
NOT YET SCHEDULED FOR ORAL ARGUMENT

**United States Court of Appeals
for the District of Columbia Circuit**

No. 18-1102

JEFFREY O. SIEGEL,

Petitioner,

v.

ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION
and NATIONAL TRANSPORTATION SAFETY BOARD,

Respondents.

*On Petition for Review from an Order of the National Transportation
Safety Board in NTSB Order No. EA-5838.*

OPENING BRIEF FOR PETITIONER

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September 28, 2018

CERTIFICATE OF PARTIES, RULINGS AND RELATED CASES

Pursuant to the Rules of this Court, Jeffrey O. Siegel, Petitioner herein, by and through his attorney, Gregory S. Winton, Esq., hereby submits this certificate as to parties, rulings, and related cases:

Parties and Amici

The parties to this case are Petitioner, Jeffrey O. Siegel (“Siegel”), and Respondents, the Federal Aviation Administration (“FAA”) and National Transportation Safety Board (“NTSB” or the “Board”). Siegel has a substantial interest in a final NTSB order, related to an aviation matter, which affirmed the emergency order issued by the Administrator of the FAA revoking his Private Pilot certificate.

Ruling Presented for Review

Siegel seeks review of a final order issued by the NTSB in *Administrator v. Siegel*, NTSB Order No. EA-5838 (April 11, 2018), related to an aviation matter, which affirmed the emergency order issued by the Administrator of the FAA revoking his Private Pilot certificate.

Related Cases

This case was not previously before this Court. There are no other related cases pending before this Court or in any other court of which counsel is aware.

CORPORATE DISCLOSURE STATEMENT

Petitioner Siegel is an individual with no parent corporations or corporate members or shareholders. Additionally, Siegel is unaware of any publicly held entity with a direct financial interest in the outcome of this Petition for Review.

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GLOSSARY

ALJ	Administrative Law Judge
C.F.R.	Code of Federal Regulations
FAA	Federal Aviation Administration
FAR	Federal Aviation Regulation
NTSB	National Transportation Safety Board
OID	Oral Initial Decision

STATEMENT OF JURISDICTION AND STANDING

On April 16, 2018, Siegel petitioned this Honorable Court pursuant to 49 U.S.C. § 1153 for review of a final order issued by the NTSB in *Administrator v. Siegel*, NTSB Order No. EA-5838, served on April 11, 2018, which affirmed an emergency order issued by the FAA Administrator revoking his Private Pilot certificate. The NTSB's final order disposes of the parties' claims. Accordingly, Siegel has a substantial interest in NTSB Order No. EA-5838 issued by the Board related to an aviation matter.

The Appellate Jurisdiction of this Honorable Court is conferred pursuant to 49 U.S.C. § 1153 since a timely Petition for Review was filed on April 16, 2018, not later than 60 days after the final order was issued by the NTSB on April 11, 2018.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. WHETHER THE NTSB'S FINAL ORDER REGARDING THE SANCTION OF CERTIFICATE REVOCATION IS ARBITRARY AND CAPRICIOUS?
2. WHETHER THE NTSB'S FINAL ORDER REGARDING THE SANCTION OF CERTIFICATE REVOCATION WAS MADE IN ACCORDANCE WITH LAW, PRECEDENT AND POLICY?

STATUTES AND REGULATIONS

The pertinent statutory and regulatory provisions are provided in an addendum bound with this brief.

CONCISE STATEMENT OF THE CASE

This matter involves a case of first impression, in that there are no other reported instances of the FAA seeking emergency revocation of an airman certificate for a violation of 14 C.F.R. §§ 91.19(a)¹ and 61.15(b)(2)², related to the operation of a civil aircraft with knowledge that a small amount of a controlled substance (i.e., simple possession) consisting of chocolate containing tetrahydrocannabinol (THC) was carried in the aircraft.

Therefore, since the NTSB's affirmation of the FAA's proposed sanction is not supported by substantial evidence, and is contrary to law, precedent and policy, the Board's decision regarding certificate revocation must be reversed.

¹ 14 C.F.R. § 91.19(a) entitled, *Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances*, states the following in relevant part:

(a) no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

² 14 C.F.R. § 61.15(b)(2) entitled, *Offenses involving alcohol or drugs*, states the following in relevant part:

(b) Committing an act prohibited by § 91.17(a) or § 91.19(a) of this chapter is grounds for:

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

FACTS RELEVANT TO THE ISSUES SUBMITTED FOR REVIEW

On February 7, 2018, the FAA Administrator issued an emergency order seeking revocation of Siegel's Private Pilot certificate premised upon the following factual allegations:

1. You now hold and at all times relevant hereto held Private Pilot Certificate Number 153745664.
2. On or about October 1, 2016, you operated a Lancair Evolution, registered as N38DM (the aircraft) near the Allen County Airport, Iola, Kansas.
3. At the conclusion of the above-described operation, the Kansas State Highway Patrol discovered marijuana onboard the aircraft.
4. You admitted to the Kansas State Highway Patrol that you were aware there was marijuana onboard N38DM.
5. You operated N38DM within the United States when you had knowledge that marijuana was carried onboard the aircraft.

A11-A16.

The emergency order of revocation, issued as the Complaint in this matter, alleged the following:

As a result, you violated the following Federal Aviation Regulations:

- a) 14 C.F.R. § 91.19(a), which states that no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

Consequently, 14 C.F.R. § 61.15(b), provides that committing an act prohibited by § 91.17(a) or § 91.19(a) of this chapter is grounds for **suspension** or revocation of any certificate, rating, or authorization issued under this part.

A11-A16 (emphasis added).

PROCEDURAL HISTORY

Appeal of the FAA's Emergency Order

On February 12, 2018, pursuant to 49 C.F.R. § 821.54, Siegel sought review of the Administrator's determination of emergency and simultaneously appealed the order of revocation. By NTSB Order dated February 20, 2018, the Board denied Siegel's Petition Challenging the Administrator's Emergency Determination. A6-A16.

Thereafter, an evidentiary hearing was held before an Administrative Law Judge ("ALJ") of the NTSB on March 13, 2018. A17-A203.

Oral Initial Decision

Following the presentation of evidence on March 13, 2018, the ALJ issued an Oral Initial Decision ("OID") in which he found mitigating evidence concerning the Administrator's determination of sanction. A227-A240. As a result, the ALJ modified the proposed sanction from revocation to suspension, and stated the following, in relevant part:

Let me talk about conclusions of law. I want to talk about sanction a little bit. I'm really disturbed and I'm going to read a section -- this is Section F out of the FAA's Compliance Philosophy that was issued in June 26 of 2015. Paragraph F says, "The FAA views those intentional or reckless deviations from regulatory standards, as defined in the Agency's safety oversight guidance, or deviations from regulatory standards that otherwise present an unacceptable risk to safety, as posing the highest risk to safe operation of the National Air Space, and thus requiring strong enforcement."

The last [14 C.F.R.] 91.19 case I had about 2 years ago out in Amarillo, there were 200 pounds of marijuana on an airplane. Guess what the sanction was? Revocation. How is that consistent with what we've got here today?

This was a **simple possession** of a substance that was purchased legally, apparently in Colorado. There wasn't any use involved. There wasn't any transporting for commercial purposes involved.

I've already talked about I think this was an inadvertent act on the part of this pilot, Mr. Siegel. It certainly wasn't reckless, it wasn't intentional or reckless, as suggested by revocation in the Compliance Philosophy.

So therefore, I'm going to find that there was a violation, as established by the evidence of FAR [14 C.F.R.] 91.19(a). I find that under the facts of this case the appropriate sanction would be one of a 90-day suspension.

A236-A237 (emphasis added).

The ALJ's oral initial decision contained the following findings of mitigating factors regarding sanction, which were supported by substantial evidence in the record:

- This was a **simple possession** in an airplane case.
- This was a **simple possession of a substance**.
- There **wasn't any use involved**.
- There **wasn't any transporting for commercial purposes** involved.
- **This was an inadvertent act** on the part of Mr. Siegel.
- It **wasn't intentional** on the part of this Respondent.

A236-A237 (emphasis added). During the hearing, Siegel's wife and sole passenger, testified that she had placed the chocolate bars in his bag without his knowledge. A131-A132.

With regard to evidence concerning the Administrator's proposed sanction, the ALJ stated "Special Agent Martinez simply was here today. **He didn't even talk about sanction...**" A198 (emphasis added).

Clearly, the record is devoid of any evidence or testimony regarding whether the Administrator considered mitigating or aggravating facts and circumstances in determining that certificate revocation, rather than suspension, was the appropriate sanction in this case.

NTSB Final Order

Siegel and the FAA Administrator timely cross-appealed the ALJ's OID to the NTSB. On April 11, 2018, the Board issued an Opinion and Order, which affirmed the ALJ's finding of violation concerning 14 C.F.R. § 91.19(a), and reinstated the sanction of revocation. *Administrator v. Siegel*, NTSB Order No. EA-5838 (April 11, 2018). A205-A226.

Siegel has petitioned this Court for review of the NTSB final order (NTSB Order No. EA-5838), seeking reversal of the revocation of his airman certificate.

THE HEARING RECORD

Kansas State Highway Patrol Investigation

The Kansas State Highway Patrol Report was completed by Trooper Wagner on October 2, 2016. A51.

Wagner testified that he discovered chocolate inside a soft sided briefcase onboard the aircraft. Based solely upon the packaging, Wagner believed that the 3 small packages of chocolate contained Tetrahydrocannabinol (THC). A32-A33. Therefore, Wagner sent the chocolate to the Kansas Bureau of Investigation (KBI) lab for testing. A35.

Wagner never asked Siegel whether he knew the chocolate was onboard the aircraft prior to departure or during the flight. He never asked Siegel when or how he discovered that the chocolate was onboard the aircraft. A69.

Kansas Bureau of Investigation Lab

The total net weight of each chocolate package was 28.63 grams, 45.04 grams, and 14.38 grams. A91. However, the total quantity of THC contained in the chocolate was undetermined. A107.

Kansas State Charge

Based upon his limited investigation, Trooper Wagner charged Siegel with the commission of a crime involving Kansas statute K.S.A. § 21-5706(b)(3),

entitled “*Unlawful possession of controlled substances*,” which Wagner described as a “simple possession” charge. A66-A70.

The Kansas State charge was dismissed in February 2018. A36-A37, A72.

The FAA Investigation

FAA Special Agent Manual Martinez testified that he relied exclusively upon Trooper Wagner’s investigation, which was conducted on behalf of the Kansas State Highway Patrol. A122. Based upon the investigation, Martinez testified that he determined a violation of 14 C.F.R. § 91.19(a). A111-A112.

Proposed Sanction

The only evidence in the record regarding the Administrator’s proposed sanction came from the limited testimony of FAA Special Agent Martinez, who stated the following:

Q. Do you assign the sanction?

A. No, it is all based on [FAA Order] 2150.3B, which is certificate action with a revocation.

Q. And is that what you used to make the recommendation?

A. Yes, I did.

Q. What does a [FAA Order] 2150.3B state?

A. Contraband inside the aircraft **leads up to** revocation of certificate action.

A111-A112. (emphasis added)

The FAA Administrator did not provide any other evidence or testimony concerning the proposed sanction of certificate revocation.

SUMMARY OF ARGUMENT

The NTSB's final order issued in *Administrator v. Siegel*, NTSB Order No. EA-5838, found an "absence of any mitigating factors" and therefore, determined that "revocation is the reasonable and appropriate sanction for a violation of 14 C.F.R § 91.19(a) under the facts and circumstances of this case (A223)." Because the Board's final order concerning sanction is arbitrary, capricious, and not made in accordance with law, precedent and policy, it must be reversed.

Unlike all other reported cases resulting in revocation of an airman certificate after the individual is convicted under a law related to a controlled substance, Mr. Siegel was charged with *simple possession* of a controlled substance (i.e., chocolate bars containing THC), which was ultimately dismissed. A36-A37. Therefore, if any sanction should be imposed, certificate suspension rather than revocation, is the only appropriate choice under the facts and circumstances of this case.

Therefore, the Board's final order should be reversed concerning the issue of certificate revocation.

STANDARD OF REVIEW

Any agency action, finding, or conclusion must be held unlawful and set aside if the Court finds it to be "arbitrary, capricious, an abuse of discretion, or

otherwise not in accordance with law” or “without observance of procedure required by law.” 5 U.S.C. § 706 (2)(A) and (D).

The task of the reviewing Court under this standard is to determine “whether the agency has considered the pertinent evidence, examined the relevant factors, and articulated a satisfactory explanation for its action including whether there is a rational connection between the facts found and the choice made.” *J. Andrew Lange, Inc. v. FAA*, 208 F.3d 389, 391 (2nd Cir. 2000) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

The FAA's interpretation of its regulation is "to be accorded deference . . . unless it is clearly contrary to the plain and sensible meaning of the regulation." *Cooper*, 660 F.3d at 481 (internal quotation marks omitted); *see also Taylor v. Huerta*, 723 F.3d 210, 213 (D.C. Cir. 2013).

The Court reviews legal questions *de novo*. *Janka v. Dep't of Transp.*, 925 F.2d 1147, 1149 (9th Cir. 1991). The Court applies *Chevron* deference, however, to the agency's interpretation of the statute it administers. *See Donnelly v. FAA*, 411 F.3d 267, 271 (D.C. Cir. 2005) (citing *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984)).

ARGUMENT

I. THE NTSB'S FINAL ORDER REGARDING THE SANCTION OF REVOCATION IS ARBITRARY, CAPRICIOUS, OR OTHERWISE NOT IN ACCORDANCE WITH LAW.

i. The Pilot's Bill of Rights Removed the Heightened Deference Requirement Concerning the Administrator's Choice of Sanction.

Sanction determination prior to the enactment of the Pilot's Bill of Rights³ required the Board to be "bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law." *See* 49 U.S.C. § 44709(d)(3). However, Section 2(c)(2) of the Pilot's Bill of Rights amended § 44709(d)(3) and removed the heightened deference requirement concerning the Administrator's choice of sanction.

In *Administrator v. Street*, NTSB Order No. EA-5791, the Administrator appealed the ALJ's OID, arguing that the law judge improperly applied the FAA's sanction guidance policy and failed to defer to the Administrator's reasonable determination that the respondent's admitted regulatory violations warranted suspension of his Airline Transport Pilot (ATP) certificate for 240 days. In *Street*,

³ Public Law 112-153, termed the Pilot's Bill of Rights ("PBR") was signed into law on August 3, 2012.

the Board emphasized that “the determination of whether the Administrator’s choice of sanction is reasonable is case-specific and is based upon the facts and circumstances adduced at the hearing.” *See Administrator v. Street*, NTSB Order No. EA-5791 at 14 (2016) (citing *Administrator v. Jones*, NTSB Order No. EA-5647 at 21 n.62 (2013)). Likewise, in the case *sub judice*, the Board’s determination of whether the Administrator’s choice of sanction was reasonable must have been based upon the facts and circumstances adduced at the hearing.

However, in the present case, although the ALJ reduced Siegel’s sanction from certificate revocation to a 90-day suspension based upon the case-specific facts and circumstances adduced at the hearing, the Board specifically found an “absence of any mitigating factors” and that “revocation is the reasonable and appropriate sanction for a violation of 14 C.F.R § 91.19(a) under the facts and circumstances of this case.” A223. Unfortunately, the Board’s findings are arbitrary, capricious, or otherwise not in accordance with law.

Specifically, the Board held:

Applying our standard of de novo review, in the case before us we find the law judge’s reduction of the sanction from revocation to a 90-day suspension was arbitrary and capricious. In his decision, the law judge attempted to distinguish the facts of this case from a previous case in which he affirmed revocation of a pilot’s certificate where that pilot was carrying 200 pounds of marijuana on an aircraft. The law judge stated that the case *sub judice*, in contrast, involved “simple possession” of marijuana presumably purchased legally under Colorado state law, did not involve any evidence of use while operating the aircraft, and did not involve any evidence of the

transportation of marijuana for commercial purposes. The law judge stated, “this was an inadvertent act on the part of this pilot[.] It certainly wasn’t reckless, it wasn’t intentional or reckless, as suggested by revocation in the Compliance Philosophy.”

While the law judge did not cite to the specific case he attempted to distinguish, he may have referred either to *Administrator v. Goldenshtein* or *Administrator v. Fletcher*. It should be noted in both cases, however, those respondents were charged not with violations of 14 C.F.R § 91.19(a), but rather with ineligibility to hold a pilot’s certificate under 49 U.S.C. § 44710(b)(1), which states:

The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued [to] an individual under section 44703 of this title [49 USC § 44703] after the individual is convicted, under a law of the United States or a State related to a controlled substance (**except a law related to simple possession of a controlled substance**), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense;

and

(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

In the case before us, respondent was not only charged under Kansas state law with simple possession, as that term is contemplated by 49 U.S.C. § 44710(b)(1), but no conviction resulted therefrom: the underlying charge was dismissed without prejudice prior to the hearing before the law judge. Comparison of respondent’s case to the facts of *Goldenshtein* or *Fletcher* is therefore inapposite.

A221-A222.

Clearly, the Board’s finding that the ALJ’s reduction of sanction from revocation to suspension was arbitrary and capricious, is not supported by

substantial evidence in the record. To the contrary, the ALJ's findings of mitigating factors are all supported by substantial evidence, which established that the present case involved the mere simple possession of marijuana; did not involve any evidence of use while operating the aircraft; did not involve any evidence of the transportation of marijuana for commercial purposes; was an inadvertent act on the part of Siegel; and was not intentional or reckless. A221-A222. Therefore, the ALJ's determination that the Administrator's choice of sanction was unreasonable is clearly based upon the facts and circumstances adduced at the hearing.

Although the Board correctly noted that a violation of § 91.19(a) can stand without regard to a pilot's motive in transporting the marijuana, the fact that Siegel was not transporting 200 pounds of marijuana for sale and distribution is absolutely relevant as a significant mitigating factor to determine the reasonableness of the Administrator's choice of sanction. Accordingly, the ALJ's reduction of sanction based upon specific facts and circumstances is not arbitrary and capricious.

All of the factors listed by the Board consist of arguments regarding the merits of the underlying violation in the present case, rather than the reasonableness of the Administrator's choice of sanction. Therefore, the Board's finding that revocation is the reasonable and appropriate sanction under the facts

and circumstances of this case (A223), is arbitrary and capricious and must be reversed.

ii. The Board Failed to Consider Mitigating Factors in Determining Whether the Administrator's Choice of Sanction is Reasonable.

In *Administrator v. Horna*, NTSB Order No. EA-5720, the law judge issued an OID and determined that the proposed 60-day suspension of respondent's ATP certificate was appropriate, based upon aggravating factors the Administrator adduced at the hearing, as well as the determination that respondent's actions were not inadvertent. The law judge stated, "[n]o matter how experienced a pilot the [r]espondent may be, he is not free to simply determine on his own which [Federal Aviation Regulation] provisions must be strictly complied with." *Horna*, NTSB Order No. EA-5720 at 3 (2014).

On appeal, the Board noted that the Pilot's Bill of Rights removed language from 49 U.S.C. §§ 44709 and 44710, which previously entitled the Administrator to a significant amount of deference concerning the choice of sanction. As a result, the Board held the following:

We will consider aggravating and mitigating factors in determining whether to amend the Administrator's choice of sanction. The Court of Appeals for the District of Columbia Circuit has recognized this practice, and we continue to consider such factors in light of the Pilot's Bill of Rights.

Horna, NTSB Order No. EA-5720 at 9-10.

As set forth in prior cases, the Board must consider mitigating factors in determining whether the Administrator's choice of sanction is reasonable.⁴ In the present case, while reducing the Administrator's sanction from revocation to a 90-day suspension, the ALJ explained in detail why the mitigating factors he applied were relevant to his determination. Since the record is devoid of any aggravating factors to support the Administrator's choice of sanction, the Board's final order which reinstated the sanction of revocation must be reversed.

In *Gilliland v. FAA*, 48 F.3d 316 (8th Cir. 1995), the U.S. Court of Appeals for the 8th Circuit held “when Congress grants a regulator discretion to choose between suspension and revocation, and a respondent presents fact issues material to the exercise of that discretion, ***the agency*** must hold a hearing and ***must articulate why*** it has chosen to impose the more severe penalty.” *See Gilliland v. FAA*, 48 F.3d 316, 318 (emphasis added).

In the case at bar, Siegel presented factual issues material to the exercise of the FAA Administrator's discretion to choose between suspension and revocation, which were properly considered by the law judge. However, the Administrator

⁴ *See Taylor v. Huerta*, 723 F.3d 210, 215 (D.C. Cir. 2013); *Administrator v. Jones*, NTSB Order No. EA-5647 at 21 (2013); *see also Administrator v. McGuire*, NTSB Order No. EA-5736 at 8-9 (2014) (indicating “we will defer to the Administrator when the regulation or choice of sanction is unclear and the Administrator offered an interpretation that is *reasonable*) (emphasis in original).

failed to articulate why he has chosen to impose the more severe penalty of revocation.

Nevertheless, the law judge explained the mitigating factors he considered for reducing the proposed revocation to a 90-day suspension. Specifically, the ALJ acknowledged that 14 C.F.R. § 61.15(b)(2), based upon the commission of an act prohibited by § 91.19(a) “carries according to the reg[ulation], either a suspension or revocation.” A231. Thus, based upon mitigating factors and the express regulatory language, the ALJ was correct in his determination that the Administrator’s choice of sanction was unreasonable under the facts and circumstances.

Therefore, the Court must reverse the Board’s final order regarding the sanction of certificate revocation.

II. THE NTSB’S FINAL ORDER REGARDING THE SANCTION OF CERTIFICATE REVOCATION WAS NOT MADE IN ACCORDANCE WITH LAW, PRECEDENT AND POLICY.

i. Congress Intended That the FAA Administrator Not Issue an Order Revoking an Airman Certificate if an Individual is Convicted Under a Law Related to Simple Possession of a Controlled Substance.

Review of an NTSB decision is governed by the Administrative Procedure Act, 5 U.S.C. § 706. *See Andrzejewski v. FAA*, 563 F.3d 796, 799 (9th Cir. 2009). The Court will apply *Chevron* deference to the agency’s interpretation of the statute it administers. *See Donnelly v. FAA*, 411 F.3d 267, 271 (D.C. Cir. 2005)

(citing *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984)).

In *Connors v. NTSB*, 844 F.3d 1143, 1146-1147 (9th Cir. 2017), Connors petitioned for review of a NTSB decision affirming an order of the FAA revoking his aircraft registration certificate. Connors admitted to the FAA that he used his aircraft to transport marijuana. The FAA revoked his registration certificate because "the aircraft was used to carry out, or facilitate, an activity that is punishable" as a drug-related felony. 49 U.S.C. § 44106(b)(1)(A). Separate, state court criminal proceedings against Connors were dismissed after the trial court suppressed the drug evidence found on his plane.

Connors argued that § 44106 does not apply to him because, in light of the suppression order, his act was no longer "punishable." Under the statute's plain language, however, the proper inquiry is whether the "activity" is "punishable," not whether the certificate holder is at risk of being punished. Because the activity—transporting marijuana—was punishable as a felony, Connors's certificate was properly revoked even though he may no longer be subject to punishment under state law. *Connors*, 844 F.3d at 1144.

The *Connors* court held that under *Chevron*, "we are prohibited from substituting our 'own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency'" when Congress has not

directly addressed the provision's meaning. Citing *Redmond-Issaquah R.R. Pres. Ass'n v. Surface Transp. Bd.*, 223 F.3d 1057, 1061 (9th Cir. 2000)(quoting *Chevron U.S.A., Inc.*, 467 U.S. at 844). If, on the other hand, "the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Connors*, 844 F.3d at 1145 (quoting *The Wilderness Soc'y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1059 (9th Cir. 2003) (en banc) (quoting *Chevron*, 467 U.S. at 842-43).

The *Connors* court held that even if the statute's meaning were not clear on its face, the legislative history leaves no doubt that Congress intended to give the FAA authority to revoke a registration certificate even in situations where a criminal conviction is not possible. *Id.* The court further noted:

Congress enacted this provision as part of the Aviation Drug-Trafficking Control Act, Pub. L. No. 98-499, § 4(a), 98 Stat. 2312 (1984). The conference report explains that the FAA can "proceed against individuals who have engaged in activities which are prohibited by state or federal drug laws, but who have not been convicted of a drug law offense," such as when "an airman is not convicted because of technicalities which apply to criminal proceedings but not to administrative proceedings involving loss of a license." H.R. Rep. No. 98-1085, at 9 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3920, 3992.

Connors, 844 F.3d at 1146-47.

In the present case, similar to *Connors*, the intent of Congress is clear. Specifically, Congress enacted 49 U.S.C. § 44710, entitled *Revocations of airman*

certificates for controlled substance violations, which states the following in relevant part:

(b) Revocation.

- (1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (**except a law related to simple possession of a controlled substance**), of an offense punishable by death or imprisonment for more than one year...

49 U.S.C. § 44710 (emphasis added).

There is no dispute that Congress made an exception for “simple possession of a controlled substance” as the basis for revocation of an airman certificate under 49 U.S.C. § 44710. Furthermore, as discussed above, the FAA has provided for *either suspension* or revocation of any certificate, rating, or authorization related to the commission of an act prohibited by § 91.19(a). *See* 14 C.F.R. § 61.15(b)(2).

Congress held hearings before the Subcommittee on Aviation of the Committee on Public Works and Transportation - House of Representatives, First Session on H.R. 1580 - To Amend the Federal Aviation Act of 1958 to Provide for the Revocation of Airman Certificates and for Additional Penalties for the Transportation by Aircraft of Controlled Substances, and for Other Purposes, 98 Cong. 88-89 (1983). Notes from the Question & Answer session between Norman Y. Mineta, CA, Chairman of Subcommittee on Aviation, and Anthony J.

Broderick, Deputy Associate Administrator for Aviation Standards, FAA, state the following, in part:

Question 5. On page 6 of FAA's testimony you suggest that the bill be changed to base revocation on a finding that an airman has operated an aircraft knowing that illegal drugs are on board. FAA would not require a finding that the drug transportation violated state or federal law. This suggestion would seem to require revocation in a case in which the airman's only offense was simple possession of a small amount of a controlled substance. H.R. 1580 does not require revocation for simple possession. **Was it FAA's intention to follow a different policy on simple possession?**

Answer. **No. The FAA agrees with excluding from the bill's provisions those whose offense is simple possession of a controlled substance.** We believe that our proposed general approach could be adopted by the Committee with the proviso that the transportation of drugs pursuant to lawful authority or **the simple possession of drugs are excluded from the bill's provisions.**

See Add. 36-37 (emphasis added).

The hearing notes confirm Congress's intent, as well as that of the FAA, concerning the appropriate sanction in a case like the present, where the only offense was simple possession of a small amount of a controlled substance. Specifically, the Aviation Drug-Trafficking Control Act (H.R. 1580-98th Congress (1983-1984)) does not require revocation of an airman certificate for simple possession of a controlled substance. Add. 35-37.

Therefore, since Congress intended to exclude certificate revocation for simple possession of a controlled substance, the Court must give effect to the unambiguously expressed intent. *See Connors*, 844 F.3d at 1145.

Accordingly, the Board's final order concerning certificate revocation must be reversed.

ii. The FAA Chief Counsel Supports the ALJ's Selection of Sanction.

On April 7, 1994, the FAA Chief Counsel provided a legal interpretation concerning the agency's policy for determining whether suspension or revocation of an airman certificate is appropriate for the violation of any federal or state statute relating to the possession of marijuana. Specifically, the *Nelms* Legal Interpretation (April 7, 1994), states the following, in part:

Section 61.15 of the Federal Aviation Regulations (14 C.F.R. 61.15) provides that a conviction for the violation of any federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for:

(2) Suspension or revocation of any certificate or rating issued under this Part.

Our agency's practice, in cases other than a single conviction for simple possession is to revoke any pilot certificate.

See Add. 38 (emphasis added).

Clearly, the FAA's published policy confirms the agency's practice that in cases involving simple possession of a controlled substance, certificate revocation is not the appropriate sanction.

Accordingly, the Board's final order concerning certificate revocation must be reversed.

iii. The Administrator Introduced No Evidence Regarding Applicable or Relevant Sanction Guidance.

In *Administrator v. Hart*, NTSB Order No. EA-5536 (2010), the ALJ affirmed the Administrator's complaint and ordered a 120-day suspension of respondent's Private Pilot certificate. Respondent appealed the law judge's order regarding the affirmation of the 120-day suspension period. The Board denied respondent's appeal.

The Administrator's order alleged that Hart was convicted of "Possession of a Controlled Dangerous Substance—Not Marijuana" in Caroline County, Maryland. The complaint stated that, because of the conviction, respondent violated 14 C.F.R. § 61.15(a)(2). The complaint also contained a reference to 14 C.F.R. § 65.12(a)(2), which provides that the penalty for such a conviction is suspension or revocation of an airman certificate. Therefore, the Administrator's complaint ordered the 120-day suspension of respondent's airman certificates. At the hearing, the Administrator did not provide any witness testimony, but submitted the conviction file from Caroline County, Maryland, and relevant excerpts from the FAA's Sanction Guidance Table into evidence.

Since the *Hart* case was decided prior to the Pilot's Bill of Rights, the Administrator's counsel requested deference to the FAA's Sanction Guidance Table and directed the law judge's attention to the portion of the Table that provides a range of 45 to 120 days suspension for a "[s]ingle conviction for simple

possession.” Agency counsel argued that the Administrator considered two circumstances as aggravating factors, both of which were submitted into evidence via the conviction file.

Specifically, Agency counsel contended that Hart’s conduct amounted to more than one drug violation, and that he provided false statements to police when he was arrested. Counsel argued that such aggravating factors sufficed to increase the sanction to the top of the range for Hart’s drug conviction. At the conclusion of the hearing, the law judge issued an oral decision in which he determined that the suspension period of 120 days was appropriate. Specifically, the ALJ found that the Administrator took all factors into consideration in determining that 120 days was an appropriate sanction, given the circumstances.

On appeal, the Board in *Hart* stated that it “may consider aggravating and mitigating factors in determining whether the Administrator has imposed a sanction that is arbitrary, capricious, or contrary to law.” *See Administrator v. Hart*, NTSB Order No. EA-5536 at 9 (2010).

The Board in *Hart* further held:

It is the Administrator’s burden under the Act to articulate clearly the sanction sought, and to ask the Board to defer to that determination, supporting the request with evidence showing that the sanction has not been selected arbitrarily, capriciously, or in a manner contrary to law.⁵

⁵ *Administrator v. Peacon*, NTSB Order No. EA-4607 at 10 (1997); *see also Administrator v. Oliver*, NTSB Order No. EA-4505 (1996) (Administrator introduced no evidence regarding applicable or relevant sanction guidance).

The Administrator's counsel fulfilled this standard with the evidence he presented at the hearing, which included relevant excerpts from the Sanction Guidance Table and the conviction file, and by clearly stating the Administrator's reasons for the choice of sanction.

* * *

Finally, given the aggravating circumstances surrounding respondent's conduct that led to his conviction, for which respondent served an 11-month incarceration term, the Board did not find that the Administrator's choice of sanction was arbitrary, capricious, or contrary to law.

Administrator v. Hart, NTSB Order No. EA-5536 at 9.

Since Hart received only a 120-day suspension of his airman certificates pursuant to 14 C.F.R. § 61.15 for a conviction - which involved ***more than one type of drug*** and an ***eleven-month incarceration term*** - related to "Possession of a Controlled Dangerous Substance – Not Marijuana", the Board's revocation of Siegel's airman certificate pursuant to the same regulation, is arbitrary, capricious, and contrary to law.

In *Administrator v. Oliver*, NTSB Order No. EA-4505 (1996), the Administrator appealed from the ALJ's OID following an evidentiary hearing. The law judge affirmed an order suspending respondent's airman certificate, on finding that respondent had violated 14 C.F.R. 91.13(a)⁶ in connection with flights in

⁶ 14 C.F.R. § 91.13 entitled, *Careless or reckless operation*, states the following: (a) *Aircraft operations for the purpose of air navigation*. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

which he was the pilot-in-command. The law judge, however, reduced the Administrator's 30-day proposed suspension to one of 7 days. The Board denied the Administrator's appeal. The Board in *Oliver* noted that the law judge considered many factors in deciding to reduce the sanction. *See Administrator v. Oliver*, NTSB Order No. EA-4505 at 4 (1996).

Ultimately, the Board in *Oliver* stated the following:

[t]he question before us is whether the law judge abused his discretion in reducing the sanction to a 7-day suspension. On this record, we cannot find that he did. To look at it another way, on appeal the Administrator must demonstrate that we are required to impose his sought 30-day suspension. We look first at the consistency of the sanction with precedent. The Administrator offers us little assistance in this regard, citing in his appeal brief no cases supporting a longer suspension period. In closing argument, counsel cited two cases, both of which are easily distinguished.

* * *

[t]he Administrator has introduced absolutely no evidence regarding any applicable or relevant sanction guidance that would contradict the law judge's 7-day suspension. The range of sanctions for violating § 91.13(a) is extremely broad, and it depends on the particular facts of each case. The Administrator has failed to present convincing evidence or argument to increase the sanction imposed by the law judge. (footnote omitted).

Administrator v. Oliver, NTSB Order No. EA-4505 at 4-6 (1996).

Similarly, in the present case, the Administrator failed to present any convincing evidence or argument that supports the revocation of Siegel's airman certificate resulting from the *dismissal* of a charge related to simple possession of a small amount of a controlled substance.

Therefore, the Board's final order concerning certificate revocation must be reversed.

iv. All Previously Reported Cases Resulting in Certificate Revocation for the Violation of 14 C.F.R. §§ 91.19 and 61.15 Involve the Transportation of Large Quantities of Marijuana with the Intent to Distribute.

All previously reported cases involving a violation of 14 C.F.R. §§ 91.19 and 61.15, are factually distinguishable from the present case, because they involve the transportation of large quantities of marijuana with the intent to distribute, resulting in criminal prosecution. Therefore, the Board's comparison of Siegel's case to other cases involving transportation of large quantities of marijuana resulting in criminal prosecution, is inapposite.

The following cases illustrate the Administrator's determination of revocation as the appropriate sanction resulting from a violation of 14 C.F.R. §§ 91.19 and 61.15:

In *Administrator v. Manning*, NTSB Order No. EA-4363 (1995), the ALJ granted Summary Judgement to the Administrator concerning an emergency order of revocation alleging a violation of 91.19 and 61.15 premised on respondent's felony drug conviction and his piloting an aircraft related to the underlying marijuana smuggling offense. The airman did not dispute that he was convicted of a drug-related felony, which involved his piloting of an aircraft containing 160 pounds of marijuana.

In *King v. NTSB*, 766 F.2d 200 (5th Cir. 1985), the Administrator issued an order revoking the airman's certificate on grounds that he acted as pilot-in-command of a civil aircraft carrying approximately twenty bales of marijuana aboard in violation of 14 C.F.R. § 91.12(a) (1985)⁷. At the hearing, the Administrator introduced documentary evidence showing that the airman had been convicted in state court for possession of marijuana in connection with the incident.

In *Kratt v. Garvey*, 342 F.3d 475 (6th Cir. 2003), the Administrator revoked the airman's pilot certificate pursuant to 14 C.F.R. § 61.15, because he pled guilty to the charge of possession of marijuana with the intent to distribute and flew an airplane in the commission of that crime. Kratt did not dispute that he was convicted of a drug-related crime punishable by death or imprisonment for more than one year. The ALJ relied not just on the conviction, but also considered the evidence in the transcript from the guilty plea hearing.

Unlike all previously reported cases involving certificate revocation for a violation of §§ 91.19 and 61.15, Siegel was not convicted of any crime involving the possession or transportation of marijuana. That fact alone is a significant mitigating factor, which should have been considered by the Board in the determination of an appropriate sanction.

⁷ Re-codified as 14 C.F.R. § 91.19(a).

A thorough review of the record clearly establishes that the Board's finding that "revocation is the reasonable and appropriate sanction for a violation of 14 C.F.R § 91.19(a) under the facts and circumstances of this case" (A223) is arbitrary, capricious, and contrary to law. In fact, it is difficult to imagine a more appropriate case than the present, which warrants a sanction of suspension rather than revocation, concerning simple possession of a small amount of a controlled substance consisting of less than two standard sized chocolate bars containing THC. Therefore, substantial evidence does not support the Board's reasoning.

In *Pasternack v. Huerta*, 513 Fed. Appx. 1 (D.C. Cir. 2013), the Court stated the following:

We review NTSB decisions under the arbitrary and capricious standard and treat the Board's factual findings as "conclusive" if they are supported by substantial evidence. *See* 5 U.S.C. § 706(2)(A); 49 U.S.C. § 46110(c); *Garvey v. NTSB*, 190 F.3d 571, 577, 338 U.S. App. D.C. 82 (D.C. Cir. 1999). "If there is no substantial evidence to support the Board's reasoning . . . its order must be vacated." *Van Dyke v. NTSB*, 286 F.3d 594, 598, 351 U.S. App. D.C. 82 (D.C. Cir. 2002).

See Pasternack v. Huerta, 513 Fed. Appx. at 3-4.

After careful review of the record, the *Pasternack* Court found that the Board's factual conclusion failed for lack of substantial evidence. Thus, the Court held that, considering the entire record, substantial evidence did not support the NTSB's determination. As a result, the Court was constrained to reverse the decision of the Board, vacate its Order, and grant the petition for review.

Likewise, in the present case, after careful review of the record, the Court must find that the Board's determination concerning the proposed sanction of revocation fails for lack of substantial evidence.

As a result, the Board's decision concerning sanction must be reversed.

CONCLUSION

For the foregoing reasons, Jeffrey Siegel, Petitioner herein, respectfully requests that this Honorable Court reverse the decision of the Board, and grant the petition for review regarding the issue of certificate sanction in *Administrator v. Siegel*, NTSB Order No. EA-5838 (April 11, 2018).

Dated: September 28, 2018

Respectfully submitted,

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§91.11

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§91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

(b) *Aircraft operations other than for the purpose of air navigation.* No person may operate an aircraft, other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

§91.17 Alcohol or drugs.

(a) No person may act or attempt to act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol;

(3) While using any drug that affects the person's faculties in any way contrary to safety; or

(4) While having an alcohol concentration of 0.04 or greater in a blood or breath specimen. Alcohol concentration means grams of alcohol per deciliter of blood or grams of alcohol per 210 liters of breath.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person

who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

(c) A crewmember shall do the following:

(1) On request of a law enforcement officer, submit to a test to indicate the alcohol concentration in the blood or breath, when—

(i) The law enforcement officer is authorized under State or local law to conduct the test or to have the test conducted; and

(ii) The law enforcement officer is requesting submission to the test to investigate a suspected violation of State or local law governing the same or substantially similar conduct prohibited by paragraph (a)(1), (a)(2), or (a)(4) of this section.

(2) Whenever the FAA has a reasonable basis to believe that a person may have violated paragraph (a)(1), (a)(2), or (a)(4) of this section, on request of the FAA, that person must furnish to the FAA the results, or authorize any clinic, hospital, or doctor, or other person to release to the FAA, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates an alcohol concentration in the blood or breath specimen.

(d) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(3) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body.

(e) Any test information obtained by the Administrator under paragraph (c) or (d) of this section may be evaluated in determining a person's qualifications for any airman certificate or possible violations of this chapter and may be used as evidence in any legal proceeding under section 602, 609, or 901 of the Federal Aviation Act of 1958.

[Doc. No. 18334, 54 FR 34292, Aug. 18, 1989, as amended by Amdt. 91-291, June 21, 2006]

Federal Aviation Administration, DOT

§ 91.23

§ 91.19 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.



Federal Aviation Administration, DOT

§ 61.15

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

(b) Committing an act prohibited by § 91.17(a) or § 91.19(a) of this chapter is grounds for:

(1) Denial of an application for a certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

(c) For the purposes of paragraphs (d), (e), and (f) of this section, a motor vehicle action means:

(1) A conviction after November 29, 1990, for the violation of any Federal or State statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle after November 29, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug; or

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(3) The denial after November 29, 1990, of an application for a license to operate a motor vehicle for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug.

(d) Except for a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of the last motor vehicle action; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AMC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action. The report must include:

(1) The person's name, address, date of birth, and airman certificate number;

(2) The type of violation that resulted in the conviction or the administrative action;

(3) The date of the conviction or administrative action;

(4) The State that holds the record of conviction or administrative action; and

(5) A statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously reported motor vehicle action.

(f) Failure to comply with paragraph (e) of this section is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under this part for a period of up to 1 year after the date of the motor vehicle action; or

(2) Suspension or revocation of any certificate, rating, or authorization issued under this part.



National Transportation Safety Board

§ 821.54

Subpart I—Special Rules Applicable to Proceedings Involving Emergency and Other Immediately Effective Orders

§ 821.53 Appeal.

(a) *Time within which to file appeal.* An appeal from an emergency or other immediately effective order of the Administrator must be filed within 10 days after the date on which the Administrator's order was served on the respondent. The respondent shall simultaneously serve a copy of the appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the certificate or certificates affected and indicate that an emergency or other immediately effective order of the Administrator is being appealed.

§ 821.54 Petition for review of Administrator's determination of emergency.

(a) *Time within which to file petition.* A respondent may, within 2 days after the date of receipt of an emergency or other immediately effective order of the Administrator, file with the Board a petition for review of the Administrator's determination that an emergency, requiring the order to be effective immediately, exists. This 2-day time limit is statutory and the Board has no authority to extend it. If the respondent has not previously filed an appeal from the Administrator's emergency or other immediately effective order, the petition shall also be considered a simultaneously filed appeal from the order under § 821.53.

(b) *Form, content and service of petition.* The petition may be in letter form. A copy of the Administrator's order, from which review of the emergency determination is sought, must be attached to the petition. If a copy of the order is not attached, the petition will be dismissed. While the petition need only request that the Board review the Administrator's determination as to the existence of an emergency requiring the order be effective immediately, it may also enumerate the respondent's reasons for believing that the Administrator's emergency determination is not warranted in the

§ 821.55

interest of aviation safety. The respondent may include attachments to the petition for review (e.g., affidavits, other documents or records) limited to evidence the respondent believes supports the reasons enumerated in the petition for why the Administrator's emergency determination is not warranted in the interest of aviation safety. The petition must be filed with the Board by overnight delivery service or facsimile and simultaneously served on the Administrator by the same means.

(c) *Reply to petition.* If the petition enumerates the respondent's reasons for believing that the Administrator's emergency determination is unwarranted, the Administrator may, within 2 days after the date of service of the petition, file a reply, which shall be strictly limited to matters of rebuttal. No submissions other than the respondent's petition and the Administrator's reply in rebuttal will be accepted, except in accordance with paragraph (d) of this section.

(d) *Hearing.* No hearing shall be held on a petition for review of an emergency determination. However, the law judge may, on his or her own initiative, and strictly in keeping with the prohibition on ex parte communications set forth in § 821.61, solicit from the parties additional information to supplement that previously provided by the parties.

(e) *Disposition.* Within 5 days after the Board's receipt of the petition, the chief law judge (or, if the case has been assigned to a law judge other than the chief law judge, the law judge to whom the case is assigned) shall dispose of the petition by written order, and, in so doing, shall consider whether, based on the acts and omissions alleged in the Administrator's order, and assuming the truth of such factual allegations, the Administrator's emergency determination was appropriate under the circumstances, in that it supports a finding that aviation safety would likely be compromised by a stay of the effectiveness of the order during the pendency of the respondent's appeal. In making this determination, however, the law judge is not so limited to the order's factual allegations themselves, but also shall permit evidence, if appropriate, pertaining to the propriety

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of the emergency determination, presented by the respondent with the petition and the Administrator with the reply to the petition. This evidence can include affidavits or other such records.

(f) *Effect of law judge's ruling.* If the law judge grants the petition, the effectiveness of the Administrator's order shall be stayed until final disposition of the respondent's appeal by a law judge or by the Board. In such cases, the remaining provisions of this subpart (§§ 821.55–821.57) shall continue to apply, unless the respondent, with the Administrator's consent, waives their applicability. If the petition is denied, the Administrator's order shall remain in effect, and the remaining provisions of this subpart shall continue to apply, unless their applicability is waived by the respondent. The law judge's ruling on the petition shall be final, and is not appealable to the Board. However, in the event of an appeal to the Board from a law judge's decision on the merits of the emergency or other immediately effective order, the Board may, at its discretion, note, in its order disposing of the appeal, its views on the law judge's ruling on the petition, and such views shall serve as binding precedent in all future cases.

[68 FR 22625, Apr. 29, 2003, as amended at 77 FR 63252, Oct. 16, 2012; 79 FR 41650, July 17, 2014]

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, § 10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85-791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: “This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].”

**§ 1153. Rules, regulations, and fees**

The Secretary is authorized to make, amend, and rescind such orders, rules, and regulations as he may deem necessary to carry out the provisions of this chapter, and to establish, from time to time, a schedule or schedules of reasonable fees or charges for services performed or for documents or other publications furnished under this chapter.

It is the policy of this chapter, to the fullest extent feasible and consistent with the objectives of this chapter, that each of the services and functions provided herein shall be self-sustaining or self-liquidating and that the general public shall not bear the cost of publications and other services which are for the special use and benefit of private groups and individuals; but nothing herein shall be construed to require the levying of fees or charges for services performed or publications furnished to any agency or instrumentality of the Federal Government, or for publications which are distributed pursuant to reciprocal arrangements for the exchange of information or which are otherwise issued primarily for the general benefit of the public.

(Sept. 9, 1950, ch. 936, § 3, 64 Stat. 823; Pub. L. 91-412, § 3(e), Sept. 25, 1970, 84 Stat. 864.)

AMENDMENTS

1970—Pub. L. 91-412 struck out provisos of first par. for deposit of moneys received for services and publications after Sept. 9, 1950, in a special account in the Treasury, to be available, subject to appropriation authorizations, for reimbursement of appropriations and for refunds to organizations and individuals entitled thereto, and making appropriations reimbursed by the special account available for original purposes. See section 1526 of this title.



related to simple possession of a controlled substance); and

(B) the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in clause (A) of this paragraph.

(2) An aircraft owner that is not an individual is deemed to have permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A) of this subsection only if a majority of the individuals who control the owner of the aircraft or who are involved in forming the major policy of the owner permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A).

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator shall—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator bases the proposed action; and

(2) provide the holder of the certificate an opportunity to answer the charges and state why the certificate should not be revoked.

(d) APPEALS.—(1) A person whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and a hearing on the record. In conducting the hearing, the Board is not bound by the findings of fact of the Administrator.

(2) When a person files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall dispose of the appeal not later than 60 days after notification by the Administrator under this paragraph.

(3) A person substantially affected by an order of the Board under this subsection may seek judicial review of the order under section 46110 of this title. The Administrator shall be made a party to that judicial proceeding.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a revocation of, a certificate of registration under this section on the basis of an activity described in subsection (b)(1)(A) of this section if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked a certificate of registration of a person under this section because of an activity described in subsection (b)(1)(A) of this section, the Administrator shall reissue a certificate to the person if the person—

(A) subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; and

(B) otherwise meets the requirements of section 44102 of this title.

§ 44106. Revocation of aircraft certificates for controlled substance violations

(a) DEFINITION.—In this section, “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATIONS.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking the certificate of registration for an aircraft issued to an owner under section 44103 of this title and any other certificate of registration that the owner of the aircraft holds under section 44103, if the Administrator finds that—

(A) the aircraft was used to carry out, or facilitate, an activity that is punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law

§ 44107

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(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1163.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
44106(a)	49 App.:1401(e)(2)(C).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §501(e)(2)(A)–(C), (F); added Oct. 19, 1984, Pub. L. 98–499, §4(a), 98 Stat. 2314, 2315.
44106(b)	49 App.:1401(e)(2)(A) (less last sentence).	
44106(c)	49 App.:1401(e)(2)(B) (1st sentence).	
44106(d)	49 App.:1401(e)(2)(B) (2d–last sentences).	
44106(e)	49 App.:1401(e)(2)(A) (last sentence), (F).	

In subsection (b)(2), the words “knowing that the aircraft was to be used for the activity described in paragraph (1)(A) of this subsection” are substituted for “with knowledge of such intended use” for clarity.



§ 44703. Airman certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airman certificate to an individual when the Administrator finds, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position to be authorized by the certificate.

(b) CONTENTS.—(1) An airman certificate shall—

(A) be numbered and recorded by the Administrator of the Federal Aviation Administration;

(B) contain the name, address, and description of the individual to whom the certificate is issued;

(C) contain terms the Administrator decides are necessary to ensure safety in air commerce, including terms on the duration of the certificate, periodic or special examinations, and tests of physical fitness;

(D) specify the capacity in which the holder of the certificate may serve as an airman with respect to an aircraft; and

(E) designate the class the certificate covers.

(2) A certificate issued to a pilot serving in scheduled air transportation shall have the designation “airline transport pilot” of the appropriate class.

(c) PUBLIC INFORMATION.—

(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of law, the information contained in the records of contents of any airman certificate issued under this section that is limited to an airman’s name, address, and ratings held shall be made available to the public after the 120th day following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

(2) OPPORTUNITY TO WITHHOLD INFORMATION.—Before making any information concerning an airman available to the public under paragraph (1), the airman shall be given an opportunity to elect that the information not be made available to the public.

(3) DEVELOPMENT AND IMPLEMENTATION OF PROGRAM.—Not later than 60 days after the

date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Administrator shall develop and implement, in cooperation with representatives of the aviation industry, a one-time written notification to airmen to set forth the implications of making information concerning an airman available to the public under paragraph (1) and to carry out paragraph (2). The Administrator shall also provide such written notification to each individual who becomes an airman after such date of enactment.

(d) APPEALS.—(1) An individual whose application for the issuance or renewal of an airman certificate has been denied may appeal the denial to the National Transportation Safety Board, except if the individual holds a certificate that—

(A) is suspended at the time of denial; or

(B) was revoked within one year from the date of the denial.

(2) The Board shall conduct a hearing on the appeal at a place convenient to the place of residence or employment of the applicant. The Board is not bound by findings of fact of the Administrator of the Federal Aviation Administration but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law. At the end of the hearing, the Board shall decide whether the individual meets the applicable regulations and standards. The Administrator is bound by that decision.

(e) RESTRICTIONS AND PROHIBITIONS.—The Administrator of the Federal Aviation Administration may—

(1) restrict or prohibit issuing an airman certificate to an alien; or

(2) make issuing the certificate to an alien dependent on a reciprocal agreement with the government of a foreign country.

(f) CONTROLLED SUBSTANCE VIOLATIONS.—The Administrator of the Federal Aviation Administration may not issue an airman certificate to an individual whose certificate is revoked under section 44710 of this title except—

(1) when the Administrator decides that issuing the certificate will facilitate law enforcement efforts; and

(2) as provided in section 44710(e)(2) of this title.

(g) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for issuing airman certificates necessary to make the system more effective in serving the needs of airmen and officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) and related to combating acts of terrorism. The modifications shall ensure positive and verifiable identification of each individual applying for or holding a certificate and shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the use of fictitious names and addresses by applicants for those certificates.

(B) the use of stolen or fraudulent identification in applying for those certificates.

(C) the use by an applicant of a post office box or “mail drop” as a return address to evade identification of the applicant’s address.

(D) the use of counterfeit and stolen airman certificates by pilots.

(E) the absence of information about physical characteristics of holders of those certificates.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(3) For purposes of this section, the term “acts of terrorism” means an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State, and appears to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by assassination or kidnapping.

(4) The Administrator is authorized and directed to work with State and local authorities, and other Federal agencies, to assist in the identification of individuals applying for or holding airman certificates.

(h) RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.—

(1) IN GENERAL.—Subject to paragraph (14), before allowing an individual to begin service as a pilot, an air carrier shall request and receive the following information:

(A) FAA RECORDS.—From the Administrator of the Federal Aviation Administration, records pertaining to the individual that are maintained by the Administrator concerning—

(i) current airman certificates (including airman medical certificates) and associated type ratings, including any limitations to those certificates and ratings; and

(ii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

(B) AIR CARRIER AND OTHER RECORDS.—From any air carrier or other person (except a branch of the United States Armed Forces, the National Guard, or a reserve component

of the United States Armed Forces) that has employed the individual as a pilot of a civil or public aircraft at any time during the 5-year period preceding the date of the employment application of the individual, or from the trustee in bankruptcy for such air carrier or person—

(i) records pertaining to the individual that are maintained by an air carrier (other than records relating to flight time, duty time, or rest time) under regulations set forth in—

(I) section 121.683 of title 14, Code of Federal Regulations;

(II) paragraph (A) of section VI, appendix I, part 121 of such title;

(III) paragraph (A) of section IV, appendix J, part 121 of such title;

(IV) section 125.401 of such title; and

(V) section 135.63(a)(4) of such title; and

(ii) other records pertaining to the individual’s performance as a pilot that are maintained by the air carrier or person concerning—

(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and

(III) any release from employment or resignation, termination, or disqualification with respect to employment.

(C) NATIONAL DRIVER REGISTER RECORDS.—In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

(2) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier making a request for records under paragraph (1)—

(A) shall be required to obtain written consent to the release of those records from the individual that is the subject of the records requested; and

(B) may, notwithstanding any other provision of law or agreement to the contrary, require the individual who is the subject of the records to request to execute a release from liability for any claim arising from the furnishing of such records to or the use of such records by such air carrier (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

(3) 5-YEAR REPORTING PERIOD.—A person shall not furnish a record in response to a request made under paragraph (1) if the record was entered more than 5 years before the date of the request, unless the information concerns a revocation or suspension of an airman certificate or motor vehicle license that is in effect on the date of the request.

(4) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator and air carriers shall maintain

pilot records described in paragraphs (1)(A) and (1)(B) for a period of at least 5 years.

(5) RECEIPT OF CONSENT; PROVISION OF INFORMATION.—A person shall not furnish a record in response to a request made under paragraph (1) without first obtaining a copy of the written consent of the individual who is the subject of the records requested; except that, for purposes of paragraph (15), the Administrator may allow an individual designated by the Administrator to accept and maintain written consent on behalf of the Administrator for records requested under paragraph (1)(A). A person who receives a request for records under this subsection shall furnish a copy of all of such requested records maintained by the person not later than 30 days after receiving the request.

(6) RIGHT TO RECEIVE NOTICE AND COPY OF ANY RECORD FURNISHED.—A person who receives a request for records under paragraph (1) shall provide to the individual who is the subject of the records—

(A) on or before the 20th day following the date of receipt of the request, written notice of the request and of the individual's right to receive a copy of such records; and

(B) in accordance with paragraph (10), a copy of such records, if requested by the individual.

(7) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.—A person who receives a request under paragraph (1) or (6) may establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records.

(8) STANDARD FORMS.—The Administrator shall promulgate—

(A) standard forms that may be used by an air carrier to request records under paragraph (1); and

(B) standard forms that may be used by an air carrier to—

(i) obtain the written consent of the individual who is the subject of a request under paragraph (1); and

(ii) inform the individual of—

(I) the request; and

(II) the individual right of that individual to receive a copy of any records furnished in response to the request.

(9) RIGHT TO CORRECT INACCURACIES.—An air carrier that maintains or requests and receives the records of an individual under paragraph (1) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

(10) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS.—Notwithstanding any other provision of law or agreement, an air carrier shall, upon written request from a pilot who is or has been employed by such carrier, make available, within a reasonable time, but not later than 30 days after the date of the request, to the pilot for review, any and all employment records referred to in paragraph (1)(B)(i) or (ii) pertaining to the employment of the pilot.

(11) PRIVACY PROTECTIONS.—An air carrier that receives the records of an individual under paragraph (1) may use such records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the pilot and the confidentiality of the records, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

(12) PERIODIC REVIEW.—Not later than 18 months after the date of the enactment of the Pilot Records Improvement Act of 1996, and at least once every 3 years thereafter, the Administrator shall transmit to Congress a statement that contains, taking into account recent developments in the aviation industry—

(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be furnished under subparagraphs (A) and (B) of paragraph (1); or

(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

(13) REGULATIONS.—The Administrator shall prescribe such regulations as may be necessary—

(A) to protect—

(i) the personal privacy of any individual whose records are requested under paragraph (1) and disseminated under paragraph (15); and

(ii) the confidentiality of those records;

(B) to preclude the further dissemination of records received under paragraph (1) by the person who requested those records; and

(C) to ensure prompt compliance with any request made under paragraph (1).

(14) SPECIAL RULES WITH RESPECT TO CERTAIN PILOTS.—

(A) PILOTS OF CERTAIN SMALL AIRCRAFT.—Notwithstanding paragraph (1), an air carrier, before receiving information requested about an individual under paragraph (1), may allow the individual to begin service for a period not to exceed 90 days as a pilot of an aircraft with a maximum payload capacity (as defined in section 119.3 of title 14, Code of Federal Regulations) of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation (as defined in such section). Before the end of the 90-day period, the air carrier shall obtain and evaluate such information. The contract between the carrier and the individual shall contain a term that provides that the continuation of the individual's employment, after the last day of the 90-day period, depends on a satisfactory evaluation.

(B) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier, without obtaining information about an individual under paragraph (1)(B) from an air carrier or other person that no longer exists or from a foreign government or entity that employed

the individual, may allow the individual to begin service as a pilot if the air carrier required to request the information has made a documented good faith attempt to obtain such information.

(15) ELECTRONIC ACCESS TO FAA RECORDS.—For the purpose of increasing timely and efficient access to Federal Aviation Administration records described in paragraph (1), the Administrator may allow, under terms established by the Administrator, an individual designated by the air carrier to have electronic access to a specified database containing information about such records. The terms shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual provide assurances satisfactory to the Administrator that information obtained using such access will not be used for any purpose other than making the hiring decision.

(16) APPLICABILITY.—This subsection shall cease to be effective on the date specified in regulations issued under subsection (i).

(i) FAA PILOT RECORDS DATABASE.—

(1) IN GENERAL.—Before allowing an individual to begin service as a pilot, an air carrier shall access and evaluate, in accordance with the requirements of this subsection, information pertaining to the individual from the pilot records database established under paragraph (2).

(2) PILOT RECORDS DATABASE.—The Administrator shall establish an electronic database (in this subsection referred to as the “database”) containing the following records:

(A) FAA RECORDS.—From the Administrator—

(i) records that are maintained by the Administrator concerning current airman certificates, including airman medical certificates and associated type ratings and information on any limitations to those certificates and ratings;

(ii) records that are maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under part 61 of title 14, Code of Federal Regulations; and

(iii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

(B) AIR CARRIER AND OTHER RECORDS.—From any air carrier or other person (except a branch of the Armed Forces, the National Guard, or a reserve component of the Armed Forces) that has employed an individual as a pilot of a civil or public aircraft, or from the trustee in bankruptcy for the air carrier or person—

(i) records pertaining to the individual that are maintained by the air carrier (other than records relating to flight time, duty time, or rest time) or person, including records under regulations set forth in—

(I) section 121.683 of title 14, Code of Federal Regulations;

(II) section 121.111(a) of such title;

(III) section 121.219(a) of such title;

(IV) section 125.401 of such title; and

(V) section 135.63(a)(4) of such title; and

(ii) other records pertaining to the individual's performance as a pilot that are maintained by the air carrier or person concerning—

(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and

(III) any release from employment or resignation, termination, or disqualification with respect to employment.

(C) NATIONAL DRIVER REGISTER RECORDS.—In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

(3) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier—

(A) shall obtain the written consent of an individual before accessing records pertaining to the individual under paragraph (1); and

(B) may, notwithstanding any other provision of law or agreement to the contrary, require an individual with respect to whom the carrier is accessing records under paragraph (1) to execute a release from liability for any claim arising from accessing the records or the use of such records by the air carrier in accordance with this section (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

(4) REPORTING.—

(A) REPORTING BY ADMINISTRATOR.—The Administrator shall enter data described in paragraph (2)(A) into the database promptly to ensure that an individual's records are current.

(B) REPORTING BY AIR CARRIERS AND OTHER PERSONS.—

(i) IN GENERAL.—Air carriers and other persons shall report data described in paragraphs (2)(B) and (2)(C) to the Administrator promptly for entry into the database.

(ii) DATA TO BE REPORTED.—Air carriers and other persons shall report, at a minimum, under clause (i) the following data described in paragraph (2)(B):

(I) Records that are generated by the air carrier or other person after the date of enactment of this paragraph.

(II) Records that the air carrier or other person is maintaining, on such date of enactment, pursuant to subsection (h)(4).

(5) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator—

(A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that the individual is deceased; and

(B) may remove the individual's records from the database after that date.

(6) RECEIPT OF CONSENT.—The Administrator shall not permit an air carrier to access records pertaining to an individual from the database under paragraph (1) without the air carrier first demonstrating to the satisfaction of the Administrator that the air carrier has obtained the written consent of the individual.

(7) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS AND CORRECT INACCURACIES.—Notwithstanding any other provision of law or agreement, the Administrator, upon receipt of written request from an individual—

(A) shall make available, not later than 30 days after the date of the request, to the individual for review all records referred to in paragraph (2) pertaining to the individual; and

(B) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records.

(8) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.—

(A) IN GENERAL.—The Administrator may establish a reasonable charge for the cost of processing a request under paragraph (1) or (7) and for the cost of furnishing copies of requested records under paragraph (7).

(B) CREDITING APPROPRIATIONS.—Funds received by the Administrator pursuant to this paragraph shall—

(i) be credited to the appropriation current when the amount is received;

(ii) be merged with and available for the purposes of such appropriation; and

(iii) remain available until expended.

(9) PRIVACY PROTECTIONS.—

(A) USE OF RECORDS.—An air carrier that accesses records pertaining to an individual under paragraph (1) may use the records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the individual and the confidentiality of the records accessed, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

(B) DISCLOSURE OF INFORMATION.—

(i) IN GENERAL.—Except as provided by clause (ii), information collected by the Administrator under paragraph (2) shall be exempt from the disclosure requirements of section 552 of title 5.

(ii) EXCEPTIONS.—Clause (i) shall not apply to—

(I) deidentified, summarized information to explain the need for changes in policies and regulations;

(II) information to correct a condition that compromises safety;

(III) information to carry out a criminal investigation or prosecution;

(IV) information to comply with section 44905, regarding information about threats to civil aviation; and

(V) such information as the Administrator determines necessary, if withholding the information would not be consistent with the safety responsibilities of the Federal Aviation Administration.

(10) PERIODIC REVIEW.—Not later than 18 months after the date of enactment of this paragraph, and at least once every 3 years thereafter, the Administrator shall transmit to Congress a statement that contains, taking into account recent developments in the aviation industry—

(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be included in the database under paragraph (2); or

(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

(11) REGULATIONS FOR PROTECTION AND SECURITY OF RECORDS.—The Administrator shall prescribe such regulations as may be necessary—

(A) to protect and secure—

(i) the personal privacy of any individual whose records are accessed under paragraph (1); and

(ii) the confidentiality of those records; and

(B) to preclude the further dissemination of records received under paragraph (1) by the person who accessed the records.

(12) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier may allow an individual to begin service as a pilot, without first obtaining information described in paragraph (2)(B) from the database pertaining to the individual, if—

(A) the air carrier has made a documented good faith attempt to access the information from the database; and

(B) the air carrier has received written notice from the Administrator that the information is not contained in the database because the individual was employed by an air carrier or other person that no longer exists or by a foreign government or other entity that has not provided the information to the database.

(13) LIMITATIONS ON ELECTRONIC ACCESS TO RECORDS.—

(A) ACCESS BY INDIVIDUALS DESIGNATED BY AIR CARRIERS.—For the purpose of increasing timely and efficient access to records described in paragraph (2), the Administrator may allow, under terms established by the Administrator, an individual designated by an air carrier to have electronic access to the database.

(B) TERMS.—The terms established by the Administrator under subparagraph (A) for

allowing a designated individual to have electronic access to the database shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual provide assurances satisfactory to the Administrator that—

(i) the designated individual has received the written consent of the pilot applicant to access the information; and

(ii) information obtained using such access will not be used for any purpose other than making the hiring decision.

(14) AUTHORIZED EXPENDITURES.—Of amounts appropriated under section 106(k)(1), a total of \$6,000,000 for fiscal years 2010 through 2013 may be used to carry out this subsection.

(15) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall issue regulations to carry out this subsection.

(B) EFFECTIVE DATE.—The regulations shall specify the date on which the requirements of this subsection take effect and the date on which the requirements of subsection (h) cease to be effective.

(C) EXCEPTIONS.—Notwithstanding subparagraph (B)—

(i) the Administrator shall begin to establish the database under paragraph (2) not later than 90 days after the date of enactment of this paragraph;

(ii) the Administrator shall maintain records in accordance with paragraph (5) beginning on the date of enactment of this paragraph; and

(iii) air carriers and other persons shall maintain records to be reported to the database under paragraph (4)(B) in the period beginning on such date of enactment and ending on the date that is 5 years after the requirements of subsection (h) cease to be effective pursuant to subparagraph (B).

(16) SPECIAL RULE.—During the one-year period beginning on the date on which the requirements of this section become effective pursuant to paragraph (15)(B), paragraph (7)(A) shall be applied by substituting “45 days” for “30 days”.

(j) LIMITATIONS ON LIABILITY; PREEMPTION OF STATE LAW.—

(1) LIMITATION ON LIABILITY.—No action or proceeding may be brought by or on behalf of an individual who has applied for or is seeking a position with an air carrier as a pilot and who has signed a release from liability, as provided for under subsection (h)(2) or (i)(3), against—

(A) the air carrier requesting the records of that individual under subsection (h)(1) or accessing the records of that individual under subsection (i)(1);

(B) a person who has complied with such request;

(C) a person who has entered information contained in the individual’s records; or

(D) an agent or employee of a person described in subparagraph (A) or (B);

in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal or State law with respect to the furnishing or use of such records in accordance with subsection (h) or (i).

(2) PREEMPTION.—No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (h) or (i).

(3) PROVISION OF KNOWINGLY FALSE INFORMATION.—Paragraphs (1) and (2) shall not apply with respect to a person who furnishes information in response to a request made under subsection (h)(1) or who furnished information to the database established under subsection (i)(2), that—

(A) the person knows is false; and

(B) was maintained in violation of a criminal statute of the United States.

(4) PROHIBITION ON ACTIONS AND PROCEEDINGS AGAINST AIR CARRIERS.—

(A) HIRING DECISIONS.—An air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

(B) ACTIONS AND PROCEEDINGS.—No action or proceeding may be brought against an air carrier by or on behalf of an individual who has applied for or is seeking a position as a pilot with the air carrier if the air carrier refused to hire the individual after the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute a release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

(k) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in subsection (h) or (i) shall be construed as precluding the availability of the records of a pilot in an investigation or other proceeding concerning an accident or incident conducted by the Administrator, the National Transportation Safety Board, or a court.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1186; Pub. L. 106-181, title VII, §715, Apr. 5, 2000, 114 Stat. 162; Pub. L. 107-71, title I, §§129, 138(b), 140(a), Nov. 19, 2001, 115 Stat. 633, 640, 641; Pub. L. 111-216, title II, §203, Aug. 1, 2010, 124 Stat. 2352; Pub. L. 111-249, §6(3), (4), Sept. 30, 2010, 124 Stat. 2629.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
44703(a)	49 App.:1422(b)(1) (1st sentence, 2d sentence words before 6th comma).	Aug. 23, 1958, Pub. L. 85-726, §602(b)(1), 72 Stat. 776; Oct. 19, 1984, Pub. L. 98-499, §3, 98 Stat. 2313; Aug. 26, 1992, Pub. L. 102-345, §4, 106 Stat. 926.
	49 App.:1655(c)(1).	Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
44703(b)	49 App.:1422(a) (11th–last words).	Aug. 23, 1958, Pub. L. 85–726, § 602(a) (9th–last words), (c), 72 Stat. 776.
	49 App.:1422(b)(1) (2d sentence words after 6th comma), (c).	
44703(c)(1) ..	49 App.:1655(c)(1).	
	49 App.:1422(b)(1) (3d sentence).	
44703(c)(2) ..	49 App.:1422(b)(1) (4th, 5th sentences, last sentence words before proviso).	
	49 App.:1655(c)(1).	
44703(d)	49 App.:1422(b)(1) (last sentence proviso).	
	49 App.:1655(c)(1).	
44703(e)	49 App.:1422(b)(2)(A), (B).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 602(b)(2)(A), (B); added Oct. 19, 1984, Pub. L. 98–499, § 3, 98 Stat. 2313; restated Nov. 18, 1988, Pub. L. 100–690, § 7204(a), 102 Stat. 4425.
44703(f)(1) ...	49 App.:1422(d).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 602(d); added Nov. 18, 1988, Pub. L. 100–690, § 7205(a), 102 Stat. 4426.
44703(f)(2) ...	49 App.:1401 (note).	Nov. 18, 1988, Pub. L. 100–690, § 7207(a) (1st sentence), (b), 102 Stat. 4427.

In subsections (a)–(d), the word “Administrator” in section 602(a), (b)(1), and (c) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 776) is retained on authority of 49:106(g).

In subsection (a), the text of 49 App.:1422(b) (1st sentence) is omitted as surplus. The words “is qualified” are substituted for “possesses proper qualifications” to eliminate unnecessary words. The words “to be authorized by the certificate” are substituted for “for which the airman certificate is sought” for clarity.

In subsection (b)(1)(C), the words “conditions, and limitations” are omitted as being included in “terms”.

In subsection (b)(1)(E), the word “designate” is substituted for “be entitled with the designation of” to eliminate unnecessary words.

In subsection (c)(1), before clause (A), the words “may appeal . . . to” are substituted for “may file with . . . a petition for review of the Secretary of Transportation’s action” for consistency with section 1109 of the revised title. The words “the individual holds a certificate that” are substituted for “persons whose certificates” for clarity.

In subsection (c)(2), the words “conduct a hearing on the appeal” are substituted for “thereupon assign such petition for hearing” for consistency. The words “In the conduct of such hearing and in determining whether the airman meets the pertinent rules, regulations, or standards” are omitted as surplus. The word “Administrator” is substituted for “Federal Aviation Administration” because of 49:106(b) and (g). The words “meets the applicable regulations” are substituted for “meets the pertinent rules, regulations” because “rules” and “regulations” are synonymous and for consistency in the revised title.

In subsection (d), before clause (1), the words “in his discretion” are omitted as surplus. In clause (2), the words “the terms of” and “entered into” are omitted as surplus. The words “government of a foreign country” are substituted for “foreign governments” for consistency in the revised title and with other titles of the United States Code.

In subsection (f)(1), before clause (A), the words “established under this chapter” and “to pilots” are omitted as surplus.

In subsection (f)(2), the words “Not later than September 18, 1989” and “final” are omitted as obsolete. The words “Administrator of Drug Enforcement” are substituted for “Drug Enforcement Administration of

the Department of Justice” because of section 5(a) of Reorganization Plan No. 2 of 1973 (eff. July 1, 1973, 87 Stat. 1092). The words “Commissioner of Customs” are substituted for “United States Customs Service” because of 19:2071.

REFERENCES IN TEXT

The date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, referred to in subsec. (c)(1), (3), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

The date of the enactment of the Pilot Records Improvement Act of 1996, referred to in subsec. (h)(12), is the date of enactment of Pub. L. 104–264, which was approved Oct. 9, 1996.

The date of enactment of this paragraph, referred to in subsec. (i)(4)(B)(ii), (10), (15)(C), is the date of enactment of Pub. L. 111–216, which was approved Aug. 1, 2010.

CODIFICATION

The text of section 44936(f) to (h) of this title, which was transferred to the end of this section, redesignated as subsecs. (h) to (j), respectively, and amended by Pub. L. 107–71, §§ 138(b), 140(a), was based on Pub. L. 104–264, title V, § 502(a), Oct. 9, 1996, 110 Stat. 3259; amended Pub. L. 105–102, § 2(25), Nov. 20, 1997, 111 Stat. 2205; Pub. L. 105–142, § 1, Dec. 5, 1997, 111 Stat. 2650; Pub. L. 106–181, title V, § 508(b), Apr. 5, 2000, 114 Stat. 140.

AMENDMENTS

2010—Subsec. (h)(16). Pub. L. 111–216, § 203(a), added par. (16).

Subsec. (i). Pub. L. 111–216, § 203(b)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 111–216, § 203(c)(1)(A), as amended by Pub. L. 111–249, § 6(3), substituted “Limitations” for “Limitation” in heading.

Pub. L. 111–216, § 203(b)(1), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(1). Pub. L. 111–216, § 203(c)(1)(B)(i), (iii), as amended by Pub. L. 111–249, § 6(3), substituted “subsection (h)(2) or (i)(3)” for “paragraph (2)” in introductory provisions and “subsection (h) or (i)” for “subsection (h)” in concluding provisions.

Subsec. (j)(1)(A). Pub. L. 111–216, § 203(c)(1)(B)(ii), as amended by Pub. L. 111–249, § 6(3), inserted “or accessing the records of that individual under subsection (i)(1)” before semicolon.

Subsec. (j)(2). Pub. L. 111–216, § 203(c)(1)(C), as amended by Pub. L. 111–249, § 6(3), substituted “subsection (h) or (i)” for “subsection (h)”.

Subsec. (j)(3). Pub. L. 111–216, § 203(c)(1)(D), as amended by Pub. L. 111–249, § 6(3), inserted “or who furnished information to the database established under subsection (i)(2)” after “subsection (h)(1)” in introductory provisions.

Subsec. (j)(4). Pub. L. 111–216, § 203(c)(1)(E), as amended by Pub. L. 111–249, § 6(3), added par. (4).

Subsec. (k). Pub. L. 111–216, § 203(c)(2), as amended by Pub. L. 111–249, § 6(4), substituted “subsection (h) or (i)” for “subsection (h)”.

Pub. L. 111–216, § 203(b)(1), redesignated subsec. (j) as (k).

2001—Subsec. (g)(1). Pub. L. 107–71, § 129(1), in first sentence, substituted “needs of airmen” for “needs of pilots” and inserted “and related to combating acts of terrorism” before period at end.

Subsec. (g)(3), (4). Pub. L. 107–71, § 129(2), added pars. (3) and (4).

Subsecs. (h) to (j). Pub. L. 107–71, §§ 138(b), 140(a), amended section identically, redesignating subsecs. (f) to (h) of section 44936 of this title as subsecs. (h) to (j), respectively, of this section, and substituting “subsection (h)” for “subsection (f)” wherever appearing in subsecs. (i) and (j). See Codification note above.

2000—Subsecs. (c) to (g). Pub. L. 106–181 added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

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TITLE 49—TRANSPORTATION

§ 44704

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-249, §6, Sept. 30, 2010, 124 Stat. 2628, provided that the amendments made by section 6 of Pub. L. 111-249 are effective as of Aug. 1, 2010, and as if included in Pub. L. 111-216 as enacted.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF
TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111-314, set out as a note under section 101 of this title.

IMPROVED PILOT LICENSES

Pub. L. 108-458, title IV, §4022, Dec. 17, 2004, 118 Stat. 3723, provided that:

“(a) IN GENERAL.—Not later than one year after the date of enactment of this Act [Dec. 17, 2004], the Administrator of the Federal Aviation Administration shall begin to issue improved pilot licenses consistent with the requirements of title 49, United States Code, and title 14, Code of Federal Regulations.

“(b) REQUIREMENTS.—Improved pilots licenses issued under subsection (a) shall—

“(1) be resistant to tampering, alteration, and counterfeiting;

“(2) include a photograph of the individual to whom the license is issued; and

“(3) be capable of accommodating a digital photograph, a biometric identifier, or any other unique identifier that the Administrator considers necessary.

“(c) TAMPERING.—To the extent practical, the Administrator shall develop methods to determine or reveal whether any component or security feature of a license issued under subsection (a) has been tampered, altered, or counterfeited.

“(d) USE OF DESIGNEES.—The Administrator may use designees to carry out subsection (a) to the extent feasible in order to minimize the burdens on pilots.”

CREDITING OF LAW ENFORCEMENT FLIGHT TIME

Pub. L. 106-424, §14, Nov. 1, 2000, 114 Stat. 1888, provided that: “In determining whether an individual meets the aeronautical experience requirements imposed under section 44703 of title 49, United States Code, for an airman certificate or rating, the Secretary of Transportation shall take into account any time spent by that individual operating a public aircraft as defined in section 40102 of title 49, United States Code, if that aircraft is—

“(1) identifiable by category and class; and

“(2) used in law enforcement activities.”



§ 44709. Amendments, modifications, suspensions, and revocations of certificates

(a) REINSPECTION AND REEXAMINATION.—The Administrator of the Federal Aviation Administration may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under section 44703 of this title.

(b) ACTIONS OF THE ADMINISTRATOR.—The Administrator may issue an order amending, modifying, suspending, or revoking—

(1) any part of a certificate issued under this chapter if—

(A) the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action; or

(B) the holder of the certificate has violated an aircraft noise or sonic boom standard or regulation prescribed under section 44715(a) of this title; and

(2) an airman certificate when the holder of the certificate is convicted of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j–1(a)).

(c) ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO ANSWER.—Before acting under

subsection (b) of this section, the Administrator shall advise the holder of the certificate of the charges or other reasons on which the Administrator relies for the proposed action. Except in an emergency, the Administrator shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.

(d) APPEALS.—(1) A person adversely affected by an order of the Administrator under this section may appeal the order to the National Transportation Safety Board. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order when the Board finds—

(A) if the order was issued under subsection (b)(1)(A) of this section, that safety in air commerce or air transportation and the public interest do not require affirmation of the order; or

(B) if the order was issued under subsection (b)(1)(B) of this section—

(i) that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require affirmation of the order; or

(ii) the order, as it is related to a violation of aircraft noise or sonic boom standards and regulations, is not consistent with safety in air commerce or air transportation.

(2) The Board may modify a suspension or revocation of a certificate to imposition of a civil penalty.

(3) When conducting a hearing under this subsection, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(e) EFFECTIVENESS OF ORDERS PENDING APPEAL.—

(1) IN GENERAL.—When a person files an appeal with the Board under subsection (d), the order of the Administrator is stayed.

(2) EXCEPTION.—Notwithstanding paragraph (1), the order of the Administrator is effective immediately if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately.

(3) REVIEW OF EMERGENCY ORDER.—A person affected by the immediate effectiveness of the Administrator's order under paragraph (2) may petition for a review by the Board, under procedures promulgated by the Board, of the Administrator's determination that an emergency exists. Any such review shall be requested not later than 48 hours after the order is received by the person. If the Board finds that an emergency does not exist that requires the immediate application of the order in the interest of safety in air commerce or air transportation, the order shall be stayed, notwithstanding paragraph (2). The Board shall dispose of a review request under this paragraph not later than 5 days after the date on which the request is filed.

(4) FINAL DISPOSITION.—The Board shall make a final disposition of an appeal under subsection (d) not later than 60 days after the date on which the appeal is filed.

(f) JUDICIAL REVIEW.—A person substantially affected by an order of the Board under this section, or the Administrator when the Administrator decides that an order of the Board under this section will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1190; Pub. L. 106-181, title VII, §716, Apr. 5, 2000, 114 Stat. 162; Pub. L. 108-176, title II, §227(c), Dec. 12, 2003, 117 Stat. 2532.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44709(a)	49 App.:1429(a) (1st sentence).	Aug. 23, 1958, Pub. L. 85-726, §609(a) (1st-7th sentences, 8th-last sentences less Administrator under title VII), 72 Stat. 779; Nov. 18, 1971, Pub. L. 92-159, §2(a), 85 Stat. 481; Nov. 27, 1971, Pub. L. 92-174, §6, 85 Stat. 492; Aug. 26, 1992, Pub. L. 102-345, §3(a)(1), 106 Stat. 925.
	49 App.:1655(c)(1).	Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.
44709(b)	49 App.:1429(a) (2d sentence).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §609(b); added Nov. 18, 1971, Pub. L. 92-159, §2(a), 85 Stat. 481.
	49 App.:1429(b).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §611(e); added July 21, 1968, Pub. L. 90-411, §1, 82 Stat. 395; re-stated Oct. 27, 1972, Pub. L. 92-574, §7(b), 86 Stat. 1241.
	49 App.:1431(e) (words before 4th comma).	
44709(c)	49 App.:1655(c)(1).	
	49 App.:1429(a) (3d sentence).	
	49 App.:1431(e) (words between 4th and 5th commas).	
44709(d)(1) ..	49 App.:1655(c)(1).	
	49 App.:1429(a) (4th sentence).	
	49 App.:1431(e) (words after 4th comma).	
44709(d)(2) ..	49 App.:1429(a) (6th sentence).	
44709(d)(3) ..	49 App.:1429(a) (5th sentence).	
44709(e)	49 App.:1655(c)(1).	
	49 App.:1429(a) (7th sentence).	
44709(f)	49 App.:1655(c)(1).	
	49 App.:1429(a) (8th-last sentences less Administrator under subch. VII).	
	49 App.:1655(c)(1).	

In this section, the word “Administrator” in section 609(a) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 779) is retained on authority of 49:106(g). The words “modifying”, “modify”, and “modified” are omitted as surplus.

In subsection (a), the words “airman holding a certificate issued under section 44703 of this title” are substituted for “civil airman” for clarity.

In subsection (b)(1), before subclause (A), the words “certificate issued under this chapter” are substituted



for “type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate” to eliminate unnecessary words.

In subsection (b)(2), the words “in his discretion” and “regarding the use or operation of an aircraft” in 49 App.:1429(b) are omitted as surplus.

In subsection (c), the words “cases of” in 49 App.:1429(a) are omitted as surplus.

In subsection (d)(1), before clause (A), the word “adversely” is substituted for “whose certificate is” in 49 App.:1429(a), and the words “an opportunity for a” are added, for consistency in the revised title and with other titles of the United States Code. The words “of the FAA” in 49 App.:1431(e) are omitted as surplus.

In subsection (d)(2), the words “consistent with this subsection” are omitted as surplus.

In subsection (d)(3), the word “Administrator” is substituted for “Federal Aviation Administration” because of 49:106(b) and (g).

In subsection (e), before clause (1), the words “the effectiveness of” are omitted as surplus.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-176 inserted “design organization, production certificate holder,” after “applicant,”.

2000—Subsec. (e). Pub. L. 106-181 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “When a person files an appeal with the Board under subsection (d) of the section, the order of the Administrator is stayed. However, if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately—

“(1) the order is effective; and

“(2) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

§ 44710. Revocations of airman certificates for controlled substance violations

(a) DEFINITION.—In this section, “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATION.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense; and

(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(2) The Administrator shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the Administrator finds that—

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(3) The Administrator has no authority under paragraph (1) of this subsection to review whether an airman violated a law of the United States or a State related to a controlled substance.

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator must—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator relies for the proposed revocation; and

(2) provide the holder of the certificate an opportunity to answer the charges and be heard why the certificate should not be revoked.

(d) APPEALS.—(1) An individual whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and an opportunity for a hearing on the record. When conducting the hearing, the Board is not bound by findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(2) When an individual files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a rev-

ocation of, an airman certificate under subsection (b)(2) of this section on the basis of an activity described in subsection (b)(2)(A) if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked an airman certificate under this section because of an activity described in subsection (b)(2)(A) of this section, the Administrator shall reissue a certificate to the individual if—

(A) the individual otherwise satisfies the requirements for a certificate under section 44703 of this title; and

(B)(i) the individual subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; or

(ii) the conviction on which a revocation under subsection (b)(1) of this section is based is reversed.

(f) **WAIVERS.**—The Administrator may waive the requirement of subsection (b) of this section that an airman certificate of an individual be revoked if—

(1) a law enforcement official of the United States Government or of a State requests a waiver; and

(2) the Administrator decides that the waiver will facilitate law enforcement efforts.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1191.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
44710(a)	49 App.:1429(c)(4).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 609(c)(1), (2), (4); added Oct. 19, 1984, Pub. L. 98–499, § 2(a), 98 Stat. 2312, 2313.
44710(b)(1) ..	49 App.:1429(c)(1) (1st sentence).	
44710(b)(2) ..	49 App.:1429(c)(2) (1st sentence).	
44710(b)(3) ..	49 App.:1429(c)(1) (last sentence).	
44710(c)	49 App.:1429(c)(3) (1st sentence).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 609(c)(3); added Oct. 19, 1984, Pub. L. 98–499, § 2(a), 98 Stat. 2312; Aug. 26, 1992, Pub. L. 102–345, § 3(b), 106 Stat. 926.
44710(d)	49 App.:1429(c)(3) (2d–last sentences).	
44710(e)(1) ..	49 App.:1429(c)(2) (last sentence).	
44710(e)(2) ..	49 App.:1422(b)(2)(C).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 602(b)(2)(C); added Oct. 19, 1984, Pub. L. 98–499, § 3, 98 Stat. 2313.
44710(f)	49 App.:1429(c)(5).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 609(c)(5); added Nov. 18, 1988, Pub. L. 100–690, § 7204(b), 102 Stat. 4425.

In subsection (b)(1) and (2), before each clause (A), the words “of any person” are omitted as surplus. The words “issued . . . under section 44703 of this title” are added for clarity.

In subsection (b)(1), the word “offense” is substituted for “crime” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(2)(C), the words “in connection with carrying out, or facilitating the carrying out of, the activity” are substituted for “in connection with such activity or the facilitation of such activity” for consistency with the source provisions restated in paragraph (1)(B) of this subsection.

In subsection (d)(1), the word “Administrator” is substituted for “Federal Aviation Administration” because of 49:106(b) and (g).

In subsection (e)(1), the words “on appeal” and “contained” are omitted as surplus.

In subsection (e)(2)(B)(i), the word “contained” is omitted as surplus.

In subsection (e)(2)(B)(ii), the words “judgment of” are omitted as surplus.

K.S.A. § 21-5706

This document is current through the 2018 legislative session.

LexisNexis® Kansas Annotated Statutes > Chapter 21. Crimes and Punishments (§§ 21-101 — 21-6824) > Kansas Criminal Code (Arts. 51 — 68) > Article 57. Crimes Involving Controlled Substances (§§ 21-5701 — 21-5717)

21-5706. Unlawful possession of controlled substances.

(a)It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in [K.S.A. 65-4107\(d\)\(1\)](#), (d)(3) or (f)(1), and amendments thereto, or a controlled substance analog thereof.

(b)It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1)Any depressant designated in *K.S.A. 65-4105(e)*, [K.S.A. 65-4107\(e\)](#), [K.S.A. 65-4109\(b\)](#) or (c) or [K.S.A. 65-4111\(b\)](#), and amendments thereto;

(2)any stimulant designated in *K.S.A. 65-4105(f)*, [K.S.A. 65-4107\(d\)\(2\)](#), (d)(4), (d)(5) or (f)(2) or [K.S.A. 65-4109\(e\)](#), and amendments thereto;

(3)any hallucinogenic drug designated in *K.S.A. 65-4105(d)*, [K.S.A. 65-4107\(g\)](#) or [K.S.A. 65-4109\(g\)](#), and amendments thereto;

(4)any substance designated in *K.S.A. 65-4105(g)* and [K.S.A. 65-4111\(c\)](#), (d), (e), (f) or (g), and amendments thereto;

(5)any anabolic steroids as defined in [K.S.A. 65-4109\(f\)](#), and amendments thereto;

(6)any substance designated in [K.S.A. 65-4113](#), and amendments thereto; or

(7)any substance designated in *K.S.A. 65-4105(h)*, and amendments thereto.

(c)

(1)Violation of subsection (a) is a drug severity level 5 felony.

(2)Except as provided in subsection (c)(3):

(A)Violation of subsection (b) is a class A nonperson misdemeanor, except as provided in subsection (c)(2)(B); and

(B)violation of subsection (b)(1) through (b)(5) or (b)(7) is a drug severity level 5 felony if that person has a prior conviction under such subsection, under [K.S.A. 65-4162](#), prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense if the substance involved was 3, 4-methylenedioxymethamphetamine (MDMA), marijuana as designated in *K.S.A. 65-4105(d)*, and amendments thereto, or any substance designated in *K.S.A. 65-4105(h)*, and amendments thereto, or an analog thereof.

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(3)If the substance involved is marijuana, as designated in *K.S.A. 65-4105(d)*, and amendments thereto, or tetrahydrocannabinols, as designated in *K.S.A. 65-4105(h)*, and amendments thereto, violation of subsection (b) is a:

(A)Class B nonperson misdemeanor, except as provided in (c)(3)(B) and (c)(3)(C);

(B)class A nonperson misdemeanor if that person has a prior conviction under such subsection, under [K.S.A. 65-4162](#), prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense; and

(C)drug severity level 5 felony if that person has two or more prior convictions under such subsection, under [K.S.A. 65-4162](#), prior to its repeal, under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.

(d)It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.

History

[L. 2009, ch. 32, § 6](#); [L. 2010, ch. 74, § 3](#); [L. 2011, ch. 83, § 2](#); [L. 2012, ch. 150, § 10](#); July 1; L. 2016, ch. 90, § 1; L. 2018, ch. 112, § 6; July 1, 2018.



PUBLIC LAW 112–153—AUG. 3, 2012

126 STAT. 1159

Public Law 112–153
112th Congress

An Act

To amend title 49, United States Code, to provide rights for pilots, and for other purposes.

Aug. 3, 2012

[S. 1335]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Pilot's Bill of Rights.
49 USC 40101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pilot’s Bill of Rights”.

SEC. 2. FEDERAL AVIATION ADMINISTRATION ENFORCEMENT PROCEEDINGS AND ELIMINATION OF DEFERENCE.

49 USC 44703 note.

(a) IN GENERAL.—Any proceeding conducted under subpart C, D, or F of part 821 of title 49, Code of Federal Regulations, relating to denial, amendment, modification, suspension, or revocation of an airman certificate, shall be conducted, to the extent practicable, in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

(b) ACCESS TO INFORMATION.—

(1) IN GENERAL.—Except as provided under paragraph (3), the Administrator of the Federal Aviation Administration (referred to in this section as the “Administrator”) shall provide timely, written notification to an individual who is the subject of an investigation relating to the approval, denial, suspension, modification, or revocation of an airman certificate under chapter 447 of title 49, United States Code.

Notification.

(2) INFORMATION REQUIRED.—The notification required under paragraph (1) shall inform the individual—

(A) of the nature of the investigation;

(B) that an oral or written response to a Letter of Investigation from the Administrator is not required;

(C) that no action or adverse inference can be taken against the individual for declining to respond to a Letter of Investigation from the Administrator;

(D) that any response to a Letter of Investigation from the Administrator or to an inquiry made by a representative of the Administrator by the individual may be used as evidence against the individual;

(E) that the releasable portions of the Administrator’s investigative report will be available to the individual; and

(F) that the individual is entitled to access or otherwise obtain air traffic data described in paragraph (4).

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(3) EXCEPTION.—The Administrator may delay timely notification under paragraph (1) if the Administrator determines that such notification may threaten the integrity of the investigation.

(4) ACCESS TO AIR TRAFFIC DATA.—

(A) FAA AIR TRAFFIC DATA.—The Administrator shall provide an individual described in paragraph (1) with timely access to any air traffic data in the possession of the Federal Aviation Administration that would facilitate the individual's ability to productively participate in a proceeding relating to an investigation described in such paragraph.

(B) AIR TRAFFIC DATA DEFINED.—As used in subparagraph (A), the term “air traffic data” includes—

(i) relevant air traffic communication tapes;

(ii) radar information;

(iii) air traffic controller statements;

(iv) flight data;

(v) investigative reports; and

(vi) any other air traffic or flight data in the Federal Aviation Administration's possession that would facilitate the individual's ability to productively participate in the proceeding.

(C) GOVERNMENT CONTRACTOR AIR TRAFFIC DATA.—

(i) IN GENERAL.—Any individual described in paragraph (1) is entitled to obtain any air traffic data that would facilitate the individual's ability to productively participate in a proceeding relating to an investigation described in such paragraph from a government contractor that provides operational services to the Federal Aviation Administration, including control towers and flight service stations.

(ii) REQUIRED INFORMATION FROM INDIVIDUAL.—The individual may obtain the information described in clause (i) by submitting a request to the Administrator that—

(I) describes the facility at which such information is located; and

(II) identifies the date on which such information was generated.

(iii) PROVISION OF INFORMATION TO INDIVIDUAL.—If the Administrator receives a request under this subparagraph, the Administrator shall—

(I) request the contractor to provide the requested information; and

(II) upon receiving such information, transmitting the information to the requesting individual in a timely manner.

(5) TIMING.—Except when the Administrator determines that an emergency exists under section 44709(c)(2) or 46105(c), the Administrator may not proceed against an individual that is the subject of an investigation described in paragraph (1) during the 30-day period beginning on the date on which the air traffic data required under paragraph (4) is made available to the individual.

49 USC 44703.

(c) AMENDMENTS TO TITLE 49.—

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126 STAT. 1161

(1) AIRMAN CERTIFICATES.—Section 44703(d)(2) of title 49, United States Code, is amended by striking “but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law”.

(2) AMENDMENTS, MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS OF CERTIFICATES.—Section 44709(d)(3) of such title is amended by striking “but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law”. 49 USC 44709.

(3) REVOCATION OF AIRMAN CERTIFICATES FOR CONTROLLED SUBSTANCE VIOLATIONS.—Section 44710(d)(1) of such title is amended by striking “but shall be bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law”. 49 USC 44710.

(d) APPEAL FROM CERTIFICATE ACTIONS.—

(1) IN GENERAL.—Upon a decision by the National Transportation Safety Board upholding an order or a final decision by the Administrator denying an airman certificate under section 44703(d) of title 49, United States Code, or imposing a punitive civil action or an emergency order of revocation under subsections (d) and (e) of section 44709 of such title, an individual substantially affected by an order of the Board may, at the individual’s election, file an appeal in the United States district court in which the individual resides or in which the action in question occurred, or in the United States District Court for the District of Columbia. If the individual substantially affected by an order of the Board elects not to file an appeal in a United States district court, the individual may file an appeal in an appropriate United States court of appeals.

(2) EMERGENCY ORDER PENDING JUDICIAL REVIEW.—Subsequent to a decision by the Board to uphold an Administrator’s emergency order under section 44709(e)(2) of title 49, United States Code, and absent a stay of the enforcement of that order by the Board, the emergency order of amendment, modification, suspension, or revocation of a certificate shall remain in effect, pending the exhaustion of an appeal to a Federal district court as provided in this Act.

(e) STANDARD OF REVIEW.—

(1) IN GENERAL.—In an appeal filed under subsection (d) in a United States district court, the district court shall give full independent review of a denial, suspension, or revocation ordered by the Administrator, including substantive independent and expedited review of any decision by the Administrator to make such order effective immediately.

(2) EVIDENCE.—A United States district court’s review under paragraph (1) shall include in evidence any record of the proceeding before the Administrator and any record of the proceeding before the National Transportation Safety

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Board, including hearing testimony, transcripts, exhibits, decisions, and briefs submitted by the parties.

49 USC 44701
note.

SEC. 3. NOTICES TO AIRMEN.

(a) IN GENERAL.—

(1) DEFINITION.—In this section, the term “NOTAM” means Notices to Airmen.

Deadline.

(2) IMPROVEMENTS.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall begin a Notice to Airmen Improvement Program (in this section referred to as the “NOTAM Improvement Program”)—

(A) to improve the system of providing airmen with pertinent and timely information regarding the national airspace system;

(B) to archive, in a public central location, all NOTAMs, including the original content and form of the notices, the original date of publication, and any amendments to such notices with the date of each amendment; and

(C) to apply filters so that pilots can prioritize critical flight safety information from other airspace system information.

(b) GOALS OF PROGRAM.—The goals of the NOTAM Improvement Program are—

(1) to decrease the overwhelming volume of NOTAMs an airman receives when retrieving airman information prior to a flight in the national airspace system;

(2) make the NOTAMs more specific and relevant to the airman’s route and in a format that is more useable to the airman;

(3) to provide a full set of NOTAM results in addition to specific information requested by airmen;

(4) to provide a document that is easily searchable; and

(5) to provide a filtering mechanism similar to that provided by the Department of Defense Notices to Airmen.

Establishment.

(c) ADVICE FROM PRIVATE SECTOR GROUPS.—The Administrator shall establish a NOTAM Improvement Panel, which shall be comprised of representatives of relevant nonprofit and not-for-profit general aviation pilot groups, to advise the Administrator in carrying out the goals of the NOTAM Improvement Program under this section.

Deadline.

(d) PHASE-IN AND COMPLETION.—The improvements required by this section shall be phased in as quickly as practicable and shall be completed not later than the date that is 1 year after the date of the enactment of this Act.

49 USC 44703
note.

SEC. 4. MEDICAL CERTIFICATION.

(a) ASSESSMENT.—

Deadline.

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall initiate an assessment of the Federal Aviation Administration’s medical certification process and the associated medical standards and forms.

(2) REPORT.—The Comptroller General shall submit a report to Congress based on the assessment required under paragraph (1) that examines—

(A) revisions to the medical application form that would provide greater clarity and guidance to applicants;

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(B) the alignment of medical qualification policies with present-day qualified medical judgment and practices, as applied to an individual's medically relevant circumstances; and

(C) steps that could be taken to promote the public's understanding of the medical requirements that determine an airman's medical certificate eligibility.

(b) GOALS OF THE FEDERAL AVIATION ADMINISTRATION'S MEDICAL CERTIFICATION PROCESS.—The goals of the Federal Aviation Administration's medical certification process are—

(1) to provide questions in the medical application form that—

(A) are appropriate without being overly broad;

(B) are subject to a minimum amount of misinterpretation and mistaken responses;

(C) allow for consistent treatment and responses during the medical application process; and

(D) avoid unnecessary allegations that an individual has intentionally falsified answers on the form;

(2) to provide questions that elicit information that is relevant to making a determination of an individual's medical qualifications within the standards identified in the Administrator's regulations;

(3) to give medical standards greater meaning by ensuring the information requested aligns with present-day medical judgment and practices; and

(4) to ensure that—

(A) the application of such medical standards provides an appropriate and fair evaluation of an individual's qualifications; and

(B) the individual understands the basis for determining medical qualifications.

(c) ADVICE FROM PRIVATE SECTOR GROUPS.—The Administrator shall establish a panel, which shall be comprised of representatives of relevant nonprofit and not-for-profit general aviation pilot groups, aviation medical examiners, and other qualified medical experts, to advise the Administrator in carrying out the goals of the assessment required under this section. Establishment.

(d) FEDERAL AVIATION ADMINISTRATION RESPONSE.—Not later than 1 year after the issuance of the report by the Comptroller Deadline.

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General pursuant to subsection (a)(2), the Administrator shall take appropriate actions to respond to such report.

Approved August 3, 2012.

LEGISLATIVE HISTORY—S. 1335:

CONGRESSIONAL RECORD, Vol. 158 (2012):

June 29, considered and passed Senate.

July 23, considered and passed House.



98 STAT. 2312

PUBLIC LAW 98-499—OCT. 19, 1984

Public Law 98-499

98th Congress

An Act

Oct. 19, 1984

[S. 1146]

Aviation Drug-
Trafficking
Control Act.
Law
enforcement.
49 USC app. 1301
note.

To amend the Federal Aviation Act of 1958 to provide for the revocation of the airman certificates and for additional penalties for the transportation by aircraft of controlled substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Aviation Drug-Trafficking Control Act".

SEC. 2. (a) Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429) is amended by adding at the end thereof the following new subsection:

"TRANSPORTATION, DISTRIBUTION, AND OTHER ACTIVITIES RELATED TO
CONTROLLED SUBSTANCES

"(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

"(2) The Administrator shall issue an order revoking the airman certificates of any person if the Administrator determines that (A) such person knowingly engaged in an activity that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance), (B) an aircraft was used to carry out such activity or to facilitate such activity, and (C) such person served as an airman, or was on board such aircraft, in connection with such activity or the facilitation of such activity. The Administrator shall not revoke, and the National Transportation Safety Board on appeal under paragraph (3) shall not affirm the revocation of, a certificate under this paragraph on the basis of any activity if the holder of the certificate is acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity.

"(3) Prior to revoking an airman certificate under this subsection, the Administrator shall advise the holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the holder of such certificate an opportunity to answer any charges and be heard as to why such certificate should not be revoked. Any person whose certificate is revoked by the Administrator under this subsection may appeal the Adminis-

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98 STAT. 2313

trator's order to the National Transportation Safety Board and the Board shall, after notice and a hearing on the record, affirm or reverse the Administrator's order. In the conduct of its hearings, the National Transportation Safety Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Administrator's order unless the Administrator advises the Board that safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator. The person substantially affected by the National Transportation Safety Board's order may obtain judicial review of such order under the provisions of section 1006, and the Administrator shall be made a party to such proceedings.

Courts, U.S.

49 USC app.
1486.

"(4) For purposes of this subsection, the term 'controlled substance' has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))."

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 609. Amendment, suspension, and revocation of certificates."

is amended by adding at the end thereof

"(c) Transportation, distribution, and other activities related to controlled substances."

SEC. 3. Section 602(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1422(b)) is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following new paragraph:

"(2)(A) Except as provided in subparagraphs (B) and (C), the Administrator shall not issue an airman certificate to any person whose airman certificate has been revoked under subsection (c) of section 609 of this title during the five-year period beginning on the date of such revocation.

Ante, p. 2312.

"(B) The Administrator may issue an airman certificate to any such person before the end of such five-year period (but not before the end of the one-year period beginning on the date of such revocation) if, in addition to the findings required by paragraph (1), the Administrator determines (i) that revocation of the certificate for such five-year period would be excessive considering the nature of the offense or the act committed and the burden which revocation places on such person, or (ii) that revocation of the certificate for such five-year period would not be in the public interest. The determinations under clauses (i) and (ii) of the preceding sentence shall be within the discretion of the Administrator and any such determination or failure to make such a determination shall not be subject to administrative or judicial review.

"(C) In any case in which the Administrator has revoked an airman certificate of a person under section 609(c) (1) or (2) as a result of any activity and—

Ante, p. 2312.

"(i) such person is subsequently acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity; or

"(ii) in the case of a revocation under section 609(c)(1), the judgment of conviction on which the revocation is based is reversed on appeal;

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the Administrator shall issue an airman certificate to such person if such person is otherwise qualified to serve as an airman under this section.”.

SEC. 4. (a) Section 501(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401(e)) is amended by inserting “(1)” after “(e)” and by adding at the end thereof the following new paragraph:

“(2)(A) The Administrator shall issue an order revoking the certificate of registration issued to an owner under this section for an aircraft and each other certificate of registration held by such owner under this section, if the Administrator determines that—

“(i) such aircraft has been used to carry out an activity, or to facilitate an activity, that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance); and

“(ii) the use of the aircraft was permitted by such owner with the knowledge that the aircraft was intended to be used for an activity described in clause (i) of this subparagraph.

For purposes of this paragraph, an owner of an aircraft who is not an individual shall be considered to have permitted the use of an aircraft with knowledge that it was intended to be used for an activity described in clause (i) of this subparagraph only if a majority of the individuals who control such owner or who are involved in forming the major policy of such owner permitted the use of the aircraft with knowledge of such intended use. The Administrator shall not revoke, and the National Transportation Safety Board on appeal under subparagraph (B) shall not affirm the revocation of, a certificate under this paragraph on the basis of any activity if the holder of the certificate is acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity.

“(B) Prior to revoking any certificate of registration under this subsection, the Administrator shall advise the holder thereof of the charges or any reasons relied upon by the Administrator for his proposed action and shall provide the holder of the certificate of registration an opportunity to answer any charges and be heard as to why such certificate should not be revoked. Any person whose certificate of registration is revoked by the Administrator under this subsection may appeal the Administrator’s order to the National Transportation Safety Board and the Board shall, after notice and a hearing on the record, affirm or reverse the Administrator’s order. In the conduct of its hearings, the National Transportation Safety Board shall not be bound by findings of fact of the Administrator. The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Administrator’s order unless the Administrator advises the Board that safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within 60 days after being so advised by the Administrator. The person substantially affected by the National Transportation Safety Board’s order may obtain judicial review of such order under the provisions of section 1006, and the Administrator shall be made a party to such proceedings.

“(C) For purposes of this paragraph, the term ‘controlled substance’ has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

49 USC app.
1486.

PUBLIC LAW 98-499—OCT. 19, 1984

98 STAT. 2315

“(D) Except as provided in subparagraphs (E) and (F), the Administrator shall not issue a certificate of registration to any person who has had a certificate revoked under subparagraph (A) of this paragraph during the five-year period beginning on the date of such revocation.

“(E) The Administrator may issue a certificate of registration for an aircraft to any such person before the end of such five-year period (but not before the end of the one-year period beginning on the date of such revocation) if the Administrator determines that such aircraft is otherwise eligible for registration under this section and (i) that revocation of the certificate for such five-year period would be excessive considering the nature of the offense or the act committed and the burden which revocation places on such person, or (ii) that revocation of the certificate for such five-year period would not be in the public interest. The determinations under clauses (i) and (ii) of the preceding sentence shall be within the discretion of the Administrator and any such determination or failure to make such a determination shall not be subject to administrative or judicial review.

“(F) In any case in which the Administrator has revoked the certificate of registration as a result of any activity and such person is subsequently acquitted of all charges contained in an indictment or information which relate to controlled substances and which arise from such activity, the Administrator shall issue a certificate of registration to such person if such person is otherwise qualified for such a certificate under this section.”

(b) Section 304(a)(9)(A) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(a)(9)(A)) is amended by inserting before the semicolon at the end thereof the following: “and the revocation of any certificate of registration under section 501(e)(2) of such Act”.

Ante, p. 2314.

SEC. 5. (a) Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472) is amended by adding at the end thereof the following new subsection:

“TRANSPORTING CONTROLLED SUBSTANCES WITHOUT AIRMAN
CERTIFICATE

“(q) Any person who knowingly and willfully serves in any capacity as an airman without an airman certificate authorizing him to serve in such capacity, in connection with the transportation by aircraft of any controlled substance, where (1) such transportation is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance), and (2) such person has knowledge of such transportation, shall be subject to a fine not exceeding \$25,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment. For purposes of this subsection, the term ‘controlled substance’ has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).”

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

“Sec. 902. Criminal penalties.”

98 STAT. 2316

PUBLIC LAW 98-499—OCT. 19, 1984

is amended by adding at the end thereof

“(q) Transporting controlled substances without airman certificate.”.

SEC. 6. Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(b)) is amended—

(1) by striking out “(b) Any person who” and inserting in lieu thereof “(b)(1) Except as provided in paragraph (2), any person who”;

(2) by striking out “uses or attempts to use” and inserting in lieu thereof “sells, uses, attempts to use, or possesses with the intent to use”; and

(3) by adding at the end thereof the following new paragraph:

“(2)(A) Any person who violates paragraph (1) of this subsection (other than by selling a fraudulent certificate) with the intent to commit a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding \$25,000 or to imprisonment not exceeding five years, or both.

“(B) Any person who violates paragraph (1) of this subsection by selling a fraudulent certificate with the knowledge that the purchaser intends to use such certificate in connection with the commission of a crime punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to controlled substances (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding \$25,000 or to imprisonment not exceeding five years, or both.

“(C) For purposes of this paragraph, the term ‘controlled substance’ has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).”.

Effective date.
49 USC app. 1401
note.

SEC. 7. This Act and the amendments made by this Act shall apply with respect to acts and violations occurring after the date of enactment of this Act.

Approved October 19, 1984.

LEGISLATIVE HISTORY—S. 1146 (H.R. 1580):

HOUSE REPORTS: No. 98-883 accompanying H.R. 1580 (Comm. on Public Works and Transportation) and No. 98-1085 (Comm. of Conference).

SENATE REPORT No. 98-228 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 129 (1983): Sept. 27, considered and passed Senate.

Vol. 130 (1984): July 24, H.R. 1580 considered and passed House; S. 1146, amended, passed in lieu.

Oct. 2, Senate agreed to conference report.

Oct. 4, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 42 (1984):

Oct. 19, Presidential statement.

AVIATION DRUG-TRAFFICKING CONTROL ACT

(98-12)

HEARINGS
BEFORE THE
SUBCOMMITTEE ON AVIATION
OF THE
COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES
NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 1580

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR
THE REVOCATION OF AIRMAN CERTIFICATES AND FOR ADDITIONAL
PENALTIES FOR THE TRANSPORTATION BY AIRCRAFT OF CON-
TROLLED SUBSTANCES, AND FOR OTHER PURPOSES

APRIL 27, 1983

Printed for the use of the
Committee on Public Works and Transportation



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WASHINGTON : 1983

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they ever say that they have got a problem in some area of law enforcement with forging by certain people of FAA certificates, we will be happy to look at it again real hard and see if there is something that we can do to solve the problem.

Mr. HAMMERSCHMIDT. Fine. Mr. Broderick, we very much appreciate you and Mr. Noble and Mr. Cassady for being before us. I have a number of other questions I may submit to you for the record. If you would respond, I would be most appreciative.

Mr. BRODERICK. We would be happy to, sir.

Mr. HAMMERSCHMIDT. Thank you, Mr. Chairman.

Mr. MINETA. And the record will be kept open for those responses.

I also have other questions, Mr. Broderick, and will be directing them for your response for the record.

[Questions posed by Mr. Mineta and responses received from Mr. Broderick follow:]

FAA RESPONSES TO ADDITIONAL QUESTIONS ASKED BY MR. MINETA

Question 1. Under FAA's current regulations, FAA revokes the certifications of airmen who are convicted of drug offenses. How does FAA obtain notice that an airman has been convicted? Is there any way that an airman could be convicted without FAA knowing about it?

Answer. The FAA maintains close liaison with the Federal law enforcement agencies most involved in apprehending drug violators. Pursuant to that working relationship, we are routinely provided information on arrests, including drug arrests, of persons who have ties to aviation. While there is no assurance of receiving information on one hundred percent of airmen charged with or convicted of drug offenses, we nevertheless are confident that the system in place works well.

Question 2. Do current FAA regulations permit revocation of an airman's certificate without a conviction if FAA determines that an airman operated an aircraft with illegal drugs on board? If so, are these cases included in the 65 revocations for drug offenses referred to in FAA testimony?

Answer. Section 91.12 of the Federal Aviation Regulations prohibits the illegal carriage of drugs by aircraft and does not require a conviction of a drug offense before sanctions may be taken against a pilot. Although section 91.12 was cited in many of the 65 enforcement cases, it appears that all cases also involved the conviction of an airman of a drug-related offense.

Question 3. The Subcommittee has heard some comments that revocation of pilot's licenses is not a valuable deterrent because the drug law penalties are so severe that a pilot who is not deterred by them will not be deterred by added penalties. What is FAA's reactions to these comments?

Answer. While the FAA does not wish to hold itself out as possessing special expertise in criminal law or its deterrent effects, we would nevertheless offer our view that the potential revocation of an airman's certificate for a drug-related offense could indeed have a deterrent effect for some individuals, particularly those who use their pilot certificates for legitimate business purposes.

Question 4. The purpose of this legislation is not only to add some measure of deterrence to that which already exists. The purpose is also to give the innocent aircraft owner some protection against those who are still undeterred and who will try to lease those aircraft under false pretenses. Would putting stiff penalties on fraudulent documents give the aircraft owner some better chance of weeding out the potential lessor who have a record of drug-trafficking?

Answer. We do not have evidence suggesting that fraudulent FAA certificates are used with any frequency by drug traffickers to lease aircraft. Nevertheless, to the extent that penalties for using a fraudulent certificate are stiffened, we believe that some individuals who intent is to smuggle drugs would be deterred from compounding the prospective penalties for drug trafficking by committing an additional offense which is independent of the drug violation.

Question 5. On page 6 of FAA's testimony you suggest that the bill be changed to base revocation on a finding that an airman has operated an aircraft knowing that illegal drugs are on board. FAA would not require a finding that the drug transportation violated state or federal law. This suggestion would seem to require revoca-

tion in a case in which the airman's only offense was simple possession of a small amount of a controlled substance. H.R. 1580 does not require revocation for simple possession. Was it FAA's intention to follow a different policy on simple possession?

Answer. No. The FAA agrees with excluding from the bill's provisions those whose offense is simple possession of a controlled substance. We believe that our proposed general approach could be adopted by the Committee with the proviso that the transportation of drugs pursuant to lawful authority or the simple possession of drugs are excluded from the bill's provisions.

Question 6. The Subcommittee has heard allegations that stepped-up enforcement in the Southern Florida area has squeezed smuggling operations into other areas, such as the Carolinas and the coast of Louisiana. Does FAA have any evidence that this is occurring? Does FAA have any plans to broaden the geographic area in which pilots are required to file flight plans as they are now required to do in the South Florida area?

Answer. Since we are not a law enforcement oriented agency, we do not have firsthand knowledge of drug smugglers moving out of the South Florida into other areas, but we are led to believe that this has been the case. In terms of expanding the Air Defense Identification Zone flight plan requirements which are applicable in Florida to locations outside of Florida, we have not yet been requested by any Federal law enforcement agencies to consider such a change.

Question 7. What is the nature of FAA's relationship with foreign air traffic control authorities in nearby countries, such as Mexico or the Bahamas? Is there a cooperative effort to catch smugglers?

Answer. While there is no formal agreement with the Mexican government on air traffic control services, there is nevertheless a cooperative working relationship. For example, in the past, when a U.S. law enforcement agency such as Customs or DEA has requested, our regional air traffic personnel have contacted their Mexican counterparts to obtain information on flights in certain areas, on certain types of aircraft, and similar kinds of information. On those occasions, the FAA has received the full cooperation of the Mexican authorities.

Also, the FAA chairs the Inter-American Flight Safety Group. This organization has representatives of most of the Caribbean and Central American countries. This group, which meets once or twice a year, has representatives of the member countries' aviation and law enforcement (drug-related) organizations. One of the primary goals of the group is the reduction of illegal drug trafficking.

Question 8. Does FAA believe that the recent stepped-up enforcement efforts are reducing the number of drug smuggling flights? Does FAA have any other suggestions for improved enforcement?

Answer. We do not have any specific information as to whether the amount of drug smuggling has been reduced because of stepped-up enforcement efforts. Considering the tremendous profits involved, our guess is that there has probably been no appreciable reduction in the number of drug smuggling flights. Based upon information provided by EPIC, we know the number and amount of cocaine seizures have increased, but that could well be because of the increased popularity of the substance which has caused a corresponding increase in the number of attempts to smuggle cocaine. At this time, we have no additional suggestions for improved enforcement in this area.

FAA RESPONSES TO ADDITIONAL QUESTIONS ASKED BY MR. HAMMERSCHMIDT

Question 1. What is the nature of the FAA's assistance which is provided to the Drug Enforcement Administration (DEA) and the Customs Service in apprehending drug smugglers?

Answer. Upon request, the FAA provides a variety of assistance both to the Drug Enforcement Administration and the Customs Service. We also have in place some continuing services. For example, the Airmen and Aircraft Registry at the FAA's Aeronautical Center in Oklahoma City responds to more than 12,000 calls a year for information on certificated airmen and registered aircraft. To respond to these queries, FAA has assigned three specialists, of which two positions are funded by DEA and Customs. FAA also cooperates with DEA and Customs in the use of our air traffic control facilities helping to track and identify suspected drug-transporting aircraft. Also, FAA has trained Customs personnel and made available space in selected air traffic control centers for these personnel to directly receive air traffic information regarding aircraft suspected of drug trafficking. Further, upon request, FAA has made available certain air traffic control towers which normally close at night to DEA personnel for surveillance of suspected drug traffickers.

April 7, 1994

Patrick L. Nelms
FPC 24118-077
9595 W. Quincy
Ave. Littleton,
CO 80123

Dear Mr. Nelms:

This is in reply to your letter of March 15, 1994.

You state that on September 15, 1993, you were convicted, upon a plea of guilty, for violation of 21 U.S.C. 841 and 18 U.S.C. 371 and were sentenced to 36 months incarceration, with three years probation. The offenses in question did not involve use of an aircraft, you state.

You are the holder of a commercial pilot certificate and would like to resume flying upon completion of your sentence. You question whether your pilot certificate is subject to revocation or suspension. I draw the inference that if it is subject to suspension or revocation, you would like to have this accomplished soon so that you will be able to fly again when you are free. Section 61.15 of the Federal Aviation Regulations {14 C.F.R. 61.15} provides that a conviction for the violation of any federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, or importation of narcotic drugs, marijuana, or depressed or stimulate drugs or substances is grounds for:

(2) Suspension or revocation of any certificate or rating issued under this Part.

Our agency's practice, in cases other than a single conviction for simple possession is to revoke any pilot certificate. Once a pilot certificate has been revoked under these circumstances, we would not entertain an application for issuance of a new pilot certificate for a period of one year after the date of revocation. After this one year period, it would be necessary for the applicant to requalify by taking the appropriate written and flight tests.

I should mention that if an aircraft were used in the commission of the offense and the FAA certificate holder was aboard the aircraft in connection with the offense, the situation is considerably different in that we are, in most cases, precluded by statute from ever issuing an airman certificate again.

I hope this adequately explains the situation. If you would like to send me information relating to your conviction, which would establish that an aircraft was not involved in the offense, we would be happy to proceed with the revocation of your certificate, forthwith. Otherwise, the information will be made available to the FAA, in due course, by the appropriate authorities, and we will proceed with the revocation of your certificate at that later time. In the latter case, however, I can offer no assurance that this would not begin until after you are released from incarceration.

Sincerely,

George L. Thompson

Assistant Chief Counsel

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because it contains 6,645 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii); and,

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word for Mac 2011, in font size 14-point and type style Times New Roman.

Respectfully submitted,

/s/ Gregory S. Winton
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Attorney for Petitioner

**United States Court of Appeals
for the District of Columbia Circuit**
Jeffrey O. Siegel v FAA, No. 18-1102

CERTIFICATE OF SERVICE

I, Julian Hadiz, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by THE AVIATION LAW FIRM, Attorneys for Petitioner to print this document. I am an employee of Counsel Press.

On **September 28, 2018**, Counsel for Petitioner has authorized me to electronically file the foregoing **Brief of Petitioner** with the Clerk of Court using the CM/ECF System, which will serve, via e-mail notice of such filing, to any of the following counsel registered as CM/ECF users:

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A courtesy copy has also been mailed to the above listed counsel.

Unless otherwise noted, 8 paper copies have been filed with the Court on the same date via Express Mail.

September 28, 2018

/s/ Julian Hadiz
Julian Hadiz
Counsel Press