

Whistleblower Response to the Supplemental DOT Report

OSC File DI-20-000914

FAA Oversight of
Contract Pilot Training Centers/Providers

13 December 2022

Continuing Safety Concern

This is not the first time concerns have been raised about the FAA's ability to provide proper oversight of pilot training. A 2020 Department of Transportation (DOT) Audit Announcement¹ stated in part *"These fatal accidents have drawn widespread attention to FAA's oversight and certification practices, including the Agency's process for establishing pilot training requirements for the aircraft"*.

In a January 13, 2022 letter to the President of the United States the Office of Special Counsel (OSC) reported that the DOT also substantiated the following whistleblower allegations related to pilot training in which the FAA also attempted to minimize the reported hazards and whistleblower contribution by trying to convince the OSC that the reported safety concerns are just *"administrative errors"*.²

- Principal Inspectors have failed to ensure that pilot training centers are conducting only FAA-approved training curriculum.
- Pilots and flight crewmembers may have obtained certification based upon expired training courses.

In an April 13, 2022 memorandum from Department of Transportation Office of Inspector General (DOT-OIG) Principal Assistant Inspector General for Auditing and Evaluation to the Deputy Secretary the following was reported.

On November 13, 2020, upon consideration of the nature of several whistleblower referrals from the Office of Special Counsel, your predecessor requested that we conduct a performance audit of the Federal Aviation Administration's (FAA) Flight Standards Service and its roles and responsibilities in ensuring aviation safety through its oversight of FAA-certificated operators... In late 2021, OIG's Office of

¹ DOT Project Number 20A3002A000

² <https://osc.gov/Documents/Public%20Files/FY22/DI-19-3959/DI-19-3959%20Letter%20to%20President.pdf>

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Investigations completed four investigations substantiating most of the underlying whistleblower complaints, and provided its findings to the Department.

In June 2022 the OSC referred³ to the DOT Secretary the following safety allegations associated with airman training and OPSS.

- Inspectors have failed to ensure that Aviation Maintenance Technician Schools are conducting only FAA-approved distance learning courses.
- Mechanics who completed expired curriculum may not meet the qualification standards for their aircraft rating or certificate.
- FAA's specific failure to ensure compliance with A026 OpSpecs is an additional example of the agency's ongoing failure to ensure that FAA officials are enforcing OpSpecs and other requirements in a timely and consistent manner.

In regard to the current whistleblower allegation which is also associated with airman training and OPSS the DOT-OIG Report of Investigation (ROI) “substantiated that FAA records showed hundreds of certificate holders who failed to audit their FAA approved contract pilot center/provider at least every 24 months as required by FAA Approved Training and/or OpSpec/MSpec/LOA A031”.

The DOT-OIG report even shows the “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”.

FAA Order 8900.1, Volume 3, Chapter 18 paragraph 3-4415 A.2) dated 9/2/21 states “**if an operator does not conduct the required 24-month audit, their authorization to use the training center/provider will cease** on the last day of the 24th month following the date of their last audit”.

³ OSC File Number DI-22-000535

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The key take away from the DOT-OIG Supplemental Report is that the DOT investigators appear to have only contacted one FSDO who in turn had multiple certificate holders with expired audit dates. The DOT then reported that the FSDO only looked at their own internal office records and NOT any of the certificate holder records.

Since it is a requirement to audit and maintain records, the OSC and DOT Secretary should ask why the OIG chose not to review any of the pilot training/audit records for each of the identified certificate holders. **Maybe it's because the OIG and/or FAA did not want to confirm what the FAA acknowledged as being possible.**

1. The DOT Supplemental Report does not provide any legal determination about certificate holders who continued using a contract training provider that was not audited within the expected timeframe as required by a FAA Approved Training Program and/or FAA Approved A031 Operations Specification.
2. The DOT Supplemental Report does not provide any assurance that all of the pilots who received training from an organization that was not audited as required by a FAA Approved Training Program and/or A031 Operations Specification were technically or properly trained and/or qualified in accordance with the certificate holders training program to operate aircraft in commercial operations.
3. While preparing a response for the DOT Supplemental Report, I discovered and properly reported to the FAA Hotline Whistleblower Information System (FHWIS) a new safety concern (AAE-IHL-20221116-700) that over 200 different 14 CFR 121 and/or 14 CFR 135 certificate holders overseen by approximately 66 different FAA Offices across the United States may have not conducted an audit or failed to record the contract training audit as required by a FAA Approved Training Program and/or A031 Operations Specification.
4. The FAA Office of Chief Counsel (AGC) should issue a legal opinion about the status of pilots who received any training at a contract pilot facility whose authorization ceased on the last day of the 24th month following the date of their last audit?

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5. AGC should determine if the pilot training is/was valid if the airman received any pilot training from contract providers whose authorization ceased (for failure to audit) or was not conducted in accordance with the certificate holders approved program?
6. AGC should determine if the certificate holders complied with all requirements and expectations training is/was valid if the airman received any training that was not in accordance with the certificate holders approved program.
7. As a long time employee (25+ years) within the FAA Aviation Safety (AVS) Organization I have seen firsthand the degradation of our ability to proactively identify and address safety issues in a timely manner. For example, the FAA Safety Performance Analysis System (SPAS) is no longer functionally current and has not been for many years. ⁴
8. **For over a decade I have reported to FAA Executive Leadership, FAA Hotline, AVS Voluntary Safety Reporting System (VSRP), Quality Management System (QMS) and the OSC Thousands of Systemic Organizational and/or Operational Hazards.**

It is important to understand that the FAA reportedly relies on data from numerous databases to identify and mitigate safety hazards. For many years I have reported that several AFS safety databases/systems including WebOPSS contain incomplete, inconsistent, and inaccurate data. If the quality of the data continues to remain poor, its inputs to safety-related decisions may not be reliable, and **WILL** impact our ability to effectively support the FAA's safety mission.

For example it is well known within the FAA that Operations Specification System Automation, Policy, Training and Oversight could use significant improvement. An FAA Memo related to Internal Whistleblower (IWB) Case 21802 shows **"To date,**

⁴ AAE File #AAE10-12-0024(F)

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substantiated reports clearly point to a systemic weakness with WebOPSS that appears to hinder optimal operator oversight by the certificate holding office”⁵

1. As you read the DOT Supplemental Report and my Whistleblower Response remember the following.

1. An Air Carrier/Operator **must obtain** Operations Specifications.⁶
 - FAA Policy states “*For those regulations that are broad and not overly prescriptive, there is often room for more than one acceptable method of compliance. OpSpecs provide an effective method for establishing safety standards that address a wide range of variables that are not specifically accounted for in regulation*”⁷”.
2. An Air Carrier/Operator **must comply** with their FAA Approved Operations Specifications (14 CFR §119.5) and their other approved programs (14 CFR Part 121 Subpart N or section Part 135 Subpart H).
3. A fractional owner and/or fractional ownership program manager **must comply** with their Management specifications (§91.1015).
4. FAA Order 8900.1, Volume 3, Chapter 54, Section 5, paragraph 3-4415 A.2) dated September 2, 2021 states “**The approval** for a CH to use a part 142 training center or other provider in the conduct of their required training **is authorized through the issuance of OpSpec A031**.”
5. FAA Order 8900.1, Volume 3, Chapter 19, Section 1 states “*Initial approval involving arrangements with other CHs or part 142 training centers **must include the issuance of OpSpec A031**”.*

⁵ FAA Internal Whistleblower Case IWB- 21802- FAA Operations Specifications

⁶ <https://www.transportation.gov/policy/aviation-policy/licensing/US-carriers>

⁷ FAA Order 8900.1, Volume 3, Chapter 3, Section 1, Paragraph 3-679

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6. FAA Order 8900.1, Volume 3, Chapter 19, Section 1 states “*Final approval involving arrangements with other CHs or part 142 training centers must include the issuance of OpSpec A031*”.
7. FAA Order 8900.1, Volume 3, Chapter 54, Section 5, paragraph 3-4417 states that **POIs will use OpSpec A031 to record FAA approval** of these contract training arrangements.
8. FAA Order 8900.1, Volume 3, Chapter 18 dated September 16, 2022 states “*OpSpec/MSpec/LOA A031 authorizes a certificate holder (CH) / 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.*”
9. FAA Order 8900.1, Volume 3, Chapter 54, Section 5, paragraph 3-4417 C. dated September 2, 2021 states *the self-audit and summary report cycle outlined in this section may be used as the first phase of a plan to implement more effective CH driven quality assurance (QA) where outsourced flightcrew training is concerned. The cycle must be conducted at least every 24 months in accordance with OpSpec A031, and should be conducted at any time that a major change affects the CH’s outsourced flightcrew training.*
10. FAA Order 8900.1, Volume 3, Chapter 54, Section 5, paragraph 3-4417 D. 3) dated September 2, 2021 states “*All affected CHs are required to be issued OpSpec A031. Any training provider conducting contract training, within the meaning of this section, must be approved by the POI and recorded in OpSpec A031*”.
11. The FAA approved the Operations Safety System (OPSS) A031 paragraph which states in part “*subsequent audits must be conducted by the certificate holder at*

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least once every 24 calendar months. *The date of the most recent audit must be recorded in Table 1”.*

12. Air Operator Contract Training OpSpec A031 Audit and Reporting Process states “An initial audit **must be conducted** and summary report issued to the POI within 60 days after commencement of training or checking operations **in accordance with the operator’s operations specification paragraph A031.** Recurrent audit reports **are required at least once each twenty-four calendar months thereafter**”⁸.
13. Air Operator Contract Training OpSpec A031 Standardization Review Process states “In order to maintain A031 authorization to conduct contract training, recurrent **audit reports are due to the POI thereafter at intervals not greater than 24 calendar months.**”⁹
14. FAA Order 8900.1, Volume 3, Chapter 18 paragraph 3-4415 A.2) dated 9/2/21 states **if an operator does not conduct the required 24-month audit, their authorization to use the training center/provider WILL CEASE on the last day of the 24th month following the date of their last audit.**
15. FAA Safety Assurance System Data Collection Tool 2.1.4 titled (OP) Outsource Crewmember Training requires ASIs to answer the following question.
- *Do the procedures specify the certificate holder must conduct initial and recurring audits of each training agreement and organization?*
 - The DCT also includes the following: **NOTE - The requirement for certificate holder audits are identified in OPSpec A031.**
16. Since FAA guidance is very clear about the audit requirements and the consequences, it is more likely than not the FAA approved training program(s) also included a requirement for a certificate holder to audit a contract training

⁸ https://www.faa.gov/pilots/training/part_142/media/A031_audit.docx

⁹ https://www.faa.gov/pilots/training/part_142/media/A031_standardization_review.docx

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provider/center at least once every 24 months or anytime that a major change affects the certificate holders outsourced flight crew training.

17. FAA Policy is silent about ASI actions when the OPSS A031 audit dates listed as ‘blank’ or that exceed 24 months since last audit.

Note- FAA Policy is generally silent about ASI expectations related to inaccurate, obsolete or missing SAS. OPSS, PTRS, SPAS data.

18. For over the past decade I have been continuously reporting to the Federal Aviation Administration (FAA) Hotline and FAA Executive Leadership that many of our Flight Standards Service (AFX or AFS) safety databases contain obsolete, incomplete, inconsistent, and/or inaccurate data. I have alerted them that if the quality/availability of our data continues to remain poor, its inputs to safety-related decisions may not be reliable, and WILL impact our ability to effectively support the FAA’s safety mission.

19. Given that this hazard may have existed for over a decade, how could the certificate holders and FAA ensure the highest level of safety in the public interest?- (49 U.S. Code § 44702)

Whistleblower Comments about DOT Supplemental Report

➤ **DOT Statement-** *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.*

Whistleblower Response- *It is disappointing that only one FAA office agreed to create a weekly OpSpec report to emphasize the use of action item tracking tools to its inspectors.*

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While preparing a response for the DOT Supplemental Report, I discovered and properly reported to the FAA Hotline Whistleblower Information System (FHWIS) a new safety concern (AAE-IHL-20221116-700) that over 200 different 14 CFR 121 and/or 14 CFR 135 certificate holders overseen by approximately 66 different FAA Offices across the United States may have not conducted an audit or failed to record the contract training audit as required by a FAA Approved Training Program and/or A031 Operations Specification.

- **DOT Statement-** *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."*

Whistleblower Response- How can the American public have confidence in the safety of air travel when the FAA outsources oversight activities such pilot training audits to a certificate holder who does not appear to have the ability track mandatory audit due dates.

The FAA oversight and/or sampling of these certificate holders should have been robust enough to ensure all pilot training audits are properly on-time, every-time.

- **DOT Statement-** *With the issuance of 14 CFR part 142 (part 142), FAA authorized operators the ability to contract for flight training services with outside organizations.*

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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.

Whistleblower Response- “the operators must...” And yet they didn’t.

- **DOT Statement-** *"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."*

Whistleblower Response- FAA acknowledged in this report it is possible that training at 14 CFR Part 142 contract facilities occurred beyond the relevant 24-month audit expiration date. If true, the report should describe how the FAA resolved this noncompliance.

- **DOT Statement-** *OIG found further relevant language in FAA Notice N8900.37 issued on March 12, 2008, and canceled a year later. 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.”*

Whistleblower Response- This statement supports my argument that the FAA is aware of systemic hazards and is often (very) slow to address them. This example shows the FAA knew of this safety concern for at least 14 years.

- **DOT Statement-** *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*

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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.

Whistleblower Response- So if the A031 audit date is overdue and not completed does the FAA still have “*reasonable assurance that the certificate holder is providing adequate oversight of the training provider with whom it contracts to conduct that training*”?

- **DOT Statement-** *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.*

Whistleblower Response- And yet noncompliance continues.

- **DOT Statement-** *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.*

Whistleblower Response- This statement may be the opinion rather than a fact. In a letter from DOT General Counsel to the OSC dated March 14, 2022 the Deputy General Counsel stated in part the “*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*”.

FAA Legal Counsel should provide the OSC with a written legal determination that supports the comment that the 24-month audits in WebOPSS “are not a requirement”.

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A review of PTRS Records such as SO19202212481 show that FAA Inspectors have in fact opened legal enforcement cases such as 2022SO190120 for certificate holders who failed to perform A031 audits of a Contract Training Provider.

If the failure to audit in accordance with an approved training program and/or OPSS is not enforceable then the FAA should formally withdraw from the record all enforcements related to OPSS A031 Audits.

- **DOT Statement-** *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.”*

Whistleblower Response- FAA Order 8900.1 states OpSpec/MSpec/LOA A031 authorizes a certificate holder (CH)/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.

Each OpSpec/MSpec/LOA A031 paragraph **are approved** by direction of the Administrator and accepted by the certificate holder.

More likely than not the FAA approved training program(s) also included a requirement for a certificate holder to audit a contract training provider/center at least once every 24 months or anytime that a major change affects the certificate holders outsourced flight crew training.

The requirement to perform an audit was so important that FAA Order 8900.1, Volume 3, Chapter 18 states if an operator does not conduct the required 24-month audit, their authorization to use the training center/provider will cease on the last day of the 24th month following the date of their last audit.

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- **DOT Statement-** *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.”*

Whistleblower Response- The requirement to perform an audit was so important that FAA Order 8900.1, Volume 3, Chapter 18 states if an operator does not conduct the required 24-month audit, their authorization to use the training center/provider **WILL CEASE** on the last day of the 24th month following the date of their last audit.

How can the American public have confidence in the safety of air travel when the FAA outsources pilot training audits to a certificate holder who does not appear to have the ability track mandatory audit due dates. The FAA oversight and/or sampling of these certificate holders should be robust enough to ensure all pilot training audits are properly completed.

- **DOT Statement-** *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 requirement’.*

Whistleblower Response- 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”.

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Therefore the FAA knows the Safety Assurance System (SAS) require ASIs to verify and record the answer to the following question about OPSS A031 audits.

<p>6 Do the procedures specify the certificate holder must conduct initial and recurring audits of each training agreement and organization?</p> <p>REFERENCES: 8900.1 Vol 3 Ch 18 Sec 3, A031, 8900.1 Vol 3 Ch 54 Sec 5</p> <p>NOTE: The requirement for certificate holder audits are identified in OpSpec A031.</p> <p>Safety Attribute: Procedures, Question Type: Output Validation,</p> <p>Scoping Attribute: (FAR PART = "135") AND (OPSPEC = "A031") , Rev. 3 6/22/2021 2:23:07 PM,</p> <p>QID: 00001926, Response Details: EP & ED DCTs (Both OP and AW), Status: Released</p>	<p><input type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><input type="radio"/> Not Applicable</p>
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Sample- SAS FS Data Collection Tool (DCT) - ED_2_1_4_135DOP.PDF

For over two decades the FAA has required initial and recurrent audits of contract pilot training centers/providers and the dates of those audits to be listed in OPSS A031 and/or approved training program?

The whistleblower provided the OSC hundreds of examples showing specifically which commercial operators had expired training dates listed in OPSS A031.

This concern was substantiated. It is also reasonable to assume that some of these certificate holders may have operated aircraft in commercial service using pilots who were trained at a center/provider whose authorization ceased to exist because they had not been audited in accordance with their FAA Approved OPSS and/or FAA approved training program.

In my 25+ year career with the FAA, noncompliance with the regulations and/or FAA approved program(s) is a significant safety risk that must be mitigated.

How can the American public have confidence in the safety of air travel when the FAA outsources pilot training audits to a certificate holder who does not appear to have the ability track mandatory audit due dates. The FAA oversight and/or sampling of these certificate holders should be robust enough to ensure all pilot training audits are properly completed on-time, every-time.

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- **DOT Statement-** *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.*

Whistleblower Response- Operation of aircraft by airlines using pilots who were not trained in accordance the FAA approved Training Program would be detrimental to flight safety.

- FAA acknowledged that data within the web-based FAA Operations Safety System (WebOPSS) showed certificate holders with out-of-date audits.
- FAA 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.
- FAA still acknowledges there are almost 400 commercial operators who may not be in compliance with their FAA approved OPSS and/or pilot training program.
- The FAA acknowledged noncompliance with training center/provider audits going back to May 1, 2009 and still does not view these concerns as demonstrating any safety risk.
- FAA acknowledged that WebOPSS data showed certificate holders with out-of-date audits.
- FAA acknowledged it is possible that training at those part 142 contract facilities occurred beyond the relevant 24-month audit expiration date.
- FAA Acknowledged that approximately one in ten of the 400 entries are

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associated with active training programs and need to be updated to reflect current operations or changes since the last audit required under paragraph A031.

- FAA acknowledged this has been a “*longstanding issue*”.
 - FAA acknowledged the FAA Safety Performance Analysis System (SPAS) is no longer functionally current and has not been for many years.¹⁰
 - FAA acknowledged “*substantiated reports clearly point to a systemic weakness with WebOPSS that appears to hinder optimal operator oversight by the certificate holding office*”¹¹
- **DOT Statement-** *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.*

Whistleblower Response- On December 5, 2022 there were only 861 A031 active paragraphs issued of which appear to show approximately 400 that were past the 24 month audit date.

If true this would represent approximately 50% of the A031 paragraphs not 10%.

- **DOT Statement-** *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”*

Whistleblower Response- This statement may not be accurate since:

- The OPSS A004 paragraph is titled *Summary of Special Authorizations and Limitations*
 - *a. The certificate holder, in accordance with the reference paragraphs, is authorized to: Make arrangements with training centers and other*

¹⁰ AAE File #AAE10-12-0024(F)

¹¹ Internal Whistleblower Case 21802

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organizations for certificate holder training in accordance with 14 CFR Section 135.324. A031

- The OPSS A031 paragraph states part *“The certificate holder is authorized to make arrangements with each training center (including satellites) and/or certificate holder operating under the same CFR part (collectively referred to as training organizations) listed in this operations specification for the purpose of conducting instruction and/or evaluations for the certificate holder in accordance with the following **limitations** and provisions”*.
- **DOT Statement-** *the 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.”*

Whistleblower Response- It was disappointing to learn that the FAA acknowledged noncompliance with training center/provider audits going back to May 1, 2009 and only now AFTER a whistleblower submission it is now reconsidering the sunset of paragraph A031 and guidance.

Critical Think Question- Is this being considered for sunset due to a confidence in FAA/Certificate oversight or because the FAA and certificate holders are having difficulty performing contract pilot training audits on-time, every-time?

- **DOT Statement-** The report shows that *FAA officials do not view paragraph A031 as a “safety issue.”*

Whistleblower Response- Whistleblower Response- FAA OMS document AFS002-206 states *“The Operations Safety System (OPSS) Web-based OPSS (WebOPSS) is the system used to administer regulatory documents that apply the conditions and limitations of Title 14 of the Code of Federal Regulations (14 CFR) to air operators and air agencies”*.

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- If the Agency has determined that the FAA Approved A031 Operations Specifications are no longer regulatory or support safety, then why does the FAA still require all certificate holders who wish to use a contract pilot training center/provider to obtain the OPSS paragraph?
 - The FAA should discontinue the regulatory burden of requiring the use of the A031 OPSS paragraph if it is no longer provides value or does not support safety.
 - The FAA should discontinue use of the A031 OPSS paragraph if it is only based on internal FAA Policy rather than regulation.
 - It is my opinion that once the OPSS is approved and issued by the FAA it likely becomes a regulatory requirement.
- **DOT Statement-** *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.”*

Whistleblower Response- FAA Order 8900.1 states Four Hundred-Series (400–499). OpSpec/MSpec/LOA/TSpec templates are used for data collection when the Administrator determines that it is necessary. These data collection templates are not considered to be authorizations.

If the current A031 paragraph was intended to only be used for data collection the FAA should have used the four hundred series. It appears that the FAA decided that this was an authorization so it issued A031 rather than a four hundred series (data collection) paragraph.

- **DOT Statement-** *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.”*

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Whistleblower Response- So the failure to conduct audits in accordance with an approved training program and/or OPSS is not indicative of objective training deficiencies?

Wouldn't the failure to follow an FAA Approved Training program be considered a deficiency?

How would the FAA or certificate holder know if there are existing or emerging hazards if they were not properly audited on-time, every- time?

- **DOT Statement-***Additionally, FAA stated training program surveillance by the operator constitutes "just one critical component to ensuring the safety of the national airspace system."*

Whistleblower Response- If training program surveillance by the certificate holder is a critical component of ensuring safety of the national airspace system it must be alarming that both the certificate holder and the FAA (with its teams dedicated Inspectors and analysts) performing oversight could not identify the hundreds of audits not being accomplished in a timely manner.

- **DOT Statement-***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."*

Whistleblower Response- The FAA acknowledges that *"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"*.

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If true, then this would support my allegation that certificate holders may have missed required audits of contract pilot training providers (as required by the approved training program) and may have used the provided with the authorization ceased to exist.

Critical Thinking Question- Why didn't the teams of assigned FAA Inspectors or Analysts notice the missing, coming due or overdue audit dates?

- **DOT Statement-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.

Whistleblower Response- So why is the FAA using internal policy rather than regulation to impose a greater administrative burden for certificate holders? Since the FAA acknowledged that this requirement was in policy why does it not have proper controls in place to ensure FAA Inspectors follow national policy?

Critical Think Question- Does the FAA require the use of other WebOPSS paragraphs that are not supported by regulation?

- **DOT Statement-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;

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- (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.*

Whistleblower Response- The DOT should require that the FAA determine the root cause of how with so many “*layers of mitigation*” could hundreds of certificate holders slip thru the cracks without being properly audited?

- **DOT Statement-** *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.”*

Whistleblower Response- The requirement to conduct audits of Contract Pilot Providers were added after a fatal accident.

The DOT Report shows that now the FAA is considering removing audits as a requirement. If this happens the FAA should explain how removing a requirement to audit contract pilot training providers is in the best interest of the American public.

FY23 FAA Hotline Submissions related to the topic

- **14 CFR 121 Certificate Holders**
 - I reported to FHWIS (AAE-IHL-20221114-606) Safety/Regulatory/Policy Concern - [REDACTED] INC
 - I reported to FHWIS (AAE-IHL-20221114-607) Safety/Regulatory/Policy Concern - [REDACTED] INC
 - I reported to FHWIS (AAE-IHL-20221114-608) Safety/Regulatory/Policy Concern - [REDACTED] Inc. -

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- I reported to FHWIS (AAE-IHL-20221114-609) Safety/Regulatory/Policy Concern - [REDACTED] LLC
- **14 CFR 135 Certificate Holders**
 - I reported to FHWIS (AAE-IHL-20221003-149) Safety/Regulatory/Policy Concern - [REDACTED], Inc.
 - **I reported to FHWIS (AAE-IHL-20221116-700) Safety / Regulatory / Policy Concern that approximately Two Hundred 135 Certificate Holders were showing Overdue Audit dates for Pilot Contract Training Providers in OPSS A031.**

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Closing

It is important that the American public understand that Whistleblowers perform a vital role in today's world. Federal Aviation Administration (FAA) Whistleblowers such as myself have (following established processes) alerted management officials and others to violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or substantial and specific danger to public health or safety.

FAA Whistleblowers who properly report safety, regulatory and other concerns are often ignored, ostracized and/or retaliated against for our professionalism and unwavering commitment to aviation safety. Because of this, FAA employees and contractors who discover hazards or wrongdoing may choose to remain silent and not report their concern(s) for risk of direct or indirect whistleblower retaliation.

It may be at a great cost or risk to the American public, if the Department of Transportation (DOT)/FAA senior leadership continue to ignore the valuable contributions of Whistleblowers and other persons who submit Hotline complaints. I have personally alerted the Secretary of Transportation, FAA Administrator and other DOT/FAA Senior Executives of systemic failures and none of them except AAE-1 have taken time to even respond back to me about any of the substantiated concerns.

“Failure can be useful if we learn from our mistakes. Failure can be fatal if we do not.”

Your Loyal Servant

/s/ [Whistleblower], Aviation Safety Inspector

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