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ADMINISTRATION, BEFORE THE SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION, SUBCOMMITTEE ON AVIATION,
CONCERNING S. 1146. JULY 21, 1983.

Madam Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before the Subcommittee today to present the views of the Federal Aviation Administration concerning S. 1146, which provides strengthened authority for the Federal Government to deal with the aviation-related aspects of illegal drug activities.

I know the Subcommittee is aware of the Administration's efforts to stem the flow of illegal drugs into this country, and that the overall effort to combat illegal drugs is a high priority one within the Administration. We in the FAA have actively participated in these efforts, and have worked closely with other Federal agencies such as the Customs Service and Drug Enforcement Administration, providing them technical assistance and support. We also have an individual assigned full time to the El Paso Intelligence Center (EPIC), and are a participating member in the newly created National Narcotics Border Interdiction System (NNBIS) which consists of several Federal agencies involved in three basic functions: 1) operations information, 2) intelligence, and 3) air operations/radar. FAA's primary function with NNBIS is in the area of air operations/radar.

A major concern of the FAA about the illegal carriage of drugs is that safety considerations are given limited priority by many who haul drugs. Illustrative of this are the 155 aircraft accidents from 1980 through 1982 occurring in the United States where some definite evidence of the carriage of drugs was found. Those FAA statistics are probably not as representative of the overall problem as data maintained by the El Paso Intelligence Center which shows 491 accidents during that same time in which an aircraft suspected of carrying drugs crashed either in the U.S. or out of the country. During that same period, the FAA revoked or suspended the airman certificates of 65 individuals convicted of drug offenses, and 574 general aviation aircraft were stolen. Forty-nine percent of these thefts were estimated to be drug related. This information is merely suggestive of a broader problem which can probably best be described by the law-enforcement-oriented agencies that, as a major mission, have a continuous, day-to-day involvement in this area.

The FAA stands ready to continue providing assistance to these law enforcement agencies as they work to combat drug smuggling. We would like to emphasize, however, that we do not see ourselves as a law enforcement agency, nor do we seek to take on such authority. We are and should remain a safety agency. In that regard, we believe the bill before this Subcommittee properly recognizes the FAA's role in this area,

and we support its enactment. I would like to turn now to a statement of FAA's views on S. 1146.

Section 2 of the bill amends Section 609 of the Federal Aviation Act of 1958 in two significant respects. First, the FAA Administrator would be required to revoke the airman certificate of any person who has been convicted in any court for violation of any State or Federal law relating to controlled substances, if the Administrator determines that such person has knowingly served in any capacity as an airman in connection with such violation. Second, the Administrator would be required to revoke the airman certificate of any person determined by the Administrator to have knowingly served in any capacity as an airman in connection with the transportation by air of any controlled substance, where such transportation is either prohibited by law or provided in connection with any act prohibited by State or Federal law.

We agree with the general thrust of these provisions, contained in new Subsection 609(c), which recognize that airmen engaged in illegally transporting drugs typically care little about complying with the Federal Aviation Regulations or the underlying safety rationale of the FARs. Clearly, it is in the public interest to keep these people from using the Nation's airways, and S. 1146 makes it clear that the Federal Government will not tolerate their continuing to do so once they have been

caught engaging in the kinds of illegal drug activities specified in the proposed legislation. We welcome that kind of reinforcement of our existing legislative and regulatory authority and the deterrence effect it may have for people who value their airman certificates for personal or legitimate business reasons.

We do have some specific concerns and recommendations to offer regarding these provisions, however. Both provisions require the Administrator to determine that the individual has "knowingly served in any capacity as an airman" in connection with the underlying illegal activity. We believe that the "knowingly" standard should not be applicable to the individual's serving as an airman. There are cases in which it may be virtually impossible to prove that an individual was, in fact, even serving as an airman. For example, two individuals may both be aboard an aircraft which requires only one pilot. Both individuals may possess an airman's certificate. Given this circumstance, it may be virtually impossible for the FAA to prove that one or both of these individuals served as an airman on that aircraft. Consequently, despite a criminal conviction for violation of the drug laws, and despite the fact that it can be proven that the aircraft was used in committing that offense, both airmen may be able to escape the loss of their airman certificates. Given this potential, we believe that the Subcommittee might wish to consider mandating the loss

of an airman's certificate when it can be shown that controlled substances were transported with the knowledge of the airman in question, and that that activity involved an aircraft, rather than requiring that it be proven that the individual actually served in some capacity as an airman. This approach would seem to better effectuate the purpose of these proposed provisions and would not place an undue burden on FAA's resources in seeking to develop adequate proof. Further, we are concerned that the bill seems to call for the FAA to prove as one element of the offense that the carriage of controlled substances was illegal under State or Federal law. Conceivably, this could require the FAA to essentially have to prove the whole criminal case against an individual. We recommend that the sanction of revocation be triggered by the carriage of a controlled substance, with the proviso that the section does not apply if that activity is authorized under State or Federal law. This would permit an individual to raise as an affirmative defense the legality of the drug transaction in which he was involved.

We believe the bill should be clarified, preferably in its statutory provisions but at least through very clear legislative history, to indicate that the FAA Administrator need not await the final appeal of an individual before taking action to revoke that individual's certificate on drug grounds. We believe the statute is intended to provide the Administrator with flexibility, and that it should be made

clear that regardless of the stage of a criminal proceeding against an individual, or even in the absence of a criminal proceeding, the Administrator has full authority to revoke an airman certificate for the kinds of activities specified in the section. Also, we believe that it is desirable to indicate expressly that these new provisions do not supplant the Administrator's broad authority to prescribe and undertake additional regulatory actions in this or related areas.

The proposal is silent with respect to any statutory requirement to provide a hearing to an individual whose certificate may be revoked by the FAA. Notwithstanding the lack of such an express requirement, FAA attorneys believe that due process considerations would require that a hearing be provided. In the interest of governmental efficiency, we believe that the proposed legislation should provide for a process whereby the alleged violator could appeal a revocation decision of the FAA to the National Transportation Safety Board where the airman would be afforded an opportunity for a hearing--the same process used today for drug-related certificate actions and which will continue to remain available to airmen whose certificates are revoked or suspended on other grounds. The NTSB could make findings of fact but would be bound by the statutory sanction calling for certificate revocation upon concluding that the Administrator's original determination was correct. Relying on the existing process

would avoid having the FAA establish an internal hearing mechanism to deal with drug-related offenses, would permit the more efficient use of existing administrative law judge resources at the NTSB, and would not require dual hearings--one before the FAA, one before the NTSB--when an individual, during the course of a drug activity, has committed safety violations also warranting certificate action and also giving rise to a revocation proceeding. We believe this approach makes sense, both on the grounds of efficiency and governmental resource management, and strongly urge its adoption by the Subcommittee.

Section 3 of the bill prohibits the issuance for a five-year period of an airman certificate to any person whose airman certificate has been revoked pursuant to proposed Subsection 609(c). The FAA Administrator would be granted authority to issue a new airman certificate to such an individual who applies in less than the five-year period following revocation if he determines that a five-year period is excessive or that revocation for five years is not in the public interest. The exercise of this authority would be committed solely to the Administrator's discretion and not subject to administrative or judicial review. We agree with the provisions of this section. Five years seems to be a reasonable period of time for the revocation of an airman's certificate for the types of offenses contemplated by this section. We assume, however, that the bill's intent is not to preclude the Administrator

from denying an individual a certificate after completion of the five-year period in a particularly aggravated case. If that is the Subcommittee's intent, it would be helpful to have the legislative history address that issue. The bill also provides flexibility to the Administrator to take into account unusual cases where a five-year period for revocation may be unduly burdensome. Significantly, the Administrator would be given latitude in reaching such decisions and could make these extraordinary determinations solely upon their merits, free from concerns about needless litigation which could further put a strain on agency resources.

Section 4 of the bill amends the aircraft registration provisions of the Federal Aviation Act of 1958 to provide that the Administrator shall revoke the certificate of registration of an aircraft, along with other certificates of registration, held by that owner, if the Administrator determines that the aircraft has been used to illegally transport drugs and that the use of the aircraft for such purposes was with the permission of the owner. For a corporate type structure, the owner would be considered to have knowledge of the intended use of the aircraft only if a majority of the individuals who control such owner or who are involved in forming the major policy of the owner have knowledge of the intended use. As in the case of airman certificates revoked for drug-related offenses, the Administrator could not issue a certificate of

registration to a person whose certificate was so revoked for a five-year period. The Administrator is given discretion to permit an individual to receive a new registration certificate in less than five years on the same bases for which he can issue a new airman certificate under Section 3 of the bill.

We agree with the provisions of this section. Revoking an individual's certificate of registration for an aircraft and denying that individual any new registration certificates for a five-year period represents an added deterrent to individuals considering using their aircraft or permitting others to use their aircraft for illegal drug activities. Through calling for the revocation of all certificates of registration possessed by a given individual who is determined to have committed the proscribed kinds of drug activities, the bill will preclude an individual from continuing in the drug trade by substituting new aircraft for ones that otherwise might be "de-registered" under the proposed bill.

Section 5 of the bill calls for a stiff criminal sanction for individuals who serve as airmen aboard aircraft for which they do not hold the appropriate airman certificate, if they know the aircraft is illegally transporting drugs. Persons convicted of violating this amendment to Section 902 of the Federal Aviation Act of 1958 would be subject to a fine up to \$25,000 or to imprisonment not exceeding five years, or to

both. From an FAA safety perspective, this provision does two important things. First, it recognizes the added potential for safety violations created by an uncertificated or inappropriately certificated individual who is illegally transporting drugs. Second, it puts teeth into the provisions calling for revocation of an airman certificate, by telling individuals whose certificates have been revoked that, in addition to existing penalties for drug offenses themselves, they are also subject to additional, serious criminal penalties for continuing to transport drugs by air.

The last section of the bill, Section 6, amends Section 902(b) of the Federal Aviation Act of 1958. Present Section 902(b) makes it a criminal offense to forge, counterfeit, alter or falsely make an FAA certificate, or to use or attempt to use such a fraudulent FAA certificate. The present section also makes criminal the act of displaying or causing to be displayed false or misleading marks on an aircraft. The proposal would also make it a criminal offense to possess with intent to use or to sell a fraudulent certificate. Further, the proposal would add stiffer criminal penalties for performing any of these previously indicated acts, other than selling a certificate, with the intent to commit an illegal drug offense. Selling such a fraudulent certificate to a person, knowing that the purchaser intends to use such a certificate in

connection with an illegal drug act, would also be subjected to higher criminal penalties than the mere act of selling a certificate. We support these provisions, and believe the substantial penalties they provide are fully warranted in the interest of deterring such illegal activities.

In closing, Madam Chairman, I want to reiterate our support of the proposed legislation, and offer our assistance to the Subcommittee in working with you and your staff on this important issue.

That completes my prepared statement, Madam Chairman. I would be pleased to respond to questions you may have at this time.