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The Special Counsel

May 2, 2013

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

Re: OSC File No. DI-12-1847

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find an agency report based on a disclosure made by a whistleblower at the Department of Transportation (DOT), Federal Aviation Administration, Detroit Metropolitan Airport, Terminal Radar Approach Control (TRACON), Detroit, Michigan, alleging that employees engaged in conduct that may constitute violations of law, rule, or regulation and a substantial and specific danger to public safety. Timothy Funari, who consented to the release of his name, was a Front Line Manager in the TRACON. Mr. Funari disclosed that FAA managers in Detroit adopted informal guidance for the operation of simultaneous visual approaches that resulted in a violation of the specific requirement of FAA Order 7110.65, paragraph 7-4-4c2, and failed to treat violations of the order as losses of separation.

DOT did not substantiate Mr. Funari's allegations, but it took action to correct identified concerns impacting runway safety, and the reporting, investigation, and determination of loss of separation events. DOT properly acknowledges that communication in a safety culture is essential. The agency has revised FAA Order 7110.65, paragraph 7-4-4 in response to the disclosures and to address similar concerns about parallel approaches at airports with wider runways. I have determined that the report meets all statutory requirements and that the findings of the agency head appear reasonable. Notwithstanding this finding, I urge the agency to monitor the effect of these changes at Detroit Metropolitan Airport and other affected airports to ensure that their implementation mitigates the risks identified when simultaneous parallel approaches are conducted.

Mr. Funari's allegations were referred to the Honorable Ray LaHood, Secretary, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The investigation of the matter was delegated to the FAA, Office of Audit and Evaluation (AAE). On May 15, 2012, the Secretary submitted the agency report to this office. Mr. Funari did not submit comments on the report. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you. [1]

[1] The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of

Mr. Funari's Disclosures

Mr. Funari was a Front Line Manager in the TRACON in Detroit. As a Front Line Manager, he was charged with managing air traffic controllers who guide aircraft as they approach or leave airspace surrounding airports until the aircraft are about 40 miles away. Controllers at the Detroit TRACON handle air traffic going into and out of many different airports. Mr. Funari identified a safety issue that he alleged contributed to losses of separation between aircraft and the failure to report those losses. He asserted that the agency refused to follow the rules set out in FAA Order JO 7110.65, paragraph 7-4-4c2. According to Mr. Funari, the failure to adhere to the requirement resulted in losses of separation, which the agency purposefully avoided reporting. He also disclosed that this safety issue has been identified as a top risk in the National Airspace System and, as such, the agency's actions with respect to the application of this provision of FAA Order 7110.65 affect air traffic control in TRACON airspace nationally.

FAA Order JO 7110.65, paragraph 7-4-4c2 applies to aircraft on visual approach to multiple runways, and requires standard separation of the aircraft until the aircraft is established on a heading that will intercept the extended centerline of the runway at an angle not greater than 30 degrees. Mr. Funari explained that this paragraph sets out a condition that must be satisfied prior to allowing reduced separation requirements. Paragraph 7-4-4c2 mandates the application of standard separation between aircraft, which here is a requirement to maintain 1,000 feet of vertical separation, or three nautical miles longitudinal separation. Once the condition is satisfied, "...and each aircraft has been issued and the pilot has acknowledged receipt of the visual approach clearance," then, and only then, may reduced separation be applied. FAA Order JO 7110.65, paragraph 7-4-4c2a.

According to Mr. Funari, this condition is required to mitigate the safety risk in turning simultaneously onto runways that are so close together. If the aircraft is not established on a heading that is compliant with paragraph 7-4-4c2, simultaneous operations are not authorized and a subsequent loss of standard separation must be reported as a loss of separation.

Mr. Funari cited three incidents in 2012 in which the controller did not ensure compliance with the above-stated requirement. When Mr. Funari reported these instances of

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authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c) and (g).

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

non-compliance, he was informed by Gary Ancinec, the DTW Air Traffic Manager, that FAA Headquarters officials had issued an interpretation that resulted in none of the incidents being reported as a loss of separation. He asserted that there was no such interpretation available on the FAA Interpretation website, which states: "This website identifies and provides information on FAA HQ validated Air Traffic Control (ATC) interpretations. These are the only interpretations that are valid for use in the [National Airspace System]."

Mr. Funari disclosed that when he questioned the lack of a valid interpretation, he was told by Mr. Ancinec that FAA officials in the Central Service Area and from FAA Headquarters, Terminal Safety, had determined that as long as the controller issues a correct heading, he is not responsible for the track of the aircraft. He was later provided a copy of informal guidance upon which the TRACON management appeared to be relying, as developed by Brett Faulkner, Manager, Terminal Safety and Operations Support. Mr. Faulkner's guidance stated that "...after the pilot acknowledges the visual approach clearance, there will likely be variances in the ground tracks, because after the pilot completes the turn, they can make heading corrections at their discretion since they are on a visual approach and the track at that point is not a measurable ATC performance item."

Mr. Funari pointed out that based on Mr. Faulkner's guidance, no loss of separation would be identified where the aircraft is provided a heading that does not consider the number of degrees of the turn to the final, and thus fails to establish the aircraft on a heading which will intercept the extended centerline of the runway at an angle not greater than 30 degrees. In one case, an aircraft flew through the intended final approach course, and did so while turning off of an assigned heading that resulted in intercepting the extended centerline of the runway at a 42 degree angle. In this situation, at no point was the aircraft established on a heading which would intercept the extended center line at an angle no greater than 30 degrees. As such, the requirement necessary to be satisfied prior to applying any form of separation other than standard separation was not met, and when the aircraft came closer than 1,000 vertical feet or three nautical miles longitudinally, separation was lost. Under Mr. Faulkner's guidance, the loss was not identified because, according to Mr. Funari, the guidance inappropriately removes the requirement for the aircraft to be *established* on the proper heading.

According to Mr. Funari, the guidance could lead to the risk explicitly warned about in the Note following FAA Order 7110.65, paragraph 7-4-4. The Note states that the 30 degree intercept angle is to reduce the potential for overshoots of the final, and preclude side-by-side operations with one or both aircraft in a "belly-up" configuration during the turn.[2] The Note also provides considerations for controllers in vectoring aircraft so that the aircraft is established on the correct heading, stating that, "Aircraft performance, speed, and the number of degrees of the turn to the final are factors to be considered by the controller when vectoring aircraft to parallel runways."

[2] The term "final" is commonly used to mean that an aircraft is on the final approach course or is aligned with a landing area. See, http://www.faa.gov/air_traffic/publications/atpubs/PCG/pcg.pdf, last accessed April 24, 2013.

Mr. Funari asserted that the informal guidance, and the use of informal interpretations of FAA Order 7110.65 generally, have the effect of subverting or changing the requirements of the Order. The result is a lowering of safety standards, without the necessary safety risk analysis that must accompany such a change. Mr. Funari also noted a disturbing trend in such informal guidance, as it appeared to permit the FAA to avoid reporting losses of separation.

The Agency Report

The report did not substantiate Mr. Funari's allegations that Detroit TRACON managers improperly relied on an email excerpt to justify the failure of TRACON controllers to meet the requirements contained in FAA Order JO 7110.65, paragraph 7-4-4c2, regarding simultaneous visual approaches. The investigation also did not substantiate the allegation that officials at facilities throughout the NAS are relying on improper guidance instead of obtaining official interpretations of FAA Order JO 7110.65.

Notwithstanding the agency's findings, the report reflects that since Mr. Funari first raised the issue in January 2012, new orders clarifying the roles and responsibilities of divisions within the Air Traffic Organization (ATO) have been implemented. This includes the implementation of a centralized system of records and assigning responsibility of reporting, investigating, and determining loss of separation of events to one office, instead of several offices, as was the previous practice. The report acknowledges that a FAA employee wrongly excerpted part of one of Mr. Faulkner's emails and closed Mr. Funari's occurrence reports. After Mr. Funari elevated his concern to AAE, FAA managers corrected the occurrence report, removing the email excerpt and counseling staff that they were not allowed to rely on inter-office emails as justification for their determinations. According to the report, given the "singularity of this instance and the newness of the process, [FAA] believe[s] the incident was limited to a one-time action by an employee, which is not indicative of systemic use and reliance on informal or improper guidance to close loss of separation events." The report states that FAA believes that the implementation of the new Quality Assurance Order, JO 7210.633, which clearly identifies ATO-Safety as the investigating and determining office for loss of separation events, will eliminate future instances of improper reliance on a non-official interpretation.

Mr. Funari's allegations also prompted a review of JO 7110.65 paragraph 7-4-4c2, as it relates to airports that have parallel runways separated by 4,300 feet or more. The report reflects that although the requirements of paragraph 7-4-4c2 pertain to airports such as Detroit, which has parallel runways separated by 2,500 feet but less than 4,300 feet, no such requirement exists for airports with parallel runways separated by 4,300 feet or more. Absent the requirement, controllers were granting a visual approach clearance early in the arrival sequence, without a speed restriction and without a turn from the base leg to the localizer. This resulted in aircraft attempting to join the localizer on a 90 degree or, in some instances, a 180 degree turn. These turns, while legal, resulted in unstable approaches as the aircraft flew through the centerline of the runway, conflicting with traffic on the parallel runways. A Corrective Action Plan, including a safety risk management panel and changes to JO 7110.65 paragraph 7-4-4c3, has been implemented.

With regard to Mr. Funari's primary safety allegation, i.e., that noncompliance with paragraph 7-4-4c2 results in losses of separation, the agency report reflects that FAA does not agree with Mr. Funari's interpretation of the requirement, and disputes there were losses of separation in the cited incidents. The report stated that ATO officials responsible for issuing guidance pertaining to JO 7110.65 have documented that in all instances identified, the aircraft are established on headings which would intercept the extended centerline of the runway at an angle of 30 degrees or less. Therefore, the controllers and management have properly applied the requirements of 7110.65 paragraph 7-4-4c2. ATO officials determined in these cases that because the pilot completes the turn without air traffic control guidance, deviations to the aircraft track may legally occur as the pilot adjusts his heading to compensate for any wind effects, to ensure the aircraft does not overshoot the turn to final and intercepts the extended centerline of the runway in a stable manner.

In essence, the FAA found that the requirement that the aircraft be "established on a heading which will intercept the extended centerline of the runway at an angle not greater than 30 degrees" is measured, for air traffic purposes, by the heading (the direction at which the aircraft nose points) and not the track (the actual flight path of an aircraft over the surface of the earth) of the aircraft. As such, if the controller gives a heading that is 30 degrees or less, the rule has been properly applied. For example, during the February 13, 2012 instances, the controller assigned a heading of 190 degrees, and when the aircraft was established on the heading, it was provided a visual approach clearance. Because the extended centerline of the runway is 220 degrees and the heading was 190 degrees, the angle of intercept was 30 degrees, and the result was a proper application of the rule.

The report concludes that it is clear from the investigation that all of the concerned parties failed to communicate effectively. Effective risk communication, according to the report, is critical to the successful implementation of a risk management program. AAE makes several recommendations to improve transparency within ATO, specifically in regard to future analyses of FAA Order JO 7110.65. AAE recommends that ATO: 1) thoroughly review all data contained in FAA data systems to determine whether other facilities with runways spaced between 2,500 but less than 4,300 feet have identified concerns regarding angle of intercept on visual approach clearances; 2) consider implementing a quality control check by providing a dedicated staff member to conduct random reviews of MORs and EORs closed by an ATO-Safety specialist with a finding that a loss of separation did not occur; and 3) consider whether to add the definition of heading into JO 7110.65 pilot/controller glossary. FAA has confirmed that these corrective actions have been completed.

Significantly, FAA amended its Order JO 7110.65 paragraph 7-4-4, by adding a note after paragraph 7-4-4c2 that states: "Variances between heading assigned to intercept the extended centerline of the runway and aircraft ground track are expected due to the effect of wind and course corrections after completion of the turn and pilot acknowledgement of a visual approach clearance." In addition, FAA has published an addition to FAA Order JO 7110.65 paragraph 7-4-4 to address parallel runways separated by 4,300 feet or more. Notably, this new paragraph,

paragraph 7-4-4c3(d), states that "each aircraft must be assigned headings which will allow" the aircraft to intercept the extended center line of the runway at the proper angle.

I have reviewed the original disclosure and the agency report. Based on that review, I have determined that the agency report contains all of the information required by statute and that the findings of the agency head appear reasonable. Notwithstanding this finding, I urge the agency to monitor the effect of these changes at DTW and other affected airports to ensure that their implementation mitigates the risks identified when simultaneous parallel approaches are conducted.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the unredacted report to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science and Transportation and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure. I have also filed a copy of the redacted report in our public file, which is now available online at www.osc.gov. The redacted report identifies DOT employees, other than Mr. Funari, and other individuals by title.[3] OSC has now closed this file.

Respectfully,

Carolyn N. Lerner

Enclosures

[3] DOT provided OSC with a redacted report, which substituted titles for the names of DOT employees and other individuals referenced therein. DOT cited the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for these revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to DOT's use of the FOIA and Privacy Act to remove the names of these individuals on the basis that the application of the FOIA and Privacy Act in this manner is overly broad.