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The Call for FAA Regulation Change: Why Individuals with ADHD and ADHD Medication Prescriptions Should Be Permitted to Become Pilots

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THE CALL FOR FAA REGULATION CHANGE: WHY INDIVIDUALS WITH ADHD AND ADHD MEDICATION PRESCRIPTIONS SHOULD BE PERMITTED TO BECOME PILOTS

Clare Kelley[†]

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INTRODUCTION

The Federal Aviation Administration (“FAA”) implements various guidelines regulating who may obtain a commercial or private pilot’s license.¹ One of these regulations enforces the use of medical certificates which bar individuals diagnosed with Attention-Deficit Hyperactivity Disorder (here after “ADHD”), or taking ADHD medications from receiving their pilot’s license.² Those who take ADHD medications must stop taking them to obtain a pilot’s license and/or fly a plane.³ The FAA claims their hard ban on ADHD medications is justified out of fear that “medications used for treatment may result in cognitive deficits that pose a risk to aviation safety.”⁴ This argument holds minimal weight due to the excessive amount of contradictions, most notably evidence of stimulant use and its effectiveness among military pilots. While safety precautions are vital, the FAA’s law fails medically and legally. We should construct a more practical version of the FAA’s law by analyzing the current law’s contradictions and dangers. To date, little has been discussed on this topic. In fact, almost no research exists regarding the correlation between the FAA and ADHD.

This note advocates for a change in FAA regulations that will permit individuals with ADHD, or who take ADHD medications, to obtain their pilot’s license. Part I provides a background on the FAA regulation.⁵ It outlines and responds to the FAA’s reasons behind their regulation.⁶ Part II discusses similar licenses and other vehicles that individuals with ADHD are permitted to operate.⁷ Comparing and contrasting FAA guidelines with similar alternatives demonstrates the multitude of contradictions within the FAA regulation, specifically when looking at their handling of other health conditions and medications.⁸ Part III sheds light on the increasing magnitude of this

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1. *Regulations and Policies*, FAA, https://www.faa.gov/regulations_policies [<https://perma.cc/4ZX5-ZMQE>].
 2. Jackson Barnett, *ADHD & Pilot Medical Certification*, BARNETT L. OFFS., <https://barnettlegal.com/adhd-pilot-medical/> [<https://perma.cc/VZ8H-ZTZW>].
 3. *Testing Requirements – ADHD/ADD*, FAA, https://www.faa.gov/ame_guide/media/TestingRequirements.pdf [<https://perma.cc/W5A4-WAGM>].
 4. *Guide for Aviation Medical Examiners*, FAA, https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/dec_cons/disease_prot/adhd/ [<https://perma.cc/TEP2-X8GL>].
 5. *See infra* Part I.
 6. *Id.*
 7. *See infra* Part II.
 8. *Id.*

issue by exploring societal factors that add additional pressure on the FAA to reevaluate their regulation.⁹ Today, the number of pilots has plummeted, while the number of ADHD diagnoses and medication use has skyrocketed.¹⁰ Part IV proposes a specific new FAA process that permits individuals with ADHD and ADHD medications the opportunity to become commercial or private pilots.¹¹

I. THE HISTORY OF THE FAA REGULATION

The FAA Act of 1958 “charge[s] the federal government with promoting aviation and maintaining aviation safety standards.”¹² Through this Act, the FAA maintains aviation safety standards by creating a system that requires commercial and private pilots to hold medical certificates.¹³ This obligates the FAA to “structur[e] certification policies and processes to reflect current medical advancements.”¹⁴ However, the policies implemented by the FAA lack a uniform framework and are “a maze of medical and legal language that is, in some respects, clear and concise, and, in others, very general and vague.”¹⁵

Obtaining a medical certificate is an often unpredictable process varying among applicants based on their disclosures.¹⁶ This is because many of these disclosures involve medical conditions and medications that the FAA flags for further review.¹⁷ As such, “every applicant for a medical certificate who has a medical condition that requires review will receive consideration that is measured against the medical policy and on the merits of the individual’s medical case history.”¹⁸ This review process requires additional testing before an Aviation Medical Examiner (“AME”).¹⁹ An AME is an FAA board certified doctor responsible for conducting additional testing for pilot license applicants who disclose

9. *See infra* Part III.

10. *Id.*

11. *See infra* Part IV.

12. *Airman Medical Certification: Understanding Airman Medical Standards*, AOPA, <https://www.aopa.org/go-fly/medical-resources/airman-medical-certification> [<https://perma.cc/HZP5-UJ3X>].

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Sean Walsh, *Can I Become a Private Pilot if I have ADHD?*, PILOT PASSION, <https://pilotpassion.com/can-i-become-a-pilot-if-i-have-adhd/> [<https://perma.cc/XSP2-HE9M>].

any form of condition or medication that may affect their ability to fly a plane.²⁰ If an individual fails to disclose a diagnosis, such as ADHD, then it is highly unlikely the FAA will flag their application for review, or even alert an AME.²¹

FAA guidelines prohibit a realm of conditions, substances, traits, etc., but this note will focus on two of the prohibitions: individuals with diagnosed ADHD, and individuals who have ingested stimulants and non-stimulants commonly used for the management of ADHD.²² These stimulants include medications with common brand names such as Concerta, Ritalin, Strattera, Vyvanse, Dexedrine, Methylin, and Focalin.²³ According to the FAA, for this class of medication, “it is the condition that becomes [the] primary reason” for its ban, because the medications are typically used to treat conditions (such as ADHD) that the FAA often considers disqualifying for flying.²⁴ A diagnosis of ADHD does not automatically disqualify an individual from becoming a pilot in the U.S.; however, an individual with ADHD is substantially less likely to become a pilot than an individual without ADHD because a person with ADHD must undergo rigorous testing by an AME.²⁵ While it is incredibly difficult for an individual with diagnosed ADHD to obtain a commercial or private pilot’s license, it is *possible* through a long extensive process known as a Special Issuance.²⁶ But it is *impossible* for an individual to obtain a commercial or private pilot’s license if they use medication to treat ADHD.²⁷

This section will discuss the history of this FAA regulation, how it works, its negative impact on individuals with medical conditions such as ADHD, and why it is a problem.

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20. *Aviation Medical Examiner (AME) Designee Information*, FAA, https://www.faa.gov/other_visit/aviation_industry/designees_delegations/designee_types [<https://perma.cc/PU6Y-BPL4>].
 21. Walsh, *supra* note 19.
 22. *Medications and Flying*, FAA, https://www.faa.gov/pilots/safety/pilotsafetybrochures/media/Meds_brochure.pdf [<https://perma.cc/L6VW-XYV4>].
 23. Barnett, *supra* note 2.
 24. *Medications and Flying*, *supra* note 22.
 25. Walsh, *supra* note 19.
 26. *Airman Medical Certification: Understanding Airman Medical Standards*, *supra* note 12.
 27. Walsh, *supra* note 19.

A. What is a Medical Certificate?

The FAA requires all pilots-in-command of commercial or private aircrafts to obtain and maintain FAA Airman Medical Certificates.²⁸ A pilot-in-command is the pilot responsible for operating behind the wheel of the plane.²⁹ Although applicants may begin their required flight training without a medical certificate, the FAA suggests all individuals secure their medical certificate prior to commencing training in order to alert them to any medically disqualifying condition before wasting their time and money,³⁰ because even if applicants complete the training, they will not receive their pilot's license without a medical certificate.³¹

There are three main types of FAA medical certificates: First-Class, Second-Class, and Third-Class.³² Each medical certificate regulates a different type of aircraft, and pilots must obtain their certificates accordingly.³³ First-Class medical certificates are required for airline transport pilots.³⁴ Second-Class medical certificates are required for commercial pilots.³⁵ Third-Class medical certificates are required for private pilots.³⁶

All three classes have similar medical standards.³⁷ This includes prerequisites for: color vision, hearing, audiology, ENT, pulse, blood pressure, mental, and substance dependence and substance abuse.³⁸ Likewise, all three medical certificates disqualify the same fifteen conditions.³⁹ These disqualifying conditions are diabetes mellitus requiring oral hypoglycemic medication or insulin, angina pectoris,

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28. *FAA Medical Certificates: Airman Medical Certification*, ATP FLIGHT SCH., <https://atpfightschool.com/become-a-pilot/airline-career/faa-medical-certificate.html> [https://perma.cc/C35A-VD7K].
 29. *Id.*
 30. *Frequently Asked Questions: When Do I Need a Medical Certificate?*, FAA, https://www.faa.gov/faq?combine=&field_faq_category_target_id=11581 [https://perma.cc/8W3J-GG2X].
 31. Medical Certificates: Requirements & Duration, 14 C.F.R. § 61.23 (2024).
 32. Flying Staff, *What Are the Different Types of FAA Medical Certificates?*, FLYING MAG. (June 6, 2022), <https://www.flyingmag.com/guides/types-of-pilot-medical-certificates/> [https://perma.cc/W63Y-4S5V].
 33. *Id.*
 34. *Synopsis of Medical Standards*, FAA, https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/media/synopsis.pdf [https://perma.cc/Y59B-JDKV].
 35. *Id.*
 36. *Id.*
 37. *Id.*
 38. *Id.*
 39. *Id.*

coronary heart disease that has been treated or, if untreated, that has been symptomatic or clinically significant, myocardial infarction, cardiac valve replacement, permanent cardiac pacemaker, heart replacement, psychosis, bipolar disorder, personality disorder that is severe enough to have repeatedly manifested itself by overt acts, substance dependence, substance abuse, epilepsy, disturbance of consciousness (without satisfactory explanation of cause), and transient loss of control of nervous system function(s) without satisfactory explanation of cause.⁴⁰ These conditions almost always kill a pilot's career before it begins.⁴¹ However, Special Issuances provide a glimmer of hope, creating a process for medical approval by the FAA.⁴² After meeting with an AME, the FAA will either deny the application or grant a Special Issuance.⁴³

B. How Does ADHD Alter the Medical Certification Process?

An ADHD diagnosis or a prescription for ADHD medications impacts the medical certification process.⁴⁴ However, this assumes that the individuals applying for the medical certificate disclose their ADHD or ADHD medication use.⁴⁵ If applicants make such a disclosure, then they first must undergo a comprehensive evaluation by an AME to determine whether an ADHD diagnosis exists or if there is a current ADHD medication prescription in use.⁴⁶ If the individual takes ADHD medications, they must first stop taking them for ninety days before continuing the certification process.⁴⁷ Once those ninety days have passed, or if an applicant does not take ADHD medications, then they will undergo a neurophysiological evaluation with an FAA approved clinical psychologist or neuropsychologist.⁴⁸ This evaluation typically takes a minimum of six hours and consists of various neurocognitive functioning tests.⁴⁹ The psychologist determines whether the individual

40. *Id.*

41. *Id.*

42. *See infra* Section C.

43. Chris M. Front & Randy J. Georgemiller, *Pilots with Attention Deficit/Hyperactivity Disorder (ADHD)*, MEDIUM: FAA SAFETY BRIEFING (Jan. 3, 2022), <https://medium.com/faa/pilots-with-attention-deficit-hyperactivity-disorder-adhd-6518967ac46e> [<https://perma.cc/7DHE-R7RC>].

44. *Guide for Aviation Medical Examiners*, *supra* note 4.

45. *See* Front & Georgemiller, *supra* note 43.

46. *Id.*

47. *ADHD Disposition Table*, FAA, https://www.faa.gov/ame_guide/media/ADHD_disposition_table.pdf [<https://perma.cc/4XEX-DBVV>].

48. *Id.*

49. Warren Silberman, *Heads-Up for Student Pilots*, AOPA PILOT PROT. SERVS. (May 21, 2014), <https://pilot-protection-services.aopa.org/>

has ADHD by comparing their test results to those of a non-neurodivergent functioning individual.⁵⁰

If the evaluation confirms an ADHD diagnosis, and/or if the individual is unable to stop taking their medication for ninety days (and then into the future if they become a pilot), then the FAA will not grant the applicant *any* class of medical certification.⁵¹ Given that many individuals with ADHD take medication to treat their condition, this automatically disqualifies a significant portion of individuals with ADHD from receiving medical certifications.⁵²

A major concern (which occurs outside the FAA) is the ADHD diagnostic process in and of itself, as it may inaccurately diagnose a patient with ADHD.⁵³ Given the range of symptoms, and the differing ways these symptoms may manifest in one individual to another, no rigid “one-size-fits-all” diagnostic process technically exists.⁵⁴ As a result, some medical providers may prescribe a medication that another may find to be unnecessary.⁵⁵ Due to the risk of potential erroneous ADHD diagnoses, the FAA permits individuals to undergo an evaluation by an AME.⁵⁶

Sometimes, pilots receive an ADHD diagnosis after obtaining their license. However, the pilot must immediately stop flying upon receipt of an ADHD diagnosis from any qualified medical provider. The pilot is prohibited from flying until they undergo and pass a new medical evaluation by an AME.⁵⁷ It is the pilot’s responsibility to report any new diagnosis or medication to the FAA.⁵⁸ If the pilot fails to uphold

news/2014/may/21/heads-up-for-student-pilots [https://perma.cc/TYH2-352H].

50. Gary Crump, *ADHD and the FAA: What Is It and How Does the FAA Look at This Condition?*, AOPA PILOT PROT. SERVS. (Feb. 1, 2018), <https://pilot-protection-services.aopa.org/news/2018/february/01/adhd-and-the-faa> [https://perma.cc/NJA9-C2SK].
51. *Id.*
52. *See National Prevalence of ADHD and Treatment*, CDC, <https://www.cdc.gov/ncbddd/adhd/features/national-prevalence-adhd-and-treatment.html> [https://perma.cc/5P6M-2SFB] (noting that an estimated 60% of individuals with ADHD treat their condition with medication).
53. Jaime Herndon, *What We Know About ADHD Overdiagnosis*, HEALTHLINE (Sept. 21, 2021), <https://www.healthline.com/health/adhd-overdiagnosed> [https://perma.cc/9LE6-ZUM7].
54. *Id.*
55. *Id.*; *see also* Front & Georgemiller, *supra* note 43.
56. Front & Georgemiller, *supra* note 43.
57. *Pilot Mental Fitness*, FAA, <https://www.faa.gov/pilot-mental-fitness> [https://perma.cc/PF3E-JERA].
58. *Id.*

this responsibility, then it is possible the FAA will never find out about the new diagnosis or medication.⁵⁹

C. What is a Special Issuance?

Some pilots can acquire their license despite a medical condition if they attain a Special Issuance. Those with conditions “classified as ‘dynamic’—such as diabetes, ADHD, a learning disability, or depression [. . .] would apply for a Special Issuance.”⁶⁰ Additionally, “it requires periodic follow up, such as drug testing or monitoring by a psychologist, and the medical [evaluation] is valid for at most one year.”⁶¹

A special issuance is a two-sided coin. It’s great that the regulations offer a mechanism to offset the disqualifying conditions. The downside is that it’s a discretionary issuance granted by the Federal Air Surgeon and comes with requirements for periodic interim medical reports and time limitations (usually 12 months) on the duration of the certificate, and it can be withdrawn anytime the FAA sees evidence of an “adverse” change in your condition.⁶²

Although Special Issuances may be valid for longer, they tend to only be authorized for a few months at a time.⁶³ The length of validity is up to the discretion of the FAA, and is typically determined by the medical condition and the risk that condition could pose.⁶⁴ Ultimately, a Special Issuance is like a waiver, and is included alongside the pilot’s medical certificate.⁶⁵ Although many people apply, the process is time consuming and frustrating. It is possible for an individual diagnosed with, but unmedicated for ADHD to get a private or commercial pilot’s license through the Special Issuance Process.⁶⁶ However, no individual actively taking ADHD medication can receive a private or commercial pilot’s license through the Special Issuance process.⁶⁷

59. *See id.*

60. Pia Bergqvist, *Pilots with Special Abilities*, FLYING MAG. (June 14, 2021), <https://www.flyingmag.com/pilots-with-special-abilities/> [<https://perma.cc/N8Z9-7XZ4>].

61. *Id.*

62. *Special Issuance Certification*, AOPA, <https://www.aopa.org/go-fly/medical-resources/special-issuance-certification> [<https://perma.cc/3K6L-8VJL>].

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

D. How is this Regulation Monitored?

Another concern with the FAA's regulation is the lack of set policy in terms of drug testing commercial and private pilots, making it unclear whether the regulation is actually enforced.⁶⁸ The only time a private pilot is guaranteed to be drug tested is after an accident.⁶⁹ The FAA claims the purpose of this mandatory drug test is "to clear the pilot of any wrongdoing or intoxication."⁷⁰ Commercial pilots only undergo mandatory drug testing when they apply for their medical certificate, and after an accident.⁷¹ This is because "FAA regulations state that airlines have to drug-test potential pilots early in the hiring process to ensure that the pilot is not using drugs or alcohol."⁷² No regulation of drug and alcohol intake by the pilots occurs outside of these limited circumstances, unless the airline imposes additional supervising techniques.⁷³ Therefore, many pilots could easily ingest substances banned by the FAA after receiving their medical certificates without any repercussions.⁷⁴

If a pilot fails a drug test, specifically the additional drug testing administered by the airlines, consequences may include revoking the pilot's license.⁷⁵ Often, airlines are quick to fire employees who test positive while employed.⁷⁶ However, a failed drug test does not automatically mean that the pilot can never fly again.⁷⁷ There are opportunities for pilots to come back from a failed test such as contesting the positive test result.⁷⁸ For example, a pilot may also enter a substance abuse program which their employer and the FAA approve.⁷⁹ Following intensive inpatient or outpatient care, a pilot has the opportunity to return to duty if a Substance Abuse Professional approves.⁸⁰ If a pilot is permitted to return to duty following a failed

68. *Are Pilots Drug Tested (and How Often)?*, AEROCORNER, <https://aerocorner.com/blog/are-pilots-drug-tested-and-how-often/> [<https://perma.cc/WD6S-RS38>].

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

drug test, then they will take more drug tests than other pilots.⁸¹ This includes random drug tests and a “Return to Duty Drug Test.”⁸²

E. What is the FAA’s Rationale?

The FAA alleges ADHD poses a risk to flight safety, requiring regulation.⁸³ In addition to the condition itself, “pharmacological treatments for ADHD are not approved for flying because they can cause harmful effects on perceptual, motor, and cognitive functions and impair the recognition of fatigue. Additionally, their effectiveness is time-limited, a particular concern if a dose is missed or flight time exceeds the therapeutic impact of the drug.”⁸⁴ Specifically:

NTSB investigations of fatal accidents attributed to ADHD have documented that pilots with ADHD: failed to adequately prepare for flight (e.g., did not check the weather), continued flight when it was ill-advised (e.g., due to deteriorating weather), engaged in hazardous actions (e.g., low-level maneuvering to show off), and became distracted and made critical errors (e.g., failed to maintain airspeed, stalled, and spun while circling a friend’s home at low altitude).⁸⁵

However, there is no shortage of problems with the FAA’s position. First, the FAA provides little to no evidence to support their justification. Second, the FAA lacks a current understanding of ADHD and ADHD medication use. Third, the issues stated are not confined to ADHD; these risks exist among all pilots regardless of an ADHD diagnosis or ADHD medication. However, the list of issues within the FAA regulation goes far beyond those three.

F. Problems with the FAA Regulation

1. Requires Disclosure

The FAA regulation depends on the honesty of the applicant and fails if an individual fails to disclose information. In order “[t]o attain a clear medical, pilots must report any health professional visits during the previous three years and disclose all existing physical and psychological conditions and medications.”⁸⁶ Because some pilots fear

81. *Id.*

82. *Id.*

83. Front & Georgemiller, *supra* note 43.

84. *Id.*

85. *Id.*

86. Ashley Barajas et al., *Why Pilots Don’t Want to Talk About Mental Health – and Why They Should*, FLYING MAG. (May 17, 2022), <https://www.flyingmag.com/why-pilots-dont-want-to-talk-about-mental-health-and-why-they-should/> [<https://perma.cc/63ML-66YD>].

medical disqualification if they disclose, pilots refrain from disclosing the full extent of their health status to their AME.⁸⁷ Unfortunately, it may require a toxicology test following a fatal accident to reveal the non disclosed ADHD or other condition.⁸⁸

Data show that pilots disclose their mental health struggles less than other members of the general population.⁸⁹ For example, a recent study conducted by Dr. William Hoffman, a neurology resident and aeromedical researcher, found that 56.1% of pilots actively refrained from using health care services in fear of losing their medical license.⁹⁰ Of the pilots who seek care, 26.8% admitted to misrepresenting or withholding their health care information.⁹¹ One pilot stated that, “pilots believe being vulnerable, and sharing feelings or struggles, such as anxiety, depression, and chronic stress, would be at best humiliating or embarrassing, and, at worst, the end of their flying career.”⁹² In August 2023, this fear of nondisclosure became a reality when the FAA began investigating an estimated 5,000 pilots who all allegedly withheld disqualifying medical conditions.⁹³ These 5,000 pilots are likely only a portion of the number of pilots currently hiding their medical conditions from the FAA. As such, in the future, the FAA may discover they have been oblivious to thousands of additional pilots with disqualifying medical conditions.

Pilots fear that addressing their health concerns may end their careers. *No one* should be in a position where a career comes at the expense of health. The FAA regulation rewards non-disclosure of medical conditions with a pilot’s license, thus increasing the already-persistent stigma surrounding ADHD and other mental illnesses within society.

2. Contradicts Military Standards

The FAA’s regulation is inconsistent with the handling of ADHD medications by the military.⁹⁴ In the military, pilots are often given

87. Front & Georgemiller, *supra* note 43.

88. *Id.*

89. Barajas et al., *supra* note 86.

90. *Id.*

91. *Id.*

92. *Id.*

93. Ronny Reyes, *FAA Says Nearly 5K Pilots Lied About Medical Issues That Would Keep Them From Flying*, N.Y. POST (Aug. 27, 2023), <https://nypost.com/2023/08/27/nearly-5000-pilots-lied-about-medical-conditions-faa/> [https://perma.cc/U2A5-LBB8].

94. Michael Segal, *The Military Needs Recruits with ADHD*, WALL ST. J. (Jan. 19, 2023), <https://www.wsj.com/articles/the-military-needs-recruits-with-adhd-overstimulation-standards-learship-advantage-join-symptoms-11674056740> [https://perma.cc/JM22-UM3U].

stimulants to increase their focus while flying a plane, and to extend the length of time they can fly.⁹⁵ The parallel is not the institutions, but the activity. Both involve flying a plane, but one flies at a higher intensity and permits these substances, while the other is a lower intensity and has a regulation that increases the risk of danger by prohibiting these substances.⁹⁶

Unlike the FAA, the military has found that ADHD medications enhance the safety of many flights because “[b]io enhancements can improve service members’ performance, which can promote safe and efficient mission accomplishment.”⁹⁷ Specifically, previous Air Force pilots were given “10 mg of amphetamines for every four hours of flying time for single-pilot fighter missions longer than eight hours.”⁹⁸ Although many of these pilots do not have prescriptions for ADHD medications, the military permits them to use smaller dosages.⁹⁹ The use of these medications has continued in the military for years, especially for pilots with long flights.¹⁰⁰ When “[a]sked why military pilots were permitted to use amphetamines when they were prohibited by commercial airlines, Colonel Peter Demitry, chief of the Air Force Surgeon General’s Science and Technology division, explained: ‘When a civilian gets tired, the appropriate strategy is to land, then sleep. In combat operations when you’re strapped to an ejection seat, you don’t have the luxury to pull over.’”¹⁰¹ Additional studies and “[r]esearch

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95. Shani Sarfati et al., *Success Rates at an Air Force Pilot Academy and Its Relation to Methylphenidate Use*, 90 AEROSPACE MED. & HUM. PERFORMANCE 788 (2019).
96. David Sayers et al., *The Prevalence of Attention-Deficit/Hyperactivity Disorder (ADHD) and ADHD Medication Treatment in Active Component Service Members, U.S. Armed Forces, 2014-2018*, HEALTH.MIL (Jan. 1, 2021), <https://health.mil/News/Articles/2021/01/01/Prevalence-of-Att-MSMR-Jan-2021> [<https://perma.cc/SS9Q-A68D>].
97. Maxwell Mehlman, *Bioethics of Military Performance Enhancement*, 165 J. R. ARMY MED. CORPS. 226, 226–31 (2019).
98. *Id.*
99. Lianne Hart, *Use of ‘Go Pills’ a Matter of ‘Life and Death,’ Air Force Avows*, L.A. TIMES (Jan. 17, 2003), <https://www.latimes.com/archives/la-xpm-2003-jan-17-na-friendly17-story.html> [<https://perma.cc/D76E-E8MB>].
100. *What Are Go Pills in the Military?*, BANYAN TREATMENT CTR., <https://www.banyantreatmentcenter.com/2022/08/05/what-are-go-pills-in-the-military-mvir/> [<https://perma.cc/X6G4-A276>]; see also Rocky Jedick, *Stimulants & Sleep Aids in Military Aviation*, GO FLIGHT MED. (July 11, 2014), <https://goflightmedicine.com/2014/07/11/stimulants-sleep-aids/> [<https://perma.cc/9HKH-TKCJ>].
101. Mehlman, *supra* note 97.

demonstrates that stimulant medications maintain alertness and performance in sleep-deprived aircrew.”¹⁰²

Military flying does not differ all that drastically from commercial or private flying.¹⁰³ Yet, the FAA holds pilots to a completely different standard than the military. The military not only *permits* ADHD medication use, but it *encourages*, and in some instances even *requires* it to make a pilot more attentive and safer while in flight.¹⁰⁴ This not only contradicts the FAA regulation but disproves the FAA’s claims that ADHD medications are dangerous when used by pilots. In fact, it shows the complete opposite – that ADHD medications make flying safer.

3. Fails to Address the Root of the Issue

Safety is the root of the FAA’s concern, yet their regulation fails to create an environment that adequately addresses this concern. The FAA cites various flying incidents as justification for their regulation, however, these past flying accidents demonstrate that stimulants are not a sole factor for many of the accidents, but that “[i]nexperience, bad weather, and self-medication create a fatal combination.”¹⁰⁵ As a result, the FAA has put forth a narrative that mislabels ADHD and ADHD medications as the culprit.

Multiple past incidents demonstrate this, including one suffered by a 21-year-old Alabama man who was able to obtain a third-class medical certificate.¹⁰⁶ In his certificate application, he failed to disclose his previous antidepressant prescription as well as his current Adderall prescription.¹⁰⁷ Unfortunately, the pilot died in a plane crash.¹⁰⁸ The pilot’s autopsy found amphetamines and alcohol in the pilot’s blood and tissues at the time of his accident.¹⁰⁹ Following the autopsy results, investigators obtained the pilot’s pharmacy records, which revealed that the pilot had taken five Adderall pills within two days of having

102. Russell K. Gore et al., *Fatigue & Stimulant Use in Military Fighter Aircrew During Combat Operations*, 8 AVIATION SPACE ENV’T MED. J. 719, 719 (2010).

103. *ADHD and the Military*, CHADD, <https://chadd.org/for-adults/adhd-and-the-military/> [<https://perma.cc/2XR6-LWQ3>].

104. *Id.*

105. Peter Garrison, *Accident Report: One Student Pilot’s Reckless Decision*, FLYING MAG. (Oct. 24, 2011), <https://www.flyingmag.com/technique-accidents-accident-report-one-student-pilots-reckless-decision/> [<https://perma.cc/6XPC-MBKQ>].

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

his prescription filled.¹¹⁰ This meant the pilot was consuming his pills at a rate more than twice the rate his doctor prescribed.¹¹¹ In addition, investigators found empty cans of Red Bull energy drinks, a full ashtray, chewing tobacco, and at least eight cans of beer.¹¹² He also flew in weather conditions of high fog, extreme wind, and heavy rain.¹¹³ Despite this individual having ADHD and taking medication to manage it, investigators explained that this accident could have happened to any pilot.¹¹⁴ Many licensed pilots without an ADHD diagnosis “regularly take off in darkness, fog, and rain, only to hit a tree or a hillside within a few miles of the airport.”¹¹⁵

If the FAA’s goal is to promote safety and limit aviation accidents, then barring people with ADHD or with ADHD medications will not accomplish their objective.

II. THE FAA’S VIEW ON ADHD IS TOO STRICT

A. *Other Medications and Conditions Regulated by the FAA*

ADHD and ADHD medications are not the only conditions and medications that the FAA regulates.¹¹⁶ The FAA permits individuals with other medical conditions, diagnoses, etc. to obtain a pilot’s license and fly a plane.¹¹⁷ Some of these medical conditions may inhibit a pilot’s senses, but do not completely disqualify them from obtaining a license, so long as they adequately manage their condition.¹¹⁸ For example, eyesight is a necessity to fly a plane, yet, a lack of 20-20 vision does not bar an individual from obtaining a pilot’s license.¹¹⁹ The FAA allows individuals to become commercial or private pilots if they use corrective mechanisms such as contact lenses, glasses, Lasik surgery, etc. to fix their vision.¹²⁰ Despite allowing other conditions to be treated through

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Airman Medical Certification: FAR 61.53: Self-Ground for Medical Deficiency*, AOPA, <https://www.aopa.org/go-fly/medical-resources/airman-medical-certification> [<https://perma.cc/Q6UA-G4KA>].

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

corrective mechanisms, the FAA does not allow for ADHD medications to be used as corrective mechanisms.¹²¹

Depression is a non-disqualifying condition, more analogous to ADHD.¹²² The FAA takes a closer look at depressive disorders because both the condition and its medications may produce cognitive deficits that inhibit a pilot's ability to fly a plane.¹²³ Despite having diagnosed depression, applicants can obtain a Special Issuance after being evaluated by a licensed neuropsychologist who can verify the applicant does not use any of the prohibited medications to treat the depression.¹²⁴ If the applicant takes a prohibited medication, then they must stop its use for a minimum of sixty days.¹²⁵ If the applicant takes an approved medication, they may undergo further evaluation from an AME so long as they have been on the approved medication for at least six months.¹²⁶ Depressive disorders are commonly treated with selective serotonin reuptake inhibitors ("SSRI") medications.¹²⁷ SSRIs "exert action by inhibiting the reuptake of serotonin, thereby increasing serotonin activity. Unlike other classes of antidepressants, SSRIs have little effect on other neurotransmitters, such as dopamine or norepinephrine."¹²⁸

The FAA has not always permitted SSRI use by commercial or private pilots.¹²⁹ In 2010, the FAA decided to change its regulation, and allow commercial and private pilots to take four select SSRIs.¹³⁰ These

121. *Id.*

122. *Guide for Aviation Medical Examiners: Decision Considerations - Aerospace Dispositions. Item 47. Psychiatric Conditions - Use of Antidepressant Medications*, FAA, https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/app_process/exam_tech/item47/amd/antidepressants/ [<https://perma.cc/73E8-4LSY>].

123. *Specifications for Neuropsychological Evaluations for Treatment with SSRI Medications*, FAA, https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/media/ssrimedsspecs.pdf [<https://perma.cc/72WP-K9FC>].

124. *Id.*

125. *Guide for Aviation Medical Examiners: Decision Considerations - Aerospace Medical Dispositions Item 47. Psychiatric Conditions - Use of Antidepressant Medications*, *supra* note 122.

126. *Id.*

127. *Specifications for Neuropsychological Evaluations for Treatment with SSRI Medications*, *supra* note 123.

128. Andrew Chu & Roopma Wadhwa, *Selective Serotonin Reuptake Inhibitors*, STATPEARLS, <https://www.ncbi.nlm.nih.gov/books/NBK554406/> [<https://perma.cc/YG86-3532>].

129. Larry M. Diamond, *The Journey of the Serotonin Reuptake Inhibitor in Aviation*, AOPA PILOT PROT. SERVS. (Aug. 1, 2018), <https://pilot-protection-services.aopa.org/news/2018/august/01/the-journey-of-the-serotonin-reuptake-inhibitor-in-aviation> [<https://perma.cc/4AJG-6F6Z>].

130. *Id.*

four SSRIs include: Fluoxetine (Prozac), Sertraline (Zoloft), Citalopram (Celexa), and Escitalopram (Lexapro).¹³¹ The FAA identified these specific SSRIs as acceptable due to their high effectiveness, common use, and mild side effects.¹³² Before this “FAA policy change in 2010, pilots simply would not declare they had depression and if they were on antidepressant medications, they were not reported on the medical application. This was an obvious disconnect with the FAA’s mandate for aviation safety.”¹³³ When changing their SSRI regulation, the FAA reviewed recommendations from a multitude of sources including the Aerospace Medical Association, the Aircraft Owners & Pilots Association (AOPA), the Air Line Pilots Association (ALPA), and the U.S. Army.¹³⁴ The FAA was particularly influenced by the fact that the U.S. Army had already allowed pilots to take antidepressants.¹³⁵ Therefore, the FAA should find it especially persuasive that the U.S. military permits its pilots to take ADHD medications.¹³⁶

The FAA continues to further evolve its regulations on depression and SSRI use.¹³⁷ The FAA previously required pilots with SSRI Special Issuances to undergo annual neuropsychological evaluations every six months to renew their Special Issuance.¹³⁸ But, as of December 2022, the FAA has eliminated this requirement for SSRI renewal.¹³⁹ Because the FAA continues to reevaluate and change its policing of depression and SSRIs, it should do the same regarding its policing of ADHD and ADHD medications.

Although the FAA permits a multitude of medical diagnoses, it prohibits others in addition to ADHD.¹⁴⁰ Most of these are physical conditions, such as angina pectoris, cardiac valve replacements, coronary heart disease, heart replacements, diabetes, epilepsy,

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. Sarfati et al., *supra* note 95.

137. *SSRI Recertification/Follow-Up Clearance*, FAA, https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/media/SSRI_Recert_NP_change_FAQs.pdf [https://perma.cc/9R3V-GEKS].

138. *Id.*

139. *Id.*

140. Sarina Houston, *Aviation Medical Exams: Disqualifying Medical Conditions*, LIVE ABOUT, <https://www.liveabout.com/aviation-medical-exams-disqualifying-medical-conditions-282925> [https://perma.cc/QJW9-HMUD].

myocardial infarctions, and permanent cardiac pacemakers.¹⁴¹ In addition to the physical conditions, there are psychological medical conditions such as bipolar disease and psychosis that disqualify individuals from obtaining a pilot's license.¹⁴² These conditions are distinguishable from ADHD because they are less predictable, making management more challenging.¹⁴³ The FAA should evaluate ADHD and ADHD medications in a manner similar to how it views depression and SSRI medications. This would encourage individuals to seek treatment for their ADHD and disclose all prescribed medications without the fear of the FAA.

B. ADHD and ADHD Medications do not Disqualify Individuals from Obtaining other Vehicle Licenses.

Despite being blocked by the FAA from obtaining a pilot's license, individuals with ADHD or that use ADHD medications qualify for numerous other licenses and can operate a plethora of other vehicles.¹⁴⁴ They may drive a car, a boat, or even a smaller plane, as explained below.¹⁴⁵ It is medically inappropriate to exclude these individuals from flying a plane, yet to permit them to operate a variety of alternative forms of motor vehicles.¹⁴⁶ This is especially problematic given research showing that ADHD medication substantially diminishes the risk of motor vehicle crashes.¹⁴⁷

1. Sports Pilot Licenses

The FAA permits the same individuals whom they prohibit from flying private and commercial planes to fly smaller and more dangerous planes, such as a sports plane.¹⁴⁸ In 2004, the sports pilot license was introduced, allowing individuals to fly small, two-seat planes without a medical certificate.¹⁴⁹ However, these small aircrafts pose a substantially

141. *Id.*

142. *Id.*

143. Erica Cirino, *How to Deal with the Uncertainty of Bipolar Episodes*, HEALTHLINE, <https://www.healthline.com/health/bipolar-disorder/care-giver-unpredictability> [https://perma.cc/KL4G-ZBS3].

144. Zheng Chang et al., *Association Between Medication Use for Attention-Deficit/Hyperactivity Disorder and Risk of Motor Vehicle Crashes*, 74 JAMA PSYCH. J. 597, 597 (2017).

145. *Id.*

146. *Id.*

147. *Id.*

148. *Sport Pilot*, FAA, https://www.faa.gov/sites/faa.gov/files/licenses_certificates/airmen_certification/sport_pilot/LSPBrochure.pdf [https://perma.cc/G5TM-FQVV].

149. *Id.*

behind the wheel, medications tremendously improve driving safety in study subjects with ADHD.¹⁶⁰ Many of these studies interact with families who testify that their relatives with treated ADHD are some of the best drivers they know when they use their medications correctly.¹⁶¹ Another study found that individuals with untreated ADHD had a slightly higher risk of being in a car accident than individuals without ADHD.¹⁶² However, this same study found that drivers with ADHD treated by medication did not have a higher crash risk than the drivers without ADHD.¹⁶³

These studies shed light on the importance of adequate medication use. The FAA should invite the use of ADHD medications when needed, not forbid it. The real issue comes from *unmanaged* ADHD, which is why the FAA should permit pilots with *managed* ADHD to fly.

3. Hot Air Balloon License Ban

The list of licenses the FAA has banned individuals from receiving has recently expanded to include commercial hot balloon licenses.¹⁶⁴ The FAA now requires commercial hot balloon pilots to receive a Class-Two medical certificate, meaning that individuals taking medications for ADHD can no longer qualify for a commercial hot air balloon license.¹⁶⁵

This regulation was proposed following the deaths of sixteen people during a disastrous hot air balloon crash.¹⁶⁶ On July 30, 2016, a hot air balloon took off from a park near Austin, Texas.¹⁶⁷ Unfortunately, the balloon was in the air for less than an hour before it hit power lines and burst into flames.¹⁶⁸ After the crash, investigators discovered that the pilot had been taking prescribed medications to manage his ADHD and depression, however investigators found no connection between his

160. *Id.*

161. *Id.*

162. *Id.*

163. Andrew M. Seaman, *ADHD Tied to Driver's License Delays, Crash Risks*, REUTERS HEALTH (June 12, 2017), <https://www.reuters.com/article/us-health-youth-crash-adhd/adhd-tied-to-drivers-license-delays-crash-risks-idUSKBN1932K2> [<https://perma.cc/569F-9R2U>].

164. *Hot Air Balloon Pilots Could Be Required to Get Medical Examinations Like Commercial Pilots*, KOAT, <https://www.koat.com/article/balloon-pilots-faa-changes/38393674> [<https://perma.cc/CTP9-ZFFQ>].

165. *Following 2016 Tragedy, FAA Mandates Medical Cert for Commercial Balloon Pilots*, PLANE & PILOT, <https://www.planeandpilotmag.com/news/the-latest/2022/11/17/following-2016-tragedy-faa-mandates-medical-cert-for-commercial-balloon-pilots/> [<https://perma.cc/9QLG-FHFW>].

166. *Id.*

167. *Id.*

168. *Id.*

prescribed medications and the crash.¹⁶⁹ Instead, the crash was the result of a variety of other factors that were unrelated to the pilot's prescribed ADHD and depression medications.¹⁷⁰

First, the pilot had a criminal history of impaired driving, and spent multiple years in prison for his five convictions of using drugs and alcohol while driving.¹⁷¹ These convictions alone would likely disqualify a pilot from obtaining a pilot's license.¹⁷² Second, the pilot had multiple illegal drugs in his system at the time of the crash, including oxycodone and valium.¹⁷³ These illegal drugs can cause poor judgment and motor vehicle control, yet they are not monitored by the FAA during its medical certificate application process.¹⁷⁴ Additionally, the pilot chose to fly the commercial air balloon that day despite low ceilings and illegal levels of high fog.¹⁷⁵

Another tragic hot air balloon accident occurred in June of 2021, killing five individuals in Albuquerque after crashing into power lines.¹⁷⁶ Following the incident, investigators found marijuana and cocaine in the pilot's system.¹⁷⁷ The toxicology revealed the pilot had deadly levels of cocaine in his system, meaning he was severely impaired at the time of the crash.¹⁷⁸

In both hot air balloon accidents, the crash investigators ruled out ADHD (and the prescribed medications) as the cause.¹⁷⁹ Ultimately, the crashes stemmed from a deadly combination of illegal drugs and dangerous weather conditions.¹⁸⁰ Despite this, the FAA chose to regulate ADHD and ADHD medications, which overlooks the true cause of the accidents. The FAA's medical certificates regulate *legal* substances and conditions, not *illegal* substances, and behavior.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. Maggie Krajewski, *Doctor Says Cocaine in Balloon Pilot's System Were 'Near Fatal Amounts'*, KOAT, <https://www.koat.com/article/albuquerque-balloon-crash-pilot-toxicology/37680710> [<https://perma.cc/DT2Q-CQXG>].

177. *Id.*

178. *Id.*

179. *Id.*; *Following 2016 Tragedy, FAA Mandates Medical Cert for Commercial Balloon Pilots*, *supra* note 165.

180. Krajewski, *supra* note 176; *Following 2016 Tragedy, FAA Mandates Medical Cert for Commercial Balloon Pilots*, *supra* note 165.

III. SOCIETAL FACTORS PRESSURING FAA REGULATION CHANGE

The FAA's understanding of ADHD and ADHD medication is outdated, too rigid, and overall incorrect.¹⁸¹ With a growing number of individuals being diagnosed with ADHD or taking ADHD medications, the FAA's regulations have ostracized an increasing number of individuals from the pilot industry. This section will explore societal factors currently pressuring the FAA to loosen their regulation and to further develop their understanding of ADHD and ADHD medications.

A. *Increasing ADHD Diagnoses and ADHD Medication Use Today*

The number of individuals affected by the FAA regulation is climbing exponentially due to the rapid increase of ADHD diagnoses and prescriptions¹⁸² There are currently more than five times the number of ADHD diagnoses per year than there were in 1999.¹⁸³ Multiple factors, such as the creation of telehealth, have made obtaining an ADHD diagnosis easier and more prevalent.¹⁸⁴ This has led to a sharp increase in the number of prescriptions for ADHD medications as well.¹⁸⁵ So it is no surprise that a "significant (and increasing) number [of pilot applicants] are presenting with the diagnosis of Attention Deficit Hyperactivity Disorder and on stimulant medication."¹⁸⁶

Furthermore, ADHD medications have expanded beyond ADHD treatment, and are now prescribed for a variety of conditions.¹⁸⁷ Based on the FAA policy, an individual taking ADHD medications for a condition other than ADHD is still prohibited from flying.¹⁸⁸ For example, swing shift workers have begun to use ADHD stimulants to

181. Walsh, *supra* note 19.

182. Charlotte Morabito, *Skyrocketing Demand for ADHD Meds Is Straining the U.S. Health Care System*, CNBC (Dec. 7, 2022), <https://www.cnn.com/2022/12/07/adhd-medication-demand-us-healthcare.html> [<https://perma.cc/5JMY-KBZP>].

183. *Id.*

184. *Id.*

185. *Id.*

186. *The Conundrum of ADHD in Pilots (and Pilot Applicants)*, YBW AEROMEDICAL CLINIC (Oct. 13, 2016), <https://www.aviationdoc.com/articles/2016-10-13-the-conundrum-of-adhd-in-pilots-and-pilot-applicants> [<https://perma.cc/LF2M-M4GX>].

187. Shawn Radcliffe, *Binge Eating Disorder May Be Treatable with ADHD Drug*, HEALTHLINE, <https://www.healthline.com/health-news/adhd-drug-may-be-effective-for-binge-eating-disorder-011415> [<https://perma.cc/JHT9-29GJ>].

188. Walsh, *supra* note 19.

help stay awake through their shifts.¹⁸⁹ There are no alternatives to these medications for many individuals.¹⁹⁰ Forcing them to stop taking their necessary medications poses a tremendous risk to their mental and physical health, and general well-being.

B. Current Pilot Shortage

During a time when the country demands a greater number of pilots, the FAA is barring more individuals from becoming pilots.¹⁹¹ Over the past few years, a pilot shortage has taken over the aviation industry, resulting in canceled flights across the world.¹⁹² As a result of this pilot shortage, many airlines are struggling to provide the necessary air travel to hundreds of markets throughout the world.¹⁹³ Research shows “the need for more pilots is expected to grow in the years ahead to as many as 18,000 new hires annually.”¹⁹⁴ Airlines have continued to acknowledge that “[t]he US pilot shortage is real – and a growing problem.”¹⁹⁵ As this problem persists, individuals have begun to discuss the potential link between the ADHD diagnosis epidemic and the pilot shortage.¹⁹⁶ Specifically, medical professionals and pilots have also

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189. Kristina Robb-Dover, *Why Too Many Overnight Warehouse Workers Take Stimulants*, FHE HEALTH (July 6, 2021), <https://fherehab.com/learning/overnight-work-stimulants> [<https://perma.cc/8WLP-N5EL>].
190. Kali Coleman, *It’s Not Just Adderall – These Medications Are Also Facing Shortages Now*, BEST LIFE (Jan. 30, 2023), <https://bestlifeonline.com/adhd-medication-shortages-ritalin-concerta-news/> [<https://perma.cc/AU3E-BZVK>].
191. Bob Woods, *How Airlines Plan to Create a New Generation of Pilots Amid Fears of Decade-long Cockpit Crisis*, CNBC (Nov. 11, 2022), <https://www.cnbc.com/2022/11/11/how-airlines-plan-to-create-new-generation-of-pilots-at-time-of-crisis.html> [<https://perma.cc/6VB9-GP26>].
192. *Id.*
193. See Jay Ratliff, *An Immediate Fix to the Pilot Shortage Is Being Ignored*, THE HILL (Dec. 18, 2022), <https://thehill.com/opinion/finance/3778411-an-immediate-fix-to-the-pilot-shortage-is-being-ignored/> [<https://perma.cc/WU2C-9D29>]; see also *The 2023 Pilot Shortage – Here We Go Again*, PILOT INST. (Nov. 22, 2022), <https://pilotinstitute.com/pilot-shortage/> [<https://perma.cc/4TTH-Q9JU>].
194. Woods, *supra* note 191.
195. Pilar Wolfsteller, *How US Airlines Are Tackling Pilot Shortage Crisis*, FLIGHT GLOB. (Oct. 24, 2022), <https://www.flightglobal.com/flight-international/how-us-airlines-are-tackling-pilot-shortage-crisis/150638.article> [<https://perma.cc/Z9X3-UE6E>].
196. Philip Greenspun, *Pilot Shortage Partly Due to ADHD Diagnosis Epidemic?*, PHILIP GREENSPUN’S WEBLOG (Nov. 21, 2019), <https://philip.greenspun.com/blog/2019/11/21/pilot-shortage-partly-due-to-adhd-diagnosis-epidemic/> [<https://perma.cc/5VV8-HXTK>].

noticed the increasing number of people being barred from becoming pilots due to their ADHD diagnoses or ADHD medication use.¹⁹⁷

This pilot shortage has compromised the safety of commercial airlines by forcing pilots to work longer hours, resulting in extreme levels of stress and fatigue.¹⁹⁸ Over the past few years, the FAA has labeled fatigue as one of the predominant causes of all airline accidents, or near misses of accidents.¹⁹⁹ Dennis Tajer, an American Airlines pilot, explained that he has “seen the system under pressure for well over a year, it was just a question of time before it was going to manifest itself in incidents.”²⁰⁰ The FAA is also aware of this dilemma, and admits they have received an excessive number of concerns from pilots who “continue to feel stress in the workplace, including long work hours under adverse conditions.”²⁰¹ As this stress on overworked pilots continues, the risk of aviation accidents will likely continue to increase simultaneously.²⁰² Permitting additional groups of people to become commercial pilots, such as those with ADHD or who take ADHD medication, could help alleviate a portion of this stress on current commercial pilots.

C. *A Public Demand to Relax FAA Regulations*

To solve the pilot shortage, some people have proposed FAA regulation changes.²⁰³ One of these proposals includes raising a pilot’s retirement age beyond sixty-five years old.²⁰⁴ Allied Pilots Association President, Captain Joe DePete, believes raising the retirement age is not a solution to the pilot shortage problem because it “would only increase costs for airlines as well as introduce unnecessary risks to

197. *The Conundrum of ADHD in Pilots (and Pilot Applicants)*, *supra* note 186.

198. Julia Buckley, *US Airplane Near Misses Keep Coming. Now Officials are Talking About Averting ‘Catastrophic’ Incidents*, CNN, <https://www.cnn.com/travel/article/aviation-safety-united-states/index.html> [<https://perma.cc/TG9V-EDS7>].

199. *Id.*

200. *Id.*

201. Pete Muntean & Greg Wallace, *Transportation Secretary Pete Buttigieg Cites ‘Uptick’ in Aviation Incidents at FAA Safety Summit Reviewing ‘Serious Close Calls’*, CNN, <https://www.cnn.com/2023/03/15/us/faa-air-safety-summit-close-calls/index.html> [<https://perma.cc/C6LH-82WE>].

202. *Id.*

203. David Schaper, *Proposals Would Ease Standards, Raise Retirement Age to Address Pilot Shortage*, NPR (Aug. 10, 2022), <https://www.npr.org/2022/08/10/1116650102/proposals-would-ease-standards-raise-retirement-age-to-address-pilot-shortage> [<https://perma.cc/4SAC-67QG>].

204. *Id.*

passengers and crew alike.”²⁰⁵ United Airlines CEO Scott Kirby feels similarly, and explained that “at United, of our age 64 pilots, 36% of them are unavailable to fly on a given day for sick, short-term or long-term medical reasons [. . .] Many aviation experts don’t doubt that some airline pilots would be able to continue flying safely after turning 65, but they say, at best, it’s only a short-term fix.”²⁰⁶ Ultimately, raising the retirement age fails to address the long-term problem of pilot shortages, so alternate changes should be given more consideration.²⁰⁷

Another proposed regulation change suggested reducing the number of flight hours required for new pilots.²⁰⁸ Republic Airways proposed an exception to the FAA’s 1,500-hour in-flight experience to permit graduates of their flight school to obtain a pilot’s license with only half of the required training hours.²⁰⁹ This proposal was quickly struck down by the FAA, but the public has continued to brainstorm other ways to loosen the regulation.²¹⁰ The FAA must act swiftly to mitigate the damages from this pilot shortage and may be able to do so by reevaluating its regulation on ADHD and ADHD medications.

IV. PROPOSED CHANGES TO THE FAA REGULATION

After analyzing the history of the FAA regulation, its contradicting handling of various medical conditions and medications, its strict guidelines in comparison to other licensing standards, and the current public desire to loosen the regulation, it is clear the FAA needs to reevaluate their regulation. This reevaluation should include proposing a new waiver that permits individuals with ADHD or who take ADHD medications to obtain a private or commercial pilot’s license so long as they manage their disorder by taking the medication prescribed to treat their condition. This waiver would ensure the safety of the public, while simultaneously abiding by the medical recommendations.

205. *Id.*; see also Joseph G. DePete, *President’s Department Airline Pilots Association*, ALPA (May 6, 2022), <https://www.alpa.org/-/media/ALPA/Files/pdfs/news-events/letters/2022/0506-depete-pilot-supply.pdf?la=en> [https://perma.cc/SX66-RE86].

206. Schaper, *supra* note 203.

207. *Id.*

208. David Schaper, *1 Airline Made a Bid to Reduce Flight Hours Required for New Pilots. FAA Rejects It.*, NPR, <https://www.npr.org/2022/09/21/1124201271/airline-bid-reduce-flight-hours-new-pilots-faa-rejects> [https://perma.cc/6V5V-Y43X].

209. *Id.*; see also Peter Greenberg, *Airlines are Lobbying for a Change to Federal Regulations That Could Put One Pilot in the Cockpit*, CBS NEWS (Dec. 8, 2022, 11:33 AM), <https://www.cbsnews.com/news/one-pilot-in-cockpit-staffing-shortage-faa-part-121/> [https://perma.cc/PT68-UF6S].

210. Greenberg, *supra* note 209.

The FAA has changed its policies before on medication related regulations, like in 2010 when they modified their policy on antidepressants, and created a new Special Issuance waiver for pilots and pilot applicants who take a group of SSRI medications.²¹¹ The reasons for the FAA's shift on their view of depression medications are analogous to the reasons the FAA should shift its view on ADHD and ADHD medications. Like the SSRI Special Issuance waiver, the FAA should create and implement an ADHD medication Special Issuance waiver. The pilots could undergo an evaluation from a licensed physician, who can approve their application, and would not require the applicants to continue to apply for renewal of the special issuance.

When the FAA adjusted its stance on SSRIs, it selected some of the most effective and low risk SSRIs to be permitted for commercial and private pilot use. The same logic is applicable when looking at ADHD medications. There is a wide range of ADHD medications, but they all work to increase neurotransmitters in the brain to help manage ADHD symptoms.²¹² Specifically, these medications tend to increase attention span, reduce hyperactivity, control impulsive behavior, and manage executive dysfunction.²¹³ There are both stimulant and non-stimulant medications.²¹⁴ Additionally, healthcare providers also may prescribe SSRIs to treat ADHD, further proving the extensive similarities between treatment for depression and ADHD.²¹⁵ If the pilot treats ADHD with a non-stimulant SSRI, then they should be given the opportunity to apply for a pilot's license through the SSRI Special Issuance process. Stimulants tend to be the most effective, however, many individuals find non-stimulants to be just as effective.²¹⁶ The stimulants come in two forms: immediate-release and extended-release.²¹⁷ Immediate-release stimulants have a shorter time of effectiveness, and last around four hours.²¹⁸ The extended-release stimulants have a longer period of effectiveness, many lasting up to sixteen hours a day.²¹⁹

The FAA should label a specific portion of ADHD medications as acceptable under the ADHD medication Special Issuance. This group would encompass extended-release stimulants such as

211. Diamond, *supra* note 129.

212. *ADHD Medication*, CLEV. CLINIC, <https://my.clevelandclinic.org/health/treatments/11766-adhd-medication> [<https://perma.cc/ZS5Y-F4GK>].

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

dextroamphetamine (Adderall XR), dextroamphetamine sulfate (ProCentra), lisdexamfetamine dimesylate (Vyvanse), methylphenidate hydrochloride (Concerta), and methylphenidate hydrochloride (Ritalin).²²⁰ These medications are essentially the most universal options due to their effectiveness and widespread availability.²²¹ In addition, some extended-release stimulants have immediate-release alternatives which should also be approved.²²² This includes methylphenidate hydrochloride (Ritalin) and dextroamphetamine (Adderall).²²³ However, given the variation in time effectiveness, airlines should limit the length of flights an individual may pilot based on the longevity of their medication.²²⁴ For example, pilots should be required to take their medications at a time that would allow them to adequately focus for the duration of their flight (such as the military pilots who took stimulants every four hours of flight to ensure the medication's effectiveness).²²⁵ This would be especially important when using immediate-release stimulants that tend to have shorter durations of effectiveness.²²⁶ For the medications with a range of time effectiveness, the shortest end of the time effectiveness spectrum should be used. This would ensure the medication functions throughout the flight and best aid the FAA in their pursuit of risk mitigation and aviation safety.

Additionally, like the SSRI Special Issuance, the ADHD medication Special Issuance should not require a bi-annual Special Issuance renewal through an AME. Instead, the process should be analogous to that of the SSRI Special Issuance where the pilot may electronically submit their renewal on an annual basis, rather than meet with an AME on a bi-annual basis. Unless the pilot changes their medication, they should not be forced to seek renewal approval from an AME if the medication is working effectively and the condition is managed.

In terms of regulating the actual ingestion of ADHD medications, when the FAA created their SSRI Special Issuance waiver, they did not put an additional system in place to verify that pilots took their medications accordingly. So here, it would not be necessary either; the airlines should trust their pilots to take their medications as recommended. The only scenario in which such regulation may be

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.* (listing the duration of the extended-release stimulants. Adderall XR: 8-12 hours, Concerta: 10-12 hours, ProCentra: 4-8 hours, Ritalin: 8 hours, and Vyvanse: 10-12 hours).

225. Gore et al., *supra* note 102.

226. *ADHD Medication*, *supra* note 212 (noting that the duration of instant-release Adderall is 4-8 hours, and the duration of instant-release Ritalin is 3-5 hours).

necessary is if a pilot flies for a period longer than the effectiveness of their medication. Under these circumstances, there would be a co-pilot who would ensure the pilot-in-command takes an additional dose at the required time of flight.

Until 2010, the FAA viewed depression and depression medications in a light similar to ADHD and ADHD medications. Through the SSRI Special Issuance process, people with depression, specifically managed depression, can become commercial or private pilots. It has been over ten years since the FAA permitted this group of people to become pilots. Since then, the FAA has not only upheld the SSRI Special Issuance process, but it has adopted it to become even easier to renew these Special Issuances. If the FAA has been willing to adjust their regulation in the past based on medical and aviation developments, they should do the same here and modify their policies on ADHD and ADHD medications to address the current systemic issues.

Although the FAA once held a firm position on its view of ADHD, it has recently shown its willingness to adjust its stance on the issue.²²⁷ In 2023, after reviewing extensive literature, the FAA loosened its medical certificate policies for a minute portion of individuals.²²⁸ Specifically, individuals can apply to avoid the Special Issuance process if they: (1) have not shown ADHD symptoms within the past four years; (2) have not taken ADHD medications in the past four years; and (3) have no other diagnosed psychiatric conditions.²²⁹ However, these individuals can still be deferred to the typical ADHD Special Issuance process.²³⁰ Regardless, this change does not do anything to mitigate the current issues for the thousands of people who currently experience ADHD symptoms, take ADHD medications, or have another psychiatric diagnosis.²³¹ However, this new policy is the first example of the FAA loosening its guidelines on ADHD, providing hope for the future.

CONCLUSION

The FAA must change its regulation and permit individuals with ADHD or who take ADHD medication to become commercial or private pilots. There is no safety concern in terms of flying with managed ADHD that may or may not require medication use. In fact, the use of

227. Gary Crump, *FAA Eases Burden for Many Pilots With ADHD History*, AOPA (Sept. 6, 2023), <https://www.aopa.org/news-and-media/all-news/2023/september/06/faa-eases-burden-for-many-pilots-with-adhd-history> [<https://perma.cc/3Y8M-8HFQ>].

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

these medications likely creates an even safer environment for commercial and private pilots. An ADHD medication Special Issuance waiver creates a solution for individuals with ADHD to become commercial or private pilots. It authorizes individuals with ADHD to seek the most effective treatment which in turn helps mitigate their symptoms of ADHD, resulting in a more attentive and overall safer person and pilot. The ADHD medication Special Issuance will provide guidance in the constantly evolving field of medicine and aviation.