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**Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments,
and Comments of the Associate Special Counsel**
OSC File No. DI-08-1708

Summary

Christopher Monteleon, an Aviation Safety Inspector with the Department of Transportation (DOT), Federal Aviation Administration (FAA), disclosed allegations concerning the Colgan Air Certificate Management Team (Colgan CMT) in the Washington Flight Standards District Office (FSDO), Herndon, Virginia, and the Runway Safety Program within FAA Headquarters. He disclosed that in January 2008, while serving as Aircrew Program Manager (APM) for the Colgan CMT, he reported critical safety-of-flight violations committed by a Colgan pilot. He claimed that after his reporting caused delays in Colgan's schedule for introducing new aircraft into revenue service and Colgan complained, FSDO management directed him to terminate an enforcement investigation and removed him from the Colgan CMT. He asserted that the safety of the flying public was compromised to allow Colgan to meet its schedule.

Mr. Monteleon also disclosed that while working in the Office of Runway Safety (ORS) in FAA Headquarters in 2006, he observed that runway incursion severity classification data were intentionally manipulated to reflect the occurrence of fewer and less severe runway incursions. He contended that the inaccurate data were incorporated into FAA's nationwide databases and a computer program used by FAA to calculate runway incursion severity classifications. He claimed that the data have produced inaccurate and misleading statistics relied on by FAA.

The investigation, conducted by DOT's Office of Inspector General (OIG), partially substantiated Mr. Monteleon's allegations. OIG confirmed that the Colgan pilot reported by Mr. Monteleon violated the Federal Aviation Regulations (FAR). OIG found, however, that FSDO management did not pursue enforcement action against the pilot or Colgan because Mr. Monteleon did not follow required reporting procedures and the Colgan CMT Supervisor failed to take appropriate action in response to the events. OIG also confirmed that, since 2000, FAA had not conducted a regional assessment of Colgan's Aircrew Designated Examiner (ADE) program, as required every three years. The investigation did not reveal evidence to substantiate Mr. Monteleon's allegations that runway incursion severity classification data were intentionally manipulated.

The Whistleblower's Disclosures

Colgan CMT

In July 2007, Mr. Monteleon was assigned as APM on the Colgan CMT, overseeing the ADE program for a fleet of 15 new aircraft, the Bombardier DHC-8-402 (Dash 8).¹ As APM, Mr. Monteleon was responsible for conducting surveillance of training and certification activities, including in-flight observation of the flightcrew during training flights and proving runs of the new aircraft. Colgan received the first of these new aircraft on or about December 28, 2007. Mr. Monteleon alleged that Colgan set a date of February 4, 2008, to begin revenue service of the Dash 8 for United Airlines. He stated that FSDO management assured Colgan that the required inspections and proving runs would be completed in a manner that would not delay this tight schedule.

Mr. Monteleon alleged that on January 14, 2008, while conducting surveillance, he found safety violations, including the use of an outdated in-flight engine-failure emergency procedure in one of the flight manuals known as the Quick Reference Handbook, in violation of 14 CFR § 121.135 and 137. He claimed that despite pressure from his supervisor, Edward Roberts, Principal Operations Inspector (POI) Douglas Lundgren, and FSDO Assistant Manager Rolandos Lazaris to move forward with the proving runs, he determined this violation was a safety-of-flight issue that required resolution prior to conducting the proving runs. As a result, the proving runs were delayed by at least one day, angering Colgan and FSDO management.

On January 19, 2008, Mr. Monteleon observed three training/proving runs with the flightcrew on the Dash 8. Colgan Pilot William Honan (the pilot), who is an APD, was the check airman, instructor-pilot and pilot-in-command for these three runs.² During and after the runs, Mr. Monteleon observed several instances in which the pilot engaged in safety-of-flight violations, performed in a manner below FAA standards, and refused to take responsibility for his performance. On the first run, the pilot exceeded the airspeed limitation for the aircraft on two occasions. Following the run, the pilot did not record these two airspeed "exceedences" in the aircraft maintenance log (AML), as required under 14 CFR §121.563.³ Mr. Monteleon

¹ The ADE program, established under 14 CFR §§ 121 and 183, allows FAA to designate select pilots of eligible carriers as Aircrew Program Designees (APDs), who are authorized by FAA to conduct pilot certification examinations and issue pilot's certificates for a particular type of aircraft. APMs are responsible for the oversight and management of the APDs' activities. Where a new aircraft is being introduced, as was the case with Colgan, the APM is also responsible for reviewing, approving, and overseeing the carrier's pilot training and proficiency checking program for the new aircraft. In this context, the APM conducts regulatory oversight of the carrier's check airman and instructor-pilots.

² Check airman are a level above instructor-pilots and are authorized to conduct proficiency checks of other check airman. Although Mr. Honan did not function as an APD during the three flights, Mr. Monteleon contended that his APD and check airman status required him to maintain the highest standards of performance.

³ Section 121.563 of 14 CFR requires the pilot-in-command to ensure that all mechanical irregularities occurring during flight time are entered into the maintenance log of the airplane at the end of that flight time. It further requires the pilot-in command to ascertain, prior to each flight, the status of each irregularity entered in the log at the end of the preceding flight.

explained that the recording of these “discrepancies” in the AML would trigger a required maintenance inspection of the aircraft to ensure its airworthy condition, including the absence of any structural damage to the aircraft caused by the airspeed exceedence.

During the second run, Mr. Monteleon stated that an aircraft communication system malfunctioned. After the run, the pilot failed to enter this discrepancy and the two prior airspeed exceedences in the AML. Mr. Monteleon alleged he received “pushback” from the pilot, who reluctantly recorded the communication system discrepancy only after Mr. Monteleon cautioned him that failure to do so could result in safety violations. He still did not record the two airspeed exceedences. During the third run, Mr. Monteleon continued to observe deficiencies in the pilot’s performance, including another airspeed exceedence. Following the third run, the pilot initially denied exceeding the airspeed limitation, but recorded the discrepancy after Mr. Monteleon cautioned him again regarding safety violations. The pilot still refused to enter the two prior exceedences.

Mr. Monteleon further alleged that during the second and third runs, the pilot provided inaccurate instructions for emergency and maintenance procedures to the pilot-in-training and failed to safely conduct a night missed-approach in a mountainous area. During the third run, Mr. Monteleon observed the pilot exhibiting signs of fatigue and questioned him. The pilot responded that he was fine. After the flight, however, Mr. Monteleon stated that the pilot acknowledged he had experienced excessive fatigue during the flight and had not demonstrated the judgment required of a pilot. Mr. Monteleon alleged that the pilot’s actions violated 14 CFR § 91.505, “Familiarity with operating limitations and emergency equipment,” and 14 CFR § 91.13, “Careless or reckless operation.”

On January 19, 2008, following the training/proving runs, Mr. Monteleon conducted a debriefing with the pilot and co-pilot. He alleged that during the meeting, the pilot became confrontational and disputed the violations and deficiencies. Colgan’s Vice President of Operations, LaDonn Nunn, who participated in the debriefing by phone, intervened in support of the pilot and threatened to contact the FSDO Manager. On January 28, 2008, Supervisor Roberts advised Mr. Monteleon that FSDO Manager Nicholas Scarpinato had received a complaint from Colgan’s president regarding his “misconduct.” Mr. Roberts directed Mr. Monteleon to have no further contact with the carrier and assigned him to desk duties. Mr. Monteleon further claimed that Mr. Scarpinato and Mr. Lazaris initiated an investigation of his conduct in response to the complaint from Colgan.

Based on his observations during the January 19 training/proving runs, Mr. Monteleon initiated an enforcement investigation of the pilot. The pilot’s APD and check airman privileges were voluntarily suspended by Colgan pending the outcome of the investigation and the pilot’s retraining. Mr. Monteleon also recommended suspension of Colgan’s ADE program for the Dash 8 fleet. By memorandum of February 4, 2008, to Mr. Roberts and Mr. Lundgren, Mr. Monteleon outlined the violations and failure to adhere to FAA Order 8900.1 and the Memorandum of Understanding (MOU) between FAA and Colgan. On March 6, 2008,

Mr. Roberts directed Mr. Monteleon to terminate his enforcement investigation, advising him that the FSDO's position was that the proving runs were training flights and "those violations never happened." In addition, Mr. Roberts and Mr. Lundgren rejected Mr. Monteleon's recommendation to suspend the ADE Program for the Dash 8 fleet. Mr. Monteleon was formally removed from the Colgan CMT on March 13, 2008. In a March 17, 2008, document, responding to a grievance filed by Mr. Monteleon, Mr. Scarpinato stated that he removed Mr. Monteleon from the Colgan CMT in part because management needed "to immediately respond to the Operator's scheduling needs, which was an issue at the time."

Mr. Monteleon learned, after his removal from the Colgan CMT, that FSDO management approved the restoration of the pilot's APD, check airman and instructor status without retraining. Mr. Monteleon contended that this pilot's performance during the three training/proving runs rendered him ineligible for reinstatement as an APD, regardless of any retraining he received. Nevertheless, this pilot, who performed below FAA standards, refused to comply with the FAR, and failed to cooperate with the APM, continued to conduct pilot certification examinations and issue pilot's certificates. Mr. Monteleon further claimed that Colgan aircraft N187WQ flew without a necessary maintenance inspection, in violation of the FAR, for at least two months. He also asserted that after he was relieved of his APM duties, the Colgan ADE Program for the Dash 8 fleet operated without a trained APM. He contended that FSDO management terminated an enforcement investigation, ignored safety and maintenance inspection regulations, removed him as APM, and allowed an unqualified APD to carry out pilot examinations and certification, all in an effort to accede to the demands of Colgan.

Mr. Monteleon asserted that his 2008 experience on the Colgan CMT was similar to his prior assignment on, and removal from, the Colgan CMT in 2004 and 2005. He stated that while serving as POI on the Colgan CMT in 2005, he observed numerous safety violations, including non-compliance with airworthiness regulations, deficiencies in maintenance procedures and controls, and use of outdated manuals. As he did in 2008, Mr. Monteleon reported the violations to FSDO management. As in 2008, after Colgan complained, FSDO management removed him from the Colgan CMT in 2005. Again, Mr. Monteleon contended that regulatory compliance and safety were compromised by FAA in order to satisfy the demands of Colgan.

Manipulation of Runway Incursion Classification Data

In January 2006, Mr. Monteleon was assigned to ORS to work on FAA's Runway Safety Program. He served as the Aviation Safety/Flight Standards representative on a Runway Incursion Severity Assessment Team, along with representatives of the Air Traffic Organization (ATO) and Airports (ARP). This assessment team of three "subject-matter experts" was responsible for analyzing runway incursion data and classifying the severity of runway incursions, pursuant to FAA Order 7050.1.⁴ As a member of the assessment team,

⁴ On October 1, 2007, FAA adopted the International Civil Aviation Organization's (ICAO) definition of a runway incursion, which is "any occurrence at an aerodrome involving the incorrect presence of an aircraft, vehicle, or person on the protected area of a surface designated for the landing and take off of aircraft." Previously, FAA

Mr. Monteleon observed that runway incursion severity classifications were not determined in accordance with the procedures and classification criteria set forth in Order 7050.1.⁵ He alleged that the classification determinations were intentionally manipulated to reflect the occurrence of fewer severe runway incursions, in an effort to improve the appearance of FAA's safety record.

Mr. Monteleon stated that William Davis, then-Vice President, ATO-Safety, had direct oversight responsibility of the assessment team's activities. According to Mr. Monteleon, there was pressure from Mr. Davis, who was striving to improve FAA's runway safety record, to classify runway incursions less severely than they should be, based on the criteria of Order 7050.1. He alleged that Mr. Davis modified the severity category definitions to improve the data, and on more than one occasion expressed his dissatisfaction with the assessment team's classifications, indicating they were too severe (*i.e.*, there were too many A and B classifications). He further explained that the three-member team frequently was unable to reach a consensus on classifications because the ATO representative, and to a lesser extent the ARP representative, tended to classify runway incursions less severely than Mr. Monteleon. He contended that in these instances, the designated tie-breaker was often someone who lacked the qualifications to render classification determinations, and always lacked neutrality and/or was under pressure to classify runway incursions less severely.

Mr. Monteleon contended that this under-classification of severe runway incursions produced inaccurate and misleading data and statistics, which have been published and relied upon by FAA. He claimed that the inaccurate data have been incorporated into FAA's safety databases, including the Aviation Safety Information Analysis System, and were used as the foundation for a computer program, "Runway Incursion Severity Classification Calculator" (RISC), used by FAA to standardize runway incursion severity classifications. He alleged that because the program's model is based on skewed data that under-classify more severe incursions, the calculations produced by the program likewise yield an under-classification of severe incursions, misleading those who rely on the data in a manner that may negatively affect public safety.⁶

defined a runway incursion as any occurrence in the airport runway environment involving an aircraft, vehicle, person, or object on the ground that creates a collision hazard or results in a loss of required separation with an aircraft taking off, intending to take off, landing, or intending to land.

⁵Order 7050.1, App. 3, lists factors to be considered in severity categorization, such as the speed, performance, and maneuverability of the aircraft, the distance between the parties, visibility and runway conditions, and evasive actions taken. Order 7050.1 defines the severity classifications with Category A being the most severe and Category D being the least severe.

⁶Mr. Monteleon provided an example of a misclassification involving a large Airbus on the runway, at night, in "bad" weather, with a heavy B-747 on landing approach. The B-747, seeing the Airbus at the last minute, and without Air Traffic Control Command instruction, executed a go-around, missing the Airbus by 85 feet. He stated that under the criteria of Order 7050.1, this scenario should be classified as an A, the most severe category. He explained that the RISC computer program would calculate it to be an A. However, LaGretta Bowser, then-Acting Manager of ATO-Safety Operational Services, who reported directly to Mr. Davis, classified the same-type scenario as either not a runway incursion at all, or as a D, the least severe category of incursion.

Between July and September 2006, Mr. Monteleon reported his concerns regarding the non-compliance with Order 7050.1 in conducting runway incursion severity classifications to FAA management. FAA conducted an internal audit in late 2006; however, Mr. Monteleon has never seen the audit report. The Government Accountability Office (GAO) conducted an audit on FAA runway and ramp safety in 2007, which confirmed there were problems with the runway incursion severity classifications.⁷ The GAO report discussed FAA's 2006 audit, stating that "FAA's internal audit of 2006 runway incursion data found that the subjectivity of the severity classifications has the potential to affect the accuracy of the classifications." The GAO report stated that "the majority of the experts [interviewed] . . . indicated that . . . FAA classified the incidents as being less severe than they actually were." Mr. Monteleon acknowledged that he is no longer involved in runway incursion severity classifications. He contended, however, that the under-classification of severe runway incursions he observed, and the use of this skewed data for statistical purposes and the RISC computer program, have not been corrected.

The Report of the Department of Transportation

Former Secretary of Transportation Mary E. Peters tasked DOT OIG with investigating the allegations and preparing the report in this matter. OIG reviewed FSDO records and conducted interviews with FSDO and Headquarters personnel, including Mr. Monteleon, Colgan employees, and representatives of aircraft manufacturer Bombardier. OIG also reviewed and included as part of the agency report the reports of the Flight Standards Service Internal Assistance Capability (IAC) Team (4/24/08), the Mitigation Plan for Audit of Colgan Air/FAA Aircrew Designated Examiner Program (3/12/08), the Colgan Air ADE Assessment Report (5/22/09), and the Summary Report of the Administrative Investigation (undated).

Colgan CMT

The investigation substantiated Mr. Monteleon's allegation that the Colgan pilot exceeded the airspeed limitation of the Dash 8 aircraft twice during the proving/training runs on January 19, 2008, and violated the FAR by failing to record these events in the AML. OIG found, however, that FSDO management did not pursue an enforcement action against the pilot or Colgan because Mr. Monteleon did not follow required reporting/notification and other applicable procedures following these events, and Colgan CMT Supervisor Edward Roberts failed to investigate and take appropriate action in response to the events. The report states that in deciding not to take action against the pilot or Colgan, FSDO Manager Nicholas Scarpinato also considered the minor nature of the exceedences and Bombardier's determination that inspections were not required. He also took into account the pilot's unblemished record and the fact that the January 19 proving runs marked the pilot's first time engaging in reactive maneuvers in the aircraft. OIG concluded that Mr. Scarpinato's decision to terminate the enforcement action initiated by Mr. Monteleon was not improper.

⁷ Report No. GAO-08-29, Aviation Runway and Ramp Safety, November 2007.

According to the agency report, OIG did not find evidence that FSDO management terminated Mr. Monteleon's enforcement action to appease Colgan. Rather, OIG found that Mr. Scarpinato determined not to pursue an enforcement action against the pilot and Colgan because Mr. Monteleon did not document information in the appropriate FAA databases, such as the Program Tracking and Reporting System (PTRS) and the Air Transportation Oversight System (ATOS) within the requirement of three days. The report does not provide a citation for, or any further explanation of, these reporting requirements. OIG also notes that Mr. Monteleon did not initiate his enforcement action until 18 days after the proving runs. The report states that because Mr. Monteleon did not obtain the documentary evidence necessary to support a legal enforcement action, "Mr. Scarpinato found this lack of documentation adversely affected the credibility of Mr. Monteleon's allegations." Mr. Scarpinato indicated that the case was "too weak" to be pursued by FAA legal counsel. The report states that FAA legal counsel confirmed that a lack of documentation would make an enforcement action difficult.

In addition, OIG did not find that Mr. Scarpinato improperly rejected Mr. Monteleon's recommendation to suspend Colgan's ADE program for the Dash 8 and the pilot's APD qualification. The report states that within several days after Mr. Monteleon raised his concerns on January 20 and 21, 2008, FSDO personnel completed an inquiry and determined that the pilot "did not believe he committed any FAR violation, and thus would not have been required to log the alleged airspeed exceedences." Again, FSDO management also took into account that Bombardier determined the exceedences were minor and did not require inspection. However, OIG notes that a Flight Standards Service Internal Assistance Capability Team (IAC Team) subsequently conducted an investigation and determined that the pilot had, in fact, exceeded the airspeed limitation and thus violated the FAR by not recording those events in the AML. The IAC Team's findings are discussed in greater detail below. The report further states that because FSDO management determined that only one of the thirty-four concerns raised by Mr. Monteleon in his February 4, 2008, memorandum was found to have merit, Mr. Scarpinato concluded there was not a sufficient basis to terminate Colgan's ADE program or the pilot's APD qualification.

OIG also did not find evidence supporting Mr. Monteleon's allegations that FSDO management removed him from the Colgan CMT in order to appease Colgan. According to the report, the investigation did not reveal evidence that Colgan complained that Mr. Monteleon's actions were impeding their schedule; rather, OIG found that Colgan's January 24, 2008, complaint expressed concerns regarding Mr. Monteleon's behavior during the proving runs and subsequent meetings with Colgan representatives. Based on this complaint, and alleged complaints from other Colgan CMT inspectors regarding Mr. Monteleon, Mr. Scarpinato requested an "internal inquiry" of Mr. Monteleon's conduct. The report states that in March 2008, two Supervisory Principal Operations Inspectors (SPOIs) from FSDOs outside the Washington area conducted the inquiry, and that their report of preliminary findings indicated unprofessional conduct by Mr. Monteleon.⁸ Therefore, Mr. Scarpinato terminated

⁸ The report states that preliminary interviews included statements from all ten Colgan test pilots that they feared for their pilot certificates if they would be required to conduct proving runs with Mr. Monteleon. The preliminary

Mr. Monteleon's detail as APM for Colgan on March 13, 2008. OIG further states, however, that in early April 2008, Eastern Region Administrator Lawrence Fields directed Mr. Scarpinato to immediately terminate the internal inquiry into Mr. Monteleon's conduct after Mr. Monteleon complained of bias on the part of the investigators.

Upon OSC's request, OIG provided the report of preliminary findings prepared by the SPOIs, which is the Summary Report included with the agency report. The Summary Report, which is not dated, states that an administrative investigation of Mr. Monteleon was initiated in response to Colgan's complaint, and that interviews were conducted between March 19 and 21, 2008. As noted by OIG, the Summary Report indicates that the investigation was halted before completion. Nevertheless, the report provides the preliminary findings that are cited by OIG as the basis for Mr. Scarpinato's decision to terminate Mr. Monteleon's detail as APM on March 13, 2008. It is not clear how Mr. Scarpinato based his decision on those preliminary findings, as the Summary Report reflects that interviews for the administrative investigation were not conducted until after March 13, and it appears that the Summary Report was not prepared until after the termination of the investigation in early April 2008. The agency report does not address this discrepancy.

Further, OIG found that FDSO management relied on the findings of the IAC Team, which conducted an investigation in late April 2008. At the request of Eastern Region Administrator Lawrence Fields, the IAC Team investigated Colgan's complaint regarding Mr. Monteleon and Mr. Monteleon's allegations regarding the pilot. OIG notes that the IAC Team was comprised of individuals without prior experience with Mr. Monteleon or Colgan. Significantly, the IAC Team confirmed that the pilot did, in fact, violate 14 C.F.R. parts 91 and 121 by failing to record the two airspeed exceedences in the AML. OIG states that the IAC Team's recommendations included consideration of administrative action against CMT Supervisor Roberts for his failure to ensure that employees documented their activities in the appropriate FAA databases and failure to investigate Mr. Monteleon's and Colgan's respective allegations regarding the January 19, 2008, proving runs.⁹ The IAC Team also recommended immediate termination of Mr. Monteleon's detail and that he return to Headquarters. Therefore, OIG "found that Mr. Monteleon's detail was terminated based upon independent recommendations, not due to Mr. Scarpinato's desire to appease Colgan." The agency report does not specifically address the allegation regarding Mr. Scarpinato's statement in a document dated March 17, 2008, that he removed Mr. Monteleon from the Colgan CMT in part because management needed "to immediately respond to the Operator's scheduling needs, which was an issue at the time."

In addition to the IAC Team's findings noted in the agency report, the IAC Team identified several "safety issues/concerns" relating to the adequacy of Colgan's pilot training for the Dash 8 and shortcomings on the part of the Colgan CMT and Mr. Monteleon. The IAC Team concluded

findings indicated that Mr. Monteleon's "personal conduct and exercise of his duties created a hostile environment in the cockpit that had the potential to impact safety."

⁹ The agency report indicates, in footnote 8 on page 4, that FSDO management took disciplinary action against Mr. Roberts in response to the IAC Team's findings.

that CMT management's direction to Mr. Monteleon to close the enforcement action was justified, because Mr. Monteleon "was complicit in the subsequent violations by failing to have the crew enter maintenance discrepancies in the AML and continuing to fly on the same aircraft on multiple instances." The IAC Team also found that Colgan CMT personnel were "too willing to resolve airworthiness determinations, rather than requesting the air carrier complete maintenance requirements." With respect to the airspeed exceedences, the IAC Team concluded that the "CMT's focus should have been on ensuring the discrepancy was correctly entered in the [AML] and the air carrier maintenance department should determine the aircraft airworthiness." Noting the excessive delay in Colgan's recording of the airspeed exceedences, which were finally entered in the AML on April 23, 2008, the IAC Team concluded that the Colgan CMT did not hold Colgan accountable for recording aircraft discrepancies (*e.g.*, airspeed exceedences) and corrective action. It does not appear that the IAC Team recommended, or that FAA took, corrective action against the pilot or Colgan for the FAR violations confirmed by the IAC Team.

The report also found that, pursuant to Bombardier's aircraft maintenance manual, and as confirmed by Bombardier, FAA, and Colgan officials, inspection of the aircraft was not required for the two unrecorded airspeed exceedences because they were minor -- *i.e.*, less than 10 knots above the limitation and aircraft altitude was below 10,000 feet. OIG also found that the pilot did record the third airspeed exceedence, and that the AML reflected that an inspection by Colgan maintenance personnel following that event did not reveal any damage or safety issues. OIG did not find evidence to substantiate the allegation that following the second proving run, the pilot initially declined to record the malfunction of the Aircraft Communications Addressing and Reporting System (ACARS) in the AML so as not to delay the proving runs. The report explains that the pilot disagreed with Mr. Monteleon's assessment that the system malfunctioned and that recording the event in the AML was required. Despite his objection, the pilot made an AML entry. An inspection conducted later that evening found the ACARS system operational.

Further, the investigation did not substantiate Mr. Monteleon's allegation that the pilot continued to fly despite his acknowledgement that he experienced excessive fatigue. The pilot denied expressing to Mr. Monteleon that he was fatigued or had shown questionable judgment. According to the report, POI Lundgren stated that he did not recall Mr. Monteleon raising this issue until weeks later. He indicated that he investigated the issue and found the pilot's apparent fatigue "attributable to his many interactions with Mr. Monteleon during a 12-hour day." The investigation also did not substantiate the allegation that the proving runs were delayed because Mr. Monteleon reported a violation involving improper modifications to the aircraft's Quick Reference Handbook. While OIG determined that Mr. Lundgren's cutting and pasting of emergency check-list procedures did not violate FAA Orders, OIG agreed with the IAC Team's finding that Mr. Lundgren was too willing to do Colgan's work, rather than requiring Colgan personnel to do the work with his oversight. The report further notes that standard operating procedures have been implemented to address this issue, as recommended by the IAC Team. The investigation also did not substantiate Mr. Monteleon's allegation that following his removal as APM, the Colgan ADE program operated without a qualified APM. The report notes that Mr. Lundgren served as APM until a new APM completed training for the Dash 8.

Significantly, the agency report confirmed Mr. Monteleon's allegation that the Eastern Region Flight Standards Division (Region) had not conducted an assessment of Colgan's ADE program for eight years, since 2000. The report states that a regional assessment is required every three years pursuant to FAA Order 8900.1 and the MOU between FAA and Colgan. Mr. Monteleon raised this issue in his February 4, 2008, memorandum recommending cancellation of Colgan's ADE program for the Dash 8. This was the one concern in the memorandum found to have merit by FSDO managers. The report states that, upon discovery of the overdue assessment, Mr. Scarpinato filed a Corrective Action Request with the Region. As the Region was unable to promptly conduct an assessment, Mr. Scarpinato directed FSDO personnel to conduct an assessment of Colgan's ADE program. The assessment, which was completed in March 2008, identified numerous deficiencies on the part of Colgan and the FSDO. OIG found that corrective actions were implemented by April 2008. In May 2009, the Region conducted its overdue assessment. Despite the previous FSDO audit and corrective actions taken in March and April 2008, the Region's assessment identified "multiple deficiencies" on the part of Colgan and the FSDO. The ADE Assessment Report, included with the agency report, reflects "major findings" relating to Colgan's aircrew training program and operating practices, and the FSDO's management of Colgan's ADE program.¹⁰ The ADE Assessment Report also identifies several "minor findings" relating to Colgan and the FSDO and provides recommendations for corrective action. OIG found, however, that none of the findings in the assessment implicated regulatory non-compliance warranting enforcement action, and noted that the FSDO and FAA were in the process of responding to the findings and recommendations.

Manipulation of Runway Incursion Classification Data

The investigation did not substantiate Mr. Monteleon's allegations that runway incursion severity classification data were intentionally manipulated to reflect fewer and less severe runway incursions. The report states that while OIG determined that the specific 2006 runway incursion cited by Mr. Monteleon and four other incursions were misclassified, they did not find evidence that they were deliberately misclassified. OIG reviewed FAA's May 2007 audit report by the Office of Air Traffic Safety Oversight (AOV), which determined that the 2006 Category A incursion cited by Mr. Monteleon was misclassified as a Category D incursion. However, the AOV audit reflected that ORS accurately assessed 82% of runway incursions. Further, AOV found that only 5 out of the 114 incursions (4%) they reviewed were misclassified. Of those 5 misclassifications, AOV determined that 3 were rated too low, while 2 were rated too high in terms of severity. The report notes that AOV was unable to classify another 13 incursions due to insufficient guidance and a lack of clear criteria in Order 7050.1 to distinguish between severity classifications.

In addition, the report states that OIG interviewed all past and present members of the runway incursion assessment team, all of whom denied deliberately misclassifying runway

¹⁰ According to the ADE Assessment Report, "major findings" are defined as operator deficiencies which could adversely affect safety and which have gone undetected, unreported, or uncorrected; and management deficiencies, which in the opinion of the assessment team, have major impact on the effectiveness of the program.

incursions or that they were under pressure to do so. Based on these statements, the insufficient criteria and guidance in Order 7050.1, and the nearly equal number of misclassifications that were underrated and overrated, OIG concluded that the misclassifications were due to "subjective and partially incomplete guidance in [Order 7050.1]." OIG further found that in response to AOV's 2007 audit recommendations, FAA is in the process of rewriting and clarifying the guidance in Order 7050.1 "to expand, formalize, and further clarify the roles and responsibilities associated with investigation, severity classification and follow-up." In the interim, the report explains that FAA has issued a Notice (N JO 7050.2), which revises the definitions and amends the section pertaining to the severity classifications to provide clarification. The report states that the revised version of Order 7050.1 will be issued in Fiscal Year 2010. In addition, the report states that OIG initiated an audit in January 2009 to evaluate the effectiveness of actions taken in response to FAA's "Call to Action Plan" for improving runway safety. The audit is ongoing and OIG anticipates issuing its report of findings sometime in Fiscal Year 2010.

Further, OIG found that the RISC computer program, which Mr. Monteleon alleged incorporated the skewed data and thus produced skewed results, was never used as a determinant for severity classifications and was used only on a test basis. Further, due to reliability problems with the software, the report states that ORS suspended its use in late 2007 until the software could be evaluated. The report explains that a March 2009 report issued by outside consultant Booz-Allen-Hamilton concluded that there were inherent inconsistencies with the program that rendered it unreliable. Thus, the report states that FAA does not intend to use the RISC program for runway incursion severity classifications. With respect to the allegation that the skewed data have produced inaccurate and misleading statistics, OIG only notes that because the RISC program was never used as a determinant for classifications, FAA's statistics were derived from the assessment team's determinations.

OIG Recommendations and FAA Response

Based on the findings of its investigation, OIG made the following recommendations: 1) In light of the findings and recommendations in the Region's Assessment Report of Colgan's ADE program, OIG recommended that FAA's Associate Administrator for Aviation Safety ensure that the FSDO and Colgan complete the response process in a timely manner and that appropriate corrective actions are fully implemented; and 2) OIG recommended that the Associate Administrator for Aviation Safety ensure that, for all regions, assessments for all Part 121 carriers with ADE programs are completed as required.

By memorandum dated August 4, 2009, FAA Administrator J. Randolph Babbitt accepted OIG's findings. Mr. Babbitt confirmed that FAA will change its guidance, and incorporate the change into Order 8900.1, to clarify that FAA certificate holding district offices "must," rather than "should," conduct assessments of Part 121 carriers' ADE programs every 36 months. Mr. Babbitt further confirmed that FAA will direct the Region to ensure that the FSDO processes any corrective actions required from the Region's assessment of Colgan's ADE program, including follow-up to determine Colgan's successful completion of those corrective actions.

Finally, the memorandum confirms that FAA will require all Flight Standards Regional Offices to review their schedules for ADE program assessments, and to conduct any overdue assessments immediately. Regional Managers must then report compliance for all carriers to the Flight Standards Air Transportation Division.

The Whistleblower's Comments

Mr. Monteleon provided, through counsel, comprehensive comments on the agency report. In general, Mr. Monteleon was highly critical of OIG's findings. First, he asserts that OIG failed to acknowledge that his disclosures concerning Colgan's "slipshod safety and training operations" and FAA's failure to carry out its oversight responsibilities directly relate to, and served to portend, the fatal accident of a Colgan Dash 8, operating as Continental Airlines Flight 3407, in Buffalo, New York, on February 12, 2009. He comments that OIG considered each of his allegations in isolation and contends that when viewed as a whole, "the disclosures revealed an air carrier that was cutting corners at every turn and regulators who were willing not only to turn a blind eye to this behavior, but to assist." He asserts that the report "trivialized the disclosures that [he] made, refused to acknowledge that the FAA was on notice of the grave safety concerns regarding Colgan operations and training, and demonstrated its failure to conduct a thorough and independent investigation and analysis."

Mr. Monteleon refutes many of the factual findings in the report. He notes that the report affirms his complaint that the most highly qualified Colgan pilot for the Dash 8 aircraft twice exceeded the airspeed limitations and then violated the FAR by not documenting those exceedences. He believes, however, that the report attempts to diminish his allegations and "ignores that these violations were symptomatic of the deeper problems of Colgan's unsafe operations and FAA's failure to regulate this regional airline." In particular, he refutes OIG's finding regarding the minor nature of the airspeed exceedences, asserting that the determination that they were only two to three knots is baseless. He notes that the most contemporaneous documentation of the aircraft speed is his email report of January 20, 2008, attached to the comments as Exhibit 1, in which he reported that the first exceedence was approximately four to six knots and the second was approximately six to ten knots. He argues that had his FSDO supervisors allowed him to properly investigate, he could have retrieved the airspeed data from the digital flight data recorder; however, the flight data were never retrieved. He notes that, instead, his supervisors asked the pilot if he believed he had exceeded the airspeed limitations and accepted his self-serving response. He further comments that the only other documentation of the exceedences is the entry in the AML on April 25, 2008. He notes that this record, attached to the comments as Exhibit 3, was entered by an employee who did not observe the exceedences and did not have access to the flight data recorder. He contends that the report's reliance on this entry demonstrates the biased approach DOT used when conducting its investigation.

In addition, Mr. Monteleon takes issue with OIG's acceptance of FSDO management's decision not to pursue enforcement action against the pilot because Mr. Monteleon did not follow the required reporting or notification procedures. He claims that initially reporting a possible violation observed while conducting surveillance, either verbally or via email, is

sufficient under FAA procedures set forth in FAA Order 2150.3B. He explains that those observations are subsequently recorded in an enforcement action, which is often initiated months later, after attempts to remediate the situation with the carrier have failed. Mr. Monteleon emphasizes that he immediately reported the pilot's violations to his supervisors. He verbally advised FSDO Assistant Manager Lazaris on January 19, 2008, and he reported the violations in his January 20, 2008, email to Colgan CMT inspectors and his supervisors. He notes that FSDO personnel's knowledge of his report is confirmed by POI Lundgren's email on January 22, 2008, attached to the comments as Exhibit 4. He states that on February 28, 2008, upon learning that Colgan failed to take remedial action with the pilot, he initiated the enforcement action. He maintains that he adhered to FAA procedures at every step, and even if he had not, the failure of FSDO managers to investigate the alleged FAR violations was a violation of FAA procedures. He contends that the assertions that he failed to obtain the necessary documentation and that the case was "too weak" are misleading, as his managers never allowed him to conduct a complete investigation.

In his comments, Mr. Monteleon also contends that the report exonerates FSDO management's demand that he entirely erase, rather than simply close, his enforcement action, in contravention of FAA procedures. He states that FSDO managers never advised him that the reason for erasing the record of the enforcement action was because he had not followed reporting and notification requirements, as the report concludes. He also challenges Mr. Scarpinato's consideration of such mitigating factors as the pilot's record, the minor nature of the exceedences, and the pilot's lack of experience in the new aircraft, and asserts that none of those factors provided a legitimate basis for terminating the enforcement action for the pilot's violation of the FAR.

Mr. Monteleon also asserts that the report summarily disregards his allegation that the pilot initially failed to record the ACARS malfunction because he believed the problem was caused by something external to the aircraft. He points out that because the pilot lacked the equipment, qualification, and authorization to determine the cause of the ACARS malfunction, the required action for the pilot to take was to record the discrepancy in the AML. He contends that this incident is reflective of Colgan's culture of cutting corners on safety issues in order to increase revenue. Mr. Monteleon also refutes the report's findings regarding his allegation of the pilot's fatigue. He disputes the factual findings and maintains that he did not report the matter "weeks later." Rather, he claims he addressed this issue with Colgan and FSDO management the evening of the proving runs and in an email to Mr. Lundgren and Mr. Roberts on January 21, 2008, which is attached to his comments as Exhibit 7. He contends that the report simply accepts the pilot's repudiation of his admission of fatigue and Mr. Lundgren's statements without critically evaluating the issue.

In addition, Mr. Monteleon is critical of the report's conclusion that FSDO management's rejection of his recommendation to suspend Colgan's ADE program for the Dash 8 was appropriate. He notes that the report fails to examine the procedure used by his supervisors or the evidence on which they based their assessment that his concerns lacked merit. He further asserts that while the report acknowledges there were multiple deficiencies in Colgan's ADE

program, the report attempts to minimize, and provides a "gross misstatement" of, the major findings in the ADE Assessment Report. He believes this mischaracterization demonstrates that DOT is seeking to cover up FAA's misconduct rather than addressing the problems. He also comments that FAA's failure to conduct an assessment of Colgan's ADE program for eight years demonstrates that FAA failed to discharge its oversight responsibilities.

Further, Mr. Monteleon expresses dissatisfaction with the report's failure to substantiate his allegations that the enforcement action was terminated and he was removed from the Colgan CMT to appease Colgan. He states that he provided OIG with a copy of the March 17, 2008, memorandum in which Mr. Scarpinato explained that removing Mr. Monteleon as APM was required "because management needed to immediately respond to the operator's scheduling needs, which was an issue at the time." The memorandum is attached to his comments as Exhibit 8. He also takes issue with the report's finding that Mr. Scarpinato removed him as APM because of the results of an investigation into his conduct prompted by complaints from Colgan's president and other inspectors on the Colgan CMT. He asserts that the report fails to recognize that these individuals wanted him removed because he refused to allow Colgan to cut corners when it came to safety, which made certification within Colgan's timeline increasingly difficult.

He also notes that the statement by Colgan's president that Mr. Monteleon was endangering the "collaborative working environment" between FAA and Colgan "is classic criticism against whistleblowers who invariably are charged with not being team players or sufficiently collaborative and are further criticized for being difficult, uncooperative or disruptive." He contends that the statements of the ten Colgan pilots who feared they could not pass a check ride with Mr. Monteleon should have prompted an investigation of Colgan's training program rather than Mr. Monteleon's conduct. He also clarifies that he did not allege that his detail to the FSDO was terminated to appease Colgan; rather, he alleged that his removal from the Colgan CMT was carried out for that purpose. Thus, he asserts that the report's dismissal of his allegation based on the IAC Team's recommendation to terminate his detail to the FSDO is misplaced.

Mr. Monteleon also refutes the finding that the Colgan ADE program did not operate without a qualified APM, noting that Mr. Lundgren was not qualified to serve as APM under the MOU between Colgan and FAA. In addition, he objects to the report's finding that Mr. Lundgren did not violate regulations by cutting and pasting emergency procedures into the flight manual. He maintains that such unauthorized actions, which were done to avoid delay in Colgan's schedule, violated FAA rules in several ways. The specific violations are outlined in his comments. He asserts that the report's attempt to excuse these violations reflects DOT's unwillingness to acknowledge that "the very inspectors that were tasked with monitoring Colgan Air and ensuring that it met the necessary regulatory and safety standards were too preoccupied with Colgan Air's business needs to execute faithfully their role as regulators." Mr. Monteleon concludes that "[i]nstead of conducting an independent and critical investigation, [OIG] accepted as true the unsupported claims of FAA and Colgan Air management, even in the face of compelling evidence" that he provided.

In his comments, Mr. Monteleon also takes issue with the report's findings concerning his allegations of intentional manipulation of runway incursion severity classification data. He asserts that the statements of those individuals alleged to have exerted pressure to manipulate the data are not probative. He further contends that the report's reliance on the AOV audit, which found that the whole classification framework under Order 7050.1 was invalid and needed reform, is misplaced. He maintains that the report's willingness to disregard his disclosure regarding the pressure under which he and his teammates were placed reflects DOT's unwillingness to acknowledge "the depth of the problem." He also notes that the report summarily dismissed his allegation regarding the RISC computer program by making several incorrect statements, which he outlines in his comments. In particular, he notes that the RISC program continues to be available to members of the International Civil Aviation Organization (ICAO) and the public on ICAO's website. Mr. Monteleon argues that the dismissal of his allegations reflects DOT's unwillingness to investigate this issue to determine the extent of the safety problem.

OSC's Comments and Conclusion

We have examined the original disclosures and reviewed the agency report and Mr. Monteleon's comments. Based on that review, OSC has determined that the report contains all of the information required by statute and that the findings of the agency head appear to be reasonable.