

NOTICE

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

N 8100.18

National Policy

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09/07/2023

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09/07/2024

SUBJ: Updated Policy on Organization Designation Authorization (ODA) Holder Interference with ODA Unit Members (UM) and Communication between UMs and the FAA

1. Purpose of this Notice. On September 7, 2022, the Federal Aviation Administration (FAA) published Notice N 8100.17, Organization Designation Authorization (ODA) Holder Interference with ODA Unit Members (UM) and Communication between UMs and the FAA, to provide instructions and procedures intended to eliminate or minimize ODA holder interference with UMs performing their authorized functions, and to ensure free communication between UMs and the FAA. This updated notice extends the ongoing interference reporting and communication instructions and procedures in Notice N 8100.17. This notice also provides new procedures and instructions for FAA Organization Management Teams (OMT) in Sections 5(c)(1) and 7, and for the Interference Review Team in Section 5(c)(1). The policies contained in this notice will be incorporated into the FAA's next revision of FAA Order 8100.15, Organization Designation Authorization Procedures. To the extent that this notice conflicts with Order 8100.15B, the contents of this notice supersede that Order.

2. Audience. The audience for this notice includes ODA applicants; ODA holders, including their UMs; and the FAA offices that evaluate, appoint, and manage ODA holders.

3. Where can I Find This Notice? You can find this notice on the MyFAA employee website at https://employees.faa.gov/tools_resources/orders_notices/ and the Dynamic Regulatory System (DRS) at <https://drs.faa.gov>. Operators and the public can find this notice on the FAA's website at https://www.faa.gov/regulations_policies/orders_notices/ and DRS.

4. Background.

a. The FAA has broad statutory authority to delegate certain functions related to issuance of certificates per Title 49 of the United States Code (49 U.S.C.) § 44702(d). In 2020, the Aircraft Certification, Safety, and Accountability Act, Public Law (PL) 116-260 (the Act) added several provisions specific to the FAA's oversight of ODA holders. To ensure that ODA UMs can conduct delegated functions without interference by their employer, Section 107 of the Act amended Chapter 447 of 49 U.S.C. by adding 49 U.S.C. § 44742, Interference With the Duties of Organization Designation Authorization Unit Members. Section 44742 includes requirements that specifically apply to ODA holders that manufacture transport category airplanes, including provisions that prohibit ODA holder interference with UM duties and mandate ODA holder investigation and reporting in support of the prohibition on interference. This notice includes

provisions that implement these statutory requirements for all ODA holders, pursuant to part 183. Additionally, this notice is consistent with part 183, § 183.57(c), which broadly prohibits such interference.¹ Section 183.57(c) provides that ODA holders must “...ensure that no conflicting non-ODA Unit duties or other interference affects the performance of authorized functions by ODA Unit members.” Section 107 of the Act also amended 49 U.S.C. § 44736 such that it mandates free communication between UMs and the FAA. Refer to 49 U.S.C. § 44736(f). The FAA recognizes the importance of open communication between UMs and the FAA, and, with this notice, provides procedures to support this statutory requirement. The FAA recognizes that direct communication between UMs and the Organization Management Teams (OMT) or other staff is an important part of the ODA system.

b. Section 107 of the Act also amended 49 U.S.C. § 44736 such that it mandates free communication between UMs and the FAA. Refer to 49 U.S.C. § 44736(f). The FAA recognizes the importance of open communication between UMs and the FAA, and, with this notice, provides procedures to support this statutory requirement. The FAA recognizes that direct communication between UMs and the OMTs or other staff is an important part of the ODA system.

c. In September 2022, the FAA issued Notice N 8100.17 to provide instructions and procedures to eliminate or minimize ODA holder interference with UMs. The intended audience for these instructions and procedures included ODA applicants; ODA holders, including their UMs; and the FAA offices that evaluate, appoint, and manage ODA holders. This updated notice extends the guidance contained in Notice N 8100.17 and adds new instructions and procedures for the FAA OMT and the Interference Review Team (IRT). The FAA drafted this updated notice with the intent that existing ODA holders would already have an FAA-approved updated ODA procedures manual compliant with Notice N 8100.17 when this updated notice becomes effective. This notice also applies to new ODA applicants.

5. Policy to Prevent Interference with UM Performance of FAA Authorized Functions. Preventing interference with UMs’ performances of their authorized functions on behalf of the FAA is necessary to ensure that such functions are properly conducted. The definition of “interference” in 49 U.S.C. § 44742(d)(2) includes not only acts that a reasonable person would conclude were intended to influence or prejudice the UMs’ performances of authorized functions, but also the presence of non-ODA unit duties or activities, that, regardless of the intent of the person or organization imposing those duties or activities, conflict with the performance of authorized functions by the ODA UM. Interference includes reprisal, such as changing the employment status, pay, duties, work location, or retention status, of any UM for reporting or considering reporting a concern related to interference with the performance of authorized functions. The ODA unit is an independent entity within the organization when exercising a delegated function, and pressure must not be allowed to interfere with UMs in properly performing their authorized functions on behalf of the FAA. ODA holders, including ODA

¹ In some instances, the term “undue pressure” has been used by industry, the FAA, and other governmental entities to describe situations in which a UM faces interference from any company or organizational elements regarding UM performance of authorized functions on the FAA’s behalf. The term “undue pressure” is a form of “interference” addressed in 49 U.S.C. § 44742 and § 183.57(c).

administrators and FAA OMTs, must continually exercise vigilance in their management and oversight activities, respectively, to guard against UM interference. ODA holders must have approved procedures to effectively manage and investigate all reports of alleged UM interference and address instances of interference so that it does not reoccur. Interference with UMs performing their authorized functions on behalf of the FAA may result in suspension or termination of the ODA and/or civil penalties.

a. Procedures Manual Content Regarding UM Interference. The ODA holder's procedures manual must address the procedures, including monitoring, investigation, reporting, corrective actions, and training, necessary to ensure compliance with 49 U.S.C. § 44742, as applicable, and § 183.57(c), as further described below. The purpose of incorporating the procedures related to UM interference described in this notice into the ODA holder's procedures manual is to provide an understanding of actions that constitute interference so that it can be avoided. This notice discusses monitoring, investigation, and reporting systems so that the ODA holder can promptly address any interference that arises.

(1) ODA Holder Monitoring for Interference.

(a) The ODA holder's procedures manual must include means by which the ODA holder monitors the ODA unit for evidence of UM interference that has not been the subject of a report and monitors the efficacy of any corrective actions, including:

1. An annual solicitation to every UM seeking anonymous feedback regarding interference. At a minimum, the annual solicitation must ask UMs if they are aware of, or have been subjected to, any unreported interference.

2. An internal self-assessment process for evaluating the effectiveness of the ODA holder's monitoring and correcting of UM interference. This self-assessment process must solicit and consider feedback from UMs who have reported interference.

(b) The ODA holder must evaluate data gathered from its UM interference monitoring. If the ODA holder identifies potential interference, the procedures manual must address the matter in accordance with the procedures described in subparagraphs 5a(2) through 5a(6) below.

(2) UM and ODA Administrator Reporting of Alleged Interference.

(a) The ODA holder's procedures manual must incorporate reporting procedures for UMs and ODA administrators to follow when they have experienced or have perceived any interference. These procedures must also address the means for individuals other than the ODA administrators and UMs to make reports when they witness or suspect interference that could affect the performance of any authorized functions by a UM or an ODA administrator. The procedures manual must also advise UMs and ODA administrators that they may report their concerns directly to the FAA by contacting the OMT, or contacting the FAA through the FAA Hotline.

(b) The ODA holder's Memorandum of Understanding (MOU)² with the FAA, signed by the appropriate senior management of the organization, must include the following statement: "As senior management of the ODA holder, I (we) will protect ODA UMs from actions that constitute interference, including reprisal for reporting suspected interference. I (we) understand that changing the employment status, pay, duties, work location, or retention status may be investigated by the FAA."

(3) Investigation by the ODA Holder.

(a) The ODA holder's procedures manual must include procedures that identify an ODA administrator responsible for the investigation of reports of alleged interference with UMs, and describe how ODA holder personnel will conduct investigations.

(b) The ODA administrator must conclude investigations of reports of alleged interference within 30 calendar-days of a report made directly to the ODA holder, or within 30 calendar-days of receiving a report from the FAA requesting the ODA holder to begin an investigation as a result of a report made directly to the OMT. The ODA holder may request an extension of the investigation period from the OMT. The request for extension must be substantiated by the ODA holder and approved by the OMT.

(4) Initial Reporting of Alleged Interference to the OMT. The ODA holder's procedures manual must require all reports of alleged interference be provided to the OMT within 2 business-days after learning of the incident. The ODA holder's report to the OMT must contain the following information:

- Date the ODA holder first learned of the incident;
- Summary of the alleged interference (i.e., who, what, when, where, why, etc.);
- Documentation of available evidence;
- Initial action(s) taken, if any, to address the report of interference; and
- Summary of actions(s) taken to launch an investigation.

(5) ODA Holder Corrective Action Related to Interference. The ODA holder's procedures manual must require corrective action by the ODA holder for all cases in which an investigation determines that interference occurred. The ODA holder's corrective action process should include:

- A Root Cause Analysis (RCA) to determine the appropriate corrective actions;
- A determination of whether the root cause of an instance of interference is systemic;
- A process for mandating both immediate and long-term actions as necessary;
- A schedule for actions; and
- Procedures for verification of implementation and effectiveness of corrective actions.

² Refer to Order 8100.15B, paragraph 3-7 and Appendix A.

(6) Reporting Final Investigation Results to the OMT. The ODA holder's procedures manual must require that the ODA holder provide a report on the results of its investigation within 15 calendar-days of its completion. The report must include:

- Date the ODA holder first learned of the incident;
- Summary of the alleged interference (i.e., who, what, when, where, why, etc.);
- Documentation of evidence;
- A determination by the ODA administrator, based on the results of the ODA holder's investigation, as to whether or not interference occurred and a detailed explanation of that determination;
- If the ODA administrator determined interference occurred, the root cause(s) of the interference, both individual and systemic; and
- A summary of all corrective actions proposed and taken.

(7) ODA Holder Annual Review and Report to OMT. As a part of the annual self-audit, an ODA holder must review all reports of alleged interference that occurred during the evaluation period of the self-audit, and submit to the OMT a summary of the reports, including those determined not to be interference, and any resulting indicators, patterns of actual or potential interference, and system improvements that have been made or are needed.

b. Training.

(1) ODA holders must develop initial and recurrent training procedures for ODA administrators and UMs regarding UM interference. Training should also be developed for individual signatories on the ODA MOU and for other personnel who are expected to be involved in ODA-authorized functions or interactions with UMs, as determined by the ODA holder. ODA holder training for ODA UMs and other ODA holder personnel should address the following:

- FAA regulatory requirements and policy related to UM interference and ODA holder internal procedures related to UM interference;
- The potential for a civil penalty under 49 U.S.C. § 44742(b)(1) for an act of interference with a UM's performance of authorized functions if committed by supervisory employees of an ODA holder that manufactures transport category airplanes;
- Roles and responsibilities of the ODA holder and ODA unit related to preventing, addressing, and reporting interference with a UM;
- Contact information for the OMT; and
- Information on the FAA's Hotline reporting program (refer to <https://hotline.faa.gov/>).

(2) Training records related to interference with a UM must be retained with the UM training records required by § 183.61(a)(6) and Order 8100.15.

c. FAA OMT Oversight.

(1) Review Reports of Investigation of Alleged Interference. Final investigation reports of alleged interference from the ODA holder must be reviewed by the OMT. In reviewing the

report for acceptance, the OMT will consider the evidence documented by the ODA holder and its rationale for making the determination. The OMT must submit its proposed response with rationale for acceptance or rejection of these reports to the Aviation Safety (AVS) Interference Review Team (IRT) for concurrence within 30 calendar days of receipt. Submittal must be made to the 9-AVS-ODA-Office@faa.gov mailbox, with attention IRT. The IRT is an internal AVS team intended to ensure that findings of noninterference are supported by the facts, after applying the relevant statutes, regulations, and policies. The IRT will perform its review and inform the OMT lead of its determination within 30 calendar days of receipt. If the IRT disagrees with the OMT position, the IRT will provide its rationale for disagreement to the OMT lead. Once the OMT receives a final determination from the IRT, the OMT will provide that determination as the FAA position to the ODA holder within 15 calendar days of receipt from the IRT. Notifications of rejection must contain the FAA's rationale for the rejection and describe the expected follow-up action or request that a meeting between the OMT lead and the ODA administrator be held within 15 calendar days to seek resolution.

(2) Annual Oversight. The OMT must conduct oversight of the ODA holder's compliance with the statutory and regulatory requirements discussed in this notice. OMT oversight must include an annual evaluation of the effectiveness of the ODA holder's processes in addressing interference and related issues, including a review of results of the annual solicitation of feedback from UMs required in subparagraph 5a(1). The OMT oversight must consider all reports of alleged interference, including those determined by the ODA holder not to be interference as a result of the ODA holder's investigation, and any indicators, patterns of actual or potential interference, and the effectiveness of system improvements made by the ODA holder. This annual oversight action must be documented using a supervision record.³

d. FAA OMT Response to Reports of Alleged Interference. Ensuring an environment free of interference is foundational to the confidence the FAA places in each ODA holder. OMTs must ensure that reports of alleged interference are fully investigated and, if warranted, corrected by ODA holders. If the FAA determines there was interference under 14 C.F.R. § 183.57(c), OMTs must follow FAA Order 2150.3, Compliance and Enforcement Program, as amended, to prevent reoccurrence. To determine whether compliance or enforcement actions are appropriate, OMT personnel should refer to Order 2150.3 and their program office compliance and enforcement guidance.

(1) Individual Civil Penalty for Supervisory Employees of ODA Holders That Manufacture Transport Category Airplanes. Title 49 U.S.C. § 44742(b) makes it unlawful for any individual who is a supervisory employee of an ODA holder that manufactures a transport category airplane to commit an act of interference with a UM's performance of authorized functions. Violators are subject to a civil penalty under 49 U.S.C. § 46301(a)(1). OMTs must follow Order 2150.3.

(2) Suspension and Termination of ODA Authority. An FAA delegation is a privilege and not a right. Suspension or removal of specific areas of authority as well as suspension or termination of all ODA holder authority can be taken at any time by the OMT, if necessary. Suspension and termination of ODA authority is accomplished in accordance with Order

³ Supervision records are discussed in detail in Order 8100.15B, Chapter 5 and Appendix A.

8100.15B, which may or may not include compliance and enforcement action(s) in accordance with Order 2150.3. The FAA Administrator will take suspension or termination actions when warranted to ensure the FAA's continued confidence in the independent decision making of the ODA holder's UMs and in the ODA holder as a designee of the Administrator.

Note: OMTs should exercise discretion and judgment when deciding on the appropriate action(s) to take in situations in which repeated violations are reported and confirmed. Consideration of factors such as the nature and frequency of violations, specific personnel involved, etc. may be appropriate (e.g., 2 violations within 6 months by the same person versus 2 violations within 6 years by different individuals).

e. OMT Reports of Interference to the ODA Office (AVS-60). On a quarterly basis, all OMT leads will use the AVS-60 OMT Data Portal to provide AVS-60 with the total count of reports of alleged interference (including zero if applicable) and all reports of ODA holder investigation of alleged interference received by the FAA pursuant to the process under subparagraph 5(a)(6). OMTs will also use the AVS-60 OMT Data Portal to submit the ODA holder's annual review and report(s) to the OMT received in accordance with subparagraph 5(a)(7), within 30 calendar days of receipt.

6. Policy Regarding UM and FAA Communication. Communication between the ODA holder, ODA administrators, UMs, and the OMT is essential for the success of the ODA program, and thus, is in no way prohibited. The ODA program relies on the ODA holder as the FAA's designee to act on behalf of the FAA. The ODA holder is responsible for ensuring UMs follow the ODA holder's procedures manual, as well as the FAA regulations and policy related to the performance of the ODA holder's authorized functions. This notice clarifies that the FAA recognizes direct communication between UMs and the OMT or other FAA staff as an important part of the ODA system. An ODA holder's procedures manual may include the preferred procedures for UMs seeking guidance and clarification from within the organization. However, an ODA holder, through its procedures manual or otherwise, must not prohibit communication to be initiated by a UM, such as when a UM needs more detailed guidance from the OMT beyond that obtained from their ODA administrator(s) or other UMs, or seeks to communicate with or seek the advice of FAA staff, for any purpose. If the OMT needs information regarding the ODA holder's programs, schedules, and corrective actions, OMT members should contact the ODA administrator rather than individual UMs as the agency expects the ODA administrator to be best positioned to provide that information; however, the ODA holder may not prohibit either the OMT or other FAA staff from communicating with a UM.

a. Procedures Manual Content Regarding UM and OMT Communication. The ODA holder's procedures manual must state that UMs are free to communicate directly with the OMT or other FAA staff without restriction. Additionally, it is acceptable for a procedures manual to include a process for sharing the results of communication within the organization in order to ensure that all UMs receive similar guidance, when appropriate.

b. Reprisal Against a UM for Communication. Changing the employment status, pay, duties, work location, or retention status of any UM for reporting, or considering reporting, a concern related to interference with the performance of authorized functions may constitute

reprisal against a UM in violation of statutes or regulations, such as 49 U.S.C. § 44742(b)(1) and § 183.57(a) and (c).

c. ODA and OMT Communication Training. ODA holder training provided to UMs should address the ability for UMs to communicate freely with the FAA.

7. ODA Office (AVS-60) Data Needs Supporting Implementation. To support the successful implementation of this policy, OMT leads are required to provide upon completion of the following items:

- Date of ODA interference MOU approval.
- Date of ODA holder procedures manual revision.
- Date OMT approved the ODA procedures manual.
- Date of ODA holder training materials submitted to OMT.
- Date of ODA holder training materials accepted by OMT.
- Date of ODA holder training completion and data as described in section 5(e).

Note: OMT leads will submit this data in the AVS-60 OMT Data Portal.

8. Distribution. This notice is available for general access by FAA staff and the public on the FAA website at https://www.faa.gov/regulations_policies/orders_notices/ and DRS.

9. Deviations. It is necessary to adhere to the procedures contained in this notice in order to achieve uniform administration of this directive material. Any deviation to this notice must be approved by AVS-60.

10. Disposition. Direct questions or comments concerning the information in this notice to 9-AWA-AVS-Designee-Directives@faa.gov. AVS-60 welcomes and will consider all suggestions or comments regarding this notice.

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