



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

INSPECTION REPORT

DOE-OIG-21-36

September 2021

**ALLEGATIONS OF CONFLICT OF
INTEREST AT THE DEPARTMENT OF
ENERGY'S OFFICE OF
AVIATION MANAGEMENT**



Department of Energy
Washington, DC 20585

September 8, 2021

MEMORANDUM FOR THE DEPUTY SECRETARY

SUBJECT: Inspection Report on “Allegations of Conflict of Interest at the Department of Energy’s Office of Aviation Management”

The attached report discusses our review of allegations regarding the Office of Aviation Management. This report contains two recommendations that, if fully implemented, should help ensure that the issues identified during this inspection are corrected. Management fully concurred with our recommendations.

We conducted this inspection from February 2021 through July 2021 in accordance with the Council of the Inspectors General on Integrity and Efficiency’s *Quality Standards for Inspection and Evaluation*. We appreciated the cooperation and assistance received during this evaluation.

A handwritten signature in black ink, appearing to read "Anthony Cruz", is written over a light-colored rectangular background.

Anthony Cruz
Assistant Inspector General
for Inspections, Intelligence Oversight,
and Special Projects
Office of Inspector General

cc: Chief of Staff
Director, Office of Management



Department of Energy Office of Inspector General

Allegations of Conflict of Interest at the Department of Energy's Office of Aviation Management (DOE-OIG-21-36)

WHY THE OIG PERFORMED THIS REVIEW

The Office of Inspector General received allegations and identified a subsequent concern regarding the Department of Energy's Office of Aviation Management (OAM). The allegations included: a senior OAM official's solicitations of a Department contractor during an onsite aviation audit in February 2020 to hire a subordinate OAM official as a part-time pilot and to pay for the official's associated "type rating" training; and an OAM aviation audit finding was issued as "pay back" for not accommodating the senior OAM official's solicitations. During our inspection, a subsequent concern arose that the senior OAM official had been flying as a supplemental pilot.

We initiated this inspection to determine the facts and circumstances regarding the alleged inappropriate conduct at the OAM.

What Did the OIG Find?

We substantiated the allegation that a senior OAM official solicited a Department contractor to accommodate additional aviation duties for a subordinate OAM official. This occurred while the OAM was conducting an independent audit of the contractor. We also determined that the senior OAM official had made a similar solicitation in the February 2019 timeframe.

We did not substantiate the allegations that the senior OAM official solicited the Department contractor to pay for the aircraft "type rating" training or that an OAM aviation audit finding was issued as retaliation for not accommodating the senior OAM official's solicitations.

It also came to our attention that the senior OAM official had been flying for the National Nuclear Security Administration's Office of Secure Transportation as a supplemental pilot for approximately 8 years.

What Is the Impact?

Department and contractor officials expressed concerns about the OAM's oversight role of the Department's aviation programs while an OAM official is a part-time pilot for one of those programs. A reasonable person could question the impartiality and objectivity of the OAM and its personnel, given the OAM's oversight responsibilities to conduct aviation audits of the Department's aviation programs.

What Is the Path Forward?

To address the issues identified in this report, we have made two recommendations that, if fully implemented, should help ensure that the issues identified during our inspection are corrected.

BACKGROUND

The Office of Aviation Management's (OAM) mission is to provide the Department of Energy, including the National Nuclear Security Administration, with aviation policies, guidance, and program management oversight to ensure the delivery of effective, efficient, and safe aviation services required to support the Department's mission. To meet these responsibilities, the OAM conducts periodic onsite audits of organizations that own and operate aircraft or contract for commercial aviation services. The Department's Office of Management (MA) is responsible for the OAM.

Mission Support and Test Services, LLC (MSTS) is the management and operating contractor for the Nevada National Security Site, which includes the Remote Sensing Laboratory. The Remote Sensing Laboratory has several crisis and emergency response teams trained and equipped to respond to a variety of radiological situations, including nuclear power plant accidents, nuclear terrorist incidents, and transportation events. Deployable emergency response assets include aircraft such as the Beechcraft King Air 350ER. The Nevada Field Office provides oversight for the Nevada National Security Site.

On January 4, 2021, the Office of Inspector General Hotline received allegations regarding the OAM. Specifically, the complainant stated that a senior OAM official solicited a Department contractor official to hire a subordinate OAM official as a part-time pilot and asked if MSTS could pay for the "type rating" training, worth over \$30,000, to qualify that subordinate OAM official to fly a specific aircraft. The alleged solicitation occurred during the OAM's February 2020 onsite visit at Nellis Air Force Base during an aviation audit of MSTS. In addition, the complainant alleged that a subsequent finding from the OAM aviation audit was "pay back" for MSTS not accommodating the senior OAM official's solicitations. Both OAM officials are Federal employees and hold supervisory positions.

We initiated this inspection to determine the facts and circumstances regarding the alleged inappropriate conduct at the OAM.

SOLICITATION OF ADDITIONAL AVIATION DUTIES

We substantiated the allegation that the senior OAM official solicited a Department contractor to accommodate additional aviation duties for a subordinate OAM official. This occurred while the OAM was conducting an independent audit of MSTS. The senior OAM official clarified that the solicited additional aviation duties to serve as a supplemental pilot were proposed collateral extensions of the subordinate OAM official's responsibilities, not part-time employment for compensation. The subordinate OAM official confirmed that there were discussions about MSTS pilot qualifications and his potential for flying for MSTS as a supplemental pilot. At first, the senior OAM official stated that the solicitation did not take place during the OAM's February 2020 onsite aviation audit. However, in a subsequent discussion, the senior official told us that he could not remember the specific conversations that took place and deferred to the subordinate OAM official's account of events. The subordinate OAM official subsequently confirmed that those conversations did, in fact, take place during the February 2020 onsite aviation audit.

We also determined that the senior OAM official had made a similar solicitation in the February 2019 timeframe. According to the subordinate OAM official, there were discussions about him potentially flying for MSTTS as a supplemental pilot upon his hire in February 2019. The senior OAM official stated that he approached the Nevada Field Office to propose collateral flying duties for the subordinate OAM official to fly for MSTTS as a supplemental pilot. A Nevada Field Office representative confirmed that the senior OAM official had made the solicitation after the subordinate OAM official was hired. However, the subordinate OAM official stated that the additional aviation duties never materialized because of COVID-19 and his lack of interest in flying the specific aircraft operated by MSTTS since MSTTS was planning to replace the specific aircraft.

ETHICAL CONDUCT GUIDANCE AND AUDIT PROTOCOLS NOT FOLLOWED

The OAM officials did not follow the Department’s guidance on ethical conduct for Federal employees to identify and mitigate the potential conflicts of interest and ethical concerns associated with the OAM’s oversight role of the Department’s aviation programs while flying for those aviation programs. The Office of the Chief Human Capital Officer issued guidance that is available to all Department employees. For example, the Office of the Chief Human Capital Officer’s guidance provides an overview of the ethics principles in Title 5 Code of Federal Regulations (CFR) Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*. In particular, Title 5 CFR Part 2635 states that “employees shall endeavor to avoid any actions creating the appearance that they are violating the law, or the ethical standards set forth in [the Standards of Ethical Conduct]. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.” In addition, the Department’s Annual Ethics Training course, which is mandatory for all employees who file confidential or public financial disclosure reports, also covers these ethics principles.

Title 5 CFR Section 2635.502(a) also states that “where an employee [...] knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee.” Title 5 CFR Section 2635.502(a)(2) further elaborates that “an employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.” According to Title 5 CFR Section 2635.502(b)(1)(i), an employee has a covered relationship with “a person [...] with whom the employee has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction.”

By requesting or being the subject of a request for flight time from MSTTS, the senior and subordinate OAM officials may have engaged in a “business, contractual, or other financial relationship that involves other than a routine consumer transaction.” This request may be seen, therefore, as creating a covered relationship under Title 5 CFR Section 2635.502(b)(1)(i) between those officials and MSTTS. Additionally, if both officials had a covered relationship

with MSTs when they were performing audits that included MSTs, a reasonable person with knowledge of the relevant facts could question their impartiality. Adherence to the impartiality regulation may prevent questions of that nature.

Even if the request for extra flight time did not create a covered relationship, Title 5 CFR Section 2635.502(a)(2) provides a process for determining whether to participate in a particular matter. Under that process, a reasonable person would not have been involved in a request for extra flight time – a perceived benefit – from a contractor the OAM officials were auditing. The contractor’s granting or denying that benefit could be seen as influencing an audit. That perceived loss of impartiality occurred in this situation. The complainant alleged that a subsequent finding from the OAM aviation audit was “pay back” for MSTs not accommodating the senior OAM official’s solicitations.

In addition, the subordinate OAM official was not approved in writing for additional aviation duties to serve as a pilot for the Department’s aviation programs. A review of his position description revealed that the subordinate OAM official was not required to fly aircraft, maintain pilot certification, or flight hours. When we spoke to an MA official about the potential conflicts of interest and ethical concerns associated with the OAM’s oversight role while flying for the Department’s aviation programs, the official did not consider it a conflict of interest. Nevertheless, when we informed the MA official that the subordinate OAM official’s position description did not include serving as an airline pilot for the Department’s aviation programs, the official stated that she had not examined the position description in years. In addition, another MA official was unaware if the MA ever identified and mitigated the potential conflicts of interest and ethical concerns associated with the OAM’s oversight roles and responsibilities while serving as a pilot for the Department’s aviation programs. Therefore, the MA official could not provide any documentation or evidence that those concerns were vetted by the Department’s ethics officials at the Office of the General Counsel.

Finally, we noted that the OAM did not adhere to its Audit and Appraisal Protocols (Protocols) during its aviation audit of the Nevada Field Office and MSTs. According to the Protocols, OAM inspectors occupy sensitive and highly visible positions and must maintain the highest standards of personal and professional conduct. The Protocols state, “Discussing future work possibilities at the site, mentioning individual or corporate capabilities and experience as they apply to current site problems, and any other similar activity is unacceptable. Such actions cast doubt on inspection objectivity and OAM’s aviation oversight mission.” The Protocols further elaborate that discussing future job possibilities or leaving a resume is not only unprofessional but also “creates the impression that one is taking advantage of his or her official position for personal gain.” The senior OAM official’s actions to solicit for potential additional aviation duties while conducting an audit could be viewed by a reasonable person as inappropriate. The Protocols state that while on audits or appraisals, OAM team members are considered official representatives of the Department’s Headquarters. Department and contractor officials also expressed concerns about whether it was appropriate for OAM personnel to fly for the Department’s aviation programs on a part-time basis while having oversight responsibilities of those programs.

The Government may benefit from OAM personnel flying for the Department at no additional cost. However, we considered that the potential conflicts of interest and ethical concerns associated with the OAM's oversight role while flying for the Department's aviation programs and the mitigation of those risks and concerns are warranted to ensure impartiality in performing official duties. The Department's Office of the Chief Human Capital Officer also provides the following guidance, *Ethics – Impartiality in Performing Official Duties*, to all Department employees:

- Think of it as a question of fairness. Suppose you went to a baseball game and you found out that the umpire was the uncle of a player on one of the teams. Most people would say that the umpire should not work that game, because there would be a strong appearance that he might not make the calls fairly and impartially.
- A similar rule applies to you when you are doing your job. You should not act on a matter if a reasonable person who knew the circumstances of the situation could legitimately question your fairness.
- If you have a situation that you think might raise such a concern, then you should talk to an ethics official at the Department. He or she will be able to tell you whether or not there is an appearance problem and give you advice on how to deal with it.

SUBSEQUENT CONCERN

During our inspection, additional information came to our attention that the senior OAM official had been flying for the National Nuclear Security Administration's Office of Secure Transportation (OST) as a supplemental pilot. Specifically, we found that the senior OAM official had been flying missions for the OST in a co-pilot or second-in-command capacity for approximately 8 years. OAM and the National Nuclear Security Administration officials informed us that the OST experienced a pilot shortage and that the senior OAM official's pilot services were critical to keep OST operations ongoing. An OST official informed us that the OST did not financially compensate the senior OAM official. However, we determined that the OAM conducted an aviation audit in April 2016 and that the senior OAM official served as a supplemental pilot for the OST approximately 1 month before the audit began. We obtained the senior OAM official's OST flight log and determined that the senior OAM official had flown Boeing 737 aircraft for various OST missions since February 2014. Prior to the April 2016 aviation audit, the senior OAM official had flown three OST mission flights from February 2016 through March 2016. A reasonable person could question the OAM's independence because of the OAM's oversight responsibility to conduct audits of the Department's aviation programs. During our inspection, an OST official told us that it was now fully staffed on pilots. Another OST official informed us that the OST had not utilized the senior OAM official's pilot services since mid-2020.

Our review of the senior OAM official's position description identified language for the official to serve as an airline pilot, when needed, for Department and commercial aviation services. However, an MA official could not recall how the discussions for the OAM official to fly for the OST began, and noted that a formal study was not conducted to identify and mitigate the

potential conflicts of interest and ethical concerns associated with the OAM providing independent oversight while serving as a pilot for the Department's aviation programs prior to the approval of the position description. Therefore, MA officials could not provide any documentation or evidence that those concerns were vetted by Department ethics officials at the Office of the General Counsel. As mentioned earlier, Department and contractor officials expressed concerns about the OAM's oversight role of the Department's aviation programs while an OAM official is a part-time pilot for one of those programs. A reasonable person could question the impartiality and objectivity of the OAM and its personnel, given the OAM's oversight responsibilities to conduct aviation audits of the Department's aviation programs.

OAM OVERSIGHT RESPONSIBILITIES

The OAM has inherent responsibilities for oversight of all aspects of the Department's aviation programs. The Director of the OAM is charged with implementing a program that provides aviation support to the Department with the highest standards of safety, efficiency, and effectiveness. The OAM's responsibilities include approval of fleet aircraft acquisitions and disposals, replacement of aging aircraft, aviation budget preparation, contract aircraft activities, and aviation audits. Concerning OAM aviation audits, the Protocols state that the OAM's oversight function is "independent" from the Department's line program offices, and the OAM must maintain the highest standards of personal and professional conduct. Therefore, it is important for the OAM to adhere to ethical guidelines due to its oversight role of the Department's aviation programs and to mitigate potential conflicts of interest and ethical risks in accordance with those guidelines.

OTHER ALLEGATIONS

We did not substantiate the allegations related to the senior OAM official's solicitation of the Department contractor by asking MSTs to pay for the subordinate OAM official's aircraft "type rating" training or that an OAM aviation audit finding was issued as retaliation for MSTs not accommodating the senior OAM official's solicitations.

Aircraft "Type Rating" Training

We did not substantiate the allegation that the senior OAM official asked the Department contractor if MSTs could pay for the subordinate OAM official's aircraft "type rating" training. Both OAM and MSTs officials stated that OAM officials did not directly ask if MSTs could pay for the subordinate OAM official's "type rating" training. The MSTs official clarified that if the subordinate OAM official flew for MSTs as a supplemental pilot, the OAM official would have been required to take the "type rating" training; however, there was no evidence that the training was ever obtained by the subordinate OAM official. Due to the lack of any information contradicting the officials' information, we did not substantiate the allegation.

Aviation Audit Finding

We did not substantiate the allegation that an OAM aviation audit finding was issued as retaliation for MSTs not accommodating the senior OAM official's solicitations to extend

additional aviation duties for the subordinate OAM official and to pay for the required “type rating” training. The OAM audit finding pertained to MSTs having qualified an internal employee as a first officer pilot who, at the time of hire, only had approximately 500 hours of total flight time. Per Department Order 440.2C, *Aviation Management and Safety*, Federal pilots are required to have a minimum of 1,500 hours of total flight time. We noted that Department Order 440.2C, *Contractor Requirements Document*, does not specify whether a 1,500-hour total flight time requirement applies to contractor pilots, and so the OAM audit report questioned the pilot’s limited experience to safely operate in a real-world environment. We reviewed the Protocols, which specifically state that “although any program element or system not in compliance with [Department] aviation policy or not meeting [Department] aviation performance standards may be identified as a finding, teams are expected to exercise judgment in determining findings.” We concluded that the OAM followed its Protocols, and we did not identify evidence that indicated the audit finding was issued as retaliation.

RECOMMENDATIONS

We recommend that the Deputy Secretary of Energy direct the MA to revisit the Department’s ethical guidelines and consult with the Office of the General Counsel to:

1. Define additional collateral duties associated with the OAM’s oversight roles and responsibilities, and whether serving as a pilot for the Department’s aviation programs is authorized.
2. Require a written determination for additional collateral duties, including the identification of potential conflicts of interest and ethical risks, and the mitigation of those concerns.

MANAGEMENT RESPONSE

Management fully concurred with our recommendations and stated that proposed actions will be completed no later than December 30, 2021. According to the MA, it is continually looking for ways to improve its operations and will use our recommendations to strengthen the OAM to better serve its customers and ensure the highest levels of integrity.

Management comments are included in Appendix 3.

INSPECTOR COMMENTS

Management’s comments and corrective actions are responsive to our recommendations.

Appendix 1: Objective, Scope, and Methodology

OBJECTIVE

We initiated this inspection to determine the facts and circumstances regarding the alleged inappropriate conduct at the Office of Aviation Management.

SCOPE

The inspection was performed from February 2021 through July 2021. The parties in the allegation were located at the Department of Energy Headquarters in Washington, DC and the Remote Sensing Laboratory at Nellis Air Force Base in Nevada. The inspection was conducted under Office of Inspector General project number S21AL012.

METHODOLOGY

To accomplish our inspection objective, we:

- Reviewed laws, regulations, and Department directives.
- Held discussions with Office of Aviation Management, Office of Management, Office of Secure Transportation, Nevada Field Office, and Mission Support and Test Services personnel with subject matter expertise in the inspection areas.
- Reviewed Department Memorandum, *Aircraft Management*; Office of Aviation Management Audit and Appraisal Process Protocols; Comprehensive Aviation Program Study IV (2018); and Annual Aviation Program Audit Report of the Nevada Field Office and Mission Support and Test Services (February 2020).
- Reviewed available Department guidance on ethics, including information from the Office of the Chief Human Capital Officer on the Department's website and the mandatory Annual Ethics Training course on the Department's learning management system.
- Reviewed Office of Aviation Management position descriptions for duties and responsibilities.

We conducted our inspection in accordance with the *Quality Standards for Inspection and Evaluation* (December 2020) as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions.

Management waived an exit conference on August 23, 2021.

Appendix 2: Prior Reports

- Inspection Report on [*Alleged Nepotism and Wasteful Spending in the Office of Energy Efficiency and Renewable Energy*](#) (DOE/IG-0888, June 2013). The report substantiated the allegation that a senior Office of Energy Efficiency and Renewable Energy (EERE) official was actively involved in securing Student Temporary Employment Program (STEP) intern appointments at the Department of Energy for his three college-aged children. The allegation related to enrolling his children in inappropriate training was not substantiated. The inspection determined that the senior EERE official contacted a number of Department officials within various program offices to inquire about STEP intern opportunities for his children. In addition, the senior EERE official contacted officials within the Office of the Chief Information Officer a number of times to follow up on his inquiries regarding STEP employment for one of his children. All three of the senior EERE official's children were hired by Department program offices as STEP interns for fiscal year 2012. Two of the official's children worked for EERE. Nepotism or even its appearance can have a decidedly negative impact on morale within an organization. Providing inappropriate advantages for relatives of Federal employees damages the integrity of the competitive process and erodes public trust in the Federal hiring process. The report made several recommendations designed to address the issues and strengthen internal controls over certain hiring processes within the Department.
- Audit Report on [*Allegation of Nepotism and Misuse of Position Within the Office of Management*](#) (DOE-OIG-17-09, September 2017). The report determined, based on coordination and confirmation from the Department's Office of the General Counsel, actions taken by an Office of Management employee (herein identified as "Employee") within the Office of Policy and Headquarters Procurement Services hiring officials resulted in violations of laws and regulations pertaining to prohibited personnel practices and misuse of position. The audit found that the Employee advocated for employment for his daughter. Specifically, the Employee provided his daughter's resume to a Procurement Services hiring official and communicated with the hiring official regarding potential Federal employment on at least two occasions. Additionally, the audit determined that three Procurement Services hiring officials demonstrated a loss of impartiality and granted an unauthorized preference to the Employee's daughter when hiring actions were taken while being aware of the family relationship. Based on work performed, the report concluded that the Employee violated the regulation governing misuse of position. Senior officials within the Office of Management took prompt action to stop the hiring action when notified of the employment selection. The hiring request was also separately flagged by the Office of the Chief Human Capital Officer's Human Resources Service Center because the resume was not submitted under, nor did it meet the experience requirement of, the vacancy announcement. However, the report identified some issues that needed to be addressed by the Office of Management and the Acting Chief Human Capital Officer.

Appendix 3: Management Comments



Department of Energy

Washington, DC 20585

August 19, 2021

MEMORANDUM FOR ANTHONY CRUZ
ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS, INTELLIGENCE OVERSIGHT,
AND SPECIAL PROJECTS

FROM: INGRID KOLB
DIRECTOR
OFFICE OF MANAGEMENT

Ingrid Kolb
Digitally signed by Ingrid
Kolb
Date: 2021.08.19
22:19:46 -0400

SUBJECT: Response to Draft Inspection Report on “Allegations of Conflict
of Interest at the Department’s Office of Aviation Management”
(S21AL012)

The Office of Management (MA) appreciates the work performed by the Department of Energy’s (DOE) Office Inspector General (OIG) in conducting a review of MA’s Office of Aviation Management. MA is continually looking for ways to improve its operations and will use the OIG recommendations to strengthen the Office of Aviation Management to better serve our customers and ensure the highest levels of integrity.

The attachment includes MA’s responses to each recommendation in the report. OIG should direct any questions to Ms. Laurie Morman, Chief of Staff, Office of Management at (202) 586-1645 or laurie.morman@hq.doe.gov.

Attachment

Appendix 3: Management Comments

Management Response

Draft Inspection Report on
“Allegations of Conflict of Interest at the Department’s Office of Aviation Management
(S21AL012)”

Recommendation 1: Define additional collateral duties associated with the OAM’s oversight roles and responsibilities, and whether serving as a pilot for the Department’s aviation programs is authorized.

Management Response: Concur

Corrective Action: MA, in consultation with the Office of General Counsel (GC) and the Office of Chief Human Capital Officer, will review the position descriptions for OAM and amend the position descriptions, as appropriate, to define appropriate collateral duties, including whether serving as a pilot for the Department’s aviation programs should be authorized.

Due Date: December 30, 2021

Recommendation 2: Require a written determination for additional collateral duties, including identification of potential conflicts of interest and ethical risks, and the mitigation of those concerns.

Management Response: Concur

Corrective Action: Future requests for additional collateral duties in OAM will require a written determination by MA, in consultation with GC, that identifies and mitigates potential conflicts of interest and ethical risks.

Due Date: September 30, 2021

FEEDBACK

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Department of Energy
Washington, DC 20585

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