



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

The Special Counsel

July 6, 2023

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

Re: OSC File Nos. DI-23-000742
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, Federal Aviation Administration (FAA), Minneapolis-St. Paul International Airport (MSP), Air Traffic Control Tower, Minneapolis, Minnesota. The whistleblower alleged that MSP leadership has engaged in activity 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) by September 5, 2023.

The whistleblower, who chose to remain anonymous, disclosed that converging runway operations (CRO) at MSP do not comply with FAA rules and pose a safety hazard for arriving and departing aircraft.¹ The allegations to be investigated include:

- CRO at MSP do not comply with aircraft separation requirements in FAA Order 7110.65 because they do not include adequate mitigation aids, such as sufficient Arrival-Departure Windows, to prevent conflicts between arriving and departing air traffic in the event of a missed approach;²
- MSP leadership has improperly implemented CRO without conducting a study to assess the effects of wake turbulence and multiple runway simultaneous operations; and

¹ I referred similar allegations to former-Secretary Elaine L. Chao on April 3, 2019, in OSC File Nos. DI-19-1890 and DI-19-2117. On October 21, 2021, I found the agency's findings reasonable based, in part, on the fact that the FAA's review of Arrival-Departure Windows at MSP was still ongoing.

² Arrival-Departure Windows are predetermined sections of airspace on the approach path to a runway that are required to be clear of arriving aircraft before a departing aircraft can begin a take-off roll on a converging runway.

- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

According to the whistleblower, MSP leadership has implemented converging runway operations on three runways—runway 30L, runway 30R, and runway 35—in a manner that creates a potential hazard. Based on traffic demand and prevailing winds, the MSP Air Traffic Control Tower can utilize runways 35, 30L, and 30R for arriving aircraft, and runways 30L and 30R for departing aircraft. Runway 35 does not physically intersect with runways 30L or 30R, but these runways are considered non-intersecting converging runways because the flight paths of aircraft intersect less than one nautical mile from the departure ends of each runway. For converging runway configuration, FAA Order 7110.65 requires air traffic controllers to apply separation rules for intersecting runways unless the facility uses alternative aids to ensure safe spacing and mitigate risk between arriving and departing aircraft. The MSP Air Traffic Control Tower uses alternative mitigation aids—such as specific weather, staffing, coordination, and equipment requirements, as well as the use of Arrival-Departure Windows (ADWs)—for conducting CRO.

In the previously referred cases, the FAA reported to OSC that the ADWs in use at MSP adequately reduced the probability of a hazardous wake encounter. A subsequent FAA technical memorandum on current MSP ADWs, dated February 7, 2022, indicated the need for a wake turbulence study prior to the implementation of CRO.³ The technical memorandum also states that the study used to establish current ADWs did not consider the effect of multiple simultaneous runway operations in place at MSP.⁴

The whistleblower indicated that the use of CRO was discontinued in early 2020 due to traffic levels and training and staffing limitations but was reintroduced on June 5, 2023. The whistleblower alleged MSP leadership has prematurely re-implemented CRO. First, the whistleblower contends that MSP leadership has acknowledged that a heavy gap⁵ is needed to address wake turbulence between a heavy aircraft departing on runway 30L departure and a runway 35 arrival aircraft but has not conducted a safety analysis to determine the appropriate size of the heavy gap or adjust the size of ADWs. In addition, the whistleblower alleged MSP leadership has not conducted an ADW study that addresses the actual simultaneous runway

³ Wake turbulence is caused by a pair of counter-rotating vortices trailing from the wing tips of an aircraft in flight, which can pose a hazard to encountering aircraft. The wake from larger aircraft can impose rolling moments that exceed the roll control authority of smaller aircraft. Wake turbulence can damage aircraft components and equipment as well as cause personal injuries. See FAA Advisory Circular 90-23G, Aircraft Wake Turbulence.

⁴ The study establishing ADWs at MSP only considered a straight-out missed approach from runway 35 and a straight-out departure from runway 30L or a separate straight-out missed approach from runway 35 and a straight-out departure from runway 30R. However, actual CRO at MSP rarely involve straight-out missed approaches or straight-out departures, rather, the aircraft usually turn. In addition, departures frequently occur simultaneously on runways 30L and 30R.

⁵ The heavy gap proposed at MSP is to skip one arrival on runway 35 when a heavy aircraft departs from runway 30L.

The Honorable Pete Buttigieg

July 6, 2023

Page 3 of 3

operations that occur at MSP. Accordingly, the whistleblower alleged the ADWs in use at MSP do not comply with FAA Order 7110.65 and are insufficient to ensure a safe distance between arriving and departing aircraft.

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 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/Documents/PublicFiles/1213Appendix.pdf>. 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 or cmcmullen@osc.gov 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