

STATEMENT OF MELISSA J. ALLEN
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before the

COMMITTEE ON GOVERNMENT OPERATIONS,
SUBCOMMITTEE ON GOVERNMENT ACTIVITIES
AND TRANSPORTATION

CONCERNING THE DEPARTMENT'S POLICY
ON DRUG TESTING DOT CIVILIAN EMPLOYEES

June 24, 1987

MADAM CHAIRWOMAN AND MEMBERS OF THE COMMITTEE, I APPRECIATE THE OPPORTUNITY TO TESTIFY TODAY ON THE COMMITTEE'S QUESTIONS REGARDING THE DEPARTMENT OF TRANSPORTATION'S DRUG TESTING PROGRAM FOR ITS CIVILIAN EMPLOYEES. I WILL ADDRESS THE EXISTING PROGRAM OF TESTING FOR DRUGS IN THE FEDERAL AVIATION ADMINISTRATION AND THE PROPOSED PROGRAM FOR EXTENDING TESTING TO OTHER CRITICAL SAFETY PERSONNEL EMPLOYED BY THE DEPARTMENT.

LAST FALL, THE PRESIDENT AND CONGRESS JOINED TOGETHER IN A CALL FOR A DRUG-FREE AMERICA. IN SEPTEMBER, PRESIDENT REAGAN ISSUED AN EXECUTIVE ORDER CALLING FOR A "DRUG-FREE FEDERAL WORKPLACE." EARLY THIS YEAR, SECRETARY DOLE ANNOUNCED THAT THE DEPARTMENT WAS DEVELOPING PLANS FOR A SERIES OF STEPS, INCLUDING MANDATORY DRUG TESTING, TO INSURE THAT THERE IS NO ROOM FOR DRUGS IN THE TRANSPORTATION WORKPLACE, WHETHER THAT WORKPLACE IS THE DEPARTMENT OF TRANSPORTATION OR ONE OF THE REGULATED INDUSTRIES. THE PUBLIC HAS EVERY RIGHT TO EXPECT AND TO RECEIVE A DRUG-FREE TRANSPORTATION SYSTEM, AND THOSE OF US WHO SERVE THE PUBLIC HAVE A DUTY TO SEE THAT THEIR EXPECTATIONS ARE MET.

THE FEDERAL AVIATION ADMINISTRATION BEGAN TO DEVELOP THEIR POLICIES ON DRUG TESTING MORE THAN TWO YEARS AGO IN RESPONSE TO A GROWING NATIONAL AWARENESS THAT ILLEGAL DRUG USE IS A PROBLEM FOR PEOPLE FROM ALL WALKS OF LIFE. INITIALLY, FAA'S POLICY WITH REGARD TO DRUG TESTING OF AIR TRAFFIC CONTROLLERS, AND OTHER EMPLOYEES DIRECTLY INVOLVED IN AVIATION SAFETY, WAS TO DEPEND ON THE PRESENCE OF CREDIBLE EVIDENCE THAT CREATED A REASONABLE SUSPICION THAT AN EMPLOYEE MAY HAVE USED DRUGS. FAA APPLIES THIS STANDARD OF REASONABLE SUSPICION TO ITS POST ACCIDENT DRUG TESTING -- AN ACCIDENT OR INCIDENT IN AND OF ITSELF HAS NOT BEEN DEEMED REASONABLE SUSPICION. IF THE NTSB REQUESTS DRUG TESTS, THE FAA INFORMS THE EMPLOYEE OF THE REQUEST, AND MAKES THE EMPLOYEE AVAILABLE IF THEY AGREE, BUT DOES NOT ORDER THE EMPLOYEE TO SUBMIT TO A URINE SAMPLE UNLESS THE CIRCUMSTANCES MEET THE FAA STANDARD.

WE SHARE FAA'S CONCERN THAT NTSB DOES NOT HAVE A WRITTEN POLICY FOR DETERMINING THE CIRCUMSTANCES WHICH WILL TRIGGER REQUESTS FOR POST ACCIDENT DRUG TESTS. WE LIKewise ARE CONCERNED THAT THE NTSB HAS TRADITIONALLY ONLY ASKED FOR CONTROLLERS TO BE TESTED NOT PILOTS, CREW OR MECHANICS -- AN ACCIDENT, INVESTIGATION POLICY THAT DOES NOT REFLECT THE COMPLEX NATURE OF THE FACTORS WHICH CAN CONTRIBUTE TO ANY ACCIDENT OR INCIDENT.

IT IS IMPORTANT TO NOTE THAT FAA HAS A RELATIONSHIP AND A RESPONSIBILITY AS THE EMPLOYER OF THE AIR

TRAFFIC CONTROLLERS THAT IS VERY DIFFERENT FROM THE RELATIONSHIP WHICH THE NTSB HAS WITH THOSE SAME PEOPLE. AS A CONSEQUENCE, FAA'S OFFICIAL INTERACTION WITH ITS EMPLOYEES IN THE COURSE OF AN NTSB ACCIDENT INVESTIGATION IS CAREFUL TO CONVEY REQUESTS FOR VOLUNTARY DRUG TESTS SO THAT SUCH REQUESTS ARE NOT PERCEIVED AS A COERCION OR A THREAT.

THE FAA POLICY REGARDING POST ACCIDENT/INCIDENT DRUG TESTING AS STATED BY THE ADMINISTRATOR ON APRIL 3, 1987, AND REAFFIRMED IN HIS JUNE 16, 1987 LETTER TO THE CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD, IS MOST APPROPRIATE. THE FAA POLICY IS TO GIVE FULL AND COMPLETE COOPERATION TO THE NTSB SAFETY REPRESENTATIVES. WE WERE FULLY COGNIZANT AND SUPPORTIVE OF THE FAA POSITION. BUT, I WANT THE COMMITTEE TO UNDERSTAND THAT FAA'S POLICY IS THE CURRENT POLICY ONLY IN PLACE ON AN INTERIM BASIS PENDING THE IMPLEMENTATION OF THE DEPARTMENTWIDE DRUG PROGRAM.

AS A CONSEQUENCE OF FAA'S CONCERN WITH THE POTENTIAL IMPACT OF THE PRIVATE DECISION OF ANY EMPLOYEE TO USE ILLEGAL DRUGS, THE FAA EXPANDED ITS PROGRAM IN FEBRUARY OF THIS YEAR TO SCREEN FOR DRUGS AS PART OF THE PERIODIC MEDICAL EXAMINATION REQUIRED FOR CERTAIN FAA EMPLOYEES AND APPLICANTS. THIS POLICY WAS DEVELOPED WITH THE FULL SUPPORT OF THE OFFICE OF THE SECRETARY AS THE APPROPRIATE INTERIM RESPONSE TO THE ISSUE OF DRUGS IN THE WORKPLACE. WORKING WITH FAA AND THE JUSTICE DEPARTMENT, WE OBTAINED INTERIM JUSTICE

APPROVAL OF THAT PLAN ON FEBRUARY 12, 1987. THIS TESTING PROGRAM IS CONSISTENT WITH THE OVERALL INTENT OF THE PRESIDENT'S EXECUTIVE ORDER EXTENDING A HELPING HAND TO THOSE EMPLOYEES WHO RECEIVE POSITIVE DRUG TEST RESULTS. THE FAA PROGRAM FOLLOWS THE SCIENTIFIC AND TECHNICAL GUIDELINES ISSUED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES. ADHERENCE TO THESE PROCEDURES BY THE FAA IS DESIGNED TO INSURE AGAINST INACCURATE TEST RESULTS. UNDER THE FAA PROGRAM, EMPLOYEES WHO TEST POSITIVE FOR DRUG USE DURING THEIR PERIODIC PHYSICAL EXAMINATION ARE REASSIGNED FROM THEIR CRITICAL SAFETY OR SECURITY DUTIES AND ARE OFFERED AN OPPORTUNITY TO ENTER A REHABILITATION PROGRAM. OUT OF A TOTAL OF ALMOST 7,000 TESTS SINCE FEBRUARY, FIVE EMPLOYEES (AND TWELVE APPLICANTS FOR CRITICAL SAFETY POSITIONS) HAVE TESTED POSITIVE FOR DRUGS. THE FAA TESTING PROGRAM IS AN IMPORTANT INTERIM STEP IN ANSWERING DRUG ABUSE PROBLEMS WHICH MIGHT FACE THE DEPARTMENT.

THE SECRETARY HAS FREQUENTLY STATED HER COMMITMENT TO ENSURING THE SAFETY OF THE NATION'S AIRWAYS. THAT COMMITMENT EXTENDS TO PROPOSING A POLICY OF RANDOM AND POST ACCIDENT/INCIDENT TESTING FOR ALL EMPLOYEES OF THE DEPARTMENT WHOSE DUTIES ARE SAFETY/ SECURITY CRITICAL. THAT POLICY WILL PROVIDE FOR EXPLICIT TRIGGER CRITERIA FOR POST ACCIDENT/INCIDENT TESTING ABOVE AND BEYOND THE STANDARD OF REASONABLE SUSPICION WHICH FAA CURRENTLY APPLIES. THE FAA PROGRAM WILL BE SUBSUMED BY THE DEPARTMENTAL PROGRAM WHEN IT BECOMES EFFECTIVE LATER THIS SUMMER.

FOLLOWING THE ISSUANCE OF THE EXECUTIVE ORDER, WE BEGAN DEVELOPING A COMPREHENSIVE PROGRAM OF DRUG EDUCATION AND AWARENESS, TESTING, AND PROVISIONS FOR COUNSELING AND REHABILITATION FOR EMPLOYEES IN ALL DOT ADMINISTRATIONS. THE OVERALL DOT PROGRAM IS BEING DEVELOPED IN ACCORDANCE WITH THE EXISTING EXECUTIVE BRANCH GUIDANCE -- THE OPM AND HHS GUIDELINES -- AND WITH JUSTICE DEPARTMENT ADVICE. IN ADDITION, WE HAVE SOUGHT THE ADVICE AND COUNSEL OF EXPERTS IN THE FIELD OF DRUG ABUSE AND REHABILITATION TO ENSURE THAT THIS MOST SENSITIVE PROGRAM IS UNDERTAKEN WITH THE BEST AND MOST CURRENT INFORMATION AVAILABLE.

SIGNIFICANTLY, OUR PROGRAM FOR DRUG TESTING OF DOT CIVILIAN EMPLOYEES IS BEING DEVELOPED IN THE CONTEXT OF ADDRESSING ILLEGAL DRUG USE IN ALL MODES OF TRANSPORTATION. WE ARE DEVELOPING POLICIES WHICH WILL ENSURE THAT THE PUBLIC TRUST PLACED IN OUR TRANSPORTATION SYSTEM IS NOT VIOLATED BY THE USE OF ILLEGAL DRUGS BY TRANSPORTATION WORKERS IN SAFETY SENSITIVE FUNCTIONS -- WHETHER THOSE INDIVIDUALS WORK FOR THE FEDERAL GOVERNMENT OR NOT.

WE ARE PROPOSING TO CONDUCT RANDOM TESTING AS THE BEST DETERRENT TO DRUG ABUSE. WE PLAN TO RANDOMLY TEST EMPLOYEES IN CRITICAL SAFETY AND SECURITY POSITIONS, WHOSE JOB FUNCTIONS HAVE A DIRECT IMPACT ON PUBLIC HEALTH, SAFETY, AND THE PROTECTION OF LIFE AND PROPERTY. WE REACHED THIS CONCLUSION WITH A FULL APPRECIATION OF THE DEPARTMENT'S RESPONSIBILITIES FOR THE SAFETY OF THE TRAVELING

PUBLIC AND A CAREFUL CONSIDERATION FOR THE LEGITIMATE CONCERNS OF THE AFFECTED EMPLOYEES. AN EMPLOYEE WITH A DRUG PROBLEM MUST NEVER BE IN A JOB WITH RESPONSIBILITY FOR TRANSPORTATION SAFETY. WE BELIEVE THAT RANDOM TESTING WILL ENCOURAGE INDIVIDUALS WITH DRUG PROBLEMS TO END THEIR DEPENDENCY AND SEEK REHABILITATION.

IN ADDITION TO RANDOM TESTING, WE WILL HAVE "ACCIDENT OR UNSAFE PRACTICE TESTING" AS AUTHORIZED BY THE EXECUTIVE ORDER. THE FEDERAL RAILROAD ADMINISTRATION RULE PROVIDES A MODEL FOR DEVELOPING THE SPECIFIC CRITERIA UNDER WHICH SUCH TESTING WILL BE TRIGGERED. WE WILL ENSURE THAT THE STANDARDS FOR POST ACCIDENT TESTING ARE EQUITABLE -- WHERE WE TEST EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION WE WILL PROPOSE THROUGH THE RULEMAKING PROCESS TO TEST EMPLOYEES OF THE INDUSTRIES WHICH WE REGULATE. THE EFFECTIVE DATE OF OUR INTERNAL PROGRAM WILL PRECEDE THAT OF THE REGULATIONS.

WE RECOGNIZE THAT DRUG TESTING IS A VERY SENSITIVE ISSUE WHICH MUST BE HANDLED WITH CARE. OUR PROGRAM SEEKS TO BALANCE THE RIGHTS OF THE INDIVIDUAL WITH THE EXPECTATIONS OF THE PUBLIC FOR A SAFE TRANSPORTATION SYSTEM. AS PART OF THE DOT PROGRAM WE ARE SCREENING ALL CATEGORIES OF CRITICAL SAFETY AND SECURITY EMPLOYEES TO ENSURE THAT WE TEST ONLY THOSE EMPLOYEES WHOSE DUTIES COULD HAVE A DIRECT IMPACT ON THE SAFETY AND SECURITY OF THE TRANSPORTATION SYSTEM AND THE TRAVELING PUBLIC. OUR GOAL IS NOT TO SINGLE OUT OR PUNISH THESE EMPLOYEES, BUT RATHER TO ENCOURAGE

INDIVIDUALS WITH A DEBILITATING PERSONAL PROBLEM TO SEEK HELP THROUGH COUNSELING AND REHABILITATION. WE ARE WORKING TO STRENGTHEN OUR EMPLOYEE ASSISTANCE PROGRAMS ACROSS THE COUNTRY TO ENSURE THEIR CAPABILITY TO PROVIDE ADVICE AND ASSISTANCE TO EMPLOYEES WHO HAVE DRUG PROBLEMS, AND WE ARE IDENTIFYING DRUG REHABILITATION FACILITIES FOR EMPLOYEES TO AID THEM IN SEEKING LONGER TERM ASSISTANCE. IN ADDITION, WE HAVE BEEN DEVELOPING AN EXTENSIVE INFORMATIONAL PROGRAM TO INCREASE DOT EMPLOYEES' UNDERSTANDING OF THE IMPACT THAT THE USE OF ILLEGAL DRUGS WILL HAVE ON THEMSELVES, THEIR FAMILIES, AND ON THE TRAVELING PUBLIC. WE FIRMLY BELIEVE THAT IN THIS BATTLE AGAINST ILLEGAL DRUGS, KNOWLEDGE IS OUR GREATEST WEAPON.

WE HAVE DETERMINED THAT IT IS IN THE BEST INTEREST OF OUR EMPLOYEES AND THE OVERALL INTEGRITY OF THE PROGRAM TO USE ONLY THOSE LABORATORIES CURRENTLY CERTIFIED BY THE DEPARTMENT OF DEFENSE UNTIL THE HHS ACCREDITATION PROCESS HAS IDENTIFIED OTHER HIGHLY QUALIFIED LABORATORIES. DOD CERTIFICATION OF A LABORATORY REQUIRES THE HIGHEST STANDARDS OF QUALITY CONTROL, STRICT CHAIN OF CUSTODY CONSIDERATIONS ONCE SAMPLES REACH A LABORATORY, AND TWO LEVEL TESTING, SCREENING AND CONFIRMATION OF THOSE SAMPLES SCREENED POSITIVE BY GC/MS, FOR THE PRESENCE OF DRUGS AS REQUIRED UNDER THE HHS GUIDELINES. WE ALSO PROVIDE FOR STRICT CHAIN OF CUSTODY FROM TIME OF COLLECTION TO RECEIPT BY THE LABORATORY. BY USING ONLY A DOD CERTIFIED LABORATORY IN THE INTERIM WE ARE ASSURED, AND WE CAN ASSURE OUR EMPLOYEES, THAT THE LABORATORY PROCESS HAS BUILT IN SAFEGUARDS AGAINST INACCURATE TEST RESULTS.

WE WILL ALSO BE FOLLOWING THE HHS GUIDELINES WHICH REQUIRE THAT THE DEPARTMENT OF TRANSPORTATION IDENTIFY MEDICAL REVIEW OFFICIALS WHO WILL REVIEW THE RESULTS OF ANY CONFIRMED POSITIVE TESTS PRIOR TO REPORTING THOSE RESULTS TO DOT MANAGEMENT. THE MRO MUST EXAMINE ALTERNATIVE MEDICAL EXPLANATIONS FOR A CONFIRMED POSITIVE TEST RESULT. WHERE AN ALTERNATIVE EXPLANATION EXISTS SUCH AS THE USE OF PRESCRIPTION DRUGS, THE MRO WILL REPORT THE TEST RESULT AS NEGATIVE.

WE ANTICIPATE ISSUING THE REQUIRED SIXTY DAY NOTICES TO ALL EMPLOYEES AFTER WE HAVE COMPLETED OUR REVIEW OF ALL COVERED POSITIONS AND WE HAVE RECEIVED FINAL APPROVAL FROM THE DEPARTMENT OF JUSTICE ON THE DEPARTMENT'S PLAN. WE WOULD THEN ACCELERATE OUR INTENSIVE EDUCATIONAL CAMPAIGN FOR ALL DOT MANAGERS AND EMPLOYEES NOT ONLY ON THE IMPACT WHICH DRUGS CAN HAVE BUT ALSO ON THE DOT PROGRAM ITSELF. LATER THIS SUMMER, WHEN WE ARE ASSURED THAT WE HAVE DEVELOPED ALL THE APPROPRIATE SAFEGUARDS FOR ENSURING THE ACCURACY OF THE COLLECTION AND TESTING PROCESS, WE WILL NOTIFY THOSE EMPLOYEES SPECIFICALLY SUBJECT TO RANDOM TESTING THAT THE PROGRAM WILL BEGIN IN THIRTY DAYS. ONCE WE BEGIN TESTING, WE WILL CAREFULLY MONITOR THE ADMINISTRATION AND THE RESULTS OF THE PROGRAM.

THIS CONCLUDES MY PREPARED STATEMENT AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS.