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Analysis of Disclosures, Agency Investigation and Reports and Whistleblower Comments

OSC File No. DI-07-2350

Summary

Gabriel D. Bruno, former Manager of the Orlando Flight Standards District Office (Orlando FSDO), Federal Aviation Administration (FAA), disclosed to the U.S. Office of Special Counsel (OSC) that there are numerous airframe and power plant (A&P) mechanics employed in the aviation industry whose certification is questionable. Mr. Bruno alleged that, in the process of re-examining mechanics who received questionable certificates from the St. George Aviation Testing Center (St. George), FAA administered a condensed version of the standard A&P mechanic certification exam that omitted the crucial hands-on practical test. He also alleged that many St. George-certified mechanics with questionable certificates have not been re-examined at all, yet they continue to perform maintenance on aircraft.

In addition, Mr. Bruno alleged that St. George certificate holders may be implicated in mechanical failures that contributed to two specific aviation accidents; nevertheless, FAA failed to advise the National Transportation Safety Board (NTSB) about the risks posed by certain St. George certificate holders, nor has FAA instituted a system for cross-referencing the names of St. George certificate holders with databases and documents associated with NTSB accident investigations. In short, Mr. Bruno contended that the ongoing deficiencies in FAA's effort to re-examine St. George certificate holders, and its failure to coordinate with other agencies regarding this issue, pose a substantial and specific danger to the flying public.

FAA's Flight Standards Service Quality Assurance (QA) staff investigated Mr. Bruno's allegations and prepared a report. In addition, FAA, with assistance from the Department of Transportation (DOT), Office of Inspector General (OIG) prepared a second report, which incorporated the findings set forth in the QA staff report. Among other findings, the agency investigation substantiated Mr. Bruno's allegation that, during the current phase of the St. George re-examination program, the examination that FAA is administering to mechanics is a substantially modified and condensed version of the standard A&P mechanic examination, which omits the hands-on practical test. According to the agency reports, FAA contends that it has discretion to administer modified versions of the mechanic certification exam during a re-examination effort. The investigation also revealed that a St. George certificate holder had in fact performed maintenance and inspections on an aircraft involved in a 2005 aviation accident; however, FAA concluded that there was no evidence to suggest that the mechanic was implicated in the accident. The agency report advised that, in order to prevent another

St. George-type fraudulent certification scheme from occurring, FAA has instituted several corrective actions to improve oversight of its designated mechanic examiner (DME) program.

After OSC reviewed the FAA report and the Flight Standards Service Quality Assurance staff's independent report, along with Mr. Bruno's comments on the FAA report, we concluded that several of FAA's findings required further clarification. Accordingly, we requested additional information, and FAA provided a supplemental report. Among other information contained in the supplemental report, FAA conceded that the documentary evidence it relied upon to conclude that there is no nexus between the 2005 Chalk's accident and a St. George certificate holder who performed maintenance on the aircraft was not definitive.

OSC considered the agency reports and Mr. Bruno's comments. For the reasons discussed below, OSC concludes that the reports meet all of the technical requirements of 5 U.S.C. § 1213, and the findings of the agency head appear reasonable. Notwithstanding this conclusion, we note that Mr. Bruno has raised issues that warrant the agency's consideration as it contemplates future policies and actions.

The Whistleblower's Disclosures

Mr. Bruno, who consented to the release of his name, was employed by FAA for more than 24 years. During his tenure as Manager of the Orlando FSDO, Mr. Bruno was responsible for overseeing all commercial aviation safety activities within the Orlando district.

Background

Mr. Bruno has filed several disclosures with OSC, all of which relate chronologically and substantively to the instant matter. To ensure a complete understanding of the background of this disclosure (OSC File No. DI-07-2350), each of the prior matters are discussed below by reference to the OSC File Number.

Mr. Bruno's 2003 Allegations (OSC File No. DI-02-1869)

Mr. Bruno first brought his concerns to the attention of OSC in March 2003, when he and another whistleblower alleged wrongdoing by officials within FAA's Southern Region Flight Standards Division (FSD), which oversees the Orlando FSDO. OSC File No. DI-02-1869.¹ Among other things, they alleged that, in the Spring of 2001, FAA officials abruptly cancelled a re-examination program for individuals who had received A&P mechanic certificates under fraudulent conditions. Mr. Bruno alleged that cancellation of this program, and the failure to re-examine more than 1,000 mechanics holding questionable certificates, constituted gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety.

The questionable A&P mechanic certificates were issued by St. George Aviation in Sanford, Florida. St. George was a "designated mechanic examiner" (DME), authorized to

¹ The agency report responding to Mr. Bruno's disclosures in OSC File No. DI-02-1869 is publically available on OSC's website at www.osc.gov.

administer FAA's A&P mechanic exam and issue A&P mechanic certificates. A&P mechanics are generally employed by airlines and provide pre-flight maintenance and safety checks for commercial aircraft. In May 1999, both the owner of St. George and a St. George employee were convicted of fraud and conspiracy in federal court in relation to their administration of the A&P mechanic exam and issuance of A&P mechanic certificates between 1995 and 1999. Specifically, the evidence revealed that St. George had supplied examinees with the answers in advance of the exam and, in some cases, issued certificates without requiring the examinee to take any examination at all. The mechanics certified by St. George were then employed by airlines and responsible for aircraft maintenance.

The DOT OIG investigated the matter in 1999, and found that approximately 2,000 mechanics certified by St. George held questionable certificates and needed to be re-examined. Thereafter, the Orlando FSDO, under Mr. Bruno's supervision, developed a program to identify and re-examine those mechanics. Re-examinations began in 1999 and, according to Mr. Bruno, there was a high rate of failure among the mechanics re-tested. Other mechanics opted to forgo re-examination -- voluntarily relinquishing their certificates instead.

Mr. Bruno alleged that, in the Spring of 2001, he was ordered to terminate the re-examination program, because the Southern Region's legal division lacked adequate resources to process the revocations of fraudulent certificates. Over Mr. Bruno's objections, all pending re-examinations were terminated. Mr. Bruno estimated that cancellation of this program left more than 1,000 questionable certificates outstanding, and many unqualified A&P mechanics continued to work in the aviation industry.

In March 2003, OSC referred Mr. Bruno's allegations to the Secretary of Transportation for investigation. The OIG partially substantiated the allegations. The OIG's initial report to OSC, dated January 16, 2004, concluded, "FAA prematurely cancelled its re-examination program," and the number of mechanics who had not been re-examined and might fail "represents a measurable impact on aviation safety." The OIG found that FAA failed to follow through on its previous commitment to re-examine all 1,626 mechanics who had received certificates from St. George between October 1995 and October 1998, the time frame in which the OIG determined fraudulent certificates were issued. Instead, FAA limited re-examinations to those individuals who were certified after June 11, 1998, the date on which OIG began an investigation into the matter.

According to the report, FAA cancelled the re-examination program after only 130 mechanics had been re-examined. FAA offered the following two reasons for cancelling the program: (1) an opinion from the Regional Counsel's Office that it was "merely speculation that the balance of the approximately 1,228 certificate holders identified for re-examination had not received a valid test from [St. George];" and (2) advice from the Regional Air Safety Regulation Branch that, given the passage of two years since St. George's closure and a pass-rate of 79 percent for the mechanics who were re-examined, there was "no conclusive measurable impact on aviation safety and the flying public that can be attributed to individuals tested at [St. George]."

The OIG disagreed with FAA's limitation of the re-examination program to only those mechanics certified after June 11, 1998, because FAA had information that suspicious testing activities were occurring at St. George as early as May 1995. Thus, the OIG recommended that FAA take steps to re-examine the remaining 1,228 mechanics who received certificates from St. George under suspect conditions. In a June 9, 2004, supplemental report to OSC, OIG reported that FAA was implementing steps to re-examine all mechanics who received certificates from St. George dating back to May 1995.

The Special Counsel forwarded the agency report along with OSC's Analysis of the disclosures and the whistleblowers' comments to the President and to the Chairmen of the Senate Committee on Commerce, Science and Transportation and the House Committee on Transportation and Infrastructure for any action deemed appropriate. Thereafter, the case was closed. Copies of the report and OSC's Analysis, and the whistleblowers' comments, are publically available at www.osc.gov, in OSC's Disclosure Unit Public File.

Subsequently, Mr. Bruno informed OSC that this new re-examination program had been cancelled. OSC requested additional information from OIG and the FAA Office of the Chief Counsel (OCC), which confirmed the cancellation of the re-examination program. OCC advised OSC that a federal court's preliminary injunction prohibited FAA from proceeding with re-examinations for several mechanics who filed suit challenging the legality of the re-examinations, and that FAA was in the process of seeking reconsideration of the preliminary injunction. The re-examinations were suspended pending the outcome of the litigation. OCC staff thereafter reported to OSC that the injunction was lifted in 2005, and that re-examinations were nearly complete, as discussed more fully below.

Mr. Bruno's 2007 Allegations (OSC File No. DI-07-2350)

In October 2004, FAA resumed its program for re-examining St-George-certified mechanics. FAA labeled this second re-examination effort, which is still ongoing, "phase two," to distinguish it from the previous re-examination effort, which it refers to as "phase one."² After reviewing pertinent information, Mr. Bruno concluded that many aspects of the phase-two re-examination effort are inadequate. In June 2007, he filed a second disclosure with OSC regarding his concerns. In his second disclosure, Mr. Bruno alleged that the phase-two re-examination program is insufficient to ensure that the mechanics who have received certificates are fully qualified to perform the essential functions of their positions. He also reported that numerous St. George-certified mechanics still have not yet been re-examined by FAA at all. Mr. Bruno criticized FAA for permitting these mechanics with questionable certificates to remain employed in the aviation industry and to continue to perform maintenance on aircraft.

² This report adopts FAA's terminology "phase one" and "phase two" to distinguish the earlier re-examination effort from the current one. "Phase one" denotes the initial re-examination effort that began in June 1999 and ended in June 2001, and "phase two" denotes the second re-examination effort that began in October 2004 and is still ongoing.

FAA issued guidelines for the phase-two re-examination program in Flight Standards Information Bulletin for Airworthiness (FSAW 04-10B). Mr. Bruno alleged that, under FSAW 04-10B, the FAA administers an abbreviated version of the original A&P mechanic certification exam when re-examining St. George-certified mechanics. Pursuant to 14 CFR Part 65, the original A&P mechanic certification exam consists of three components: a written test, an oral test, and a practical test. According to Mr. Bruno, the phase-two abbreviated re-examination excludes the practical test, which requires mechanics to demonstrate proficiency in performing hands-on mechanical skills. Mr. Bruno contended that the practical, hands-on portion of the examination is essential to ensure that mechanics are legitimately certified. In Mr. Bruno's opinion, the re-examinations have been "watered-down" to such an extent that they represent little improvement over the original fraudulent St. George examinations.

Next, Mr. Bruno alleged that FAA has not honored the commitments it made in response to the prior OIG investigation, which included the pledge to properly re-examine all of the nearly 2000 mechanics who received certificates from St. George during the time period in question. Mr. Bruno maintained that FAA's oversight of the DME program, and airline mechanics overall, has fallen short of the minimum level of oversight expected to ensure safety to the flying public. He contended that, without better oversight and management of commercial airline operations, particularly aircraft maintenance, substantial and significant risks to the public will continue.³

Moreover, Mr. Bruno asserted that FAA has been less than forthcoming in its reporting on the progress of re-examinations. Mr. Bruno identified as problematic both the inconsistency of available information on the mechanics who have been identified for re-examination, and for whom testing is complete, and the high number of failures reported. For example, FAA reported, in response to a Freedom of Information Act (FOIA) request, that, as of August 1, 2007, only 712 St. George certificate holders had been re-examined out of a total of 1,455 identified for re-testing. Of those re-examined, only 573 passed; 226 failed the initial examination, and 50% of those passed on the second attempt. At the same time, FAA reported to OSC in August 2007, that the re-examination process was 90% to 95% complete. At the time the re-examinations began, FAA had advised OSC that there were approximately 1,600 mechanics identified for re-testing. Mr. Bruno suggested that FAA's failure to report accurate information evidences a lack of accountability by FAA officials administering the re-examination program, and reinforces his concerns about the qualifications of those mechanics who were administered a less-than-complete examination.

As support for his concern that the phase-two re-examination process is flawed and continues to compromise public safety, Mr. Bruno cited the conclusions of the NTSB in two fatal crashes. In January 2003, a US Air Express flight crashed in Charlotte, North Carolina, killing all 21 persons on board. The cause of the crash was determined to be faulty maintenance; specifically, a mechanic performing a routine maintenance check did not follow all required

³ See, U.S. Government Accountability Office, Report to the Ranking Democratic Member, Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, GAO-05-40, *Aviation Safety, FAA Needs to Strengthen the Management of Its Designee Program*, October 2004, which echoed Mr. Bruno's concerns.

steps, resulting in a mechanical failure during flight. Similarly, in December 2005, Chalk's Ocean Airways, Flight 101 crashed when a wing detached from the airplane in flight, resulting in the death of all 20 persons on board. Fatigue cracks, which had gone undetected by mechanics, were found to have been the cause. In both cases, the NTSB sharply criticized the FAA's lack of airline maintenance program oversight. In the Chalk's Airline Accident Report, NTSB concluded that:

The FAA's procedures for maintenance program oversight, when applied to commercial operators of aircraft with limited manufacturer or engineering support, such as Chalk's Ocean Airways, are insufficient to ensure the adequacy of such programs' structural airworthiness plans and, thus, the safety of such aircraft operations, and the FAA's failure to identify the inadequacy of the Chalk's Ocean Airways maintenance program was causal to the accident.⁴

Mr. Bruno alleged that comments by two NTSB board members, in statements accompanying the Chalk's report, strongly suggest that better FAA oversight could have prevented the accident.⁵

Mr. Bruno also pointed out that, although each of these crashes implicated mechanics and maintenance personnel at the airlines, neither NTSB, nor FAA, appeared to have reviewed the issue of mechanic certification as it may have related to the issuance of St. George certificates. FAA admits, in response to a FOIA request sent on Mr. Bruno's behalf, that it has not established a formal coordination or cross-referencing program with regard to NTSB accident investigations, when the investigative findings determine that faulty maintenance contributed to a crash. Mr. Bruno maintained that, without this critical piece of safety information, FAA has not credibly substantiated its claim that there is "no conclusive measurable impact on aviation safety and the flying public that can be attributed to individuals tested at [St. George]."⁶

Mr. Bruno asserted that FAA should evaluate and complete an adequate re-examination of all A&P mechanics who received certifications during the time period of St. George's fraudulent testing scheme. In addition, Mr. Bruno recommended that FAA undertake a review of certification records to determine whether or not the mechanics working on aircraft involved in recent aviation accidents were originally St. George certificate-holders, and to ascertain the status of their certification. Mr. Bruno contended that, by not doing so, FAA has failed to ensure

⁴ See, NTSB Accident Report, NTSB/AAR-07/04, *In-flight Separation of Right Wing, Flying Boat, Inc. (doing business as Chalk's Ocean Airways) Flight 101, Grumman Turbo Mallard (G-73T), N2969, Port of Miami, Florida, December 19, 2005*, Adopted May 30, 2007. See also, NTSB Accident Report, NTSB/AAR-04/01, *Loss of Pitch Control During Takeoff, Air Midwest Flight 5481, Raytheon (Beechcraft) 1900D, N233YV, Charlotte, North Carolina, January 8, 2003*; Adopted February 26, 2004.

⁵ NTSB/AAR-07/04, Board Member Statements of Deborah A. P. Hersman, and Kathryn O'Leary Higgins, pp. 58 and 60.

⁶ See, Report of the Department of Transportation to OSC, January 16, 2004.

that its re-examination process is adequate, and that public safety is not further compromised by unqualified mechanics.

FAA Investigation and Reports

Two Aviation Safety Inspectors (ASIs) from FAA's Flight Standards Service Quality Assurance (QA) staff investigated Mr. Bruno's allegations and prepared a report (QA staff report). FAA then incorporated the findings from the Flight Standards Service QA staff investigation into a second report it prepared in response to Mr. Bruno's allegations (agency report). At then-Secretary Peters' request, FAA coordinated its investigation and report with the Department of Transportation, Office of Inspector General.

According to the QA staff report, FAA Security interviewed Mr. Bruno, and the QA staff interviewed numerous other witnesses. The QA staff also reviewed and analyzed relevant documents and databases, including the Airman Registry Database, the Program Tracking Reporting System, National Transportation Safety Board (NTSB) case files, and documents from the U.S. Court of Appeals for the 11th Circuit.

a. Current Status of Re-examination Program

First, the agency report provided recent data regarding the status of "phase two" of the St. George mechanic re-examination program. FAA reported that it has now processed 1,362 out of a total of 1,445 mechanics subject to re-examination, i.e., 94 percent. Among other supporting documents, FAA attached a complete list of the names of all 1,445 mechanics, along with information on the current status of each mechanic's certificate. The agency report asserted that "FAA remains dedicated to diligently processing the remaining six percent of the mechanics." Nevertheless, FAA explained that it has encountered several obstacles in completing this task: for example, several of the mechanics are overseas on active duty military service and other mechanics have not maintained a current address on file where they can be contacted. The agency report advised that FAA has accounted for the remaining 83 mechanics, has flagged their airman files, and is regularly monitoring their certificates.

Next, the agency report addressed Mr. Bruno's allegation that FAA has reported inconsistent statistics on the number of St. George mechanics subject to the phase two re-examination program. FAA denied this claim. According to the agency report, since the outset of phase two in July 2005, the number of affected mechanics has remained constant at 1,455. However, the report explained that FAA recently decreased the number to 1,445 after eliminating several duplicate listings and determining that certain other individuals actually tested at St. George outside of the time period in question.

FAA also responded to Mr. Bruno's claim that it "has been less than forthcoming in its reporting on the progress of re-examinations" and has released inconsistent statistics. According to the agency report, any discrepancy between the statistics FAA provided Mr. Bruno in August 2007 in response to a FOIA request versus the statistics FAA provided to OSC during the same time period may be attributed to the narrow scope of Mr. Bruno's FOIA request. The agency report explained that, while FAA only provided Mr. Bruno with specific information responsive

to his limited FOIA request, it instead provided OSC with a more complete picture of the status of the re-examination program at that time.

The agency report stated that, so far, phase two of the re-examination program has yielded a 20 percent failure rate. FAA contended that the 20 percent failure rate “demonstrates that FAA has remained committed throughout the current re-examination program to fairly and aggressively administer the program to ensure that only St. George Aviation examinees who can demonstrate their qualifications remain certificate holders.”

b. Omission of Practical Test from Phase-Two Re-examination Program

The agency report confirmed Mr. Bruno’s contention that the examination administered to mechanics during phase two of the re-examination program consists of a written test and an oral test, but does not include a hands-on practical test. In this way, the second-phase examination format departs from the format of the standard mechanic certification examination administered to prospective new mechanics. It also departs from the format of the examinations administered during phase one of the St. George re-examination program, which consisted of an oral test and a practical test.

The standards for initial mechanic certification exams are set forth at 14 CFR Part 65. This regulation mandates that prospective mechanics pass a three-part examination -- consisting of a written component, an oral component and a practical component -- in order to obtain initial certification. In the agency report, FAA maintained that it has discretion to deviate from these initial certification requirements when it administers re-examinations. Specifically, the agency report asserted that:

The standards for conducting a re-examination are discretionary and allow FAA personnel the flexibility to determine the best means possible to ascertain the present qualifications of the certificate holder. There is no requirement that a re-examination must, in effect, repeat the original certification testing process for the original certification under part 65.

In support, FAA cited *dicta* from an NTSB decision *Administrator v. Santos and Rodriguez*, NTSB Order No. EA-4266 at n.7 (1994), which acknowledged that FAA had administered a condensed version of the original certification exam during a re-examination effort and did not challenge FAA’s right to do so.

According to the agency report, FAA’s decision to omit the practical test was influenced by pragmatic and logistical considerations: specifically, the fact that “FAA generally does not have facilities equipped to conduct practical tests.” The report further explained that, for initial certification exams, FAA usually relies upon DMEs to administer practical tests at schools or private facilities. However, for the phase-two re-examination program, FAA elected not to use DMEs to re-examine the mechanics in light of the criminal conduct of certain St. George DMEs who had administered the original certification exams at issue. FAA concluded that, without the use of DMEs, the task of administering a practical test to so many mechanics was daunting.

The agency report further explained that, in contrast to the practical test (with its associated logistical challenges), “[t]he written and oral re-examination format could be administered to the mechanics at flight standards district offices nationwide and internationally. . . .” In reference to the written component, the agency report advised that FAA decided to administer the written test at the outset of the re-examination process as a quick and efficient method for screening such a large group of mechanics to ascertain whether they “met the fundamental knowledge requirements for holding a mechanic certificate.”

c. FAA Oversight of DMEs

The agency report also addressed Mr. Bruno’s criticism that FAA’s oversight of the DME program is inadequate to ensure the safety of the flying public. FAA responded that, since the St. George incident, it has taken significant steps to improve DME oversight, in an attempt to prevent similar situations from recurring in the future. Among other improvements, FAA established the Designee Quality Assurance Branch, revised relevant agency guidance to institute stricter controls over DMEs, and offered a training course on DME oversight to aviation inspectors.⁷

d. Review of Two Aviation Accidents

At Mr. Bruno’s request, FAA examined the maintenance and certification records associated with the aircraft involved in two fatal aviation accidents: the January 2003 crash of an aircraft operated by U.S. Air Express and the December 2005 crash of an aircraft operated by Chalk’s Ocean Airways. FAA reviewed the certification records of mechanics who worked on both aircraft to ascertain whether any of them had been certified by St. George. In reference to the U.S. Air Express aircraft, FAA found that none of its mechanics were St. George-certified.

On the other hand, FAA did find one St. George certificate holder among those mechanics who performed maintenance on the Chalk’s Ocean Airways aircraft. At the time of the accident, this mechanic had not yet been re-examined. The agency report states that, on December 22, 2005, immediately after the accident, the mechanic was finally re-examined, and he failed the exam. As a result, FAA required him to place his mechanic’s certificate on deposit with the agency. After the mechanic failed the certification exam a second time, FAA revoked his mechanic’s certificate and ratings.

FAA examined whether there might be a nexus between the St. George certificate holder and the aviation accident. The agency report noted that NTSB attributed the accident to undetected fatigue cracking in the right wing, which led to the wing’s structural failure. FAA further stated that NTSB’s accident report contained “absolutely no suggestion that links the cause of the crash to FAA’s oversight of DMEs or to St. George Aviation-examined mechanics.” In addition, FAA reviewed Chalk’s maintenance records and determined “that there is no

⁷ FAA’s corrective actions are described in greater detail below, under the heading “Corrective Actions Planned or Taken.”

documentation that the St. George Aviation mechanic was involved in maintenance on areas of this aircraft related to the cause of the accident.”

e. Coordination of Information with NTSB

The agency report confirmed Mr. Bruno’s claim that FAA does not have a system in place specifically for the purpose of cross-referencing NTSB aviation accident investigations with the list of St. George certificate holders. The agency report then explained the approach that FAA does employ when coordinating accident investigations with NTSB. According to the agency report, whenever NTSB determines that maintenance deficiencies contributed to an aviation accident, “FAA and NTSB work closely together to obtain and evaluate the aircraft maintenance records, as well as the individual mechanic’s airman records, to ascertain the root cause of the accident or incident as part of the analysis of the accident or incident.”

Corrective Actions Planned or Taken

FAA reported that it has taken several steps to improve its oversight of the DME program, in an effort to prevent an incident similar to that caused by St. George from recurring in the future. These corrective actions, as enumerated in the agency report, include the following:

- (1) The Flight Standards Service revised the DME Handbook, Order 8610.4, and the Airworthiness Inspector's Handbook, Order 8300.10, "to add risk controls to the selection and management of DMEs." The Flight Standards Service also increased the amount of surveillance that it requires inspectors to perform on DMEs.
- (2) The Flight Standards Service established the Designee Quality Assurance Branch, which is responsible for analyzing designee processes and devising recommendations for improvement. The Designee Quality Assurance Branch recently audited the DME system and is currently developing a set of recommendations.
- (3) The Flight Standards Service and the FAA Academy developed and deployed a new course entitled "Designee Management for Personal Certification" to train FAA inspectors to conduct DME inspection and oversight functions.
- (4) The Office of Aviation Safety (AVS) is developing several initiatives to improve designee processes and establish minimum controls. AVS also established a Delegation Steering Group to discuss and coordinate designee issues among the various offices and services.

The Whistleblower’s Comments

Mr. Bruno commented on the agency report. He reiterated his criticism of the phase two re-examination format selected by FAA, remarking that the “specific re-exam requirements contained in the FAA Flight Standards Information Bulletins, 04-10A and 04-10B are shocking in their deficiencies.” Mr. Bruno argued that, because many of the mechanics certified by St. George never passed a valid initial certification exam, FAA’s re-examination program should have required the St. George certificate holders to take a complete version of the initial

certification exam, rather than a condensed version. According to Mr. Bruno, an original A&P certification exam entails a written test consisting of 260 questions, an oral test with a minimum of 176 questions, and a hands-on practical test that requires an examinee to perform a minimum of 68 separate tasks. By contrast, the phase-two re-examination format for A&P certification merely consists of a written test of 60 questions and an oral test of 15 questions.

Mr. Bruno was particularly critical of FAA's decision to limit the re-examination format to only the written and oral portions, omitting the practical portion altogether. He argued that "[t]he total elimination of the hands-on practical demonstration makes it impossible to determine if the applicant can perform even the most basic functions of an A&P mechanic." Mr. Bruno elaborated that, in other words, individuals who pass FAA's phase two re-examination program are "approved to continue working in air transportation without so much as turning a wrench." He pointed out that FAA's decision to omit the practical portion of the test is inconsistent with FAA's policy as set forth in FAA Order 8610.12, "Technical Personnel Examiner Handbook" (July 14, 2008), which emphasizes that the oral and practical portions of the mechanic certification exam supersede the written portion in both value and significance.⁸

Regarding FAA's claim that it has discretion to determine the appropriate test format to use for re-examining mechanics, Mr. Bruno accused FAA of misusing this discretion. Mr. Bruno contended that "FAA's discretion in this area should have been used to ensure the public safety," and he further expressed his opinion that "[t]he proper use of that discretion would have been to ensure that the individuals [who] were re-tested did in fact meet the full certification requirements for the professional certificates they obtained."

Next, Mr. Bruno mentioned another potential deficiency in FAA's re-examination program. He stated that, as far as he is aware, FAA procedures do not require the agency to notify a mechanic's employer whenever a mechanic fails re-examination and his certificate is revoked. Thus, Mr. Bruno expressed concern that it may be possible for a mechanic to continue working on aircraft after FAA revokes his certificate, and Mr. Bruno has heard anecdotal accounts of this situation occurring.

Mr. Bruno also commented on FAA's finding that a St. George mechanic had worked on the Chalk's Ocean Airways aircraft that was involved in the December 2005 fatal accident. Mr. Bruno expressed skepticism over FAA's conclusion that the mechanic did not somehow contribute to the accident. He contended that FAA's investigation into a possible causal connection appears to be inadequate. According to Mr. Bruno, the agency report's statement "that there is no documentation that the St. George Aviation mechanic was involved in maintenance on areas of this aircraft related to the cause of the accident," is insufficient to resolve the matter to his satisfaction. Mr. Bruno questioned whether the converse was also true: he asked whether FAA encountered "any documentation that indicated [the mechanic] *did not*

⁸ In his comments, Mr. Bruno actually cited the predecessor to FAA Order 8610.12: FAA Order 8610.4 "Aviation Mechanic Examiner Handbook" (April 15, 2004). In July 2008, FAA cancelled FAA Orders 8610.4 and 8610.5, "Parachute Rigger Examiner Handbook," and consolidated the information from both of these orders into the new FAA Order 8610.12. The pertinent passages that Mr. Bruno references from FAA Order 8610.4 were fully incorporated into FAA Order 8610.12.

work on the relevant parts of the aircraft, or was otherwise uninvolved in the maintenance problems that led to the accident.”

Mr. Bruno criticized FAA’s slow progress in re-examining the St. George certificate holders. In response to the data that FAA has not yet processed six percent of the 1,445 mechanics, Mr. Bruno stated:

This means, after eight years, a time span that includes the 9/11 tragedy, there are still at least 50 mechanics somewhere in the aviation system that have not been properly vetted or tested by the FAA. As we tragically learned after the Chalk’s accident, a matter of days can mean the difference between life and death.

Mr. Bruno emphasized the fact that FAA did not re-examine the St. George certificate holder who worked on the ill-fated Chalk’s aircraft until *after* the aircraft was involved in a fatal accident. Since, as FAA reported, the mechanic failed the re-examination twice, and ultimately FAA revoked his mechanic’s certificate, Mr. Bruno argued that FAA should have taken action against this mechanic much sooner.

Mr. Bruno reviewed the NTSB report on the accident involving the Chalk’s aircraft. According to Mr. Bruno, in its report, NTSB posed several pointed questions to FAA about its oversight of Chalk’s Ocean Airways. Mr. Bruno stated that he attempted to gain access to FAA’s response to these questions by submitting a FOIA request to FAA. However, FAA’s reply to his request indicated that the agency was unable to locate any records or files responsive to his inquiry. Based on this information, Mr. Bruno accused FAA of being involved in a “cover-up to draw attention away from its malfeasance and multiple violations of the public trust.”

FAA’s Supplemental Report

After OSC reviewed the FAA report and the QA staff report, along with Mr. Bruno’s comments, we concluded that several of FAA’s findings required further clarification. Accordingly, we requested additional information, and FAA submitted a supplemental report.

First, OSC questioned the strength of the evidence FAA relied upon to dismiss the possibility of a nexus between the 2005 Chalk’s Ocean Airways accident and the St. George-certified mechanic who worked on the ill-fated aircraft. OSC found that the information on this issue provided in the agency report is inadequate, as the agency report addresses this concern in a mere two sentences, stating: “The FAA followed up with an investigation of Chalk’s air personnel and a review of Chalk’s air maintenance records. That review revealed that there is no documentation that the St. George Aviation mechanic was involved in maintenance on areas of this aircraft related to the cause of the accident.”

OSC requested more details about FAA’s investigation into the matter, and asked the following questions: (1) Which databases and documents were included in FAA’s review? (2) Was the document review sufficient to definitively rule out a nexus between the mechanic and the accident? (3) Which areas of the aircraft did the mechanic work on? and (4) Was all of

his time accounted for in maintenance records, or is it possible that he may have worked on other areas of the aircraft without this fact being documented?

According to the supplemental report, as part of the initial investigation, the South Florida Certificate Management Office (CMO) reviewed the aircraft's logbook pages, maintenance inspection records, and associated non-routine cards. To assist FAA in preparing the supplemental report, the South Florida CMO re-analyzed these maintenance records. Based on information gleaned from the second document review, FAA reported that the St. George-certified Chalk's employee not only worked for Chalk's as a mechanic, but he also worked for the company in the capacity of an inspector. In response to OSC's inquiry into the specific areas of the aircraft the mechanic worked on, the supplemental report advised that the records indicate that he "worked on various areas of the aircraft throughout his tenure at Chalks."

In the supplemental report, FAA conceded that "it is not possible to state that the FAA's document review is definitive." By way of illustration, FAA stated that Chalk's maintenance records contain hand-written signatures and initials of mechanics, and some of these are illegible. FAA further admitted that there is no way to account for all of the mechanic's time, and -- even though mechanics are supposed to document all of their work -- it is possible that the mechanic may have worked on other areas of the aircraft without documenting this fact.

OSC also asked FAA to address whether FAA has a mechanism in place for notifying the mechanic's employer whenever FAA revokes a mechanic's certificate, which is a concern that Mr. Bruno raised in his comments. FAA responded that it may notify the mechanic's employer when it is aware of the employer's identity; however, FAA does not always possess this information because mechanics are not required to provide it to FAA. FAA further explained that the responsibility for ensuring that mechanics are appropriately certified is shared by both the mechanic and the carrier, not FAA. To this end, FAA regulations forbid those mechanics who have had their mechanic certificate revoked from exercising the privileges of a mechanic certificate, and other regulations require carriers to ensure that, among their staff, only qualified certificate holders perform work that requires certification.

The Whistleblower's Second Set of Comments

Mr. Bruno reviewed the supplemental report and submitted written comments. Among other points, Mr. Bruno asserted that the supplemental report highlights FAA's "lack of due diligence" in conducting its investigation. Mr. Bruno criticized FAA for belatedly discovering or revealing (whichever the case may be) new, relevant information contained in the supplemental report -- specifically, the fact that the St. George mechanic employed by Chalk's also worked for the company as an inspector. Mr. Bruno elaborated on the significance of this finding as follows: "this means that this individual had broad-ranging responsibilities for the maintenance of Chalk's entire fleet of aircraft." In light of the significance of this finding, Mr. Bruno contended that FAA's earlier investigation should have uncovered the mechanic's dual role, and FAA should have incorporated this finding into the agency's initial reports.

Mr. Bruno also expressed concern that FAA's poor oversight of DMEs is ongoing, in spite of FAA's representations and assurances to the contrary. In support, he submitted an article

from a trade newsletter discussing a recent FAA criminal investigation that substantiated allegations that ex-DME Bryan Tobias of San Antonio, Texas, administered fraudulent A&P mechanic certification exams.⁹ As a result of the investigation, the certifications held by approximately 1400 A&P mechanics examined by Mr. Tobias have been called into question, and those mechanics will be required to pass a re-examination in order to remain certified. Mr. Bruno expressed his frustration in the following terms:

Tobias Aviation, which is a carbon copy of the St. George criminal enterprise, was in full swing issuing fraudulent mechanics certificates while the FAA and DOT were giving OSC and the public assurances that they had taken steps to improve the oversight of Designated Mechanic Examiners to ensure that another 'St. George-type' operation could not occur.

Lastly, Mr. Bruno called for FAA officials to be held accountable "for creating this continued specific danger to public safety."

Conclusion

Based on the representations made in the agency reports and Mr. Bruno's comments, OSC concludes that the reports meet all of the technical requirements of 5 U.S.C. § 1213, and the findings of the agency head appear reasonable. Notwithstanding this conclusion, we note that Mr. Bruno has raised issues that warrant the agency's consideration as it contemplates future policies and actions.

⁹ "1400 Mechanics Recalled by the FAA," Nuts and Bolts – A Newsletter Written by Mechanics for Mechanics; Issue 09-03 (September 30, 2009).