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December 28, 2010

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

Re: OSC File No. DI-09-3770

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel (OSC) is forwarding to you agency reports responding to disclosures received from Mr. Patrick Massie, an Aerospace Engineer and Team Lead at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Rotorcraft Directorate (Directorate), Fort Worth, Texas. Mr. Massie, who consented to the release of his name, alleged that in contravention of FAA Order 8040.1C and the Airworthiness Directives Manual, Directorate management failed to ensure that Airworthiness Directives (ADs) were developed and issued in a timely manner.<sup>1</sup> He claimed that systemic deficiencies in the process for developing and publishing ADs resulted in significant and potentially dangerous delays, in some cases for years, in resolving unsafe conditions in helicopters.

On October 20, 2009, OSC referred Mr. Massie's allegations to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary LaHood delegated responsibility for investigating the matter to DOT's Office of Inspector General (OIG). OSC received the agency's report on August 10, 2010, and a supplemental report on October 18, 2010. Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Massie provided comments on the agency reports, which are enclosed.

The agency investigation substantiated Mr. Massie's allegations. The report confirms that the "Directorate's failure to issue ADs has resulted in unsafe conditions that have been left unresolved for years." Specifically, the investigation revealed that as of December 31, 2009, the Directorate had 81 open -- *i.e.*, unissued -- ADs that had exceeded the timeliness goals established by FAA's Aircraft Certification Service (AIR) for processing ADs.<sup>2</sup> Three of these

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<sup>1</sup>Airworthiness Directives (ADs) are legally enforceable rules that apply to aircraft and aircraft engines, propellers and appliances installed on aircraft. FAA issues ADs to address unsafe conditions that exist in a product and are likely to exist or develop in other products of the same type design. ADs specify the inspections that must be carried out, conditions and limitations that operators must comply with, and any actions operators must take to resolve the unsafe condition. An operator who operates an aircraft that does not meet the requirements of an applicable AD violates 14 C.F.R. § 39.7. See 14 C.F.R. part 39.

<sup>2</sup>Under AIR's timeliness goals, the Directorate is supposed to issue Emergency ADs (EADs) and Immediately Adopted Rules (IARs), which are used for unsafe conditions warranting expeditious action, within 30 days. Standard ADs using Notices of Proposed Rulemaking (NPRMs), which require a public comment period prior to publication of the final AD, are to be issued within 365 days.

ADs had been open for approximately seven years. OIG confirmed that the six ADs presented as examples in Mr. Massie's disclosure had not been issued as of December 31, 2009. All but one of these ADs had been open for more than two years. The investigation also substantiated the allegation that the Directorate delayed corrective action of unsafe conditions by changing two of these ADs from IARs to NPRMs and assigning new identification numbers after the Directorate failed to issue the IARs within 30 days. Both ADs were prompted by emergency ADs issued by the European Aviation Safety Agency (EASA). OIG found that the Directorate changed one to an NPRM "despite no change in the condition that was to be immediately addressed." After the Directorate failed to issue the other IAR for 19 months, it changed it to an NPRM based on a lack of service difficulty reports. OIG determined that it was not clear how the lack of service difficulty reports alone changed the risk identified by EASA. OIG concluded that these actions "resulted in further confusion in the tracking of the ADs and the accurate calculation and visibility of their ages" and "gave the appearance to staff that the Directorate management was attempting to mask the lack of timeliness."

FAA indicated that it was not its intent to mask the timeliness or age of the ADs, noting that the initiation dates of the ADs are maintained in the AD database. Rather, when the Directorate failed to timely issue the IARs, FAA determined that a re-evaluation of the risk assessment was appropriate to determine whether the unsafe conditions, originally assessed as "high risk" in these cases, were severe enough to justify bypassing the public's opportunity to comment on the proposed actions. FAA reviewed its database and determined there were no service problems reported since the EASA emergency ADs were issued. FAA also considered that the manufacturer had issued service information to operators; a significant amount of time had passed since the unsafe conditions were initially identified; one AD applied to a limited number of components; and the other superseded a previous AD. FAA did not document the re-evaluations and has no record that it conferred with EASA in re-evaluating the risk assessments. The agency reports confirm that FAA did not publish the NPRMs for public comment until June 2010, more than two years after the ADs had been initiated.

OIG also found that when the Directorate did issue ADs, it often failed to meet AIR's timeliness goals "in most instances." The report states that since 2002, the Directorate failed to issue EADs and IARs within 30 days 72 percent of the time, and several were more than one year old when issued. OIG also found that between 2002 and 2008, the percentage of untimely NPRMs "increased dramatically" from 5 to 59 percent, and roughly one third of those NPRMs were more than two years old -- double the target of 365 days.

The investigation also substantiated Mr. Massie's allegation that the Directorate did not establish timeliness standards recommended in the AD Manual for carrying out the AD process, which would have allowed the Directorate to identify and address systemic deficiencies that contributed to the failure to timely process ADs. OIG identified several causes of the delays in processing ADs, including performance issues relating to a technical writer and an engineer, a lack of consistent management oversight within the Safety Management Group, disagreement between the Directorate and legal counsel regarding how foreign-issued ADs should be converted into FAA-issued ADs under FAA Order 8040.5, and extensive comments on draft ADs by legal counsel.

In addition, OIG found that the Directorate submitted inaccurate and misleading AD metric data to AIR. According to the report, AIR collects data on a semi-annual basis to determine whether metrics that measure the quality of business processes, including AD timeliness, have been met. AIR established an AD metric spreadsheet with a formula for calculating the average number of days to issue ADs. The investigation revealed that all offices except the Directorate correctly used the formula. OIG found that the Directorate modified the formula by including in its calculation months when no ADs were issued, which skewed the averages. As a result, OIG concluded “the Directorate significantly understated the number of days by which it failed to meet the EAD/IARs target, and incorrectly showed it met the target for NPRM ADs.”

The report notes that AIR revised its metrics in January 2010, changing the EAD/IAR metric to a number rather than an average. The metric for NPRMs was eliminated, in part because AIR believed all of the offices had successfully met the target goal. However, this determination was made prior to OIG's finding that the Directorate had submitted inaccurate data. OIG opined that the revised metric is a better indicator of performance, but noted that by eliminating the NPRM target, there is no visibility regarding the timeliness of these ADs. Consequently, what occurred in the Rotorcraft Directorate could occur in the other directorates.

FAA stated that in April 2009, the Directorate recognized problems with its AD processing and, in June 2009, initiated a Preventive Action Request to address the timeliness of IARs. OIG found, however, that no significant action was taken by FAA until November 2009, after OSC's referral. At that time, the Directorate established an AD Process Action Team to focus on the backlog of all ADs. In response to OIG's findings, FAA confirmed that it would implement near and long-term corrective action. These actions include, but are not limited to, the following: The AD Process Action Team continues to reduce the AD backlog and has developed measures to improve the efficiency of the AD process; the seven-year-old ADs have been issued; the two ADs changed from IARs to NPRMs were published for comments in June 2010, and one was issued as a final AD in October 2010; the Directorate is using AIR's revised metric to measure AD timeliness and will implement an automated AD tracking tool used by other directorates; performance issues of the employees identified as contributing to delays have been addressed through counseling and/or disciplinary action; and the AIR Engineering Division will form a group of representatives from the directorates and divisions to define the necessary steps for tracking AD timeliness and developing an AIR-wide AD process. Mr. Massie reported that, thus far, the changes to the AD process have resulted in significant improvement.

As noted, Mr. Massie had an opportunity to provide comments on the agency's reports. Overall, he believes the reports are accurate and well written. He commented that Directorate management is responsible for assigning ADs to the technical writers and engineers and establishing priority of work assignments. Therefore, it is not accurate to imply that management did not know or should not have known where ADs were in the process. He contended that management was aware of the increasing backlog, but did not mandate overtime, and rarely offered overtime and/or compensatory time to work on the backlog. Instead, employees were left to juggle increases in workload and pressure from management to complete other non-AD related assignments.

Mr. Massie further contended that prior to OSC's referral of his allegations, employees had stressed that the AD process was broken; however, Directorate management ignored their concerns and suggestions to improve the process. He stated that some employees were reluctant to challenge the *status quo* because they feared retaliation. He added that although the FAA Administrator has declared the flying public to be FAA's "customers," employees are fearful of upsetting external customers in the AD process. He also asserted that FAA senior management failed to recognize the fundamental problems with the Directorate's AD process during a 2009 AD review.

Mr. Massie took issue with FAA's basis for changing IARs to NPRMs after failing to timely issue the IARs. He noted that a risk assessment does not change merely because time has passed and no service difficulty reports are found in the voluntary Aviation Safety Accident Prevention (ASAP) database. He stressed that there are no regulatory requirements for operators or manufacturers to input data in the ASAP database, and under-reporting of service difficulty events is a known fact within the Directorate. Thus, he contended the absence of any safety reports in the database did not provide a legitimate basis to re-classify an IAR as an NPRM. He also asserted that there was no legitimate reason to change the AD identification numbers, and that this action was taken to deceive the public when the NPRMs were published in the *Federal Register*.

Regarding corrective action taken by FAA, Mr. Massie noted that some of the initial measures, such as the bi-weekly reviews of AD status, were counterproductive to issuing ADs in a timely manner. He also stressed that there was a lack of accountability on the part of Directorate management and undue blame placed on the technical writer and engineer identified by FAA. He asserted that management has disingenuously attributed the delays within the AD process to these individuals. He believes the disciplinary action taken against the technical writer was unfounded and noted that it did not relate to this employee's performance.

Finally, Mr. Massie suggested that the group of representatives that FAA proposed to form to review the steps for AD tracking and developing an AIR-wide AD process should include all directorate managers. He believes the proposal involving the AIR Engineering Division would leave responsible management too far removed from the issues that would produce the most efficient corrective actions. He noted that the current AIR-wide AD process should be changed to promote timeliness standards and make better use of templates. He also believes that the management structure of the Directorate consists of too many managers who lose track of the overall mission of the agency.

OSC has reviewed the original disclosure, the agency's reports, and Mr. Massie's comments. Based on that review, OSC has determined that the agency's reports contain all of the information required by statute and that the findings of the agency head appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency's reports and Mr. Massie's comments to the Chairmen and Ranking Members of the Senate Committee on

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Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. OSC has also filed copies of the agency's reports and a redacted version of Mr. Massie's comments in our public file, which is available on-line at [www.osc.gov](http://www.osc.gov), and closed the matter.<sup>3</sup>

Respectfully,



William E. Reukauf  
Associate Special Counsel

Enclosures

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<sup>3</sup>Exhibits attached to Mr. Massie's comments include personnel memoranda and an arbitration decision concerning the technical writer discussed in the agency reports and Mr. Massie's comments. A revised version of the comments, redacting the technical writer's name from the exhibits, has been filed in OSC's public file.