



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

General Counsel

April 14, 2023

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

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-22-000535

Dear Mr. Kerner:

By letter dated June 13, 2022, you referred for investigation a whistleblower's allegation that Federal Aviation Administration (FAA) officials have failed to ensure that Aviation Maintenance Technician Schools (AMTS) are conducting only FAA-approved distance learning courses. Distance learning courses involve remotely sited students using computer-based technology to receive instruction. The whistleblower also alleged that because of FAA's failure, some aviation mechanics may have obtained their airman ratings or certifications based on expired distance learning courses.

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 did not substantiate the allegations. As explained in the ROI, FAA issued guidance to its Flight Standards District Offices (FSDOs) on April 1, 2020, establishing a process for FAA to provide AMTS more flexibility to offer coursework remotely due to the COVID-19 public health emergency. The investigation uncovered that one AMTS had provided FAA-approved distance learning after the expiration date listed in its Operations Specifications (OpSpecs). The ROI concludes that this was not a violation of FAA regulations, however, but primarily a recordkeeping issue that FAA remedied by amending that AMTS' OpSpecs to extend the expiration date upon discovery of the issue. Under an interim rule FAA issued on September 27, 2022, FAA no longer must issue an authorization for an AMTS to provide its coursework through distance learning. In addition to finding no violation of a law, rule, or regulation, the investigation did not find a substantial and specific danger to public safety or gross mismanagement.

Your referral letter in this matter also mentioned an "outstanding request" from OSC in 2020 that FAA review the broader implications of this whistleblower's series of referrals, including the "potential effect on public safety." While that request arrived before my tenure with the

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The Honorable Henry J. Kerner

Department, I take it seriously. I have asked my staff to work with FAA to provide me with a briefing on the recurring issues covered by the referrals, their potential impact on safety, and FAA's work to address those issues. I understand that FAA's work in this area includes system enhancements to FAA's Web-based Operations Safety System (WebOPSS) and additional training for inspectors to ensure consistency and standardization in the issuance and tracking of WebOPSS data. I know there are other systems involved in this series of referrals as well. I look forward to receiving more details and we will follow up with you on these matters.

We have appreciated the opportunity to review this important matter and the whistleblower's diligence in raising concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E. Putnam", written over a white triangular graphic element.

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-22-000535

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

April 14, 2023

Executive Summary

On June 13, 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-22-000535).

On July 1, 2022, the Office of the Secretary of Transportation delegated the investigation to the Federal Aviation Administration (FAA), requesting that FAA's Office of Audit and Evaluation (AAE) conduct the investigation and prepare this report. AAE is an independent office with the statutory authority to conduct impartial investigations of aviation safety-related whistleblower disclosures. This disclosure alleges that Aviation Maintenance Technician Schools (AMTS) conducted distance learning courses¹ under FAA-issued Operations Specifications (OpSpecs) that expired, and that as a result mechanics may not meet the qualification standards for their aircraft ratings or certificates.

The whistleblower alleged that FAA officials failed to ensure that AMTS are conducting instruction in compliance with FAA policy and regulations, and that this failure constituted a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public safety. The whistleblower specifically alleged that:

- Inspectors have failed to ensure that Aviation Maintenance Technician Schools are conducting only FAA-approved distance learning courses.
- Mechanics may have obtained their airman rating or certification based upon expired distance learning courses.

The investigation found that of the 94 AMTS authorized to conduct distance learning, 28 had expired OpSpecs at the time of the investigative analysis. Nine of the assigned principal inspectors (PI) responsible for overseeing those 28 AMTS were contacted. One PI responded that his assigned AMTS had conducted distance learning after the authorization expired (although using an FAA-approved curriculum). The eight other PIs indicated that the AMTSs assigned to them had not conducted distance learning after the expiration date, and that OpSpec paragraph A026 was deactivated and archived because of our inquiry.

Pursuant to revised regulations effective September 27, 2022, specific OpSpec authorization to conduct distance learning is no longer necessary, because AMTS no longer require FAA approval to provide their curriculum via distance learning. Although we substantiated that the OpSpecs authorization to conduct distance learning was expired in one case, the curriculum—and the fact that the training would be provided remotely—was previously approved by FAA. And while the prior authorization to conduct that coursework through distance learning was not extended through an OpSpecs amendment, when the issue was later realized, FAA amended the OpSpecs to extend the AMTS' authorization through September 27, 2022. Thus, the expiration of the authorization to conduct distance learning was primarily a recordkeeping oversight related

¹ Distance learning courses involve remotely-sited students using computer-based technology methods of receiving instruction.

only to the duration of the AMTS' authorization in that case, one that did not create a substantial and specific danger to public safety. Based on consultation with FAA experts, the one AMTS's provision of remote training without an amendment to its OpSpecs from February 1, 2022 through September 26, 2022—that is, after the expiration date listed in its OpSpecs, but before FAA issued the revised regulation authorizing distance learning without any OpSpecs notation—would not be actionable as a regulatory violation, was not gross mismanagement, and posed no substantial and specific danger to public safety. As such, AAE has no recommendations for corrective action.

Detailed Findings

Allegation 1: Inspectors have failed to ensure that Aviation Maintenance Technician Schools are conducting only FAA-approved distance learning courses.

Background:

Prior to the revised regulations effective September 27, 2022, 14 CFR Section 147.21 required an AMTS to have an FAA-approved curriculum and that the curriculum be administered in accordance with approved procedures ensuring its students qualify to perform the duties of a mechanic for a particular rating or ratings upon completion. This section also established the specific training hours required for each rating sought. Each course could include academic (classroom lecture) and practical shop activities, or both. Historically, instruction has been received in person at the AMTS's classroom and shop facilities.²

As a result of the COVID-19 pandemic and associated social distancing requirements, it became apparent that it would be difficult, if not impossible, for certificated mechanic schools to comply with their approved curriculums using only in-person training. Recognizing this, FAA's Flight Standards Service (AFX) determined that certain academic courses could be successfully administered using distance learning as a teaching method.

The FAA issued guidance on April 1, 2020 to provide the option for distance learning, allowing AMTS to submit to a local Flight Standards District Office (FSDO) a request for approval to conduct distance learning. When a request was approved, the FAA issued OpSpec paragraph A026 authorizing the AMTS to conduct distance learning.³ The same guidance stipulated that

² Under FAA's current rules, FAA need not approve every amendment to an AMTS curriculum. However, an AMTS must receive FAA certification, which includes a review of their course materials. 14 CFR §§ 147.3, 147.5, 147.17. FAA inspectors also monitor the evolving content of AMTS-offered coursework.

³ AC 147-3B Appendix 11, FAA Order 8900.1 Volume 2, Chapter 12, Volume 6, Chapter 10, Special Guidance for Part 147 AMTS Regarding Training Interruptions Related to Coronavirus (COVID-19) and FAA Flight Standards Special Memorandum M330-8000.1-G-2003-0718 (dated April 1, 2020). Flight Standards offices with AMTS oversight responsibilities had the ability to use this guidance to authorize options or flexibility for AMTS curriculum delivery and student attendance within then-existing requirements of Part 147. The guidance directed FAA offices or inspectors to discuss these options with the affected AMTS and provide the appropriate support based on the option selected by the schools. The temporary deviation provided guidance to FAA offices/inspectors; however, it may

controlling limitations be applied, one of which was an expiration date of the OpSpec authorization. Under the guidance, extensions to the expiration date in OpSpec A026 required future revisions by the FSDO.

On May 24, 2022, the FAA published an interim final rule for 14 CFR Part 147 with an effective date of September 27, 2022, wherein distance-learning programs will no longer need to be approved by the FAA or require an authorization under OpSpec paragraph A026. Therefore, a specific OpSpec authorization is no longer required to provide the “classwork” portion of FAA-approved mechanics training via distance learning.

Findings: Not Substantiated.

The investigation found that as of July 7, 2022, 94 AMTSs were authorized by OpSpec A026 to conduct distance learning. Authorizations for 28 of those AMTSs were expired at the time of our analysis. PIs assigned to nine of those 28 AMTSs were contacted. Of the nine PI responses, just one stated that one of its assigned AMTS had conducted distance learning after the authorization expired.

The one confirmed AMTS conducting distance instruction after the expiration date in its OpSpecs A026 occurred between January 31, 2022 and July 1, 2022. The instruction was accomplished in accordance with an FAA Approved Distance Learning Operating and Procedures document dated August 16, 2021, which approved the offering of coursework by distance learning. When notified of the issue, the PI opened an investigation and later closed it with No Action, being unable to identify a regulatory violation. The PI described the occurrence as a “clerical error” by both the Certificate Management Office (CMO) and the Certificate Holder, in that the FAA had approved the AMTS to conduct distance learning, but the authorization in the OpSpec was not extended by amending the expiration date in paragraph A026. The PI contacted the certificate holder and revised the A026 operations specification to allow for distance learning until September 26, 2022, the day before the effective date of the regulation changes.

Eight PIs confirmed that the AMTSs assigned to them had not conducted distance learning after expiration of OpSpec paragraph A026. As a result of our inquiry, these PIs deactivated and archived the OpSpec.

Allegation 2: Mechanics may have obtained their airman rating or certification based upon expired distance learning courses.

Background

14 CFR Part 65, Subpart D specifies the requirements to apply for a Mechanic Certificate and applicable ratings. Specifically, 14 CFR Section 65.77 states, “Each applicant for a mechanic certificate or rating must present either an appropriate graduation certificate or certificate of

have been shared with an AMTS as a part of the discussions to determine a viable course of action in response to the COVID-19 outbreak.

completion from a certificated aviation maintenance technician school...,” or demonstrate experience requirements set out in 14 CFR Sections 65.77(a) and (b), to qualify for approval of the application. Once the FAA finds that the applicant meets the training and or experience requirements, the application is approved. This approval authorizes the applicant to take written, oral, and practical tests prescribed in 14 CFR Sections 65.75 and 65.79. 14 CFR Section 65.71(a)(3) requires that the applicant complete all of the applicable tests within 24 calendar months of the application approval.

Prior to the revised regulations effective September 27, 2022, 14 CFR Section 147.21(a) required that, “An applicant for an aviation maintenance technician school certificate and rating, or for an additional rating, must have an approved curriculum that is designed to qualify his students to perform the duties of a mechanic for a particular rating or ratings.” During the COVID-19 pandemic, certain AMTSs were authorized to allow administration of specific parts of that curriculum through the use of distance learning as a teaching delivery method. Authorization to use distance learning was approved by the FAA, and authorized by issuing OpSpec Paragraph A026.

Findings: Not Substantiated.

The investigation found that even though distance learning did take place after the expiration of the authorization to do so in one case, the curriculum used was approved and the content met the requirements of 14 CFR Section 147.21(a) in effect at the time. While the authorization that allowed the use of distance-learning to provide that curriculum had expired, the approved coursework described in the allegation *did not* expire. This was primarily a recordkeeping error and did not diminish the content of instruction that the students received.⁴ The OpSpecs authorization for this AMTS to provide its training remotely expired on January 31, 2022. Because FAA’s September 27, 2022 interim final rule eliminated the need to authorize distance learning in an OpSpec, the discrepancy here was limited to the period of February 1, 2022 through September 26, 2022. During this period, the AMTS continued to operate under the FAA-approved August 16, 2021 distance learning plan—and the same AMTS continues to operate with updated curriculum and remote training procedures to this day. FAA has no reason to believe the AMTS had problems providing its course remotely, or that there was any endangerment to public safety. And as explained below, the discrepancy in this case did not amount to a regulatory violation. When advised of the problem in July 2022, FAA updated the OpSpecs to extend the AMTS’ authorization to provide its distance learning through September 26, 2022.

Legal Analysis

FAA’s Office of Chief Counsel (AGC) was consulted and asked to research and analyze whether the AMTS committed a violation of a law or regulation by continuing to conduct distance

⁴ The authorization for this AMTS to use distance learning expired on January 31, 2022. However, the AMTS’ distance learning curriculum was approved by the FAA, and this approval was not affected by the expiration date of the OpSpecs.

learning without renewal of its OpSpecs (Paragraph A026) authorizing distance learning. AGC concluded that such conduct by an AMTS prior to September 2022 would not constitute a violation of a regulation. Prior to the May 2022 interim final rule (effective September 2022), 14 CFR Section 147.3 prohibited AMTSs from operating in violation of a “certificate” issued under Part 147, but was silent on OpSpecs. It was not until the effective date of the new regulation, September 27, 2022, that the requirement to comply with “operations specifications issued under this part” was added. Thus, prior to September 27, 2022, an AMTS operating contrary to its OpSpecs by providing distance learning without revising the training expiration date in paragraph A026 would not have committed a regulatory violation of Section 147.3. This regulatory gap – which has since been remedied by the interim final rule – was narrow in scope and limited only to AMTSs certificated under Part 147. Accordingly, this legal analysis does not apply to other certificated entities, such as air carriers or commercial operators certificated under part 119, which are subject to the prohibition on operating contrary to OpSpecs in 14 CFR Section 119.5(g).

The May 2022 interim final rule was issued pursuant to the directive of the Aircraft Certification, Safety, and Accountability Act, which passed on December 27, 2020. It directed FAA to issue regulations, and provided that an AMTS “shall operate in accordance with operation specifications,” Section 135(b). Section 135(c) also required an AMTS to operate in accordance with “the operations specifications issued under the interim final regulations required under subsection (a)(1).” However, AGC concluded that this statute is not self-executing, but rather required FAA to promulgate a rulemaking. Accordingly, AGC concluded that the one AMTS that provided distance learning despite the expiration date listed in its OpSpecs A026 did not violate this statutory provision.

In addition, AGC conferred with Flight Standards’ Air Carrier Division, which confirmed that prior to the recent interim final rule, there was no regulation expressly addressing AMTS OpSpecs in Part 147, and that the substantive requirements that Congress instructed FAA to impose on AMTSs in the Act were not self-executing.

AGC also considered the potential impact of 14 CFR Section 147.5(b), which was in effect at the time of the conduct at issue. That section reads:

“(b) An applicant who meets the requirements of this part is entitled to an aviation maintenance technician school certificate and associated ratings prescribing such operations specifications and limitations as are necessary in the interests of safety.”

However, counsel concluded that Section 147.5(b) prescribes an entitlement for an applicant who meets the requirements of Part 147. Section 147.5(b) does not provide sufficient prohibitory or mandatory language to find that the AMTS violated this regulation by conducting distance learning past the expiration date in its OpSpec.

AGC also considered 14 CFR Section 147.38(a), which, prior to the regulatory revisions, provided: “Each certificated aviation maintenance technician school shall adhere to its approved curriculum.” However, counsel concluded that the conduct alleged did not violate this regulation.

In the case identified above, the AMTS' distance learning curriculum was approved by the FAA in August 2021, and the expiration of the distance learning authorization in paragraph A026 of the OpSpec did not alter this approval. Therefore, despite the clerical error related to the expiration of the OpSpec, the AMTS utilized an approved curriculum between January 31, 2022 and July 1, 2022

In sum, AGC concluded that the AMTS's failure to comply with its OpSpecs in February of 2022—which is after the passage of the Act but before the effective date of the new regulations—would not be actionable as a regulatory violation.

Recommendations and Corrective Actions:

Based upon the findings, AAE has no recommendations for corrective action.

Investigation Methodology

The investigation was conducted under the authority of the FAA Office of Audit and Evaluation (AAE), pursuant to 49 U.S.C. Section 106(t) and FAA Order 1100.167B, and by delegation from the General Counsel as described above.

Investigative Team:

- [REDACTED], Senior Investigator, Office of Audit and Evaluation
- [REDACTED], Investigator, Office of Audit and Evaluation
- [REDACTED], Senior 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 data in FAA's WebOPSS system. In addition, AAE conducted interviews and technical discussions with the Whistleblower and seven AFX employees, including executives, managers and policy/technical specialists. These communications (some of which included email correspondence as well) covered factual matters and FAA requirements. FAA counsel were also consulted for this matter.