



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

November 19, 2009

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

Re: OSC File No. DI-08-2225

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel (OSC) is forwarding to you an investigative report that we have found deficient. We received a disclosure from Raymond Adams, an Air Traffic Control Specialist at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Newark Liberty International Airport (Newark), regarding the safety of two intersecting runway configurations at one of the nation's busiest airports. Mr. Adams, who consented to the release of his name, alleged that the runway 22L-11 simultaneous arrival procedure and the runway 29-4R overhead approach procedure pose significant safety hazards, including losses of separation between aircraft and the potential for mid-air collisions and runway incursions. He claimed that despite FAA's knowledge of the safety issues associated with these two configurations, FAA failed to take steps to reduce the safety risks. Based on Mr. Adams' disclosure, we found a substantial likelihood that FAA officials were engaging in conduct that constitutes gross mismanagement and a substantial and specific danger to public safety. As discussed below, FAA still has not implemented critical procedures to reduce the safety hazards confirmed by DOT's investigation. Thus, we are concerned that a potential danger to the flying public persists.

On September 19, 2008, OSC referred Mr. Adams' allegations to the Honorable Mary E. Peters, former Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary delegated joint investigative authority to the Office of Inspector General (OIG) and FAA's Air Traffic Safety Oversight Service (AOV). On October 14, 2009, the Honorable Ray LaHood, Secretary of Transportation, submitted the agency's report to OSC. As detailed below, the investigation substantiated Mr. Adams' allegations concerning the unsafe operation of the two intersecting runway configurations at Newark. OIG concluded, and FAA concurred, that these two runway configurations pose significant safety risks that must be resolved through corrective action.

FAA provided assurances to OIG that it would implement procedures on October 26, 2009, to mitigate the safety risks associated with the runway 22L-11 configuration. On November 5, 2009, DOT provided written confirmation to OSC that FAA had in fact implemented those procedures. Subsequently, however, an OIG senior investigator assigned to this matter notified us that the procedures have not been implemented and FAA has not completed critical steps that FAA represented it had accomplished. Mr. Adams has concurred regarding the current situation.

Thus, as the safety hazards associated with the runway 22L-11 configuration have apparently not been corrected, we find that the agency's report does not meet the statutory requirements, and that the findings of the agency head do not appear reasonable.

As detailed in the enclosed agency report, OIG found that Mr. Adams raised valid concerns regarding the safety of the intersecting runway configurations, which were "echoed by an audit report [OIG] issued in April 2008 and also by members of Congress." Regarding the runway 22L-11 configuration, OIG concluded that FAA's Air Traffic Organization (ATO) did not sufficiently respond to identified safety concerns or implement corrective measures to enhance the safety of air traffic operations in a timely manner. The investigation further confirmed that FAA had not conducted the safety analysis for the runway 22L-11 configuration that FAA had committed to conduct in response to OIG's April 2008 audit recommendation. Significantly, the investigation found that 43% of the operational errors reported by Newark controllers in 2008, and 33% of those reported in 2009 to present, were the result of incorrect spacing of aircraft simultaneously arriving on intersecting runways 22L and 11. Regarding the runway 29-4R overhead approach configuration, the investigation found that Mr. Adams and other controllers, including supervisors, raised valid concerns that this configuration allows little margin for error. Specifically, the investigation found that this procedure, operated without published course guidance, approach minima, or a published missed approach procedure, has the potential to create a lack of consistency and unnecessary flight hazards.

According to the report, during the course of the investigation ATO officials announced that on October 26, 2009, the New York Terminal Radar Approach Control (TRACON) would implement aircraft staggering and Converging Runway Display Aid (CRDA) procedures for handing off aircraft approaching the runway 22L-11 configuration at Newark.¹ The report states that ATO further represented that the necessary Letters of Agreement between the Newark and New York TRACON facilities for implementation of these procedures "have been prepared and are under negotiation with National Air Traffic Controllers Association (NATCA) representatives at both facilities." For the runway 29-4R configuration, ATO committed to establishing a working group to examine options for resolving the valid safety concerns raised by Mr. Adams.

Based on its findings, OIG recommended that: 1) consistent with OIG's April 2008 audit recommendation, FAA complete the safety analysis of aircraft staggering and CRDA procedures for the runway 22L-11 approach configuration prior to the scheduled implementation of these measures on October 26, 2009; 2) AOV review the adequacy of these safety measures at 90-day and 180-day intervals after implementation; and 3) Newark discontinue the use of the runway 29-4R configuration until such time as the identified safety issues are addressed by the working

¹ CRDA is an automated computer program that displays a "ghost" of one aircraft (offset to add the necessary separation) onto the flight path of another aircraft. This enables controllers to achieve the required spacing as the two flights converge on a simultaneous approach pattern. A "staggered" arrival occurs when a distance relationship is maintained between aircraft on opposite approaches so that the aircraft may not arrive simultaneously at a point of conflict (e.g., the "missed approach point"). Staggering, along with the use of CRDA, enables controllers to provide proper spacing between aircraft and can prevent aircraft from arriving at missed approach points simultaneously.

group established by ATO and appropriate remedial measures are implemented. By memorandum of September 25, 2009, FAA Administrator J. Randolph Babbitt concurred with the findings and recommendations.

As Mr. Adams noted in his comments, discussed below, the working group established by ATO to review the runway 29-4R configuration conducted a safety risk management analysis and determined by consensus that this configuration is a "high risk" operation. Therefore, FAA has terminated the operation of this overhead approach configuration until effective mitigating safety measures are developed. With respect to FAA's assurances that it would implement aircraft staggering and CRDA procedures for the runway 22L-11 configuration on October 26, 2009, OSC requested an update from DOT regarding the status of this corrective action. On November 5, 2009, we received written confirmation from DOT that FAA had implemented these procedures on October 26, 2009. See November 5, 2009, letter from Judith Kaleta, Assistant General Counsel for General Law, enclosed. However, on November 6, 2009, we learned from an OIG senior investigator assigned to this matter that FAA provided inaccurate information, and that the aircraft staggering and CRDA procedures were not implemented for the runway 22L-11 configuration. Further, it is our understanding that FAA has not prepared or negotiated a Letter of Agreement between the New York TRACON and Newark facilities, as FAA represented.²

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Adams had an opportunity to comment on the agency's report. In the enclosed comments, Mr. Adams asserted that local operational issues, such as deficient procedures that compromise safety, should be resolved by local FAA management with FAA Regional and Headquarters support. He noted his and his predecessor's efforts, beginning in 2005, to address the safety hazards associated with the runway 22L-11 configuration, and later the runway 29-4R configuration. He believes their concerns were summarily dismissed by FAA management, even after congressional inquiries were made. Mr. Adams also raised concern that FAA managers have attempted to obstruct investigations into safety issues at Newark. He noted an example in the report concerning an apparent attempt by ATO managers to manipulate statistics to create the appearance that the runway 22L-11 procedure was safe, rather than complete a valid safety assessment as recommended by OIG.

Mr. Adams also expressed concern regarding FAA managers' recent representation that a Letter of Agreement between the Newark and New York TRACON facilities and local procedures were in place for the implementation of the CRDA procedures. As the NATCA president at Newark, Mr. Adams stated he is the only person authorized to bargain local procedures, and he is not aware of a Letter of Agreement between the facilities or any negotiations for local procedures for the CRDA procedure. He stated that he spoke with Acting Air Traffic Manager James Swanson concerning the need to establish local procedures; however, Mr. Swanson did not offer to bargain the procedures. Mr. Adams indicated that, overall, he is

² On November 10, 2009, Ms. Kaleta forwarded a follow-up letter to OSC, stating that she had been advised that "questions have been raised regarding the current operation of CRDA." Ms. Kaleta further advised us that she was consulting with FAA and would keep us apprised of developments. We have sought additional information from Ms. Kaleta regarding the status of the procedures; however, we have not received any further response from her.

The President
Page 4

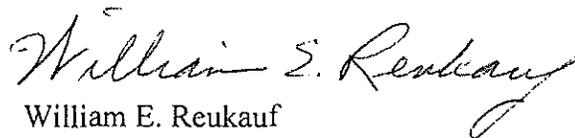
pleased with the findings in the report, which validated his allegations. He has advised OSC, however, that he is distressed by FAA's failure to implement the staggering and CRDA procedures for the runway 22L-11 configuration.

In addition, while Mr. Adams stated that he is pleased with the decision to terminate the runway 29-4R overhead approach configuration, he questioned whether it was appropriate for FAA to appoint three representatives of Continental Airlines as voting members of the working group tasked with conducting the safety risk management analysis for that runway configuration. He believes a conflict of interest may exist, and noted that a Continental Airlines executive had reviewed the agency report before Mr. Adams had an opportunity to review it. Although not noted in his comments, Mr. Adams further advised OSC that the three representatives of Continental Airlines who were appointed to the working group dissented from the consensus to terminate this "high risk" operation.

As discussed above, DOT's investigation substantiated Mr. Adams' allegations of significant safety hazards created by the operation of two intersecting runway configurations at Newark. FAA concurred with the findings and recommendations for corrective actions, and represented that it had implemented critical aircraft staggering and CRDA procedures at Newark, as promised. We note with concern that FAA's representations regarding the corrective actions taken, made pursuant to the statutorily mandated process prescribed by 5 U.S.C. § 1213, appear to be inaccurate. It is our understanding that FAA has not implemented the safety measures that are necessary to operate the runway 22L-11 configuration safely, and therefore the safety hazards associated with this configuration persist. Thus, as stated above, OSC finds that the agency report does not meet the statutory requirements, and that the findings of the agency head do not appear reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency report and Mr. Adams' comments to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. OSC has also filed copies of the agency report and Mr. Adams' comments in our public file and closed the matter. OSC's public file is now available online at www.osc.gov.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures