



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

February 4, 2013

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

Re: OSC File No. DI-10-0680

Dear Mr. President:

On May 8, 2012, pursuant to 5 U.S.C. § 1213(e)(3), I sent to you seven reports prepared by the Department of Transportation (DOT) based on whistleblower disclosures regarding various safety lapses at major airports and Federal Aviation Administration (FAA) facilities. I consolidated those reports because of their close proximity in time and to highlight FAA's pattern of insufficient responses to safety concerns. As noted in my May 8 letter, I requested that DOT provide updates on the corrective actions outlined in the reports in several of those matters.¹ I have received an update from DOT regarding the status of corrective actions in the above-referenced matter, involving allegations made by Dean Iacopelli, an Air Traffic Control Specialist at FAA's New York Terminal Radar Approach Control, Westbury, New York. He disclosed that an air traffic departure procedure posed a safety hazard for aircraft departing Teterboro Regional Airport (Teterboro) and arriving at Newark International Airport (Newark). A copy of the update is enclosed. Mr. Iacopelli declined to provide comments on the update.

The agency's update reflects that the modified departure procedure implemented by FAA in October 2011 to ensure adequate separation between aircraft remains in place. The update further indicates that FAA continues to evaluate the modified procedure. It appears that the corrective action taken by DOT has resolved the safety hazard associated with the procedure, and I am satisfied with the action taken.

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

¹ We have received all of the updates requested from DOT in my May 8, 2012, letter. I have transmitted updates to you in OSC File No. DI-11-0747, concerning Foreign Facility Deviations in Puerto Rico, and OSC File No. DI-10-2602, concerning unsafe modifications to night vision equipment on emergency medical service helicopters. The remaining updates are under review by OSC.

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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).

In 2010, Mr. Iacopelli disclosed that an air traffic departure procedure, known as the Dalton Departure Procedure, posed a safety hazard by allowing aircraft departing Teterboro to fly directly below, and in close proximity to, heavy jet aircraft on final approach to Newark without providing the necessary wake turbulence separation between aircraft.² He had reported these concerns to FAA in early 2009. FAA conducted an investigation and found problems with the procedure and recommended various corrective measures. Mr. Iacopelli stated that the proposed measures were not implemented but, in any case, the recommendations did not adequately resolve the safety hazards associated with a loss of separation between aircraft. He noted a near-collision in December 2009 involving an aircraft using the procedure. He contended that FAA placed the interests of increasing capacity over ensuring safety by allowing the procedure to continue.

OSC referred Mr. Iacopelli's allegations to Secretary of Transportation Ray LaHood for investigation. DOT's report substantiated the allegation that the Dalton Departure Procedure posed a potential safety hazard. The report revealed a significant increase in the number of incident reports on the procedure over the last decade, as well as four pilot deviations in the last few years, one of which involved a near-collision in which the aircraft were within 200 vertical feet of each other and less than three-quarters of a mile apart laterally. The report also revealed that numerous incidents were not reported. It further confirmed Mr. Iacopelli's allegation that FAA took no action to resolve the safety issues following the internal investigation in 2009. Despite these findings, DOT found "no substantial evidence" that pilots flying the procedure experienced safety issues as a result of wake turbulence and reported that no further corrective action would be taken until an additional audit was completed in March 2011.

Following the audit, which confirmed ongoing safety issues, FAA took some corrective action. In May 2011, it issued a revised notice to include a wake turbulence warning and loss-of-communications procedures, and in June 2011, published an updated procedure adding a distance restriction on the westbound right turn. However, FAA maintained that the procedure was a "safety enhancement."

² Wake turbulence is caused by a pair of counter-rotating vortices trailing from the wing tips of an aircraft in flight. Vortices from large aircraft pose problems to smaller encountering aircraft. The wake of these aircraft can impose rolling moments exceeding the control authority of the encountering aircraft. Further, turbulence generated within the vortices encountered at close range can damage aircraft components and equipment and cause personal injuries. See FAA Advisory Circular 90-23F, Aircraft Wake Turbulence.

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Finally, in October 2011, FAA modified the procedure in a manner that provided a gap in air traffic to ensure separation between aircraft departing Teterboro and arriving at Newark. Mr. Iacopelli advised OSC of this corrective action, which was taken in response to the determination by FAA's Air Traffic Safety Action Program Event Review Committee that the procedure posed a safety hazard. In my May 8 letter, I noted that it was disturbing that FAA failed to resolve these issues for more than two years and that, even after having done so, it failed to explain its contradictory prior assessment.

DOT provided the enclosed update on September 14, 2012. The update indicates that the modified departure procedure implemented by FAA in October 2011 to ensure adequate separation between aircraft remains in place and continues to be evaluated. DOT further notes that there have been no pilot deviations reported since the amended procedure adding a distance restriction on the westbound turn was published in June 2011. The update also indicates that FAA continues to work with union leaders to identify operational solutions that incorporate safety and efficiency at Teterboro and Newark.

As stated in my May 8, 2012, letter, by law, I am charged with providing you and Congress a report on the resolution of disclosures. In this case, it appears that the corrective action taken by FAA, specifically the implementation of the amended and modified procedure that ensures adequate separation between aircraft, has resolved the safety issues associated with the procedure. I am satisfied with the action taken to correct the safety problems. OSC does not have a formal continuous oversight role; any further oversight action rests with the White House and Congress.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent copies of DOT's update to the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure. We have also placed the update in our public file, which is available online at www.osc.gov, and closed our file in this matter.

Respectfully,



Carolyn N. Lerner

Enclosure