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FAA-03-14951-12

14 Creekwood Court
Danville, CA 94526
April 5, 2004

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SUBJECT : Third Amendment to
Request for Reconsideration

This is a third amendment to my request for reconsideration of the FAA response to my Paperwork Reduction and Data Quality Act complaint filed January 15, 2003, assigned DOT Docket No. FAA-2003-14951-1 on April 15, 2003. This 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, and to disavow an earlier analysis commonly known as the Golaszewski Fight Time Study.

The purpose of this additional amendment is to update the complaint, the initial request for reconsideration and the amended requests by advising that the "caveats" that FAA added to the subject Reports 3 and 4 are, themselves, flawed and misleading, this also in violation of the commands of the government-wide guidelines prepared by the Office of Management and Budget as commanded by Paperwork Reduction Act of 1995 (44 USC §§ 3501 *et seq.*) and Data Quality Act of 2001 (44 USC § 3516 (Note))

As indicated in the FAA's response of September 9, 2003, the author of these studies inserted the following "caveat" into Reports 3 and 4:

The following caveats apply to these conclusions. First, the denominator for pilots under age 60 includes exposure [*sic*] to the hazards of flight under all flight regulations, including the statistically safer hours accumulated under Part 121. However, at age 60, due to the effect of the rule, the denominator includes only hours accumulated under historically less safe Part 91, 135 and other flight regulations. The numerator also qualitatively changes at age 60. Below age 60, the numerator includes accidents occurring under both Part 121 and 135; over age 60, the numerator includes only accidents occurring under Part 135. It might be argued, therefore, that the upward trend in accident rate

for older pilots, and the apparent difference in rate for pilots age 55-59 and 60-63, may be a result of the qualitative changes in the numerator and denominator rather than a quantitative change in accident risk as a function of age.¹

The bodies of the reports remain unchanged, however, continuing to display the egregiously false and misleading single risk profile purporting to represent two fundamentally different and incompatible pilot populations - demographically skewed at age 60 by the age 60 rule, itself.

The differences in experience and operating conditions under which these pilot populations worked - not age - is recognized as the underlying cause of their incompatible risk profiles in the FAA/CAMI work order under which these four reports were produced:

In 1995, 1,546 Part 135 regional aircraft flew 3,033,773 hours as a cost of 11 accidents with a rate of .43 accidents per 100,000 flight hours as compared to Part 121 where the accident rate was .27 per 100,000 flight hour. FAR Part 119, which applies to the regulatory requirements of Part 121 to regional aircraft now operating under Part 135, created a higher safety standard by requiring changes in flight crew qualifications, cabin safety equipment and materials, airplane performance requirements, aircraft dispatching, and maintenance. However, the regional airline operational environment still differs from the operational environment of "long-haul" carriers, and these important differences seemingly affect regional airline safety, as evidenced in the difference in accident rates. For example, regional airlines fly into smaller airports, spend proportionally more time in IMC conditions, encounter terminal traffic densities more frequently, and fly a higher number of take-offs and landings per day. Fatigue issues pertaining to high workload, long workdays, and irregular, unpredictable schedules, as frequently involved in operations of regional airlines, will be investigated using appropriate fatigue and performance assessment methods in a simulated cockpit operational environment.

*Further, level of pilot experience in regional airlines is, on average, less than that for Part 121 Pilots. In 1994, the NTSB reported that these factors might combine in an interactive fashion to increase the risk of critical mistakes that could jeopardize the safety of flight. ...*²

[Emphasis added.]

These functional and operational differences leading/contributing to dramatically different risk profiles are noted even *after* the greater portion of Part 135 operations

¹ Report 4, page 43, as revised June 27, 2003

Also appearing in Report 3, page 32, as revised June 27, 2003.

² OAM research Task AAM-00-HRR-520, paragraph 13, Description of Work; Task 5(b), Regional carrier and unscheduled Part 135.

were made subject to the operational rules and regulations of Part 121 (air carrier, large aircraft) as considered in these Reports 4 and 5.

In mathematical terms,³ the disingenuous flaw in the caveats criticized here is the failure to *quantify* the differences in Part 135/121 accident counts (numerator data) and their corresponding flight hours (denominator data). According to the FAA's Statistical Handbook (1996),⁴ tables 9-5 and 9-8, for the 10 years 1987-1996 - the same period examined in these Reports - Part 121 operations experienced 1.4 times the accident count, but in 5.0 times the flight hours. Using these data, the computed risk for Part 135, alone (analogous to data for pilots age 60 and above), is more than double the risk for the two combined (analogous to data for all pilots under age 60). These results (.75 vs .31 accidents per 100,000 flight hours) correspond well with the figures given by the FAA in OAM research Task AAM-00-HRR-520, paragraph 13, as noted above.

Thus, neither the author of these reports, nor his supervisors at CAMI, nor anyone in FAA management at any level can deny full knowledge and understanding of the flawed nature and misleading results of these Reports relied on by the Agency and disseminated to the public - including the misleading nature of these *post hoc* caveats.

Conclusion

As requested in my original DQAct complaint, the FAA must, either on its own or be required to, recall and repudiate these four CAMI Reports, the 1983 Golaszewski Flight Time Study, and all its other so-called statistical analyses that pursue the same or similarly flawed methodologies. Further, the agency must, either on its own or be required to, cease and desist in its reliance on any of these so-called statistical analyses in any of its regulatory functions. If the FAA cannot or is unwilling to do so, its authority and responsibility over these scientific (statistical) endeavors and regulatory matters must be revoked or suspended until it can - or will.

Respectfully,



SAMUEL D. WOOLSEY

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Enclosures:

Denial of Exemption, Regulatory Docket No. FAA-2002-12501.

³ The flaw explained here are not rocket science, it involves only simple 4th or 5th grade arithmetic - real number division and decimal notation - that must precede the more sophisticated statistical manipulations - descriptive or inferential.

⁴ Available at: <http://www.api.faa.gov/handbook96/toc96.htm>



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

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

SEP 9 2003

Mr. Samuel D. Woolsey
14 Creekwood Court
Danville, CA 94526

Dear Mr. Woolsey:

This letter responds to your complaint filed in the U.S. Department of Transportation Docket Management System on April 15, 2003, in which you recommend a plan of action for the FAA to take regarding Age 60 matters, in particular statistical analyses. You assert that your complaint was filed pursuant to 44 U.S.C. §§ 3501 et seq. and 44 U.S.C. § 3516 (Note). You indicate that the Federal Aviation Administration (FAA) “produces and disseminates four studies that it knows to be false and misleading...to justify and defend its so-called age 60 rule.” You cite many Age 60-related studies conducted over the years, highlighting in particular the four 2000 Civil Aerospace Medical Institute (CAMI) reports, the 1983 Golaszewski Study, and the 1993 Hilton studies.

This letter responds to your challenge to several Age 60-related studies brought under the Information Quality guidelines of the Paperwork Reduction Act. Below are responses to your general challenges of the four CAMI reports and the Golaszewski and Hilton studies. Enclosed is a response to your specific challenges to the CAMI studies.

The CAMI Report

Your request for correction of the CAMI reports presents a general complaint of inaccuracy and unreliability. At the core of the request you indicate that the four reports posted on the Civil Aerospace Medical Institute (CAMI) website make no mention of the possible impact of removing the hours accumulated under 14 CFR part 121 from the accident rate denominator at age 60. In response, we will incorporate a caveat into the findings in revised versions of CAMI Reports 3 and 4 noting the potential impact arising from removal of those “ultra-safe” hours from the accident rate denominator at age 60. We also identified transcription errors in CAMI Report 3 in the course of this review and will correct them.

The other faults you cite are matters of interpretation and emphasis rather than fact. Therefore, no other corrections are required, as the four CAMI reports are complete, accurate within the limits of the data and methodology specified by Senate Report 106-55, and provide sufficient transparency of data and methods to allow reanalysis by qualified members of the public.

The Golaszewski and Hilton Studies

As for the Golaszewski and Hilton studies, the FAA defers to the court rulings handed down in recent challenges. Two decisions by U.S. Circuit Courts of Appeals have recognized that the Golaszewski Flight Time Study has some value, even though it has flaws. No U.S. court has held that the Golaszewski study is false and misleading, nor has any U.S. court found the FAA's defense of the Golaszewski study to be inappropriate.

The two U.S. cases that discuss the Golaszewski/Flight Time Study are *Yetman v. Garvey*, 261 F.3d at 676-677 (7th Cir. 2001) and *Baker v. FAA*, 917 F.2d at 320-321 (7th Cir. 1990). The Court in *Baker* analyzed many of the same challenges contained in your letter. The Court concluded that the Flight Time Study had flaws, but overall the agency presented substantial evidence for its decision to reject the petitions for exemption. The same Court in *Yetman* reiterated the concerns over the Flight Time Study, but ultimately found the FAA was justified in rejecting the *Yetman* petition for exemption.

The Court in *Yetman* also noted the FAA's argument in response to the alleged findings of the Hilton study. The study does not address the basic concern of how to identify and predict age-related decline in pilot performance. The Court also noted the FAA's opinion that the Hilton study conclusions regarding age 60 pilots were based largely upon accident data from air carrier operations. The Court continued, however, by stating that pilots who fly cargo transports, according to the FAA, have different flying patterns that may subject them to lesser levels of fatigue and stress. The Court further continued, because accidents in air carrier operations are rare and factors such as seniority bidding on more desirable routes preclude developing meaningful statistics regarding the effects of aging, the FAA suggests that caution precluded reliance on the Hilton study as justification for granting exemptions. The Court deferred to the FAA on the probative value of the study. The United States Circuit Court of Appeals for the District of Columbia in *Professional Pilots Federation v. FAA*, 118 F.3d 758, 769-770 (D.C. Cir. 1997) also deferred to the FAA on the value of the Hilton study.

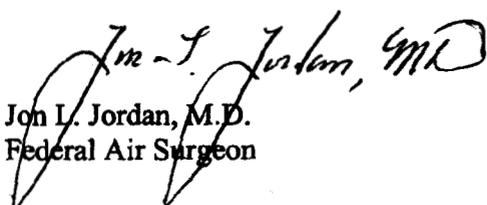
It is not within my authority, based on your recommendation, to withdraw or modify the Age 60 rule. However, although you have not petitioned to amend or remove the Age 60 rule and thus, have not met the agency's procedural requirements regarding rulemaking, you should be aware of the following: First, the Age 60 rule is a long-standing operational rule that pre-dates studies completed subsequently. Second, those studies have not presented sufficient evidence to assuage the agency's concerns about the medical risk factors associated with age, many of which develop and occur insidiously. If such studies and data become available, and they present sufficient evidence and cause

for reevaluation, the FAA would reevaluate the issues. Additionally, no one has presented protocols that would reliably predict when or whether a pilot over the age of 60 might experience a medical event that could jeopardize aviation safety.

I would like to let you know that you may appeal our agency's decision either in writing or electronically within 30 days of receiving this response. Your request should be identified by Docket Number FAA-2003-14951 and state the reasons for your appeal. You may submit your appeal using any of the following methods:

1. DOT Docket web site: Go to <http://dms.dot.gov> and follow the instructions for sending comments.
2. Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL-401, Washington, DC 20590-0001.
3. Fax: 1-202-493-2251.
4. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday to Friday.

Sincerely,


Jon L. Jordan, M.D.
Federal Air Surgeon

Enclosure

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