

SERVED: August 29, 1997

NTSB Order No. EA-4580

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 18th day of August, 1997

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JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14532
v.	)	
	)	
RICHARD DANIEL,	)	
	)	
Respondent.	)	

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**OPINION AND ORDER**

Respondent has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on December 19, 1996, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an order of the Administrator revoking any and all respondent's airman pilot certificates, on finding that respondent had violated 14 C.F.R. 61.15(a)(2) and 49 U.S.C.

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<sup>1</sup> The initial decision, an excerpt from the transcript, is attached.

44710.<sup>2</sup> We deny the appeal.

Respondent was convicted of conspiracy to transport narcotic drugs for sale, a felony. At the hearing, he admitted the conviction, but contested the sanction of revocation, arguing that an aircraft was not involved in the commission of the felony and, therefore, revocation was too severe a sanction. He claimed that, because the engine had not been turned on, it could not be said that an aircraft had been used. As the law judge, we disagree.

Respondent was arrested while alone in the aircraft with a considerable amount of cocaine. The police officer who testified for the Administrator stated that the arrest was made at the point where he believed respondent was about to taxi for takeoff.

The details, not all of which we need repeat here, warrant the conclusion that the aircraft was "used." In any case, use of an aircraft is not necessary in these circumstances to impose the sanction of revocation. See Administrator v. Piro, NTSB Order No. EA-4049 (1993), aff'd Piro v. NTSB, 66 F.3d 335 (9<sup>th</sup> Cir.

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<sup>2</sup> Section 61.15(a)(2) provides that 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, marihuana, or depressant or stimulant drugs or substances is grounds for suspension or revocation of any certificate or rating. Section 44710 requires revocation of airman certificates after an individual is convicted of a law related to a controlled substance (other than a conviction for simple possession) if the offense is punishable by death or imprisonment for more than one year and if the Administrator finds that an aircraft was "used to commit, or facilitate the commission of the offense."

1995) (revocation proper sanction for criminal conviction involving controlled substance).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The revocation of respondent's airman pilot certificates shall begin 30 days from service of this order.<sup>3</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>3</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).