

STATEMENT OF ANTHONY J. BRODERICK, ASSOCIATE ADMINISTRATOR
FOR REGULATION AND CERTIFICATION, BEFORE THE HOUSE COMMITTEE
ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON
AVIATION, CONCERNING PUBLIC AND SPECIAL PURPOSE AIRCRAFT.
DECEMBER 7, 1995.

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before you today to discuss the recent statutory changes affecting public aircraft that were enacted in November 1994, and the steps the FAA has taken to implement the new statutory requirements. I will also provide the Subcommittee the FAA's views on H.R. 1320, pending legislation concerning the use of special purpose aircraft.

Last year, the Congress enacted two major changes to the statutory definition of public aircraft that is contained in title 49 of the United States Code. For more than 50 years, aircraft classified as public aircraft have been operated by government agencies for governmental purposes with limited safety oversight by the FAA. By law, public aircraft are not subject to FAA's safety certification and maintenance requirements, but are required to follow FAA air traffic control operating rules. This past year, however, the Congress acted to except from the definition of public aircraft, aircraft which are used for passenger transportation. Despite the prohibition against using public aircraft for passenger transportation, aircraft carrying persons whose presence is associated with certain activities such as firefighting or law enforcement continue to be classified as public aircraft.

Legislation initially under consideration in the Senate would not have provided exceptions for any aircraft. All public aircraft would have had to become civil aircraft, with appropriate certificates, maintenance programs, and the like. The legislative focus on passenger transportation, however, evolved after concerns were raised by governmental entities that operated public aircraft. In some cases, these aircraft were

unsuitable for civil certification, since they had been modified to meet special government missions or were of military derivation for which no corresponding civil type certificate existed.

The legislation to limit the application of public aircraft status to non-passenger carrying aircraft was further modified in the House, as a result of concerns that arose last year over a series of fires that were occurring in the West. Some governmental entities were providing their aircraft, on a reimbursable basis, to assist other governments in firefighting. We believe the statutory limitation prohibiting use of a public aircraft for “commercial purposes” prevented arrangements such as these when reimbursement was made. The House Aviation Subcommittee developed a legislative change, which was enacted, that provided a limited exception allowing this reimbursement. That change permits one government unit to provide assistance to another on a cost-reimbursable basis if the government on whose behalf such assistance is provided certifies that there was a significant and imminent threat to life or property and that no private aircraft operator was reasonably available to provide such assistance. The change regarding reimbursement was intended to provide a balanced approach between government competition with the private sector and permitting a government body to render emergency assistance when lives or property would otherwise be at stake.

Shortly after the enactment of the change in the public aircraft statute, we set out to provide as much advance notice and information as we could to governments that could be affected by the change. We recognized that, in cases where a government could no longer operate aircraft as public aircraft, the time (and expense) for obtaining compliance with the new law could be significant. In that respect, I would note that we have undergone that experience within the FAA, since more than 1 year before the change in the public aircraft definition, Administrator Hinson decided that the FAA aircraft fleet

would be brought into compliance with civil operating standards. All aircraft operated by the FAA now meet those standards, with most of those aircraft operating under Part 135 standards.

We disseminated widely a letter to government operators on November 3, 1994, advising them of the changes. We published a notice in the Federal Register on December 12, 1994, informing the public of the change in definition of public aircraft. We held seminars in early 1995 to educate government agencies on the effect of the changes. On January 25, 1995, we published for public comment in the Federal Register a draft Advisory Circular offering advice on how we interpreted and expected to apply the changes. Subsequently, we issued the final Advisory Circular on April 24, 1995, making certain clarifications and modifications based on comments we received, including legal advice from the Department of Justice. For example, one change which resulted from the DOJ legal advice was that the carriage of prisoners was appropriately an element of law enforcement, for which aircraft operations could continue to enjoy public aircraft status under the new definition. That advice from DOJ also led us to conclude that the carriage of firefighters from an assembly point to a firefighting base camp could be done by a public aircraft, and an appropriate change was incorporated in the Advisory Circular.

We recognized that the effects of the legislation, which altered a half-century of practice, would be significant on some operators, and we set out to obtain compliance through assistance and education rather than blindly using the enforcement "hammer," although enforcement tools will be used where compliance is not forthcoming. To that end, our inspectors have met and consulted with governmental entities throughout the country, and we established a telephone hotline to address issues raised by our inspectors and by governments on as timely and consistent a basis as we can. For the first time, we are

creating a comprehensive database of all public aircraft, and a tracking system to monitor such operations.

Since enactment of the legislative changes, and through creation of our database and tracking system, we have learned much more about the extent and nature of the uses of public aircraft than we had previously known. We have encountered a number of cases involving reimbursement between governments that have resulted in aircraft operations being considered civil aircraft operations under the commercial purposes provision in the public aircraft statute. In many of these cases, the new limited exception permitting reimbursement does not permit the exchange of funds between these governments, even though the nature of the operation conducted would be considered a public aircraft operation if reimbursement were not involved. This has created concern among both Federal and non-Federal government operators about some long-standing practices under which they have operated, which we do not consider public aircraft operations under either the prior or current statute.

Given the Subcommittee's interest in learning from our experiences with the statutory changes, I would like to highlight a few areas that the Subcommittee may wish to consider in its current evaluation of the public aircraft issue. The first involves the issue of reimbursement--in particular, grants involving the use of aircraft to advance a government purpose. We have found, for example, that the Drug Enforcement Administration provides grants to local and State governments (and on occasions to the Civil Air Patrol) to conduct certain air activities designed to detect or suppress drug trafficking. If the DEA were to conduct those aerial missions itself, they would appropriately be considered public aircraft operations. Similarly, if the State or local government were to conduct those law enforcement-related activities for itself, without DEA financial assistance, they would be public aircraft operations. However, since the

only exception to the prohibition against use of a public aircraft for commercial purposes requires the finding of a significant and imminent threat, the compensation through a grant in these cases results in the aircraft being classified as civil rather than public aircraft. Similarly, the reimbursement limitation precludes the Department of Justice from receiving pro rata reimbursements from state or local law enforcement agencies when state or local prisoners are transported on a space available basis on public aircraft operated by DOJ. NASA has indicated to us as well that there is an impact on the reimbursable flight support that it provides to institutions of higher learning for their independent research, in which NASA research and program support aircraft have often been heavily modified to accommodate the sensors and equipment required for the research.

Although there were initial concerns about the potential impact of the law's changes on military activities, we have received advice from the Department of Justice that the military's operation of aircraft is unaffected by the statutory change.

Another issue we would note for the Subcommittee concerns the status of leased versus government-owned aircraft. There is what appears to be an historical anomaly in the definition of public aircraft--perhaps associated with a mail strike early in this century--under which aircraft that are leased by a government (in the case of a State or local government, for more than 90 continuous days) are treated differently from government-owned aircraft. This distinction was carried over in the recent public aircraft changes, meaning that, while non-military government-owned aircraft may not be used for passenger transportation in a public aircraft status, aircraft leased by governmental entities may. Similarly, the commercial purposes prohibition, on its face, applies only to government-owned aircraft, not government-leased aircraft.

Should the Subcommittee wish to revisit the leased aircraft or reimbursement issues, we will be pleased to work with you. The subject of public aircraft has proven to be not only extraordinarily complex, but, as you have heard from other witnesses, controversial. Some private operators believe that the government is still too much in competition with them, while a number of governmental entities believe that the application of the law to them is too harsh and expensive and does not involve competition, but necessary government functions. For those reasons, we would urge the Subcommittee to consider carefully any changes in the law, both to assure that there are not unintended consequences from any proposed change and that the issues of safety, government functions, competition, and unfunded Federal mandates are carefully evaluated. I would also reiterate that the FAA is fully prepared to work with governmental units in achieving compliance with civil aircraft regulations.

I would like to turn now for a moment to H.R. 1320, which is pending before the Subcommittee. This legislation provides that no one may use a U.S. registered aircraft over 12,500 pounds that has a special purpose certificate and does not meet minimum international airworthiness standards: to carry cargo for compensation or hire; for operations other than the special purposes stated on its type certificate; or for special purposes outside the U.S., unless the Administrator specifically authorizes such operations following special exemption provisions in the bill.

Special purpose aircraft are typically surplus military aircraft that have been modified or are used for a particular purpose. Generally, the special purposes for which these aircraft receive certificates from the FAA are for activities such as aerial surveying, wildlife conservation, and agricultural spraying or dusting. FAA domestic regulations prohibit the use of these aircraft for carriage of persons or property for compensation or hire,

meaning that the carriage of any cargo, for example, must be incidental to the operator's business and that business must be other than air transportation.

The bill would statutorily apply the FAA's prohibition on the carriage of persons or property for compensation or hire for special purpose aircraft to all special purpose aircraft operations, whether within the U.S. or outside the country. Further, the bill would also require that the use of any of these aircraft outside the U.S. would have to be specifically approved by the FAA, based on certain findings (e.g., public interest, availability of standard type certificated aircraft). Today, there are only two requirements that the operator of a special purpose type aircraft must meet to operate the aircraft outside the U.S.: 1) the country in which the aircraft will be operated certifies in writing that it is aware that the aircraft has not been found to meet international airworthiness standards; and 2) in the case of surplus military aircraft, the State Department issues an export license.

From an FAA perspective, we do not see a basis for nor do we support the enactment of this legislation. The legislation appears to be more designed to serve economic, competitive purposes between categories of U.S. registered aircraft rather than fulfilling a domestic safety requirement. Within the United States, FAA regulations prohibit the use of special purpose aircraft for compensation or hire. Outside the United States, we do not believe that the use of such aircraft for compensation or hire, if consistent with another sovereign nation's law and best interests, should be of domestic concern to us. Moreover, with the severe resource constraints we are facing due to budgetary pressures, we simply would not have the ability to conduct effective surveillance of such activities outside the country, if they were statutorily prohibited. Further, we do not believe that such surveillance and enforcement should be a priority to us, given the many existing safety demands on us. There also may be mission-related activities of the Departments of

State and Defense and the intelligence community with which this legislation could interfere, and for which their views would be useful.

In closing, Mr. Chairman, I want to assure you that we stand ready to work with you and the Subcommittee on these issues. I would be pleased to respond to any questions you may have at this time.