



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

General Counsel

October 19, 2023

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

Catherine A. McMullen
Disclosure Unit Chief
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: OSC File No. DI-20-000914

Dear Ms. McMullen:

By letter dated March 14, 2022, the U.S. Department of Transportation (DOT) transmitted to the U.S. Office of Special Counsel (OSC) DOT's Report of Investigation (ROI) in the above-referenced matter. On July 12, 2022, DOT provided OSC with a supplemental report that OSC had requested on May 12, 2022. OSC has since followed up requesting for its records a formal cover letter for the July 12, 2022 supplemental report. You may consider this to be that cover letter (and I enclose the report again for your convenience).

As noted in DOT's March 14, 2022 letter transmitting the ROI, DOT has appreciated the opportunity to review this important matter and the whistleblower's diligence in raising their concerns.

Sincerely,

A handwritten signature in blue ink that reads "Ronald Jackson".

Ronald Jackson
Senior Counsel for Oversight

Enclosure



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

Memorandum

Date: July 12, 2022

Subject: ACTION: OIG Investigation [REDACTED] (OSC File No. DI-20-000914)
Re: Alleged Violation of FAA Policy and Safety Regulations

From: [REDACTED] Special Agent-In-Charge
Office of Inspector General

Digitally signed by [REDACTED]
Date: 2022.07.12 17:56:50 -04'00'

To: Ronald Jackson
Senior Counsel for Oversight
Office of the General Counsel

On July 30, 2020, the U.S. Office of Special Counsel (OSC) referred for investigation to the Secretary of Transportation a whistleblower disclosure complaint alleging violations of Federal Aviation Administration (FAA) policy and safety regulations concerning operations specification (OpSpec) paragraph A031. The Department of Transportation (DOT) provided OSC with a Report of Investigation (the report) drafted by the DOT Office of Inspector General (OIG) in response to the complaint on March 14, 2022. This memorandum responds to a subsequent May 12, 2022 email in which OSC requested that DOT provide additional information concerning the whistleblower disclosure complaint. We respectfully request that you forward this information to OSC.

OSC Request #1

First, the report failed to address the second and third allegations that OSC referred to the agency on July 20, 2020. For your convenience, they are copied below. Please provide a full investigative report detailing the agency's findings and corrective actions related to these allegations:

- a. *FAA certificate holders may have used outsourced training programs beyond their audit expiration date, placing the public's safety in jeopardy; and,*

- b. *FAA is systemically unable to ensure that certificate holders are held to regulatory safety requirements.*

Response

With the issuance of 14 CFR part 142 (part 142), FAA authorized operators the ability to contract for flight training services with outside organizations. In turn, OpSpec paragraph A031, required, among other things, those operators to ensure the training organizations had adequate facilities and equipment and that each individual conducting the training, testing, and checking is appropriately trained, qualified, and authorized. Under paragraph A031, the operators must also conduct a review and audit of each training agreement and training organization at least once every 24 calendar months.

FAA acknowledged it is possible that training at those part 142 contract facilities occurred beyond the relevant 24-month audit expiration date. As a result, OIG contacted a Flight Standards District Office (FSDO) that had operators with expired 24-month audit dates. According to the FSDO, however, its records showed no training occurred at contract facilities after these operators' respective expired audit dates. (A FSDO manager noted this does not mean the operators did not complete required FAA training, as this training can be conducted without using contract facilities. For example, training such as annual check rides can occur within an operator's aircraft overseen by its own FAA-authorized check airmen or under the supervision of onboard FAA aviation safety inspectors.) The FSDO manager added that the facility was updating all of the delinquent operators and planned to use a weekly OpSpec report to emphasize the use of action item tracking tools to its inspectors.

Concerning FAA's ability to ensure operators are held to safety requirements, OIG found relevant language in Volume 3, Chapter 54, Section 5, of FAA Order 8900.1. According to page 32 of the order, FAA established a "mandatory self-audit program" for part 91K and part 119 certificate holders that contract with an outside training provider to conduct some of their required crewmember training. The order further states that because FAA is "often limited in its ability to oversee" this outsourced training, the oversight "is the primary responsibility not of the FAA, but of the [certificate holder] itself." This "self-audit" focuses on areas such as courseware, facilities, and qualifications of instructors and check airmen, as well as the contract training providers adherence to the approved training program. Accordingly, the certificate holder uses the self-audit to ensure its outsourced training "continually meets the requirements set by regulations and the standards contemplated at the time of initial certification."

Page 15 of the order states the initial self-audit "must be completed within 60 days of the commencement of contract training or checking operations" and each audit "must be

[REDACTED]

presented to the [certificate holder's FAA principal operations inspector (POI)] for review and acceptance within 30 days after completion." The order further requires ongoing audits occur at least every 24 months "in order for the [certificate holder] to continue to use the training center/provider." If the certificate holder does not carry out the required 24-month audit, the certificate holder's "authorization to use the training center/provider will cease on the last day of the 24th month following the date of their last audit."


OIG found further relevant language in FAA Notice N8900.37. Issued on March 12, 2008, and canceled a year later, the notice provided the "primary audience" as POIs within the FSDOs and Certificate Management Offices overseeing operators authorized to contract for training, checking, or testing services with outside training facilities. The "secondary audience" included FAA Flight Standards Service branches and divisions at FAA headquarters and the various regions. Among other things, the notice called for:

[a] focus on each operator's adherence to the specific authorizations granted by paragraph A031 as well as on the operator's procedures and practices with respect to quality control over their training program. In particular, POIs should examine the qualifications and performance of the training center evaluators (TCE), instructors, and check airmen who conduct training, checking and testing activities on behalf of the operator. Each POI should also examine the methods by which the operator controls training/checking/testing operations conducted on its behalf, and the process by which the operator conducts surveillance of training centers.

The Notice also advised that part 142 did not relieve the operators from the requirements of the operating rules concerning the responsibility to develop and ensure adequate training for the operators' flight crewmembers. Instead, regulations governing operators certificated under 14 CFR parts 91K, 121, 125, and 135 detail the training requirements to qualify crewmembers, including the designation of certain highly-qualified individuals such as check airmen.

The notice referenced recent audits of several operators conducting contract training with outside training centers. According to the notice, the audits found "there may be situations where certain individuals were not properly trained in the operator's program prior to conducting required training and/or testing/checking. Additionally, some operators were unsure of their biennial audit requirements and were not providing adequate oversight and operational control over their training program."

As a result, the notice advised, among other things, that POIs "must complete a review of each of their operator's training program(s) and [OpSpec] paragraph A031 to ensure that operators authorized to contract for training services with part 142 training centers are in




compliance with the provisions of their applicable operating regulations, and the authorizations contained in paragraph A031[.]” The Notice then provided a 12-item checklist and corresponding questions that could be useful for this review. The second question asked: “Do required biennial audits evaluate the standards and qualifications of training center personnel who are authorized to conduct the operator’s training, testing, and/or checking services?” Additionally, POIs of part 91K, 125, and 135 certificate holders were to document accomplishment of each item required by the notice using FAA’s Program Tracking and Reporting Subsystem within 120 days.

In sum, Order 8900.1 appears to identify OpSpec paragraph A031 as the tool used to record the date the certificate holder conducts a self-audit of its outsourced training. It therefore seems to follow that a current audit provides FAA with reasonable assurance that the certificate holder is providing adequate oversight of the training provider with whom it contracts to conduct that training. Moreover, Notice N8900.37 indicates FAA has been aware of issues concerning paragraph A031 since at least 2008.

OIG brought the Order 8900.1 and Notice N8900.37 language to the attention of FAA and forwarded OSC’s May 2022 email to the agency requesting a response. FAA acknowledged that data within the web-based FAA Operations Safety System (WebOPSS) showed certificate holders with out-of-date audits. According to FAA, however, the 24-month audits tracked in WebOPSS “are not a requirement” under Title 14 of the Code of Federal Regulations (Title 14). Instead, “the WebOPSS tracked audits serve an administrative function to assist certificate holders with their own training programs or certificate holders who rely on contract training programs.” FAA stated that certificate holder training program approvals are instead “controlled” by FAA Order 8900.1 and the certificate holder training program approval processes found in Volume 3, Chapter 19, Section 2, of the order.

FAA also maintained that paragraph A031 “is not the method by which FAA approves certificate holder training.” Instead, according to FAA, paragraph A031 “identifies the certificate holders or training centers the certificate holder has contracted with or arranged to deliver some of its training.” The agency stated that the recurring audit date is “administrative in nature” for the purposes of paragraph A031 and that certificate holders are “required to maintain the adequacy of all training programs, conducted under contract or otherwise as required by 14 CFR §135.323.”

According to FAA, oversight and surveillance of training programs is conducted in accordance with the guidance found in FAA Order 8900.1, Volume 3, Chapters 19 and 20. FAA stated it documents the adequacy of certificate holder training program design and performance in its Safety Assurance System (SAS) and not in OpSpecs documents contained within WebOPSS. The agency said the “continued, planned, and systematic



oversight and surveillance activities required by [Title 14] constitute the mechanism by which the FAA assures 'public safety' and ensures that 'certificate holders are held to regulatory safety requirements.'" In sum, although FAA does not view the overdue audit dates as demonstrating a safety risk, it nevertheless acknowledges the issue as an "administrative deficiency that is being addressed by short-term solutions as well as long term policy improvement."

Further, FAA responded that Notice N8900.37 expired on March 12, 2009. According to FAA, the notice "supported a special emphasis inspection on training centers. The content of this notice reinforced what a contract instructor and contract check pilot must have to serve in these roles."

OSC Request #2

Regulations require certificate holders to follow OpSpecs, which are used to establish and administer safety standards. If a certificate holder is in violation of an OpSpec, they cannot operate. 14 CFR §119.5(g). Please summarize how the FAA enforces OpSpecs violations, if the agency appears to not actively track compliance with OpSpecs and takes no action over approximately 15 years to review its records or enforce compliance?

Response

According to FAA, 14 CFR §119.5 (g) and (l) require that a certificate holder operating as a direct air carrier under 14 CFR part 135 comply with, among other things, an appropriate certificate and appropriate OpSpecs. FAA stated, however, that the conduct of an FAA-approved training program does not constitute an operation as a direct air carrier, does not include the operation of an aircraft under part 135, and would therefore not be subject to the provisions of 14 CFR §119.5 (g) and (l). The agency instead said the regulatory obligations associated with training programs are found in 14 CFR part 135, subpart H.

FAA further stated that under its reading of 14 CFR §119.7 (b), except for those OpSpec paragraphs "identifying authorized kinds of operations, [OpSpecs] are not a part of a certificate." As a result, according to FAA, "[t]raining programs and [OpSpec paragraph] A031 are not part of the certificate subject to the regulatory obligation of 14 CFR §119.5." Instead, the agency views paragraph A031 as "an administrative data collection tool that provides the certificate holder and FAA a consolidated list to identify contractual training." FAA added that it "has established enforcement and compliance processes to address operators identified with a training program's regulatory nonconformance."



OSC Request #3

The report at page 4 recounts the FAA senior technical advisor's emailed statement 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." Please provide the basis for initiating an OpSpec amendment given the language in FAA order 8900.1 that outdated audits "will" result in operators losing their training authorization and requiring operators to reapply.

Response

FAA acknowledged it is "advantageous to administratively maintain" OpSpec paragraph A031 but stated "there is no regulatory basis for the requirement [and an] administrative error does not constitute a deficient training program or a direct threat to safety." According to FAA, if it identifies a deficient training program, the certificate holder is subject to the provisions of 14 CFR § 135.325(d) and must make revisions as directed by the agency.

FAA also acknowledged there has been previous "confusion" around the application of the special rule found at 14 CFR § 135.324 that allows operators to use contract training facilities certified under part 142. The agency stated it issued updated guidance that includes standardized and other curricula to address the issues related to OpSpec paragraph A031. FAA added that it initially planned to provide a structured "sunsetting" of paragraph A031 but withdrew that concept "presumably based on the unknown length of time to deploy the majority of standardized curricula." The agency nevertheless noted it may be appropriate to reconsider a "structured [sunsetting] of [paragraph] A031 and associated guidance to prevent a reoccurrence of the longstanding issue."

OSC Request #4

The report at page 5 indicates that FAA reviewed a sample of the 400 past-due WebOPSS records and determined that "around 90% resulted from administrative issues." Please provide the sample size used to make this determination and the methodology used by the reviewers to produce the 90% estimate. Please provide similar information for the FAA's estimate that "only a very small percentage" of past-due records were "substantively deficient and in need of correction."



Response

According to FAA, the agency reviewed approximately 4,100 records concerning OpSpec paragraph A031. Of those records, FAA stated that around 10% – about 400 – were past the 24-month audit date.

An FAA Flight Standards Service subject matter expert then contacted approximately ten FAA POIs about the overdue paragraph A031 audits. According to FAA, the POIs stated approximately 90% of the overdue audit entries involved aircraft no longer used by the operators or the POI had not reissued the paragraphs with the amended dates. FAA stated “none of those overdue audits involved a direct or even remote threat to safety.” Therefore, according to FAA, the POI data showed that approximately one in ten of the 400 entries are associated with active training programs and need to be updated to reflect current operations or changes since the last audit required under paragraph A031.


OSC Request #5

The report at page 6 states that FAA officials do not view paragraph A031 as a “safety issue.” Please explain the FAA’s position specifically in light of the fact that OpSpecs are issued for the purpose of establishing and administering safety standards and that regulations provide that carriers may not operate if they are not in compliance with their OpSpecs.

Response

FAA stated “only [OpSpecs] identifying authorized kinds of operations are part of the certificate.” According to the agency, paragraph A031 “does not define operational limitations; its primary purpose is back end administrative data collection.” FAA further stated, “[f]undamentally, the administrative errors found in [paragraph] A031 are not indicative of objective training deficiencies at certificated carriers or identifying risk. Periodic oversight and certificate management functions are the primary tool to identify hazards and associated risks for certificate holders.” FAA noted that oversight findings are recorded for each certificate holder in the agency’s Safety Assurance System (SAS).

The agency added that the process for an operator to obtain an approved training program is handled through the POI assigned to each operator. FAA further stated that in accordance with specific regulatory requirements and supported by FAA Order 8900.1 guidance, the POI reviews the operator’s proposed training program for required regulatory content. According to FAA, it is not uncommon for the POI to contact the operator concerning clarifications or omitted items when reviewing a training program.



FAA further stated that once the training program receives initial FAA approval for use, the POI's oversight responsibilities are managed through SAS, not WebOPSS. As documented in SAS, planned and unplanned operator surveillance is used to ensure the operator is delivering the POI-approved training program. According to FAA, when any irregularities are observed by the operator or the POI, the operator may initiate a revision to its training program. Revisions are tracked in SAS and in the training program administered by the operator.

Additionally, FAA stated training program surveillance by the operator constitutes "just one critical component to ensuring the safety of the national airspace system." According to FAA, as called for in an inspector's work program, the POI may, for example, attend a training session to assess how effectively the material contained within the operator's training program is delivered. FAA said this "critical relationship" between POIs and operators includes working collaboratively to ensure compliance with approved training programs, identifying areas of improvement, and effectively communicating observed training program discrepancies.

According to FAA, when an operator proposes using a contract training facility for training and checking, the operator presents the POI with a standardization review prior to attending training and an audit after the training is completed. The date of this audit often coincides with an initial approval granted to a training program, the most recent audit date is entered in one of several data fields concerning OpSpec paragraph A031, and the audit is valid for 24 months. As stated above, however, FAA maintains that the paragraph A031 audit date is "not required" under 14 CFR part 135 and instead "simply serves as an administrative placeholder to establish when the most recent audit was conducted."

FAA stated the core curriculum for an approved training program rarely changes once final approval is granted. One such change, for example, could result from the installation of a head-up display in an aircraft. According to FAA, this type of change would require a revision to the operator's training program and verification by the carrier that a contract training facility and its employees are properly equipped and capable of carrying out this training. FAA said that, through policy, the agency has imposed a greater administrative burden on the operator by requiring the audits of existing training programs occur at least every 24 months.

FAA further stated multiple layers of mitigation exist to ensure a regulatory-compliant training program has been established long before the issuance of OpSpec paragraph A031. The agency said examples of these mitigations include, but are not limited to:

- (1) the POI's comprehensive review of the proposed training program;
- (2) the operator's participation in the development of the training program;
- (3) oversight provided by the contract training facility's training center program manager (TCPM), who possesses regulatory oversight responsibility and is responsible for overall FAA technical administration, certifications, surveillance, and investigation, including oversight of the training facility's TCEs authorized by FAA to conduct, among other things, tests for certification and proficiency checks;
- (4) the TCPM's subject matter expertise concerning the specific make and model of the aircraft on which the training program is based;
- (5) the POI's routine surveillance of the operator;
- (6) surveillance and oversight activity information documented in SAS; and
- (7) the ability of the POI and TCPM to work interdependently to supplement surveillance of the contract training facility.

FAA added that its Office of Safety Standards "recognizes the benefits of regularly reviewing and updating internal orders and directives, to include revising existing OpSpecs, when deemed necessary." According to FAA, "[a]ir carriers have a vested interest in the effectiveness of the training they receive and combined with the frequency they attend recurrent training, air carriers are able to regularly evaluate and assess the quality of training and checking provided by contract providers." Nevertheless, FAA further stated the "regulatory burden of this rests with the certificate holder, and an audit date in an administrative tracking record that does not appear to be current does not necessarily indicate that an unsafe operation exists or that training and checking standards have been diminished. In cases where a POI is made aware of such a discrepancy, the POI would be expected to follow up with the certificate holder as needed to ensure the training program complies with the applicable regulations."

Last, FAA indicated that OpSpec paragraph A031 is "in the process of being replaced" by OpSpec paragraph A0131. According to FAA, this update will not include biennial "audits of approved training programs." FAA stated this process "will update the administrative tool to better conform to [Title 14] requirements and will reflect past practice and lessons learned from FAA oversight and surveillance history in the area of contract training."