



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

July 30, 2020

The Honorable Elaine L. Chao
Secretary
Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: OSC File No. DI-20-000914
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Chao:

I am referring to you for investigation a whistleblower disclosure concerning employees of the Department of Transportation (DOT), Federal Aviation Administration (FAA), Aviation Safety Office, Washington, D.C. The whistleblower alleged that employees have engaged in conduct that may constitute a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public safety. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) on September 28, 2020.

[REDACTED], an Aviation Safety Inspector (ASI), consented to the release of his name to DOT in connection with the investigation. [REDACTED], however, has not consented to the use of his name in the agency report. Therefore, I am requesting that only [REDACTED] title be included in the agency report.

[REDACTED] disclosed that FAA officials have failed to ensure that certificate holders are in compliance with outsourced training requirements. He alleged this failure could result in unsafe aircraft operations. The allegations to be investigated include:

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

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FAA uses Operations Specifications and Letters of Authorization (OpSpecs/LOA) to establish and administer safety standards for air operators and certificate holders.¹ All air operations must be conducted in accordance with the provisions and limitations specified in the OpSpecs/LOA.² Certificate holders may not operate aircraft in violation of operating certificates or appropriate operations specifications.³

FAA issues A031 OpSpecs/LOA authorizing certificate holders to contract with outside organizations to conduct flightcrew member training. Pursuant to the A031 OpSpecs/LOA, the certificate holder must conduct an audit of its contracted training program at least every 24 months and present the audit with an evaluation to the certificate holder's principal operations inspector for review no "later than the last business day of the month following the due month for such audits." The date of the last audit must be recorded in "Table 1" of the A031 OpSpec/LOA. If an operator does not conduct the required 24-month audit, the authorization to use the contracted training organization will cease on the last day of the 24th month following the last audit date.⁴

██████████ disclosed that hundreds of certificate holders with A031 OpSpecs/LOAs have expired audits in Table 1, with some audits dating back to 2007. Nevertheless, the certificate holders remain authorized to operate. Accordingly, ██████████ alleged that FAA officials have failed to verify compliance with the requirements of A031 OpSpecs/LOAs, FSIMS 8900.1, and 14 C.F.R. §§ 91.1015 and 119.5, placing the safety of the certificate holders' training programs and airmen qualifications in question.

██████████ also alleged that FAA's specific failure to ensure compliance with A031 OpSpecs is one part of the agency's ongoing systemic failure to ensure that FAA officials are enforcing OpSpecs and other requirements in a timely and consistent manner. This is reflected in OSC's series of referrals to the Secretary based on ██████████ allegations, which indicate that the agency does not properly track, analyze, and respond to certificate holders who fail to meet regulatory requirements.⁵ Thus, in addition to our request for an investigation of ██████████ allegations regarding OpSpec A031, we request that the agency consider the broader implication of this series of referrals and its potential effect on public safety.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public safety. Please note that specific allegations and references to specific violations of law, rule or regulation are

¹OpSpecs are issued to certificate holders operating under 14 CFR parts 121, 125, 129, 133, 135, and 145. LOA are issued to certificate holders operating under 14 CFR parts 91. *FAA Flight Standards Information Management System (FSIMS) 8900.1 Vol. 3, Ch. 18, §1*.

²14 C.F.R. § 91.1015(a)(2).

³14 C.F.R. § 119.5.

⁴FSIMS 8900.1, Vol. 3, Ch. 54, § 3-4414, A.2).

⁵See OSC File Nos. DI-17-1298, DI-19-2560, DI-19-3959, DI-20-000393, DI-20-000536, DI-20-000690, and DI-20-000754.

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not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 for assistance. I am also available for any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Howard R. Elliott, Acting Inspector General