

**Analysis of Disclosures, Agency Investigation and Report,  
and Whistleblower Comments**

**OSC File Nos. DI-11-0747 and DI-08-2954  
(Edgar Diaz, FAA San Juan)**

*Background*

The allegations in these matters were disclosed by Mr. Edgar Diaz, an Air Traffic Controller at the U.S. Department of Transportation (DOT), Federal Aviation Administration (FAA), San Juan Center Radar Approach Control, San Juan, Puerto Rico (FAA San Juan). Mr. Diaz, who consented to the release of his name, alleged that FAA employees failed to respond adequately to the public safety risks associated with foreign facility deviations (FFDs) committed by aircraft entering U.S. airspace without authorization from U.S. Air Traffic Controllers.<sup>1</sup>

On May 10, 2011, Mr. Diaz's allegations were referred to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). Secretary LaHood tasked the investigation of the matter to the Honorable Calvin Scovel, III, DOT Inspector General. The Office of Special Counsel (OSC) received a report dated September 30, 2011.

Previously, Mr. Diaz filed the same disclosures about safety risks posed by FFDs over FAA San Juan airspace in 2008. (OSC File No. DI-08-2954) In August 2009, in response to an informal referral from OSC to the Office of Inspector General (OIG), OIG substantiated Mr. Diaz's concerns about the significant number of FFDs occurring within airspace near Puerto Rico. In July 2009, after an investigation, OIG issued a report containing findings and recommendations to FAA's Air Traffic Organization (ATO). The report reflected that ATO concurred with OIG's recommendation to initiate a dialogue between FAA officials and foreign counterparts in order to address a significant number of FFDs, particularly related to aircraft departing the Dominican Republic. ATO also reported that a national database to track FFDs would be created by the end of 2009. In the interim, ATO pledged to issue guidance by August 31, 2009, that would direct facilities to maintain FFD records in order to allow ATO to monitor any increased safety risks. Due to the agency's failure to implement substantive corrective actions to address FFDs, in March 2011, Mr. Diaz filed a second disclosure stating that FFDs continued to pose a safety risk to the flying public. (OSC File No. DI-11-0747.)

*The Report of the Department of Transportation on Mr. Diaz's Allegations*

The September 30, 2011 report partially substantiated Mr. Diaz's allegations. Although the report found that FFDs had continued, the rate was significantly reduced compared to previous years and, thus, the agency did not find that there was a substantial and specific danger to public safety. The report stated that the agency was, nevertheless, concerned about the safety issues related to FFDs and would continue to monitor and address FFD safety issues. The report specifically found that, while there was increased cooperation between FAA and the Dominican

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<sup>1</sup> A foreign facility deviation can occur when an aircraft is flying at an altitude or position different than the one coordinated, or when a foreign aircraft appears on air traffic control radar and flies into U.S. airspace without any prior clearance or authorization.

Republic, FFDs continued to occur, though at lower rate than the number of FFDs in 2010. In 2011, there were 19 FFDs. In 2009, FAA San Juan recorded 52 FFDs and, in 2010, 76 FFDs were recorded.

The agency report stated that in September 2009, FAA initiated a direct dialogue with counterparts in the Dominican Republic, and signed a letter of agreement to establish coordination and cooperation between the two facilities. In addition, FAA said that the promised national tracking database on FFDs was not complete and published quarterly reports on safety trends had not materialized. However, in a memorandum dated September 9, 2011, to OIG, submitted as a part of the report, then-Administrator Randy Babbitt stated the Comprehensive Electronic Data Analysis and Reporting System (CEDAR) will be a tool used to report, analyze, and track FFDs and is scheduled to begin prior to December 31, 2011. The Administrator's memorandum also stated that although local tracking of FFDs had occurred, the addition of CEDAR provided greater awareness and management attention to this important matter, and that new policies were nearing completion and expected to be published shortly.

In response to our request for a status update, on January 11, 2012, the agency submitted information stating that the FAA had approved new policies to require the reporting and tracking of FFDs. Specifically, beginning January 30, 2012, FFD occurrences need to be recorded and archived. The FAA also released new safety policies on FFDs in December 2011, specifically entitled ATO Occurrence Reporting and ATO Quality Assurance Program. Under these new policies, ATO will investigate and retain data on all FFD reports in order to identify trends and provide analysis. In addition, the Office of Chief Counsel is reviewing new proposals to initiate radar sharing capabilities between San Juan and the Dominican Republic. These policies and agreements will be a template for a similar future radar sharing initiative with St. Maarten. The "shout line" between San Juan and Santo Domingo facilities was to be established in early 2012, but has not yet been installed.<sup>2</sup> Although the agency has taken steps to address this issue, FFDs continue to occur in FAA San Juan's airspace.

### *The Whistleblower's Comments*

Mr. Diaz declined to comment on the report.

### *Special Counsel's Comments*

I have reviewed the original disclosures and the agency report. I have determined that the agency report contains all of the information required by statute, and that the findings of the agency head appear to be reasonable. Notwithstanding this determination, I find it troubling that Mr. Diaz was compelled to file a second disclosure with OSC in order to refocus DOT's attention on implementing promised plans of action on FFDs from two years prior, including the implementation of a database, the installation of a "shout line," and changes in FFD policies and

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<sup>2</sup> "Shout lines" act as intercoms between facilities. Although FAA San Juan can telephone these foreign facilities, making contact with these facilities is sometimes delayed until someone answers the telephone line. A "shout line" quickly informs the foreign facility that immediate attention is required by U.S. air traffic control to identify and manage a flight route.

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bilateral agreements. While I am encouraged that the agency appears to be making progress in these areas as a result of Mr. Diaz's second disclosure, I am requesting that DOT provide me with an update in three months regarding its progress on these ongoing important matters.