

[ORAL ARGUMENT SCHEDULED FOR DECEMBER 12, 2018]

No. 18-1102

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JEFFREY O. SIEGEL,

Petitioner,

v.

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

Respondents.

On Petition for Review of an Order of the
National Transportation Safety Board

**BRIEF FOR THE RESPONDENT FEDERAL AVIATION
ADMINISTRATION**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici. The parties who appeared before the National Transportation Safety Board (NTSB) are Jeffrey O. Siegel and the Acting Administrator of the Federal Aviation Administration (FAA). Jeffrey O. Siegel is the petitioner before this Court. The respondents before this Court are the NTSB and the Acting Administrator of the FAA. No intervenors or amici appeared before the NTSB, and none have entered appearances in this Court.

B. Rulings Under Review. Petitioner seeks review of NTSB Order No. EA-5838, 2018 WL 273398, served on April 11, 2018, in *Administrator v. Siegel*, which affirmed the Acting Administrator's emergency order revoking petitioner's private pilot certificate. The order is reprinted in the Joint Appendix at A205-26.

C. Related Cases. This case was not previously before this Court or any other court. The FAA is not aware of any related case within the meaning of Circuit Rule 28(a)(1)(C).

s/ Sarah Carroll

Sarah Carroll

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GLOSSARY

ALJ

Administrative Law Judge

FAA

Federal Aviation Administration

NTSB

National Transportation Safety Board

THC

Tetrahydrocannabinols

INTRODUCTION

In October 2016, petitioner made an emergency crash landing in his aircraft on a public road in Kansas. Law-enforcement personnel who responded to the incident found three chocolate bars in the aircraft, each one in a package labeled “Lab tested to 100 mg of THC,” a reference to the psychoactive chemical in marijuana. Petitioner admitted that the chocolate bars were his and said he wished law enforcement had not found them. Testing by the Kansas Bureau of Investigation confirmed the presence of tetrahydrocannabinols (THC) in the chocolate bars.

The Acting Administrator of the Federal Aviation Administration (FAA) subsequently issued an emergency order finding that petitioner had violated the federal prohibition on “operat[ing] 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.” 14 C.F.R. § 91.19(a). Consistent with longstanding FAA enforcement policy, the order revoked petitioner’s private pilot certificate and precluded him from obtaining a new certificate for one year. In the order under review, the National Transportation Safety Board (NTSB or Board) denied petitioner’s appeal, finding that petitioner had violated section 91.19(a) and that revocation was a reasonable sanction.

Petitioner no longer disputes that he violated 14 C.F.R. § 91.19(a). He nonetheless contends that the Acting Administrator was required to depart from FAA enforcement policy, which states that revocation is generally the appropriate sanction

for section 91.19(a) violations. In petitioner's view, the Acting Administrator was required to take the less drastic step of suspending his pilot certificate.

Petitioner's contention is without basis. The governing statute authorizes the Administrator to revoke an airman certificate when he "decides . . . that safety in air commerce or air transportation and the public interest require that action." 49 U.S.C. § 44709(b)(1)(A). The Acting Administrator found that standard satisfied here because petitioner's violation showed he lacked "the degree of care, judgment, and responsibility required of the holder of an airman certificate." A12.¹ The Board carefully evaluated all of the purportedly mitigating circumstances that petitioner offered but saw nothing that required it to disturb the Acting Administrator's sanction.

STATEMENT OF JURISDICTION

The Board had jurisdiction to review the Acting Administrator's emergency order under 49 U.S.C. §§ 1133 and 44709(d). The Board issued its decision affirming the emergency order on April 10, 2018. *See* A205. The petition for review was timely filed with this Court on April 16, 2018. *See* 49 U.S.C. §§ 1153, 46110(a).

Petitioner named the Board and the Administrator of the FAA as respondents in this proceeding. This brief is submitted on behalf of the Acting Administrator of the FAA, who is the real party in interest. The Board ordinarily does not enter an

¹ Citations formatted as "A____" are to the Joint Appendix.

appearance during judicial review of its decisions, *see* 49 C.F.R. § 821.64(a), and did not participate in the preparation of this brief.

STATEMENT OF THE ISSUE

The Acting Administrator of the FAA revoked petitioner's private pilot certificate because petitioner knowingly transported federally prohibited controlled substances in an aircraft he was operating. The issue presented is whether it was arbitrary, capricious, or contrary to law for the NTSB to uphold the Acting Administrator's choice of sanction.

PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

Congress has charged the Administrator of the FAA with “promot[ing] safe flight of civil aircraft in air commerce by prescribing” “regulations and minimum standards” for “practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.” 49 U.S.C. § 44701(a)(5). Congress has further required that the Administrator discharge his statutory responsibilities “in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation.” *Id.* § 44701(c).

Congress has also authorized the Administrator to issue airman certificates to pilots who he finds are “qualified for, and physically able to perform the duties related

to, [their] position.” 49 U.S.C. § 44703(a). The Administrator has broad statutory discretion to “amend[], modify[], suspend[], or revok[e]” a certificate he has previously issued if he determines that “safety in air commerce or air transportation and the public interest require that action.” *Id.* § 44709(b)(1)(A). Unless the Administrator specifies otherwise, an airman whose certificate is revoked must generally wait at least one year before reapplying for the certificate. *See* 14 C.F.R. § 61.13(d)(2); *see also* FAA Order No. 2150.3B, at 5-16 (Feb. 24, 2016), <https://go.usa.gov/xPQXq> (Order 2150.3B).²

FAA enforcement guidance identifies several types of misconduct that are “by their nature . . . so egregious as to demonstrate the certificate holder never possessed or no longer possesses the qualifications required to hold any airman certificate.” Order 2150.3B, at 7-22; *see also Huerta v. Ducote*, 792 F.3d 144, 148 (D.C. Cir. 2015) (“‘Lack of qualification’ is an FAA term of art that refers to those regulatory violations that, by their very nature, warrant revocation of a pilot’s certificate, rather than a lesser sanction like suspension.”). Among these are violations of 14 C.F.R. § 91.19(a), which prohibits any person from “operat[ing] a civil aircraft within the

² This brief, like the NTSB order under review, cites the version of Order 2150.3B that “was in effect at the time of [petitioner’s] accident.” A222 n.83. Subsequent amendments to the order are not relevant to this case. In September 2018, the FAA issued Order 2150.3C, which superseded Order 2150.3B, but FAA’s position regarding the sanction for section 91.19(a) violations is unchanged. *See* FAA Order No. 2150.3C, at 9-13 to 9-14 (Sept. 18, 2018), <https://go.usa.gov/xPQRQ> (Order 2150.3C).

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.” 14 C.F.R. § 91.19(a). It is thus FAA policy that violations of section 91.19(a) generally “warrant revocation of all airman certificates and other certificates held by the certificate holder.” Order 2150.3B, at 7-22; *see also id.* at B-28 fig.B-3-n(2) (table of sanctions reiterating that “[r]evocation” is the appropriate certificate action for “[c]arriage of illegal drugs (controlled substances) on aircraft”).

The FAA’s section 91.19(a) policy complements other restrictions on drug-related conduct by FAA certificate holders. In 49 U.S.C. § 44710(b), Congress mandated that the Administrator revoke the airman certificates of persons who commit certain controlled-substance violations that are punishable by imprisonment for more than one year. Unlike most certificate revocations, revocation under section 44710(b) is generally for life. *Compare id.* § 44703(f) (prohibiting the Administrator from “issu[ing] an airman certificate to an individual whose certificate is revoked under section 44710,” with narrow exceptions), *with* 14 C.F.R. § 61.13(d)(2) (indicating that a person whose certificate is revoked on other grounds can generally reapply after one year), *and* Order No. 2150.3B, at 5-16 (same). FAA regulations and enforcement guidance also address drug-related conduct that does not “involve the use of an aircraft or the exercise of the privileges of the alleged violator’s certificate.” *See* Order 2150.3B, at 7-22 n.1. In those cases, the Administrator evaluates the “totality of the circumstances” to determine whether revocation is appropriate. *Id.*; *see also* 14 C.F.R.

§ 61.15(a); *Administrator v. Uridel*, NTSB Order No. EA-4772, 1999 WL 376862, at *1 (June 8, 1999) (explaining that revocation is warranted where, for example, an offense does not involve aircraft but “evidenc[es] participation in commercial drug activity”).

B. Factual Background

Petitioner held an FAA-issued private pilot certificate. *See* A11 ¶ 1. In October 2016, he made an emergency crash landing shortly after takeoff from Iola, Kansas. A148-49. His aircraft was damaged, and his passenger was injured. A28, A34-35. In the aftermath of the crash, Kansas Highway Patrol troopers found a bag in the aircraft containing three packages labeled as containing chocolate, “Lab tested to 100 mg of THC.” A32-33, A36. When one of the troopers told petitioner that officers had recovered the chocolate bars, petitioner responded that he “was hoping that [law enforcement] wouldn’t have found” the bars, which he admitted belonged to him. A34.

Chemical analysis of the chocolate bars confirmed the presence of THC. A91. Kansas authorities charged petitioner with unlawful possession of a controlled substance, though the state prosecutor ultimately moved to dismiss those charges without prejudice before trial. *See* A36-37, A66-67.

C. Prior Proceedings

1. In January 2017, the FAA sent petitioner a notice of proposed certificate action that proposed to revoke his private pilot certificate for violation of 14 C.F.R. § 91.19(a). *See* A11-12. On February 7, 2018, after conducting an investigation and

evaluating the information petitioner had submitted in response to the notice, the Acting Administrator issued an emergency order revoking petitioner's private pilot certificate. *Id.* The order stated that petitioner had violated 14 C.F.R. § 91.19(a) by operating an aircraft "within the United States when [he] had knowledge that marijuana was carried onboard the aircraft." A11-12. The order stated that this conduct demonstrated that petitioner lacked "the qualifications necessary to hold a private pilot certificate" because he did "not have the degree of care, judgment, and responsibility required of the holder of an airman certificate." A12. The Acting Administrator thus "determined that safety in air commerce or air transportation and the public interest require[d] the revocation" of petitioner's certificate. *Id.* The order required petitioner to surrender his certificate to the FAA and stated that the FAA would not accept his application for a new airman certificate for one year (*i.e.*, until February 2019). *Id.*

The Acting Administrator further determined that the revocation should be effective immediately, noting that "[c]ertificate holders who knowingly engage in the possession and transportation of a controlled substance by air have shown that the Agency cannot rely upon them to minimally comply with the regulatory requirements designed to ensure aviation safety with the highest degree of integrity." A13.

2. Petitioner sought review of the order by the National Transportation Safety Board. The Board's chief administrative law judge (ALJ) rejected petitioner's challenge to the immediate effective date of the revocation, finding that continued

operation of aircraft by a person who “engaged in flight operations when he knew a contraband drug was onboard the aircraft he was piloting” would undermine “the public interest in aviation safety.” A10. The ALJ thus found that the Acting Administrator’s decision to make the order immediately effective “safeguard[ed] the public interest in aviation safety.” *Id.* Petitioner did not seek further review of that determination.

A few weeks later, a different Board ALJ conducted an evidentiary hearing on the merits of the order. *See* A17. At the hearing, petitioner conceded that there were “edibles”—a colloquial term for food containing drugs—on board his aircraft. *See, e.g.,* A152. The Kansas Highway Patrol trooper who had spoken with petitioner on the day of the accident testified regarding petitioner’s admission that the drugs were “all his” and that he “was hoping that [law enforcement] wouldn’t have found” them. A34. The forensic scientist who tested the chocolate bars on behalf of the Kansas Bureau of Investigation and an FAA special agent who investigated the matter also testified on the government’s behalf. *See* A83 (forensic scientist), A108 (special agent). The Acting Administrator offered into evidence a police report prepared by the Kansas Highway Patrol, the forensic scientist’s laboratory report showing the presence of THC in the chocolate bars, and photographs of petitioner’s aircraft. *See generally* A21.

Petitioner testified on his own behalf, and he called his passenger to testify. *See* A125 (petitioner’s passenger), A142 (petitioner). At the hearing, petitioner and his

passenger claimed that the passenger had placed the drugs in petitioner's briefcase without his knowledge. *See* A131-32, A149-50. The ALJ rejected that testimony in an oral ruling at the end of the hearing. The ALJ instead found "based on the credibility of the witnesses . . . that Mr. Siegel was aware of the marijuana on the airplane when it was inflight." A198. He "was aware that the marijuana was on board the aircraft," "[h]e was aware it was in the briefcase," and "he was aware the briefcase was on the airplane." A199. The ALJ found petitioner's "credibility on the issue of his knowledge" to be "questionable" in light of the statements he made to the Kansas Highway Patrol trooper on the day of the incident. *Id.* The ALJ also found that the substances at issue qualified as "marijuana" within the scope of 14 C.F.R. § 91.19(a). *Id.*

The ALJ nevertheless concluded that petitioner's private pilot certificate should be suspended for ninety days, rather than revoked. *See* A200. The ALJ appeared to find it relevant that a prior, unspecified certificate-revocation case had involved a larger quantity of drugs; that the ALJ did not believe petitioner's conduct was "intentional or reckless"; that the marijuana might have been purchased in Colorado; and that petitioner did not appear to have been transporting the marijuana for commercial purposes. *Id.*³

³ Petitioner emphasizes the ALJ's erroneous assertion that the FAA special agent who testified at the hearing "didn't even talk about sanction." *See* Br. 6 (quoting A198). To the contrary, although the special agent was not responsible for selecting

3. Both petitioner and the Acting Administrator appealed to the full Board.

The Board ruled in the Acting Administrator's favor, affirming the ALJ's finding that petitioner had violated 14 C.F.R. § 91.19(a) and reinstating the revocation of petitioner's private pilot certificate. *See* A206.

The Board rejected petitioner's contention—which he does not press before this Court—that the THC in the chocolate bars was not within the scope of the drugs covered by 14 C.F.R. § 91.19(a). *See* A214-15. The Board also rejected petitioner's contention—which he likewise does not press here—that he did not know the drugs were on his aircraft. *See* A217-19.

In reinstating the revocation, the Board explained that it “appl[ies] principles of judicial deference to the interpretations of laws, regulations, and policies that the Administrator carries out,” with the core inquiry being whether the Administrator's choice of sanction is reasonable. A220 (citing *Administrator v. Jones*, NTSB Order No. EA-5647, 2013 WL 316199 (Jan. 16, 2013)). The Board explained that, in evaluating the Administrator's choice of sanction, it evaluates “the facts and circumstances adduced at the hearing,” as well as “both aggravating and mitigating factors.” *Id.* The Board rejected the ALJ's reliance on a prior certificate-revocation case that the ALJ believed involved a larger quantity of drugs. A221-22. Although it was unclear which

the sanction in this case, *see* Order 2150.3B, at 2-4 to 2-6, he testified that, under Order 2150.3B, “[c]ontraband inside the aircraft leads up to revocation of certificate action.” A112. The ALJ also stated that he could take judicial notice of the FAA's sanction guidance. *See* A113.

prior case the ALJ was referring to, the two possibilities that the Board identified were distinguishable: they arose under a different provision, 49 U.S.C. § 44710(b)(1), *see* A221-22, under which Congress has made *lifetime* revocation the mandatory remedy, *see* 49 U.S.C. § 44703(f).

The Board also concluded that the ALJ had erred in suggesting that a lesser sanction was required because petitioner may not have acted intentionally or recklessly. *See* A222. The Board explained that FAA enforcement policy “specifically identifies a violation of § 91.19(a) as a violation for which revocation is appropriate” and noted that section 91.19(a) requires only knowledge—“not intent, and not recklessness.” *Id.* The Board further concluded that it had been “unreasonable” for the ALJ to rely on the amount of drugs transported on petitioner’s aircraft and on petitioner’s “inferred purpose of personal use for its transport”: 14 C.F.R. § 91.19(a) “is not predicated upon an *amount* of controlled substance possessed, but instead merely knowledge of its presence onboard the aircraft.” A223. Moreover, section 91.19(a) applies “without regard to a pilot’s motive in transporting the marijuana—whether that motive is possession, intent to distribute, or personal use.” *Id.* Likewise, to the extent the ALJ viewed it as relevant that the drugs on petitioner’s aircraft might have been purchased in Colorado, where state law permits certain transactions in controlled substances, “it remains illegal under Federal law to possess this controlled substance and transport it on an aircraft within the national air space.” *Id.* “In the

absence of any mitigating factors,” the Board found revocation to be “the reasonable and appropriate sanction . . . under the facts and circumstances of this case.” *Id.*

Board Member Dinh-Zarr filed a concurring opinion, in which she highlighted additional reasons that petitioner’s testimony lacked credibility. *See* A224-26.

SUMMARY OF ARGUMENT

The National Transportation Safety Board reasonably affirmed the Acting Administrator’s decision to revoke petitioner’s pilot certificate because he violated 14 C.F.R. § 91.19(a). This Court, like the Board, accords deference to the FAA’s interpretation of its own regulations and to its choice of sanctions in implementing those regulations. The revocation in this case is consistent with longstanding FAA policy, and petitioner offers no basis for insisting that the agency was required to impose a suspension rather than a revocation.

It is not controverted that the FAA has long made clear that its general policy is to revoke the airman certificates of a person who knowingly carries controlled substances on an aircraft he is operating. *See* Order 2150.3B, at 7-22. That policy is well within the Administrator’s “broad . . . authority to employ the statutory sanction as in [his] judgment best serves to” effectuate Congress’s purposes, *Komjathy v. NTSB*, 832 F.2d 1294, 1296 (D.C. Cir. 1987), and to fulfill his statutory duty to “promote safe flight of civil aircraft in air commerce,” 49 U.S.C. § 44701(a). The Acting Administrator considered precisely the factors that Congress prescribed, *see id.* § 44709(b)(1)(A) (authorizing revocation where “safety in air commerce or air

transportation and the public interest require that action”), and the Board carefully evaluated and reasonably rejected all of the purportedly mitigating evidence that petitioner offered.

Petitioner’s reliance on 49 U.S.C. § 44710(b), which requires certificate revocation for specified drug offenses but excludes cases of “simple possession,” is unavailing. Congress provided that, outside narrowly specified circumstances, an airman whose certificate is revoked under that provision can never again hold a certificate. *See id.* § 44703(f). That severe mandatory remedy only underscores the reasonableness of the lesser sanction imposed here, revocation with the ability to reapply after one year. Petitioner is likewise mistaken to rely on cases involving drug-related conduct not related to the use of aircraft, in which certificate suspension, rather than revocation, can be appropriate. The Acting Administrator has consistently, and reasonably, viewed conduct involving aircraft as warranting more severe sanctions.

STANDARD OF REVIEW

The Court “uphold[s] an NTSB decision unless it is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” *Dickson v. NTSB*, 639 F.3d 539, 542 (D.C. Cir. 2011) (quoting 5 U.S.C. § 706(2)(A)). “Findings of fact by the Board, if supported by substantial evidence, are conclusive.” 49 U.S.C. § 1153(b)(3).

ARGUMENT

I. The NTSB Correctly Affirmed The Revocation Of Petitioner's Private Pilot Certificate

A. Under the Federal Aviation Act's "split-enforcement regime," both the National Transportation Safety Board and this Court defer to the FAA's interpretation of its regulations. *Singleton v. Babbitt*, 588 F.3d 1078, 1081-82 (D.C. Cir. 2009). Review of the sole issue presented before this Court—whether the Acting Administrator reasonably determined that petitioner's violation of 14 C.F.R. § 91.19(a) warranted revocation of petitioner's pilot certificate—is especially deferential. *See NL Indus., Inc. v. Department of Transp.*, 901 F.2d 141, 144 (D.C. Cir. 1990) (explaining that this Court gives "substantial deference" to an agency's judgments regarding the sanction "appropriate for a violation of its regulations"). The Court "will not overturn" an agency's sanction unless it is "either 'unwarranted in law or . . . without justification in fact.'" *Pharaon v. Board of Governors of Fed. Reserve Sys.*, 135 F.3d 148, 155 (D.C. Cir. 1998) (quotation marks omitted; ellipsis in original) (quoting *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 185-86 (1973)).

B. Petitioner does not argue that the FAA lacks authority to revoke an airman certificate when the airman is found to have been illegally transporting controlled substances. Congress gave the Administrator broad discretion to revoke, amend, modify, or suspend a certificate whenever he "decides . . . that safety in air commerce or air transportation and the public interest require that action." 49 U.S.C.

§ 44709(b)(1)(A). As this Court explained in discussing the predecessor of that provision, “Congress plainly intended in its broad grant to give the head of the agency[] authority to employ the statutory sanction as in the agency chief’s judgment best serves to deter violations” and otherwise effectuate the statutory purpose. *Komjathy v. NTSB*, 832 F.2d 1294, 1296 (D.C. Cir. 1987).

In the exercise of this broad remedial discretion, the FAA has determined that certain offenses, including violations of 14 C.F.R. § 91.19(a), are “by their nature . . . so egregious as to demonstrate the certificate holder never possessed or no longer possesses the qualifications required to hold any airman certificate and other certificates.” Order 2150.3B, at 7-22.⁴ As the Acting Administrator explained in the order revoking petitioner’s certificate, “[c]ertificate holders who knowingly engage in the possession and transportation of a controlled substance by air have shown that the Agency cannot rely upon them to minimally comply with the regulatory requirements designed to ensure aviation safety with the highest degree of integrity.” A13. Such conduct thus “clearly reflect[s] a lack of the qualifications necessary for airman certification.” *Id.* The Board’s Chief ALJ reaffirmed this conclusion in his order upholding the emergency finding, explaining that petitioner’s decision to

⁴ Other conduct reflecting a lack of qualification includes making a fraudulently or intentionally false statement, *see, e.g., Cooper v. NTSB*, 660 F.3d 476, 486 (D.C. Cir. 2011); refusing to submit to a drug or alcohol test; or operating an aircraft under the influence of alcohol or drugs. *See* Order 2150.3B, at 7-22. New enforcement guidance that the FAA issued in September 2018 carries forward these judgments. *See* Order 2150.3C, at 9-13 to 9-14.

“engage[] in flight operations when he knew a contraband drug was onboard the aircraft he was piloting” is “suggestive of a noncompliance attitude, which runs contrary to the public interest in aviation safety.” A10. The choice of sanction here thus plainly furthers the Acting Administrator’s obligation to protect “safety in air commerce or air transportation and the public interest,” as well as to “carry out” his statutory duties “in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation.” 49 U.S.C. §§ 44701(c), 44709(b)(1)(A).

C. The FAA reasonably applied its general policy to the facts of this case. As the findings of the Board confirmed, the chocolate bars in petitioner’s briefcase contained “marijuana,” and petitioner “was aware of the marijuana on the airplane when it was inflight.” A198-99 (ALJ findings); *see also* A214-19 (Board affirmance of those findings). The Board further found that petitioner lied at the hearing when he testified that his passenger had placed the drugs in his briefcase without his knowledge. *See* A199 (ALJ finding that petitioner’s “credibility on the issue of his knowledge [was] questionable” and that, notwithstanding petitioner’s contrary testimony, he “was aware that the marijuana was on board the aircraft”); A219 (Board affirmance of those findings).⁵ In determining that revocation was the appropriate remedy for that violation, the Acting Administrator considered precisely the factors

⁵ The Board correctly deferred to the ALJ’s credibility findings. *See, e.g., Dillmon v. NTSB*, 588 F.3d 1085, 1090 (D.C. Cir. 2009) (“The Board’s precedent unambiguously requires it to defer to its ALJs’ credibility determinations.”).

that Congress prescribed, finding that petitioner's conduct showed he lacked "the degree of care, judgment, and responsibility required of the holder of an airman certificate" and, accordingly, that "safety in air commerce or air transportation and the public interest require[d] the revocation" of his pilot certificate. A12; *see* 49 U.S.C. § 44709(b)(1)(A) (authorizing the Administrator to revoke a certificate if he "decides . . . that safety in air commerce or air transportation and the public interest require that action").

The Board carefully considered the purportedly mitigating circumstances that petitioner offered but found that they did not render the Acting Administrator's sanction unreasonable. *See* A223. As the Board noted, even if the ALJ remembered a case involving a larger quantity of drugs in which a person's certificate was also revoked, that recollection was immaterial. *See* A221-22. The prior case appears to have involved a sanction that is, as discussed at more length below, significantly more severe—mandatory lifetime revocation under 49 U.S.C. § 44710(b), rather than the one-year revocation at issue here. *See infra* pp. 22-24. In any event, that a certificate may have been revoked where a pilot carried a greater quantity of drugs would not preclude the FAA from revoking petitioner's certificate here. *See Seghers v. SEC*, 548 F.3d 129, 135 (D.C. Cir. 2008) (rejecting a claim that a sanction was invalid because

the underlying “conduct was relatively minor when compared with the conduct of others [to] whom the SEC” had applied the same sanction).⁶

The Board also correctly held that section 91.19(a) applies where, as here, a pilot knowingly transports drugs on his aircraft and that additional findings of intentionality are not required to revoke a pilot’s certificate for violating that provision. A223; *see also* Order 2150.3B, at 7-22 to 7-23; *Butz*, 411 U.S. at 186-87 (rejecting a contention that a particular sanction was warranted only in “cases of ‘intentional and flagrant conduct,’” as “the breadth of the grant of authority to impose the sanction strongly implie[d] a congressional purpose to permit the Secretary to impose it to deter repeated violations of the Act, whether intentional or negligent”). The Board also rightly found it immaterial that the drugs might have been procured in Colorado: regardless of any state’s law, “it remains illegal under Federal law to possess this controlled substance and transport it on an aircraft within the national air space.” A223.

The decision under review is consistent with Board precedent. In *King v. NTSB*, 766 F.2d 200 (5th Cir. 1985), the Fifth Circuit affirmed the revocation of an airman’s certificate for violation of what is now 14 C.F.R. § 91.19(a). The court noted that “[p]rior decisions by the Board ha[d] held that the carriage of drugs in an aircraft

⁶ *See also Barnum v. NTSB*, 595 F.2d 869, 871 (D.C. Cir. 1979) (“The employment of a sanction within the authority of an administrative agency is . . . not rendered invalid . . . because it is more severe than sanctions imposed in other cases.”) (alteration omitted; first ellipsis in original).

in violation of [that provision] is an offense which demonstrates lack of qualification and warrants certificate revocation.” *King*, 766 F.2d at 202. Petitioner observes that the offense in *King* involved a larger quantity of marijuana than was present here, as well as a criminal conviction, *see* Br. 28, but neither the Board’s decision nor the Fifth Circuit’s decision depends on those facts. *See also Administrator v. Lydon*, NTSB Order No. EA-3249, 7 N.T.S.B. 725, 725 (1991) (affirming revocation where the certificate holder was convicted of “possess[ing] marijuana in his aircraft”); *Administrator v. Reyes*, NTSB Order No. EA-2080, 4 N.T.S.B. 1749, 1749 (1984) (noting that the Board “has affirmed revocation in all cases involving an airman’s operation of an aircraft to transport drugs”).

II. Petitioner’s Contrary Arguments Lack Merit

Petitioner does not dispute that the Administrator is authorized by statute to revoke a pilot certificate when the Administrator determines that “safety in air commerce or air transportation and the public interest require that action.” 49 U.S.C. § 44709(b)(1)(A). Nor does petitioner deny that he violated 14 C.F.R. § 91.19(a) by knowingly transporting controlled substances in the aircraft he was piloting.

Petitioner also does not directly challenge the FAA’s determination that, in general, violations of that provision reflect a lack of qualification, “an FAA term of art that refers to those regulatory violations that, by their very nature, warrant revocation of a pilot’s certificate, rather than a lesser sanction like suspension.” *Huerta v. Ducote*, 792

F.3d 144, 148 (D.C. Cir. 2015). The challenges that petitioner does make cast no doubt on the validity of the Acting Administrator's sanction.

A. Petitioner initially notes that the Board was not required to approve the FAA's chosen sanction. *See* Br. 11-12. But the Board did not view itself as bound, instead reviewing the sanction under the standard that petitioner appears to advocate. *Compare* Br. 12 (“[T]he 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.”), *with* A220 (“[T]he 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.”). This Court has approved the Board’s application of ordinary deference principles to FAA sanction determinations. *See Taylor v. Huerta*, 723 F.3d 210, 214-15 (D.C. Cir. 2013) (noting that the Board’s deferential standard of review was “identical to the one that Article III courts routinely apply”).

Petitioner’s reference to 2012 legislation known as the Pilot’s Bill of Rights does not change the analysis. *See* Br. 11-12 (citing Pub. L. No. 112-153, § 2(c), 126 Stat. 1159, 1161 (2012)). Although that legislation removed statutory language requiring Board deference, it did so to eliminate statutory redundancy—not to prohibit the Board from deferring to the Administrator’s reasonable choice of sanction. *See, e.g.*, 158 Cong. Rec. S4733 (June 29, 2012) (statement of Sen. Rockefeller) (clarifying that Congress did not intend “to eliminate the NTSB’s practice

to observe the principles of judicial deference to the FAA Administrator when reviewing airmen appeals” but was simply eliminating “redundant” statutory language); 158 Cong. Rec. H5100, H5102 (July 23, 2012) (statement of Rep. Bucshon) (similar); *see also Administrator v. Jones*, NTSB Order No. EA-5647, 2013 WL 316199, at *10 (Jan. 16, 2013) (noting this legislative history).

B. Petitioner is also mistaken to assert that the Board “[f]ailed to [c]onsider [m]itigating [f]actors” in reviewing the Acting Administrator’s choice of sanction. Br. 15. Contrary to petitioner’s claim, the Board carefully evaluated each of the purportedly mitigating factors petitioner had offered. After a careful analysis, the Board found that a lesser sanction was not required. *See* A220-23. Petitioner may disagree with the Board’s conclusion, but that disagreement does not render the Board’s decision arbitrary and capricious. *See, e.g., Seghers*, 548 F.3d at 136 (rejecting a claim that the Securities and Exchange Commission “ignored or gave insufficient weight to potentially mitigating circumstances”; the Commission “considered” the factors but simply found them “outweighed”); *Bloch v. Powell*, 348 F.3d 1060, 1070 (D.C. Cir. 2003) (explaining that the Court is “not to substitute [its] judgment for that of the agency” but must simply “consider whether the decision was based on a

consideration of the relevant factors and whether there has been a clear error of judgment” (quotation marks omitted).⁷

Likewise, although petitioner faults the Board for failing to find “any aggravating factors to support the Administrator’s choice of sanction,” Br. 16, no special aggravating factors were required. The Administrator has found that violations of section 91.19(a), “by their very nature, warrant revocation of a pilot’s certificate, rather than a lesser sanction like suspension.” *Ducote*, 792 F.3d at 148. The Board correctly deferred to the FAA’s judgment that such violations are inherently serious, “inherently call into question the individual’s qualifications,” *id.* at 154-55, and warrant revocation absent “unique circumstances,” Order 2150.3B, at 7-23.

C. Petitioner also contends that 49 U.S.C. § 44710(b), which requires the Administrator to revoke airman certificates for certain drug-related conduct, renders the sanction here unreasonable. *See* Br. 19-21. Petitioner notes that section 44710(b) does not apply in cases involving “simple possession of a controlled substance,” *see* Br. 20 (quoting 49 U.S.C. § 44710(b)(1)), and he suggests that, because he was charged with simple possession here, the Acting Administrator may not revoke his certificate for violation of 14 C.F.R. § 91.19(a).

⁷ Petitioner is mistaken to rely on *Gilliland v. FAA*, 48 F.3d 316 (8th Cir. 1995), which addressed the appropriateness of summary judgment in certificate actions. In this case, the Acting Administrator did not seek summary judgment, and the Board “h[e]ld a hearing and . . . articulate[d] why” revocation was a reasonable sanction. *Id.* at 317-18; *see* A220-23.

Petitioner's certificate was not revoked under section 44710, however, and the Board has explained that "[e]nactment of section 44710 did not vacate or void the Administrator's more general authority under section 44709 to suspend or revoke airman certificates when safety in air commerce or air transportation, and the public interest, dictate." *Administrator v. Schlieve*, NTSB Order No. EA-5250, 2006 WL 2632087, at *1 (Sept. 11, 2006). Indeed, the significant mandatory penalties under section 44710 only underscore the reasonableness of the lesser sanction imposed here. As petitioner notes (Br. 20), section 44710(b)(1) requires the Administrator to "issue an order revoking an airman certificate" if the certificate holder "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 "an aircraft was used to commit, or facilitate the commission of, the offense" and the person "served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense." Section 44710(b)(2) requires revocation even absent a conviction where the Administrator finds that a person knowingly committed such a violation.

Revocation under section 44710 is generally for life: Congress has prohibited the Administrator from "issu[ing] an airman certificate to an individual whose certificate is revoked under section 44710" except when "issuing the certificate will facilitate law enforcement efforts," or under certain circumstances in which the person is acquitted. 49 U.S.C. § 44703(f). Sections 44710 and 44703(f) thus

demonstrate the seriousness with which Congress takes drug-related conduct involving aircraft. The Acting Administrator did not find that petitioner's violation triggered mandatory lifetime revocation under section 44710. The significantly lighter sanction that petitioner received—he may reapply for his pilot certificate in February 2019, *see* A12—is reasonably calibrated to Congress's concerns and is well within the Acting Administrator's broad remedial discretion.

Petitioner's reliance on *Administrator v. Manning*, NTSB Order No. EA-4363, 1995 WL 319527 (May 10, 1995), and *Kratt v. Garvey*, 342 F.3d 475 (6th Cir. 2003), is accordingly inapposite: both cases involved lifetime revocation under section 44710. *See Kratt*, 342 F.3d at 480-82; *Manning*, 1995 WL 319527, at *1 & n.2. Petitioner's citation to legislative history indicating that neither Congress nor the FAA sought to apply section 44710 to cases of simple possession, *see* Br. 20-21, likewise adds nothing to the analysis: the Acting Administrator did not act under section 44710 here, and petitioner is not subject to mandatory lifetime revocation.⁸ The Acting Administrator's decision to impose a one-year revocation under the circumstances presented here does not conflict with section 44710, but rather complements Congress's efforts to promote safety in air transportation. *See* 49 U.S.C. § 44701.

⁸ The House report that petitioner cites discusses the legislation that enacted what is now section 44710. *See* Pub. L. No. 98-499, § 2, 98 Stat. 2312, 2312 (1984). That legislation required a five-year certificate revocation for drug offenses within its scope; Congress increased the sanction to lifetime revocation in 1988. *See* Pub. L. No. 100-690, § 7204, 102 Stat. 4181, 4425 (1988). The provisions were renumbered in 1994. *See* Pub. L. No. 103-272, 108 Stat. 745 (1994).

D. Petitioner is similarly mistaken to conflate his violation with offenses not involving the use of aircraft. Petitioner notes that a 1994 letter from the FAA’s Assistant Chief Counsel indicated that the agency’s practice was to revoke pilot certificates for non-aircraft-related drug convictions “other than a single conviction for simple possession.” Br. 22 (quoting Pet’r Add. 38).⁹ Petitioner is incorrect to suggest that, because he characterizes his offense as one of simple possession, revocation is impermissible here. Petitioner’s offense, unlike the offense discussed in the letter, involved use of an aircraft, a circumstance that FAA has made clear warrants more severe remedies. Indeed, although petitioner seeks to minimize his conduct, *see, e.g.*, Br. 5, the very letter that he cites emphasizes that “the situation [would be] considerably different” 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.” Pet’r Add. 39; *see also* Order 2150.3B, at 7-22 & n.1 (explaining that operating an aircraft with knowledge that drugs are carried on board generally warrants revocation, while “[a] drug conviction . . . that does not involve the use of an aircraft” is assessed “on a case-by-case basis”); *id.* at B-30 to B-31 fig.B-4-c (sanction guidance for drug offenses not involving aircraft).

Petitioner’s reliance on *Administrator v. Hart*, NTSB Order No. EA-5536, 2010 WL 3028899 (July 27, 2010), is accordingly misplaced: there is no indication that an

⁹ The letter that petitioner cites is an FAA legal interpretation that is available through the agency’s website. *See* <https://go.usa.gov/xPPyf>.

aircraft was used in the drug offense at issue in that case. *See id.* at *3 (explaining that the respondent was found with drugs in his car). To the extent that petitioner cites *Hart* for a broader assertion that the Administrator must support his request for sanctions, *see* Br. 24-25, any such requirement is satisfied here. The Acting Administrator repeatedly explained why revocation was appropriate, *see, e.g.*, A11-13, A109-13, A168-69; introduced extensive evidence regarding petitioner's violation; and elicited testimony regarding FAA sanction policy, *see* A111-12. The ALJ further stated that he could take judicial notice of Order 2150.3B, which expresses the Acting Administrator's judgment that violations of 14 C.F.R. § 91.19(a) reflect a lack of qualification and thus warrant certificate revocation. *See* A113.

Petitioner's citation of *Administrator v. Oliver*, NTSB Order No. EA-4505, 1996 WL 748023 (Dec. 4, 1996), is even further afield. That case involved a pilot who used incorrect weight-and-balance forms, not a controlled-substance offense. *See id.* at *1. Moreover, in *Oliver*, the Administrator "introduced . . . no evidence regarding any applicable or relevant sanction guidance that would contradict" the relatively light sanction the ALJ had imposed. *Id.* at *2. Here, in contrast, the Acting Administrator expressly relied on Order 2150.3B, which designates revocation as the appropriate sanction for a violation like petitioner's. *See* A112-13. Though petitioner suggests that the Acting Administrator did not present "*convincing* evidence or argument" supporting revocation, Br. 26 (emphasis added), petitioner is not entitled to second-

guess the Acting Administrator's judgment that revocation of his pilot certificate promotes "the goal of air safety," *Barnum*, 595 F.2d at 873.

CONCLUSION

For the foregoing reasons, the petition for review should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6443 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2013 in Garamond 14-point font, a proportionally spaced typeface.

s/ Sarah Carroll

Sarah Carroll

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Sarah Carroll

Sarah Carroll

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49 U.S.C. § 44701**§ 44701. General requirements**

(a) Promoting safety.—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

- (1)** minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;
- (2)** regulations and minimum standards in the interest of safety for—
 - (A)** inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;
 - (B)** equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and
 - (C)** a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;
- (3)** regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;
- (4)** regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and
- (5)** regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

....

(c) Reducing and eliminating accidents.— The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

....

49 U.S.C. § 44703**§ 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.

....

(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.

....

49 U.S.C. § 44709**§ 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.

(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.

49 U.S.C. § 44710

§ 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.

....

(e) Acquittal.—(1) The Administrator may not revoke, and the Board may not affirm a revocation 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.

14 C.F.R. § 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.

....

14 C.F.R. § 91.19**§ 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.