



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

September 23, 2019

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

Re: OSC File No. DI-19-2964

Dear Mr. President:

I am forwarding a report from the Department of Transportation (DOT), involving allegations that numerous Federal Aviation Administration (FAA) Operations Aviation Safety Inspectors (ASIs) were not appropriately accredited to certify pilots or to assess pilot training on procedures and maneuvers.¹ These serious allegations, which were substantiated by an agency investigation, may have significant bearing on the competency of pilots certified to fly several aircraft, including the Boeing 737 MAX and the Gulfstream VII.

The FAA's response to congressional inquiries regarding these allegations, which were included as part of FAA's report to the Office of Special Counsel (OSC), also raises significant concerns. As part of a separate investigation, OSC obtained internal FAA communications suggesting that official agency responses regarding the qualifications of ASIs, including those associated with the 737 MAX, was not in line with the independent investigation's findings. FAA's official responses to Congress appear to have been misleading in their portrayal of FAA employee training and competency.

The Allegations

The whistleblower, [REDACTED], an Aviation Safety Inspector who consented to the release of his name, alleged serious deficiencies in ASI training and certifications, which affected their ability to participate in Flight Standardization Boards (FSB). Notably, [REDACTED] raised concerns involving the qualifications of Aircraft Evaluation Group (AEG) ASIs, including those who may have sat on FSBs for the Boeing 737 MAX and the Gulfstream VII.

[REDACTED] explained that FSBs, which are staffed by ASIs, are critically important to aviation safety as they ensure flight crewmember competency to operate the aircraft by developing pilot type ratings. These ratings ensure that aircraft are flown only

¹The whistleblower's allegations were referred to Secretary of Transportation Elaine Chao pursuant to 5 U.S.C. § 1213(c) and (d). DOT General Counsel, Steven G. Bradbury, was delegated the authority to review and sign the agency report.

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by pilots with appropriate experience and training. Beyond this, ██████ noted that ASIs are responsible for assessing pilot training on aircraft procedures and maneuvers.

█████ asserted that pursuant to FAA Orders, ASIs must have formal classroom training as well as On-the-Job Training (OJT). *See* FAA Order 8900.1 Volume 5, Chapter 1, Section 2. The first part of this section states ASIs *must* complete formal training as well as OJT and cites to another FAA Order which states OJT “does not substitute for required classroom training.” *See* FAA Order 3140.20C.

In sum, ██████ provided OSC with the following specific allegations, which were referred to Secretary of Transportation Elaine Chao for investigation:

- ASIs on the Flight Standardization Board for the Gulfstream VII lacked required OJT;
- 11 out of 17 Operations ASIs in the Seattle AEG had not completed OJT and other formal training, and this may include ASIs on the FSB assigned to review and certify the Boeing 737 MAX;
- Four ASIs in the AEG Long Beach Office and one ASI in the AEG Kansas City Office have not completed required formal training;
- OJT for ASIs in AEG does not provide OJT tasks required to issue certain types of ratings in violation of FAA orders;
- AEG Offices are not completing Qualification Assessments Required by FAA Order 3410.26, which requires review of ASI qualifications when they transfer between specialties; and
- The unqualified inspectors at issue in this matter administered hundreds of certifications, known as “check rides,” that qualified pilots to operate new or modified passenger aircraft.

FAA’s Congressional Communications Regarding Accreditation and Training

Prior to OSC’s referral of these allegations to Secretary Chao on April 30, 2019, the Senate Committee on Commerce, Science, and Transportation (the Committee) made inquiries with the FAA concerning ASI and FSB training and certifications, with a focus on inspector certifications for the 737 MAX FSB. On April 4, 2019, the FAA provided an interim response to the Committee. In this response, the agency stated that the “allegations were specific to [AEG]- and not about inspectors with the [FSB] for the Boeing 737 MAX, who have their own specific training requirements. Further, we can confirm that all of the flight inspectors who participated in the Boeing 737 MAX Flight Standardization Board certification activities were fully qualified for these activities.”

This statement appears inaccurate, however, as both the AAE investigation and the evidence obtained by OSC shows the 737 MAX FSB was staffed by undertrained AEG ASIs. Further, the 737 MAX ASIs do not have their own unique training

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requirements and were apparently not fully qualified to participate in the FSB certification duties. Finally, while asserting that there were no issues with the 737 MAX FSB, the letter noted that “particular, different concerns” regarding other ASI’s were substantiated.

On May 2, 2019, the agency provided a supplemental response to the Committee. FAA reiterated that ASIs working on 737 MAX certification activities were fully qualified. The letter further states, in an apparent contradiction of its April 4 letter, that “upon review, the FAA determined those ASIs who worked on other aircraft were in fact qualified for the activities they performed.”

The FAA based this conclusion on an inconsistency in FAA Order 8900.1 which FAA management resolved in favor of relaxing safety inspector training requirements and allowing inspectors to obtain either formal classroom training or OJT. As noted above, FAA Order 8900.1 and FAA Order 3140.20C require both types of training. Notwithstanding these requirements, the agency cites to a subsequent section of FAA Order 8900.1, which in contradiction to language directly above it, states that ASIs must meet only one of the listed conditions, which include formal classroom training, OJT, or a written waiver of training for proper certification. According to this interpretation, an ASI who has waived out of training has the same authority to issue pilot certifications as an ASI who has completed extensive classroom education and OJT.

The Agency Response to OSC

OSC referred [REDACTED] allegations on April 30, 2019. On May 14, 2019, DOT responded to OSC by transmitting documents generated by “FAA’s Office of Audit and Evaluation (AAE) and addressed as appropriate by FAA.” As these documents, including the aforementioned congressional correspondence, were provided to OSC in response to a referral made under 5 U.S.C. § 1213, they constitute the agency’s report and thus were reviewed to determine whether the findings appear reasonable. The documents, which were accompanied by a cover letter signed by DOT General Counsel Steven G. Bradbury, included:

- Committee Chairman Roger F. Wicker’s initial inquiry to FAA;
- FAA’s April 4, 2019 interim response to Chairman Wicker;
- FAA’s May 2, 2019 final response to Chairman Wicker; and
- The AAE report and management response.

I note that despite FAA’s assertions in its May 2, 2019 letter to the Committee, the investigation conducted by AAE, and provided to OSC, established that Operations ASIs have not completed required formal training and required OJT enabling them to

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conduct check rides.² Significantly, the investigation determined that 16 out of 22 ASIs, or 73 percent of inspectors, including those at Seattle AEG³, had not completed formal training classes. The investigation found that these employees were not even qualified to enroll in remedial training classes because their formal training was so deficient. This information directly contradicts FAA's statements to the Committee.

These training issues were particularly acute for the Gulfstream VII Flight Standardization Board, which was tasked with developing pilot certification criteria for this aircraft. The report noted that "the findings are very serious and could have far-ranging ramifications regarding the type ratings of hundreds of certificate holders." Additionally, the report found that AEG management was not correctly applying training requirements, and FAA management was aware of training shortcomings since July 2018 and management "failed to adequately address the missing training requirements for the 16 Operations ASIs identified."

Despite being one of the core allegations by the whistleblower, the AAE report is silent regarding the accreditation and training issues and the applicability to pilots certified to fly the 737 MAX. However, the agency's correspondence to the Committee repeatedly asserts that Operations ASIs working on the 737 MAX FSB were fully qualified and had their own "specific training requirements" despite the absence of evidence confirming this assertion.

Contradictory Internal FAA Communications

During a related and ongoing OSC investigation conducted into possible prohibited personnel practices committed against ██████████, OSC obtained internal FAA communications and conducted employee interviews, which adduced credible information directly contradicting the agency's assertions to the Committee. This information specifically concerns the 737 MAX and casts serious doubt on the FAA's public statements regarding the competency of agency inspectors who approved pilot qualifications for this aircraft. With the consent of involved individuals, this material was provided to OSC's Disclosure Unit to assist in its review of FAA's report and to better inform my findings in this matter.

This information provided to OSC indicates that AAE determined that the ASIs assigned to the 737 MAX had not met qualification standards. Specifically, these ASIs had not received formal classroom training as required by FAA Order 8900.1 and FAA Order 3140.20C. According to witness interviews, this determination was supported by FAA's Office of Safety Standards, General Aviation and Commercial Division, who resolved the contradiction in FAA Order 8900.1 in favor of requiring additional training.

²This report was also appended to the FAA's May 2, 2019 letter to the Committee.

³ASIs at the Seattle AEG office staffed an FSB that certified the 737 MAX.

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This information does not appear in the final AAE report and directly contradicts the agency's statements to the Committee.

Despite AAEs independent, evidence-based determination concerning the qualifications of 737 MAX ASIs, FAA's communications to Congress appear to reject the factual findings of highly-qualified and independent individuals who investigated these matters. By statute, AAE serves as an independent avenue for oversight and is tasked with conducting objective, impartial investigations and evaluations of such allegations. Emails obtained by OSC show serious concerns within AAE regarding the veracity of the agency's public statements, particularly after the FAA's final response was transmitted to the Committee. Instead of basing FAA's public statements on the independent investigations findings, the agency appears to have relied upon a questionable policy interpretation generated by FAA's Aircraft Evaluation Division that resolved the above-referenced contradiction in FAA Order 8900.1 in favor of less inspector training. Further, the statement that "FAA determined those ASIs who worked on other aircraft were in fact qualified for the activities they performed" is directly contravened by AAE's report that was enclosed with FAA's May 2, 2019 response.

The Whistleblower's Comments

█ comments closely align with the original position of AAE investigators. With respect to the April 4, 2019 letter, he noted that this communication was silent with respect to special emphasis training necessary for the 737 MAX's Maneuvering Characteristics Augmentation System (MCAS), which has been implicated in the crashes of Lion Air Flight 610 and Ethiopian Airlines Flight 302. █ further highlighted the inconsistent statements in this letter concerning 737 MAX ASI training, correctly noting that these inspectors were also FSB members and belonged to AEG. He stated the assertion that these individuals "have their own, specific training requirements" was incorrect.

█ also took exception to the characterization of FAA's findings in the May 2 letter. He also asserted that a statement concerning the cessation of Gulfstream VII FSB work was simply not true. According to █, no work stoppage occurred. He gave credit to AAE for concluding that almost 75 percent of operations ASIs were not properly trained or credentialed and expressed his incredulity that the agency had not taken these matters more seriously. █ further noted that at present, the FAA has enrolled the majority of untrained ASIs in remedial classes, which he believes undermined the agency's position.

The Special Counsel's Analysis and Findings

The FAA is entrusted with a critically important safety and oversight role of civil aviation activities and technology. Its position in the present matter suggests that, rather

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than taking ownership and accountability for confirmed systemic deficiencies, the FAA has not appropriately fulfilled its safety mandate.

First FAA's assertion that ASIs on the 737 MAX FSB had their own "specific training requirements," which are different from other AEG Operations ASIs, is misleading. According to [REDACTED] the only difference in training for 737 MAX ASIs was a limited training module these individuals completed, and he noted they still lacked required foundational training. As seen in internal communications, AAE also confirmed that the 737 MAX FSB members lacked the formal training that their positions required.

In his comments, [REDACTED] notes that FAA's letters obfuscates the fact that 737 MAX ASIs were also FSB members and belonged to AEG, and the questionable assertion that they had their own specific training requirements diverts attention away from the likely truth of the matter: that they were neither qualified under agency policy to certify pilots flying the 737 MAX nor to assess pilot training on procedures and maneuvers.

Next, I note that FAA's April 4 letter contains statements that were later contradicted in its May 2 letter, and which were similarly discredited by AAE's own investigation into these matters. It is particularly shocking that the agency asserted that "the FAA determined those ASIs who worked on other aircraft were in fact qualified for the activities they performed," when prior correspondence states the opposite and an official independent internal investigation into these matters—which was attached to the May 2 letter—directly refutes this conclusion. The FAA now seems to adopt a position that encourages less qualified, accredited, and trained safety inspectors. Despite these public assertions, I note that FAA has enrolled affected ASIs in remedial training, which suggests they have not yet been properly trained.

The agency's position, as evidenced in its May 2 letter to the Committee, is that contradictions in FAA Order 8900.1 are resolved by management in favor of allowing objectively less qualified inspectors to sit on FSBs. These FSBs develop credentialing and training requirements for aircraft and pilots, a vitally important component of ensuring a safe airspace environment. Beyond this, these ASIs assess pilot training for procedures and maneuvers. Given the important safety role of FSBs, and the need for the most qualified inspectors to participate, it is difficult to understand how less trained and educated safety inspectors are permissible.

I further note that deficiencies in crew competency and procedures associated with the MCAS system are thought to have contributed to the two above-referenced disasters cited in [REDACTED] comments, which killed almost 350 people. These incidents resulted in a worldwide grounding of this airliner and are closely linked with crew training resources and familiarity with operational procedures. These items were the

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chief responsibility of the 737 MAX FSB, which was apparently staffed by underqualified safety inspectors.

In this matter, AAE's report confirmed that 16 out of 22 ASIs lacked proper training and accreditation and internal FAA communications and OSC witness interviews indicate that this number included members of the 737 MAX FSB. Beyond this, AAE's investigation confirmed serious problems in the certification of hundreds of Gulfstream VII pilots due to improperly credentialed ASIs. The FAA's failure to ensure inspector competency for these aircraft subjected the flying public to substantial and specific danger.

Accordingly, I question the conduct of the agency and have determined that the agency's findings, which rely on conflicting documents, do not appear reasonable. In coming forward with these allegations, [REDACTED] made a commendable effort to ensure public safety. I strongly urge Congress to continue their already robust oversight efforts in this area. Going forward, the agency must also ensure that safety inspectors certifying aircraft, including those participating in the recertification of the 737 MAX, are fully qualified to do so.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, a copy of the agency report, and the whistleblower's comments 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. I have also filed redacted copies of these documents in OSC's public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures