



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

March 18, 2010

William E. Reukauf  
Associate Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 218  
Washington, DC 20036

Re: OSC File Nos. DI-09-0683

Dear Mr. Reukauf:

I am responding to your letter of April 29, 2009, which referred for investigation concerns raised by Connie Ingram, a Drug Abatement Inspector at the Federal Aviation Administration's (FAA) Central Compliance and Enforcement Center, Fort Worth, Texas, that FAA is relying on deficient procedures for investigating positive drug test results for certificated mechanics. Ms. Ingram contends that an aircraft accident that occurred in November 2008, in Toksook Bay, Alaska, may have been caused by faulty maintenance performed by a certificated mechanic who continued to perform safety-sensitive maintenance work after testing positive for cocaine on a pre-employment drug test conducted by a different aviation employer.

I delegated responsibility for investigating these matters to the Department's Office of Drug and Alcohol Policy and Compliance (ODAPC), with investigative oversight by the Office of Inspector General. The ODAPC has concluded its investigation and provided me the enclosed memorandum report containing its findings and recommendations.

The ODAPC investigation was unable to substantiate most of the allegations raised in Ms. Ingram's complaint. Regarding the specific mechanic at issue, the investigation found that FAA took appropriate revocation action against the mechanic's airframe and power plant (A&P) certificate upon discovering that he was performing as a mechanic for one employer at the time he tested positive on a DOT pre-employment drug test for another. The FAA investigator also queried the appropriate databases. Also, according to the National Transportation Safety Board and FAA, it appears that this mechanic did not have a causal connection to the Toksook Bay aircraft accident. Regarding FAA's ability to report an employee's drug test result to multiple employers, at the time of the accident, FAA had already been actively working to change its Routine Uses in its Privacy Act System of Records so that FAA inspectors and investigators can communicate positive test information to multiple employers without violating the Privacy Act rights of individuals.

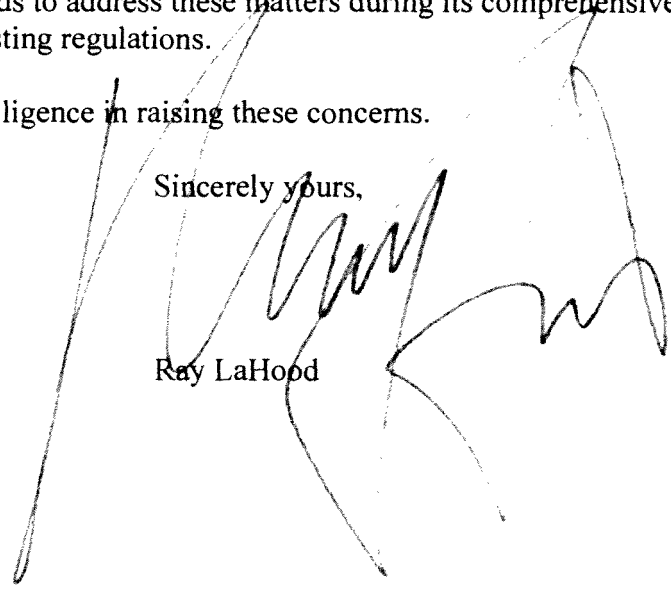
The ODAPC investigation also revealed some concerns, including the fact that FAA does not require a hiring employer to check the status of a mechanic's certificate with FAA as required

for pilots. Nor does FAA require the reporting of positive drug and alcohol test results for mechanics as required for pilots. To address these concerns, ODAPC recommended that FAA require prospective employers to check with FAA on the status of a mechanic's certification status, that it require the reporting of a certificated mechanic's drug positive test result or alcohol violation, and that it initiate revocation actions for all reported violations.

By the enclosed memorandum, the FAA Administrator concurred with ODAPC's findings and recommendations. The FAA intends to address these matters during its comprehensive updating of its drug and alcohol testing regulations.

I appreciate the whistleblower's diligence in raising these concerns.

Sincerely yours,



Ray LaHood

Enclosures



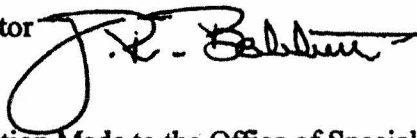
# Federal Aviation Administration

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## Memorandum

Date: MAR 4 2010

To: Jim L. Swart, Director, Office of Drug and Alcohol Compliance Policy

From: J. Randolph Babbitt, Administrator 

Prepared by: Mark Adams, Ext. 73169

Subject: Report on Whistleblower Allegation Made to the Office of Special Counsel:  
OSC File No. DI-09-0683

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This is in response to your memorandum, dated February 3, 2010, reporting to the Secretary on your investigation of a whistleblower complaint made to the office of Special Counsel (OSC) (OSC File No. DO-09-0683).

We reviewed your report and findings and appreciate the level of effort made to address the six allegations in this OSC whistleblower complaint. The report presents a thorough and accurate representation of the facts and issues associated with these complex allegations. We concur with all of the findings and recommendations made in the report. As noted in the report, the Federal Aviation Administration had initiatives underway, or has subsequently taken actions to address specific deficiencies in our Aviation Industry Drug and Alcohol Testing Program that were identified in the report. Further, the FAA fully accepts the recommendation in the report that we implement and reiterate training with respect to sharing information with employers concerning positive drug or alcohol testing results.



U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation

1200 New Jersey Avenue, SE  
Washington, DC 20590

February 3, 2010

**MEMORANDUM TO THE SECRETARY**

From:

*Jim L. Swart*  
Jim L. Swart, Director  
Office of Drug and Alcohol Policy and Compliance

Through:

Robert A. Westbrook, Acting Assistant Inspector General  
for Special Investigations and Analysis, JI-3

Subject:

DOT Report to the U.S. Office of Special Counsel  
Re: OSC File No. DO-09-0683

**BACKGROUND:**

On April 29, 2009, the U.S. Office of Special Counsel (OSC) forwarded to your attention a whistleblower complaint. The whistleblower, Connie Ingram, a former inspector at the Federal Aviation Administration (FAA), Office of Aerospace Medicine, Drug Abatement Division, alleged procedural deficiencies for investigating positive drug test results for certificated mechanics, which Ms. Ingram believed resulted in a substantial and specific danger to public safety. Ms. Ingram further alleged that an aircraft accident that occurred in November 2008, in Toksook Bay, AK, may have been caused by faulty maintenance performed by an airframe and power plant (A&P) certificated mechanic who continued to perform safety-sensitive maintenance work after testing positive for cocaine on a pre-employment drug test conducted by a different aviation employer. Ms. Ingram believes that the FAA's investigation procedures do not include adequate steps to ensure employees who test positive complete the return-to-duty process before returning to safety-sensitive functions. Ms. Ingram consented to release of her name.

Ms. Ingram initially raised her concerns regarding the November 2008 accident to the DOT Inspector General's Hotline in December 2008.

It is important to note that the accident has been investigated by the National Transportation Safety Board (NTSB) and the FAA's Office of Aviation Safety. Neither of those investigations are the subject of this investigation, although I note findings of both entities in this report.

By letter dated June 30, 2009, you delegated the investigation of this complaint to me as the Director of the DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC), with investigative oversight by the DOT Office of Inspector General. The ODAPC ensures that the drug and alcohol testing policies and goals of the Secretary of Transportation are developed and carried out in a consistent, efficient, and effective manner across the DOT Agencies [and the

United States Coast Guard] and throughout the regulated transportation industries. Our office reports directly to the Office of the Secretary of Transportation and is not part of any DOT agency, including the FAA. The report due date in the delegation letter was June 30, 2009, but with additional extensions granted by the OSC, the written report is due on March 5, 2010.

### **SUMMARY OF THE ALLEGATIONS:**

1. A November 1, 2008, aircraft accident at Toksook Bay, AK, may have been avoided if the FAA had revoked a mechanic's A&P certificate for a positive drug test result.
2. The aircraft accident may have been avoided if the FAA had reported the employee's positive drug test for one employer (Grant Aviation, Inc., Anchorage, AK) to another employer (Arctic Transportation Services, Inc., Anchorage, AK) for whom the mechanic worked in Nome, AK.
3. The Drug Abatement Division Investigator may not have queried appropriate FAA databases to determine whether the employee had both a pilot certificate and a mechanic certificate.
4. The Drug Abatement Division Investigator should have done an in-person interview of the mechanic and may not have even contacted the mechanic.
5. The FAA failed to report this mechanic's violation to another employer.
6. The FAA did not revoke the mechanic's certificate upon learning of the positive drug test result.

### **DESCRIPTION OF THE CONDUCT OF THE INVESTIGATION:**

I interviewed numerous FAA employees in the course of conducting this investigation, including the whistleblower, Ms. Ingram. Specifically, the DOT investigation included interviews of: James Fraser, M.D., Deputy Federal Air Surgeon; Rafael Ramos, Manager of the Drug Abatement Division; Karen Leamon, Manager of the Special Investigations Branch in the Drug Abatement Division; Kimberly Greenberg and Philip Herbert, Investigators for the Special Investigations Branch in the Drug Abatement Division; Andrew Monetti, Manager of the Western Compliance and Enforcement Center of the Drug Abatement Division; Ben Fish and Mariann Halstead, Inspectors in the Western Compliance and Enforcement Center of the Drug Abatement Division, Alaskan Field Office; James Ronan, Manager of the Central Compliance and Enforcement Center of the Drug Abatement Division; Connie Ingram, the whistleblower and a former Inspector in the Central Compliance and Enforcement Center of the Drug Abatement Division; Douglas Dalbey, Deputy Director, Flight Standards Service; and James Montgomery and Patrick Sullivan, Flight Standards Service Inspectors in the Alaska Regional Office. I also interviewed Clinton Johnson from the NTSB, who was the Investigator-In-Charge of the crash investigation that took place in Toksook Bay, AK.

During the course of the interviews, many of these individuals referred to and produced documents, and I requested additional documents from some individuals. I conducted independent research using the Internet and publicly available FAA documents concerning relevant policies and procedures. In some cases, follow-up interviews were conducted in order to gain further clarification regarding documents and conflicting facts provided during various interviews.

As part of the inspection assignment, I assembled a chronology of events and studied the relevant documents in order to determine whether the serious concerns articulated by Ms. Ingram were substantiated and whether the FAA's procedures were sufficient.

#### **TIMELINE OF SIGNIFICANT EVENTS:**

**July 11, 2008 – Mechanic Applies for Work at Grant Aviation, Inc., Anchorage, AK**

**July 15, 2008 – Mechanic Applies for Work and Takes a Pre-Employment Drug Test for Arctic Transportation Services, Inc., in Nome, AK**

**July 18, 2008 – Mechanic's Pre-Employment Drug Test for Arctic Transportation Services, Inc., Is Negative**

**July 19, 2008 – Mechanic Is Hired by Arctic Transportation Services, Inc.**

**July 25, 2008 – Mechanic Interviews with Grant Aviation, Inc., and Takes a Pre-Employment Drug Test**

**August 2, 2008 – Mechanic Begins Work at Arctic Transportation Services, Inc., in Nome, AK**

**August 5, 2008 – Mechanic's Pre-Employment Drug Test for Grant Aviation, Inc. Is Positive for Cocaine**

**August 13, 2008 - Flight Standards Inspector Notifies Drug Abatement Inspector of Test Results**

The mechanic initially drew the FAA's attention in early July 2008, after he piloted his plane twice into airspace that he was not cleared to fly. A Flight Standards Division Office Inspector in Anchorage was involved in that matter. After receiving notice from Grant Aviation, Inc. and the Medical Review Officer about his positive test, the mechanic/pilot contacted the Flight Standards Inspector in Anchorage and left a voice message about the test, saying there must be some mistake in the result. It was then that this Flight Standards Inspector reported the positive result information to the Drug Abatement Division Inspector in Anchorage. The Drug Abatement Inspector, following appropriate procedures, reported the information directly to her supervisor, her second-line supervisor, and to the Headquarters Special Investigations Branch, Drug Abatement Division.

### **August 18, 2008 – Medical Review Officer Reports Mechanic’s Positive Pre-Employment Test Result to the FAA**

The Special Investigations Branch in the Drug Abatement Division at the FAA initiated an investigation on or about August 18, 2008. The investigation began when they learned from a Principal Operations Inspector for Flight Standards, Anchorage, AK, that the mechanic and private pilot certificate holder tested positive for cocaine. The individual was applying for a position as a mechanic with an air carrier, Grant Aviation, Inc., Anchorage, AK, when he tested positive. The individual held three certificates issued by the FAA: an A&P mechanic certificate, a private pilot certificate, and an airman medical certificate.

### **August 19, 2008 - Special Investigations Branch Investigates Revocation Action Against Individual's Airman Medical Certificate**

In response to the information provided by the Flight Standards Inspector through the Drug Abatement Inspector and now in possession of the verified drug test result, the Special Investigations Branch initiated an investigation into and a resulting revocation action against the individual’s airman medical certificate in accordance with 14 CFR Part 67. Part 67 states that a person is not eligible for an airman medical certificate if he or she has had a verified positive drug test result on a drug test required by the DOT within the past 2 years.

### **November 11, 2008 - Airman Medical Certificate is Revoked; No Action Taken Against the A&P Certificate**

By issuing the Emergency Order of Revocation, the FAA notified the individual that his airman medical certificate had been revoked and that he was not eligible to reapply for a medical certificate for a period of one year from the date of surrender. In response, instead of surrendering the medical certificate, the individual submitted an “affidavit of loss of the airman medical certificate” on November 11, 2008.

Citing the FAA’s regulation at 14 CFR § 120.33, the FAA’s Special Investigations Branch Manager, and the Manager of the Drug Abatement Division, each explained that if the individual was not performing safety-sensitive duties at the time of the test, such as in the case of a pre-employment test, revocation actions cannot be taken against the A&P certificate. Because the FAA Drug Abatement Investigator had not yet learned, and had no way of knowing, that the individual was working for another air carrier at the time of the pre-employment positive test for Grant Aviation, Inc., the Drug Abatement Division considered the case closed with regard to revocation of his A&P certificate. They did, however, revoke his pilot medical certificate because of this pre-employment positive drug test, which is appropriate under the FAA’s regulations.

### **November 25, 2008 - Drug Abatement Division HQ Staff Learns the Mechanic Was Working for Another Air Carrier**

On November 25, 2008, another Inspector for the Drug Abatement Division in Anchorage notified the Drug Abatement Division Headquarters staff that the mechanic in question was

working for an air carrier, Arctic Transportation Services, Inc., at the time he failed the pre-employment drug test for Grant Aviation, Inc. According to this Drug Abatement Inspector, the individual never completed the return-to-duty process, which requires an evaluation by a Substance Abuse Professional, a referral for education and/or treatment, and a return-to-duty test. The return-to-duty process is mandated by DOT regulation, and is incorporated by reference into the FAA regulations. The return-to-duty process must be completed before an employee can return to the performance of safety-sensitive functions. The Drug Abatement Inspector also reported that the individual had performed maintenance duties on an aircraft owned and operated by Arctic Transportation Services, Inc., that crashed November 1, 2008. The details of the crash were reported to the Drug Abatement Inspector by the Flight Standards Inspector.

#### **December 2008 to May 2009 - FAA Revokes the Mechanic's A&P Certificate**

In response to the information conveyed, on December 1, 2008, the FAA's Special Investigations Branch initiated an investigation to address the mechanic's failure to comply with the return-to-duty process after testing positive for cocaine on the DOT-regulated pre-employment drug test conducted on July 25, 2008. The FAA issued an Emergency Order of Revocation on May 8, 2009, notifying the mechanic that his A&P certificate had been revoked. According to the Special Investigations Branch, the delay in issuing the Emergency Order was due to difficulty with obtaining a permanent address for the individual. As of January 2010, the mechanic has not yet surrendered his A&P certificate and has not filed an affidavit of loss. The FAA Chief Counsel's Office is finalizing a civil penalty action against the mechanic for his failure to surrender his certificate. In the meantime, it appears that the mechanic still has physical possession of his A&P certificate, which he could be using to work as a mechanic, even though the privileges of his certificate have been revoked.

#### **SUMMARY OF THE EVIDENCE OBTAINED FROM THE INVESTIGATION:**

In addition to interviewing the witnesses and assembling the timeline above, I reviewed the relevant documents issued by the FAA regarding this individual, and the applicable policies, procedures, and regulations. The NTSB Investigator assigned to the aircraft accident also was interviewed and relevant documents provided by him were reviewed. As a result of these efforts, I found:

##### **Allegation 1**

With respect to Ms. Ingram's assertion that the November 1, 2008, aircraft accident at Toksook Bay, AK, may have been avoided if the FAA had revoked the mechanic's A&P certificate for the positive drug test result, I found there is no evidence to substantiate the claim. According to NTSB's Preliminary Report and the NTSB's Factual Report, as well as the FAA Flight Standards investigation findings, the Arctic Transportation Services, Inc., aircraft involved in the accident sustained substantial damage and the two crew members sustained minor injuries. However, the maintenance the mechanic in question performed on the aircraft was not cited as a contributing factor to the crash. While we await the NTSB's Probable Cause Report, the NTSB investigation to date does not show any nexus between this mechanic and the crash. The



conclusions drawn from FAA's Flight Standards crash investigation also revealed no causative factors between this mechanic and the crash.

## **Allegation 2**

I was unable to substantiate Ms. Ingram's allegation that the aircraft accident may have been avoided if the FAA had reported the employee's positive drug test for one employer (Grant Aviation, Inc.) to another employer (Arctic Transportation Services, Inc.) for whom the mechanic worked. Because the individual who had the positive drug test result had not performed maintenance directly attributable to the aircraft crash, there is no evidence to suggest that the accident would have been avoided by such reporting. In addition, there were no FAA inspectors or investigators who were aware of the fact that when this individual tested positive for Grant Aviation, Inc. in Anchorage he was also working in Nome for Arctic Transportation Services, Inc. It is also important to note that the individual did not divulge to any FAA inspector or investigator that he was living and working in Nome. According to witnesses interviewed, the mechanic continually failed to provide appropriate contact information and that he gave only vague indications of his whereabouts. They also reported that he was recalcitrant in returning calls and responding to mailed notices.

Ms. Ingram raises a valid concern about the FAA's ability to share information. At the time of the November 1, 2008, accident, the FAA Drug Abatement Division did not have the authority to report drug positive test results, alcohol violations, and refusals to test to any employer for whom the employee works without violating provisions of the Privacy Act. This presented a serious safety issue because, for example, if a safety-sensitive employee worked for two companies, (s)he could conceivably test positive for cocaine on a DOT-mandated drug test for one and continue working in a safety-sensitive function for another, and do so with the FAA's knowledge without any repercussions.

Unrelated to this matter, the FAA was in the process of changing its Privacy Act System of Records to add a Routine Use to allow the FAA to disclose drug and alcohol violations to any employer for whom the safety-sensitive employee works, even if the violation did not occur during the time the individual was working for the current employer. This change to the Privacy Act System of Records was published in the Federal Register on September 29, 2008 [73 Federal Register 56624], and it went into effect on November 10, 2008. Thus, after November 10, 2008, FAA would have been permitted to disclose to Arctic Transportation Services, Inc., that a mechanic had tested positive for cocaine, but before November 10, 2008, such a disclosure would have been a violation of the Privacy Act. In this matter, however, the FAA did not know the individual worked at Arctic Transportation Services, Inc.

Although a memorandum was distributed by management to Drug Abatement Division employees to advise them of this change to the FAA's Privacy Act Routine Uses, some of the Drug Abatement Division field staff were not aware of the change at the time of our interviews in 2009.

The FAA agreed to reiterate the new Routine Use and the fact of this Final Rule in recurrent and new inspector training. They will emphasize the importance of communicating information

through established Drug Abatement Division channels regarding drug and alcohol testing violations to other employers for whom an individual may be working.

### **Allegation 3**

I was unable to substantiate Ms. Ingram's allegation that the Drug Abatement Division Investigator may not have queried appropriate FAA databases to determine whether the employee had both a pilot certificate and a mechanic certificate.

At the time of the FAA Investigation into the individual's positive test result for Grant Aviation, Inc., FAA Drug Abatement Division investigators were routinely required to query FAA airman certificate databases when a mechanic's positive test result is reported. Both the Drug Abatement Investigator and her supervisors reported that the query was made in this case. However, at the time of the DOT's investigation of this whistleblower complaint, the procedures, though consistently carried out, were not in writing.

The FAA has advised that the Special Investigations Branch standard operating procedures now include a written requirement for any investigator to query all FAA databases to ascertain whether the individual holds multiple FAA issued certificates. Enforcement action on all certificates will be considered, as appropriate.

Furthermore, I looked into whether prospective employers are required before hiring mechanics to contact the FAA about the status of current certificates, but there is no such requirement. The Pilot Record Improvement Act requires companies to request and receive FAA records concerning current certificates, including limitations upon those certificates, as well as summaries of pertinent legal enforcement actions prior to hiring pilots. This safety measure ensures the pilot does not have any outstanding FAA regulation violations and has not been barred from performing safety-sensitive functions as a result. Such a requirement for mechanics would also serve safety, but this is a statutory requirement for pilots, not simply an FAA regulation.

### **Allegation 4**

I was unable to substantiate Ms. Ingram's allegation that the Drug Abatement Division Investigator should have done an in-person interview of the mechanic and may not have even contacted the mechanic.

Drug Abatement Division standard operating procedures do not include a requirement for any investigator to conduct an in-person interview of a mechanic who has a positive test result. The procedures state that contact via express mail with a return-receipt is required and a verbal interview is desired.

The investigation showed that despite her repeated attempts to contact him, the Drug Abatement Investigator did actually speak with the mechanic. According to the Drug Abatement Investigator, reaching this individual was difficult because he had not provided the FAA with a current address, and he failed to answer his phone. The Drug Abatement Investigator made

repeated attempts to reach him at all known addresses. It would not have been a reasonable expenditure of Federal Government resources for investigators to have traveled to various addresses in Alaska [and Europe and the Far East, places where the mechanic claimed to have lived] to try to track down this mechanic. By persistently attempting to achieve contact at all known addresses for the mechanic, the Drug Abatement Investigator was finally able to achieve verbal contact, following a written notice to him about revocation of his certificate.

Once the individual contacted the FAA and a telephone interview took place, he provided misleading information. There is no indication that, even if the mechanic had been located, an in-person interview would have evoked more truthful responses. Once the mechanic falsely indicated that he had been out of the country for months, there was no reason for the Drug Abatement Investigator to conclude that the mechanic was currently performing safety-sensitive functions, which can only be performed in the United States.

There is no reason to believe that an in-person interview would have revealed anything different than the telephonic interview revealed. In addition, a telephonic interview seems a more efficient use of FAA resources in this case.

#### **Allegation 5**

I was unable to substantiate Ms. Ingram's concerns that the FAA failed to report the mechanic's violation to another employer.

I found no evidence that anyone at FAA, either at Headquarters or in Alaska, had knowledge this mechanic had applied for work at two different companies at nearly the same time. I found no evidence that any FAA inspectors or investigators knew that the mechanic worked for Arctic Transportation Services, Inc., in Nome during any of the investigations initiated prior to the Toksook Bay crash.

Even if they had known the mechanic had worked for another aviation company, FAA Drug Abatement employees would have violated the Privacy Act if they had released such information to another employer prior to November 10, 2008. Unrelated to this case, the FAA was changing its Privacy Act System of Records to add a Routine Use to allow the FAA to disclose drug and alcohol violations to any employer for whom the safety-sensitive employee works, even if the violation did not occur during the time the individual was working for the current employer.

Drug Abatement Division staff were not familiar with the memorandum issued by management to advise them of this change to the FAA's Privacy Act Routine Uses.. Thus, the FAA Drug Abatement Division again reiterated the new Routine Use to employees and plans to do so in recurrent training so that all Drug Abatement Division employees are kept aware of their responsibilities to communicate such information through appropriate channels.

#### **Allegation 6**

I substantiated Ms. Ingram's allegation that FAA did not immediately revoke the mechanic's A&P certificate upon learning of the individual's positive drug test result for Grant Aviation, Inc.

The FAA did not revoke the individual's A&P certificate until after the Toksook Bay crash. The FAA took no initial action on the A&P certificate when the positive drug test result was first reported in August 2008. Revocation of that certificate occurred only after an FAA Flight Standards Investigator, aware of the mechanic's pre-employment positive test for another aviation employer, reported the crash to a Drug Abatement Inspector in Anchorage.

The FAA revoked the mechanic's A&P certificate on May 8, 2009. As of December 2009, I was told that the individual was still in possession of his revoked A&P certificate because he continued his evasive actions with the FAA. The FAA has now also initiated civil penalty action against the individual for his failure to surrender his A&P certificate.

FAA regulations require companies to report to the FAA any A&P mechanic who has refused to take a drug or alcohol test. The FAA then investigates the matter. The FAA also investigates reported drug positive test results and alcohol violations. Under current regulations, there are no mandatory reporting requirements for A&P mechanic positive results and alcohol violations, like there are for pilots.

In addition, if an employer or Medical Review Officer chooses to report a mechanic's positive pre-employment drug test result, under current regulations the FAA could not take a revocation action against the mechanic's A&P certificate. Under 14 CFR § 120.33, the FAA cannot take revocation action against a mechanic's A&P certificate if he is not performing mechanic duties at the time of test. In this case, the FAA did not know that the individual was performing mechanic duties at the time of the test.

During the FAA's investigation, the mechanic led the FAA Drug Abatement Investigator to think that he was not working as a mechanic any longer. When the Drug Abatement Investigator tracked him down and finally spoke with him, he told her that he had been out of the country for several months, leading her to believe that he was not longer using his A&P certificate in the United States. Like other inspectors and investigators before her, the Drug Abatement Investigator concedes to being misled by the mechanic and therefore believing that the FAA did not have a basis under 14 CFR § 120.33 to initiate a revocation action against his A&P certificate.

In early December 2008, the FAA did proceed with revocation of the subject's A&P certificate for the positive pre-employment test, as they were authorized, as soon as they learned that he had been working as a mechanic for another employer at the time he tested positive.

The differing requirements for pilots and mechanics – regarding the reporting of positive drug test results to the FAA, requiring employer querying of certificate databases for violations, and the mandatory revocation of certificates – seem to be limitations in the FAA's safety program. In dealing with these issues, the FAA reports that these will receive full consideration in Drug Abatement Divisions upcoming Rulemaking Project, which is described as a complete overhaul of the drug and alcohol rules

The FAA has made a written requirement that investigators ask the employee during the interview if he or she is currently working for another employer. If the employee answers in the

affirmative, the investigator will immediately inform their supervisor so that the other employer can be notified in accordance with the FAA's November 10, 2008, amendment to the Privacy Act Routine Uses. The FAA informs us that these procedures have been documented in the Special Investigations Branch standard operating procedures to be carried out by the investigators.

### CONCLUSION:

DOT's investigation was unable to substantiate most of the allegations noted in Ms. Ingram's whistleblower complaint. The FAA took appropriate revocation action against the mechanic's A&P certificate after discovering that he was performing as a mechanic for Arctic Air Services Inc., at the time he tested positive on a DOT pre-employment drug test for Grant Aviation, Inc. According to the NTSB and the FAA, it appears that this mechanic did not have a causal connection to the Toksook Bay aircraft accident on November 1, 2008. Therefore, any revocation actions that did not take place for this mechanic would not have had an impact on this aircraft accident.

Ms. Ingram raised a valid point with respect to the FAA's ability to report an employee's drug test result to multiple employers for whom an employee works. The FAA has changed its Routine Uses in its Privacy Act System of Records so that the FAA inspectors and investigators can communicate such information without violating the Privacy Act rights of individuals. In addition, the FAA has issued internal guidance to its staff to carry out such responsibilities. I recommend reiteration and possibly retraining to further emphasize this duty to FAA Drug Abatement Division staff.

Regarding the check of FAA databases, the Drug Abatement Investigator complied with that FAA requirement. Upon learning that he had a pilot certificate by checking the pilot database, the FAA revoked his FAA Airman Medical Certificate because of this positive drug test. Rather than relinquish his certificate, the individual presented a notarized Affidavit of Loss attesting that the medical certificate was no longer in his possession.

After the Flight Standards Inspector conveyed information following the crash regarding the mechanic's continued employment to the Drug Abatement Inspector, the FAA was then in a position to work with the FAA's Office of the Chief Counsel to take appropriate action under 14 CFR § 120.33. Consequently, the FAA has now revoked the privileges of the A&P certificate and has initiated civil penalty action against this individual because he refused to surrender his A&P certificate.

Because the mechanic has not surrendered his revoked A&P certificate, he still poses a potential threat to subsequent employers who could hire him. The mechanic could display his revoked certificate, which would be passable as a valid certificate. Some individuals I interviewed called this a "pocket certificate."

There is no FAA requirement for a hiring employer to check the status of the mechanic's certificate with the FAA. The Pilot Record Improvement Act requires hiring employers to check the status of the certificates of pilots, but there is no similar requirement for their checking the

status of mechanic certificates. I view this as a potential threat to safety. But this is not the only safety issue I identified.

One other incongruence exists. The FAA deals with pilot drug and alcohol testing violations differently from mechanic violations. According to information provided in interviews with FAA staff, pilot drug positives are required to be reported by Medical Review Officers and alcohol results of 0.04 or greater are required to be reported by employers to the FAA for appropriate certificate revocation action. The same test results for mechanics are not required to be reported to the FAA.

I would invite the FAA to re-examine their positions on these two issues: Requiring hiring employers to check the status of the mechanic's A&P certificate with the FAA; and requiring reporting of positive drug tests and alcohol test results 0.04 or greater so that revocation actions can be initiated. Whether the FAA positions on these are based upon statutes, regulations, and/or resources, considerations to critically review these policies may be warranted.

**DESCRIPTION OF ANY ACTION TAKEN OR PLANNED AS A RESULT OF INVESTIGATION:**

In response to some concerns articulated by this whistleblower and by our investigation, various internal policies and procedures of the Drug Abatement Division have been revised and updated. Other changes were already in motion. All policies have been reiterated to Drug Abatement Division field and headquarters staff by management.

At the time of the crash, the FAA was in the process of changing its Privacy Act System of Records to add a Routine Use to allow the FAA to disclose drug and alcohol violations to any employer for whom the safety-sensitive employee works, even if the violation did not occur during the time the individual was working for the current employer. This change to the Privacy Act System of Records was published in the Federal Register on September 29, 2008 [73 Federal Register 56624], and it went into effect on November 10, 2008. Drug Abatement Division employees have again been notified of the change to the FAA's Privacy Act Routine Uses, and will have recurrent training on the procedures for notifying employers.

The Drug Abatement Division has placed into their written procedures the requirement that investigators query all FAA databases to determine whether the individual holds multiple FAA issued certificates.

Likewise, the Drug Abatement Division has placed into their written procedures the requirement that investigators during an investigation will ask each employee if he or she is currently working for other employers. If the employee answers in the affirmative, the investigator will immediately inform his or her supervisor.

The suggestions I raise about requiring a prospective employer to make an FAA inquiry regarding a mechanic's A&P certification status, requiring the reporting of a certificated mechanic's drug positive test result or alcohol violation on any DOT mandated test to the FAA, and the FAA taking revocation actions for all reported results violations will be considered by

the FAA during the Drug Abatement Division's Rulemaking Project. The FAA indicates that the Project will result in a re-write and comprehensive update of the FAA's current drug and alcohol testing regulations.