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September 30, 2010

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

Re: OSC File No. DI-09-0683

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel (OSC) is forwarding to you agency reports responding to a disclosure received from Ms. Connie Ingram, a former Drug Abatement Inspector at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Office of Aerospace Medicine, Drug Abatement Division (Drug Abatement). Ms. Ingram disclosed allegations concerning inadequate procedures implemented by Drug Abatement for investigating violations of FAA's drug testing program regulations, which resulted in a substantial and specific danger to public safety. Ms. Ingram consented to the release of her name.

On April 29, 2009, OSC referred Ms. Ingram's allegations to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary LaHood delegated responsibility for investigating the matter to DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC), with investigative oversight by DOT's Office of Inspector General. OSC received the agency's report on March 18, 2010, and a supplemental report on May 27, 2010. Ms. Ingram did not provide comments on the agency reports. As required by law, 5 U.S.C. § 1213(e)(3), we are now transmitting the agency reports to you.

Ms. Ingram disclosed an incident involving an airframe and power plant (A & P) mechanic who continued to perform safety-sensitive maintenance work for a certificate holder in Alaska after he tested positive for cocaine in a pre-employment drug test conducted by another certificate holder. She alleged that the mechanic continued to perform this work even after the positive drug test result was reported to, and investigated by, Drug Abatement. Ms. Ingram contended that this incident highlighted deficiencies in the procedures implemented by Drug Abatement for investigating positive drug test results reported by certificate holders pursuant to FAA's drug testing program regulations, set forth in 49 C.F.R. part 40 and 14 C.F.R. part 121, Appendix I.<sup>1</sup>

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<sup>1</sup>Under 49 C.F.R. § 40.23 and 14 C.F.R. part 121, Appendix I, ¶ V(E), certificate holders are required to remove employees who test positive for drugs from safety-sensitive functions until they have successfully completed the return-to-duty process. However, the regulations do not require revocation of a mechanic's A & P certificate based on a single positive drug test result; nor is the certificate holder required to report a positive drug test result to Drug Abatement, unless the employee holds an airman's medical certificate under 14 C.F.R. part 67.

In this case, the positive drug test result was reported to Drug Abatement based on the mechanic's possession of an airman's medical certificate, which is required for pilots, but not for mechanics. The investigation conducted by Drug Abatement, pursuant to FAA Order 9120.1A, "Drug and Alcohol Compliance and Enforcement Inspector Handbook," resulted in the revocation of the mechanic's airman's medical certificate. His A & P certificate, however, was not suspended or revoked. Ms. Ingram contended the investigation ended there, without further inquiry to ensure that this mechanic was not employed by another certificate holder and performing safety-sensitive work without completing the required return-to-duty process. Ms. Ingram alleged that it was not until after a November 1, 2008, accident involving an aircraft operated by the certificate holder employing this mechanic that FAA discovered the mechanic was working in violation of the drug testing program regulations. Ms. Ingram did not allege a violation of the regulations or failure to adhere to procedures by an FAA employee. Rather, she contended that this incident resulted from deficiencies in Drug Abatement's investigation procedure that prevented FAA from determining the employment and duty status of this mechanic.

The agency report states that the investigation did not substantiate most of Ms. Ingram's allegations. In fact, however, the report largely confirms Ms. Ingram's account of the incident involving the mechanic and Drug Abatement's investigation following the report of his positive drug test result. Moreover, the report confirms Ms. Ingram's principal allegation that this incident highlighted critical deficiencies in the procedures implemented by Drug Abatement for investigating violations of FAA's drug testing program regulations. ODAPC concluded that some of these deficiencies pose safety concerns and recommended significant corrective measures to address them.

The report substantiates Ms. Ingram's allegation that it was not until after the aircraft accident on November 1, 2008, that FAA discovered the subject mechanic was employed by the certificate holder of the aircraft involved in the accident and had continued to perform safety sensitive maintenance work in violation of the regulations. The report also confirms that this mechanic had performed maintenance work on the aircraft that crashed prior to the accident. However, ODAPC did not substantiate Ms. Ingram's assertion that the crash might have been avoided had FAA revoked the mechanic's A & P certificate or reported the positive drug test result to his employer. ODAPC found that the preliminary information from the accident investigation by the National Transportation Safety Board (NTSB) and conclusions drawn from the FAA's Flight Standards crash investigation did not show a causal connection between this mechanic and the crash.<sup>2</sup>

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<sup>2</sup>According to the NTSB's Probable Cause Report for this accident, NTSB determined the probable cause of the crash to be "the flight crew's inability to adjust/increase power to the right engine during the landing approach due to an in-flight disconnect of the engine power control linkage, resulting in a loss of control of the airplane." The NTSB report notes that the right engine was installed on the aircraft on August 26, 2008, and two maintenance inspections were conducted in October prior to the crash. The report further states that "[s]ince the bolt that connects the [propeller pitch control] linkage to the splined shaft was not found, it is unknown if the bolt failed or if maintenance personnel failed to properly tighten/torque the bolt at installation. The report (NTSB ID. No. ANC09LA009), adopted March 3, 2010, is posted on the NTSB website at [www.ntsb.gov](http://www.ntsb.gov), in the Aviation Accident Database.

The report indicates that in response to learning that the mechanic was performing safety-sensitive work in violation of the regulations, Drug Abatement initiated an investigation and issued an emergency order of revocation of the mechanic's A & P certificate on May 8, 2009. The delay in issuing the revocation was attributed to the difficulty in obtaining a permanent address for the mechanic. Critically, the report states that the mechanic had not surrendered his revoked A & P certificate as of January 2010. Explaining that the mechanic might present this certificate, which would appear valid, ODAPC concluded that the mechanic still poses a potential threat to prospective employers.

OSC followed up with DOT regarding this matter, and DOT provided a supplemental report. The supplemental report states that the mechanic still had refused to surrender his revoked certificate as of May 2010. As a result, FAA initiated a civil penalty action and is pursuing enforcement against the mechanic. The supplemental report further indicates that, until FAA can implement the recommendations made by ODAPC to address this type of situation, discussed below, FAA has a mechanism for prospective employers to check the status of a mechanic's certification on FAA's website.<sup>3</sup>

As noted, the agency report substantiates Ms. Ingram's primary allegation that the incident involving the mechanic highlighted deficiencies in Drug Abatement's procedures for investigating violations of FAA's drug testing program regulations, and that some of these deficiencies pose a potential threat to safety. The report acknowledges that Ms. Ingram raised a valid point concerning FAA's ability to report positive drug test results to multiple employers. It states that, in November 2008, FAA expanded its routine uses for information protected under the Privacy Act to allow FAA to disclose drug and alcohol violations to any employer for whom a safety-sensitive employee works. ODAPC found, however, that Drug Abatement staff was not familiar with the change in policy. Thus, ODAPC recommended that Drug Abatement provide further internal guidance and training on the new routine use policy and procedures for notifying employers. FAA represented that it has reiterated the new policy and will conduct recurrent training on the procedures.

Further, ODAPC concluded that disparities between the requirements for pilots and mechanics concerning certificate verification and reporting of drug and alcohol violations also pose a "potential threat to safety." The report states that, unlike the regulations for pilots, there is no requirement that a hiring employer verify the status of a mechanic's A & P certificate with FAA. In addition, while positive drug test results and alcohol violations for pilots must be reported to FAA for appropriate certificate revocation action, there is no reporting requirement for mechanics. Further, the current regulations do not authorize FAA to take revocation action against a mechanic's A & P certificate based on a positive drug test result or alcohol violation unless the mechanic was performing safety-sensitive duties at the time of the test. ODAPC

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<sup>3</sup>The website address provided in the supplement report for FAA's airmen's certification information is incorrect. The webpage may be accessed at [www.faa.gov/licences\\_certificates/airmen\\_certification](http://www.faa.gov/licences_certificates/airmen_certification). Review of the certificate information for the subject mechanic in this matter revealed the following: Under "Medical," it states "No medical available." Under "Certificates" the individual's private pilot's certificate appears valid. For his A & P mechanic's certificate, the report instructs the viewer to contact the Airmen Certification Branch at a toll-free number.

determined that the disparate requirements for pilots and mechanics "seem to be limitations in the FAA's safety program," and recommended that FAA re-examine its position on these issues. FAA represented that all of these issues will receive full consideration during Drug Abatement's upcoming Rulemaking Project, which is described as a complete overhaul of the drug and alcohol rules.

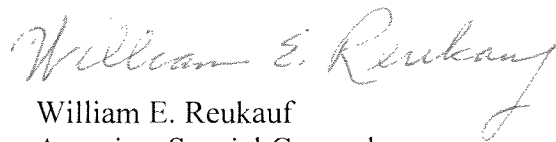
In addition, the report further reflects that, in response to ODAPC's findings of procedural deficiencies, Drug Abatement has made improvements to its investigation procedures. While ODAPC found that the Drug Abatement investigator queried FAA's certificate databases and eventually made "verbal contact" with the mechanic, these procedures were not included in Drug Abatement's standard operating procedures. Thus, based on ODAPC's recommendations, Drug Abatement has incorporated into its written procedures the requirements that investigators:

- 1) query all FAA databases to determine whether an individual holds multiple certificates; and
- 2) during an investigation, ask each employee if he/she is currently working for other employers, and inform a supervisor if the employee responds affirmatively.

OSC has reviewed the original disclosure and the agency's reports. Based on that review, OSC has determined that the agency's reports contain all of the information required by statute and that the findings of the agency head appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency's reports to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. OSC has also filed copies of the reports in our public file, which is available on-line at [www.osc.gov](http://www.osc.gov), and closed the matter.

Respectfully,



William E. Reukauf  
Associate Special Counsel

Enclosures