



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

January 8, 2024

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-20-000914

Dear Mr. President:

I am forwarding to you reports transmitted to the Office of Special Counsel (OSC) by the Department of Transportation (DOT) in response to the Special Counsel's referral of a disclosure of wrongdoing at the Federal Aviation Administration (FAA), Aviation Safety Office, Washington, D.C. I have reviewed the disclosure, the agency reports, and the whistleblower comments, and in accordance with 5 U.S.C. § 1213(e), I have determined that the report contains the information required by statute and the findings appear reasonable.¹ As summarized below, the agency investigation partially substantiated the allegations.

The Allegations

The whistleblower² alleged that, in violation of regulations and agency orders, FAA officials have not ensured that all certificate holders conduct required 24-month audits of contracted training providers; that FAA certificate holders may have used contracted training programs beyond their audit expiration date, placing the public's safety in jeopardy; and that the FAA is systematically unable to ensure that certificate holders are held to regulatory safety requirements.

¹ The allegations were referred to former Secretary of Transportation Elaine L. Chao for investigation pursuant to 5 U.S.C. § 1213(c) and (d). The DOT Office of Inspector General investigated the allegations. Former Secretary Chao delegated the authority to review and sign the report to the DOT General Counsel, and the report was reviewed and signed by the DOT Deputy General Counsel John E. Putnam.

² The whistleblower consented to the release of his name to DOT in connection with the investigation, but he did not consent to any additional disclosure of his name by OSC.

The Agency Reports

The agency substantiated that FAA officials have not ensured that all certificate holders conduct required 24-month audits of contracted training providers, and partially substantiated that FAA certificate holders may have used contracted training programs beyond their audit expiration date. However, as explained below, the agency contends that this does not place the public's safety in jeopardy.

The FAA issues Operations Specifications (OpSpecs), Management Specifications (MSpecs), and Letters of Authorization (LOAs) to specify authorized operations for aircraft operators and certificate holders, and all operations must be conducted in accordance with the provisions and limitations contained therein.³ OpSpec/MSpec/LOA paragraph A031 (paragraph A031)⁴ requires that certificate holders, operators, or program managers audit each contracted training agreement or training organization at least once every 24 calendar months and submit an audit report to its FAA Principal Operations Inspector (POI)⁵ within 60 calendar days after the start of contracted training operations.

Investigators found that Web-Based Operations Safety System (WebOPSS)⁶ data reflected that hundreds of certificate holders had not audited their contracted training programs within the required 24-month period.⁷ However, while acknowledging the out-of-date audits and that the information required by paragraph A031 should be maintained, the reports stressed that the 24-month audit requirement in paragraph A031 is an administrative, not regulatory, requirement that was created under FAA policy. Further, the report stated that paragraph A031 is not the method by which the FAA approves training programs.⁸ Rather, the adequacy and regulatory compliance of a training program, including training program revisions

³ See 14 C.F.R. 119.5(g).

⁴ See FAA Order 8900.1, Vol. 3, Ch. 18, Sec. 3. FAA Order 8900.1 was cancelled and replaced by FAA Order 8900.1A on Oct. 27, 2022. See FAA Order 8900.1A – Flight Standards Information Management System, Document Information, *available at* https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentID/1041430.

⁵ An FAA Principal Operations Inspector (POI) is a type of Aviation Safety Inspector (ASI) who is responsible for overseeing operational issues, including training programs.

⁶ FAA's Web-based Operations Safety System (WebOPSS) develops, records, and tracks safety authority from the FAA, and includes tools to develop and modify OpSpecs, MSpecs, LOAs, and other documents.

⁷ Investigators reviewed the current version of paragraph A031 in WebOPSS, which contains approximately 4,100 records, and found approximately 400 records with out-of-date audits. FAA officials estimated that 90 percent of those 400 out-of-date audits resulted from administrative issues, such as the POI failing to reissue paragraph A031 after an operator ceased using an aircraft or failing to remove specific training centers that an operator no longer uses. The remaining 10 percent of the out-of-date audits were associated with active training programs and were updated to reflect current aircraft operations since the last audit date listed in paragraph A031.

⁸ See 14 C.F.R. § 135.325. Additionally, the reports noted that the approval process for a training program goes through the POI who is assigned to each certificate holder, and the POIs review training programs to ensure they meet regulatory requirements. Additionally, the reports noted that once the FAA approves a training program, the POI's oversight responsibilities are managed through the Safety Assurance System (SAS), not WebOPSS.

and additional oversight findings, are documented in FAA's Safety Assurance System (SAS),⁹ not in the OpSpecs/MSpecs/LOAs, including paragraph A031, contained in WebOPSS. Additionally, the investigators found that the FAA views paragraph A031 as an administrative data-collection tool, and that any past-due audit dates for training programs do not constitute a deficient training program or a danger or a significant risk to the public.

The reports also noted that there is some confusion regarding training requirements, and that FAA has issued updated guidance to address the concerns related to paragraph A031. Additionally, the report noted that FAA officials are working to implement a standardized curriculum concept and to eliminate the 24-month audit requirement from paragraph A031. The report stated that the revised paragraph A031 will more closely align with regulatory requirements and reflect past practice and lessons learned from FAA oversight and surveillance history regarding contract training.

The Whistleblower's Comments

The whistleblower disagreed with the FAA's statement that paragraph A031 is an administrative requirement rather than a regulatory requirement and contended that a certificate holder's approval to use a contracted training facility to meet their training requirements is authorized through the issuance of paragraph A031. The whistleblower reiterated that paragraph A031 is part of all OpSpecs/MSpecs/LOAs, and that a certificate holder's operations must be conducted in accordance with all OpSpecs/MSpecs/LOAs.

Additionally, the whistleblower expressed concern that the FAA does not view these compliance failures as a safety risk—e.g., a lack of up-to-date audit information in paragraph A031 records, and the use of unauthorized training facilities by certificate holders to conduct required training. The whistleblower asserted that, although sufficient information regarding the adequacy and regulatory compliance of a training program is in SAS, the last audit date of a training program must be recorded in paragraph A031 in WebOPSS, and that failure to do so shows deficiencies within the FAA's oversight ability. The whistleblower questioned how the public can have confidence in the safety of air travel when the FAA appears to outsource oversight responsibilities to certificate holders and is aware of hazards but often slow to mitigate them.

The Special Counsel's Findings

I thank the whistleblower for bringing these allegations to OSC. Based on the findings of the investigation, including evidence that more robust information regarding certificate

⁹ The SAS is the FAA's oversight tool to perform certification, surveillance, and continued operational safety. SAS includes policy, processes, and associated software that the FAA offices use to capture data when conducting oversight. See FAA, "Safety Assurance System (SAS): What is SAS?," (last updated Nov. 16, 2023), *available at* <https://www.faa.gov/about/initiatives/sas>.

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holders' training programs are housed in SAS and that paragraph A031 is being revised to adhere more closely to FAA regulatory requirements, I have determined that the agency reports meet all statutory requirements, and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the agency reports, and the whistleblower's comments to the Chairs and Ranking Members of the Senate Committee on Commerce, Science and Transportation and House Committee on Transportation and Infrastructure. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in dark ink, reading "Karen Gorman" in a cursive script.

Karen Gorman
Acting Special Counsel

Enclosures