots in the 56-59 age group. The results also suggest that the probability of an aviation accident as a function of pilot annual flight hours was related to age. However, this study is not absolutely conclusive because medical science and human factors research, in particular, are somewhat imprecise.

Before issuing a regulation, the FAA must be satisfied that it will maintain or raise the current level of safety. The basic question is one of public policy and determining how much risk is acceptable. The FAA must evaluate all the varied evidence that indicates what those risks are and determine where the public interest lies. At this time, the FAA cannot be assured that raising the age 60 limit will maintain or raise the level of safety that the Age 60 Rule offers.

If you or your staff have any questions, please feel free to contact David Balloff, Assistant Administrator for Government and Industry Affairs, at (202) 267-3277.

Sincerely,



Ida M. Klepper
Acting Director, Office of Rulemaking

Enclosure
Transmitted Correspondence