

# A New Chapter in A Long History

## Executive Board votes to amend ALPA policy on Age 60.

By *Air Line Pilot* staff

**Change can approach slowly**, but it passes in an instant. No better example exists than ALPA's position on the FAA's Age 60 mandatory retirement rule for U.S. airline pilots. When the Executive Board voted in May to change ALPA's 27-year support of the rule, it immediately started a new chapter in the history of this controversial rule.

After hearing reports from the ALPA Age 60 Blue Ribbon Panel, staff, and ALPA's pollster, the Executive Board acted on the recommendations that ALPA's Executive Council made at its April meeting and changed ALPA policy from that opposed to any change to the Age 60 rule to support for legislative or regulatory activities to modify the Age 60 rule if such efforts incorporate ALPA's priorities. The policy was adopted by an overwhelming 80 percent vote in favor of change. In the face of concerted congressional and FAA efforts to change the rule, the MEC chairmen who make up the Executive Board directed that union resources be committed to protecting pilot interests by exerting ALPA's influence in any rule change.

"The Executive Board spoke clearly," says ALPA's president,

**FAA Administrator Marion Blakey, left, announces that the FAA will issue an NPRM on the Age 60 rule.**

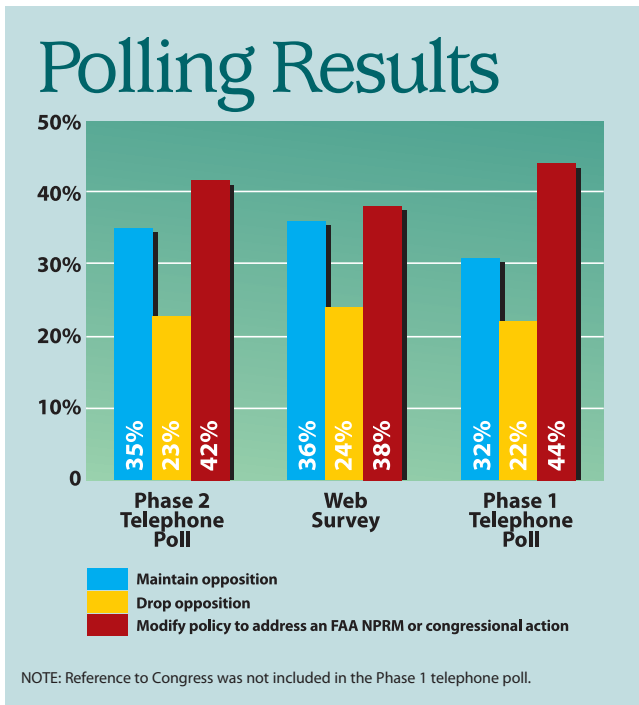




JOHN PERKINSON

**ABOVE: Committee 1 meets in the plenary session room so that all members who want to can speak.**

**LEFT: ALPA's policy since 1980 has opposed any change in the Age 60 Rule. If it became evident that the FAA or Congress is determined to change the rule and that it will change, should ALPA maintain its opposition to change, drop opposition, or modify its policy to address efforts to change it?**



Capt. John Prater. "ALPA pilots will be fully engaged in shaping any rule change. Any legislative or regulatory change needs to address ALPA's priorities in the areas of safety, medical standards, benefits, retroactivity, liability protection, and appropriate rule implementation."

ALPA's attention is now on working to advocate the following priorities contained in the resolution:

- Preventing retroactive application of a change to the Age 60

rule through appropriate legislative language to the effect that "No person over 60, except active flight deck crewmembers, on the effective date may serve as a pilot (captain or first officer) for a Part 121 airline unless such person is newly hired as a pilot on or after such effective date without credit for prior seniority or prior longevity for benefits or other terms related to length of service prior to the date of rehire under any labor agreement or employment policies of the air carrier."

- Ensuring stronger liability protection for airlines and pilot unions in implementing a change to the rule through appropriate legislative language to the effect that "Any action in conformance with this Act or with a regulation under this Act may not serve as a basis for liability or relief before any court or agency of the United States, or of any state or locality, nor may any action taken prior to the effective date of enactment on the basis of section 121.383(c) of title 14, Code of Federal Regulations as then in effect"

- Ensuring that, under a defined-benefit retirement plan, a change to the Age 60 rule will not reduce a participant's or beneficiary's accrued benefit nor reduce a benefit to which a participant or beneficiary would have been entitled without enactment of such a change to the rule.

## “But is it safe?”

While some accounts of the Age 60 rule's origin claim that it was rooted in an industrial dispute, the FAA rule was actually framed in 1959 as a safety regulation and that stance was maintained until very recently. Dr. Jon Jordan, then federal air surgeon, testified to Congress on July 19, 2005: “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.” Pilots who have sought exemptions and waivers or brought suit against the FAA to overturn the rule have been unsuccessful because they had no compelling proof to counter the presumptive “common sense” argument, i.e., that aging impairs health and cognitive ability and that older pilots on average are not as safe as younger ones. Courts, lacking sufficient factual evidence to justify overturning the FAA rule, were unwilling to interfere and continually deferred to the agency.

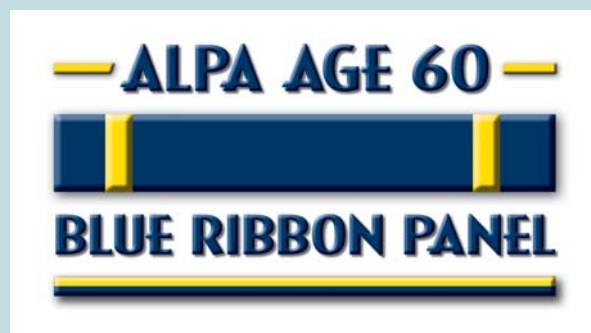
So, what changed? In November 2006, the International Civil Aviation Organization, the United Nations aviation standards-setting body, adopted a new standard that raised the maximum age to fly as an airline captain to 65. The FAA, facing mounting political pressure from Congress to change the rule in light of this development, was aware of other changes also. Shifts in medical opinions and new safety studies, coupled with the fact that the FAA allows foreign and Part 135 pilots age 60 or older to operate in U.S. airspace, were providing opponents of the rule with new arguments to plead. It became apparent that it would be increasingly difficult for the FAA to defend its safety argument against the next rounds of challenges.

Not surprisingly, therefore, in late 2006, the current federal air surgeon, Dr. Fred Tilton, tipped the agency's hand by informing the Age 60 Aviation Rulemaking Committee that he saw no reason to institute more extensive medical requirements on pilots who fly past age 60, if such a rule was enacted.

The Aerospace Medical Association (AsMA), the largest, most representative professional organization in the fields of aviation, space, and environmental medicine, with more than 3,200 members from more than 70 countries, went further, stating, “It would seem reasonable to assume the risk of a significant medical event during a critical phase of flight would imperceptibly

threaten flying safety. The risk is vanishingly small.”

In January 2007, FAA Administrator Marion Blakey made it official that FAA had changed its position on whether the Age 60 rule is a safety-based rule. She proclaimed that any safety basis for the rule had been severely undermined with the passage of time and increased operating experience, and announced that the FAA would issue a notice of proposed rulemaking to revisit the rule.



Despite the weight and volume of opinions now arguing against a safety reason for retaining the Age 60 rule, ALPA's Blue Ribbon Panel nevertheless created a Safety and Aeromedical Working Group to ensure that no stone had been left unturned. The Working Group deliberated and conducted research for several weeks and held numerous meetings, including one with ALPA's Aeromedical Office physicians, to gain a full understanding of this issue. The Working Group looked at the risk of incapacitation and other aeromedical risks, compared their individual frequency of appearance, and then looked at the likely effect on a single flight.

Ultimately, the Working Group listed several findings, including (1) U.S. and Canadian data from 1983 to the present reveal 31 health-related pilot incapacitation events over hundreds of millions of flights, and none of these had resulted in an accident; (2) pilot incapacitation had never been cited as a probable or contributing cause of any U.S. or Canadian aviation accident; and (3) if the mandatory retirement age is increased, the FAA has recommended that it will require pilots 60 or older to hold a first class medical certificate to be renewed every 6 months.

Based on these and other findings, the Panel determined that it could not put forward a sound, fact-based safety argument against raising the mandatory airline pilot retirement age. 🌀



Concurrent with ALPA's internal work, legislative efforts in Congress to change the pilot mandatory retirement age were accelerating, including the introduction of S.65 and H.R.1125—"The Freedom to Fly Act." ALPA's Executive Council concluded that the provisions in these bills would not sufficiently address the Association's issues with respect to any change in the mandatory retirement age.



FO GREG LIPINSKI (UAL)

- Opposing any additional age-related diagnostic medical testing.
- Opposing any attempt by the FAA to obtain greater access to pilot medical records.
- Supporting the federal air surgeon's recommendation to require a first-class medical certification every 6 months for airline pilots over age 60.
- Opposing for domestic operations the implementation of the ICAO standard that at least one pilot in the cockpit be younger than 60. Once sufficient data on pilots age 60 or older become available, unless the necessity for this mitigation for the long term is clearly shown, ALPA will advocate for removal of the ICAO older/younger mitigation for all operations.
- Supporting the ability of an airline pilot to retire before the mandatory age without penalty.

The Board charged that ALPA continue to aggressively lobby for the adoption of the Akaka bill (which would provide full PBGC benefits to pilots who are required to retire at age 60).

### **The road to action**

The ground began shifting on the Age 60 rule when FAA Administrator Marion Blakey announced in January that "the FAA will propose a new rule to allow pilots to fly until they are 65," and that "the rule we intend to propose will parallel the ICAO standard—either pilot or copilot may fly up to age 65 as long as the other crewmember is [younger than] 60."

In response to the FAA Administrator's announcement, Prater established the Blue Ribbon Panel "to study the long-range effects of potential changes to the FAA Age 60 rule and to identify issues connected to possible changes to pilot mandatory retirement age."

In April, ALPA's Executive Council (the national officers and executive vice-presidents) heard the Panel's findings in the areas of aviation safety; collective bargaining; the cost and structure of health care, disability, and retirement benefits; pilot training; medical standards; and scheduling rules.

Concurrent with this internal ALPA work, legislative efforts in Congress to change the pilot mandatory retirement age were accelerating, including the introduction of



**Blue Ribbon Panelist, Capt. Mary McMillan (United), reviews the history of the Age 60 rule in the United States.**

S.65 and H.R.1125—"The Freedom to Fly Act."The Association's Executive Council concluded that the provisions in these bills would not sufficiently address ALPA's issues with respect to any change in the mandatory retirement age.

In response to this conclusion, the Council recommended to the Executive Board that ALPA modify its policy to enable the Association to influence legislation and regulatory efforts. This became more critical as legislative efforts to change the rule accelerated.

The Board, in its deliberations, took into account the high likelihood of rule change through either the legislative or the regulatory process, as well as survey data from ALPA members, who overwhelmingly affirmed that if the rule is going to change, ALPA needs to influence that change. By press time, the Association had developed a legislative strategy to begin doing just that.

Stay tuned for updates over the summer. No one is predicting that this will be the last chapter of the Age 60 history book. 🗨️

## What's Happening in Congress

This year's activity on Capitol Hill with regard to the Age 60 rule is just the latest in a string of developments.

Legislative efforts to raise the mandatory retirement age have been offered and narrowly defeated in the full U.S. Senate twice since 2001. In November 2005, language to make the upper age limit for airline pilots consistent with the International Civil Aviation Organization's recommended practice of age 65 was adopted by the Senate Commerce, Science, and Transportation Committee and then incorporated into the Senate Transportation Appropriations bill in July 2006. However, the 109th Congress adjourned before the Senate took any further action.

The adoption of ICAO's recommended practice in November 2006 that would allow foreign pilots-in-command to fly until reaching age 65 in U.S. airspace while denying that privilege to American pilots, and the FAA's announcement in January 2007 that the agency's rule would be changed within 2 years through the rulemaking process, significantly shifted the dynamic of the Age 60 debate on Capitol Hill as many lawmakers from both sides of the aisle, including the House and Senate leaders on this issue, became increasingly convinced that a change to the mandatory retirement age for airline pilots was now inevitable and the only remaining question was when the change would take effect.

This led many lawmakers and congressional staffers to start expressing private concerns with ALPA's existing policy and others—including many House and Senate friends of ALPA—to co-sponsor legislation (S.65/H.R.1125) expediting the implementation process.

In May 2007, Senate Aviation Subcommittee Chairman Jay Rockefeller (D-W.Va.) and the ranking member, Sen. Trent Lott (R-Miss.)—with the additional support of full committee Chairman Sen. Dan Inouye (D-Hawaii) and ranking member Sen. Ted Stevens (R-Alaska)—incorporated S.65 into the introduced version of the Senate FAA reauthorization bill, which the Senate Commerce, Science, and Transportation Committee then passed. This increased the likelihood that a legislative change to the Age 60 rule could possibly occur this year and supersede the FAA's regulatory time line.—ALPA Government Affairs Department