June 20, 2024

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-22-000520

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) by the Department of Transportation (DOT) in response to the Special Counsel’s referral of a disclosure of wrongdoing at the Federal Aviation Administration (FAA), Aviation Safety Office, Washington, D.C. I have reviewed the disclosure, the agency report, and whistleblower comments and, in accordance with 5 U.S.C. §1213(e), I have determined the report contains the information required by statute and the findings appear reasonable. The FAA Office of Audit and Evaluation investigated the allegations. As summarized below, the agency partially substantiated the allegations.

The whistleblower, who only consented to the release of his name to the DOT in connection with the investigation, alleged that FAA officials failed to ensure that certificate holders have interchange agreements\(^1\) in place when operating the same aircraft, and that FAA is systematically unable to ensure that certificate holders are held accountable to regulatory safety requirements. The agency investigation did not substantiate the allegation involving the interchange arrangements but did substantiate that FAA is systematically unable to ensure certificate holders are held accountable to regulatory safety requirements, only as it relates to data on aircraft listings. Notwithstanding this finding, the agency did not conclude there was a substantial and specific danger to public safety.

The report noted that, as identified by the whistleblower, FAA datasheets show several instances where a single aircraft is listed on the Operations Specifications (OpSpecs) paragraph D085, or aircraft listing, by more than one certificate holder even though no interchange agreement was in place. The OpSpecs specify, among other things, a certificate holder’s authorizations, the procedures for each type of operation, and the operation of each aircraft.

\(^1\) An interchange agreement is a dry lease that permits two carriers to connect two or more points on a route using the same aircraft but using the operator’s own crew members.
Certificate holders are required to comply with their OpSpecs; amendments may be made by FAA or requested by the certificate holder and approved by FAA, including changes to fleet composition or operation.

The report explained that it is permissible under FAA regulations and policy for two certificate holders to share the same aircraft through a dry lease arrangement. If, however, the certificate holders are requesting authorization for an interchange agreement, i.e., use of the aircraft with their own crews exclusively between two points of a predetermined route, FAA must determine that both certificate holders meet the requirements for the authorization. If the agreement is authorized, an OpSpec paragraph A029 will be issued to each air carrier and each air carrier includes the aircraft in its OpSpec D085 aircraft listing. Investigators consulted subject matter experts from Flight Standards Air Transport Division, Integration and Implementation Group, and General Aviation and Commercial Division to determine that an OpSpec A029 is necessary only when there is an interchange agreement; the inclusion of an aircraft on the OpSpec D085 alone does not require an OpSpec A029.

The investigation identified 53 aircraft in the Web-based Operations System Safety (WebOPSS), FAA’s database for OpSpecs, that were included on the aircraft listings for more than one certificate holder but did not have an interchange agreement. However, the report notes that the lack of FAA authorization for an interchange agreement for these 53 aircraft does not mean such an agreement is required. Additionally, the report noted that the database information could be out of date. The investigation also found that two interchange agreements with Pollux Aviation, Ltd., and Helicopter Air Alaska were improperly authorized because the carriers do not conduct scheduled operations.

With respect to the FAA’s ability to hold certificate holders accountable to regulatory safety requirements, the report described WebOPSS as the next generation of application software used by FAA’s Flight Standards Division to collect data on operators, disseminate FAA policies to operators, and generate operator authorizing documents, including OpSpecs. Certificate holders update and input aircraft information in the Dynamic Information System (DIS), a subsystem of WebOPSS. The report notes that the OpSpecs and other reports rely on information from these systems, and thus, the data accuracy depends on the information entered by the certificate holders.

The investigation found that some certificate holders do not keep their information in DIS current. The report provides examples of information generated in the WebOPSS Operator Aircraft Viewer standard reports that lists aircraft for different carriers that are not listed on the OpSpec paragraph D085 for the same carriers. The report attributes these findings to a systemic concern regarding the accuracy of data in DIS related to aircraft listings by operators.

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2 A dry lease is the lease of an aircraft in which the lessor provides the aircraft, and the lessee supplies its own crewmembers. Under a dry lease, operational control has been passed to the lessee. Conversely, a wet lease is the lease of an aircraft in which the lessor provides the aircraft and at least one crewmember.
However, the agency states that FAA uses information in the OpSpecs to provide security oversight, not the information in DIS. Nevertheless, the report states that operational authorizations and approvals depend on accurate data and that inaccurate information “invalidates the reports the FAA uses to support oversight of all certificates.”

The report included four recommended corrective actions: amend FAA Order 8900.1 to ensure consistency with FAA regulations and policy; ensure the 53 aircraft identified as being shared by the 30 Part 135³ certificate holders are evaluated and corrective action taken if necessary; ensure that A029 is evaluated and corrective action is taken concerning the authorization for Pollux Aviation, Ltd., and Helicopter Air Alaska as they do not conduct scheduled operations; and ensure that information in the DIS is current and accurate, and develop guidance for aviation safety inspectors to ensure the accuracy of the data. OSC requested an update regarding the corrective actions. FAA confirmed all recommendations have been implemented and FAA Order 8900.1 was amended with the publication of Change 883.

In comments, the whistleblower disagreed with the finding that FAA officials have not failed to ensure that certificate holders have interchange agreements in place when operating the same aircraft, highlighting that the investigation revealed 53 aircraft being shared amongst 30 certificate holders. The whistleblower further asserted that the FAA is unable to provide adequate oversight of its own workforce and the national airspace system, and questioned why investigators did not investigate additional allegations he raised.

I thank the whistleblower for bringing these allegations to OSC. The investigation identified clarifications needed to an FAA Order and resulted in recommendations to improve data currency in FAA’s Dynamic Information System. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, and whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Commerce, Science and Transportation and the House Committee on Transportation and Infrastructure. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at osc.gov. This matter is now closed.

Respectfully,

Hampton Dellinger

Special Counsel

Enclosures

³ 14 C.F.R. Part 135 pertains to air carriers operating commercial and on-demand operations, such as charter flights and air taxi services.