



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

June 13, 2022

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

Re: OSC File No. DI-22-000535
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, 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) on August 12, 2022.

██████████ an Aviation Safety Inspector, consented to the release of his name to DOT in connection with the investigation. ██████████ however, has not consented to the use of his name in the agency report. Therefore, I am requesting that only ██████████ title be included in the agency report.

██████████ disclosed that Aviation Safety Office employees have engaged in conduct that violates FAA policy and regulations. The allegations to be investigated include:

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

FAA uses Operations Specifications (OpSpecs) to establish and administer safety standards for all air commerce operations, including Aviation Maintenance Technician Schools (AMTS) operating under 14 C.F.R. Part 147.¹ To be authorized to conduct distance learning as a teaching delivery method, an AMTS must be issued OpSpec paragraph A026 by an FAA

¹ See FAA Flight Standards Information Management System (FSIMS) 8900.1 Vol. 3, Ch. 18, § 1.

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Inspector. An AMTS is only authorized to offer and provide distance learning for subjects/topics specifically identified in its A026 OpSpec.²

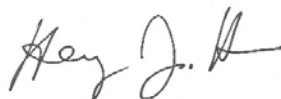
While analyzing FAA data in the Web-based Operations Safety System, [REDACTED] observed numerous A026 OpSpecs that include expired distance learning authorizations. Nevertheless, many of the schools continue to advertise the expired distance learning curriculum on their websites and in 2022 course catalogs. [REDACTED] further alleged that mechanics who completed expired curriculum may not meet the qualification standards for their aircraft rating or certificate issued under 14 C.F.R. Part 65.

OSC has made a series of referrals to the Secretary based on [REDACTED] allegations that the agency does not properly track, analyze, and respond to certificate holders who fail to meet regulatory requirements.³ In OSC File No. DI-20-000914, there is an outstanding request that the FAA review the broader implication of this series of referrals and its potential effect on public safety. This allegation of the FAA's specific failure to ensure compliance with A026 OpSpecs is an additional example of the agency's ongoing failure to ensure that FAA officials are enforcing OpSpecs and other requirements in a timely and consistent manner.

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. As previously noted, your agency must conduct an investigation of these matters, and 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/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. §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

² FSIMS 8900.1 Vol. 3, Ch. 18, § 11.

³ See OSC File Nos. DI-17-1298; DI-19-2560; DI-19-3959; DI-20-000393; DI-20-000536; DI-20-000690; DI-20-000754; DI-20-000914; and DI-22-000520.

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).