The Honorable Henry J. Kerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street NW, Suite 218  
Washington, DC 20036  

Re: OSC File No. DI-22-000520  

Dear Mr. Kerner:  

By letter dated May 24, 2022, you referred for investigation a whistleblower’s allegations that Federal Aviation Administration (FAA) officials failed to ensure that certificate holders have interchange agreements in place when operating the same aircraft, and that FAA is systematically unable to ensure certificate holders’ compliance with regulatory safety requirements. An interchange agreement is a form of dry lease agreement that permits two carriers to connect two or more points on a route using the same aircraft—but each operator’s own crewmembers. The referral letter stated FAA’s alleged failures may constitute a violation of law, rule, or regulation and a substantial and specific danger to public safety.

The Secretary of Transportation has delegated responsibility for matters falling under 5 U.S.C. Section 1213(d) to the General Counsel. FAA, through its Office of Audit and Evaluation, prepared the Report of Investigation (ROI) in this matter. I enclose the ROI with this letter.

The investigation found that none of the allegations disclosed a substantial and specific danger to public safety. Furthermore, the investigation did not substantiate the allegation concerning interchange agreements because FAA regulations and policy do not require an interchange agreement when two carriers operate the same aircraft. However, the investigation revealed that one provision of an FAA Order is inconsistent with FAA’s regulations and policy on that issue. The investigation also found that FAA improperly approved a specific interchange agreement; while interchange agreements are not required, carriers can request FAA approval when they wish to enter them. The investigation substantiated the allegation of a systemic problem with inaccurate data on the aircraft that carriers list for their operations. The ROI includes four recommended corrective actions to remedy the problems the investigation identified.
We have appreciated the opportunity to review this important matter and the whistleblower’s diligence in raising concerns.

Sincerely,

John E. Putnam
General Counsel

Enclosure
Federal Aviation Administration
Report of Investigation
To the Office of the Secretary of Transportation

In response to:
U.S. Office of Special Counsel (OSC)
File DI-22-000520

Acting Director, Office of Audit and Evaluation (AAE-1)
Federal Aviation Administration
Washington, D.C.

March 23, 2023
Executive Summary

On May 24, 2022, Special Counsel Henry J. Kerner referred to the Secretary of Transportation for investigation a U.S. Office of Special Counsel (OSC) whistleblower disclosure (OSC File No. DI-22-000520).

On June 10, 2022, the Office of the Secretary of Transportation delegated the investigation to the Federal Aviation Administration (FAA), Office of Audit and Evaluation (AAE). AAE is an independent office with the statutory authority to conduct impartial investigations of aviation safety-related whistleblower disclosures. This disclosure alleges that the FAA failed to ensure that airlines are operating in compliance with FAA requirements. The whistleblower did not consent to the use of their name in the agency report.

The whistleblower more specifically alleged that:

- FAA officials have not ensured that air carriers have interchange agreements in place when operating the same aircraft.
- FAA is systematically unable to ensure that certificate holders are held accountable to regulatory safety requirements.

While the first allegation was not substantiated and the second allegation was substantiated (as it relates to data on aircraft listings, the focus of the allegations here), we found no evidence of a substantial or specific danger to public safety. The investigation found that aircraft are authorized by OpSpec D085 to be operated by at least two independent air carriers, but interchange agreements are not required to conduct such operations. We also found at least two certificate holders that have been issued an interchange agreement authorization without meeting the intent of the governing guidance.

While operation of an aircraft by two or more certificate holders without an interchange agreement is not a regulatory violation or safety issue, we found that FAA Flight Standards policy is inconsistent and must be revised.1

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1 FAA Order 8900.1, which applies to aviation safety inspectors (ASI) and other Flight Standards Service employees responsible for the certification, technical administration, and surveillance of air carriers and other operators, contains FAA policy on interchange agreements. The policies and guidance in this order are not meant to bind the public and are not a separate basis for affirmative enforcement action or other administrative penalty.

An interchange agreement permits two air carriers to connect two or more points on a route using the same aircraft but each operator’s crewmembers. FAA Order 8900.1 Volume 3, Chapter 13, Section 5 (Lease and Interchange Agreements) requires issuance of OpSpec A029 when there is an interchange agreement between air carriers. It does not require issuance of OpSpec A029 when an aircraft is operated by two or more certificate holders. FAA Order 8900.1 Volume 3, Chapter 18, Section 13 (Safety Assurance System: Authorize Aircraft for Operations Specification/ Management Specification D085 for Parts 91K, 121, 125, and 135) incorrectly lists an interchange agreement for an aircraft on another certificate holder’s OpSpec D085 as a prerequisite for FAA approval of the operations. However, Volume 3, Chapter 18, Section 13 policy is inconsistent with subpart 91K regulations and Flight Standards policy, and must be revised.
The investigation also found that the information provided on a standard Web-based Operations Safety System (WebOPSS) report entitled “Operator Aircraft Viewer” was inaccurate, and thus unreliable.

This report includes four recommendations for corrective action to the Associate Administrator for Aviation Safety (AVS-1), including corrections designed to improve data quality on recorded aircraft authorizations and OpSpec information on aircraft listings, as identified in this report. A response to AAE on these recommendations is anticipated from AVS by April 30, 2023. AAE will work with the Office of the FAA Administrator to ensure that appropriate corrective action is taken, including to the satisfaction of the General Counsel, who acts under delegation from the Secretary on OSC whistleblower referral matters.

**Detailed Findings**

**Allegation 1:** FAA officials have failed to ensure that certificate holders have interchange agreements in place when operating the same aircraft.

**Background**

The whistleblower explained that FAA datasheets show, in several instances, a single aircraft is listed on OpSpec paragraph D085 (“Aircraft Listing”)\(^2\) by more than one certificate holder, without an interchange agreement in place.\(^3\) Thus, it is alleged that the aircraft are being flown and operated by different air carriers without appropriate authorization by the FAA. The whistleblower asserted that with more than one certificate holder listed as operating an aircraft without an interchange arrangement in place, the FAA is unable to determine who is responsible for an aircraft, its maintenance, its crewmembers, passengers, and the safety of any flight. However, this is not a correct statement; principal inspectors assigned to provide oversight are required to ensure that certificate holders comply with all applicable regulations and OpSpec requirements before permitting an aircraft to be added to OpSpec paragraph D085, including authorities governing responsibility for aircraft, maintenance, crewmembers, passengers, and safety of any flight.

The whistleblower also incorrectly quoted a statement from an Informational Letter to Pilots, dated May 22, 2020. According to the whistleblower, the letter stated that “the lack of approved and authorized interchange agreements in the air carrier industry is ‘a problem nationwide’ that ‘put[s] the flying public in danger, dilute[s] safety in the national airspace system, and undercut[s] the business of legitimate operators.’” The Informational Letter does not address

\(^2\) 14 CFR § 119.49(a)(4) requires all certificate holders to obtain operations specifications to include specific information, including the type of aircraft, registration markings, and serial numbers of aircraft authorized for use. OpSpec paragraph D085 is used to comply with this requirement.

\(^3\) An interchange agreement is a form of dry lease agreement. An interchange agreement permits two air carriers to connect two or more points on a route using the same aircraft but each operator’s crewmembers (all pilot(s) and flight attendant(s)). (FAA Order 8900.1 Volume 3, Chapter 13, Section 5, Paragraph 3-476.)
interchange agreements, but instead addresses illegal charter operations. Moreover, the letter actually states, “Unauthorized 135 operations continue to be a problem nationwide, putting the flying public in danger, diluting safety in the national airspace system, and undercutting the business of legitimate operators.”

*Operations Specifications (OpSpecs)*

FAA certificates issued to air operators include a stipulation that their operations must be conducted in accordance with the provisions and limitations specified in the certificate holder’s OpSpecs.4 The OpSpecs specify the authorizations, limitations, and certain procedures under which each type of operation must be conducted and under which each class and size of aircraft must be operated. OpSpecs may be added or amended by the FAA, or when requested by the certificate holder and approved by the FAA,5 allowing changes in fleet composition or operations to be addressed. A certificate holder may not conduct operations inconsistent with its current OpSpecs.

*Certificate Holder Aircraft Requirements*

14 CFR Section 119.49(a)(4) requires each certificate holder to obtain OpSpecs containing information on, among other things, the type of aircraft, registration marks, and serial numbers of each aircraft authorized for use. This information is provided by each certificate holder through FAA’s Dynamic Information System (DIS) and imported to OpSpec paragraph D085 (“Aircraft Listing”) to meet this requirement. The DIS is integrated into FAA’s WebOPSS system (the database housing OpSpecs) to enable the population of data into WebOPSS. Certificate holders maintain data in the DIS applicable to their operations, with oversight provided by each assigned FAA principal inspector.6

It is not unusual to find the same aircraft listed on OpSpec paragraph D085 for more than one certificate holder, which is not contrary to 14 CFR and is permitted in Flight Standards policy.7

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4 FAA Order 8900.1, Volume 3, Chapter 18.

5 14 CFR § 119.51.

6 Volume 3, Chapter 18, Section 2 policy requires inspectors to ensure the information in each OpSpec is accurate prior to issuance. Inspectors use the information in the issued OpSpecs to conduct oversight; inspectors do not use the data contained in DIS to conduct oversight.

7 FAA Order 8900.1 Volume 3, Chapter 13, Section 5, and Volume 3, Chapter 18, Section 6, does not require issuance of OpSpec A029 when an aircraft is also listed on another certificate holder’s OpSpec D085.
An aircraft can be shared between two certificate holders through a dry lease arrangement. A dry lease arrangement in and of itself does not require that OpSpec Paragraph A029 (“Aircraft Interchange Arrangements”) be issued unless the two certificate holders are requesting authorization for an interchange agreement (i.e., use of the aircraft with their own crewmembers exclusively between two points of a predetermined route). If there is an interchange agreement between air carriers, and the FAA determines that the certificate holders meet the requirements for the authorization, OpSpec paragraph A029 will be issued to each certificate holder. In this case, each air carrier who is a party to the interchange agreement authorization will also include the specific aircraft in their OpSpec D085 aircraft listing. If there is not an interchange agreement between air carriers, issuance of OpSpec paragraph A029 is not appropriate.

Certificate holders who choose to share aircraft through a dry lease arrangement will determine maintenance and operational control responsibilities and limitations of each party through a dry lease agreement. Assigned principal inspectors evaluate the lease agreements to determine regulatory compliance prior to authorizing the aircraft to be added to each certificate holder’s OpSpecs.

**Findings:** Not substantiated.

We found 53 aircraft that were included on D085 (“Aircraft Listing”) for more than one certificate holder; this involved thirty 14 CFR Part 135 certificate holders—for which no interchange agreement authorizations (OpSpec paragraph A029) were found within WebOPSS. The aircraft identified by the Whistleblower were among those aircraft listed. However, issuance of OpSpec A029 is only appropriate if there is an interchange agreement between air carriers. Operation of an aircraft by more than one certificate holder is not unusual, and issuance of OpSpec D085 does not require the issuance of OpSpec A029.

We found, however, an authorization that was improperly approved. OpSpec paragraph A029 was issued to two 14 CFR Part 135 certificate holders, Pollux Aviation LTD (UPXC) and Helicopter Air Alaska (1TQC). The authorization does not meet the requirements of FAA Order 8900.1, Volume 3, Chapter 13, Section 5, paragraph 3-477(E)(4), Interchange Points. The policy requires that any interchange agreement list specific interchange points, such as airports. This specific authorization was granted to allow interchange at “All State Of Alaska,” rather than specific airports as required by policy. Additionally, these two companies hold air operator certificates with authorization to conduct intrastate, on-demand, commercial passenger operations under 14 CFR Parts 119 and 135; they do not operate scheduled passenger flights between pre-determined points and therefore issuance of OpSpec A029 is contrary to Volume 3, Chapter 13, Section 5; the OpSpec A029 should be rescinded in this case.

As recognized in FAA policy, matters that are commonplace in normal operations of an air carrier frequently present major problems in an air carrier interchange. Therefore, special emphasis must be given to the review, approval, and monitoring of this type of operation. (FAA Order 8900.1, Volume 3, Chapter 13, Section 5, paragraph 3-477.)
During our investigation we discussed the applicability of interchange agreements with subject matter experts at AFS-220 (Flight Standards Air Transport Division, 135 Flight Operations Section), AFS-260 (Integration and Implementation Group), and AFS-830 (General Aviation and Commercial Division, Authorized and Certificated Operations Sections). It was determined that issuance of OpSpec A029 was only appropriate if there is an interchange agreement between air carriers and that issuance of OpSpec D085 does not necessarily require the issuance of OpSpec A029.

To be clear, FAA’s WebOPSS database does include FAA authorizations of interchange agreements for some aircraft operated by more than one air carrier. In addition, the lack of an FAA authorization noted in WebOPSS for the “53” aircraft identified above does not mean that they all are being operated by more than one air carrier without an interchange agreement in place; information on the carriers’ operations might be out of date, just as information on any necessary interchange agreements might not be current. However, as stated above, FAA should emphasize the need to ensure regulatory compliance for any carriers who share utilization of the same aircraft, whether through an interchange agreement or dry lease.

**Allegation 2:** FAA is systematically unable to ensure that certificate holders are held accountable to regulatory safety requirements.

**Background**

*Web-based Operations System Safety (WebOPSS):*

The WebOPSS User Guide (revised 10/2015) states that WebOPSS is the next generation of application software utilized by FAA’s Flight Standards Division to collect data on operator activities, to disseminate FAA policies to the certificate holder and inspector communities, and to generate and manage authorizing documents to the operator, which includes OpSpecs. This system contains some of the most up-to-date data on the airline industry.

Within WebOPSS is a sub-system used to collect and maintain operator specific data. This sub-system is referred to as the Dynamic Information System, described above. Among other things, certificate holder aircraft information is collected via the DIS and used in various OpSpec paragraphs, such as D085 (“Aircraft Listing”), the OpSpec paragraph relevant to interchange agreement authorizations.

Certificate holders can input aircraft information in the DIS and then select which aircraft they would like to show on the aircraft listing in D085 as being “in service.” If “in service” is not selected, the aircraft information will remain in the database, but it will not appear on a subsequent D085 revision.

OpSpecs and related reports rely on data collected through the DIS. Critical fields of information provided by DIS must be current to be considered technically accurate. Standard reports provided by WebOPSS, such as the Operator Aircraft Viewer Report, depend on accurate data to determine which aircraft are being operated by which operators. This is important for distributing safety critical information, like airworthiness directives, to the appropriate audience.
**Findings:** Substantiated.

We found that some certificate holders were not keeping aircraft information in DIS current. This is causing inaccurate information to show on the WebOPSS “Operator Aircraft Viewer” standard report. For example, the Operator Aircraft Viewer report generated for this investigation showed that aircraft N740AX, N744AX, N749AX, N750AX, N765AX, and several more are listed for ABX Air, Inc. (ABXA) and Amerijet International Inc. (PCSA). The same aircraft are shown on D085 for ABXA, but not for PCSA. This indicates that PCSA may have at one time operated the aircraft and did not delete them from the DIS record when ABXA began operating them instead. Another possibility is that PCSA and ABXA considered an interchange agreement, but never completed one. Regardless, the FAA does not use information in DIS to provide safety oversight, instead data contained in the operator’s issued OpSpecs is used. However, accuracy of some reports using data drawn from DIS can be unreliable.

We also noted that 96 aircraft appearing on the Operator Aircraft Viewer report for 14 CFR Part 135 certificate holders were not listed on OpSpec paragraph D085 for those same certificate holders. This also is indicative of outdated data in DIS. However, it is common for an operator to make requests in WebOPSS to add aircraft to their D085. Until the FAA inspects and approves the aircraft and ensures it complies with applicable requirements, OpSpec paragraph D085 is not issued and, therefore, the aircraft would be in DIS but not listed on the issued OpSpec paragraph D085.

These findings show that there is a systemic concern with data currency in the FAA’s DIS related to aircraft listings by operator. OpSpecs are critical in the safe operation of all certificate holders. Those systems depend on current data to provide accurate information for operational authorizations and approvals. Inaccurate information invalidates the reports the FAA uses to support oversight of all certificates.

**Recommendations and Corrective Actions:**

Based upon the findings related to existing guidance regarding aircraft interchange agreement authorizations and data currency within the FAA’s DIS system, AAE will issue the following recommendations to the Associate Administrator for Aviation Safety (AVS-1).

**Recommendation 1:** Amend FAA Order 8900.1, Volume 3, Chapter 18, Section 13 to ensure consistency with FAA policy and FAA’s subpart 91K regulations, neither of which require an interchange agreement when two carriers list the same aircraft on their OpSpec paragraph D085 (“Aircraft Listing”).

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8 FAA Order 8900.1, Volume 3, Chapter 18, Section 2 requires FAA inspectors to ensure the information in the OpSpec is accurate prior to issuance.
**Recommendation 2**: Ensure that the 53 aircraft identified as being shared by the thirty Part 135 certificate holders in Allegation 1 are evaluated and appropriate corrective action taken, if necessary, to ensure regulatory compliance.

**Recommendation 3**: Ensure that A029 is evaluated and corrective action is taken with regard to the interchange agreement that was authorized for Pollux Aviation LTD (UPXC) and Helicopter Air Alaska (ITQC). The current authorization does not meet the intent of the applicable policy found in FAA Order 8900.1, Volume 3, Chapter 13, Section 5, paragraph 3-477(E)(4), in that the entire State of Alaska is listed, rather than specific interchange points. These two companies conduct intrastate, on-demand, commercial, passenger carrying operations; they do not conduct scheduled operations, therefore, issuance of OpSpec A029 is contrary to FAA Order 8900.1, Volume 3, Chapter 13, Section 5, and the OpSpec A029 should be rescinded.

**Recommendation 4**: Ensure that information in the DIS is current and accurate and develop policy and guidance for aviation safety inspectors to ensure the accuracy of such records, to include guidance on the deletion of aircraft from certificate profiles when appropriate.

**Investigation Methodology**

The investigation was conducted under the authority of the FAA Office of Audit and Evaluation pursuant to Title 49 U.S.C. §106(t) and FAA Order 1100.167B, and by delegation from the U.S. Department of Transportation's General Counsel.

Investigative Team:

- [Redacted], Senior Investigator, Office of Audit and Evaluation – Detachee
- [Redacted], Investigator, Office of Audit and Evaluation
- [Redacted], Senior Investigator, Office of Audit and Evaluation

AAE analyzed records, documents, memorandums, emails, FAA guidance, policy, regulations, orders, notices, and records obtained from the FAA Aircraft Registry, WebOPSS, and Vital Information Systems (VIS). In addition, interviews and technical discussions with the Whistleblower and seventeen AFX executives, managers and policy/technical specialists, discussions of policy, and email correspondence were conducted.
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<td>Whistleblower</td>
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<td>2</td>
<td>Manager, Program Support and Safety Recommendations, AFS-260</td>
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<td>3</td>
<td>ASI - Operations, AFS-830</td>
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<td>Supervisory ASI, AFS-220</td>
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<td>5</td>
<td>ASI-Operations, AFS-220</td>
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