

the agency found "that there is a progressive deterioration of certain important physiological and psychological functions with age, that significant medical defects attributable to this degenerative process occur at an increasing rate as age increases, and that sudden incapacity due to such medical defects becomes more frequent in any group reaching age 60." 24 FR 9767. It also found that "[s]uch incapacity, due primarily to heart attacks and strokes, cannot be predicted accurately as to any specific individual on the basis of presently available scientific tests and criteria." 24 FR 9767. The FAA noted "[o]ther factors, even less susceptible to precise measurement as to their effect but which must be considered in connection with safety in flight, result simply from aging alone and are, with some variations, applicable to all individuals. These relate to loss of ability to perform highly skilled tasks rapidly, to resist fatigue, to maintain physical stamina, to perform effectively in a complex and stressful environment, to apply experience, judgment and reasoning rapidly in new, changing and emergency situations, and to learn new techniques, skills and procedures." 24 FR 9767. While the FAA recognized that such losses generally start well before age 60, the agency determined that beyond age 59 the risks associated with these losses become unacceptable for pilots in part 121 operations.

The agency noted that, due to seniority, older pilots tend to "fly the largest, highest-performance aircraft, carrying the greatest number of passengers over the longest non-stop distances," in the highest density traffic. 24 FR 9767. The FAA concluded that, because of the high risks involved, persons should be precluded from piloting aircraft in part 121 operations after reaching age 60.

While the Age 60 Rule prohibits pilots from operating aircraft under part 121 after reaching their 60th birthdays, it does not impose mandatory retirement for affected pilots. A pilot may work as a flight engineer or flight instructor in operations conducted under part 121 or may work as a pilot in operations outside of part 121. The pilot also may function as an instructor or evaluator in simulators, an area that has expanded over the years.

I(b). Subsequent Rulemaking Actions

In the early 1980's, the FAA explored possible changes to the Age 60 Rule, stemming from direction from Congress in 1979 that the National Institutes of Health (NIH) study the desirability of mandatory age retirement for certain pilots. (P.L. 96-171). The NIH assigned

the National Institute on Aging (NIA) the primary responsibility for implementing the legislation. In the report from this study, "Report of the National Institute on Aging Panel on the Experienced Pilot Study" (August 1981) (NIH report), NIA recommended that the age 60 limit be retained. Among other things, the panel concluded that, while no medical significance could be attached to age 60 as a mandatory retirement age, age-related health changes endanger aviation safety and no medical or performance appraisal system could be identified that would single out pilots who would pose a hazard to safety. The conclusions reached by the NIA panel and the supporting statements contained in the report pointed to an inability to distinguish those persons who, as a consequence of aging, present a threat to air safety from those who do not. The following recommendations were made:

1. The age 60 limit should be retained for pilots in command and first officers.
2. The FAA or some other appropriate Federal agency should be requested to engage in a systematic program to collect the medical and performance data necessary to consider relaxing the age 60 rule.
3. In view of the growing importance of commuter air carriers, the age 60 limit should be extended to cover all pilots engaged in carrying passengers for hire, specifically including operations under part 135 to provide a level of safety equivalent to that provided in part 121 operations.

As part of its study, NIA looked at information on functional decline with age and the increased frequency of a number of medical disorders (including cardiovascular disease, neurological and mental disorders, and changes in perceptual, psychomotor and intellectual functions) associated with aging. In addition, NIA looked at death and disability rates in air carrier pilots and flight engineers, death rates in the general population, and accident rates for pilots.

In response to the NIH recommendations, in 1982 the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) on the Age 60 Rule (47 FR 29782, July 8, 1982). The FAA was considering identifying a select group of pilots who would continue flying in part 121 operations in order to allow the FAA to collect data on selected pilots, age 60 and over, flying in actual operations under part 121. The FAA was also considering establishing age limits for flight engineers serving on airplanes operated under part 121. The FAA withdrew the ANPRM in 1984 (49 FR 14692, April 12,

1984). The FAA found that valid tests did not exist for selecting a group of pilots age 60 and over who could act as the test group for collecting data. The FAA was concerned that without valid selection tests these pilots would create an unacceptable safety risk to part 121 operations. The FAA also stated that it was not appropriate to establish an age limit for flight engineers at that time.

I(c). 1993 Request for Comments on Age 60 Rule and Hilton Study

In late 1990 the FAA contracted for the Hilton Study, a 2-year study to consolidate accident data and correlate it with flying experience and age of pilots. This study analyzed accident data between 1976 and 1988. Although the focus of the study was on part 121 pilots, the study analyzed the accident rates for pilots in part 91, 121, and 135 operations holding Class I, Class II, and Class III medical certificates. The authors of the study found "no hint of an increase in accident rate for pilots of scheduled air carriers as they neared their 60th birthday" but noted that there were no data available on scheduled air carrier pilots beyond age 60. Observing a "hint, and a hint only," of an increase in accident rates for Class III pilots older than 63 years of age, they concluded that "one could cautiously increase the retirement age to age 63."

In addition, on April 20, 1993, the FAA published a notice of public meeting and request for comments regarding various aspects of the Hilton Study. (58 FR 21336; April 20, 1993.) The public meeting was held on September 29 and 30, 1993, and the comment period closed on October 15, 1993. In response to the FAA's notice of public meeting and request for comments, 46 members of the public made presentations at the public meeting, and the FAA received approximately 1,200 written comments on the Hilton Study and the Age 60 Rule in general before the close of the comment period.

I(d). Commuter Rule

The FAA addressed the Age 60 Rule in a Notice of Proposed Rulemaking (Notice 95-5, 60 FR 16230, March 29, 1995) that would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121 (the "Commuter Rule"). In that notice, the FAA proposed to apply all part 121 rules, including the Age 60 Rule, to those pilots currently employed in certain part 135 scheduled operations who would be affected by the Commuter Rule. In response to Notice 95-5 the FAA received many comments dealing