



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

November 19, 2019

The President
The White House
Washington, D.C. 20050

Re: OSC File No. DI-17-5857

Dear Mr. President:

I am forwarding reports from the Department of Transportation in response to disclosures of wrongdoing at the Federal Aviation Administration (FAA), Jacksonville Air Route Traffic Control Center (ARTCC), Hilliard, Florida. The whistleblower alleged that: 1) air traffic controllers do not comply with FAA rules when transferring aircraft from one airspace sector to another; and 2) rather than address controllers' noncompliance with the rules, ARTCC managers implemented a change in standard operating procedures (SOPs) that creates hazardous air traffic conditions. FAA substantiated both allegations, but has not modified the SOPs. Based on FAA's investigation and subsequent responses to OSC's questions, I have determined that the agency's response does not appear reasonable. In accordance with 5 U.S.C. § 1213(e), I am providing a summary of the reports, the whistleblower's comments, and my findings.¹

The Whistleblower's Allegations

The whistleblower, [REDACTED], who consented to the release of his name, is an air traffic control specialist (controller). [REDACTED] alleged that some controllers do not comply with the coordination rules required by FAA Joint Order (JO) 7110.65Y when transferring aircraft between certain sectors in the Gulf and Central areas.² In February 2018, following a safety incident review and direction from the regional office to resolve the coordination problems, managers implemented a change in the ARTCC's SOPs for altitude assignments to reduce the coordination required between the problematic sectors. [REDACTED] alleged that ARTCC managers implemented this SOP

[REDACTED] [REDACTED] allegations were referred to Secretary of Transportation, Elaine L. Chao, on June 12, 2018, pursuant to 5 U.S.C. § 1213(c) and (d). FAA's Office of Audit and Evaluation conducted the investigation. Secretary Chao reviewed and signed the agency report.

²The air traffic rules in Order 7110.65Y require controllers to ensure that the necessary coordination is accomplished before allowing aircraft under their control to enter another controller's airspace. Generally, the transferring controller must complete a radar handoff and obtain the receiving controller's approval before making any changes to the aircraft's flight path, altitude, or speed during handoff or after acceptance by the receiving controller. Before transferring communications, the transferring controller is required to ensure that any potential conflicts are resolved and coordination has been completed with all controllers of airspace through which the aircraft will pass.

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change, which alters air traffic flow and creates hazardous air traffic conditions, rather than address controller noncompliance with FAA rules.

██████████ explained that the pre-February 2018 SOPs established an air traffic flow for the Gulf and Central areas transferring all northbound aircraft between sectors at even altitudes and southbound aircraft at odd altitudes. The February 2018 SOP change created an exception for air traffic between the sectors where the coordination violations were occurring. Traffic between the excepted sectors now flows opposite of the general traffic flow of the other sectors. ██████████ asserted that this change creates a safety hazard, because aircraft transferring between the excepted sectors may be in conflict with aircraft flying at the same altitude within ten miles, or approximately one to two minutes, of the sector boundaries. He asserted that the SOP change allows less time for controllers to resolve conflicts, *i.e.*, prevent a loss of separation or midair collision and does not account for deviations due to weather conditions.

The Agency's Investigation

The investigation substantiated both of ██████████ allegations. FAA found multiple instances in which controllers did not comply with coordination rules during the transfer of aircraft from one sector to another, and management failed to appropriately document these events or take action to address controller performance. All employees interviewed by FAA stated there was a “culture of noncompliance with certain elements of required coordination.” The report states that this allegation was previously substantiated in February 2018, after ██████████ filed an internal FAA hotline complaint. However, ARTCC management did not take effective corrective action, and failures to coordinate persisted.

FAA also determined that in February 2018, ARTCC managers implemented a change in SOPs that creates hazardous air traffic conditions, rather than address controller noncompliance with coordination rules. FAA found that the change in SOPs requires less frequent coordination but creates a safety hazard by moving points of aircraft conflict very close to sector boundaries, giving controllers very little time and space to react should a conflict occur. FAA interviewed several supervisors and controllers, all of whom stated that the SOP change was “hazardous” or “introduced risk.” The supervisors of the affected sectors stated they had no knowledge or involvement in the SOP change until its implementation. FAA found no evidence that ARTCC managers were directed or required to change the SOP as the acting air traffic manager (ATM) asserted. Further, FAA determined that ARTCC managers did not conduct the Safety Risk Management (SRM) assessment required by JO 1000.37A, and therefore did not incorporate an analysis of potential hazards and appropriate mitigations into the February 2018 SOP change.

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Based on the findings, FAA recommended that the Air Traffic Organization (ATO) immediately conduct the required SRM analysis to determine the potential hazards and appropriate mitigations for the February 2018 SOP change. FAA also recommended a change in ARTCC management. The ATO concurred with both of these recommendations. The acting ATM was reassigned to another facility, and a new permanent ATM was assigned to the ARTCC. Headquarters Air Traffic Services also conducted a management inquiry to review ARTCC management oversight and accountability issues. Additional corrective actions stemming from that review included training in the safety management system and individual performance management.

In April 2019, OSC requested an update on the status of the required SRM analysis. FAA provided an SRM form, dated August 2018, documenting the ARTCC's review of the February 2018 SOP change. The form stated "[n]o hazards were identified during this analysis" and provided the same rationale the acting ATM offered to FAA investigators. The form reflected that the acting ATM who was removed from the ARTCC was an SRM panel member. The whistleblower confirmed that the ARTCC continued to use the February 2018 SOPs with no modifications.

As FAA's response reflected that the ARTCC had maintained, without modification, the February 2018 SOPs that FAA determined were hazardous, OSC sought further clarification from FAA. The ARTCC conducted a new SRM analysis. In August 2019, FAA submitted a supplemental report confirming that the ARTCC still has not modified the February 2018 SOPs. The supplemental report states that the ARTCC completed a new SRM analysis and determined that the February 2018 SOP change does not introduce any new hazards or change the current risk-level. It further states that the SOP change brought the facility into compliance with the JO 7110.65Y altitude assignments. The supplemental report does not explain the discrepancy between the ARTCC's determination and FAA's findings and conclusion that the SOP change creates hazardous air traffic conditions.

The Whistleblower's Comments

The whistleblower was pleased with the investigation and findings, which substantiated his allegations, and he believes that the recommendations were appropriate. However, he is "gravely disappointed" that FAA has chosen to ignore the unsafe procedures confirmed by the investigation, rather than address the "culture of noncompliance." He asserted that FAA's statement that the February 2018 SOP change brought the ARTCC into compliance with the JO 7110.65Y altitude assignments is misleading. He explained that the original SOPs were designed to facilitate the funnel effect of aircraft flying into Florida and purposely deviated from the JO 7110.65Y standard for altitude assignments, because the standard was unsafe and inefficient for air traffic in this airspace. [REDACTED] further commented that FAA's statement that the SOP change limited the aircraft conflict points to eastbound traffic flow is false and is

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contradicted by the findings in the report. The whistleblower stated that, aside from new managers, nothing has changed. He continues to observe controller noncompliance with no accountability, and the ARTCC continues to use the SOPs that FAA confirmed pose a hazard.

The Special Counsel's Analysis and Findings

I have reviewed the original disclosure, agency reports, and whistleblower comments. FAA substantiated the whistleblower's allegations that the ARTCC implemented a change in SOPs that creates hazardous conditions, rather than address controllers' noncompliance with FAA rules. Despite these troubling findings, however, the supplemental report reflects that FAA has failed to take appropriate corrective action. The Safety Risk Management process is not merely an exercise in completing forms. It involves a critical safety analysis to identify and mitigate hazards posed by air traffic procedures. It is compelling that every supervisor and controller interviewed by FAA stated that the February 2018 SOP change is hazardous or introduces risk, yet FAA continues to use these procedures without modification. The whistleblower raised valid points in his comments, including those regarding FAA's questionable justification in the supplemental report for the continued use of procedures found to be hazardous. In light of the confirmed hazardous conditions created by the February 2018 SOP change, FAA's decision, and the explanation provided, to maintain these SOPs without mitigation of the hazards do not appear reasonable. I urge FAA to reconsider its position and take immediate corrective action.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the agency reports, and whistleblower's comments to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. I have also filed redacted versions of these documents and the § 1213(c) referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures