



**U.S. Department of
Transportation**

**Office of the Secretary
of Transportation**

GENERAL COUNSEL

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

March 14, 2022

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: OSC File No. DI-20-000914

Dear Mr. Kerner:

By letter dated July 30, 2020, you referred for investigation disclosures from a Federal Aviation Administration (FAA) whistleblower alleging violations of FAA policy and safety regulations that could result in unsafe aircraft operations. The whistleblower alleged that FAA personnel failed to ensure that FAA certificate holders complied with outsourced training requirements.

The Secretary of Transportation has delegated responsibility for matters falling under 5 U.S.C. Section 1213(d) to the General Counsel. As Deputy General Counsel, I have the authority to carry out the functions and duties of the General Counsel. DOT's Office of Inspector General (OIG) conducted the investigation into this matter and I enclose the Report of Investigation. In sum, after speaking with the whistleblower and FAA officials, and analyzing FAA emails, policies, records, and regulations, OIG substantiated the whistleblower's allegation that FAA records showed hundreds of certificate holders who failed to audit their contracted training programs at least every 24 months as required by FAA OpSpec/MSpec/LOA A031 (paragraph A031). Accordingly, OIG requested that FAA provide a description of corrective action responsive to the investigative findings.

In multiple communications to OIG, FAA acknowledged that FAA records indicated certificate holders with out-of-date audits. FAA stated, however, that the 24-month audit is not a regulatory requirement and is instead an administrative issue prescribed under FAA policy. According to FAA, paragraph A031 is not the method by which FAA approves certificate holder training. As a result, FAA does not view the overdue audit dates as demonstrating a safety risk.

Nevertheless, FAA described the agency's efforts to address the matter. These include previous and future outreach to FAA aviation safety inspectors reminding them of the 24-month audit requirement, to ensure audits are current and documented, and to correct any deficiencies. The efforts also entail clarifying and revising relevant FAA guidance to address concerns with paragraph A031. Last, FAA described ongoing efforts to develop a long-term solution for the majority of certificate holders subject to paragraph A031. This entails a standardized curriculum concept that FAA believes will enhance training and eliminate the need for recurring administrative audits by these certificate holders.

We have appreciated the opportunity to review this important matter and the whistleblower's diligence in raising their concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E. Putnam", with a stylized flourish at the end.

John E. Putnam
Deputy General Counsel

Enclosure



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REPORT OF INVESTIGATION	INVESTIGATION NUMBER	DATE	
	[REDACTED]	3/10/2022	
	TITLE	PREPARED BY:	STATUS
	FAA Aviation Safety – Alleged Violation of FAA Policy and Safety Regulations	[REDACTED]	FINAL
(OSC File No. DI-20-000914)	DISTRIBUTION	[REDACTED]	1/8
	File		
	DOT Office of the General Counsel U.S. Office of Special Counsel	APPROVED [REDACTED] ASAC, JI-2	

I. SYNOPSIS

On July 30, 2020, the U.S. Office of Special Counsel referred to the Secretary of Transportation a whistleblower disclosure complaint (DI-20-000914) from an Aviation Safety Inspector (ASI) within the Federal Aviation Administration (FAA) Flight Standards Service. According to the whistleblower, FAA personnel failed to ensure that aircraft operators complied with outsourced training requirements and this failure could result in unsafe aircraft operations. Specifically, the whistleblower alleged that data within the web-based FAA Operations Safety System (WebOPSS) indicated hundreds of FAA certificate holders had not conducted an audit of their contracted training programs at least every 24 months as required under FAA policy and regulations.

On September 11, 2020, the Department of Transportation (DOT) Office of the General Counsel delegated the investigation to the DOT Office of Inspector General (OIG). The OIG investigation into the disclosure found that for hundreds of certificate holders, WebOPSS data reflected that they had not conducted an audit of their contracted training programs within the required 24-month period. Accordingly, OIG requested that FAA provide corrective action in response to the investigative findings.

In multiple responses to OIG, FAA acknowledged that WebOPSS data showed certificate holders with out-of-date audits. FAA stated, however, that the 24-month audit is not a regulatory requirement and is instead an administrative issue prescribed under FAA policy. According to

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FAA, the policy is not the method by which FAA approves certificate holder training. As a result, FAA does not view the overdue audit dates as evidencing a safety risk. Nevertheless, FAA described ongoing efforts to address the matter, including outreach to ASIs, revising relevant guidance, and creating an option that would eliminate the need for recurring audits among the majority of affected certificate holders.

II. BACKGROUND

FAA issues Operations Specifications (OpSpecs), Management Specifications (MSpecs), and Letters of Authorization (LOAs) that outline how aircraft operators and certificate holders may conduct authorized operations. Some OpSpecs/MSpecs/LOAs, for example, concern the make, model, and series of aircraft, while others concern the authority to conduct a particular kind of operation. All air operations must be conducted in accordance with the provisions and limitations specified in these OpSpecs/MSpecs/LOAs.

Whether FAA issues an OpSpec, MSpec, or LOA depends upon the type of operation conducted by the recipient. For example, FAA typically issues OpSpecs to large U.S.-based airlines, regional air carriers, and cargo operators operating under 14 CFR Part 121; large airplanes used for private carriage operating under 14 CFR Part 125; air charters operating under 14 CFR Part 135; and repair stations operating under 14 CFR Part 145. The agency issues MSpecs to program managers who conduct fractional ownership operations (typically joint or shared ownership of an aircraft or a fleet of aircraft) under 14 CFR Part 91 Subpart K (Part 91K) and LOAs to others, such as non-commercial private pilots operating under 14 CFR Part 91.

Found within FAA Order 8900.1, Volume 3, Chapter 18, Section 3, OpSpec/MSpec/LOA paragraph A031 authorizes a certificate holder, operator, or program manager to contract with an outside training organization to train, test, and check certain persons authorized by the certificate holder, operator, or program manager to exercise operational control. (These are typically crewmembers such as pilots, flight engineers, and flight attendants.) **(Attachment)** Depending upon the type of operator or certificate holder, the contracted training organization may be another certificate holder or program manager or a training center, which could have actual aircraft and/or aircraft simulators.

Additionally, paragraph A031 places further requirements on Part 91K, Part 121, and Part 135 operations. Among other things, the certificate holder or program manager must ensure that the training organization has adequate facilities and equipment and that each individual conducting the training, testing, and checking is appropriately trained, qualified, and authorized. The certificate holder or program manager must also conduct a review and audit of each training agreement and training organization at least once every 24 calendar months. Further, the

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certificate holder or program manager must complete this review and audit and submit a report to the FAA Principal Operations Inspector (POI) within 60 days after the commencement of contract training and/or checking operations. (The POI is a type of ASI with responsibility over operational issues, including training programs.) To maintain paragraph A031 authorization to contract with an outside training organization, the operator or program manager must also submit subsequent audit reports to the POI at least every 24 calendar months.

III. DETAILS

The whistleblower alleged that hundreds of certificate holders, operators, and program managers to whom FAA issued paragraph A031 had expired audits exceeding the 24-month limit, with some audits dating back to 2007. According to the whistleblower, those certificate holders, operators, and program managers nevertheless retained FAA authorization to operate, which could result in unsafe aircraft operations and jeopardize public safety. The whistleblower contended this demonstrated that FAA officials failed to verify compliance with applicable FAA policies and safety regulations related to paragraph A031, including FAA Order 8900.1 and 14 CFR §§ 91.1015 and 119.51, thereby placing the safety of the training programs in question.

FAA Order 8900.1, Volume 3, Chapter 18 states principal inspectors are responsible for, among other things, updating WebOPSS to reflect the certificate holder or operator's status, as well as overseeing and coordinating the authorizations granted by the issuance of OpSpecs/MSpecs/LOAs. Chapter 18 and 14 CFR § 119.51 further provide processes for amending OpSpecs, not only upon the initiative of the operator, but also by FAA based on safety concerns. These safety concerns include when the "certificate holder or operator's operating environment or its operational capability is no longer consistent with the operating authorizations, conditions, and limitations contained in its OpSpecs."

In support of the disclosure complaint, the whistleblower provided OIG an October 6, 2020, 463-page WebOPSS spreadsheet. The spreadsheet contained information about each certificate holder, operator, and program manager, such as the regulation under which they operated, *i.e.*, Part 91K, Part 121, or Part 135; the FAA Flight Standards District Office (FSDO) providing oversight; the outside training organization; the applicable aircraft model; the most recent audit date; and the 24-month audit due date. There were approximately 4,000 total records on the spreadsheet, each separated by certificate holder, operator, and program manager name. (Some certificate holders, operators, and program managers had multiple records, as they operated numerous aircraft models and/or operated out of multiple locations and there were separate records to reflect this.) On the spreadsheet, there were 413 records showing an overdue 24-month audit date. The expired due dates ranged from May 1, 2009, to October 2, 2020, meaning the most recent audit dates ranged from May 1, 2007, to October 2, 2018.



IV. INVESTIGATIVE SUMMARY

Based on information provided by the whistleblower, including during an interview and in emails and the WebOPSS spreadsheet, OIG substantiated the whistleblower's allegation that FAA officials failed to ensure compliance with the 24-month audit requirement of paragraph A031. Accordingly, OIG requested FAA describe the agency's corrective action concerning this matter.

V. CORRECTIVE ACTION

OIG contacted an FAA official involved in addressing the issue while serving as the senior technical advisor for the FAA Office of General Aviation Safety Assurance (GASA), of which the FSDOs overseeing the certificate holders, operators, and program managers are part. On July 8, 2021, the senior technical advisor emailed GASA's eight district managers and top management officials concerning the paragraph A031 issue. In the email, the senior technical advisor stated that if the most recent audit date is outside the required timeline, principal inspectors "should work with the operator(s) and initiate an OpSpec amendment."

The email also provided links to relevant guidance within FAA Order 8900.1, including the language of paragraph A031, and a current version of the WebOPSS spreadsheet showing the certificate holders, operators, and program managers with expired 24-month audit due dates. The spreadsheet had 465 records with an expired due date. In the email, the senior technical advisor also asked the division managers to forward the information and spreadsheet to their respective offices for correction.

On July 9, 2021, the senior technical advisor sent an email to the librarian responsible for maintaining the FAA Flight Standards Information Management System (FSIMS). In the email, the senior technical advisor wrote that FAA Order 8900.1, Volume 3, Chapter 18, Section 3 "does not provide enough clarity around how to fill out the 'Most Recent Audit Date' column for Operations Specification A031." The senior technical advisor also wrote about situations where the column will appear blank even though paragraph A031 has been properly authorized and issued, such as when the date occurs prior to the first training or checking event.


Based on these concerns, the senior technical advisor wrote the following recommendations to amend FAA Order 8900.1, Volume 3, Chapter 18 in the email to the FSIMS librarian:

- "Add guidance that identifies what to enter into the Most Recent Audit Date column during the initial issuance of a training center on paragraph A031 – 'pending[.]'"

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- “Add a note that states: ‘Based on the timeline(s) in paragraph j, the most recent audit date for a training center may exceed 24 calendar months pending POI review and acceptance of the most recent audit conducted by the operator. However, the operator may not utilize the training center prior to the POI[’]s review and acceptance of the most recent audit.’”
 - “Add guidance that identifies what to do if an audit timeline has been exceeded and the operator informs the POI that they wish to utilize the training center in the future, beyond the 24-month audit window (i.e. if an operator fails to comply with their OpSpec, the POI shall amend A031 in accordance with 119.51. In this case the [POI] can work with the operator and request a new standardization review and amend A031 to reflect ‘pending’ in the most recent audit date column for the applicable training center).”

According to the email, these recommendations would address “common scenarios that are raised as questions” concerning paragraph A031 within GASA.

On July 12, 2021, the senior technical advisor sent the division managers and top GASA officials another email “as part of the comprehensive fix to the discrepancies found during the [OIG] investigation.” Among other things, the email stated:

“Training center audits are the responsibility of the operator. However, POIs are highly encouraged to establish a system for monitoring the 24 month audit due dates (i.e. monthly, quarterly) to ensure the audits are current and meet the requirements of the approved training program(s).”

The senior technical advisor’s email also contained a link to access the “WebOPSS A031 Audit Date Custom Report” on the GASA SharePoint page. The link provided instructions on how to access the report so POIs could take any action necessary to ensure paragraph A031 is current.

On January 31, 2022, this same official, who is now a manager with the FAA Training and Certification Group (AFS-810), provided OIG with the then current version of the WebOPSS spreadsheet. The spreadsheet had 4,072 separate records of certificate holders, operators, and program managers, with 383 of those records showing an overdue 24-month audit due date.

In March 2022, OIG offered FAA the opportunity to describe any additional corrective action prior to the submission of this report. According to FAA management officials, the agency analyzed the current version of the paragraph A031 WebOPSS spreadsheet, which had approximately 4,100 total records and approximately 400 of those indicated a 24-month audit past

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the due date. Based on a sample of the past-the-due-date records, the officials estimated that around 90% resulted from administrative issues, such as the POI failing to reissue paragraph A031 after an operator ceased using an aircraft or the failure to remove a specific training center curriculum from paragraph A031 despite an operator no longer using that curriculum. The officials further estimated that only a very small percentage of those approximately 400 records were substantively deficient and in need of correction.

The FAA officials, however, do not view the paragraph A031 matter as a safety issue. According to the officials, paragraph A031 is not the method by which FAA approves certificate holder training. Instead, the POI authorizes the individual training curricula delivered by the outside training organization. The POI is also responsible for oversight and surveillance of the training curricula and ensuring the training organization complies with FAA regulations. Paragraph A031, on the other hand, is the “administrative tool” used to document the certificate holder’s contractual arrangement with the training organization to deliver training, including a listing of the FAA-approved curricula. The certificate holder is responsible for conducting the 24-month audit to validate its contractual arrangement with the training organization and the audit results are documented on OpSpec A031. According to the FAA management officials, the certificate holder’s responsibility arises pursuant to FAA policy rather than regulation.

Nevertheless, the FAA management officials stated the agency is continuing to address the issue of overdue training audits. In the near term, Flight Standards Service personnel will continue to work on revising relevant guidance within FAA Order 8900.1, Volume 3, Chapter 18 as described in the aforementioned July 9, 2021 e-mail. Further, Flight Standards Service leadership will also continue outreach to ASIs reminding them of the requirement to document completion of the 24-month audit for OpSpec A031 until the revisions are implemented.

The management officials further stated FAA is also working on a long-term solution concerning Part 135 operators, who represent the vast majority of the certificate holders with paragraph A031. Specifically, this involves the implementation of a standardized curriculum concept that will eliminate the recurring audit requirement of paragraph A031. According to the management officials, the concept offers a mechanism to standardize the curricula offered by outside training organizations to Part 135 operators as an option for those operators to meet their regulatory training requirements. The FAA management officials stated that in addition to offering enhanced training, testing, and checking to the Part 135 operators who opt to participate, the resulting “streamlined approval process will eliminate the need for administrative audits.”

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ATTACHMENT

- FAA Order 8900.1, Volume 3, Chapter 18, Section 3 (OpSpec/MSpec/LOA A031)

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METHODOLOGY OF INVESTIGATION

Two OIG Attorney-Investigators and an OIG Special Agent participated in this investigation. To address the whistleblower's concerns, the following FAA personnel provided information to OIG:

- Aviation Safety Inspector, Flight Standards Service (AFB-422)
- Manager, Policy, Support, and Implementation Section (AFS-280)
- Acting Manager, Training and FSTD Policy Development Section (AFS-280)
- Manager, Training and Certification Group (AFS-810)
- Chief of Staff, Flight Standards Service (AFX-3)
- Assistant Chief Counsel for Litigation and Information Law,
Office of the Chief Counsel (AGC-400)
- Chief of Staff, Aviation Safety (AVS-3)

In addition, the OIG staff analyzed numerous records and documents obtained from the whistleblower and FAA officials. These included emails, FAA guidance and policy, and records from FAA databases.

ATTACHMENT:

FAA ORDER 8900.1

VOLUME 3, CHAPTER 18,

SECTION 3

(OPSPEC/MSPEC/LOA A031)

2) Conducting Supplemental Operations in Accordance with Supplemental Rules to Airports Listed in C070. OpSpec A030 subparagraph c authorizes a certificate holder with domestic and/or flag authority to conduct supplemental operations between the airports listed in the certificate holder's C070 under supplemental rules.

3) Optional Nonstandard Provisions. OpSpec A030 contains a field in which POIs can enter optional/nonstandard text. This field is commonly referred to as "TEXT99." POIs may not issue nonstandard text to OpSpec A030 without obtaining prior approval from the Air Transportation Division (AFS-200).

OPSPEC/MSPEC/LOA A031—14 CFR PART 91K, OUTSOURCED TRAINING; PARTS 121 AND 135, CONTRACT TRAINING; PART 125, ARRANGEMENTS WITH TRAINING CENTERS, AIR AGENCIES, AND/OR OTHER ORGANIZATIONS FOR CERTIFICATE HOLDER TRAINING; PART 125 LODA HOLDERS, FLIGHT CREWMEMBER REQUIREMENTS.

A. General. OpSpec/MSpec/LOA A031 authorizes a certificate holder/operator/program manager to enter into a contract with an outside training organization to conduct the training, testing, and/or checking of crewmembers (pilots, Flight Engineers (FE), and flight attendants (F/A)), aircraft dispatchers (part 121 domestic and flag), or other persons authorized to exercise operational control (part 121 supplemental) required by the applicable 14 CFR part. As detailed below, a contracted training organization may be another certificate holder, 14 CFR part 142 training center, program manager, or a training center not certificated under part 142.

1) Part 91K. In accordance with part 91, § 91.1075, a program manager may only contract with another part 91K program manager, a part 121 or part 135 certificate holder, a part 142 training center, or a training center not certificated under part 142 to conduct the training, testing, and/or checking required by part 91K.

2) Part 121. In accordance with part 121, § 121.402, a part 121 certificate holder may only contract with another part 121 certificate holder or a part 142 training center to conduct the training, testing, and/or checking required by part 121.

3) Part 125. In accordance with part 125, § 125.296, part 125 certificate holders and part 125 Letter of Deviation Authority (LODA) holders may only contract with a part 142 training center to conduct the training, testing, and/or checking required by part 125.

4) Part 135. In accordance with part 135, § 135.324, a part 135 certificate holder may only contract with another part 135 certificate holder or a part 142 training center to conduct the training, testing, and/or checking required by part 135.

B. Applicability. LOA A031 is mandatory for part 125 LODA holders. OpSpec/MSpec A031 is optional for parts 91K, 121, 125, and 135 certificate holders/program managers.

C. Limitations and Provisions—Parts 91K, 121, and 135. A certificate holder or program manager must comply with the following limitations and provisions to operate under the authority granted by OpSpec/MSpec A031. The certificate holder/program manager must:

- 1) Ensure that all arrangements made with each training organization are fully compliant with the certificate holder/program manager's OpSpecs/MSpecs, the certificate holder/program manager's approved training program, and 14 CFR.
- 2) Ensure that each contracted training organization conducts all training, testing, and/or checking in accordance with the certificate holder/program manager's applicable 14 CFR part and approved training program.
- 3) Ensure that each contracted training organization has adequate facilities, equipment, competent personnel, and an organizational structure to support the training, testing, and/or checking in accordance with the certificate holder/program manager's approved training program.
- 4) Have a program or method outlined in the approved training program that enables the certificate holder/program manager to detect, identify, and implement timely corrective action for all deficiencies detected in the training, testing, and/or checking provided by each training organization.
- 5) Ensure that each contract instructor, contract check pilot, and contract FE conducting training, testing, and/or checking of the certificate holder/program manager's personnel is trained, qualified, and authorized to conduct the appropriate training, testing, and/or checking in accordance with the certificate holder/program manager's applicable 14 CFR part and approved training program.
- 6) Ensure that its aircraft configuration(s) and FAA-approved procedures are effectively supported by each training organization's equipment, training, testing, and/or checking. Additionally, the certificate holder/program manager must ensure that differences between its equipment and the training organization's equipment are addressed by conducting appropriate differences training.

D. Additional Limitations and Provisions—Part 91K. Part 91K program managers must also conduct a review and audit of each training agreement and organization at least once every 2 calendar-years from the date shown in the "Audit Date" column of Table 1 of A031. This review and audit must include an evaluation of the items listed in subparagraphs C1) through 6). Each audit with evaluation must be submitted to the program manager's Principal Operations Inspector (POI) no later than the last business-day of the month following the due month. The date of the most recent audit must be entered into Table 1 of MSPEC A031.

E. Additional Limitations and Provisions—Parts 121 and 135. Parts 121 and 135 certificate holders must also:

- 1) Conduct a standardization review of each training organization and provide the results of this review to the certificate holder's POI. A satisfactory standardization review must be submitted to the POI prior to the issuance of OpSpec A031 and the beginning of contract training, testing, and/or checking. Refer to the Air Carrier Contract Training web page at https://www.faa.gov/pilots/training/air_carrier_contract/acc_trng_program/ for a sample standardization review.

2) Conduct initial and recurring audits of each training agreement and organization. Each audit must include an evaluation of the items listed above in subparagraphs C1) through 6), including an in-person evaluation of actual training, testing, and/or checking being conducted by the training organization for the certificate holder's crewmembers and/or aircraft dispatchers. The date of the most recent audit must be entered into Table 1 of OpSpec A031. Refer to the Air Carrier Contract Training web page at https://www.faa.gov/pilots/training/air_carrier_contract/ac_c_trng_program/ for a sample audit.

3) Permit and facilitate access to their aircraft and cockpits by employees of each training organization for the purpose of maintaining their line-performance/line-observation currency as contract instructors and/or contract check pilots.

F. Additional Information. More detailed information regarding contracting with a part 142 training center can be found in Volume 3, Chapter 54, Section 5. POIs must review this information prior to issuing OpSpec/MSpec/LOA A031. POIs should refer to the A031 Job Aid contained in the Web-based Operations Safety System (WebOPSS) "Guidance" for proper completion of Table 1.

OPSPEC A032—ADOPTION OF FLIGHT CREWMEMBER FLIGHT TIME LIMITATION RULES TO ESTABLISH FLIGHT ATTENDANT DUTY AND FLIGHT TIME LIMITATIONS AND REST RESTRICTIONS; MSPEC A032—FLIGHT ATTENDANT FLIGHT, DUTY, AND REST RULES. The program manager may be authorized to adopt the flightcrew member's flight, duty, and rest requirements for its flight attendants in accordance with written approved procedures as provided in part 91, § 91.1062(b) and described or referenced in MSpec A032.

OPSPEC A033—TITLE 14 CFR PART 135 FLIGHT AND REST TIME LIMITATIONS FOR CERTAIN PART 121 ALL-CARGO OPERATIONS OR CERTAIN PART 135 OPERATIONS.

A. Part 121 Operations. Part 121 subparts Q, R, and S prescribe flightcrew member flight time limitation and rest requirements for part 121 domestic, flag or supplemental all-cargo operations. In accordance with part 121, §§ 121.470, 121.480, or 121.500 (as applicable to the kind of operation being conducted), a certificate holder may conduct certain part 121 all-cargo operations, in accordance with the flight, duty, and rest requirements of part 135, §§ 135.261 through 135.273. OpSpec A033 prescribes the conditions under which a certificate holder may apply these part 135 flight, duty, and rest requirements. The following conditions apply:

1) In accordance with §§ 121.470(a), 121.480, and/or 121.500, the OpSpec A033 authorization applies only to part 121 all-cargo operations conducted with airplanes having a passenger seat configuration of 30 seats or fewer and a payload capacity of 7,500 pounds or less.

2) The OpSpec A033 authorization applies only to those part 121 all-cargo operations defined in 14 CFR part 110, § 110.2 and § 121.583.

3) The certificate holder must describe its application and use of the OpSpec A033 authorization in its FAA-approved Fatigue Risk Management Plan (FRMP).