



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

The Special Counsel

September 2, 2021

The Honorable Pete Buttigieg
Secretary
Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: OSC File No. DI-21-000728
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Buttigieg:

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 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 November 1, 2021.

The whistleblower, [REDACTED] an Aviation Safety Inspector, 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 airlines are operating in compliance with FAA policy and safety regulations. The allegations to be investigated include:

- Aviation Safety Inspectors have improperly approved operations specifications for commercial operations under 14 C.F.R. Parts 121 and 135 that include aircraft with experimental airworthiness certificates;
- The FAA's failure to provide adequate oversight of commercial airlines' operations specifications creates a substantial and specific safety risk to the public; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

In order to conduct commercial passenger or cargo aircraft operations under 14 C.F.R. Parts 121 and 135, an individual or business must obtain approved operations specifications (OpSpecs) from the FAA.¹ The OpSpecs must identify each aircraft the individual or business is authorized to use in their commercial operations.²

¹14 C.F.R. § 119.33.

²14 C.F.R. § 119.49(a)(4).

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The FAA issues experimental airworthiness certificates to owners of registered aircraft under 14 C.F.R. § 21.191. Experimental certificates are issued for various purposes, including testing new aircraft designs and equipment, for exhibition flights at air shows, or for operating an amateur or kit-built aircraft. The FAA's Air Traffic and General Operating Rules specifically prohibit the commercial use of aircraft with experimental certificates.³

██████████ alleged that Aviation Safety Inspectors have improperly approved OpSpecs for commercial operations under Parts 121 and 135 that include aircraft with experimental certificates, and are thus, subject to the prohibition from commercial use. He witnessed this error on the OpSpecs of numerous commercial operators, including American Airlines and SkyWest Airlines. ██████████ alleged the presence of aircraft with experimental certificates on Parts 121 and 135 OpSpecs demonstrates that the approval process lacks proper oversight and does not meet FAA safety standards.

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 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 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/Pages/DOW.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,



Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Eric J. Soskin, Inspector General

³14 C.F.R. § 91.319(a)(2).

APPENDIX
AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/PublicFiles>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).