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The Special Counsel

March 23, 2017

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

Re: OSC File No. DI-16-2708

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding a Department of Transportation report based on disclosures of wrongdoing at the Federal Aviation Administration (FAA), Washington, D.C. and Minneapolis, Minnesota. I have reviewed the agency report and, in accordance with 5 U.S.C. §1213(e), I am providing the following summary of the report and my findings.¹ The whistleblower, whose identity is confidential, alleged that air traffic policy at Minneapolis-St. Paul International Airport (MSP) placed the public at risk.

The whistleblower's allegations were referred to former Secretary Anthony Foxx for investigation pursuant to 5 U.S.C. §1213 (c) and (d), who tasked the FAA's Office of Audit and Evaluation with investigating the allegations. Secretary Foxx submitted the agency's report to OSC on January 19, 2017. The whistleblower chose not to submit comments on the agency report.

The whistleblower alleged that FAA's current policy for landing and departing aircraft—commonly referred to as the arrival descent window, or ADW—is not suited for use with MSP's unique runway configuration and increases the likelihood of aircraft collisions. The whistleblower further alleged that FAA management was made aware of these safety concerns but took no action to adjust the policy for MSP's configuration.

The agency did not substantiate the whistleblower's allegations. The agency determined that the ADW, which is used during converging runway operations (CRO), was

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 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). 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).

The President
March 23, 2017
Page 2 of 2

designed specifically for MSP's runway configuration with input from both internal and external experts and stakeholders. The report explains that the ADW incorporates mitigation procedures and staffing solutions to abate the risk of unsafe situations such as those raised by the whistleblower. Further, the agency found that MSP air traffic controllers (ATCs) are permitted to take immediate action to avoid a conflict. According to the agency, ATCs received verbal briefings and simulation training on ADW procedures, and the report highlights that MSP has not experienced a significant operational occurrence when ATCs have complied with the ADW procedures.

The agency also found that MSP management convened several Safety Risk Management (SRM) panels to address ADW procedures and included MSP National Air Traffic Controllers Association (NATCA) in the discussion of risks associated with the procedures. The report notes that MSP NATCA representatives participated in a SRM panel in January 2016 and initially participated in the February 2016 SRM panel, but declined to continue because they believed that controllers could only be successful using an ADW with dedicated departure and arrival runways. However, NATCA representatives from the Minneapolis Terminal Radar Approach and the Minneapolis Air Route Traffic Control Center did continue to participate and agreed that the procedures contained no "high risk" areas. The report explains that management has implemented several safety updates to the CRO procedures at MSP, such as inclusion of minimum weather conditions, implementation of hourly recorded coordination discussions by supervisors to address weather conditions and other pertinent information, and adjustments to the starting and ending points of the ADW for runways at MSP.

I have reviewed the original disclosure and agency report and have determined that the report meets all statutory requirements and the findings appear reasonable. The agency found no significant operational occurrences related to the use of ADW procedures, and the report reflects that FAA and MSP management have undertaken efforts to improve air safety at MSP and that these efforts are ongoing.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter and the agency report to the Chairman and Ranking Member of the Senate Committee on Science, Commerce, and Transportation and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure. I have also filed copies of these documents in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures