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

GENERAL COUNSEL

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Catherine A. McMullen, Esq.
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036-4505

September 30, 2011

Re: OSC File No. DI-07-2350 (Bruno)

Dear Ms. McMullen:

This in response to your letter of August 23, 2011, regarding certain exhibits in the above-referenced file. You asked that we review the exhibits in the file for possible sensitive personally identifiable information (PII) and that we return a fully redacted report to OSC for re-posting on OSC's public file.

Together with our privacy attorney, we have reviewed the file for PII and determined that Appendix B, Exhibit 2 and the chart listing the Airmen dated August 28, 2008, contain PII that should not be posted on OSC's public file. This is in addition to Appendix B, Exhibit 3, which OSC has previously agreed should not be posted publically since it also contains sensitive PII. Accordingly, I am returning to you a fully redacted report, without these three exhibits, for inclusion in OSC's public file. To the extent these documents have already been posted, our privacy experts have concluded that notification is not warranted since the risk of harm to the individuals is relatively low.

Please do not hesitate to contact me or Debra Rosen if you have any questions.

Sincerely,

Judith S. Kaleta
Assistant General Counsel
for General Law

Enclosure

AGENCY REPORT

(PART 1)

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

September 15, 2008

Mr. Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M. Street, NW., Suite 300
Washington, DC 20036-4505

Re: OSC File No. DI-07-2350

Dear Mr. Bloch:

Thank you for your letter of October 23, 2007, in which you requested my office to investigate "whistleblower disclosures that officials and employees of the U.S. Department of Transportation (DOT), Federal Aviation Administration (FAA), and Flight Standards Service (AFS), Washington, D.C., are engaging in conduct which constitutes gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety."

Mr. Gabriel D. Bruno, a former FAA employee, made these serious accusations to the Office of Special Counsel with regard to FAA's handling of the St. George Aviation re-examination cases. Mr. Bruno, who was the manager of the FAA Flight Standards District Office (FSDO) with oversight of the first phase of the re-examination program, made similar allegations to the Special Counsel's Office in 2003 about FAA's decision then to stop the re-examination program. After the 2003 Special Counsel inquiry, the FAA resumed the re-examination program in what is known as phase two. It is this second phase of the re-examination program that is at issue in OSC File No. DI-07-2350.

Pursuant to your request, I asked the FAA to conduct a comprehensive investigation of this matter and to coordinate its investigation and report with the Department's Office of the Inspector General, which had previously investigated this matter. To that end, the FAA prepared a final report addressing each of Mr. Bruno's allegations after FAA's Flight Standards Service Quality Assurance Staff conducted an independent investigation of the matter. A copy of that investigation and other supporting documentation are enclosed, along with FAA's final report. The report summarizes the evidence revealed by the investigation and provides additional background information that is responsive to the allegations.

More specifically, FAA's final report addresses Mr. Bruno's allegations that the second phase of FAA's re-examination program is not adequate to ensure safety. The report explains that the standards for the FAA to conduct a re-examination are discretionary and allow FAA personnel the flexibility to determine the best means to ascertain the 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, which includes written, oral, and practical testing.

With regard to the re-examination of the 1,445 St. George Aviation mechanics subject to the current re-examination program, the FAA chose to use a written test for the first part of the re-examination because it provides an effective means to ascertain whether a mechanic has the proper foundation of knowledge to hold the certificate. Mechanics who could not pass the written portion of the re-examination were deemed to have failed the re-examination, thereby eliminating the necessity for progressing to the oral portion of the re-examination. Both the written and oral test formats were crafted expressly for the re-examination and targeted key areas that allowed the examiners to assess general knowledge as well as specific areas, if any, in which the mechanic was actually using the certificates. The written and oral re-examination format could be administered to the mechanics at FSDOs nationwide and International Field Offices to provide the means for FAA to ascertain efficiently and effectively if each of this large group of mechanics met the fundamental knowledge requirements for holding a mechanic certificate.

If the mechanic could demonstrate basic proficiency on the written knowledge portion of the re-examination, then he or she was also subjected to an oral test to reexamine proficiency on selected technical areas deemed appropriate by the examining aviation safety inspector. By using a written test as an initial screening tool for knowledge competency, the FAA was able to identify unqualified certificate holders in an efficient manner and to recover their certificates and ratings as quickly as possible.

Mr. Bruno expressed concern that by modifying the testing format to exclude the practical portion, FAA instituted a re-examination process that is inadequate to ensure that the St. George Aviation mechanics are qualified to hold their certificates. Consistent with FAA's position that it has discretion to fashion re-examinations, only oral and practical tests were used during the first phase of the re-examination program. FAA's investigation revealed that both the oral and practical format used in the first phase of the re-examination program and the written and oral re-examination format used during the present phase of the re-examination program were equally effective as tools to "weed out" unqualified certificate holders. The pass rate on the re-examination using the oral and practical format was 79 percent, whereas the pass rate using the written and oral format for the re-examination was 80 percent. Based on our review of FAA's report, it does not appear that there was any impropriety with regard to FAA's selection of the testing methodology for the current re-examination program.

FAA's report goes on to satisfactorily address each of Mr. Bruno's allegations in detailed responses. The substance of Mr. Bruno's complaint, however, is that, "FAA should evaluate and complete an adequate re-examination of all A&P [Airframe and Powerplant] mechanics who received certifications during the time of St. George's fraudulent testing scheme." As detailed in FAA's investigation and the July 21, 2008, report, 94 percent of the current re-examination program had been completed as of the date of the report. This means that the FAA had processed 1,362 of the 1,445 mechanics in the current re-examination program. Some of the obstacles that FAA has faced in dealing with the remaining mechanics who have not yet been reexamined include: 1) FAA's inability to locate the mechanics because they failed to maintain

accurate addresses of record as required under FAA's regulations and associated difficulties with providing adequate legal notice to these mechanics regarding the necessity for the re-examination; and 2) FAA's obligation to grant extensions of time to mechanics serving in the United States military or civilians serving in support of the United States military on official duty outside the United States. Acting Administrator Sturgell has assured me that FAA remains dedicated to diligently processing the remaining mechanics through the re-examination program to bring closure on this matter. In fact, I am enclosing an updated FAA report dated August 28, 2008, that shows that since FAA completed its July 21, 2008, report, FAA has reduced the number of mechanics not processed through the re-examination program from 83 to 50. This means that as of August 28, 2008, FAA has processed over 96 percent of the mechanics and has only 4 percent of the mechanics left to process.

As FAA's report additionally explains, the agency recently has made significant enhancements to its oversight of designated examiners with the expectation that it can prevent in the future a situation like that which occurred with the designated mechanic examiners at St. George Aviation.

I appreciate the opportunity to share this information with you.

Sincerely yours,

Mary E. Peters

Enclosures

Report in Response to Disclosures Referred for Investigation in OSC File No. DI-07-2350

Prepared By: The Flight Standards Service
Dated: July 21, 2008

I. Introduction

This report was prepared at the request of Secretary Peters to respond to the Report of Disclosures Referred for Investigation in OSC File No. DI-07-2350. This report was coordinated with Secretary Peters' office as well as the Department of Transportation Inspector General's office before it was sent to the U.S. Office of Special Counsel.

II. Background

In a letter sent with the Report of Disclosures Referred for Investigation, the Special Counsel requested the Secretary to investigate "whistleblower disclosures that officials and employees of the Department of Transportation (DOT), Federal Aviation Administration (FAA), and Flight Standards Service (AFS), Washington, D.C., are engaging in conduct which constitutes gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety." Gabriel D. Bruno, a former FAA employee, made these accusations to the Office of Special Counsel with regard to FAA's handling of the St. George Aviation re-examination cases. Mr. Bruno made similar allegations about FAA wrongdoing in 2003, which resulted in an earlier Special Counsel inquiry on this matter.

This report was prepared after the Flight Standards Service Quality Assurance staff conducted an independent investigation of Mr. Bruno's most recent allegations. A copy of that investigation and other supporting documentation is included with this report. This report summarizes the evidence revealed by the investigation and provides additional background information that is responsive to the allegations. The allegations, as detailed in the Report of Disclosures Referred for Investigation in OSC File No. DI-07-2350, are addressed by topic headings below.

III. Discussion

A. The Adequacy of the Re-examination

1. Whistleblower Allegations: Mr. Bruno asserts that, "to date, the mechanics who received certificates from St. George's have not been adequately re-examined and re-certified." He bases this claim on his belief that "mechanics were tested using an abbreviated examination, excluding the practical, hands-on portion of the test..." OSC File No. DI-0702350, *page 3*. Mr. Bruno also asserts that, "By modifying the examination, and excluding the essential practical portion of the exam...the FAA has decriminalized the St. George practices that were found to have been fraudulent, and adopted unsatisfactory, inconsistent certification criteria that do not prioritize safety, and conflict with FAA's own certification requirements." OSC File No. DI-0702350, *page 4*.

2. FAA Response: Congress gave the FAA broad authority in 49 United States Code (U.S.C.) sections 44702 and 44703 to set the standards for issuing airman mechanic certificates and ratings. The FAA promulgated the regulations in Title 14 Code of Federal Regulations (14 CFR) part 65 that set the standards for issuance of mechanic certificates and ratings. In addition to other requirements, part 65 provides that applicants for mechanic

certificates and ratings must pass a written, oral, and practical examination before the FAA will issue them a certificate or rating. The three parts of the examination are administered to an applicant in that order and the applicant must pass each successive part of the examination before being permitted to move on to the next part of the examination.

In 49 U.S.C. § 44709 Congress gave the FAA a variety of tools to use to address situations in which a certificate holder's conduct violates safety regulations, raises questions about the certificate holder's competency, or demonstrates that the certificate holder is no longer qualified to hold a certificate or rating. It is FAA's long-established practice to use punitive suspensions to address regulatory violations that do not raise a question of qualification and the remedial sanctions of indefinite suspension and revocation to address conduct that respectively raises a question about the certificate holder's qualifications or demonstrates that the certificate holder lacks qualification.

As noted above, 14 CFR part 65 contains the standards for issuance of mechanic certificates and ratings. Once an applicant for a mechanic certificate or rating meets all of the requirements in part 65, FAA will issue the applicant a certificate or rating. If FAA later finds that a certificate holder is no longer qualified to hold a certificate or rating, then the FAA has authority under 49 U.S.C. § 44709 to revoke that certificate or rating. The effect of the revocation on the individual is that in order for that individual to obtain a new certificate, that individual must apply for the certificate and meet all of the requirements in part 65, including passing complete written, oral, and practical examinations.

With regard to the mechanics who received their certificates and ratings from St. George Aviation, the U.S. Department of Transportation's Inspector General's criminal investigation of St. George Aviation did not reveal that the mechanics who were examined at St. George Aviation were complicit in the fraudulent certification scheme. None of the mechanics were criminally prosecuted for any wrongdoing in connection with the prosecution of the principals of St. George Aviation. As a result, FAA did not and does not have evidence sufficient to support the revocation of the certificates and ratings of the mechanics; however, the evidence that the Inspector General gathered during the criminal investigation, supplemented by FAA's own investigation of the mechanics, does provide a reasonable basis for FAA to question whether the mechanics currently possess the qualifications necessary to hold their certificates and ratings.

In circumstances such as the present case in which FAA has evidence that raises a question about the qualifications of the mechanics who were examined for their certificates and ratings at St. George Aviation, the FAA has authority in 49 U.S.C. section 44709 to reexamine the qualifications of those mechanics.[1]

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[1] The United States Court of Appeals for the Eleventh Circuit acknowledged FAA's authority to reexamine airman certificates in the context of the St. George re-examination program. *Doe v. Fed. Aviation Admin*, 432 F.3d 1259, 1262 (11th Cir. 2005).

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.[2] There is no requirement that a re-examination must, in effect, repeat the original certification testing process for the original certification under part 65.

The FAA found under both phase one of the St George Aviation re-examination program, which occurred between June 1999 and June 2001, and phase two of the re-examination program, which has been in progress since October 2004, that some of these mechanics were not qualified to hold their certificates and ratings after they failed to pass the re-examination. These mechanics either surrendered their certificates for cancellation or had their certificates revoked. In either event, these mechanics must apply for new certificates and ratings and demonstrate their qualifications by passing the full battery of tests required for any applicant for a mechanic certificate under part 65, including passing written, oral, and practical examinations before FAA will issue them new certificates or ratings.

Contrary to what is implied in the Whistleblower Complaint, during phase one of the re-examination program, FAA did not require the mechanics to submit to the complete battery of tests required under part 65 before a mechanic certificate was issued. In phase one of the re-examination program, oral and practical tests were administered, but no written tests. The FAA generally does not have facilities equipped to conduct practical tests. Practical tests ordinarily are administered by designated examiners at schools or private facilities equipped for that purpose. However, because of the criminal conduct of the designated examiners at St. George Aviation, FAA did not want to use any designated examiners to conduct the re-examination. To administer the practical tests during phase one of the re-examination program, the FAA was limited to one testing center in Orlando, Florida, that was specially equipped for the practical test and a small number of FAA inspectors at the Orlando Flight Standards District Office who were trained to conduct the practical re-examination. Thus, the FAA was limited during first phase of the re-examination program both geographically and resource wise in the number of re-examinations it could conduct at any given time. Moreover, the mechanics who were subject to the re-examination had to travel to Orlando at their own expense for the re-examination, thereby precluding some of them from being reexamined based on their own economic status.

Turning to the structure of phase two of the re-examination program, the FAA determined that it could best reexamine the 1,445 mechanics subject to the re-examination by screening them for the fundamental knowledge that all certificated mechanics should possess. The FAA chose to use a written test for the first part of the re-examination because it provides an effective means to ascertain whether a mechanic has the proper foundation of knowledge to hold the certificate. Mechanics who could not pass the written portion of the re-examination

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[2] The National Transportation Safety Board in *dicta*, in the context of a similar re-examination case, recognized FAA's broad discretion to craft a re-examination program to address the unique circumstances of a case. *Administrator v. Santos and Rodriguez*, NTSB Order No. EA-4266 at n.7 (1994)("Although it has no bearing on our decision, we note that the Administrator has made good faith efforts to minimize the burden and inconvenience a retest might present. Specifically, the retest applies only to 9 of the 43 subject areas the original tests should have covered, refresher courses and study materials for those 9 subjects have been made available, and it is being offered without charge to any of the individuals originally tested by Mr. Harris."). Mr. Harris was a designated mechanic examiner who the FAA found gave incomplete mechanic examinations.

were deemed to have failed the re-examination, thereby eliminating the necessity for progressing to the oral portion of the re-examination. Both the written and oral test formats were crafted expressly for the re-examination and targeted key areas that allowed the examiners to assess general knowledge as well as specific areas, if any, in which the mechanic was actually using the certificate. The written and oral re-examination format could be administered to the mechanics at flight standards district offices nationwide and internationally providing FAA with a means to efficiently and effectively ascertain if each of this large group of mechanics met the fundamental knowledge requirements for holding a mechanic certificate.

If the mechanic could demonstrate basic proficiency on the written knowledge portion of the re-examination, then he or she was also subjected to an oral test to reexamine proficiency on selected technical areas deemed appropriate by the examining aviation safety inspector. The standards for the complete re-examination program are set out in Flight Standards Information Bulletins for Airworthiness (FSAW) 04-10A and 04-10B, which are included at Tabs 9 and 10 in Appendix A of the Quality Assurance Staff investigation. The re-examination format during phase two of the re-examination program permitted FAA to reach as many of the mechanics as possible in a relatively short period of time by using dedicated nationwide and international testing sites. By using a written test as an initial screening tool for knowledge competency, FAA was able to identify unqualified certificate holders in an efficient manner and to recover their certificates and ratings as quickly as possible. After the FAA began the re-examination program described in FSAW 04-10A, the Flight Standards Service reviewed the efficacy of the re-examination methodology to ensure the re-examination tools were effective measures of the mechanics' current qualifications. This was accomplished by statistically monitoring the progress of the re-examination program with regard to the pass/fail rates of the re-examination as a whole and with regard to the actual structure of the questions on the written and oral re-examinations.

The decision to switch the re-examination format to written and oral tests for phase two of the re-examination program was based in part on the desire to better utilize FAA resources nationwide and internationally to accomplish the re-examination and to increase the number of venues available to the mechanics for the re-examination. The written and oral format of the re-examination allowed FAA to do this while still providing an effective means to determine whether the mechanics possessed the fundamental knowledge necessary to hold their certificates and ratings. In fact, the evidence shows that both re-examination programs have been equally effective as tools to "weed out" unqualified certificate holders. The pass rate on phase one of the re-examination program was 79 percent, whereas the pass rate on phase two of the re-examination program is 80 percent.

B. Ongoing Concerns About the Qualifications of the Mechanics Examined at St. George Aviation

1. Whistleblower Allegations: Mr. Bruno alleges "that these re-certified aircraft mechanics are now employed with major airlines; their re-examination status is questionable and FAA has not taken sufficient steps to ensure they are actually qualified for the positions they hold." OSC File No. DI-0702350, Page 3. He also asserts a "[c]ontinuing concern

about the qualifications of those mechanics who were administered a less-than-complete examination." OSC File No. DI-0702350, Page 4.

2. FAA Response: Airmen who have successfully completed the re-examination have demonstrated to FAA that they are qualified to continue to hold their current mechanic certificates and ratings. As a result, the certificate holder may exercise the privileges of the certificates and ratings that he or she holds and he or she is free to seek employment that requires the use of those certificates and ratings. The certificate holder's position with an employer is at the discretion of the employer and not the FAA. FAA-certificated mechanics who are employed by certificate holders (e.g., air carriers, repair stations) receive the additional oversight that FAA provides to all of those certificate holders.

Certificate holders who could not demonstrate their qualifications to hold their certificates and ratings on re-examination, no longer hold those certificates and ratings as the certificates and ratings were surrendered for cancellation or revoked. Certificate holders who refused to submit to the re-examination either surrendered their certificates and ratings for cancellation or had those certificates and ratings suspended until they successfully complete the re-examination. Accordingly, the general contention that St. George Aviation-examined mechanics may be working for air carriers when they are not qualified to hold their certificates or ratings is unsupported.

C. Status of the Re-examination Program

1. **Whistleblower Allegation:** Mr. Bruno asserts that FAA has been less than forthcoming in its reporting on the progress of re-examination program. OSC File No. DI-0702350, p*age 4.*

2. FAA Response: To the extent that Mr. Bruno contends that the FAA "has been less than forthcoming" in providing information about the re-examination program, the FAA does not believe this allegation to be true, although the FAA concedes that some of the data it released may have been confusing and may have been misconstrued by the recipients. The FOIA requests posed to the FAA with regard to the re-examination program asked for specific information and the FAA attempted to be responsive to those specific requests; however, the nature of the requests was limited and the FAA provided only materials responsive to those requests. As a result, the responses did not necessarily provide a complete picture of the status of the re-examination and the advice to the OSC that the re-examination program was 90-95 percent complete was based on all the information available to the FAA, not just information gleaned from reading the response to the FOIA request.

In the interest of clarifying the current status of the re-examination program that began in 2004, FAA is providing a complete listing of all of the airmen subject to the re-examination program and the status of each of these airmen (see Appendix B to Quality Assurance Staff investigation).

This information includes:

whether the airman has been reexamined;
b. whether the airman has passed or failed the re-examination;
c. whether the airman has surrendered the certificate;
d. whether the airman's certificate has been suspended; or
e. whether the airman's certificate has been revoked.

For airmen who do not fall into one of these categories, information is provided to show:

a. whether the FAA has been unable to locate and serve the airman with legal documents;
b. whether the airman has received a temporary exemption from the re-examination due to military service overseas;
c. whether the airman is deceased;
d. whether the airman was exempted from the re-examination because an Inspection Authorization was received before the re-examination program began;
e. whether the airman was wrongly included on the re-examination list because he or she was examined at a different testing center than St. George Aviation or took the examination at a date earlier than the scope of the re-examination program; or
f. whether duplicates of the same airman's name were removed from the re-examination list.

As detailed in the investigation conducted by the Quality Assurance Staff, the FAA has completed 94 percent of phase two of the re-examination program with 6 percent of the certificate holders still needing to be processed. This means that FAA has processed 1,362 of the 1,445 mechanics in phase two of the re-examination program. The FAA remains dedicated to diligently processing the remaining 6 percent of the mechanics. Delays in processing these mechanics has been a problem for the FAA since the beginning of phase two because some of the mechanics have not maintained accurate addresses of record and others have been given an extension of time due to U.S. military service outside the United States. The FAA has flagged the airman files of these mechanics and is regularly monitoring the certificates of the last 6 percent of the mechanics. A complete accounting of phase two of the re-examination program is contained in the Quality Assurance Staff report.

D. Alleged Inconsistency in FAA's Record Keeping

1. Whistleblower Allegations: Mr. Bruno contends that "[a]t the time the re-examinations began, FAA advised OSC, there were approximately 1,600 mechanics identified for re-testing. Mr. Bruno alleges that, "the statistics quoted by FAA are inconsistent and do not reflect the actual progress of the re-examination program." OSC File No. DI-0702350 at Page 4. He also complains about "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." He suggests that these factors evidence a lack of

accountability by FAA officials administering and reporting on the re-examination program..." OSC File No. DI-0702350 at Page 4.

2. FAA Response: The total number of airmen subject to re-examination has been 1,455 since July 2005. A "master list" was developed from a list prepared by the Airman Certification Branch, AFS-760, consisting of all airmen who were examined by Anthony St. George from May 3, 1995 to January 14, 1999 and by George Allen after his hiring date at St. George Aviation in 1997. The original pool of airmen examined during this period was 2,041. From that list, 86 names were removed because they were listed more than once; 54 names were removed because the airmen were examined prior to October 10, 1995, which was the date the Department's Inspector General found was the earliest indication of wrongdoing at St. George Aviation; 49 names were removed because the airmen were examined and obtained an FAA Inspection Authorization prior to July 5, 2005, as explained in FSAW 04-10A and B; and 397 names were removed because these airmen were part of the phase one re-examination program and were either successfully re-examined or their certificates were returned to FAA.

The remainder on the master list after these exclusions is 1,455, a number that has been a constant factor since the current re-examination program started in 2005. Recently, an additional 10 airmen name were removed because they were identified as duplicate listings or they were found to have been examined outside the dates specified in the FSAW. This correction brings the list to 1,445.

The sources of the information compiled on the master list includes: Written examination results compiled in a database maintained by the Flight Standards Airmen Testing Standards Branch, AFS-630, in Oklahoma City; individual airman records available on SPAS (Safety Performance Analysis System), a database containing MSAT-A (Multi System Access Tool for Air Personnel) that tracks information on the status of certificate(s) and addresses; EIS (Enforcement Information System), a system that tracks all FAA enforcement actions; PTRS (Program Tracking & Reporting Subsystem), a system that tracks information gathered from aviation safety inspectors during the course of investigations; and information supplied by Embry Riddle Aeronautical University for students examined by George Allen while he was employed at that University and not at St. George Aviation.

The FAA does not agree with Mr. Bruno's assessment that the 20 percent failure rate demonstrates a lack of accountability on the part of FAA officials. To the contrary, bringing closure to 94 percent of the names on FAA's master list in the relatively short period of time demonstrates the commitment the FAA made to complete the examination since the 2004 Special Counsel's report. Indeed, despite numerous legal challenges that the current re-examination program faced, the program is nearing completion. The 20 percent failure rate supports not only that the conclusion of the earlier Special Counsel's report regarding the necessity for the re-examination as true, but it 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.

E. The FAA has Remained Committed to the Re-examination Program

1. **Whistleblower Allegations:** Mr. Bruno also alleges 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 the nearly 2000 mechanics who received certificates from St. George. OSC File No. DI-0702350, Page 3.

2. FAA Response: As discussed above more fully and in the Quality Assurance Staff Investigation, as of May 2008, FAA has closure on 1,362 of the 1,445 airmen listed on the master St. George Aviation list. The remaining 83 airmen are accounted for, and FAA is aggressively seeking closure on those cases as well.

F. FAA's Oversight of Maintenance and Designated Examiners

1. Whistleblower Allegation: Mr. Bruno claims FAA's oversight of the Designated Mechanic Examiner program and airline mechanics overall, has fallen short of the minimum level of oversight expected to ensure safety of the flying public." OSC File No. DI-0702350, p*ages 3-4*.

2. FAA Response: The Flight Standards Service takes a proactive approach to the oversight of all persons and entities that it is responsible for. With regard to the issue of oversight of designated mechanic examiners (DME), and designees in general, there have been continuous improvements made since the St. George Aviation incident.

a. Based on the events associated with St. George Aviation, the Flight Standards Service modified its policy to add risk controls to the selection and management of DMEs. This occurred through revisions to the Designated Mechanic Examiner Handbook, Order 8610.4, and the Airworthiness Inspector's Handbook, Order 8300.10. In addition, the minimum amount of surveillance for each DME was raised using the National Program Guidelines, which delineate surveillance requirements for all certificates and designees managed by the Flight Standards Service.

b. The Flight Standards Service has established the Designee Quality Assurance Branch, AFS-650, to analyze the designee processes and develop recommendations to improve both the designee oversight processes and to perform quality assurance functions to assure that incidents such as St. George Aviation do not take place again. This organization recently completed an audit of the DME system and is working to establish recommendations to improve the system based on the findings of that audit. In addition, AFS-650 has established an airman survey process that allows newly certificated airmen to provide data to the FAA about certification examinations that were administered by designees. The first survey that was deployed to newly certified private pilots led the FAA to develop 11 significant recommendations that would change the system to improve the quality of tests being given by designated pilot examiners. Currently, a similar survey for DMEs is being coordinated through OMB and should be deployed later this year. Data from this survey will help FAA develop additional strategies to improve the mechanic certification process. The AFS-650 has also established a cadre of professionals in each policy division, each

regional office, and each district office that has oversight responsibility for designees. These designee focal points serve as subject matter experts both at their respective offices and on national teams to develop designee oversight training and policies for managing designees. The focal point system allows open communication nationally, regionally, and locally on important designee issues.

c. The Flight Standards Service is currently certified under ISO-9001. Under this system, the organization is working toward continuous improvement of all processes. A draft Quality Management System (QMS) process on oversight of individual designees has been developed and is ready for coordination with all stakeholders. This new process would include metrics to determine how well the DME system is performing. These metrics are reported three times per year at the highest levels of the Flight Standards Service, assuring open communication of issues with upper management.

d. Specific training has been developed and deployed by AFS-500 and the FAA Academy that deals with oversight of designees. This course, Designee Management for Personal Certification (Course Number 21400001), is designed to provide the FAA inspector and manager workforce with a thorough understanding of FAA policy regarding designee functions, management of designees, and use of management tools currently used to assure that designee activities are appropriate. Development of a follow-on recurrent course is scheduled to begin this year.

e. The Office of Aviation Safety (AVS), of which the Flight Standards Service is a part, has begun an initiative to improve all designee processes to include not just the Flight Standards Service but also the Aircraft Certification Service and the Office of Aviation Medicine designees as well. Three major initiatives have been or are targeted to be completed by the end of FY-08. FAA Order VS 1100.2 was created to establish minimum controls and processes that must be in place for all designations. This order is being used by each service as a guide to improve designee processes to include the oversight component. The AVS Delegation Steering Group has been formed to discuss designee issues between the offices and services. This group is currently working to develop a more common set of guidelines for all designee types within AVS. The final initiative for the steering group has been the establishment of a single ISO (QMS) procedure to monitor designee activity throughout AVS.

G. Concerns about Air Carrier Accidents

1. Whistleblower Allegations: As support for his concerns that the re-examination process was flawed and continues to compromise public safety, Mr. Bruno cites the conclusions of the NTSB in two recent fatal crashes. – "January 2003, a US Air Express, Charlotte, North Carolina"... and "a December 2005, a Chalk's Ocean Airways flight." OSC File No. DI-0702350, Page 4. Mr. Bruno also asserts that, FAA should review certification records to determine whether or not the mechanics involved in recent airline crashes were originally St. George certificate-holders, and to ascertain the status of their certification." DI-0702350, Page 5.

2. FAA Response: The cause of the US Air Express accident was determined to be faulty maintenance. An examination of the airman records associated with that accident indicates that no mechanics who worked on the aircraft received their mechanic certificates from St. George Aviation.

The cause of the Chalk's Ocean Airways accident was attributed to fatigue cracks that had gone undetected by mechanics. Records indicate one mechanic who performed work on the subject aircraft received his mechanic certificate from St. George Aviation. This mechanic failed his re-examination on December 22, 2005, with a score of 60 percent. After placing his certificate on deposit with the FAA after the first failure, he took the re-examination again on January 30, 2006, and failed with a score of 67 percent. Enforcement action was initiated to revoke his mechanic certificate and ratings. The mechanic appealed to the NTSB, and the NTSB affirmed the revocation. 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.

H. Concerns About FAA Air Carrier Oversight

1. Whistleblower Allegations: Mr. Bruno alleges 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. DI-0702350, *page 5*.

2. FAA Response: A review of the Chalk's accident report, which includes the two Board member statements, shows that the accident resulted from the structural failure of the right wing of a very old airplane due to undetected fatigue cracking in the wing structure. The Board broached FAA's oversight of the maintenance of the aircraft only in the broadest terms and there is absolutely no suggestion that links the cause of the crash to FAA's oversight of DMEs or to St. George Aviation-examined mechanics.

Historically, FAA's oversight methodologies have focused on end-product inspections and design features during certification. The primary responsibility for the safety of operations in air transportation rests with the air carrier certificate holder. FAA's responsibility is to issue the certificate and set forth the safety regulations and system requirements for air carrier certificate holders to follow. The FAA maintains oversight of the air carrier's compliance with those safety regulations through its compliance and enforcement program; however, the carrier, and not FAA, remains responsible for that compliance.

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IV. Conclusion

The substance of the whistleblower complaint is 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." DI-0702350, *page 5*. The FAA believes that it has done that. This report documents that FAA has evaluated and substantially completed the re-examination program it undertook as a result of the 2004

Special Counsel's report. While the FAA regrets that it, to date, has not been able to process the remaining 83 mechanics covered in phase two of the re-examination program, FAA is making a diligent effort to get this last part of the re-examination program done.

SGA Re-examination Program
Disposition of Selected Airman
Effective 8/28/08

Testing:

1	Airmen Arranging for Reexamination – October , 2008 EA17
1	SFAR 100

Enforcement Investigative Reports:

11	EIR - Domestic
38	EIR - Foreign
49	Total EIRs in process

Completed:

615	Successfully passed the reexamination
364	Certificates suspended
267	Certificates surrendered
48	Certificates revoked
61	Tested and received an FAA Inspection Authorization
19	Embry Riddle Aeronautical University
20	Deceased
1394	Total Completed

Total Airmen

1445	Total

Changes 8/27/08

- 8 Domestic EIR - Suspended

Changes 8/20/08

- 5 domestic EIR- Suspended

Changes 8/14/08

- No significant changes this week. Mr. Sunderland has moved his testing date to 8/29/08 to allow time to receive all his belongings. He tried for 8/21/08, FSDO moved to 8/29/08.

Changes 7/30/08

- 3 Foreign moved to Suspended
- 1 foreign passed 7/29/08

Report in Response to Disclosures Referred for Investigation in OSC File No. DI-07-2350

Prepared By: The Flight Standards Service
Dated: July 21, 2008

I. Introduction

This report was prepared at the request of Secretary Peters to respond to the Report of Disclosures Referred for Investigation in OSC File No. DI-07-2350. This report was coordinated with Secretary Peters' office as well as the Department of Transportation Inspector General's office before it was sent to the U.S. Office of Special Counsel.

II. Background

In a letter sent with the Report of Disclosures Referred for Investigation, the Special Counsel requested the Secretary to investigate "whistleblower disclosures that officials and employees of the Department of Transportation (DOT), Federal Aviation Administration (FAA), and Flight Standards Service (AFS), Washington, D.C., are engaging in conduct which constitutes gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety." Gabriel D. Bruno, a former employee of the FAA, made these accusations to the Office of Special Counsel with regard to the FAA's handling of the St. George Aviation reexamination cases. Mr. Bruno made similar allegations about FAA wrongdoing in 2003, which resulted in an earlier Special Counsel inquiry on this matter.

This report was prepared after the Flight Standards Service Quality Assurance Staff conducted an independent investigation of Mr. Bruno's most recent allegations. A copy of that investigation and other supporting documentation is included with this report. This report summarizes the evidence revealed by the investigation and provides additional background information that is responsive to the allegations. The allegations, as detailed in the Report of Disclosures Referred for Investigation in OSC File No. DI-07-2350, are addressed by topic headings below.

III. Discussion

A. The Adequacy of the Reexamination

1. Whistleblower Allegations: Mr. Bruno asserts that, "to date, the mechanics who received certificates from St. George's have not been adequately re-examined and re-certified." He bases this claim on his belief that "mechanics were tested using an abbreviated examination, excluding the practical, hands-on portion of the test..." OSC File No. DI-0702350, Page 3. Mr. Bruno also asserts that, "By modifying the examination, and excluding the essential practical portion of the exam...the FAA has decriminalized the St. George practices that were found to have been fraudulent, and adopted unsatisfactory, inconsistent certification criteria that do not prioritize safety, and conflict with FAA's own certification requirements." OSC File No. DI-0702350, Page 4.

2. FAA Response: Congress gave the FAA broad authority in 49 United States Code (U.S.C.) sections 44702 and 44703 to set the standards for issuing airman mechanic certificates and ratings. The FAA promulgated the regulations in Title 14 Code of Federal Regulations (14 CFR) part 65 that set the standards for issuance of mechanic certificates and ratings. In addition to other requirements, part 65 provides that applicants for mechanic

certificates and ratings must pass a written, oral, and practical examination before the FAA will issue them a certificate or rating. The three parts of the examination are administered to an applicant in that order and the applicant must pass each successive part of the examination before being permitted to move on to the next part of the examination.

In 49 U.S.C. § 44709 Congress gave the FAA a variety of tools to use to address situations in which a certificate holder's conduct violates safety regulations, raises questions about the certificate holder's competency, or demonstrates that the certificate holder is no longer qualified to hold a certificate or rating. It is the FAA's long-established practice to use punitive suspensions to address regulatory violations that do not raise a question of qualification and the remedial sanctions of indefinite suspension and revocation to address conduct that respectively raises a question about the certificate holder's qualifications or demonstrates that the certificate holder lacks qualification.

As noted above, 14 CFR part 65 contains the standards for issuance of mechanic certificates and ratings. Once an applicant for a mechanic certificate or rating meets all of the requirements in part 65, the FAA will issue the applicant a certificate or rating. If the FAA later finds that a certificate holder is no longer qualified to hold a certificate or rating, then the FAA has authority under 49 U.S.C. § 44709 to revoke that certificate or rating. The effect of the revocation on the individual is that in order for that individual to obtain a new certificate, that individual must apply for the certificate and meet all of the requirements in part 65, including passing complete written, oral, and practical examinations.

With regard to the mechanics who received their certificates and ratings from St. George Aviation, the Department of Transportation Inspector General's criminal investigation of St. George Aviation did not reveal that the mechanics who were examined at St. George Aviation were complicit in the fraudulent certification scheme. None of the mechanics were criminally prosecuted for any wrongdoing in connection with the prosecution of the principals of St. George Aviation. As a result, the FAA did not and does not have evidence sufficient to support the revocation of the certificates and ratings of the mechanics; however, the evidence that the Inspector General gathered during the criminal investigation, supplemented by the FAA's own investigation of the mechanics, does provide a reasonable basis for the FAA to question whether the mechanics currently possess the qualifications necessary to hold their certificates and ratings.

In circumstances such as the present case in which the FAA has evidence that raises a question about the qualifications of the mechanics who were examined for their certificates and ratings at St. George Aviation, the FAA has authority in 49 U.S.C. section 44709 to reexamine the qualifications of those mechanics.[1]

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[1] The United States Court of Appeals for the Eleventh Circuit acknowledged the FAA's authority to reexamine airman certificates in the context of the St. George reexamination program. *Doe v. Fed. Aviation Admin*, 432 F.3d 1259, 1262 (11th Cir. 2005).

The standards for conducting a reexamination are discretionary and allow FAA personnel the flexibility to determine the best means possible to ascertain the present qualifications of the certificate holder.[2] There is no requirement that a reexamination must, in effect, repeat the original certification testing process for the original certification under part 65.

The FAA found under both phase one of the St George Aviation reexamination program, which occurred between June 1999 and June 2001, and phase two of the reexamination program, which has been in progress since October 2004, that some of these mechanics were not qualified to hold their certificates and ratings after they failed to pass the reexamination. These mechanics either surrendered their certificates for cancellation or had their certificates revoked. In either event, these mechanics must apply for new certificates and ratings and demonstrate their qualifications by passing the full battery of tests required for any applicant for a mechanic certificate under part 65, including passing written, oral, and practical examinations before the FAA will issue them new certificates or ratings.

Contrary to what is implied in the Whistleblower Complaint, during phase one of the reexamination program, the FAA did not require the mechanics to submit to the complete battery of tests required under part 65 before a mechanic certificate was issued. In phase one of the reexamination program, oral and practical tests were administered, but no written tests. The FAA generally does not have facilities equipped to conduct practical tests. Practical tests ordinarily are administered by designated examiners at schools or private facilities equipped for that purpose. However, because of the criminal conduct of the designated examiners at St. George Aviation, the FAA did not want to use any designated examiners to conduct the reexamination. To administer the practical tests during phase one of the reexamination program, the FAA was limited to one testing center in Orlando, Florida, that was specially equipped for the practical test and a small number of FAA inspectors at the Orlando Flight Standards District Office who were trained to conduct the practical reexamination. Thus, the FAA was limited during first phase of the reexamination program both geographically and resource wise in the number of reexaminations it could conduct at any given time. Moreover, the mechanics who were subject to the reexamination had to travel to Orlando at their own expense for the reexamination, thereby precluding some of them from being reexamined based on their own economic status.

Turning to the structure of phase two of the reexamination program, the FAA determined that it could best reexamine the 1,445 mechanics subject to the reexamination by screening them for the fundamental knowledge that all certificated mechanics should possess. The FAA chose to use a written test for the first part of the reexamination because it provides an effective means to ascertain whether a mechanic has the proper foundation of knowledge to hold the certificate. Mechanics who could not pass the written portion of the reexamination

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[2] The National Transportation Safety Board in *dicta*, in the context of a similar reexamination case, recognized the FAA's broad discretion to craft a reexamination program to address the unique circumstances of a case. *Administrator v. Santos and Rodriguez*, NTSB Order No. EA-4266 at n.7 (1994)("Although it has no bearing on our decision, we note that the Administrator has made good faith efforts to minimize the burden and inconvenience a retest might present. Specifically, the retest applies only to 9 of the 43 subject areas the original tests should have covered, refresher courses and study materials for those 9 subjects have been made available, and it is being offered without charge to any of the individuals originally tested by Mr. Harris."). Mr. Harris was a designated mechanic examiner who the FAA found gave incomplete mechanic examinations.

were deemed to have failed the reexamination, thereby eliminating the necessity for progressing to the oral portion of the reexamination. Both the written and oral test formats were crafted expressly for the reexamination and targeted key areas that allowed the examiners to assess general knowledge as well as specific areas, if any, in which the mechanic was actually using the certificate. The written and oral reexamination format could be administered to the mechanics at flight standards district offices nationwide and internationally providing the FAA with a means to efficiently and effectively ascertain if each of this large group of mechanics met the fundamental knowledge requirements for holding a mechanic certificate.

If the mechanic could demonstrate basic proficiency on the written knowledge portion of the reexamination, then he or she was also subjected to an oral test to reexamine proficiency on selected technical areas deemed appropriate by the examining aviation safety inspector. The standards for the complete reexamination program are set out in Flight Standards Information Bulletins for Airworthiness (FSAW) 04-10A and 04-10B, which are included at Tabs 9 and 10 in Appendix A of the Quality Assurance Staff investigation. The reexamination format during phase two of the reexamination program permitted the FAA to reach as many of the mechanics as possible in a relatively short period of time by using dedicated nationwide and international testing sites. By using a written test as an initial screening tool for knowledge competency, the FAA was able to identify unqualified certificate holders in an efficient manner and to recover their certificates and ratings as quickly as possible. After the FAA began the reexamination program described in FSAW 04-10A, the Flight Standards Service reviewed the efficacy of the reexamination methodology to ensure the reexamination tools were effective measures of the mechanics' current qualifications. This was accomplished by statistically monitoring the progress of the reexamination program with regard to the pass/fail rates of the reexamination as a whole and with regard to the actual structure of the questions on the written and oral reexaminations.

The decision to switch the reexamination format to written and oral tests for phase two of the reexamination program was based in part on the desire to better utilize FAA resources nationwide and internationally to accomplish the reexamination and to increase the number of venues available to the mechanics for the reexamination. The written and oral format of the reexamination allowed the FAA to do this while still providing an effective means to determine whether the mechanics possessed the fundamental knowledge necessary to hold their certificates and ratings. In fact, the evidence shows that both reexamination programs have been equally effective as tools to "weed out" unqualified certificate holders. The pass rate on phase one of the reexamination program was 79 percent, whereas the pass rate on phase two of the reexamination program is 80 percent.

B. Ongoing Concerns About the Qualifications of the Mechanics Examined at St. George Aviation

1. Whistleblower Allegations: Mr. Bruno alleges "that these re-certified aircraft mechanics are now employed with major airlines; their re-examination status is questionable and FAA has not taken sufficient steps to ensure they are actually qualified for the positions they hold." OSC File No. DI-0702350, Page 3. He also asserts a "[c]ontinuing concern

about the qualifications of those mechanics who were administered a less-than-complete examination." OSC File No. DI-0702350, Page 4.

2. FAA Response: Airmen who have successfully completed the reexamination have demonstrated to the FAA that they are qualified to continue to hold their current mechanic certificates and ratings. As a result, the certificate holder may exercise the privileges of the certificates and ratings that he or she holds and he or she is free to seek employment that requires the use of those certificates and ratings. The certificate holder's position with an employer is at the discretion of the employer and not the FAA. FAA-certificated mechanics who are employed by certificate holders (e.g., air carriers, repair stations) receive the additional oversight that the FAA provides to all of those certificate holders.

Certificate holders who could not demonstrate their qualifications to hold their certificates and ratings on reexamination, no longer hold those certificates and ratings as the certificates and ratings were surrendered for cancellation or revoked. Certificate holders who refused to submit to the reexamination either surrendered their certificates and ratings for cancellation or had those certificates and ratings suspended until they successfully complete the reexamination. Accordingly, the general contention that St. George Aviation-examined mechanics may be working for air carriers when they are not qualified to hold their certificates or ratings is unsupported.

C. Status of the Reexamination Program

1. **Whistleblower Allegation:** Mr. Bruno asserts that the FAA has been less than forthcoming in its reporting on the progress of reexamination program. OSC File No. DI-0702350, Page 4.

2. FAA Response: To the extent that Mr. Bruno contends that the FAA "has been less than forthcoming" in providing information about the reexamination program, the FAA does not believe this allegation to be true, although the FAA concedes that some of the data it released may have been confusing and may have been misconstrued by the recipients. The FOIA requests posed to the FAA with regard to the reexamination program asked for specific information and the FAA attempted to be responsive to those specific requests; however, the nature of the requests was limited and the FAA provided only materials responsive to those requests. As a result, the responses did not necessarily provide a complete picture of the status of the reexamination and the advice to the OSC that the reexamination program was 90-95% complete was based on all the information available to the FAA, not just information gleaned from reading the response to the FOIA request.

In the interest of clarifying the current status of the reexamination program that began in 2004, the FAA is providing a complete listing of all of the airmen subject to the reexamination program and the status of each of these airmen (see Appendix B to Quality Assurance Staff investigation).
This information includes:

a. whether the airman has been reexamined;

b. whether the airman has passed or failed the reexamination;
c. whether the airman has surrendered the certificate;
d. whether the airman's certificate has been suspended; or
e. whether the airman's certificate has been revoked.

For airmen who do not fall into one of these categories, information is provided to show:

a. whether the FAA has been unable to locate and serve the airman with legal documents;
b. whether the airman has received a temporary exemption from the reexamination due to military service overseas;
c. whether the airman is deceased;
d. whether the airman was exempted from the reexamination because an Inspection Authorization was received before the reexamination program began;
e. whether the airman was wrongly included on the reexamination list because he or she was examined at a different testing center than St. George Aviation or took the examination at a date earlier than the scope of the reexamination program; or
f. whether duplicates of the same airman's name were removed from the reexamination list.

As detailed in the investigation conducted by the Quality Assurance Staff, the FAA has completed 94 percent of phase two of the reexamination program with 6 percent of the certificate holders still needing to be processed. This means that the FAA has processed 1,362 of the 1,445 mechanics in phase two of the reexamination program. The FAA remains dedicated to diligently processing the remaining 6 percent of the mechanics. Delays in processing these mechanics has been a problem for the FAA since the beginning of phase two because some of the mechanics have not maintained accurate addresses of record and others have been given an extension of time due to U.S. military service outside the United States. The FAA has flagged the airman files of these mechanics and is regularly monitoring the certificates of the last 6 percent of the mechanics. A complete accounting of phase two of the reexamination program is contained in the Quality Assurance Staff report.

D. Alleged Inconsistency in the FAA's Record Keeping

1. Whistleblower Allegations: Mr. Bruno contends that "[a]t the time the re-examinations began, FAA advised OSC, there were approximately 1,600 mechanics identified for re-testing. Mr. Bruno alleges that, "the statistics quoted by FAA are inconsistent and do not reflect the actual progress of the re-examination program." OSC File No. DI-0702350 at Page 4. He also complains about "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." He suggests that these factors evidence a lack of accountability by FAA officials administering and reporting on the re-examination program..." OSC File No. DI-0702350 at Page 4.

2. FAA Response: The total number of airmen subject to reexamination has been 1,455 since July 2005. A "master list" was developed from a list prepared by the Airman Certification Branch, AFS-760, consisting of all airmen who were examined by Anthony St. George from May 3, 1995 to January 14, 1999 and by George Allen after his hiring date

at St. George Aviation in 1997. The original pool of airmen examined during this period was 2,041. From that list, 86 names were removed because they were listed more than once; 54 names were removed because the airmen were examined prior to October 10, 1995, which was the date the Department of Transportation Inspector General found was the earliest indication of wrongdoing at St. George Aviation; 49 names were removed because the airmen were examined and obtained an FAA Inspection Authorization prior to July 5, 2005 as explained in FSAW 04-10A and B; and 397 names were removed because these airmen were part of the phase one reexamination program and were either successfully reexamined or their certificates were returned to the FAA.

The remainder on the master list after these exclusions is 1,455, a number that has been a constant factor since the current reexamination program started in 2005. Recently, an additional 10 airmen name were removed because they were identified as duplicate listings or they were found to have been examined outside the dates specified in the FSAW. This correction brings the list to 1,445.

The sources of the information compiled on the master list includes: Written examination results compiled in a database maintained by the Flight Standards Airmen Testing Standards Branch, AFS-630, in Oklahoma City; individual airman records available on SPAS (Safety Performance Analysis System), a database containing MSAT-A (Multi System Access Tool for Air Personnel) that tracks information on the status of certificate(s) and addresses; EIS (Enforcement Information System), a system that tracks all FAA enforcement actions; PTRS (Program Tracking & Reporting Subsystem), a system that tracks information gathered from aviation safety inspectors during the course of investigations; and information supplied by Embry Riddle Aeronautical University for students examined by George Allen while he was employed at that University and not at St. George Aviation.

The FAA does not agree with Mr. Bruno's assessment that the 20 percent failure rate demonstrates a lack of accountability on the part of FAA officials. To the contrary, bringing closure to 94 percent of the names on the FAA's master list in the relatively short period of time demonstrates the commitment the FAA made to complete the examination since the 2004 Special Counsel's report. Indeed, despite numerous legal challenges that the current reexamination program faced, the program is nearing completion. The 20 percent failure rate supports not only that the conclusion of the earlier Special Counsel's report regarding the necessity for the reexamination as true, but it demonstrates that the FAA has remained committed throughout the current reexamination program to fairly and aggressively administer the program to ensure that only St. George Aviation examinees who can demonstrate their qualifications remain certificate holders.

E. The FAA has Remained Committed to the Reexamination Program

1. **Whistleblower Allegations:** Mr. Bruno also alleges 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 the nearly 2000 mechanics who received certificates from St. George. OSC File No. DI-0702350, Page 3.

2. FAA Response: As discussed above more fully and in the Quality Assurance Staff Investigation, as of May 2008, the FAA has closure on 1,362 of the 1,445 airmen listed on the master St. George Aviation list. The remaining 83 airmen are accounted for, and the FAA is aggressively seeking closure on those cases as well.

F. FAA's Oversight of Maintenance and Designated Examiners

1. Whistleblower Allegation: Mr. Bruno claims the FAA's oversight of the Designated Mechanic Examiner program and airline mechanics overall, has fallen short of the minimum level of oversight expected to ensure safety of the flying public." OSC File No. DI-0702350, Page 3-4.

2. FAA Response: The Flight Standards Service takes a proactive approach to the oversight of all persons and entities that it is responsible for. With regard to the issue of oversight of designated mechanic examiners (DME), and designees in general, there have been continuous improvements made since the St. George Aviation incident.

a. Based on the events associated with St. George Aviation, the Flight Standards Service modified its policy to add risk controls to the selection and management of DMEs. This occurred through revisions to the Designated Mechanic Examiner Handbook, Order 8610.4, and the Airworthiness Inspector's Handbook, Order 8300.10. In addition, the minimum amount of surveillance for each DME was raised using the National Program Guidelines, which delineate surveillance requirements for all certificates and designees managed by the Flight Standards Service.

b. The Flight Standards Service has established the Designee Quality Assurance Branch, AFS-650, to analyze the designee processes and develop recommendations to improve both the designee oversight processes and to perform quality assurance functions to assure that incidents such as St. George Aviation do not take place again. This organization recently completed an audit of the DME system and is working to establish recommendations to improve the system based on the findings of that audit. In addition, AFS-650 has established an airman survey process that allows newly certificated airmen to provide data to the FAA about certification examinations that were administered by designees. The first survey that was deployed to newly certificated private pilots led the FAA to develop 11 significant recommendations that would change the system to improve the quality of tests being given by designated pilot examiners. Currently, a similar survey for DMEs is being coordinated through OMB and should be deployed later this year. Data from this survey will help the FAA develop additional strategies to improve the mechanic certification process. AFS-650 has also established a cadre of professionals in each policy division, each regional office, and each district office that has oversight responsibility for designees. These designee focal points serve as subject matter experts both at their respective offices and on national teams to develop designee oversight training and policies for managing designees. The focal point system allows open communication nationally, regionally, and locally on important designee issues.

c. The Flight Standards Service is currently certified under ISO-9001. Under this system, the organization is working toward continuous improvement of all processes. A draft Quality Management System (QMS) process on oversight of individual designees has been developed and is ready for coordination with all stakeholders. This new process would include metrics to determine how well the DME system is performing. These metrics are reported three times per year at the highest levels of the Flight Standards Service, assuring open communication of issues with upper management.

d. Specific training has been developed and deployed by AFS-500 and the FAA Academy that deals with oversight of designees. This course, Designee Management for Personal Certification (Course Number 21400001), is designed to provide the FAA inspector and manager workforce with a thorough understanding of FAA policy regarding designee functions, management of designees, and use of management tools currently used to assure that designee activities are appropriate. Development of a follow-on recurrent course is scheduled to begin this year.

e. The Office of Aviation Safety (AVS), of which the Flight Standards Service is a part, has begun an initiative to improve all designee processes to include not just the Flight Standards Service but also the Aircraft Certification Service and the Office of Aviation Medicine designees as well. Three major initiatives have been or are targeted to be completed by the end of FY-08. FAA Order VS 1100.2 was created to establish minimum controls and processes that must be in place for all designations. This order is being used by each service as a guide to improve designee processes to include the oversight component. The AVS Delegation Steering Group has been formed to discuss designee issues between the offices and services. This group is currently working to develop a more common set of guidelines for all designee types within AVS. The final initiative for the steering group has been the establishment of a single ISO (QMS) procedure to monitor designee activity throughout AVS.

G. Concerns about Air Carrier Accidents

1. Whistleblower Allegations: As support for his concerns that the reexamination process was flawed and continues to compromise public safety, Mr. Bruno cites the conclusions of the NTSB in two recent fatal crashes. – "January 2003, a US Air Express, Charlotte, North Carolina"... and "a December 2005, a Chalk's Ocean Airways flight." OSC File No. DI-0702350, Page 4. Mr. Bruno also asserts that, FAA should review certification records to determine whether or not the mechanics involved in recent airline crashes were originally St. George certificate-holders, and to ascertain the status of their certification." DI-0702350, Page 5.

2. FAA Response: The cause of the US Air Express accident was determined to be faulty maintenance. An examination of the airman records associated with that accident indicates that no mechanics who worked on the aircraft received their mechanic certificates from St. George Aviation.

The cause of the Chalk's Ocean Airways accident was attributed to fatigue cracks that had gone undetected by mechanics. Records indicate one mechanic who performed work on the subject aircraft received his mechanic certificate from St. George Aviation. This mechanic failed his reexamination on December 22, 2005 with a score of 60 percent. After placing his certificate on deposit with the FAA after the first failure, he took the reexamination again on January 30, 2006 and failed with a score of 67 percent. Enforcement action was initiated to revoke his mechanic certificate and ratings. The mechanic appealed to the NTSB, and the NTSB affirmed the revocation. 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.

H. Concerns About FAA Air Carrier Oversight

1. Whistleblower Allegations: Mr. Bruno alleges 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. DI-0702350, Page 5.

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IV. Conclusion

The substance of the whistleblower complaint is 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." DI-0702350, Page 5. The FAA

believes that it has done that. This report documents that the FAA has evaluated and substantially completed the reexamination program it undertook as a result of the 2004 Special Counsel's report. While the FAA regrets that it, to date, has not been able to process the remaining 83 mechanics covered in phase two of the reexamination program, the FAA is making a diligent effort to get this last part of the reexamination program done.

Appendix A

Federal Aviation Administration

Exhibits 1 – 27

Presented to:

By:

Date:

Appendix A

Exhibit 1

Route Slip

U.S. Department
of Transportation
Federal Aviation
Administration

APPENDIX A
Exhibit 1

G R.Y Baird

To: Associate Administrator for Regulation and Certification, AVR-1

Date: AUG 31 1999

Subject: Testing and Certification of Aviation Mechanics

Action:

___ Per Your Request	___ Discuss With Me	___ Take Appropriate Action
___ For Your Information	___ For Your Approval	___ Please Answer
___ Per Our Conversation	X For Your Signature	___ Prepare Reply For:
___ Note and Return	___ Comment	

Remarks:

Attached is a memorandum describing the FAA's plan to reexamine the mechanics certificated at St. George Aviation, Inc., as a result of the conspiracy that occurred there. The FAA had committed to advising the Office of Inspector General (OIG) of our plan in your memorandum of July 26, 1999, subject as above.

In the attached memorandum we also describe ongoing efforts to improve our current procedures and strengthen management controls in the testing environment, as well as revising policy guidance as needed. In addition, we inform the OIG of our intent to conduct a national review of the Designated Mechanic Examiner program to determine its effectiveness and identify and correct any other program weaknesses that may exist. We plan to forward our plan to conduct this review within 30 days.

for Lewis L. Mears

L. Nicholas Lacey
Director, Flight Standards Service, AFS-1

Subject: INFORMATION: Testing and Certification of Aviation Mechanics

Date: SEP 3 1999

From: Associate Administrator for Regulation and Certification, AVR-1

Reply to Attn. of: Mickey Hostetler: 202-267-3089 FAX:202-267-7636

To: Assistant Inspector General for Auditing, JA-1

As a followup to my memorandum of July 26, 1999, subject as above, I would like to provide you with our plan to reexamine those aviation mechanics who were certificated by St.George Aviation (SGA), Inc., located in Sanford, Florida.

Background

Evidence shows that the certification practices at St. George Aviation, Inc., provide reason to believe that a group of airmen was not tested in accordance with Title 14, Code of Federal Regulations, Part 65.79. Therefore, the competence of approximately 2,000 mechanics certificated at that site is in question. Reexamination of their qualifications to be holders of mechanic certificates with airframe and powerplant ratings is necessary in the interest of safety. Pursuant to the authority contained in Title 49, United States Code, Subtitle VII, Section 44709, as amended, the FAA will request that these mechanics be reexamined.

Action Plan

The reexamination will consist of the Oral and Practical tests to assure that the mechanics meet a satisfactory level of competence to retain their mechanic certificates. In accordance with regulations, an airman who satisfactorily completes the reexamination will be issued a Letter of Satisfactory Results. In the event of an unsatisfactory test, the FAA Inspector will issue a letter indicating those results and will inform the airman of each deficiency and pending enforcement action. Legal enforcement action must be taken to revoke the airman's certificate, or rating, and to have the airman surrender the certificate or rating. If the airman refuses to comply, the FAA Inspector will advise the airman that emergency legal action will be taken. Any certificate recovered as a result of the legal action will be handled in accordance with current FAA guidance.

To accomplish the reexamination, we are taking the following steps:

- Making final arrangements to secure the site for reexamination. Currently, a facility vacated by the inactivation of an Army Reserve Aviation Unit and located on the Orlando International Airport property, is a primary selection. We are working with representatives of the Department of Defense (DoD) on this effort. A temporary agreement is in place that allows us to have current access to the building and the facilities. Funding will be required to secure the facility for the time that may be required to conduct reexaminations of all the mechanics affected.

- Acquiring the necessary tools, equipment, and consumable supplies required for the reexamination process.

- Finalizing the procedures manual that will be used to conduct an in-briefing and other administrative actions required to ensure that each reexamination applicant has a complete standardized test. The estimated date for completing the manual is September 1999. The actual procedures for the oral and practical reexamination will be completed in accordance with current FAA policy and guidance.

- Initiating the training of the FAA aviation safety inspectors from the Orlando Flight Standards District Office (FSDO) who will administer the reexaminations. This training will meet or exceed all current FAA requirements for administering airframe and powerplant testing.

- Ensuring that the reexamination procedure is carried out in accordance with FAA Order 8610.4G, Aviation Mechanic Examiner Handbook, July 13, 1999.

- Notifying 25 individuals at a time through letters requesting that they contact the FAA to be reexamined. The letter states that a nonresponse by the mechanic will result in a suspension of the airman's certificate until such time as he or she demonstrates competence to exercise its privileges. Recipients of these letters also are informed that they may voluntarily surrender their certificates should they refuse to be reexamined. (The initial set of 25 letters was mailed on June 30, 1999.) There is a standard 15-day response time.

- Conducting analyses on each group of 25 airmen to determine when or if reexamination of subsequent groups may not be necessary. For example, if analysis of a given group reveals that 16 out of 25 individuals voluntarily surrendered their certificates or have had revocation action initiated, indicating inappropriate testing, there would be a high probability that the next group of 25 airmen would have been subjected to the same inappropriate testing.

Policy and Procedural Changes

In view of the conspiracy that took place at St. George Aviation, we are taking steps to immediately improve our procedures and institute stricter management controls as follows:

- We are enhancing the current Airman Tests and School database (ATS) automated surveillance capabilities. Specifically, the ATS will collect the start and end time of all tests and flag an applicant's record if the system is powered off, then powered back on, before the test is completed. Additional ATS data edits are being prepared to isolate and flag knowledge testing records that meet a set criteria. An applicant's test results will not load into the ATS data base when the results show significant time spent on any question or when there are either very few or no applicant answers recorded.

- We are developing an aircraft mechanic Airman Performance Report (APR) which will replace the current examiner Airframe and Powerplant Oral and Practical Planning Sheet. This new report can be scanned and will be used to electronically compile the details of all Oral and Practical tests. The data also will be used to conduct statistical analyses of designated testing processes and results.

- We have begun a national beta test involving the sampling of Oral and Practical test results. From this data, we are developing a national norm for the results of these tests. Applying statistical analysis techniques will enable FAA to identify potential irregularities in individualized examiner testing processes and results.

- We have initiated several new requirements to facilitate the coordination between the FAA and Designated Mechanic Examiners (DMEs). Upon completion of the Oral and Practical test, the DME will forward the completed APR to the FSDO/International Field Office as part of the certification package. An Airworthiness Aviation Safety Inspector will perform a final review, initial, and enter the four-digit FAA credential identification number on the back of the APR, indicating acceptance. The APR then will be forwarded to the Flight Standards Airmen Testing Standards Branch for data processing. These changes in our procedures will ensure applicants are eligible to be tested, establish FSDO coordination concerning the entry of skill test data, and enable the FAA to track the testing patterns of examiners and applicants.

- We are revising FAA Order 8610.4G to (1) restrict applicants from being tested by a DME located outside that applicant's district, unless authorization to be tested outside the applicant's district has been given, and (2) prohibit the DME from taking part in the computer knowledge test process. In the past, a DME was authorized to serve as a knowledge test supervisor as well as administering the

Oral and Practical tests. Because of this lack of separation of duties, the knowledge test and the Oral and Practical tests were compromised by one person at St. George Aviation. This new limitation, which has been communicated to the computer testing organizations, will provide better management controls in this area.

- We also are revising FAA Order 8300.10, Airworthiness Inspector's Handbook, to require that an applicant demonstrate adequate knowledge and background experience in 50 percent of the subject areas listed in Title 14, Code of Federal Regulations, part 147, prior to receiving authorization to take the test. This change will promote a more standardized approach to how we determine an applicant's eligibility.

- In addition, we are in the process of working with our Training Division, AFS-500, to include designee standardization on the list of Operational Training Needs Assessment (OTNA) courses, thus providing a central funding source for this training. Currently, this training is provided to the designee community. However, in order for the inspector to attend the training, the local FSDO must provide funding. This change also will mean that an inspector will be required to complete this OTNA training before being considered eligible to attain journeyman status.

In addition to the above actions, FAA is planning to conduct a review of the DME program to determine its effectiveness from a national perspective and to identify and correct any other program weaknesses that may exist. We will forward to you our plan to conduct this internal review within 30 days.

Original Signed By
Margaret Gilligan

Thomas E. McSweeny

cc: AFS-130/AFS-100/AFS-3/AFS-2
File: st george
WP: A:\geo

afs-130:mhostetler:meh:x73089:8/20/99

Appendix A

Exhibit 2

APPENDIX A
Exhibit 2

Memorandum

U.S. Department of Transportation
Federal Aviation Administration

Subject: ACTION: Decision Letter – St. George Re-examination (709) Process

Date: JUN 14 2001

From: Acting Manager, Flight Standards Division, ASO-200

Reply to Attn. of: D. Veatch 404-305-6000

To: Manager, Orlando FSDO
Regional Counsel, ASO-7
Howard Swancy, AFS-3

I would like to personally commend the Orlando FSDO and Keith May, ASO-7, for their exceptional effort to bring justice and creditability to the St George enforcement case. This involved approximately 403 airmen re-examination actions due to the conviction of two individuals charged with selling A&P certificates associated with St. George-Designated Mechanics Examiner (DME). While this is commendable, this office also felt it necessary to conduct an evaluation to determine what extent this process needs to continue.

The evaluation concludes the re-examination process should consider all airmen who were issued certificates after June 11, 1998. I have found no supporting evidence to indicate a need to dedicate limited resources past this date. This determination was based on the following facts:

1. Our documentation for the US Attorney and FAA investigations began on June 11, 1998.
2. No airmen were used as evidence in the criminal prosecution or FAA enforcement actions with certificates issued prior to June 11, 1998.
3. Airmen identified in the original complaint were issued certificates in January 1998. This was never substantiated, but this allegation prompted the investigation that followed.
4. Verification with Keith May, ASO-7; Cliff Weiss, ASO-700; and the Orlando FSDO confirm that the activity prior to June 11, 1998, is speculative and not substantiated, though highly likely.

This office also has determined that the majority of remaining re-examinations can be completed by September 30, 2001. At that time arrangements will have been made to terminate the contract on the hanger facility leased from DOD. Any remaining re-examinations that need to be conducted after September 30, 2001, will utilize other available facilities.

Dawn R.H. Veatch

Dawn R.H. Veatch

Cc:
ASO-210
ASO-250
ASO-300

Appendix A

Exhibit 3

APPENDIX A
Exhibit 3

U.S. Department
of Transportation

Federal Aviation
Administration

FAA-S-8081-26
w/ Changes 1, 2, & 3

AVIATION MECHANIC GENERAL

Practical Test Standards

June 2003

FLIGHT STANDARDS SERVICE
Washington, DC 20591

AVIATION MECHANIC GENERAL

PRACTICAL TEST STANDARDS

2003

FLIGHT STANDARDS SERVICE
Washington, D.C. 20591

NOTE

FAA-S-8081-26, Aviation Mechanic General Practical Test Standards (PTS) is to replace the oral and practical test guides currently used. Both testing procedures will be in effect until all examiners have been trained to administer the test in accordance with the PTS, or 2 years after the effective date of Order 8610.4J, Aviation Mechanic Examiner Handbook. After which time, **all** tests must be administered under the PTS guidelines. New examiners must use the PTS upon completion of initial training. Previously appointed examiners must transition to the PTS within 60 days after completion of recurrent training.

Record of Changes

Change 1: 8/8/2003

Introduction

Performance Levels

LEVEL 1—Z3b. Nondestructive changed to specified.
LEVEL 1—PERFORMANCE STANDARD deleted.
LEVEL 2—bullet 2: added additional text.
LEVEL 2—PERFORMANCE STANDARD deleted.
LEVEL 3—bullet 4: added additional text.
LEVEL 3—Z3e. Verify changed to check.
LEVEL 3—PERFORMANCE STANDARD deleted.

Change 2: 9/24/2003

Introduction

Performance Levels

LEVEL 1—PERFORMANCE STANDARD added.
LEVEL 2—PERFORMANCE STANDARD added.
LEVEL 3—PERFORMANCE STANDARD added.

Section 1—Aviation Mechanic General

A. Basic Electricity, Objective 1. Change "at least four" to "at least two."
B. Aircraft Drawings, Objective 1. Change "at least four" to "at least two."
C. Weight and Balance, Objective 1. Change "at least four" to "at least two."
D. Fluid Lines and Fittings, Objective 1. Change "at least four" to "at least two."
D. Fluid Lines and Fittings, Objective 2 a. Added the words "fabrication and tubefittings.
E. Materials and Processes, Objective 1. Change "at least four" to "at least two."
F. Ground Operation and Servicing, Objective 1. Change "at least four" to "at least two."
G. Cleaning and Corrosion Control, Objective 1. Change "at least four" to "at least two."
H. Mathematics, Objective 1. Change "at least four" to "at least two."
I. Maintenance Forms and Records, Objective 1. Change "at least four" to "at least two."
J. Basic Physics, Objective 1. Change "at least four" to "at least two."
K. Maintenance Publications, Objective 1. Change "at least four" to "at least two."
L. Aviation Mechanic Privileges and Limitations, Objective 1. Change "at least four" to "at least two."

FOREWORD

This Aviation Mechanic General Practical Test Standards book has been published by the Federal Aviation Administration (FAA) to establish the standards for the Aviation Mechanic General Practical Test. The passing of this practical test is a required step toward obtaining the Aviation Mechanic certificate with Airframe and/or Powerplant ratings. **FAA inspectors and Designated Mechanic Examiners (DMEs) shall conduct practical tests in compliance with these standards.** Applicants should find these standards helpful in practical test preparation.

/s/ 2-13-2003

Joseph K. Tintera, Manager
Regulatory Support Division
Flight Standards Service

CONTENTS

INTRODUCTION

The Flight Standards Service of the Federal Aviation Administration (FAA) has developed this practical test book as a standard to be used by FAA inspectors and Designated Mechanic Examiners (DMEs) when conducting aviation mechanic practical tests. Applicants are expected to use this book when preparing for practical testing.

Information considered directive in nature is described in this practical test document in terms, such as "shall" and "must" indicating the actions are mandatory. Guidance information is described in terms, such as "should" and "may" indicating the actions are desirable or permissive but not mandatory.

The FAA gratefully acknowledges the valuable assistance provided by the many individuals and organizations that contributed their time and talent in assisting with the development of these practical test standards.

This practical test standard may be downloaded from the Regulatory Support Division's, AFS-600, web site at http://afs600.faa.gov. Subsequent changes to this standard, in accordance with AC 60-27, Announcement of Availability: Changes to Practical Test Standards, will also be available on AFS-600's web site and then later incorporated into a printed revision.

This publication can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The official online bookstore web site for the U.S. Government Printing Office is www.access.gpo.gov.

Comments regarding this document should be sent to:

U.S. Department of Transportation
Federal Aviation Administration
Regulatory Support Division
Airman Testing Standards Branch, AFS-630
P.O. Box 25082
Oklahoma City, OK 73125

Practical Test Standard Concept

Title 14 of the Code of Federal Regulations (14 CFR) specifies the subject areas in which knowledge and skill must be demonstrated by the applicant before the issuance of an Aviation Mechanic Certificate with an airframe and/or powerplant rating. The CFRs provide the flexibility that permits the FAA to publish practical test standards containing knowledge and skill specifics in which competency must be demonstrated.

"Knowledge" (oral) elements are indicated by use of the words *"Exhibits knowledge of...."*

"Skill" (practical) elements are indicated by the use of the words *"Demonstrates the ability to...."*

The FAA will revise this book whenever it is determined that changes are needed. **Adherence to the applicable regulations, the policies set forth in the current revision of FAA Order 8610.4, Aviation Mechanic Examiner Handbook, and the practical test standards is mandatory for the evaluation of aviation mechanic applicants.**

Practical Test Book Description

This test book contains the following Aviation Mechanic Practical Test Standards.

Section I—Aviation Mechanic General

Practical Test Standard Description

The Aviation Mechanic Practical Test Standards include the subject areas of knowledge and skill for the issuance of an aviation mechanic certificate and/or the addition of a rating. The subject areas are the topics in which aviation mechanic applicants must have knowledge and/or demonstrate skill.

The REFERENCE identifies the publication(s) that describe(s) the subject area. Descriptions of the subject area are not included in the practical test standards, because this information can be found in references listed and/or in manufacturer or FAA-approved or acceptable data related to each subject area. Publications other than those listed may be used as references if their content conveys substantially the same information as the referenced publications. Except where appropriate, (e.g., pertinent CFRs) references listed in this document are NOT meant to supersede or otherwise replace manufacturer or other FAA-approved or acceptable data, but to serve as general information and study material sources. **Information contained in manufacturer and/ or FAA-approved/acceptable data always takes precedence over advisory or textbook referenced data.** Written instructions given to applicants for the

An applicant is not permitted to know before testing begins which selections in each subject area are to be included in his/her test (except the core competency elements, which all applicants are required to perform). Therefore, an applicant should be well prepared in *all* oral and skill areas included in the practical test standard.

Further information about the requirements for conducting/taking the practical test is contained in FAA Order 8610.4

Aviation Mechanic Practical Test Prerequisites

All applicants must have met the prescribed experience requirements as stated in 14 CFR part 65, section 65.77. (See FAA Order 8610.4 for information about testing under the provisions of 14 CFR part 65, section 65.80.)

Examiner Responsibility

The examiner who conducts the practical test is responsible for determining that the applicant meets acceptable standards of knowledge and skill in the assigned subject areas within the appropriate practical test standard. Since there is no formal division between the knowledge and skill portions of the practical test, this becomes an ongoing process throughout the test.

The following terms may be reviewed with the applicant prior to, or during, element assignment.

1. "Inspect" means to examine by sight and/or touch (with or without inspection enhancing tools/equipment).
2. "Check" means to verify proper operation.
3. "Troubleshoot" means to analyze and identify malfunctions.
4. "Service" means to perform functions that assure continued operation.
5. "Repair" means to correct a defective condition.

Performance Levels

The following is a detailed description of the meaning of each level.

Level 1

- Know basic facts and principles.
- Be able to find information and follow directions and written instructions.
- Locate methods, procedures, instructions, and reference material.
- Interpretation of information not required.
- No skill demonstration is required.

Example: **Change 1 (8/8/2003) & 2 (9/24/03)**

Z3b. Locate specified nondestructive testing methods. (Level 1)

Performance Standard: The applicant will locate information for nondestructive testing.

Level 2

- Know and understand principles, theories, and concepts.
- Be able to find and interpret maintenance data and information, and perform basic operations using the appropriate data, tools, and equipment.
- A high level of skill is not required.

Example:

Z3c. Detect electrical leakage in electrical connections, terminal strips, and cable harness (at least ten will have leakage faults). (Level 2)

Performance Standard: Using appropriate maintenance data and a multimeter, the applicant will identify items with leakage faults.

Level 3

- Know, understand, and apply facts, principles, theories, and concepts.
- Understand how they relate to the total operation and maintenance of aircraft.
- Be able to make independent and accurate airworthiness judgments.
- Perform all skill operations to a return-to-service standard using appropriate data, tools, and equipment. Inspections are performed in accordance with acceptable or approved data.
- A fairly high skill level is required.

Example:

Z3e. Check control surface travel. (Level 3)

Performance Standard: Using type certificate data sheets and the manufacturer's service manual, the applicant will measure the control surface travel, compare the travel to the maintenance data, and determine if the travel is within limits.

Change 3 (6/21/04)

Satisfactory Performance

The practical test is passed if the applicant demonstrates the prescribed proficiency in the assigned elements (core competency and other selected elements) in each subject area to the required standard. Applicants shall not be expected to memorize all mathematical formulas that may be required in the performance of various elements in this practical test standard. However, where relevant, applicants must be able to locate and apply necessary formulas to obtain correct solutions.

Unsatisfactory Performance

If the applicant does not meet the standards of any of the elements performed (knowledge, core competency, or other skill elements), the associated subject area is failed, and thus the practical test is failed. The examiner or the applicant may discontinue testing any time after the failure of a subject area. In any case, the applicant is entitled to credit for only those subject areas satisfactorily completed. See the current revision of FAA Order 8610.4 for further information about retesting and allowable credit for subject areas satisfactorily completed.

Typical areas of unsatisfactory performance and grounds for disqualification include the following.

1. Any action or lack of action by the applicant that requires corrective intervention by the examiner for reasons of safety.
2. Failure to follow acceptable or approved maintenance procedures while performing skill (practical) projects.
3. Exceeding tolerances stated in the maintenance instructions.
4. Failure to recognize improper procedures.
5. The inability to perform to a return to service standard, where applicable.
6. Inadequate knowledge in any of the subject areas.

SECTION I—AVIATION MECHANIC GENERAL

A. BASIC ELECTRICITY

*Core competency element.

REFERENCES: JSGT; AEE; AMT-G.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. sources and/or effects of capacitance in a circuit.
   b. uses of capacitance in a circuit.
   c. sources and/or effects of inductance in a circuit.
   d. uses of inductance in a circuit.
   e. operation of basic AC and/or DC electrical circuits.
   f. Ohm's law.
   g. Kirchoff's law(s).
   h. procedures used in the measurement of voltage, current, and/or resistance.
   i. determining power used in simple circuits.
   j. troubleshooting, and/or repair or alteration using electrical circuit diagrams.
   k. common types of defects that may occur in an installed battery system.
   l. aircraft battery theory/operation.
   m. servicing aircraft batteries.

2. *Demonstrates the ability to perform both of the following—

   a. use measuring equipment to measure in a circuit or circuit component(s), at least one of the following: voltage, current, resistance, or continuity. (Level 3)
   b. determine the appropriateness of measurement(s) according to instructions/specifications. (Level 2)

3. Demonstrates the ability to perform at least one of the following—

   a. read and interpret one or more electrical circuit diagrams. (Level 2)
   b. troubleshoot an electrical circuit. (Level 3)
   c. calculate voltage, current, and resistance using Ohm's Law. (Level 2).
   d. inspect a battery and installed battery system. (Level 3)
   e. accomplish a battery state-of-charge (hydrometer) and/or electrical leak (cell imbalance) test. (Level 3)

f. accomplish removal and/or installation of a battery in an aircraft. (Level 3)
g. set-up and connect a charger to one or more batteries for constant current and/or constant voltage charging. (Level 3)

B. AIRCRAFT DRAWINGS

REFERENCES: ABS; JSGT; AMT-G.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. characteristics and/or uses of any of the various types of drawings/blueprints and/or system schematics.
   b. the meaning of any of the lines and symbols commonly used in aircraft sketches/drawings/blueprints.
   c. using charts or graphs.
   d. troubleshooting an aircraft system or component(s) using drawings/blueprints and/or system schematics.
   e. inspection of an aircraft system or component(s) using drawings/blueprints and/or system schematics.
   f. repair or alteration of an aircraft system or component(s) using drawings/blueprints and/or schematics.
   g. use of drawings/blueprints in component fabrication.
   h. terms used in conjunction with aircraft drawings/blueprints and/or system schematics.

2. N/A

3. Demonstrates the ability to perform at least one of the following—

   a. maintenance and/or inspection using drawings/blueprints and/or system schematics. (Level 3)
   b. preventive maintenance using drawings/blueprints and/or schematics. (Level 3)
   c. troubleshooting using drawings/blueprints and/or schematics. (Level 3)
   d. use a control cable tension chart. (Level 3)
   e. use a servicing, limitation, or calculation chart or graph. (Level 3)
   f. draw a sketch of an alteration or repair. (Level 2)
   g. draw a diagram of an electrical circuit or other system, or portion thereof, and explain the drawing. (Level 2)

C. WEIG-HT AND BALANCE

*Core competency element.

REFERENCES: ABS; AMT-G; FAA-H-8083-1.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. the purpose(s) of weighing or reweighing.
   b. general preparations for weighing, with emphasis on aircraft preparation and/or weighing area considerations.
   c. the general location of airplane center of gravity (CG) in relation to the center of lift for most fixed main airfoils.
   d. definitions of any of the following: datum, arm, moment (positive or negative), or moment index.
   e. the meaning and/or application of any terms/nomenclature associated with weight and balance other than those mentioned in element "d" above, including but not limited to any of the following: tare, ballast, and residual fuel/oil.
   f. procedures for finding any of the following: datum, arm, moment (positive or negative), or moment index.
   g. purpose and/or application of mean aerodynamic chord (MAC).
   h. adverse loading considerations.

2. *Demonstrates the ability to calculate weight and balance CG and complete aircraft weight and balance documentation. (Level 3)

3. Demonstrates the ability to perform at least one of the following—

   a. weighing equipment preparation and setup according to manufacturer's instructions. (Level 3)
   b. locate procedures for leveling and the leveling points for an aircraft. (Level 2)
   c. locate weigh points, procedures for determining CG, and determine the weigh point arms for an aircraft. (Level 2)
   d. identify tare items for a specific aircraft and weighing procedure. (Level 2)
   e. find the datum for at least two different aircraft. (Level 2)
   f. determine the weight and location of required ballast after an (actual or hypothetical) equipment change. (Level 2)

E. MATERIALS AND PROCESSES

*Core competency element.

REFERENCES: ABS; AMR; AMT-G; JSAT; JSGT.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. any of the metals commonly used in aircraft and their general application.
   b. composites and other nonmetallic components and their general application.
   c. heat-treated parts precautions, using DD or "icebox" rivets.
   d. typical wood materials and fabric coverings.
   e. visible characteristics of acceptable and/or unacceptable welds.
   f. precision measurement and precision measurement tools.
   g. using inspection techniques/methods, including any of the following: visual, metallic ring test, dye/fluorescent penetrant, magnetic particle, and/or eddy current.
   h. identification, selection, installation, and/or use of aircraft hardware.
   i. safetying of components and/or hardware.
   j. finding information about material types for specific application(s).

2. *Demonstrates the ability to torque to specification(s), and safety-wire aircraft component(s)/hardware. (Level 3)

3. Demonstrates the ability to perform at least one of the following—

   a. select and install standard aircraft hardware, to include one or more self-locking nuts. (Level 3)
   b. select, install, and secure a clevis bolt and associated hardware. (Level 3)
   c. select and install one or more appropriate screws/bolts, nuts, cotter pins, and washers. (Level 3)
   d. inspect hardware for defects, proper installation. (Level 3)
   e. safety a turnbuckle. (Level 3)
   f. perform a dye or fluorescent penetrant inspection. (Level 3)
   g. find a (not visible) defect using eddy current or ultrasonic inspection equipment. (Level 2)

h. perform, read, and record a precision measurement using a dial indicator, or micrometer, or vernier caliper. (Level 2)
i. visually inspect welds and determine acceptability. (Level 3)
j. identify rivets by physical characteristics. (Level 2)

F. GROUND OPERATION AND SERVICING

REFERENCES: ABS; AMT-G; JSGT.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. general procedures for towing aircraft.
   b. Air Traffic Control (ATC) considerations/requirements for towing aircraft on or across active runways.
   c. general procedures for starting, ground operating, and/or taxiing a reciprocating engine powered aircraft.
   d. general procedures for starting, ground operating, and/or taxiing a turbine engine powered aircraft.
   e. the hazards associated with starting, ground operating, and/or taxiing aircraft and procedures for preventing, minimizing or otherwise managing any of them.
   f. procedures for refueling and/or defueling aircraft.
   g. oxygen system safety practices/precautions.
   h. characteristics of aviation gasoline and/or turbine fuels, including basic types and means of identification.
   i. fuel contamination hazards.
   j. fuel additives commonly used in the field.
   k. use of automobile fuel in aircraft engines.
   l. types/classes of fires, using proper fire extinguishers/methods.

2. N/A

3. Demonstrates the ability to perform at least one of the following—

   a. service an aircraft with compressed air or nitrogen. (Level 3)
   b. set-up an aircraft and cockpit controls for engine start. (Level 2)
   c. start and ground operate an aircraft engine* (taxiing optional), and use or respond to standard hand or light wand signals. (Level 3)
   d. determine the engine oil for a specific engine. (Level 2)
   e. secure an aircraft for outside storage. (Level 3)

f. fuel and/or defuel an aircraft (may be simulated). (Level 3)
g. sample fuel and inspect for proper fuel and contaminates. (Level 3)
h. set-up and connect an aircraft to an external power source. (Level 2)
i. connect a towbar to an aircraft and prepare for towing. (Level 3)
j. direct the movement (may be simulated) of aircraft. (Level 3)
k. locate and clear a liquid lock (actual or simulated) in an aircraft engine. (Level 3)
l. identify the types/classes of fires that local shop and/or flightline fire extinguishers may be used on. (Level 2)

*If an operable engine is available.

G. CLEANING AND CORROSION CONTROL

*Core competency element.

REFERENCES: ABS; AC 43-4A; AMT-G.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. aircraft preparation for washing, general aircraft cleaning (washing) procedures.
   b. postcleaning (washing) procedures.
   c. corrosion theory.
   d. types/effects of corrosion.
   e. conditions that cause corrosion.
   f. corrosion prone areas in aircraft.
   g. corrosion preventive maintenance procedures.
   h. inspection for and identification of corrosion in any of its various forms.
   i. corrosion removal and treatment procedures.
   j. use of Material Safety Data Sheets (MSDS).

2. *Demonstrates the ability to inspect for and identify two or more of the various forms of corrosion that affect aircraft. (Level 3)

3. Demonstrates the ability to perform at least one of the following:

   a. identify and select materials used to clean interior and/or exterior surfaces according to aircraft manufacturer's instructions. (Level 2)
   b. corrosion removal from any of the metals commonly used in aircraft. (Level 3)

c. preventive corrosion treatment on any of the metals commonly used in aircraft. (Level 3)
d. identify and select appropriate corrosion preventive methods and materials for a specific aircraft application. (Level 2)

H. MATHEMATICS

REFERENCES: AC 65-9A; ABS; AMT-G.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. areas of various geometrical shapes.
   b. volumes of various geometrical shapes.
   c. definitions/descriptions of geometrical terms, including but not limited to any of the following: polygon, pi, diameter, radius, and hypotenuse.
   d. ratio problems, including one or more examples of where or how they may be used in relation to aircraft maintenance or system(s) operation.
   e. proportion problems, including one or more examples of where or how they may be used in relation to aircraft maintenance or system(s) operation.
   f. percentage problems, including one or more examples of where or how they may be used in relation to aircraft maintenance or system(s) operation.
   g. algebraic operations, including one or more examples of where or how they may be used in relation to aircraft maintenance.
   h. conditions or areas where metric conversion may be necessary.

2. N/A

3. Demonstrates the ability to perform at least one of the following, using appropriate formulas—

   a. calculate the area of a polygon and/or circle. (Level 2)
   b. calculate the volume of a sphere, cube, or cylinder. (Level 2)
   c. algebraic operations involving addition, subtraction, multiplication, and/or division of positive and negative numbers. (Level 2)
   d. locate mathematical formulas used to assist in the maintenance, preventive maintenance, or alteration of aircraft. (Level 1)

e. performance of a 100-hour inspection with disapproval for return to service because of needed maintenance, or noncompliance with applicable specifications or airworthiness directive(s). (Level 3)
f. FAA Form 337, Major Repair and Major Alteration, for additional equipment installation or an alteration in accordance with a supplemental type certificate (STC) and make appropriate maintenance record entry. (Level 3)
g. FAA Form 8010-4, Malfunction or Defect Report. (Level 3)

J. BASIC PHYSICS

REFERENCES: ABS; AC 65-15A.

Objective. To determine that the applicant:

1. Exhibits knowledge of at least two of the following—

   a. any of the simple machines, how they function, and/or how mechanical advantage is applied in one or more specific examples.
   b. sound resonance, how it can be a hazard to aircraft, and how sound may be used to aid in inspecting aircraft.
   c. the relationship between fluid density and specific gravity.
   d. the characteristic of specific gravity of fluids and how it may be applied to aircraft maintenance.
   e. the general effects of pressure and temperature on gases and liquids and how the qualities of compressibility and/or incompressibility of gases and liquids are generally applied to aircraft systems.
   f. density altitude and the effects of temperature, and/or pressure, and/or humidity on aircraft and/or engine performance.
   g. heat, how it is manifested in matter, and how heat transfer is accomplished through conduction, and/or convection, and/or radiation.
   h. coefficient of linear (thermal) expansion as related to aircraft materials.
   i. aircraft structures and theory of flight/physics of lift.
   j. the operation of aerodynamic factors in the flight of airplanes and/or helicopters.
   k. the relationship between force, area, and pressure.
   l. the five forces or stresses affecting aircraft structures.
   m. the two forms of energy and how they apply to aircraft and/or aircraft systems.

2. N/A

Appendix A

Exhibit 4

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

The Inspector General

Office of Inspector General
Washington, D.C. 20590

January 16, 2004

The Honorable Scott J. Bloch
Special Counsel
United States Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, DC 20036-4505

Dear Mr. Bloch:

This is in response to then-Special Counsel Elaine Kaplan's letter of March 28, 2003, referring allegations made by Gabriel D. Bruno and Dorvin D. Hagan, employees of the Federal Aviation Administration's (FAA) Orlando Flight Standards District Office (FSDO), to the Secretary of Transportation for investigation. Secretary Norman Mineta delegated your request to our office for investigation and subsequent response to you. Presented herein are the results of our investigation of the predicate allegations.

The Special Counsel referred the following allegations for investigation:

1. Mr. Bruno, then-Orlando FSDO Manager, alleged that in the spring of 2001, Dawn Veatch, then-Acting Division Manager, Southern Region Flight Standards Division, Atlanta, cancelled a program he implemented to re-examine individuals who had received airframe and power plant (A&P) mechanic certificates under fraudulent conditions. Mr. Bruno asserted that the cancellation of this program, and FAA's failure to re-examine more than 1,000 individuals holding questionable mechanic certificates, represents gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety.

2. Mr. Bruno and Mr. Hagan, then-Supervisory Aviation Safety Inspector assigned to FAA's Certificate Management Unit (CMU) for AirTran Airways, Orlando FSDO, alleged that FAA Southern Region management, specifically, three consecutive Flight Standards Division managers, Marion Dittman, Dawn Veatch, and Nicholas Sabatini, failed to adequately staff the CMU from 1998

to 2001[1]. They asserted that such understaffing represents gross mismanagement, resulting in a substantial and specific danger to public safety.

Background

Beginning in early 1998, OIG conducted a criminal investigation of St. George Aviation (SGA), an Orlando, FL, based aircraft maintenance school, and FAA-approved Designated Mechanic Examiner (DME) facility, for alleged issuance of fraudulent A&P mechanic certificates. Specifically, Anthony St. George, owner of SGA, and George Allen, an SGA examiner, were allegedly falsely certifying that they had administered examinations and had directed SGA employees to take examinations on behalf of applicants, or to otherwise ensure examinees received passing scores. Our investigation substantiated the predicate allegations[2]. Subsequently, we provided FAA with a list of 1,626 A&P mechanics who received their certificates from SGA between October 10, 1995, and October 9, 1998, the period during which OIG's investigation disclosed that fraudulent certificates had been issued[3].

In June 1999, based on a recommendation from OIG[4], FAA initiated a program to re-examine the mechanics certified by SGA. Specifically, Thomas McSweeny, FAA's then-Associate Administrator for Regulation and Certification, advised us in a September 3, 1999, memorandum that there was sufficient evidence to believe that SGA-certificated mechanics had not been tested in accordance with regulations, and he committed FAA to a re-examination program.

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[1] In April 1998, the Orlando FSDO became responsible for the regulatory oversight of aircraft formerly operated by ValuJet Airlines when that carrier merged with AirTran Airways. At that time, Mr. Bruno appointed Mr. Hagan as the Supervisor of the Certificate Management Unit (CMU), with combined oversight of AirTran Airways and the former ValuJet aircraft. The CMU subsequently became a Certificate Management Office when AirTran Airways grew large enough to warrant such designation.

[2] OIG's criminal investigation disclosed that between October 10, 1995, and October 9, 1998, employees of SGA issued numerous fraudulent A&P mechanic certificates. As a result of OIG's investigation, Anthony St. George and George Allen were convicted in U.S. District Court on multiple felony charges stemming from the issuance of fraudulent certificates.

[3] Federal Aviation Regulations provide that once issued, mechanic certificates are effective until surrendered, suspended, or revoked. There is no requirement for periodic re-examination of an A&P mechanic certificate-holder (absent surrender, suspension, or revocation), and certificates do not expire.

[4] Following completion of our investigation, we recommended to FAA that 1,626 A&P mechanics certificated by SGA be re-examined by FAA to ensure their level of competence. FAA concurred with our recommendation.

Mr. McSweeny's memorandum stated, in part, the following:

> *"Evidence shows that the certification practices at St. George Aviation, Inc., provide reason to believe that a group of [mechanics] was not tested in accordance with Title 14, Code of Federal Regulations, Part 65.79. Therefore the competence of approximately 2000 mechanics certificated at that site is in question. Re-examination of their qualifications to be holders of mechanic certificates with airframe and powerplant ratings is necessary in the interest of safety."*

Mr. Bruno subsequently created and implemented the re-examination program through an action plan he formulated. Mr. Bruno's plan was to identify, contact, and re-examine, through both oral and practical examinations, individuals who received their A&P mechanic certificates from SGA, beginning with the last person certified by SGA and working backwards, in groups of 25 until the FAA was confident, through analysis of the test results that "those remaining [to be tested] do not pose a threat to aviation safety and the flying public." The action plan did not specify the manner in which such analysis would be conducted in support of a decision to end the testing. However, in contrast to his written statements to your office that all SGA-certificated mechanics should have been retested, Mr. Bruno told us, when interviewed for this investigation, along with then-members of his staff, that a simple majority of individuals passing the re-examination would be sufficient justification for ending it.

In June 2001, Dawn Veatch, then-Acting Manager, Southern Region Flight Standards Division, restricted the conduct of re-examinations to only those individuals who received their certifications from SGA after June 11, 1998, and directed that only oral examinations be conducted. The last re-examination was conducted on September 24, 2001.

Summary of Findings

In brief, we concluded that FAA prematurely canceled its re-examination program by not following-thru on its commitment to re-examine, as recommended by OIG, all 1,626 SGA-certificated A&P mechanics. We disagree with FAA's rationale that a re-examination pass rate of 79 percent, at the time the program was terminated, is sufficient to conclude that A&P mechanics who received their certificates from SGA do not represent a measurable impact on aviation safety. Further, we did not substantiate Mr. Bruno's allegations that Southern Region Flight Standards Division management failed to adequately staff the CMU for

Accordingly, we are recommending to FAA that, consistent with our original recommendation and the original commitment of then-Associate Administrator McSweeny, it take appropriate action to assess the current competence of the 1,228 SGA-certificated A&P mechanics not previously re-examined, or whose certificates were not suspended or revoked.

2. We did not find that Southern Region Flight Standards Division managers failed to provide sufficient personnel to adequately staff the CMU for AirTran Airways from 1998 to 2001. We found that adequate staffing for the CMU was provided to the Orlando FSDO manager; however, individuals hired or transferred by Southern Region Flight Standards Division management to the Orlando FSDO for the staffing of the CMU were assigned to conduct re-examinations rather than performing CMU duties.

   We found that Mr. Bruno declined offers for geographical support to assist with the SGA re-testing[5]. Such geographical support would have eased the need to divert Orlando FSDO personnel, including those that could have been assigned to the CMU, from performing normal certificate oversight functions to conducting re-examinations.

   Additionally, we found that offers by Southern Region Flight Standards Division Managers to hire Aviation Safety Inspectors, as directed by Nicholas Lacey, then-Director, Flight Standards Division, were declined by Mr. Bruno, who wanted to hire inspectors at higher grades. However, such higher grade positions were rejected by FAA Headquarters on the basis of being duplicate positions.

   We also did not substantiate Mr. Bruno's contentions that the CMU was subjected to seven different redundant inspections between November 2000, and March 2001. Mr. Bruno was able only to identify to us three specific inspections: (1) FAA Flight Standards' Certificate Audit Program, (2) FAA's Regional Aviation Safety Inspection, and (3) the DoD Air Carrier Survey and Analysis[6]. We did not find documentation for inspections other than the three identified by Mr. Bruno. Further, FAA records show that each of these inspections addressed separate areas of concern. Accordingly, we concluded that these inspections were conducted in keeping with FAA's, and DoD's, air carrier safety oversight mission and responsibilities.

---

[5] Geographical support consists of inspectors permanently assigned to other geographical areas who are placed on temporary assignment at another location to assist with a project of assignment that temporarily requires an increase in the number of personnel.

[6] The DoD inspection was based upon DoD's use of AirTran Airways as a contract carrier.

Details

Cancellation of re-examination

In 1998, OIG initiated a criminal investigation of SGA for alleged issuance of fraudulent A&P mechanic certificates. OIG's investigation resulted in the indictment and subsequent conviction of Mr. St. George and Mr. Allen on multiple felony charges stemming from the issuance of fraudulent certificates. Subsequently, OIG provided a list to the Orlando FSDO of 1,626 individuals who received A&P mechanics certificates from SGA between October 10, 1995, and October 9, 1998.

FAA, based on our recommendation, agreed to retest the mechanics certified by SGA. Mr. Bruno subsequently developed an action plan to conduct re-examination of the A&P mechanics certified by SGA beginning with the most recent mechanic certified and continuing backwards chronologically in groups of 25 until FAA was confident, through analysis of the testing results, that "those remaining [to be tested] do not pose a threat to aviation safety and the flying public."

There were 398 individuals contacted by FAA for re-examination. Of that 398, 130 submitted to re-examination, with a 79 percent pass rate. In addition, there were 118 mechanics who voluntarily surrendered their certificates to FAA, 155 whose certificates were suspended by FAA for failure to appear for re-examination, 12 who had their certificates revoked, 12 whose certificates were suspended for other reasons, and 2 mechanics for whom action on their certificates remains pending, i.e., medical examination.

Subsequently, in June 2001, upon assuming duties as Acting Manager, Southern Region Flight Standards Division, Ms. Veatch directed the re-examinations be discontinued after the 398 individuals contacted by FAA had been re-examined, or other action had been taken (e.g., certificate surrender or revocation). Further, Ms. Veatch limited the remaining re-examinations solely to oral re-examinations. Ms. Veatch told us the re-examination project was a significant drain on limited personnel and financial resources. Therefore, after her appointment as Acting Manager in May 2001, she solicited information and recommendations concerning the re-examinations to determine the need to continue the program.

Mr. May told us he provided information in a memorandum to Ms. Veatch recommending she terminate the re-examination project. He explained that based on the OIG investigation; there was sufficient evidence to establish that fraudulent certificates were issued between June 11, 1998, and January 20, 1999, the date on

which FAA terminated SGA as a DME. However, Mr. May maintained that there was no such substantiated information that fraudulent activity occurred prior to June 11, 1998. Specifically, Mr. May told us, "There was a little bit of distinction between the [mechanics] that were sort of actually caught in the sting operation. Factually, we knew they didn't get a good test, so those we revoked. The other airmen, we were speculating."

Moreover, Mr. May did not believe that the re-examination process could determine the level of competency a mechanic possessed four to five years earlier. He said the testing results were "suggestive at best." Further, he did not agree with the most common interpretation of the testing results—that the mechanics who voluntarily surrendered their certificates were incapable of passing the re-examination. Mr. May believed a number of the mechanics were "fed-up" with FAA and their restrictions, namely traveling back to Orlando, FL for the re-examination. Accordingly, he believed a number of the mechanics simply surrendered their certificates in order to test at a local DME.

Mr. Dunbar provided a memorandum to Ms. Veatch, in which he recommended that the re-examination program be terminated. Mr. Dunbar advised that, based on the results of the re-examinations already conducted, there was no evidence to show that those individuals who received their A&P certificates from SGA were having a measurable impact on aviation safety and the flying public.

Mr. Dunbar's memorandum to Ms. Veatch stated:

> *"Approximately 980 airmen were certified between June 1, 1997 and the date SGA operations were terminated in 1998. As of January 10, 2001 there had been 312 letters...sent to individuals, 133 re-exams...scheduled, 78 re-exams conducted, 59 re-exams passed and 19 re-exams failed. There are 85 individuals that voluntarily surrendered their certificates. Those voluntarily surrendering their certificates may reapply for a certificate with no record relating to SGA and are thus not in the equation for evaluating the SGA effect. There are 95 letters that received no response.*
>
> *Two years after closing the SGA facility, and considering the above information, we have no conclusive measurable impact on aviation safety and the flying public that can be attributed to individuals tested at SGA."*

Ms. Veatch said she reviewed spreadsheets and briefing papers from the Orlando FSDO, reviewed costs associated with the re-examinations and based, in part, on

advice she received from Mr. Dunbar and Mr. May she restricted testing to mechanics who received their certificates between June 11, 1998, and January 20, 1999, because it was inclusive of the dates between the first substantiated fraudulent issuance of an A&P certificate by SGA and the date SGA was terminated as a DME (on January 20, 1999).

A June 14, 2001, memorandum from Ms. Veatch to Mr. Bruno contained the following explanation:

> *"This office felt it necessary to conduct an evaluation to determine to what extent this process needs to continue. The evaluation concludes the reexamination process should consider all airmen issued certificates after June 11, 1998. I have found no supporting evidence to indicate a need to dedicate limited resources past this date. This determination was based on the following facts:*
>
> *1. Our documentation for the U. S. Attorney and FAA Investigation began on June 11, 1998.*
>
> *2. No airmen were used as evidence in the criminal prosecution or FAA enforcement actions with certificates issued prior to June 11, 1998.*
>
> *3. Airmen identified in the original complaint were issued certificates in January 1998. This was never substantiated, but this allegation prompted the investigation that followed.*
>
> *4. Verification with Keith May, ASO-7, Cliff Weiss ASO-700; and the Orlando FSDO confirm that the activity prior to June 11, 1998, is speculative and not substantiated, though highly likely."*

We do not agree with FAA's limitation of the re-examinations to only those individuals receiving their certificates from SGA between June 11, 1998, and January 20, 1999. We found that FAA had information as early as May 1995, through a direct complaint to them by two separate applicants, that SGA was not conducting proper examinations.

Moreover, we do not agree with FAA's contention that a pass rate of 79 percent is sufficient to conclude that those A&P mechanics who received their certificates from SGA do not have a measurable impact on aviation safety. With a pass rate of 79 percent, 21 percent—or 27 mechanics—failed their re-examination. Arguably, when extrapolated, approximately 258 of the 1,228 mechanics to be re-examined

would fail. In our view, this does represent a measurable impact on aviation safety.

Accordingly, we are specifically recommending to FAA that it determine (a) the number of the remaining 1,228 mechanics who still possess SGA-issued A&P certificates; and (b) the number of those 1,228 mechanics who have since received A&P certificates from other sources. Once these steps are complete, we recommend that FAA ensure the re-examination of all remaining SGA-certificated A&P mechanics through either the program operated by Mr. Bruno, or through alternate means, such as the use of local DMEs.

Alleged mismanagement in meeting staffing needs

Mr. Bruno told our office that between August 31, 2000, and October 31, 2001, he continuously communicated with Southern Region Flight Standards Division Management attempting to acquire additional Inspectors for the Orlando FSDO that he could subsequently assign to the CMU for AirTran Airways. Mr. Bruno alleged that, despite his repeated requests he was not provided sufficient personnel to adequately staff the CMU for AirTran Airways. In addition to Mr. Bruno's assertions, Mr. Hagan alleged that he had also made numerous requests for additional staffing for the CMU. According to both Mr. Bruno and Mr. Hagan, Southern Region Flight Standards Division Managers refused to offer any assistance in the acquisition of proper staffing.

Our investigation did not find evidence to support the contentions of Mr. Bruno and Mr. Hagan. Specifically, we found that Southern Region Flight Standards Division Managers took significant measures, including multiple re-writes and submissions of special position requests, to assist Mr. Bruno in obtaining the staff necessary for the CMU.

Prior to the merger of AirTran Airway Inc. and ValuJet Airlines Inc., Mr. Hagan prepared a Staffing Plan, reviewed by the Flight Standards National Position Classification Panel (FSNPCP)[7], calling for an increase from six to a total of 14 Inspectors. On December 29, 1999, Mr. Michael Sacrey, then-Manager, Southern Region Flight Standards Division, Atlanta, GA, reported the FSNPCP review did not find that there was sufficient justification for the positions requested by Mr. Bruno[8]. More specifically, the FSNPCP found that the position descriptions

[7] The FSNPCP is a FAA National Panel made up of Flight Standards Personnel from FSDOs nationwide that are tasked with reviewing and determining staffing requirements for individual FSDOs.

[8] FAA told us that their staffing numbers are based on a dynamic computerized staffing model that updates annually, overwriting the previous year's projections. Accordingly, FAA was unable to provide our office with written documentation of staffing goals during this period.

for these positions described duties already being performed by other inspection personnel.

However, the report recommended that Mr. Bruno submit a unique position request for temporary positions as the national resource Aircrew Program Manager (APM) for AirTran Operations and Maintenance in accordance with Section XII Paragraph A 5 and 6 of the ASI Position Classification Guide. Then, after two years AirTran Airways would either need to have a total of 100 aircraft to support a Partial Program Manager or the incumbents in these temporary positions would return to an approved position at their previous grade level[9].

In December 2000, Nicholas Lacey, Director, Flight Standards Division, FAA Headquarters, directed an Independent Staffing Study of the CMU for AirTran Airways. In January 2001, the study was completed and demonstrated that the CMU for AirTran Airways was staffed on a par with other CMUs with similar responsibilities located in FSDOs across the country (Exhibit 1).

Certificate and Region	No. Aircrft	No. Types Aircrafts	No Supv. ASI	No. Non-Supv. ASI	No. Supt Positions	Total	Additional Identified Hiring Needs
Mesa (Masa) – SW	68	4	1	10	1	12	2 ASI, 1Support
American Trans (AMTA)-GL	60	4	1	8	1	10	1 ASI
Piedmont (HNAA)-EA	57	2	1	7	1	9	1 ASI
Air Midwest (AMWA)-CE	56	1	1	6	1	8	2 ASI
Chautauqua (CHQA)-GL	56	3	1	6	1	8	0
Horizon (QXEA)-NM	52	2	1	12	1	14	0
AirTran (ZZDA)-SO	51	3	1	7	2	10	5 ASI
Allegheny (PCAA)-EA	51	1	1	**	1	**	0
Air Wisconsin (A6WA)-GL	46	3	1	6	1	8	0
Great Lakes Aviation (GBLA)-CE	40	1	1	**	1	**	0

Exhibit 1: Chart depicting the results of the staffing study for the CMU for AirTran Airways.

The study recommended increases for half of the CMUs, including a minimum increase of five aviation safety inspectors for the CMU for AirTran Airways, four to be hired immediately, and a fifth to be added as resources became available.

[9] The ASI (Aviation Safety Inspector) Position Classification Guide requires an operator to be operating 100 aircraft prior to the establishment of PPM organization in the office with certificate responsibilities. An NVIS—a FAA report listing the number of aircraft currently operating under an Air Carrier certificate—effective 10/20/1999, shows AirTran Airways operates 40-DC9s, 8-737s, and 2-B-717s, for a total of 50 aircraft.

however, they denied allegations that they refused to provide adequate staffing. They both asserted that Mr. Bruno had sufficient personnel to manage his area of responsibility, but instead of assigning personnel to the AirTran Certificate, Mr. Bruno elected to staff the SGA Re-examination Project, which his superiors considered to be an overcommitment of his resources.

According to Ms. Dittman and Ms. Veatch, of the 89 inspectors assigned to the Orlando FSDO in 2001, Mr. Bruno assigned a staff of seven inspectors to the CMU for AirTran Airways and diverted three FSDO personnel, slated for assignment to the CMU, to the SGA re-examination project.

During August 2001, Jack Moyer became the CMU for AirTran Airways Manager. According to Mr. Moyer he had ample staff to properly manage the certificate. The CMU for AirTran Airways was designated as a Certificate Management Office in December 2001, separate from the Orlando FSDO. According to Mr. Moyer, following his assignment to the certificate, the number of inspectors assigned to the certificate grew annually, in proportion to the expansion of AirTran's fleet, to the current number of 21 inspectors.

Alleged excessive inspections

Mr. Bruno also asserted that the CMU was subjected to seven different inspections between November 2000 and March 2001. However, when we interviewed Mr. Bruno, he was able to identify only three inspections: (1) the Certificate Audit Program, (2) the Regional Aviation Safety Inspection, and (3) the DoD Air Carrier Survey and Analysis. We did not find evidence to support Mr. Bruno's assertions that there were seven different inspections.

FAA records show that each of these inspections addressed separate areas of concern. Specifically, the AFS Certificate Audit Program concentrated on AirTran Airways' Safety Program, Internal Evaluation Program, Continuing Analysis and Surveillance System (CASS) Program, and their Reliability Program. The audit team also reviewed Maintenance Control, Operational Control/Dispatch and Crewmember Training and Qualification.

The RASIP Inspection focused on reviewing AirTran's airworthiness manual system, 12 months of flight logs, Service Difficulty Reports, Maintenance Interruption Summary, Mechanical Reliability Reports, maintenance facilities to determine their currency and compliance with applicable FARs.

The DOD Inspection was focused on AirTran's operations/maintenance manual revision program and their oversight of the monthly publication audit system required by AirTran's General Maintenance Manual.

Conclusion

In conclusion, we do not agree with FAA's termination of the re-examination program. As originally committed to by then-Associate Administrator McSweeny, each of the remaining subject 1,228 SGA-certificated mechanics needs to be re-examined (absent prior certificate suspension, revocation, or surrender). We believe that the possibility that 258 of those 1,228 mechanics would fail re-examination represents a measurable impact on aviation safety.

Accordingly, by copy of this letter report, we are recommending to FAA that it determine (a) the number of the remaining 1,228 mechanics who still possess SGA-issued A&P certificates; and (b) the number of those 1,228 mechanics who have since received A&P certificates from other sources. Once these steps are complete, we recommend that FAA ensure the re-examination of all remaining SGA-certificated A&P mechanics through either the program operated by Mr. Bruno, or through alternate means, such as the use of local DMEs. We are requesting that FAA inform our office of the disposition of this recommended action.

If I can answer any questions or be of further assistance, please feel free to contact me at (202) 366-1959 or my Deputy, Todd J. Zinser, at (202) 366-6767.

Sincerely,

Kenneth M. Mead
Inspector General

Appendix A

Exhibit 5

Memorandum

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

Subject: ACTION: Investigation, Re: St. George Aviation Re-examination Program

Date: January 22, 2004

From: Charles H. Lee Jr.
Assistant Inspector General for Investigations, JI-1

Reply to Attn of:

To: Nicholas A. Sabatini
Associate Administrator for Regulation and Certification, AVR-1

Please find attached a copy of a letter we transmitted to the U.S. Office of Special Counsel (OSC) detailing the results of our investigation concerning allegations made by FAA employees Gabriel D. Bruno and Dorvin D. Hagan. OSC referred the following allegations to the Department for investigation:

1. Mr. Bruno, then-Orlando FSDO Manager, alleged that in the spring of 2001, Dawn Veatch, then-Acting Division Manager, Southern Region Flight Standards Division, Atlanta, cancelled a program he implemented to re-examine individuals who had received airframe and power plant (A&P) mechanic certificates from St. George Aviation (SGA), under fraudulent conditions. Mr. Bruno asserted that the cancellation of this program, and FAA's failure to re-examine more than 1,000 individuals holding questionable mechanic certificates, represents gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety.

2. Mr. Bruno and Mr. Hagan, then-Supervisory Aviation Safety Inspector assigned to FAA's Certificate Management Unit (CMU) for AirTran Airways, Orlando FSDO, alleged that FAA Southern Region Flight Standards Division management failed to adequately staff the CMU from 1998 to 2001. They asserted that such understaffing represents gross mismanagement, resulting in a substantial and specific danger to public safety.

In brief, our investigation did not substantiate allegations that FAA Southern Region management failed to adequately staff the CMU for AirTran Airways from 1998 to 2001. Further, we did not find evidence to support allegations that there were excessive and redundant inspections of the CMU. However, we did find that FAA prematurely canceled its re-examination program by not following-thru on its commitment to re-examine, as recommended by OIG, all 1,626 SGA-certificated A&P mechanics. We disagree with FAA's rationale that a re-examination pass rate of 79 percent, at the time the program was terminated, is sufficient to conclude that A&P mechanics who received their certificates from SGA do not represent a measurable impact on aviation safety.

Specifically, Thomas McSweeny, FAA's then-Associate Administrator for Regulation and Certification, advised us in a September 3, 1999, memorandum that there was sufficient evidence to believe that SGA-certificated mechanics had not been tested in accordance with regulations, and he committed FAA to a re-examination program.

Mr. McSweeny's memorandum stated, in part, the following:

> *"Evidence shows that the certification practices at St. George Aviation, Inc., provide reason to believe that a group of [mechanics] was not tested in accordance with Title 14, Code of Federal Regulations, Part 65.79. Therefore the competence of approximately 2000 mechanics certificated at that site is in question. Re-examination of their qualifications to be holders of mechanic certificates with airframe and powerplant ratings is necessary in the interest of safety."*

In June 2001, Dawn Veatch, then-Acting Manager, Southern Region Flight Standards Division, restricted the conduct of re-examinations to only those individuals who received their certifications from SGA after June 11, 1998, and directed that only oral examinations be conducted. Ms. Veatch directed cancellation of the program after only 130 mechanics had been re-examined, along with another 268 whose certificates were suspended, revoked, or surrendered. The last re-examination was conducted on September 24, 2001.

We disagree with FAA's limitation of the re-examination program to only those mechanics who were certified by SGA after June 11, 1998. FAA had information as early as May 1995, through a direct complaint to them from two separate applicants, that SGA was not conducting proper examinations.

Moreover, we disagree with FAA's contention that a pass rate of 79 percent is sufficient to conclude that those A&P mechanics who received their certificates from SGA do not represent a measurable impact on aviation safety. With a pass rate of 79 percent, there were 21 percent—or 27 mechanics—who failed their re-examination. Arguably, when extrapolated, approximately 258 of the potential 1,228 mechanics remaining to be re-examined would fail. In our view, this does represent a measurable impact on aviation safety.

Accordingly, we are recommending that FAA determine (a) the number of the remaining 1,228 mechanics who still possess SGA-issued A&P certificates; and (b) the number of those 1,228 mechanics who have since received A&P certificates from other sources. Once these steps are complete, we recommend that FAA ensure the re-examination of all remaining SGA-certificated A&P mechanics through either the program operated by Mr. Bruno, or through alternate means, such as the use of local DMEs. Please inform our office of the disposition of this recommended action.

The OSC response letter and this memorandum are provided for your official use. Please be advised that the OSC Response letter, this memorandum, and information contained therein, are subject to provisions of the Privacy Act and thus may not be disclosed outside official channels.

Please advise our office of your intended actions. If I can answer any questions or be of further assistance, please feel free to call me at x61967, or our Special Agent-in-Charge of Integrity Investigations, Rick Beitel, at x61972.

-#-

Appendix A

Exhibit 6

APPENDIX A
Exhibit 6

U.S. Department of Transportation
Federal Aviation Administration

Memorandum

Subject: **INFORMATION:** Investigation, Re: St. George Aviation Re-examination Program; JI-1 memo dated 1/22/04

Date: JUN 9 2004

From: Director, Flight Standards Service, AFS-1

Reply to Attn. of:

To: Charles H. Lee, Jr., Assistant Inspector General for Investigations, JI-1

Thank you for your memorandum of January 22 to Nicholas A. Sabatini, Associate Administrator for Regulation and Certification, which transmitted a letter from the Office of Special Counsel (OSC) detailing the results of your investigation concerning St. George Aviation (SGA). Mr. Sabatini has asked me to respond.

Since your memo, Flight Standards has been reviewing the results of the investigation and revalidating the testing records. Also, we have continued to retest individuals who had received their airframe and powerplant (A&P) mechanics licenses from SGA. Upon receiving your memo, AFS began revalidating SGA testing results back to May 1995.

On June 15, we will have a strategy meeting to finalize our approach to complete the testing of those examined at SGA. We will use designated mechanic examiners to support the extended testing activity and initiate letters to all those candidates for A&P licenses who were tested during the affected period.

Flight Standards has discussed this approach with OSC and assured it that we will continue our testing efforts.

We will keep you informed about our progress.

Original Signed By:
John M. Allen

James J. Ballough

File: Working Folder
WP: SGA1..doc

CONCURRENCES	
ROUTING SYMBOL	AFS-10sm
INITIALS/SIG	sm
DATE	6-7-2004
ROUTING SYMBOL	AFS-10
INITIALS/SIG	VHK
DATE	6-7-2004
ROUTING SYMBOL	AFS-corres
INITIALS/SIG	
DATE	6/9/04
ROUTING SYMBOL	AFS-1
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Appendix A

Exhibit 7

APPENDIX A
Exhibit 7

FEDERAL AVIATION ADMINISTRATION

From: **Southern Region, Flight Standards Division**

Prepared by: Dawn R.H. Veatch

Date: **June 3, 2004**

Re: **Current Status of the St. George Re-Examination Process**

Overview:
The St. George FAA designated testing facility (SGA) was found to have falsely issued certificates beginning on June 11, 1998 through January 1999. It was concluded that an undetermined number of airmen issued certificates by SGA would be re-examined under 49 USC §44709 (709) to determine if they met the qualifications to hold their mechanic's certificate. On September 3, 1999 AVR-1 sent a Memorandum to JA-1(attachment #1) providing the IG with our action plan. In summary the plan called for the following:

- Notify 25 individuals at a time through letters*, requesting the airmen contact the Orlando FSDO for reexamination. The letter also stated that failure to contact the FAA would result in a suspension of the airmen's certificate until which time he demonstrates competence to exercise its privileges. (*Beginning with groups of 25 going backwards chronologically, attachment # 2)
- Conduct an analysis of each group of 25 airmen to determine when or **if reexamination of the subsequent groups may or may not be necessary.**

Because it was not known how long the falsifications were being made prior to the date of discovery, we needed to establish a cut-off point through analysis of the results of each group of airmen reexamined.

After two years of re-examination effort, the Southern Regional Office, after consulting various parties, determined that continuing to re-examining airmen with date of issuance (DOI) prior to June 11, 1998, would not be supportable. During

the process of conducting re-examinations just before June 2001, we received numerous complaints from airmen and Congressmen that airmen were being subject to re-examination without just cause. As the period of time increased from the Date of Issuance (DOI) of the mechanic certificates by SGA to the date of re-examination, ASO-7 felt it was difficult to justify the rational that all of the airmen who had ever obtained a certificate from SGA had to be re-examined under 709. On June 14, 2001, the Acting Division Manager of ASO-200, on recommendation by AFS-1, AFS-300, ASO-7 and ASO-250, issued a letter stating that the logical point to discontinue the re-examinations was June 11, 1998, and extensive rational for the termination was provided.

The basis for the decision to re-examine these applicants was contained in a letter from the Associate Administrator for Regulation and Certification, AVR-1, to the Assistant Inspector General for Auditing, JA-1. (see attachment #3) Recommendation #4 in the letter stated: ***Ensure all applicants tested by DMEs found to have abused their authority are qualified for the certification received.*** The OIG investigation established falsification actions of airmen records beginning on June 11, 1998. ASO-7 advised ASO-200 that the "abuse of their authority" was thereby established on June 11, 1998. For the Agency to continue re-examinations to the period prior to June 11, 1998, would be speculative and without just cause. Another significant point regarding the June 11, 1998 date is that this date would now have established the 18-month experience requirement of FAR 65.77 necessary for the applicant to qualify for the certificate. The lack of experience requirements was one of the elements of the falsification.

All of the airmen who were issued certificates between June 11, 1998, and the date St. George DME closed, have either been re-examined, had their certificates revoked, their certificates were voluntarily surrendered or are currently being scheduled for oral testing. **It is noteworthy that the last 22 airmen re-examined between October 1, 2001 and May 26, 2004, had a 100% pass rate.**

On November 20, 2001, ASO-200 developed a revised 709 procedure (re-examination, attachment #4), in the format of a Handbook Bulletin. At the request of AFS-1, a memorandum was issued instead. Following the issuance of this memorandum, in January 2002, a telecon was conducted with participates from AFS-3, ASO-250, ASO-7 and the Orlando FSDO. A determination was made to continue with oral testing only, and reconfirmation was made, that the cut-of date, which was established going back to June 12, 1998, was still appropriate.

There have been many different references to the actual numbers of airmen issued certificates by SGA. There are several lists of names of individuals who were

issued certificates by SGA from August 1995 to January 1999. The OIG provided Orlando FSDO with two listings. One set of lists represents a total number of 1507 airmen. The second set of lists represents 1665. The Orlando FSDO has based their entire re-examination on two lists provided by OKC-Airmen Records (attachment #5&6). These lists represent a total of 1282 airmen. None of these lists total the numbers referenced in the letter dated 1/16/2004 from Kenneth Mead, Inspector General.

There were 412* airmen who were issued certificates by DME Allen and DME St. George from June 11, 1998 to January 1999 as indicated on the OKC listing of airmen. There were 398 airmen contacted by Orlando FSDO for re-examination. Of the 398 airmen, 133 submitted to re-examination, with a 73% pass rate. In addition, there were 124 mechanics that voluntarily surrendered their certificates to FAA, 154 whose certificates were suspended by FAA for failure to appear for reexamination and 12 who had their certificates revoked.** For the Agency to continue to re-examine airmen for competencies that were required more than 7 years ago is not feasible or justifiable. We have upheld our commitments, which were made to JA-1in, attached #1.

* There are duplicate names on the listings which make the total airmen differ from 398 airmen.
**These numbers do not equal 398, because there is over-lap between the groups)

Options/Impact:

1. Continue with the current process, testing orally the remaining identified 398 airmen that were sent letters. Continue to analyze the pass/failure rate. If a significant increase in failures occurs, then reassess.

2. Send a reexamination letter the to remaining 893 identified airmen. AGC will have to provide the legal basis for which these reexaminations will be conducted. There is no evidence, just speculation, to support legal action against the remaining 893 airmen.

Key Attendees/ Individuals of Interest

Political Considerations/ Other Dynamics:

Option 2 above, will be highly political and difficult to support.

Attachments:

1. Memo: Testing and Certification of Aviation Mechanic, dated 9/3/99

2. Memo: Recommend Termination, St. George, Reexamination Program, dated 2/10/01
3. Memo: Testing and Certification of Aviation Mechanics, dated 6/23/99
4. Memo:Revised 709(reexamination)Procedures for Airmen associated w/ SGA, dated 11/20/01.

Questions & Suggested Answers:

Appendix A

Exhibit 8

APPENDIX A
Exhibit 8

U.S. Department of
Transportation

Office of Inspector General
Washington, D.C. 20590

June 9, 2004

Ms. Catherine A. McMullen
Chief, Disclosure Unit
U.S. Office of Special Counsel
1730 M. Street, N.W.
Suite 300
Washington, DC 20036-4505

Dear Ms. McMullen:

Per our discussion with you on May 20, 2004, by this letter we are responding to comments made by Mr. Bruno and Mr. Hagen in regard to the findings of our investigation of FAA's alleged intentional failure to properly staff the Orlando FSDO, and more specifically, the AirTran Certificate Management Unit (CMU). Specifically, Mr. Bruno, and Mr. Hagen continue to maintain that FAA management intentionally failed to properly staff the Orlando FSDO and AirTran CMU. You asked our office to assemble documents and detail the information used by us to reach the conclusion stated in our January 16, 2004, letter to the Special Counsel that we did not substantiate "allegations that the Southern Region Flight Standards Division management failed to adequately staff the CMU for AirTran Airways."

More specifically, Mr. Bruno and Mr. Hagan alleged that FAA Southern Region management, namely, three consecutive division managers, Marion Dittman, Dawn Veatch, and Nicholas Sabitini, failed to adequately staff FAA's AirTran CMU[1] from 1998 to 2001. They asserted that such understaffing represents gross mismanagement resulting in a substantial and specific danger to public safety.

In addressing this allegation, our office reviewed documents provided by Mr. Bruno and Mr. Hagen, documents available at FAA's Southern Region, and the Orlando FSDO, FAA regulations, and interviewed relevant personnel. As discussed with you on May 20, 2004, we found, based on the enclosed documents that, 1) Mr. Bruno and Mr. Hagen were constantly asking for personnel

[1] FAA Order 8000.49B defines CMU as a Flight Standard office whose resources are dedicated to the administration and certificate management of one or more complex or large regional air carrier operating certificate(s), Exhibit 2.

assignments and positions that they did not rate based upon the size of the CMU; 2) Southern Region Management and the Southern Region Personnel Office attempted to assist Mr. Bruno in obtaining sufficient staff to manage the CMU; and 3) staffing levels within the Orlando FSDO and AirTran CMU were consistent with levels at like facilities within FAA.

More specifically, we found the following:

Requests for unrated positions:

Beginning in 1998, ValuJet and AirTran Airways began a merger procedure which was not concluded until March 1999.

Prior to initiation of the merger, in November 1997, Mr. Hagen prepared a staffing plan, which Mr. Bruno submitted to Ms. Dittman, requesting staffing support for the AirTran CMU based on the ATOS staffing model, **(Exhibit 1)**. FAA's ATOS program began with the 10 largest airlines which handle 95% of U.S. passengers and will ultimately include all U.S. airlines. The ATOS program is described as an innovative way of inspecting the nation's airlines, designed to identify trends in order to spot and correct problems at their root cause before an accident occurs. ATOS incorporates a holistic look at an airline to see how the many elements of its operation—from aircraft to pilots to maintenance facilities to flight dispatch to cabin safety—interact to meet federal standards. By collecting and analyzing data on the many airlines systems, FAA Inspectors are better able to target areas for improvement, **(Exhibit 2)**.

In a July 12, 2000, e-mail to Cathy Parrish, Administrative Officer, Orlando FSDO, Mr. Hagen asserts that AirTran Airways was scheduled to become the 11th ATOS air carrier, **(Exhibit 3)**. Mr. Hagen went on to assert that failure by the FAA to fill positions in a timely manner resulted in non-compliance with the staffing requirements of ATOS, and therefore, AirTran Airways was dropped from the program. However, despite an October 21, 1998, e-mail from Ms. Dittman to Mr. Bruno, authorizing the implementation of ATOS in Orlando **(Exhibit 4)**, the AirTran Certificate was never officially authorized to become an ATOS program. Nancy Aadland, FAA's ATOS Program Office Manager told us that after the identification of the original 10 airlines the ATOS program was shelved with no additional airlines assigned or intended[2]. Then around 2002, a plan to identify and assign ATOS air carriers was prepared. Aadland, told OIG that the process is very formal and decisions are made solely at the headquarters level. According to this Manager, AirTran Airways has never been identified or scheduled to become an ATOS air carrier.

[2] An 11th air carrier, American Eagle, was subsequently added to the ATOS program. At present time there are only 11 air carriers under the ATOS program.

As noted in a March 1998 e-mail exchange between Mr. Hagen, and Dorothy Townsel, Program Analyst, Resource Management Section, Southern Region Flight Standards, via Mr. Bruno, Mr. Hagen noted that none of the ValuJet aircraft had been transferred to Orlando, and would not be transferred until the completion of the merger (**Exhibit 5**). Mr. Hagen stated "...we do not move a few aircraft at a time to the certificate. In essence, after all preparations and procedures must be reviewed and accepted by this office before anything moves anywhere." Mr. Hagen's e-mail requests the assignment of additional personnel to assist with the complexity of merger issues.

On March 9, 1998, Ms. Townsel—apparently in response to a request by Mr. Hagen for additional personnel to assist with merger issues—advised Mr. Hagen that Mr. Bruno had the ability to temporarily assigned Orlando FSDO personnel to the CMU to assist with those issues. Additionally, Ms. Townsel stated "From a classification standpoint, the proposed positions...cannot be released to Orlando for selections until certificate management responsibility for the aircraft currently assigned to ValuJet has moved to Orlando." Regardless, Ms. Townsel notes that, based on projected increases, Southern Region has authorized the classification process for additional billets to be started (**Exhibit 5**).

Around June 25, 1998, during a Regional Program Resource Committee (RPRC) teleconference pertaining to the assignment of 6 additional staffing positions within the Southern Region, Mr. Bruno became involved in a heated discussion with Liesa Johnson, Manager, Administrative Service Branch[3], Southern Region Flight Standards. According to an e-mail by Joe Laird, then-FSDO Manager, Jackson, MS, reporting the minutes of that meeting, Mr. Bruno and Ms. Johnson were discussing 5 position vacancies resulting from personnel leaving the Orlando FSDO (or soon scheduled to depart) that Mr. Bruno had apparently agreed to not backfill. According to Ms. Johnson, the five positions being discussed were positions earmarked for the AirTran CMU that Mr. Bruno had failed to fill for over a year. Ms. Johnson told our office that Mr. Bruno was angry because the committee wanted to reassign those positions—based on his failure to fill them—to other FSDOs within the region (**Exhibit 6**).

According to Mr. Laird's e-mail message, the committee agreed to leave the 5 ASI positions in Orlando, earmarked for the AirTran CMU. This would increase the AirTran CMU staff to 8, (**Exhibit 6**). Laird notes that, following the discussion between Ms. Johnson and Mr. Bruno, Mr. Bruno subsequently refused to vote on other staffing proposals.

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[3] The RPRC is a committee comprised of regional managers who are tasked with making recommendations to Mr. Sacrey concerning the distribution of staff vacancies within the various FAA Flight Standards Regions.

NOTE: In June 1999, the Orlando FSDO began efforts to re-examine mechanics that may have been fraudulently certified by St. George Aviation. Statements of both Ms. Dittman and Ms. Veatch, former-Manager/Acting Manager, Southern Region Flight Standards, reflect that Mr. Bruno began diverting FSDO staff—including staff earmarked for the AirTran CMU—to support this effort **(Exhibit 7 and 8)**. There are no documents that support assertions that Mr. Bruno, nor Mr. Hagen continued to request personnel between June and September 1999; however, Mr. Bruno, Mr. Hagen, and both Managers assert that there were conversations—mostly telephonic—concerning staffing during this period.

On September 27, 1999, in an e-mail response to an apparent request by Mr. Bruno for a contract maintenance position at the AirTran CMU, Dorothy Townsel advised that there would be questions from the National Classification Panel[4] pertaining to his request and the difference in work requirements from the PMI and two assistant PMIs already at the CMU. She asserts that there may be a concern by the National Classification Panel concerning the duplication of efforts **(Exhibit 9)**.

On December 29, 1999, Ms. Dittman forwards to Mr. Bruno, the findings of the FSNPCP. The Panel denied the special positions requested by Mr. Bruno based on the lack of justification for each. More specifically, based on the information provided in the response, Mr. Bruno had requested: (1) a Maintenance Partial Program Manager (PPM); (2) a Operations PPM; and (3) a Contract Maintenance Inspector. The FSNPCP found that, based upon the size and workload of the AirTran CMU, they did not rate the requested positions **(Exhibit 10)**.

This panel met again in May 2000, and addressed, among other things, a subsequent request from Mr. Bruno for the AirTran CMU. The Panel again finds that AirTran Airways does not have sufficient numbers of aircraft to warrant the formation of a PPM organization. The Panel goes on to recommend, based on the projections that AirTran Airways would be a launch point for the B-717, that the AirTran CMU consider submitting a request for a National Resource PPM (Maintenance) **(Exhibit 11)**. (This position is subsequently requested and approved.)

On January 5, 2001, Diana Russell, Administrative Office, Southern Region completed a review of staffing for the AirTran Airways CMU, Orlando, FL **(Exhibit 12)**. This staffing review reflected that the CMU, then staffed at a personnel level of 10, including 7 Aviation Safety Inspectors (ASI), should be

[4] The Flight Standards National Position Classification Panel (FSNPCP) is a National Panel made up of Flight Standards Personnel from FSDOs nationwide tasked with reviewing and determining staffing requirements for individual FSDOs based upon workload.

increased by 5 ASIs. The review did not find justification for the Contract Maintenance Inspector positions repeatedly asked for by Mr. Bruno. On January 8, 2001, three days after completion of Russell's review, Leisa Johnson, advised Mr. Bruno that Marion (Dittman) had obtained hiring authority for 4 ASIs for Mr. Bruno's office **(Exhibit 13)**. Instead of submitting a request for the 4 ASIs, Mr. Bruno subsequently submitted a request for 2 Assistant Principal Operations Inspector, 1 Assistant PMI, and 1 Contract Maintenance Inspector **(Exhibit 14)**. As previously noted, Mr. Bruno had been repeatedly informed that, because of the number of aircraft operated by AirTran Airways, the AirTran CMU did not rate a Contract Maintenance Inspector. Then on February 5, 2001, after the Contract Maintenance Inspector position was again denied, Mr. Bruno, in a memorandum to Dawn Veatch, then-Acting Manager, Southern Region Flight Standards, wrote "...you have effectively denied the fourth position authorized by Headquarters for the management of the AirTran certificate," **(Exhibit 15)**.

Staffing Assistance by Southern Region Managers

In order to provide assistance with the workload, between October 1999, and September 2000, Southern Region Managers provided geographical support to the AirTran Airways CMU **(Exhibit 16)**.

AirTran CMU received increases of 6 personnel during 1999, 1 in 2000, 5 in 2001, 7 in 2002, and 2 in 2003 **(Exhibit 17)**.

December 22, 2000, based on the recommendation of the FSNPCP, Southern Region supported Mr. Bruno's request for a National Resource Specialist (Maintenance) for the Boeing 717 aircraft being introduced by AirTran Airways **(Exhibit 18)**.

On January 8, 2001, based on the results of the staffing study completed by Southern Region personnel office, as requested by Nick Lacey, then-Associate Administrator for Flight Standards, immediately sought and received hiring authority for the Orlando FSDO to fill the recommended positions **(Exhibit 19)**.

On February 13, 2001, Ms. Dittman, then-Acting Manager, Southern Region Flight Standards, in response to repeated denials by the FSNPCP to authorize a Contract Maintenance Inspector position, instructs Mr. Bruno to submit a justification for a Assistant Principle Maintenance Inspector. In her memorandum, Ms. Dittman states that she will review the submission to ensure the sufficiency of the justification and will also personally speak with Mr. Lacey to enlist support for the request **(Exhibit 20)**.

subsequently unable to hire a Contract Maintenance Inspector. In a February 5, 2001, Memorandum to Ms. Dittman, Mr. Bruno accused her of denying him a fourth position "...authorized by Headquarters for the management of the AirTran certificate." A thorough review of the staffing study and associated documents showed that FAA Headquarters authorized the hiring of 4 Aviation Safety Inspectors. Regardless of the inflammatory language contained in his Memorandum, Ms. Dittman wrote Mr. Bruno on February 13, 2001, offering her personal support to push through an alternative unique position. FAA documents show that this unique position was subsequently authorized and hired by the Orlando FSDO.

Moreover, Ms. Dittman's February 13, 2001, correspondence to Mr. Bruno specifically states "As I have previously advised you the positions authorized by headquarters are to be on the AirTran certificate." Ms. Dittman told our office that Mr. Bruno was diverting personnel hired for the AirTran certificate to work on the St. George Aviation retesting project.

If I can answer any questions or be of further assistance, please feel free to contact me at (202) 366-0677, or Investigator Gilbert Salazar at (202) 528-9058.

Sincerely,

James L. Muhlenkamp
Acting Director
Integrity Investigation Section

Appendix A

Exhibit 9

APPENDIX A
Exhibit 9

ORDER:	8300.10
APPENDIX:	4
BULLETIN TYPE:	Flight Standards Information Bulletin for Airworthiness (FSAW)
BULLETIN NUMBER:	FSAW 04-10A
BULLETIN TITLE:	Reexamination of Airframe and Powerplant Certificate Holders Who Took Oral and Practical Exams at the St. George Aviation Testing Center in Sanford, Florida
EFFECTIVE DATE:	09-21-04
AMENDED DATE	06-08-05
TRACKING NUMBER:	NA

APPLICABILITY:

M/M	ATA Code	14 CFR	PTRS
NA	NA	65.17	3532

NOTE: THIS BULLETIN REQUIRES PTRS INPUT. SEE ITEM # 19.

1. What is the purpose of this bulletin? This bulletin provides guidance to Federal Aviation Administration (FAA) aviation safety inspectors (ASI) on program policies and procedures for reexamining individuals holding mechanic certificates with airframe and/or powerplant ratings, who tested at the St. George Aviation (SGA) testing facility in Sanford, Florida between October 10, 1995, and December 31, 1998. The reexamination will ensure that these individuals meet the standards of Title 14 of the Code of Federal Regulations (14 CFR) part 65, subpart D, to hold their certificates and/or ratings.

2. Who does this bulletin apply to? This bulletin applies to all FAA personnel and other appropriately designated individuals who will be involved in the reexamination program.

3. Under what authority may the FAA reexamine an airframe and powerplant (A&P) mechanic? Title 49 of the United States Code (49 U.S.C.) section 44709 is the authority for the reexamination of a mechanic. The law in part states, "The Administrator of the Federal Aviation Administration may . . . reexamine an

airman holding a certificate issued under section 44703 of this title."

4. Why are the reexaminations necessary? A criminal investigation conducted by the Office of Inspector General (OIG) disclosed that between October 10, 1995, and December 31, 1998, employees of SGA issued numerous fraudulent Airframe and Powerplant (A&P) mechanic certificates. The FAA has a reasonable basis to question whether certificate holders tested by SGA, which was criminally prosecuted for conducting fraudulent examinations, possess the qualifications to hold their certificates. The FAA believes reexamination of airman competency of these persons is necessary to ensure safety.

5. Which airmen will be reexamined?

a. Airmen who tested at SGA during this period will be reexamined unless they have previously demonstrated they possess the required qualifications. Airmen who have been successfully reexamined, or have obtained a subsequent Inspection Authorization, have demonstrated the required qualifications and do not need further reexamination. An airman must possess an Inspection Authorization prior to the date of the notification letter (see paragraph 12) to be exempt of reexamination.

b. Relief for U.S. military and civilian personnel who are assigned outside the United States in support of U.S. Armed Forces operations will be applied to airman requiring reexamination. The criteria for this relief will be the same as is offered in Special Federal Aviation Regulation (SFAR) 100 and includes the opportunity to complete reexamination within 6 calendar-months after returning to the United States.

6. What will the reexamination consist of?

a. The reexamination will cover the rating(s) that the airman received at SGA. Certificates received outside SGA are not subject to this reexamination. Airmen holding both airframe and powerplant ratings will be reexamined for competency of both ratings at the same time. The reexamination will consist of two tests; one written test, and one oral test. The written test will be computer-based and administered using the FAA Airman Knowledge Testing Program. The oral test will be given after successful completion of the written test. An airman may voluntarily surrender one rating for cancellation and show competence for another; however, an airman may not request reexamination of both ratings at different times.

b. The written knowledge test will consist of questions randomly selected from a pool of questions taken from the question banks used for the evaluation of applicants for a mechanic certificate. The content of a written knowledge test will vary depending on the rating(s) being reexamined. The written test for a mechanic holding an A&P rating will contain 60 written questions selected from the General, Airframe, and Powerplant banks and will be conducted within a time limit of 2 hours. The written test for a mechanic holding only an airframe or powerplant rating will consist of 50 written questions selected from the General and the Airframe and/or Powerplant bank, as appropriate, and will be conducted within a time limit of 1 hour and 45 minutes. The test will be conducted in accordance with chapter 6 of FAA Order 8080.6D, Conduct of Airman Knowledge Tests.

c. The oral test will consist of 5 questions selected from the Oral and Practical Test Guides (General, Airframe, and Powerplant), as appropriate for the rating(s) being tested (i.e., 10 questions for a single airframe or powerplant rating, 15 questions for both ratings). This guide also provides the examiner with criteria of acceptable responses and applicable references. The oral test is not limited to a specific area and does not have to address all areas of required knowledge. Typically, the oral test will take between 45 minutes to 1 hour. The results of the oral test will be recorded on a test planning sheet in accordance with appendix 5 of FAA Order 8610.4J, Aviation Mechanic Examiner Handbook.

d. Each test is scored independently. A score of 70 percent correct answers or greater will be considered satisfactory. A score of less than 70 percent will be considered unsatisfactory. Unsatisfactory performance on either test will result in the preliminary determination that the airman does not possess the standards required of 14 CFR part 65, subpart D for the certificate/rating held. Chapter 8 of FAA Order 2150.3A, Compliance and Enforcement Program, contains guidance concerning procedures that must be followed if the airman fails to establish qualifications to hold his or her certificate. The airman has the right to schedule a retest within a reasonable timeframe. The FAA has determined that 45 days from the date that the first test was taken is a reasonable timeframe. Airmen should be provided a minimum of 30 days to prepare, if desired, and be given scheduling priority to ensure the retest is accomplished within 45 days.

e. FAA Form 8610-2, Airman Certificate and/or Rating Application, will be used to document the reexamination. Order 8610.4 provides instructions on completion of the form. FAA Order 8300.10, Airworthiness Inspector's Handbook, Volume 3, Chapter 18, Conduct a Reexamination Test of a Mechanic or an Inspection Authorization Under Title 49 of the United States Code, provides instructions to document a reexamination.

7. What information is available to the public about the reexaminations? Interested parties may access the following Web site for information regarding the reexamination process: http://www.faa.gov/other_visit/mechanics/testing_training/retesting/.

8. Where will the reexaminations be performed? Reexaminations will be performed at the Flight Standards District Office (FSDO), International Field Office (IFO), or other acceptable location.

9. Who will conduct the reexamination? The written knowledge test, as well as administrative processing, will be performed by an FAA employee or person designated by the Administrator. A single proctor may administer written knowledge tests to more than one airman at a time. The oral test proctor must hold a mechanic certificate with A&P ratings. An airworthiness ASI or aviation safety technician will administer the oral test on an individual basis.

10. What is the composition of the SGA reexamination program team?

a. The Program Management and Information Branch, AFS-310, is the headquarters focal point for this program.

b. AFS-310 will notify airmen who are subject to the reexamination of the reexamination process. The FSDO/IFO will have an identified point of contact to oversee the reexamination program, perform reexaminations, and process records associated with the reexaminations. A single reexamination focal point (typically the designated mechanic examiner focal point) for each office will coordinate with the office program manager and the AFS-310 headquarters focal point. Additionally, the FSDO/IFO will furnish qualified and assigned proctors to conduct testing and a technical contact to facilitate computer testing.

11. What procedures must the FSDO/IFO follow to accommodate computer testing?

a. Each participating FSDO/IFO must contact the Airman Testing Standards Branch, AFS-630, via e-mail at 9-AMC-AFS630-709@faa.gov. The sender will need to provide the following information:

- Proctor point of contact*: Name, date of birth (DOB), last four digits of social security number (SSN), office and designator (i.e., ASO-15), phone, e-mail
- Technical point of contact**: Name, DOB, last four digits of SSN, complete mailing address, phone, e-mail
- Number of testing stations***
- Internet protocol (IP) addresses of computer(s) to be used for mechanic reexaminations****

NOTE:

*** Recommendation is one per FSDO/IFO, with the exception of the offices anticipating high test volume. In any case, there should be no more than three designated proctors.**

**** Recommendation is one per office, preferably a computer specialist.**

***** Recommendation is one testing station per office, except for offices anticipating high test volume.**

****** To obtain this information, access the Web site http://www.whatismyip.com from each computer to be used for the mechanic reexaminations.**

b. The written portion of the reexamination tests will be made available via a modified version of a currently used test delivery application. This customized system uses a bootable CD or floppy diskette, which prepares the computer for the testing process—no software is actually installed on the computer. Therefore, the technical point of contact will be express-mailed detailed instructions and a number of bootable CDs and floppy diskette(s) based on the number of testing stations available at his or her office. Upon receipt of the testing materials, the technical point of contact must e-mail AFS-630 at 9-AMC-AFS630-709@faa.gov. The message should include a phone number where he or she may be contacted to arrange for a connectivity test.

c. Three tests will be available for administration: Random Test General (RTG); Random Test Airframe (RTA); and Random Test

Powerplant (RTP). Test information and exam structure information may be accessed via the "709 support" link at http://afs600.faa.gov.

d. A copy of FAA-CT-8080-4D, Computer Testing Supplement for Aviation Mechanic General, Powerplant, and Airframe; and Parachute Rigger, must be available at each testing station. The supplement is available (in PDF format) through the 709 support link, and may be downloaded for printing.

e. Detailed instructions, troubleshooting information, and frequently asked questions may also be found on AFS-600's 709 support link.

12. How will airmen be notified? Airmen requiring reexamination will be notified via mail by the AFS-310 headquarters focal point. AFS-310 will print and mail two copies of the notification letter via U.S. Postal Service to each airman. One copy will be sent certified/return receipt requested (proof of service), and the other by regular mail to the airman's address of record obtained from the FAA's Civil Aviation Registry. The FSDO/IFO will receive a copy of all letters applicable to the FSDO/IFO. The letter will advise the airman of the decision to reexamine and require the airman to contact the FSDO/IFO within 15 days of receipt of the letter to schedule a reexamination.

13. What actions must the FAA take for each airman notification? Upon receipt of the notification letter from AFS-310, the FSDO/IFO must initiate an entry into the Program Tracking and Recording Subsystem (PTRS)(see paragraph 19) for each airman.

14. What happens if an airman fails to contact the FSDO/IFO and schedule reexamination?

a. If the airman does not contact the FSDO/IFO within 30 days of the date of the reexamination letter, the FSDO/IFO should contact the AFS-310 headquarters focal point to determine whether there is "proof of service" on the airmen. Once confirmation of "proof of service" has been established and that the airman has failed to schedule a reexamination as required in the letter, the FSDO/IFO will refer the airman's files to the regional counsel office to initiate legal enforcement action, in accordance with Order 2150.3A, chapter 8, and Order 8300.10, Volume 2, Chapter 213, Conduct Violation Investigation. Because letters of notification sent by regular mail are forwarded if an address change is on file with the U.S. Postal Service, lack of

return of the general delivery letter provides a presumption that the letter was received.

b. For airmen that AFS-310 is unable to contact (i.e., both letters are returned undeliverable), the AFS-310 headquarters focal point will notify FAA Internal Security of incorrect information in the FAA Civil Aviation Registry and request assistance.

15. How will reexaminations be scheduled? The FSDO/IFO, when contacted by the airman, will allow the airman to choose from available dates and times to schedule the reexamination. Reexaminations will begin on August 15, 2005 and must be completed by December 31, 2005. Reexaminations should be scheduled at least thirty (30) days from the date the airmen contact the FSDO/IFO to provide adequate time for the airmen to prepare. Earlier testing is acceptable if the airman requests it.

16. What action will be taken if an airman fails to complete the test by December 31, 2005? All testing, including retesting, if necessary due to failing the reexamination, must be completed prior to December 31, 2005. After January 1, 2006, any airman who has not successfully completed the reexamination will be notified by an FAA inspector that legal enforcement actions will be initiated to obtain the certificate(s). Airmen whose reexaminations are extended for approved circumstances must place their certificates on temporary deposit at the FSDO/IFO to avoid legal enforcement actions.

17. What action will be taken when an airman successfully completes reexamination? After successfully completing the reexamination, the airman's certificate will be returned, if in the possession of the FAA, and the airman will be provided with a statement of successful completion of the reexamination. Subsequently, an official letter of successful completion of reexamination will be sent to the airman by the FSDO/IFO point of contact, to close this matter. The FAA Inspector's Report on the back of Form 8610-2 will be used to document the reexamination.

18. What action will be taken if an airman fails the reexamination?

a. If the airman's performance was unsatisfactory, there are two alternatives. The airman may voluntarily surrender his or her certificate for cancellation; alternatively, the airman may

surrender the certificate for deposit and request a retest as detailed in Order 2150.3A, chapter 8. If the airman declines both alternatives, an FAA inspector will inform the airman that legal enforcement action will be initiated to revoke the certificate.

b. An airman who offers to surrender his or her certificate for cancellation will be provided a statement to sign for recording voluntary surrender for cancellation. An airman who does not surrender his or her certificate for cancellation or does not place the certificate on deposit will be provided with a statement of unsatisfactory performance and a statement that legal enforcement action will be initiated. See Order 2150.3A and Order 8300.10 volume 2, chapter 213 for details concerning legal enforcement action. Letters will be sent to the airman's address on record.

19. What PTRS entries will be required of inspectors and the AFS-310 headquarters focal point?

a. It is imperative that the PTRS be updated in a timely manner. The AFS-310 headquarters focal point and other key program personnel will be using the information recorded in the PTRS to monitor and administer the reexamination program. All entries will include activity code 3532 and the National Use Code "SGA" (without the quotes).

NOTE: PTRS records should be returned to the server after entries are made and must not be retained in a "checked out status" since this would prevent access by program personnel.

b. Entries to the PTRS record comment field must be made for certain actions and may also be made to record additional information. Entries are required for the following actions. The AFS-310 headquarters focal point will make the entries described in paragraph 19b(2). Inspectors will make the entries described in paragraph 19b(1) and 19b(3) through (7).

(1) Date notification letter is mailed from AFS-310.

- Comment = "Airman notification letter mailed xx/xx/xx"

(2) Return of notification letter receipt or letter (undeliverable).

- Comment = "Certified letter receipt dated xx/xx/xx, signed xxxxx"

22. When does this bulletin expire? This bulletin will remain in effect until further notice.

/s/ Edward L. Ortiz for
David E. Cann, Manager
Aircraft Maintenance Division

Appendix A

Exhibit 10

APPENDIX A
Exhibit 10

ORDER:	8300.10
APPENDIX:	4
BULLETIN TYPE:	Flight Standards Information Bulletin for Airworthiness (FSAW)
BULLETIN NUMBER:	FSAW 04-10B
BULLETIN TITLE:	Reexamination of Airframe and Powerplant Certificate Holders Who Took Oral and Practical Exams at the St. George Aviation Testing Center in Sanford, Florida
EFFECTIVE DATE:	09-21-04
AMENDED DATE	09-1-05
TRACKING NUMBER:	NA

APPLICABILITY:

M/M	ATA Code	14 CFR	PTRS
NA	NA	65.17	3532

NOTE: THIS BULLETIN REQUIRES PTRS INPUT. SEE ITEM # 19.

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1. **What is the purpose of this bulletin?** This bulletin provides guidance to Federal Aviation Administration (FAA) aviation safety inspectors (ASI) on program policies and procedures for reexamining individuals holding mechanic certificates with airframe and/or powerplant ratings, who tested at the St. George Aviation (SGA) testing facility in Sanford, Florida between October 10, 1995, and December 31, 1998. The reexamination will ensure that these individuals meet the standards of Title 14 of the Code of Federal Regulations (14 CFR) part 65, subpart D, to hold their certificates and/or ratings.

2. **Who does this bulletin apply to?** This bulletin applies to all FAA personnel and other appropriately designated individuals who will be involved in the reexamination program.

3. **Under what authority may the FAA reexamine an airframe and powerplant (A&P) mechanic?** Title 49 of the United States Code (49 U.S.C.) section 44709 is the authority for the reexamination of a mechanic. The law in part states, "The Administrator of the Federal Aviation Administration may . . . reexamine an

airman holding a certificate issued under section 44703 of this title."

4. Why are the reexaminations necessary? A criminal investigation conducted by the Office of Inspector General (OIG) disclosed that between October 10, 1995, and December 31, 1998, employees of SGA issued numerous fraudulent Airframe and Powerplant (A&P) mechanic certificates. The FAA has a reasonable basis to question whether certificate holders tested by SGA, which was criminally prosecuted for conducting fraudulent examinations, possess the qualifications to hold their certificates. The FAA believes reexamination of airman competency of these persons is necessary to ensure safety.

5. Which airmen will be reexamined?

a. Airmen who tested at SGA during this period will be reexamined unless they have previously demonstrated they possess the required qualifications. Airmen who have been successfully reexamined, or have obtained a subsequent Inspection Authorization, have demonstrated the required qualifications and do not need further reexamination. An airman must possess an Inspection Authorization prior to the date of the notification letter (see paragraph 12) to be exempt of reexamination.

b. Relief for U.S. military and civilian personnel who are assigned outside the United States in support of U.S. Armed Forces operations will be applied to airman requiring reexamination. The criteria for this relief will be the same as is offered in Special Federal Aviation Regulation (SFAR) 100 and includes the opportunity to complete reexamination within 6 calendar-months after returning to the United States.

6. What will the reexamination consist of?

a. The reexamination will cover the rating(s) that the airman received at SGA. Certificates received outside SGA are not subject to this reexamination. Airmen holding both airframe and powerplant ratings will be reexamined for competency of both ratings at the same time. The reexamination will consist of two tests; one written test, and one oral test. The written test will be computer-based and administered using the FAA Airman Knowledge Testing Program. The oral test will be given after successful completion of the written test. An airman may voluntarily surrender one rating for cancellation and show competence for another; however, an airman may not request reexamination of both ratings at different times.

b. The written knowledge test will consist of questions randomly selected from a pool of questions taken from the question banks used for the evaluation of applicants for a mechanic certificate. The content of a written knowledge test will vary depending on the rating(s) being reexamined. The written test for a mechanic holding an A&P rating will contain 60 written questions selected from the General, Airframe, and Powerplant banks and will be conducted within a time limit of 2 hours. The written test for a mechanic holding only an airframe or powerplant rating will consist of 50 written questions selected from the General and the Airframe and/or Powerplant bank, as appropriate, and will be conducted within a time limit of 1 hour and 45 minutes. The test will be conducted in accordance with chapter 6 of FAA Order 8080.6D, Conduct of Airman Knowledge Tests.

c. The oral test will consist of 5 questions selected from the Oral and Practical Test Guides (General, Airframe, and Powerplant), as appropriate for the rating(s) being tested (i.e., 10 questions for a single airframe or powerplant rating, 15 questions for both ratings). This guide also provides the examiner with criteria of acceptable responses and applicable references. The oral test is not limited to a specific area and does not have to address all areas of required knowledge. Typically, the oral test will take between 45 minutes to 1 hour. The results of the oral test will be recorded on a test planning sheet in accordance with appendix 5 of FAA Order 8610.4J, Aviation Mechanic Examiner Handbook.

d. Each test is scored independently. A score of 70 percent correct answers or greater will be considered satisfactory. A score of less than 70 percent will be considered unsatisfactory. Unsatisfactory performance on either test will result in the preliminary determination that the airman does not possess the standards required of 14 CFR part 65, subpart D for the certificate/rating held. Chapter 8 of FAA Order 2150.3A, Compliance and Enforcement Program, contains guidance concerning procedures that must be followed if the airman fails to establish qualifications to hold his or her certificate. The airman has the right to schedule a retest within a reasonable timeframe. The FAA has determined that 45 days from the date that the first test was taken is a reasonable timeframe. Airmen should be provided a minimum of 30 days to prepare, if desired, and be given scheduling priority to ensure the retest is accomplished within 45 days.

e. FAA Form 8610-2, Airman Certificate and/or Rating Application, will be used to document the reexamination. Order 8610.4 provides instructions on completion of the form. FAA Order 8300.10, Airworthiness Inspector's Handbook, Volume 3, Chapter 18, Conduct a Reexamination Test of a Mechanic or an Inspection Authorization Under Title 49 of the United States Code, provides instructions to document a reexamination.

7. What information is available to the public about the reexaminations? Interested parties may access the following Web site for information regarding the reexamination process: http://www.faa.gov/mechanics/retesting/.

8. Where will the reexaminations be performed? Reexaminations will be performed at the Flight Standards District Office (FSDO), International Field Office (IFO), or other acceptable location.

9. Who will conduct the reexamination? The written knowledge test, as well as administrative processing, will be performed by an FAA employee or person designated by the Administrator. A single proctor may administer written knowledge tests to more than one airman at a time. The oral test proctor must hold a mechanic certificate with A&P ratings. An airworthiness ASI or aviation safety technician will administer the oral test on an individual basis.

10. What is the composition of the SGA reexamination program team?

a. The Program Management and Information Branch, AFS-310, is the headquarters focal point for this program.

b. AFS-310 will notify airmen who are subject to the reexamination of the reexamination process. The FSDO/IFO will have an identified point of contact to oversee the reexamination program, perform reexaminations, and process records associated with the reexaminations. A single reexamination focal point (typically the designated mechanic examiner focal point) for each office will coordinate with the office program manager and the AFS-310 headquarters focal point. Additionally, the FSDO/IFO will furnish qualified and assigned proctors to conduct testing and a technical contact to facilitate computer testing.

11. What procedures must the FSDO/IFO follow to accommodate computer testing?

a. Each participating FSDO/IFO must contact the Airman Testing Standards Branch, AFS-630, via e-mail at 9-AMC-AFS630-709@faa.gov. The sender will need to provide the following information:

- Proctor point of contact*: Name, date of birth (DOB), last four digits of social security number (SSN), office and designator (i.e., ASO-15), phone, e-mail
- Technical point of contact**: Name, DOB, last four digits of SSN, complete mailing address, phone, e-mail
- Number of testing stations***
- Internet protocol (IP) addresses of computer(s) to be used for mechanic reexaminations****

NOTE:

*** Recommendation is one per FSDO/IFO, with the exception of the offices anticipating high test volume. In any case, there should be no more than three designated proctors.**

**** Recommendation is one per office, preferably a computer specialist.**

***** Recommendation is one testing station per office, except for offices anticipating high test volume.**

****** To obtain this information, access the Web site http://www.whatismyip.com from each computer to be used for the mechanic reexaminations.**

b. The written portion of the reexamination tests will be made available via a modified version of a currently used test delivery application. This customized system uses a bootable CD or floppy diskette, which prepares the computer for the testing process—no software is actually installed on the computer. Therefore, the technical point of contact will be express-mailed detailed instructions and a number of bootable CDs and floppy diskette(s) based on the number of testing stations available at his or her office. Upon receipt of the testing materials, the technical point of contact must e-mail AFS-630 at 9-AMC-AFS630-709@faa.gov. The message should include a phone number where he or she may be contacted to arrange for a connectivity test.

c. Three tests will be available for administration: Random Test General (RTG); Random Test Airframe (RTA); and Random Test

Powerplant (RTP). Test information and exam structure information may be accessed via the "709 support" link at http://afs600.faa.gov.

d. A copy of FAA-CT-8080-4D, Computer Testing Supplement for Aviation Mechanic General, Powerplant, and Airframe; and Parachute Rigger, must be available at each testing station. The supplement is available (in PDF format) through the 709 support link, and may be downloaded for printing.

e. Detailed instructions, troubleshooting information, and frequently asked questions may also be found on AFS-600's 709 support link.

12. How will airmen be notified? Airmen requiring reexamination will be notified via mail by the AFS-310 headquarters focal point. AFS-310 will print and mail two copies of the notification letter via U.S. Postal Service to each airman. One copy will be sent certified/return receipt requested (proof of service), and the other by regular mail to the airman's address of record obtained from the FAA's Civil Aviation Registry. The FSDO/IFO will receive a copy of all letters applicable to the FSDO/IFO. The letter will advise the airman of the decision to reexamine and require the airman to contact the FSDO/IFO within 15 days of receipt of the letter to schedule a reexamination.

13. What actions must the FAA take for each airman notification? Upon receipt of the notification letter from AFS-310, the FSDO/IFO must initiate an entry into the Program Tracking and Recording Subsystem (PTRS)(see paragraph 19) for each airman.

14. What happens if an airman fails to contact the FSDO/IFO and schedule reexamination?

a. If the airman does not contact the FSDO/IFO within 30 days of the date of the reexamination letter, the FSDO/IFO should contact the AFS-310 headquarters focal point to determine whether there is "proof of service" on the airmen. Once confirmation of "proof of service" has been established and that the airman has failed to schedule a reexamination as required in the letter, the FSDO/IFO will refer the airman's files to the regional counsel office to initiate legal enforcement action, in accordance with Order 2150.3A, chapter 8, and Order 8300.10, Volume 2, Chapter 213, Conduct Violation Investigation. Because letters of notification sent by regular mail are forwarded if an address change is on file with the U.S. Postal Service, lack of

return of the general delivery letter provides a presumption that the letter was received.

b. For airmen that AFS-310 is unable to contact (i.e., both letters are returned undeliverable), the AFS-310 headquarters focal point will notify FAA Internal Security of incorrect information in the FAA Civil Aviation Registry and request assistance.

15. How will reexaminations be scheduled? The FSDO/IFO, when contacted by the airman, will allow the airman to choose from available dates and times to schedule the reexamination. Reexaminations will begin on August 15, 2005 and must be completed by December 31, 2005. Reexaminations should be scheduled at least thirty (30) days from the date the airmen contact the FSDO/IFO to provide adequate time for the airmen to prepare. Earlier testing is acceptable if the airman requests it.

16. What action will be taken if an airman fails to complete the test by December 31, 2005?

a. Initial testing must be completed prior to December 31, 2005. An airman that has requested retesting using the procedures described in paragraph 18 must complete retesting within 45 days of initial failure. An airman failing initial testing on December 31, 2005, could retest as late as February 15, 2006.

b. The FSDO/IFO will refer the files of airmen who have not completed initial testing by December 31, 2005 to the regional counsel office to initiate emergency legal enforcement action, in accordance with the current editions of FAA Order 2150.3, Compliance and Enforcement Action, chapter 8, and FAA Order 8300.10, Airworthiness Inspector's Handbook, volume 3, chapter 18. Airmen may be exempted from the December 31, 2005 deadline as per paragraph 5b, or approved specific consideration of circumstance (sickness/hardship) by AFS-310.

17. What action will be taken when an airman successfully completes reexamination? After successfully completing the reexamination, the airman's certificate will be returned, if in the possession of the FAA, and the airman will be provided with a statement of successful completion of the reexamination. Subsequently, an official letter of successful completion of reexamination will be sent to the airman by the FSDO/IFO point of contact, to close this matter. The FAA Inspector's Report on

the back of Form 8610-2 will be used to document the reexamination.

18. What action will be taken if an airman fails the reexamination?

a. If the airman's performance was unsatisfactory, there are two alternatives. The airman may voluntarily surrender his or her certificate for cancellation; alternatively, the airman may surrender the certificate for deposit and request a retest as detailed in Order 2150.3A, chapter 8. If the airman declines both alternatives, an FAA inspector will inform the airman that legal enforcement action will be initiated to revoke the certificate.

b. An airman who offers to surrender his or her certificate for cancellation will be provided a statement to sign for recording voluntary surrender for cancellation. An airman who does not surrender his or her certificate for cancellation or does not place the certificate on deposit will be provided with a statement of unsatisfactory performance and a statement that legal enforcement action will be initiated. See Order 2150.3A and Order 8300.10 volume 2, chapter 213 for details concerning legal enforcement action. Letters will be sent to the airman's address on record.

19. What PTRS entries will be required of inspectors and the AFS-310 headquarters focal point?

a. It is imperative that the PTRS be updated in a timely manner. The AFS-310 headquarters focal point and other key program personnel will be using the information recorded in the PTRS to monitor and administer the reexamination program. All entries will include activity code 3532 and the National Use Code "SGA" (without the quotes).

> **NOTE: PTRS records should be returned to the server after entries are made and must not be retained in a "checked out status" since this would prevent access by program personnel.**

b. Entries to the PTRS record comment field must be made for certain actions and may also be made to record additional information. Entries are required for the following actions. The AFS-310 headquarters focal point will make the entries described in paragraph 19b(2). Inspectors will make the entries described in paragraph 19b(1) and 19b(3) through (7).

21. Where may I find additional information? Marci LaShells is the AFS-310 headquarters focal point for this program. She may be reached at (202) 267-7434 or by e-mail at marci.d.lashells@faa.gov.

22. When does this bulletin expire? This bulletin will remain in effect until further notice.

/s/
David E. Cann, Manager
Aircraft Maintenance Division

Appendix A

Exhibit 11

Advisory Circular

Subject: Introduction to Safety Management Systems for Air Operators

Date: 6/22/06 **AC No:** 120-92

Initiated by: AFS-800

1. PURPOSE.

a. This advisory circular (AC):

(1) Introduces the concept of a safety management system (SMS) to aviation service providers (for example, airlines, air taxi operators, corporate flight departments, and pilot schools).

(2) Provides guidance for SMS development by aviation service providers.

b. This AC is not mandatory and does not constitute a regulation. Development and implementation of an SMS is voluntary. While the Federal Aviation Administration (FAA) encourages each aviation service provider to develop and implement an SMS, these systems in no way substitute for regulatory compliance of other certificate requirements, where applicable.

2. APPLICABILITY. This AC applies to both certificated and non-certificated air operators that desire to develop and implement an SMS. An SMS is not currently required for U.S. certificate holders. However, the FAA views the requirements in Appendix 1 to this AC to be a minimum standard for an SMS developed by an aviation service provider.

3. RECOMMENDED READING MATERIAL. The following ACs may be of value to users of this AC if they desire to integrate any of the following programs with an SMS:

a. AC 120-59A, Air Carrier Internal Evaluation Programs.

b. AC 120-66, Aviation Safety Analysis Programs (ASAP).

c. AC 120-79, Developing and Implementing a Continuing Analysis and Surveillance System.

d. AC 120-82, Flight Operational Quality Assurance.

4. BACKGROUND. The modern aviation system is characterized by increasingly diverse and complex networks of business and governmental organizations. The rapidly changing aviation operational environment requires these organizations to adapt continuously to maintain their

viability and relevance. The aviation system is also becoming increasingly global. Few business entities' markets, supplier networks, and operations are confined entirely within the boundaries of a single country. These characteristics of complexity, diversity, and change add to the importance of sound management of functions that are essential to safe operations. While safety efforts in the aviation system have been highly successful to date, the rapid increase in the volume and variety of aviation operations push the limitations of current safety strategies and practices. Along with this trend is the problem of decreasing resources to be applied by both business and government organizations. These processes have forced a fresh look at the safety strategies of the future. The best approach to problems of increased aviation activity and decreased resources is to bring safety efforts into the normal management framework of aviation operations. Just as businesses and government organizations must manage these factors effectively to accomplish their missions or to maintain business viability, they must likewise provide sound management of safety. This innovation in aviation system safety is best termed "Safety Management Systems" a term indicating that safety efforts are most effective when made part of business and government management of operations and oversight.

a. **Safety Benefits of an SMS.** An SMS is essentially a quality management approach to controlling risk. It also provides the organizational framework to support a sound safety culture. For general aviation operators, an SMS can form the core of the company's safety efforts. For certificated operators such as airlines, air taxi operators, and aviation training organizations, the SMS can also serve as an efficient means of interfacing with FAA certificate oversight offices. The SMS provides the company's management with a detailed roadmap for monitoring safety-related processes.

b. **Business Benefits of an SMS.** Development and implementation of an SMS can give the aviation service provider's management a structured set of tools to meet their legal responsibilities but they can also provide significant business benefits. The SMS incorporates internal evaluation and quality assurance concepts that can result in more structured management and continuous improvement of operational processes. The SMS outlined in this AC is designed to allow integration of safety efforts into the operator's business model and to integrate other systems such as quality, occupational safety, and environmental control systems that operators might already have in place or might be considering. Operators in other countries and in other industries who have integrated SMSs into their business models report that the added emphasis on process management and continuous improvement benefits them financially as well.

5. SMS PRINCIPLES.

a. **Safety Management.** Modern management and safety oversight practices are moving increasingly toward a systems approach that concentrates more on control of processes rather than efforts targeted toward extensive inspection and remedial actions on end products. One way of breaking down SMS concepts is to discuss briefly the three words that make it up: safety, management, and systems. Then we'll touch on another essential aspect of safety management; safety culture.

(1) **Safety: Requirements Based on Risk Management.** The objective of an SMS is to provide a structured management system to control risk in operations. Effective safety management must be based on characteristics of an operator's processes that affect safety.

Safety is defined in dictionaries in terms of absence of potential harm, an obviously impractical goal. However, risk, being described in terms of severity of consequences (how much harm) and likelihood (how likely we are of suffering harm) is a more tangible object of management. We can identify and analyze the factors that make us more or less likely to be involved in accidents of incidents as well as the relative severity of the outcomes. From here, we can use this knowledge to set system requirements and take steps to insure that they are met. Effective safety management is, therefore, risk management.

(2) Management: Safety Assurance Using Quality Management Techniques. In a recent set of working papers and guidance documents, the International Civil Aviation Organization (ICAO) emphasized that safety is a managerial process, shared by both the state (government regulators such as the FAA) and those who conduct aviation operations or produce products or services that support those operations.[1] This is compatible with the goals set forth for the FAA and industry in the Federal Aviation Act of 1958. The safety management process described in this AC starts with design and implementation of organizational processes and procedures to control risk in aviation operations. Once these controls are in place, quality management techniques can be used to provide a structured process for ensuring that they achieve their intended objectives and, where they fall short, to improve them. Safety management can, therefore, be thought of as quality management of safety related operational and support processes to achieve safety goals.

(3) Systems: Focusing on a Systems Approach. Systems can be described in terms of integrated networks of people and other resources performing activities that accomplish some mission or goal in a prescribed environment. Management of the system's activities involves planning, organizing, directing, and controlling these assets toward the organization's goals. Several important characteristics of systems and their underlying process are known as "process attributes" or "safety attributes.[2]" when they are applied to safety related operational and support processes. As in the previous discussion of quality, these process attributes must have safety requirements built in to their design if they are to result in desired safety outcomes. The attributes include:

(a) Responsibility and authority for accomplishment of required activities,

(b) Procedures to provide clear instructions for the members of the organization to follow,

(c) Controls which provide organizational and supervisory controls on the activities involved in processes to ensure they produce the correct outputs, and

(d) Measures of both the processes and their products.

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[1] ICAO Document 9734, Draft Safety Oversight Manual; ICAO Document 9859, Safety Management Manual, March 2006; and ICAO Working Paper from the ICAO Air Navigation Commission, Approval of Draft Report to Counsel on Amendment 30 to Annex 6, part 1.

[2] The six system characteristics, responsibility, authority, procedures, controls, process measures, and interfaces, are called "safety attributes" in the FAA's Air Transportation Oversight System (ATOS).

(e) An important aspect of systems management also is recognizing the important interrelationships or interfaces between individuals and organizations within the company as well as with contractors, vendors, customers, and other organizations with which the company does business.

b. Safety Culture: The Essential Human Component of Organizations. "An organization's culture consists of its values, beliefs, legends, rituals, mission goals, performance measures, and sense of responsibility to its employees, customers, and the community.[3]" The principles discussed above that make up the SMS functions will not achieve their goals unless the people that make up the organization function together in a manner that promotes safe operations. The organizational aspect that is related to safety is frequently called the "safety culture." The safety culture consists of psychological (how people think), behavioral (how people act), and organizational elements. The organizational elements are the things that are most under management control, the other two elements being outcomes of those efforts. For this reason, the SMS standard that is contained in Appendix 1 of this AC includes requirements for policies that will provide the framework for the SMS and requirements for organizational functions such as an effective employee safety reporting system and clear lines of communications both up and down the organizational chain regarding safety matters.

6. SYSTEM FUNCTIONS AND RELATIONSHIPS.

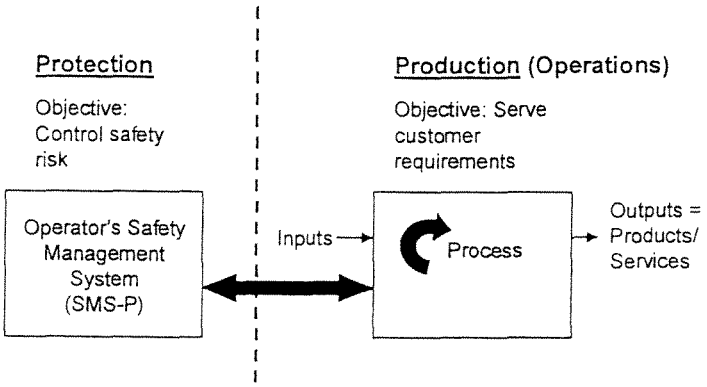
a. System Goals: Production and Protection. The global aviation system is really a "system of systems." Figure 1 depicts the relationship between the systems that are related to safety. The Figure depicts the relationships between the technical and management functions in the company that are related to providing customers with products or services and the functions that are related to controlling risk that is often a byproduct of the operations. The dichotomy between "production" and "protection" in the Figure, therefore, refers to the functions and requirements that are attendant to producing products or services (e.g. flight operations, flight training) and those that are involved in ensuring safety. As pointed out by Dr. James Reason, a prominent organizational safety researcher, these functions must be kept in harmony if the organization is to remain financially viable while controlling safety risk.[4]

> **NOTE: The depiction in Figure 1 refers to functional roles and not organizational structures. It is not meant to suggest that safety management is the sole responsibility of a "safety department" or "safety manager." In fact, the SMS standard stresses the role of those who manage the productive "line operational' processes in safety management.**

[3] Manuele, Fred A. On the Practice of Safety. John Wiley & Sons, 2003, Hoboken, NJ.

[4] Reason, Dr. James. Managing the Risk of Organizational Accidents. Ashgate Publishing Limited, 1997, Aldershot, United Kingdom.

FIGURE 1. SYSTEM RELATIONSHIPS



(1) **Production in Aviation Systems: Conducting Operations.** The production system that produces the product or service that is the mission of the aviation service provider's organization. For operators, these services usually involve provision of transportation services but may also include providing additional services to other companies such as maintenance and flight crew training. One of the first tasks in effective risk management and safety assurance is for both the operator and an oversight organization to have a thorough understanding of the configuration and structure of this system and its processes. A significant number of hazards and risk factors exist from improper design of these processes or a poor fit between the system and its operational environment. In these cases, hazards to operational safety may be poorly understood and, therefore, inadequately controlled.

(2) **Protection in Aviation Systems: Controlling Risk.** Safety risk is a byproduct of activities related to production. The aviation service provider's customers and employees are, therefore, the potential direct victims of the consequences of failures in the safety system. It is a primary responsibility of the aviation service provider to identify hazards and to control risk in the processes they manage and their operational environment. The aviation service provider is primarily responsible for safety management. The aviation service provider's SMS (denoted as the SMS-P to differentiate it from the FAA's safety oversight system, later referred to as the SMS-O) provides a formal management system for the operator's management to fulfill this obligation.

b. **Safety Management Systems for Certificated Organizations.** As aviation service providers develop SMSs, a natural interaction between the safety management efforts of the FAA and those of aviation service providers also develops. This relationship can leverage the efforts of both parties to provide a more effective, efficient, and proactive approach to meeting safety requirements while at the same time increasing the flexibility of companies to tailor their safety management efforts to their individual business models. There are distinct roles, responsibilities, and relationships (the "three Rs") for both regulators (FAA) and aviation service providers in the "system of systems" that is involved in management of safety.

(1) **Responsibilities of Certificated Operators and Aviation Service Providers.** Operators who hold out to provide services in common carriage to the public have a special responsibility to provide their customers with safe, reliable transportation. Title 49 of the United

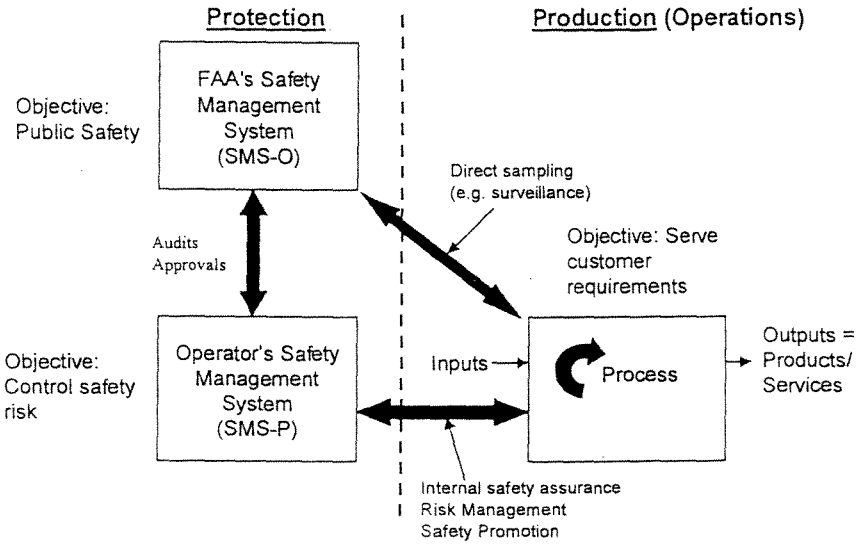
States Code, subtitle VII, chapter 447, section 44702 states, in part, that "When issuing a certificate under this chapter, the Administrator shall consider the duty of an air carrier to provide service with the highest possible degree of safety in the public interest and differences between air transportation and other air commerce...." This section of the public law makes management of safety a specific legal responsibility for air carrier management teams and, as such, is a fundamental principle of the FAA oversight doctrine. While this section applies specifically to air carriers, the FAA expects all certificated organizations to make safety a top priority and holds their managements accountable for doing so.

(2) **Oversight Responsibilities of the FAA.** United States Code Title 49 Subtitle VII Chapter 447 also prescribes roles and responsibilities of the FAA. The FAA is tasked with developing and implementing regulations and standards of other safety oversight activities that ensure operators apply those regulations and standards to the design and continuing operational safety of their organizations. These regulations and standards and the processes that apply them to certificate holders should be thought of as important safety risk controls, rather than just bureaucratic requirements.

(3) **Oversight Systems.** The other system on the "protection" side of the model in Figure 2 is the SMS-O, the system that is used by the regulator to provide oversight of the aviation service provider's operations. Traditional oversight of aviation service providers consists of activities such as certification, surveillance, investigation, and enforcement of regulations. The FAA is transitioning the traditional oversight process from a quality control approach with principal emphasis on surveillance of compliance with technical standards to a systems approach that stresses the systemic nature of aviation businesses and the larger system as a whole. While traditional oversight functions will continue to exist in future safety oversight systems, the primary means of safety oversight will shift more toward system safety methods and an emphasis on operator safety management. Moreover, the ability of the government to provide the resources that would be required to manage safety through intensive direct intervention in aviation service provider's activities is questionable at best.

(4) **Relationships between Aviation Service Provider's SMS and Oversight.** Figure 2 depicts the functional relationships between the productive processes in aviation service provider organizations, their safety management functions, and the functions of FAA oversight activities. On the "protection" side of the model depicted in Figure 2, two management systems exist: the aviation service provider's SMS (noted as SMS-P) and that of the oversight organization or regulator (noted as SMS-O).

FIGURE 2. SYSTEM RELATIONSHIPS. CERTIFICATED OPERATORS



(5) Voluntary Programs and the SMS. The FAA is seeking to increase the use of voluntary programs in the process of safety management, particularly use of the Aviation Safety Action Program (ASAP) and internal evaluation programs (IEP). Both of these programs have strong relationships to the functions of safety assurance and safety promotion in an SMS. Aviation service providers are encouraged to consider integrating these programs into a comprehensive approach to safety management.

c. Future Developments in Safety Management. A well-developed SMS and a strong relationship with the oversight system provide an excellent place from which to develop an integrated program between regulatory programs, voluntary programs, and the operator's own systems. The FAA Flight Standards Service is developing procedures to provide more effective interfaces in this process and to make both voluntary and regulatory programs more standardized and interoperable. These processes include improved, joint-use auditing tools and processes, procedures for information sharing and protection, and voluntary disclosure procedures. In the interim, certificated organizations should work closely with their certificate-holding district office (CHDO) or certificate management office (CMO) to build an SMS that will interface smoothly with regulatory oversight programs. For example, an SMS that incorporates the operator's continuing analysis and surveillance system (CASS — for certificated operators), an IEP, and an ASAP would allow the operator to derive the multiple benefits of these programs with a minimum of duplication. For operators that desire to implement Flight Operations Quality Assurance (FOQA) programs, these programs can also contribute to the safety assurance function.

7. THE SMS STANDARD: INTRODUCTION.

a. The Need for Safety Management Standards.

(1) **Standardization.** The FAA Associate Administrator for Aviation Safety (AVS) is interested in developing an integrated SMS in which business and governmental roles and relationships are well defined, requirements are based upon sound systems engineering and system safety principles, and both regulators and regulated industries participate in a unified safety effort. The SMS standard in appendix 1 of this AC provides functional requirements for an aviation safety SMS. It is similar in scope to internationally recognized standards for quality management, environmental protection, and occupational safety and health management.

(2) **International Harmonization.** ICAO, in a recent set of working papers, manuals, and proposals[5] for changes to key annexes to the ICAO Conventions, is revamping its standards and recommended practices to reflect a systems approach to safety management. This coincides with the FAA's move toward a systems approach for oversight over the past several years. Because of the many diverse relationships between organizations and the above stated global nature of the aviation system, it is critical that the functions of an SMS be standardized to the point that there is a common recognition of the meaning of SMS among all concerned, both domestically and internationally.

(3) **Alignment with International Organization for Standardization (ISO) Standards.** The SMS standard is written at the approximate scope and scale of the international standards for quality management (QMS) and management of environmental protection (EMS), ISO 9000-2000 and ISO 14001, respectively. The FAA also reviewed the British Standards Institute's standard for occupational health and safety management systems (OHSMS), which is based on ISO 14001. The clause structure of the aviation service provider SMS standard initially was developed to parallel ISO 14001, with the clauses then being arranged around the four building blocks discussed below under "The Four Pillars of Safety Management."

(4) **Alignment with Other Industry Standards.** The SMS standard was developed after an extensive review of documented SMS systems used by other countries around the world.[6] This review included literature reviews of regulations, policy documents, and advisory material, as well as interviews with both government and industry personnel who promulgated and used the systems. Existing management system standards from the International Standardization Organization (ISO) and the American National Standards Institute (ANSI) were reviewed cross-mapped.[7] The review also included consideration of third-party systems developed by user organizations such as the International Air Transport Association (IATA), the Medallion Foundation, and the International Business Aviation Council (IBAC)[8].

(5) **Auditability.** The SMS standard is designed to provide definitive functional requirements in a manner that can be audited by the organization's own personnel, regulators, or

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[5] Ibid. See footnote 1.

[6] The review included review of documents and interviews of government and industry personnel from Australia, Canada, New Zealand, and the United Kingdarom.

[7] A matrix showing the functional correlation between the SMS standard in Appendix 1 of this AC and existing standards for quality management, environmental control, and occupational safety and health management is included as Appendix 2.

[8] This preliminary literature review was conducted to compare content of the various programs and documents and did not assess any of the reviewed programs for completeness or assurance of regulatory compliance.

other third-party consultants. The language in the standard is, therefore, written in a requirements-oriented tone. To the maximum extent possible, each indexed statement defines a single requirement so that it can easily be used in audits of the system.

(6) **Integration with Other Management Systems.** While the SMS standard's stated scope is on product and service safety, the FAA recognizes that managers in real-world organizations may often, if not usually, be required to manage not only this aspect of safety, but also occupational safety and environmental protection, as well. Managers of these organizations typically are required to fit their activities into the framework of the organization's mission or commercial objectives and may operate under an integrated management system. The SMS standard therefore can be mapped to other existing standards covering these areas so that organizations may develop integrated management systems. Appendix 2 provides a cross-reference between the SMS standard presented in Appendix 1 and several other commonly used management standards.

b. **Structure and Organization.**

(1) **Functional Orientation.** The SMS Standard is written as a functional requirements document. It stresses "what" the organization must do rather than "how" it will be accomplished. The FAA feels that each of the functions detailed in the standard are essential for a comprehensive SMS. At the same time, the standard needs to be applicable to a wide variety of types and sizes of operators. Therefore, it is designed to allow operators to integrate safety management practices into their unique business models. Operators are not expected to configure their systems in the format of the standard or to duplicate existing programs that accomplish the same function. This was a further reason for using a similar scope, scale, and language to the ISO standards, which also are designed for broad application. The standard document contained in Appendix 1, therefore, attempts to strike a balance between flexibility of implementation and functional standardization of essential safety management processes.

(2) **Four Pillars of Safety Management.** The standard is organized around four basic building blocks of safety management. These four areas are essential for a safety-oriented management system, and derive from the SMS principles discussed earlier.

(a) **Policy.** All management systems must define policies, procedures, and organizational structures to accomplish their goals. Requirements for these elements are outlined in Appendix 1, par 4 which in turn provide the framework for SMS functional elements.

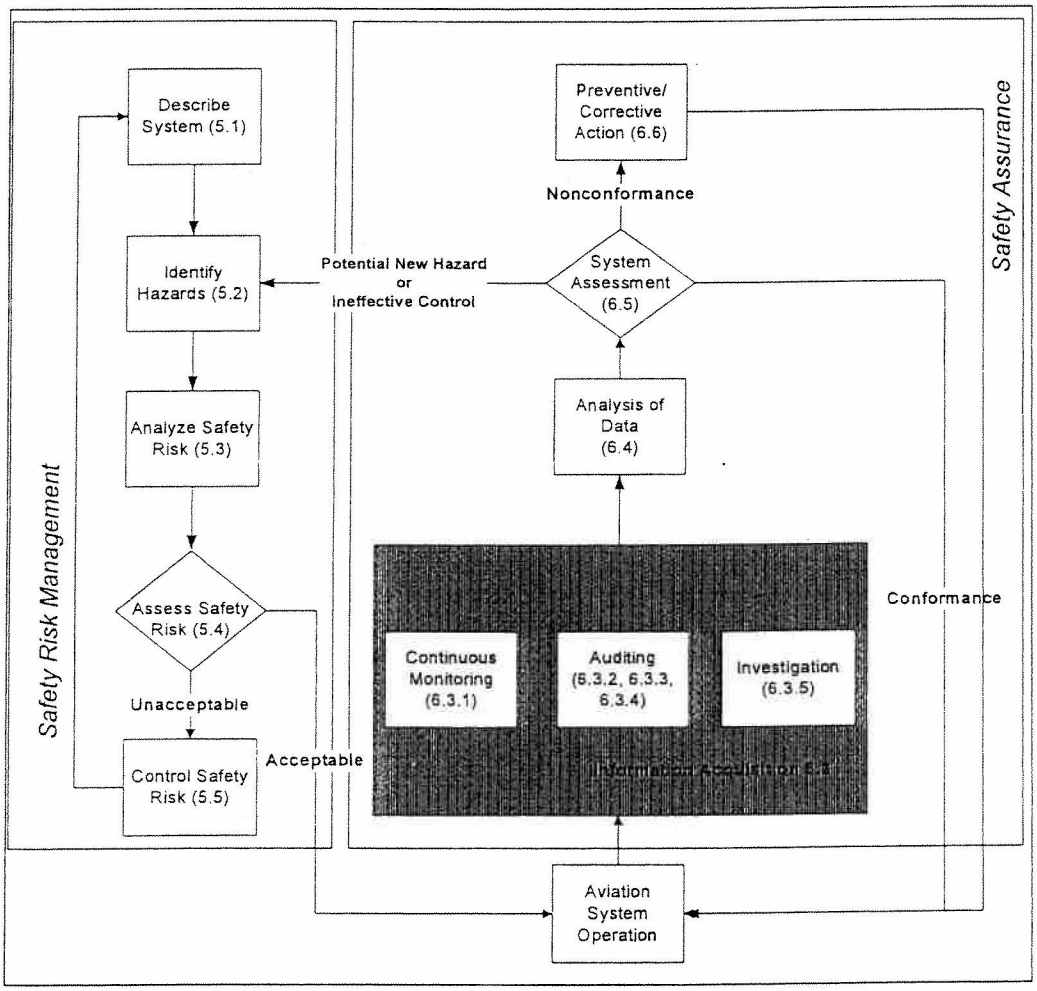
(b) **Safety risk management.** A formal system of hazard identification and safety risk management in Appendix 1, par. 5 is essential in controlling risk to acceptable levels. The safety risk management component of the SMS is based upon the system safety process model that is used in the system safety training course that is taught at the FAA Academy.

(c) **Safety assurance.** Once these controls are identified, the operator must ensure they are continuously practiced and continue to be effective in a changing environment. The safety assurance function in Appendix 1, par 6 provides for this using quality management concepts and processes.

(d) **Safety promotion.** Finally, the operator must promote safety as a core value with practices that support a sound safety culture. Appendix 1 par. 7 provides guidance for setting up these functions.

(3) **Integration of Safety Risk Management and Safety Assurance.** Figure 3 shows how the safety risk management and safety assurance processes are integrated in the SMS. The safety risk management process provides for initial identification of hazards and assessment of risk. Organizational risk controls are developed and, once they are determined to be capable of bringing the risk to an acceptable level, they are employed operationally. The safety assurance function takes over at this point to ensure that the risk controls are being practiced and they continue to achieve their intended objectives. This system also provides for assessment of the need for new controls because of changes in the operational environment.

FIGURE 3. SAFETY RISK MANAGEMENT AND SAFETY ASSURANCE PROCESSES[9]



[9] The numbers in the process blocks shown in Figure 3 refer to clause numbers in the SMS standard in Appendix 1 to this AC.

8. THE SMS STANDARD.

a. General Organization of the SMS Standard. The first part of the SMS functional requirements (SMS Standard) included as Appendix 1 of this AC follows the general organization of ISO 9000-2000 and ISO 14001. The first three clauses describe scope and applicability, references, and definitions. The following four clauses address each of the four pillars of SMS, as described previously in paragraph 7b(2).

b. Policy: Setting the Framework.

(1) Safety and Quality: Striking a Balance. As discussed above, the SMS standard uses quality management principles, but the requirements to be managed by the system are based on an objective assessment of safety risk, rather than customer satisfaction with products or other conventional commercial goals. However, management of process quality, with emphasis on those characteristics of those processes that affect safety, is an important aspect of safety management. The standard specifies that the aviation service provider should prescribe both quality and safety policies. The coverage of quality policies is limited in scope to quality in support of safety, although operators are encouraged to integrate their management systems as much as feasible. However, safety objectives should receive primacy where conflicts are identified.

(2) Roles, Responsibilities, and Relationships: The "Three Rs" of Safety Management. Figures 1 and 2 show the relationship between the productive processes of the aviation service provider as well as the joint protective processes of the regulator (FAA) in the form of an oversight system (SMS-O) and the aviation service provider's SMS (SMS-P). As before, it is important to recognize that the two aviation service provider systems shown (Protection and Production) are functional rather than departmental or organizational depictions. One of the principal roles of the oversight system (SMS-O) is to promulgate risk controls in the form of regulations, standards, and policies. It follows that regulatory compliance, in a manner that accomplishes the regulations' safety objectives, is also part of the aviation service provider's role in safety management.

(3) Importance of Executive Management Involvement. The standard specifies that top management is primarily responsible for safety management. Managements must plan, organize, direct, and control employees' activities and allocate resources to make safety controls effective. A key factor in both quality and safety management is top management's personal, material involvement in quality and safety activities. The standard also specifies that top management must further clearly delineate safety responsibilities throughout the organization. While it is true that top management must take overall responsibility for safe operations, it also is true that all members of the organization must know their responsibilities and be both empowered and involved with respect to safety.

(4) Procedures and Controls. Two key attributes of systems are procedures and controls. Policies must be translated into procedures in order for them to be applied and organizational controls must be in place to ensure that critical steps are accomplished as designed. Organizations must develop, document, and maintain procedures to carry out their safety policies and objectives. The standard also requires organizations to ensure that employees

understand their roles. Moreover, supervisory controls must be used to monitor the accomplishment of the procedures.

c. Safety Risk Management: Setting Requirements for Safety Management. The safety risk management process is used to examine the operational functions of the company and their operational environment to identify hazards and to analyze associated risk. The safety risk management process follows the same sequence of steps as the system safety process model that is used in the FAA's System Safety training course at the FAA Academy. These are also the same general steps that are used in operational risk management programs within several of the military services.

(1) Systems and Task Analysis. Safety risk management begins with system design. This is true whether the system in question is a physical system, such as an aircraft, or an organizational system such as an operator, maintenance or training establishment. These systems consist of the organizational structures, processes, and procedures, as well as the people, equipment, and facilities used to accomplish the organization's mission. The system or task descriptions should completely explain the interactions among the hardware, software, people, and environment that make up the system in sufficient detail to identify hazards and perform risk analyses. While systems should be documented, no particular format or is required. System documentation would normally include the operator's manual system,[10] checklists, organizational charts, and personnel position descriptions. A suggested breakdown of operational and support processes for air operators includes:

(a) Flight operations;

(b) Dispatch/flight following;

(c) Maintenance and inspection;

(d) Cabin safety;

(e) Ground handling and servicing;

(f) Cargo handling; and

(g) Training.

NOTE: Long and excessively detailed system or task descriptions are not necessary as long as they are sufficiently detailed to perform hazard and risk analyses. While sophisticated process development tools and methods are available, simple brainstorming sessions with managers, supervisors, and other employees are often most effective.

(2) Hazard Identification. Hazards in the system and its operating environment must be identified, documented, and controlled. It also requires that the analysis process used to

[10] While manuals are required only for certificated operators and agencies, all operators are encouraged to develop a manuals as a means of documenting their policies and procedures.

define hazards consider all components of the system, based on the system description described above. The key question to ask during analysis of the system and its operation is "what if?" As with system and task descriptions, judgment is required to determine the adequate level of detail. While identification of every conceivable hazard would be impractical, aviation service providers are expected to exercise due diligence in identifying significant and reasonably foreseeable hazards related to their operations.

(3) **Risk Analysis and Assessment.** The standard's risk analysis and risk assessment clauses use a conventional breakdown of risk by its two components: likelihood of occurrence of an injurious mishap and severity of the mishap related to an identified hazard, should it occur. A common tool for risk decision-making and acceptance is a risk matrix similar to those in the U.S. Military Standard (MIL STD 882) and the ICAO Safety Management Manual[11]. Figure 4 shows an example of one such matrix. Operators should develop a matrix that best represents their operational environment. Separate matrices with different risk acceptance criteria may also be developed for long-term versus short-term operations.

(4) **Severity and Likelihood Criteria.** The definitions and final construction of the matrix is left to the aviation service provider's organization to design. The definitions of each level of severity and likelihood will be defined in terms that are realistic for the operational environment. This ensures each organization's decision tools are relevant to their operations and operational environment, recognizing the extensive diversity in this area. An example of severity and likelihood definitions is shown in Table 1 below. Each operator's specific definitions for severity and likelihood may be qualitative but quantitative measures are preferable, where possible.

TABLE 1. SAMPLE SEVERITY AND LIKELIHOOD CRITERIA[12]

Severity of Consequences			Likelihood of Occurrence		
Severity Level	Definition	Value	Likelihood Level	Definition	Value
Catastrophic	Equipment destroyed, multiple deaths	5	Frequent	Likely to occur many times	5
Hazardous	Large reduction in safety margins, physical distress or a workload such that operators cannot be relied upon to perform their tasks accurately or completely. Serious injury or death to a number of people.	4	Occasional	Likely to occur sometimes	4

[11] Available at: http://www.icao.int/fsix

[12] Adapted from ICAO Safety Management Manual (SMM). ICAO Doc 9859. Available at: http://www.icao.int/fsix

Severity of Consequences			Likelihood of Occurrence		
	Major equipment damage.				
Severity Level	Definition	Value	Likelihood Level	Definition	Value
Major	Significant reduction in safety margins, reduction in the ability of operators to cope with adverse operating conditions as a result of an increase in workload, or as result of conditions impairing their efficiency. Serious incident. Injury to persons.	3	Remote	Unlikely, but possible to occur	3
Minor	Nuisance. Operating limitations. Use of emergency procedures. Minor incident.	2	Improbable	Very unlikely to occur	2
Negligible	Little consequence	1	Extremely Improbable	Almost inconceivable that the event will occur	1

(5) **Risk Acceptance.** In the development of its risk assessment criteria, aviation service providers are expected to develop risk acceptance procedures, including acceptance criteria and designation of authority and responsibility for risk management decision making. The acceptability of risk can be evaluated using a risk matrix such as the one illustrated in Figure 4. The example matrix shows three areas of acceptability. Risk matrices may be color coded; unacceptable (red), acceptable (green), and acceptable with mitigation (yellow).

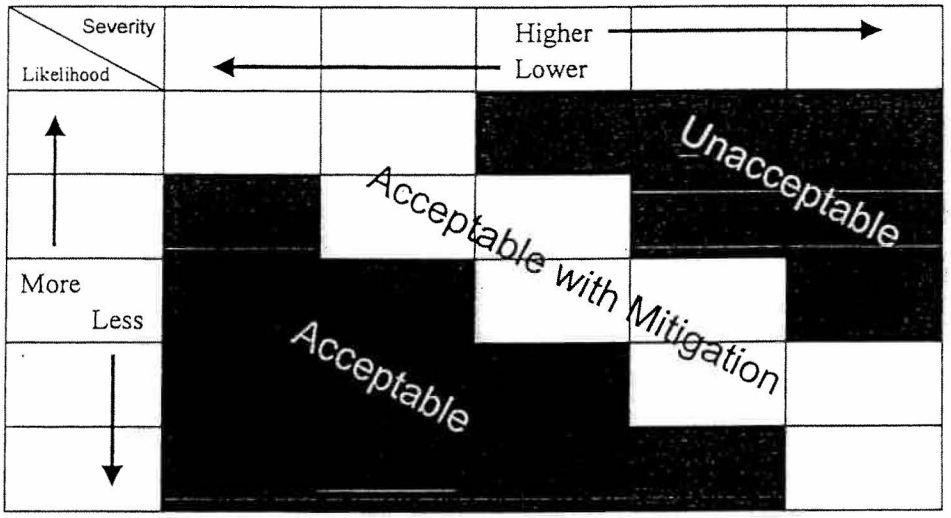
(a) **Unacceptable (Red).** Where combinations of severity and likelihood cause risk to fall into the red area, the risk would be assessed as unacceptable and further work would be required to design an intervention to eliminate that associated hazard or to control the factors that lead to higher risk likelihood or severity.

(b) **Acceptable (Green).** Where the assessed risk falls into the green area, it may be accepted without further action. The objective in risk management should always be to reduce

risk to as low as practicable regardless of whether or not the assessment shows that it can be accepted as is. This is a fundamental principle of continuous improvement.

(c) **Acceptable with Mitigation (Yellow).** Where the risk assessment falls into the yellow area, the risk may be accepted under defined conditions of mitigation. An example of this situation would be an assessment of the impact of a non-operational aircraft component for inclusion on a Minimum Equipment List. Defining an Operational ("O") or Maintenance ("M") procedure in the MEL would constitute a mitigating action that could make an otherwise unacceptable risk acceptable, as long as the defined procedure was implemented. These situations may also require continued special emphasis in the safety assurance function.

FIGURE 4. SAFETY RISK MATRIX



(6) **Other Risk Assessment Tools for Flight and Operational Risk Management.** Other tools can also be used for flight or operational risk assessment such as the Controlled Flight into Terrain (CFIT), Approach and Landing Accident Reduction (ALAR), operational control, and ground operations risk assessment tools available from the Flight Safety Foundation (http://www.flightsafety.org/technical_initiatives.html) or the Medallion Foundation (http://www.medallionfoundation.org).

(7) **Causal Analysis.** Risk analyses should concentrate not only on assigning levels of severity and likelihood but on determining why these particular levels were selected. This is often called "root cause analysis," and is the first step in developing effective controls to reduce risk to lower levels. Several structured software systems are available to perform root cause analysis. However, in many cases, simple brainstorming sessions among the company's pilots, mechanics, or dispatchers other experienced subject matter experts is the most effective and affordable method of finding ways to reduce risk. This also has the advantage of involving employees who will ultimately be required to implement the controls developed.

(8) **Controlling Risk.** After hazards and risk are fully understood though the preceding steps, risk controls must be designed and implemented. These may be additional or changed

procedures, new supervisory controls, addition of organizational, hardware, or software aids, changes to training, additional or modified equipment, changes to staffing arrangements, or any of a number of other system changes.

(9) **Hierarchy of Controls.** The process of selecting or designing controls should be approached in a structured manner. System safety technology and practice has provided a hierarchy or preferred order of control actions that range from most to least effective. Depending on the hazard under scrutiny and its complexity there may be more than one action or strategy that may be applied. Further, the controls may be applied at different times depending on the immediacy of the required action and the complexity of developing more effective controls. For example, it may be appropriate to post warnings while a more effective elimination of the hazard is developed. The hierarchy of controls is:

(a) Design the hazard out – modify the system (this includes hardware/software systems involving physical hazards as well as organizational systems).

(b) Physical guards or barriers – reduce exposure to the hazard or reduce the severity of consequences.

(c) Warnings, advisories, or signals of the hazard.

(d) Procedural changes to avoid the hazard or reduce likelihood or severity of associated risk

(e) Training to avoid the hazard or reduce the likelihood of an associated risk.

(10) **Residual and Substitute Risk.** It is seldom possible to entirely eliminate risk, even when highly effective controls are used. After these controls are designed but before the system is placed back on line, an assessment must be made of whether the controls are likely to be effective and/or if they introduce new hazards to the system. The latter condition is referred to as "substitute risk," a situation where "the cure is worse than the disease." The loop seen in Figure 3 back to the top of the diagram depicts the use of the preceding systems analysis, hazard identification, risk analysis, and risk assessment processes to determine if the modified system is acceptable.

(11) **System Operation.** When the controls are acceptable, the system is placed into operation. The next process, safety assurance, uses auditing, analysis, and review systems that are familiar from similar quality management systems. These processes are used to monitor the risk controls to ensure they continue to be implemented as designed and continue to be effective in a changing operational environment.

d. Safety Assurance: Managing the Requirements. The safety assurance function applies the processes of quality assurance and internal evaluation to the process of making sure that risk controls, once designed, continue to conform to their requirements and that they continue to be effective in maintaining risk within acceptable levels. These assurance and evaluation functions also provide a basis for continuous improvement.

(1) Relationship between Safety Risk Management, Safety Assurance, and Internal Evaluation. Quality assurance processes concentrate on proving, through collection and analysis of objective evidence, that process requirements have been met. In an SMS, the system's requirements are based on assessment of risk in the organization's operation or in the products that it produces, as discussed above. Quality assurance techniques, including internal auditing and evaluation, can be used to determine if risk controls that are designed into the operator's processes are being practiced and that they perform as designed. The process is, therefore, appropriately termed "safety assurance." If an operator already has an IEP, it should be reviewed to ensure that it conforms to the SMS safety assurance standards.[13]

> **NOTE: the safety assurance function does not need to be extensive or complex to be effective. Smaller organizations may find available tools such as the Internal Evaluation Program Audit tools produced by the Medallion Foundation (http://www.medallionfoundation.org) to be a good foundation for their organization's safety assurance processes.**

(2) Role of Other Management Systems. As discussed above, safety assurance uses many of the same practices as those used in quality management systems (QMS). In an SMS however the requirements being managed relate to ensuring risk controls, once designed and put into place, perform in a way that continues to meet their safety objectives. While operators may find it beneficial to integrate their management systems for these other areas, such as quality, employee health and safety, or environmental protection with the SMS, it is beyond the scope of the safety management standard to address these areas directly. Appendix 2 to this AC contains a table of cross-references between ISO standards and other recognized standards for quality (ISO 9000:2000), environmental protection (ISO 14001), and employee health and safety management (BSI OHSAS 18001). These are provided for convenience for organizations that desire to develop integrated management systems or that may already have existing systems in one or more of these areas.

(3) Information for Decisionmaking. Information for safety assurance comes from a variety of sources, including formal program auditing and evaluation, investigations of safety-related events, and continuous process monitoring of day-to-day activities and inputs from employees through employee reporting systems. While each of these types of information sources exist to some degree in every organization, the standard formalizes requirements for each. Specifications for these and other related safety assurance processes are left at a functional level, allowing individual organizations to tailor them to the scope and scale appropriate for their size and type of organization.

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[13] The safety assurance functions in the SMS standard contained in Appendix 1 were derived almost directly from ISO 9000-2000, the international quality management standard and the IEP development guidance in AC 120-59A.

(4) **Internal Audits by Operating Departments.** The primary responsibility for safety management rests with those who "own" the operator's technical processes. It is here where hazards are most directly encountered, where deficiencies in processes contribute to risk, and where direct supervisory control and resource allocation can mitigate the risk to acceptable levels. The standard specifies a responsibility for internal auditing of the operator's productive processes (the Production/Operation side of Figures 1 and 2). As with other requirements, the standard's auditing requirements are left at a functional level, allowing for a broad range of complexity, commensurate with the complexity of the organization.

(a) **Line Management Responsibilities.** Line managers of operational departments have the direct responsibility for quality control and for ensuring that the processes in their areas of responsibility function as designed. Moreover, line organizations are the domain technical experts in any organization and thus the most knowledgeable about the technical processes involved. Line managers of the operational departments should be given the responsibility for monitoring these processes and periodically assessing the status of risk controls though an internal auditing and evaluation program.

(b) **Audit Programs and Tools.** In order to promote system integration and a minimum of duplication, operators may want to consider using available technical system audit tools such as those provided by the Air Transportation Oversight System (ATOS)[14] or third party tools such as those in the IATA Operational Safety Audit (IOSA). This can be particularly advantageous if the operator is already involved with using these programs.

(5) **Internal Evaluation.** This function involves evaluation of the technical processes of the operator as well as the SMS-specific functions. Audits conducted for the purpose of this requirement must be conducted by persons or organizations that are functionally independent of the technical process being evaluated. A specialist safety or quality assurance department or another sub-organization as directed by top management may accomplish it. The internal evaluation function also requires auditing and evaluation of the safety management functions, policymaking, safety risk management, safety assurance, and safety promotion. These audits provide the management officials designated responsibility for the SMS to inventory the processes of the SMS itself.

NOTE: In very small organizations, the top management may elect to conduct the internal evaluation function themselves, in conjunction with the management review function.

(6) **Integration of Regulatory and Voluntary Programs.** The provisions of the SMS standard are not intended to duplicate the functions of required CASS (required for operators under part 121 or part 135 of Title 14 of the Code of Federal Regulations) (14 CFR) or IEPs. In fact, the FAA encourages an integrated approach where these programs are all part of a comprehensive SMS.

(7) **External Audits.** External audits of the SMS may be conducted by the regulator (FAA), code-share partners, customer organizations, or other third parties selected by the

[14] Available at: http://www.faa.gov/safety/programs_initiatives/oversight/atos/library/data_collection

operator. These audits not only provide a strong interface with the oversight system (SMS-O) but also a secondary assurance system. Organizations may elect to have third-party audits of their SMS from organizations such as the IATA or other consultant organizations.

(8) **Analysis and Assessment.** Audits and other information-gathering activities are useful to management only if the information is distilled into a meaningful form and conclusions are drawn to form a bottom line. Recall that the primary purpose of the safety assurance process is to assess the continued effectiveness of risk controls put into place by the safety risk management process. Where significant deviations to existing controls are discovered, the standard requires a structured, documented process for preventive and corrective action to place the controls back on track.

(9) **Corrective Action and Followup.** The safety assurance process should include procedures that ensure that corrective actions are developed in response to findings of audits and evaluations and to verify their timely and effective implementation. Organizational responsibility for the development and implementation of corrective actions should reside with the operational departments cited in audit and evaluation findings. If new hazards are discovered, the safety risk management process should be employed to determine if new risk controls should be developed.

(10) **Monitoring the Environment.** As part of the safety assurance function, the analysis and assessment functions must alert the organization to significant changes in the operating environment, possibly indicating a need for system change to maintain effective risk control. When this occurs, the results of the assessment start the safety risk management process, as depicted in Figure 3.

e. Safety Promotion: Supporting the Culture. An organizational safety effort cannot succeed by mandate or strictly though a mechanistic implementation of policy. As in the case of attitudes where individual people are concerned, organizational cultures set the tone that predisposes the organization's behavior. An organization's culture consists of the values, beliefs, mission, goals, and sense of responsibility held by the organization's members. The culture fills in the blank spaces in the organization's policies, procedures, and processes and provides a sense of purpose to safety efforts.

(1) **Safety Cultures.** Cultures consist of psychological (how people think and feel), behavioral (how people and groups act and perform) and structural (the programs, procedures, and organization of the enterprise) elements. Many of the processes specified in the policy, risk management, and assurance components of the SMS provide the framework for the structural element. However, the organization must also set in place processes that allow for communication among employees and with the organization's management. The aviation service provider must make every effort to communicate its goals and objectives, as well as the current status of the organization's activities and significant events. Likewise, the aviation service provider must supply a means of upward communication in an environment of openness.

(2) **Communication: A Two Way Street.** Dr. James Reason, among other current organizational system safety theorists, stresses the need for a "reporting culture" as an important aspect of safety culture. The organization must do what it can to cultivate the willingness of its members to contribute to the organization's knowledge base. Dr. Reason further stresses the

need for a "just culture," where employees have the confidence that, while they will be held accountable for their actions, the organization will treat them fairly.[15] The standard specifies that the aviation service provider must provide for a means of employee communication that allows for timely submission of reports on safety deficiencies without fear of reprisal. Many certificated operators already have invested in ASAP. ASAP is a collaborative, reporting, analysis, and problem solving effort among the FAA, operators, and employee unions. This program is another example of a voluntary program that could be integrated into the SMS, having a strong potential to contribute to the safety assurance and safety promotion.

(3) **Organizational Learning.** Another of Dr. Reason's principles of organizational safety culture is that of a "learning culture."[16] The information in reports, audits, investigation, and other data sources does no good if the organization does not learn from it. The standard also requires a means of analysis of this information and a linkage to the safety assurance process. The standard requires an analysis process, a preventive/corrective action process, and a path to the safety risk management process for the development of new safety controls, as environments change and new hazards are identified. It further requires that the organization provide training and information about risk controls and lessons learned.

9. CONTACT. For additional information or suggestions, please contact AFS-800 at (202) 267-8212, or AFS-900 at (703) 661-0526.

ORIGINAL SIGNED BY
John M. Allen (for)

James J. Ballough
Director, Flight Standards Service

[15] Reason. Managing the Risks of Organizational Accidents.

[16] Ibid.

External audit – an audit conducted by an entity outside of the organization being audited.

Aviation system – the functional operation/production system used by the service provider to produce the product/service (see Figure 1).

Complete – nothing has been omitted and the attributes stated are essential and appropriate to the level of detail.

Continuous monitoring – uninterrupted watchfulness over the system.

Corrective action – action to eliminate or mitigate the cause or reduce the effects of a detected nonconformity or other undesirable situation.

Correct – accurately reflects the item with an absence of ambiguity or error in its attributes.

Documentation – information or meaningful data and its supporting medium (e.g., paper, electronic, etc.). In this context it is distinct from records because it is the written description of policies, processes, procedures, objectives, requirements, authorities, responsibilities, or work instructions.

Evaluation – [ref. AC 120-59A] a functionally independent review of company policies, procedures, and systems. If accomplished by the company itself, the evaluation should be done by an element of the company other than the one performing the function being evaluated. The evaluation process builds on the concepts of auditing and inspection. An evaluation is an anticipatory process, and is designed to identify and correct potential findings before they occur. An evaluation is synonymous with the term systems audit.

Hazard – any existing or potential condition that can lead to injury, illness, or death to people; damage to or loss of a system, equipment, or property; or damage to the environment. A hazard is a condition that is a prerequisite to an accident or incident.

Incident – a near miss episode with minor consequences that could have resulted in greater loss. An unplanned event that could have resulted in an accident, or did result in minor damage, and indicates the existence of, though may not define, a hazard or hazardous condition.

Lessons learned – knowledge or understanding gained by experience, which may be positive, such as a successful test or mission, or negative, such as a mishap or failure. Lessons learned should be developed from information obtained from within, as well as outside of, the organization and/or industry.

Likelihood – the estimated probability or frequency, in quantitative or qualitative terms, of an occurrence related to the hazard.

Line management – management structure that operates the aviation system.

Nonconformity – non fulfillment of a requirement (ref. ISO 9000). This includes but is not limited to noncompliance with Federal regulations. It also includes company requirements, requirements of operator developed risk controls or operator specified policies and procedures.

Operational life cycle – period of time spanning from implementation of a product/service until it is no longer in use.

Oversight – a function that ensures the effective promulgation and implementation of the safety-related standards, requirements, regulations, and associated procedures. Safety oversight also ensures that the acceptable level of safety risk is not exceeded in the air transportation system. Safety oversight in the context of the safety management system will be conducted via oversight's safety management system (SMS-O).

Preventive action – action to eliminate or mitigate the cause or reduce the effects of a potential nonconformity or other undesirable situation.

Procedure – specified way to carry out an activity or a process.

Process – set of interrelated or interacting activities which transforms inputs into outputs.

Product/service – anything that might satisfy a want or need, which is offered in, or can be purchased in, the air transportation system. In this context, administrative or licensing fees paid to the government do not constitute a purchase.

Product/service provider – any entity that offers or sells a product/service to satisfy a want or need in the air transportation system. In this context, administrative or licensing fees paid to the government do not constitute a purchase. Examples of product/service providers include: aircraft and aircraft parts manufacturers; aircraft operators; maintainers of aircraft, avionics, and air traffic control equipment; educators in the air transportation system; etc. (Note: any entity that is a direct consumer of air navigation services and or operates in the U.S. airspace is included in this classification; examples include: general aviation, military aviation, and public use aircraft operators.)

Records – evidence of results achieved or activities performed. In this context it is distinct from documentation because records are the documentation of SMS outputs.

Residual safety risk – the remaining safety risk that exists after all control techniques have been implemented or exhausted, and all controls have been verified. Only verified controls can be used for the assessment of residual safety risk.

Risk – The composite of predicted severity and likelihood of the potential effect of a hazard in the worst credible system state.

Risk Control – refers to steps taken to eliminate hazards of to mitigate their effects by reducing severity and/or likelihood of risk associated with those hazards.

Safety assurance – SMS process management functions that systematically provide confidence that organizational products/services meet or exceed safety requirements.

Safety culture – the product of individual and group values, attitudes, competencies, and patterns of behavior that determine the commitment to, and the style and proficiency of, the organization's management of safety. Organizations with a positive safety culture are characterized by communications founded on mutual trust, by shared perceptions of the importance of safety, and by confidence in the efficacy of preventive measures.

Safety Management System (SMS) – the formal, top-down business-like approach to managing safety risk. It includes systematic procedures, practices, and policies for the management of safety (as described in this document it includes safety risk management, safety policy, safety assurance, and safety promotion).

Product/Service Provider Safety Management System (SMS-P) – the SMS owned and operated by a product/service provider.

Oversight Safety Management System (SMS-O) – the SMS owned and operated by an oversight entity.

Safety objectives.[17]– something sought or aimed for, related to safety.

NOTE 1: Safety objectives are generally based on the organization's safety policy.

NOTE 2: Safety objectives are generally specified for relevant functions and levels in the organization.

Safety planning[18] – part of safety management focused on setting safety objectives and specifying necessary operational processes and related resources to fulfill the quality objectives.

Safety risk – the composite of predicted severity and likelihood of the potential effect of a hazard.

Safety risk control – anything that reduces or mitigates the safety risk of a hazard. Safety risk controls must be written in requirements language, measurable, and monitored to ensure effectiveness.

Safety risk management (SRM) – a formal process within the SMS composed of describing the system, identifying the hazards, assessing the risk, analyzing the risk, and controlling the risk. The SRM process is embedded in the processes used to provide the product/service; it is not a separate/distinct process.

Safety promotion – a combination of safety culture, training, and data sharing activities that support the implementation and operation of an SMS in an organization

Severity – the consequence or impact of a hazard in terms of degree of loss or harm.

Substitute risk – risk unintentionally created as a consequence of safety risk control(s).

System – an integrated set of constituent elements that are combined in an operational or support environment to accomplish a defined objective. These elements include people, hardware, software, firmware, information, procedures, facilities, services, and other support facets.

Top Management – (ref. ISO 9000-2000 definition 3.2.7) the person or group of people who directs and controls an organization.

4. Policy

4.1. General Requirements

A) Safety management shall be included in the complete scope of the operator's systems including:

[17] Adapted from definition 3.2.5 in ISO 9000-2000 for "quality objectives."

[18] Adapted from definition 3.2.9 in ISO 9000-2000 for "quality planning."

1) flight operations;

2) dispatch/flight following;

3) maintenance and inspection;

4) cabin safety;

5) ground handling and servicing;

6) cargo handling; and

7) training.

B) SMS processes shall be:

1) documented;

2) monitored;

3) measured; and

4) analyzed.

C) SMS outputs shall be:

1) recorded;

2) monitored;

3) measured; and

4) analyzed.

D) The organization shall promote the growth of a positive safety culture (described in Sections 4.2 and 7.1).

4.2. *Safety Policy*

A) Top management shall define the organization's safety policy.

B) The safety policy shall:

1) include a commitment to implement an SMS;

2) include a commitment to continual improvement in the level of safety;

3) include a commitment to the management of safety risk;

4) include a commitment to comply with applicable regulatory requirements;

5) include a commitment to encourage employees to report safety issues without reprisal;

6) establish clear standards for acceptable behavior;

7) provide management guidance for setting safety objectives;

8) provide management guidance for reviewing safety objectives;

9) be documented;

10) be communicated to all employees and responsible parties;

11) be reviewed periodically to ensure it remains relevant and appropriate to the organization; and

12) identify responsibility of management and employees with respect to safety performance.

4.3. Quality Policy

Top management shall ensure that the organization's quality policy is consistent with the SMS.

4.4. Safety Planning

The organization shall establish and maintain a safety management plan to meet the safety objectives described in its safety policy.

4.5. Organizational Structure and Responsibilities

A) Top management shall have the ultimate responsibility for the SMS.

B) Top management shall provide resources essential to implement and maintain the SMS.

C) Top management shall appoint a member of management who, irrespective of other responsibilities, shall have responsibilities and authority that includes:

1) ensuring that process needed for the SMS are established, implemented and maintained

2) reporting to top management on the performance of the SMS and the need for improvement, and

3) ensuring the promotion of awareness of safety requirements throughout the organization.

D) Aviation safety-related positions, responsibilities, and authorities shall be:

1) defined;

2) documented; and

3) communicated throughout the organization.

4.6. Compliance with Legal and Other Requirements

A) The SMS shall incorporate a means of compliance with safety-related legal and regulatory requirements.

B) The organization shall establish and maintain a procedure to identify to current safety-related legal and regulatory requirements applicable to the SMS.

4.7. Procedures and Controls

A) The organization shall establish and maintain procedures with measurable criteria to accomplish the objectives of the safety policy[19].

B) The organization shall establish and maintain process controls to ensure procedures are followed for safety-related operations and activities.

4.8. Emergency Preparedness and Response

The organization shall establish procedures to:

1) identify the potential for accidents and incidents;

2) coordinate and plan the organization's response to accidents and incidents; and

3) execute periodic exercises of the organization's response.

4.9. Documentation and Records Management

A) General.

The organization shall establish and maintain information, in paper or electronic form, to describe:

1) safety policies;

2) safety objectives;

3) SMS requirements;

4) safety-related procedures and processes;

5) responsibilities and authorities for safety-related procedures and processes;

6) interaction/interfaces between safety-related procedures and processes; and

7) SMS outputs.

B) Documentation Management.

1) Documentation shall be:

a) legible;

b) dated (with dates of revisions);

c) readily identifiable;

d) maintained in an orderly manner; and

e) retained for a specified period as determined by the organization (and approved by the oversight organization).

2) The organization shall establish and maintain procedures for controlling all documents required by this Standard to ensure that:

[19] Measures are not expected for each procedural step. However, measures and criteria should be of sufficient depth and level of detail to ascertain and track accomplishment of objectives. Criteria and measures can be expressed in either quantitative or qualitative terms.

B) The SRM process shall be applied to:

1) initial designs of systems, organizations, and/or products;

2) the development of operational procedures;

3) hazards that are identified in the safety assurance functions (described in Section 6); and

4) planned changes to the operational processes to identify hazards associated with those changes.

C) The organization shall establish feedback loops between assurance functions described in Section 6 to evaluate the effectiveness of safety risk controls.

D) The organization shall define acceptable and unacceptable levels of safety risk (or safety risk objectives).

1) Descriptions shall be established for:

a) severity levels, and

b) likelihood levels.

2) The organization shall define levels of management that can make safety risk acceptance decisions.

3) The organization shall define acceptable risk for hazards that will exist in the short-term while safety risk control/mitigation plans are developed and executed.

E) The following shall not be implemented until the safety risk of each identified hazard is determined to be acceptable in:

1) new system designs;

2) changes to existing system designs;

3) new operations/procedures; and

4) modified operations/procedures.

F) The SRM process shall not preclude the organization from taking interim immediate action to mitigate existing safety risk.

5.1. System and Task Analysis

A) System and task descriptions shall be developed to the level of detail necessary to identify hazards.

B) System and task analyses should consider the following:

1) the system's interactions with other systems in the air transportation system (e.g. airports, air traffic control);

2) the system's functions for each area listed in para 4.1 A);

3) employee tasks required to accomplish the functions in 5.1 B) 2);

4) required human factors considerations of the system (e.g. cognitive, ergonomic, environmental, occupational health and safety) for:

6.3.1 Continuous Monitoring

A) The organization shall monitor operational data (e.g., duty logs, crew reports, work cards, process sheets, or reports from the employee safety feedback system specified in Section 7.1.5 to:

1) assess conformity with safety risk controls (described in Section 5);
2) measure the effectiveness of safety risk controls (described in Section 5);
3) assess system performance; and
4) identify hazards.

B) The organization shall monitor products and services received from subcontractors.

6.3.2 Internal Audits by Operational Departments

A) Line management of operational departments shall ensure that regular internal audits of safety-related functions of the organization's operational processes (production system) are conducted. This obligation shall extend to any subcontractors that they may use to accomplish those functions.

B) Line management shall ensure that regular audits are conducted to:

1) determine conformity with safety risk controls; and
2) assess performance of safety risk controls.

C) Planning of the audit program shall take into account:

1) safety significance of the processes to be audited; and
2) the results of previous audits.

D) The audit program shall include:

1) definition of the audit:
   a) criteria,
   b) scope,
   c) frequency, and
   d) methods;
2) the processes used to select the auditors;
3) the requirement that individuals shall not audit their own work;
4) documented procedures, which include:
   a) the responsibilities; and
   b) requirements for:
      (1) planning audits,
      (2) conducting audits,
      (3) reporting results, and

(4) maintaining records; and

5) audits of contractors and vendors.

6.3.3 Internal Evaluation

A) The organization shall conduct internal evaluations of the operational processes and the SMS at planned intervals to determine that the SMS conforms to requirements.

B) Planning of the evaluation program shall take into account:

1) safety significance of processes to be audited; and

2) the results of previous audits.

C) The evaluation program shall include:

1) definition of the evaluation:

a) criteria;

b) scope;

c) frequency; and

d) methods;

2) the processes used to select the auditors;

3) the requirement that auditors shall not audit their own work;

4) documented procedures, which include:

a) the responsibilities, and

b) requirements for:

(1) planning audits,

(2) conducting audits,

(3) reporting results,

(4) and maintaining records; and

5) audits of contractors and vendors.

D) The program shall be under the direction of the management official described in Section 4.5.

E) The program shall include an evaluation of the program required described in Section 6.3.2.

F) The person or organization performing evaluations of operational departments must be functionally independent of the department being evaluated.

6.3.4 External Auditing of the SMS

A) The organization shall include the results of oversight organization audits in the analyses conducted as described in Section 6.4.

6.3.5 Investigation

A) The organization shall collect data on:

1) incidents, and

2) accidents.

B) The organization shall establish procedures to:

1) investigate accidents;

2) investigate incidents; and

3) investigate instances of potential regulatory non-compliance.

6.3.6 Employee Reporting and Feedback System.

A) The organization shall establish and maintain a confidential employee safety reporting and feedback system as in Section 7.1.5).

B) Employees shall be encouraged to use the safety reporting and feedback system without reprisal as in Section 4.2 B) 5).

C) Data from the safety reporting and feedback system shall be monitored to identify emerging hazards.

D) Data collected in the safety reporting and feedback system shall be included in analyses described in Section 6.4.

6.4. Analysis of Data

A) The organization shall analyze data the data described in Section 6.3 to demonstrate the effectiveness of:

1) risk controls in the organization's operational processes, and

2) the SMS.

B) Through data analysis, the organization shall evaluate where improvements can be made to the organization's:

1) operational processes, and

2) SMS.

6.5. System Assessment

A) The organization shall assess the performance of:

1) safety-related functions of operational processes against their requirements, and

2) the SMS against its requirements.

B) System assessments shall result in a finding of:

1) conformity with existing safety risk control(s)/ SMS requirement(s) (including regulatory requirements);

2) nonconformity with existing safety risk control(s)/ SMS requirement(s) (including regulatory requirements); and

3) new hazard(s) found.

C) The SRM process will be utilized if the assessment indicates:

1) the identification of new hazards; or

2) the need for system changes.

D) The organization shall maintain records of assessments in accordance with the requirements of Section 4.9.

6.6. Preventive/Corrective Action

A) The organization shall develop, prioritize, and implement, as appropriate:

1) corrective actions for identified nonconformities with risk controls; and

2) preventive actions for identified potential nonconformities with risk controls actions.

B) Safety lessons learned shall be considered in the development of:

1) corrective actions; and

2) preventive actions.

C) The organization shall take necessary corrective action based on the findings of investigations.

D) The organization shall prioritize and implement corrective action(s) in a timely manner.

E) The organization shall prioritize and implement preventive action(s) in a timely manner.

F) Records shall be kept of the disposition and status of corrective and preventive actions per established record retention policy.

6.7. Management Reviews

A) Top management will conduct regular reviews of the SMS, including:

1) the outputs of SRM (Section 5);

2) the outputs of safety assurance (Section 6); and

3) lessons learned (Section 7.5).

B) Management reviews shall include assessing the need for changes to the organization's:

1) operational processes, and

2) SMS.

6.8 Continual Improvement

The organization shall continuously improve the effectiveness of the SMS and of safety risk controls through the use of the safety and quality policies, objectives, audit and evaluation results, analysis of data, corrective and preventive actions, and management reviews.

7. Safety Promotion

7.1. Safety Culture

Top management shall promote the growth of a positive safety culture through:

1) publication of senior management's stated commitment to safety to all employees;

2) visible demonstration of their commitment to the SMS;

3) communication of the safety responsibilities for the organization's personnel;

4) clear and regular communication of safety policy, goals, objectives, standards, and performance to all employees of the organization

5) an effective employee safety feedback system that provides confidentiality as is necessary;

6) use of a safety information system that provides an accessible efficient means to retrieve information; and

7) allocation of resources essential to implement and maintain the SMS.

7.2. Communication and Awareness

A) The organization shall communicate outputs of the SMS to its employees, as appropriate.

B) The organization shall provide access to the outputs of the SMS to its oversight organization, in accordance with established agreements and disclosure programs.

7.3. Personnel Requirements (Competence)

A) The organization shall document competency requirements for those positions identified in Section 4.5.D).

B) The organization shall ensure that those individuals in the positions identified in 4.5.D) meet those competency requirements.

7.4. Training

Training shall be developed for those individuals in the positions identified in 4.5.D).

1) Training shall include:

   a) initial training; and

   b) recurrent training.

2) Employees shall receive training commensurate with their:

APPENDIX 2. COMPARISON OF SMS-P STANDARD WITH OTHER STANDARDS

1. PURPOSE OF THIS APPENDIX.

a. The table below is provided to assist those organizations developing and implementing an SMS. It provides a link between existing standards and this standard. It includes links to the following:

(1) Quality Management Systems via International Standards Organization (ISO) 9001:2000 and the Aerospace Basic Quality System Standard (AS 9100) requirements;

(2) Environmental Management Systems via ISO 14001 requirements; and

(3) Occupational Safety and Health Management Systems via OHSAS 18001. (NOTE: OHSAS 18001 is an Occupation Health and Safety Assessment Series for health and safety management systems, which was created through a concerted effort from a number of the world's leading national standards bodies, certification bodies, and specialist consultancies.)

b. The table is intended to assist the developer in building on existing management systems to develop the SMS and/or integrating its SMS with these existing management systems.

2. SMS-P STANDARD COMPARED WITH OTHER STANDARDS.

Content (Standards)	SMS-P Standard	ISO 9001:2000/ AS 9100	ISO 14001	OHSAS 18001
Scope and application	1	1	1	1
References (Normative)	2	2	2	2
Definitions	3	3	3	3
Management system description	4	4	4	4
General requirements (and Responsibility/Authority (ISO 9000))	4.1	4.1, 5.5	4.1	4.1
Policy (safety, environmental, quality)	4.2, 4.3	5.1, 5.3, 8.5	4.2	4.2
Planning	4.4	5.4	4.3	4.3
Requirements (hazard/risk, environmental aspects, customer requirements)	5	5.2, 7.2.1, 7.2.2	4.3.1	4.3.1
Legal and other requirements, customer focus (ISO 9000)	4.6	5.2, 7.2.1	4.3.2	4.3.2
Objectives and targets	4.2.B), 5D.	5.4.1	4.3.3	4.3.3

Content (Standards)	SMS-P Standard	ISO 9001:2000/ AS 9100	ISO 14001	OHSAS 18001
Programs, action planning to meet targets, continual improvement	4.1.A), 4.4, 5.5	5.4.2, 8.5.1	4.3.4	4.3.4
Management responsibility and organizational structure	4.5	5, 6 (Resource mgmt.)	4.4.1	4.4.1
Training	7.3, 7.4	6.2.2	4.4.2	4.4.2
Communications	6.3.6, 7.2, 7.5	5.5.3, 7.2.3	4.4.3	4.4.3
Documentation and quality manual (ISO 9000)	4.9	4.2	4.4.4	4.4.4
Document and data control	4.9	4.2.3	4.4.5	4.4.5
Operational control and product realization	4.7	7	4.4.6	4.4.6
Emergency preparedness and response, control of nonconforming product (ISO 9000)	4.8	8.3	4.4.7	4.4.7
Performance measurement and monitoring	4.1, 6.3.1, 6.4, 6.5	8	4.5	4.5
Accidents, incidents, nonconformity, corrective and preventive action	6.3.5, 6.5, 6.6	8.3, 8.5.2, 8.5.3	4.5.2	4.5.2
Auditing	6.3.3 – 6.3.5	8.2.2	4.5.4	4.5.4
Management review	6.7	5.6	4.6	4.6
Continual Improvement	6.8	8.5.1	4.3.4	4.3.4

Appendix A

Exhibit 12

U.S. Department of Transportation
Federal Aviation Administration

800 Independence Ave., S.W.
Washington, DC 20591

NOV 17 2006

Mr. Adam Miles
Government Accountability Project
National Office
1612 K Street, NW., Suite 1100
Washington DC 20006

Freedom of Information Act # 2007-0697

Dear Mr. Miles:

This is in response to your Freedom of Information Act (FOIA) dated October 24. We are enclosing a copy of "Flight Standards Information Bulletin for Airworthiness (FSAW 04-10B) Reexamination of Airframe and Powerplant Certificate Holders Who Took Oral and Practical Exams at the St. George Aviation Testing Center in Sanford, Florida." This document is responsive to your request for a comprehensive description of the retesting program as it was implemented, including, but not limited to, whether mechanics were retested for hands-on competency, in addition to oral and written examinations.

In a telephone conversation on October 31 with Ms. LaShells, Aircraft Maintenance Division, you indicated that you are looking primarily for a current status of the St. George Aviation project rather than specific records. Therefore, we are submitting the following information in response to your revised request.

- Number of recertification that have been completed – As of November 1, a total of 1,274 out of 1,455 airmen have been processed (either passed examination, surrendered certificate, or suspended certificate). The remaining 181 airmen either meet the Special Federal Aviation Regulation No. 100-1, cannot be located, are in the queue to be tested, or are in the legal process. All airmen will be successfully tested, or their certificate will be surrendered or suspended before the project is officially completed.
- Number of St. George certified mechanics* that were retested – There were 647.
- Number of St. George certified mechanics* working for commercial airlines prior to retesting – The FAA does not have statistics on this issue.
- Number of St. George certified mechanics* that continue to work for commercial airlines – The FAA does not have statistics on this issue.
- Number of St. George certified mechanics* working for the FAA – There were three. All airmen/FAA employees were treated equally according to FSAW 04-10B.

- Communication from FAA to Department of Transportation – No communication/documentation has been exchanged between the FAA and the Department of Transportation on this issue.

(*Individuals holding mechanic certificates with airframe and/or powerplant ratings who tested at the St. George Aviation testing facility in Sanford, Florida, between October 10, 1995, and December 31, 1998.)

There is no fee to process your request as the cost to process was less than $10.00.

Sincerely,

for David Cann
Manager, Aircraft Maintenance Division
Flight Standards Service

Enclosure

Appendix A

Exhibit 13

APPENDIX A
Exhibit 13

Government Accountability Project
National Office
1612 K Street, N.W. • Suite 1100
Washington, D.C. 20006
(202)408-0034 • Fax: (202)408-9855
Email: info@whistleblower.org • Website: www.whistleblower.org

July 23, 2007

Federal Aviation Administration
National Freedom of Information Act Staff, ARC-40
800 Independence Avenue, SW
Washington, DC 20591

Re: **FOIA Request**

Dear Freedom of Information Officer:

This Freedom of Information Act request is in response to a November 17, 2006, letter (attached) from the FAA responding to my FOIA request dated October 24, 2006. The Nov. 17 letter accurately notes that I am "looking primarily for a current status [update] of the St. George Aviation project rather than specific records." Along these lines, I appreciate the information that was sent in the Nov. 17 letter from Mr. David Cann. However, after reviewing the information provided, I am seeking additional information in connection with the FAA's response to the aviation safety concerns created by the criminal activity of Anthony St. George.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting responses to the following:

1. Has the St. George Reexamination activity adhered to the "St. George Aviation Action Plan" that was approved by FAA headquarters in August 1999? If not, why not? If not, who authorized the decision to change the testing program and/or the methodology for reexaminations from the initial plan approved as the "St. George Aviation Action Plan" in August 1999? Please provide any communications by FAA officials relevant to this decision.

2. Retesting statistics:

   a. How many St. George issued certificate holders have been reexamined as of July 23, 2007?

   b. How many St. George certified certificate holders did the FAA identify for the retesting program?

   c. How many of the St. George certified certificate holders identified for retesting took the re-examination and met the satisfactory requirement

identified in FSAW 04-10B?

d. How many of the St. George certified certificate holders identified for retesting chose to voluntarily surrender their certificates after being advised they were going to be retested, but before taking the reexamination?

e. How many St. George certified certificate holders attempted the reexamination and received an unsatisfactory score or otherwise failed the reexamination?

Of these, how many failed the reexamination program that was initially authorized as the "St. George Action Plan" in August 1999? What was the percentage of certificate holders that failed to pass the reexamination under this action plan?

Of those that failed, how many did not meet the satisfactory requirement as specified in Bulletin FSAW 04-10B, which became effective on September 21, 2004? Of those that failed to meet the satisfactory requirement specified in FSAW 04-10B, how many voluntarily returned their certificates to the FAA? How many chose to be retested a second time? In how many of these cases did the individual receive a second unsatisfactory rating? In how many cases did the FAA initiate "legal enforcement action," as specified in item 18, in Bulletin FSAW 04-10B? What was the percentage of certificate holders that failed to pass the reexamination detailed in Bulletin FSAW 04-10B?

f. How many of the St. George certified certificate holders identified for retesting failed to comply with the FAA's order for retesting and have subsequently had their certificates suspended by the FAA? How many of these certificate holders has the FAA been unable to locate? In how many of these cases did the FAA initiate legal enforcement action?

3. Did the FAA take any steps to determine whether any St. George certified mechanics that failed the reexamination or had their certificate suspended because of the reexamination program were performing or continue to perform any work for commercial airlines that is contingent on holding an Airframe and Powerplant certification?

4. How many of the St. George re-certifications/retests have been conducted by FAA inspectors? How many of the St. George re-certifications/retests have been conducted by designated contract examiners?

5. What coordination, if any, has taken place between the FAA and any air carrier that

employed a St. George certified mechanic that had their certificate revoked, removed, suspended, or rescinded?

6. Did the three St. George certified mechanics the FAA identified as working for the FAA pass the reexamination program as specified in FSAW-04B? Were they reexamined before or after being hired by the FAA? At what offices and in what capacity are the FAA employees who obtained their A&P credentials through St. George currently working? If they have left the FAA since your Nov. 17, 2006 response, where in the FAA did they work at that time?

7. Has the list of St. George issued certificate holders been cross-referenced with FAA/NTSB accident investigations? If not, why not?

8. Has the FAA provided the Department of Transportation Office of Inspector General with any information on this issue? If so, please provide these communications.

9. Please provide the current requirements that new applicants for airframe and powerplant certificates must meet. Specifically, are new applicants required to take a practical test or other demonstration of "hands-on" competency? Also, is a score of 70 percent satisfactory to meet the guidelines for competency in oral or written tests given by the FAA or designated examiners for A&P certificates?

Thank you very much for your assistance.

If any of the material covered by this request has been destroyed or removed, please provide all surrounding documentation including, but not limited to, a description of the action taken regarding the materials and justification for those actions taken. For any documents or portions you deny due to a specific FOIA exemption, please provide a detailed justification of your grounds for claiming such exemption, explaining why the exemption is relevant to the document or portion of the document withheld.

The Government Accountability Project requests that all fees incurred in connection with the attached request to the Federal Aviation Administration be waived, because "disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester." 5 U.S.C. §552 (a)(4)(A)(iii).

The Government Accountability Project consents to the deletion of any material that would violate an individual's rights under the Privacy Act. We will work with your office to prioritize responsive data for this request, further refine the request if you find any terms too imprecise, conduct searches for unclassified responsive records, or engage in any other reasonable activities that would lessen the agency's burden and costs.

Appendix A

Exhibit 14

Print Message

[redacted]

From: "Adam Miles" <adamm@whistleblower.org> Add to Address Book
Date: 2007/08/29 Wed PM 12:29:17 EDT
To: "Gorman, Karen" <kgorman@osc.gov>
CC: [redacted] Add to Address Book
Subject: FW: St. George Aviation

—Original Message—
From: Marci.D.LaShells@faa.gov [mailto:Marci.D.LaShells@faa.gov]
Sent: Thursday, August 16, 2007 11:03 AM
To: Adam Miles
Subject: St. George Aviation

Adam,

Per our conversation on Tuesday, here is a copy of the response to your July 23, 2007 letter. The original will be mailed out by regular mail. As your letter it was asking questions pertaining to a former FOIA, it was not logged in the system as a new FOIA. However, the response is basically the same. Further inquires on this issue can be sent to the following:

Federal Aviation Administration
Aircraft Maintenance Division, AFS-310
800 Independence Ave, SW
Washington DC 20591

Sincerely,

Marci

Marci LaShells, AFS-310
Aviation Safety Analyst
202-267-7434

Mr. Adam Miles
Government Accountability Project
National Office
1612 K Street, NW Suite 1100
Washington DC 20006

Dear Mr. Miles:

In regards to your July 23, 2007 letter pertaining to the St. George Aviation project:

Responses to your request:

1. The St. George Aviation Action Plan you referred to was cancelled in 2000/2001. The project was brought back to the attention of the FAA in 2004, in which a new action plan was initiated via the Flight Standards Information Bulletin for Airworthiness (FSAW 04-10B) - Reexamination of Airframe and Powerplant Certificate Holders Who Took Oral and Practical

Exams at the St. George Aviation Testing Center in Sanford, Florida. This FSAW has been supplied to you, and is also on the FAA website.

2. Retesting Statistics: Effective August 1, 2007

a. Number of certificate holders reexamined - 712
b. Number of St. George certificate holders identified for retesting - 1455
c. Number of St. George certificate holders who have satisfactory met the requirement - 573
d. Number of St. George certificate holders who have voluntarily surrendered certificate - 232
e. Number of St. George certificate holders who have failed to satisfactorily pass the exam - 226 failed the initial examination, out of the 226, 177 retested - 50 % passed on the 2nd attempt. Approximately 375 have been turned over to legal for enforcement actions.

3. The current St. George Aviation plan is not monitoring the airmen who have had their certificates suspended or revoked. There are numerous ways that an airman can remain at their current position without having a mechanics certificate. If they are performing job tasks which require a certificate and do not have one, appropriate legal enforcement actions will be initiated. It does not fall under the St. George Aviation program.

4. All reexaminations have been done according to the FSAW 04-10B which requires an FAA inspector to administer the written and oral exam. One airman chose to be examined by a Designated Maintenance Examiner. He was given all three written exams, oral exam and practical exam - not the SGA exam.

5. There is no formal coordination between the FAA and air carriers regarding the St George Aviation airmen who have had their certificates revoked, removed, suspended or rescinded. Again, if an airman, without a certificate, is performing a job task which requires a mechanics certificate, appropriate legal enforcement action will be initiated.

6. The three St. George certified mechanics working for the FAA have been handled according to FSAW 04-10B. Retesting was required if they desired to maintain certificate privileges.

7. No formal cross-references between FAA/NTSB accident investigations have been done.

8. Per the FAA November 17, 2006 letter, No communication/documentation has been exchanged between the FAA and the Department of Transportation on this issue. Status updates have been provided to the OIG as requested.

9. Current requirements for new applicants can be located at: http://www.faa.gov/mechanics/

Appendix A

Exhibit 15

APPENDIX A
Exhibit 15

ST. GEORGE AVIATION FACT SHEET
(1/5/2008)

- In 1999, FAA designated mechanic examiner (DME) Anthony St. George was found guilty of criminal felony and convicted for issuing (selling) FAA mechanic certificates to individuals without performing the required certification tests to determine their competency.

- There were approximately 2,000 St. George (StG)-issued certificate holders identified by Department of Transportation Inspector General (DOT IG) to be retested by the FAA.

- The Orlando Flight Standards District Office developed and initiated a full reexamination program for the StG-issued certificate holders in accordance with FAA original certification requirements. (complete written, oral and practical tests)

- The overwhelming majority of StG certificate holders being reexamined at that time were unable to demonstrate the necessary competency to hold the FAA certificate and as a result, were surrendering their certificates or having them revoked by the FAA.

- In 2001, the newly appointed FAA Associate Administrator for Aviation Safety, Nicholas Sabatini, canceled the StG Reexamination Program, demonstrating his abuse of authority and gross mismanagement of his responsibilities, by leaving a thousand plus StG criminally obtained certificates in the aviation system without reexamining the holders for competency.

- Sabatini created a specific danger to the public by canceling and dismantling the StG Reexamination Program and left the program abandoned for three years. Sabatini's mishandling of this critical responsibility turned StG-issued certificates into a "cold case".

- My [Bruno] whistleblower disclosure to the Office of Special Counsel (OSC) resulted in the DOT IG and the OSC finding that, "FAA prematurely cancelled its reexamination program," and this "represents a measurable impact on aviation safety."

- In response to DOT IG and OSC findings, the FAA had to restart the StG Reexamination Program. However, the FAA's restarted program under Sabatini's direction was and remains a watered-down, partial testing program that does not meet the FAA's own requirements contained in FAA Order 8610.4G or the original certification regulatory requirements for issuance of these certificates.

- The FAA's limited, partial, deficient retesting program of the StG-issued certificate holders, in effect de-criminalizes the activities for which Anthony St. George was convicted, and was sentenced to two and a half years in federal prison. Just as Anthony St. George, the FAA is not holding these individuals to the required standard for original certification of their certificates.

- This deficient testing has resulted in individuals passing through the FAA's competency filter and working in the aviation system without ever having met original certification requirements.

- During numerous court challenges to the FAA's reexaminations, the National Transportation Safety Board (NTSB) affirmed and upheld the FAA's authority to reexamine the StG certificate holders to determine their competency. NTSB Order Number EA-4836, dated 4/14/2000, cites FAA Order 8610.4G requirements for oral and practical exams, in affirming the FAA's right of reexamination. Subsequently, the FAA failed to follow these requirements in its own guidance to inspectors contained in FAA Bulletin FSAW 04-10B, resulting in deficient retesting.

- In two recent fatal accidents (total of 41 fatalities), NTSB identified "faulty maintenance and lack of FAA oversight" as contributing factors.

    - On 12/29/2005, in Miami, FL, Chalks Ocean Airways regularly scheduled passenger flight #101 crashed on take-off killing all 20 people onboard. The NTSB accident investigation identified a number of questions about the FAA's oversight that were left unanswered including:
        - "Why didn't anyone look more carefully at this operation?"
        - "Why didn't anyone act before this accident?"
        - "Who is providing safety oversight?"
        - "And, finally, who is held accountable?"

    - On 1/8/2003, in Charlotte, NC, U.S. Airways Express regularly scheduled passenger flight #5481 crashed killing all 21 persons onboard. The NTSB investigation found improper control rigging by maintenance personnel. This work was performed at an outsourced third-party maintenance facility that the FAA claimed it had inspected, but was unable to provide the documentation in its database.

- In both the U.S. Airways Express and Chalks fatal crashes, the FAA has not fulfilled its mandated responsibilities. The FAA works shoulder-to-shoulder with the NTSB during fatal aviation accident investigations. However, the FAA has suppressed its knowledge of the StG safety issues. By its own admission, it does not share this information with the NTSB to

cross-reference during the search for causal and contributing factors to aviation accidents.

- The list of StG-issued certificates includes the name of an identified 9/11 terrorist. The FAA has not been able to provide any evidence of follow-up with a national security entity to determine the potential risks of foreign individuals who obtained FAA certificates from the StG criminal enterprise.

- FAA admittedly has no outreach or liaison programs to determine the StG safety impact on the public with:
  - Air carriers,
  - Repair stations,
  - NTSB investigations, or
  - National security entities.

- OSC has opened an investigation file (OSC file DI-07-2350) stating, "The information you [Bruno] disclosed reveals a substantial likelihood that serious safety concerns persist in the management and operation of the certification and maintenance programs at FAA." OSC has forwarded this information to the Secretary of the Department of Transportation for investigation.

- OSC has opened an investigation file (OSC file DI-08-0338) to determine any national security risks as demonstrated by a 9/11 hijacker's name appearing on the StG list of certificates issued. OSC has referred this information to the Secretary of the Department of Transportation for assistance.

Appendix A

Exhibit 16

APPENDIX A
Exhibit 16

U.S. Department
of Transportation
Federal Aviation Administration

800 Independence Ave., SW
Washington, DC 20591

February 27, 2008

Mr. Scott J. Bloch
U.S. Office of Special Counsel
1710 M. Street NW, Suite 300
Washington, D.C. 20590

Re: OSC File No. DI-07-2350

Dear Mr. Bloch:

On October 23, 2007, you requested the Secretary of Transportation to investigate whistleblower disclosures regarding the FAA's handling of the St. George Aviation reexamination cases. You requested that the investigation be disposed of within 60 days. The FAA was initially tasked with conducting the investigation of this matter.

In December 2007, your office granted a 60-day extension of time until February 27, 2008, for the FAA to complete its investigation of this matter. Shortly after the extension of time was granted, the FAA was advised that it should stop the investigation because there was concern about the FAA Flight Standards division conducting an investigation of its own activities with regard to the St. George reexamination program. The Secretary's office and the DOT IG's office reviewed the situation and determined that FAA could proceed; however, by that time the FAA believed that if there was any question about the impartiality of the investigation, then it would be better to have the investigation completed by a neutral party.

On February 20, 2008, members of the staff of the DOT General Counsel's office, the DOT IG's office, and the FAA's Office of the Chief Counsel met to discuss the future handling of the investigation. As a result of this meeting the investigation is being turned over to the FAA's Flight Standards Quality Assurance Staff with assistance from the FAA's internal security division. The report of investigation will then be reviewed by the staff of the DOT IG's office before it is sent to your office. Neither the FAA's Flight Standards Quality Assurance Staff nor its internal security division has had any involvement in the reexamination program.

Accordingly, we are requesting another 60-day extension of time so that extra measures can be taken to ensure the impartiality and completeness of the investigation. Please do not hesitate to contact my office if you have any concerns regarding the necessity for this additional extension of time.

Sincerely,

Richard Lea
Manager, AFS-40
Flight Standards Quality Assurance Staff
(410) 590-5371

Susan Caron/AWA/FAA
AGC-300, Enforcement Division

02/27/2008 11:11 AM

To Richard Lea/AWA/FAA@FAA, Peter Lynch/AWA/FAA@FAA
cc
bcc
Subject OSC/SGA Extension of Time Letter

Rich - Attached is the OSC extension of time letter for you to sign and fax. The signed letter should be faxed to the attention of Catherine A. McMullen, Chief, Disclosure Unit at the U.S. Office of Special Counsel. Ms. McMullen's fax number is (202) 653-5151 and her telephone number is (202) 254-3604. Thanks again for your assistance.

OSC EOT Letter 2-27-08.doc

Susan S. Caron
AGC-300
(202) 267-7721 (telephone)
(202) 267-5106 (fax)

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	1689
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SUBADDRESS	
CONNECTION ID	
ST. TIME	02/27 13:33
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PGS. SENT	2
RESULT	OK

Flight Standards Quality Assurance
898 Airport Park Road, Suite 204
Glen Burnie, MD 21061
Phone: 410-590-5364
Fax: 410-590-5861

Flight Standards Quality Assurance AFS-40

Fax

To: Catherine A. McMullen From: Richard Lea

Fax: 202-653-5151 Date: 2/27/08

Phone: 202-254-3604 Pages: 2 (with cover)

Re: DI-07-2350 CC:

☐ Approval ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments:

****
*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	1688
CONNECTION TEL	12022675106
SUBADDRESS	
CONNECTION ID	
ST. TIME	02/27 13:31
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PGS. SENT	2
RESULT	OK

Flight Standards Quality Assurance
898 Airport Park Road, Suite 204
Glen Burnie, MD 21061
Phone: 410-590-5364
Fax: 410-590-5861

Flight Standards Quality Assurance AFS-40

Fax

To: Susan Caron From: Rick Lea

Fax: 202-267-5106 Date: 2/27/08

Phone: 202-267-7721 Pages: 2 (with cover)

Re: DI-07-2350 CC:

Approval ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Comments:

Appendix A

Exhibit 17

APPENDIX A
Exhibit 17

U.S. House of Representatives
Committee on Transportation and Infrastructure

Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

April 7, 2008

Mr. Nicholas A. Sabatini
Associate Administrator for Aviation Safety
Federal Aviation Administration

Mr. James J. Ballough
Director, Flight Standards Service
Federal Aviation Administration

Mr. Thomas Stuckey
Federal Aviation Administration

Dear Mr. Sabatini, Mr. Ballough, and Mr. Stuckey:

We are deeply disturbed about statements that you made, under oath, to the Committee at our recent hearing on April 3, 2008, on "Critical Lapses in FAA Safety Oversight" on issues involving the so called Customer Service Initiative (CSI). We believe that your testimony conveyed inaccurate and misleading information about whether Aviation Safety Inspectors and Managers in the Flight Standards Service (which Mr. Ballough directs) were ordered to conduct special meetings with all airlines, repair stations and other regulated entities to deliver and discuss the CSI.

According to documents provided to the Committee[1], the CSI was announced by then Administrator Blakely in December 2002, affirmed by Mr. Sabatini in February 2003, and formally unveiled by Flight Standards in February 2004. The documents spelled out a series of new procedures for appeals by airlines and other regulated entities who were dissatisfied with the actions of FAA safety inspectors. At the hearing, a number of Members of the Committee and witnesses criticized the CSI on the grounds that treating regulated entities as "customers" undercuts the ability of FAA inspectors to enforce safety regulations, and conveys to the regulated entities that their satisfaction is a higher goal than enforcement. The Members and witnesses believe that the only "customer" of the FAA's safety offices are the persons who travel on aircraft.

In the panel which preceded yours at our hearing, Mr. Mills, who is the Assistant Manager of the Dallas Fort Worth Flight Standards District Office, testified that in 2004 he had been "mandated" to promptly visit "every single operator" to deliver a copy of the new procedures.

[1] CSI: Flight Standards, FAA/Industry Customer Service Meetings, Powerpoint Presentation for delivery to Certificate Holders, prepared by AFS-140, February 2004.

Following Mr. Mills testimony, you three officials, the officials to whom Mr. Mills reported [1] testified in the second panel. Congressman DeFazio asked you whether Mr. Mills was accurate in believing that he had been directed to hand-deliver the CSI. Mr. Sabatini replied, "I was surprised to hear Mr. Mills say he had been instructed to hand deliver that. That certainly is not in the guidelines." Mr. Ballough responded, "Mr. DeFazio, from what I know it was supposed to have been delivered by routine carrier visits and repair station visits." Mr. Ballough added that these visits would take place "at least once a year."

Mr. Sabatini added in response to further questions that he would not agree "that it was widespread" that people were sent to hand-deliver the CSI and Mr. Stuckey said that it would not have been "his expectation" that one individual would spend three months delivering the CSI.

In sum, these answers convey that managers and inspectors had up to one year to deliver the customer service initiative and that it could be done during routine visits.

This relaxed approach is radically different from that directed by the attached memorandum, dated February 12, 2004, which was sent to "All Flight Standards Managers, Supervisors and Employees," under the signature of Mr. Ballough. This memorandum states that after the CSI had been developed to carry out policies announced by Mr. Sabatini in 2003, all field offices had been directed to contact their operators, to provide them CSI literature and discuss CSI with them. Mr. Ballough's memorandum stated that "few of these meetings have occurred and the purpose of this memorandum is to rectify that." The memorandum directed that "within 60 days of the receipt of this memorandum FSDOs (Flight Standards District Offices) and CMOs (Certificate Management Offices) should conduct meetings with "at a minimum their Title 14 Code of Regulations (14 CFR) parts 121, 135, 141, 142, and 145 operators to discuss CSI."[2] The meetings were to be conducted with a representative of the operators' management, the FSDO or CMO management and the principal inspectors assigned to that operator. Further, it was a requirement that the record of these meetings was to be entered into the FAA's Performance Tracking Reporting System (PTRS), which underscored the mandatory nature of this requirement placed upon FAA Flight Standards Managers.

This is a very different picture from that created by your testimony. It was inaccurate for you to state that the CSI packages could be delivered during routine visits over the next year. Rather, they were required to be delivered and discussed within 60 days of the memorandum. Certainly, this program, which required meetings with almost 8,000 regulated entities would require a "widespread effort" by inspectors and managers.

Following your testimony, we received testimony supporting Mr. Mills, from Mr. McNease a retired Inspector in the Southern Region:

---

[1] Mr. Stuckey headed Flight Standards for FAA's Southwest Region, Mr. Ballough directed Flight Standards for the entire country, and Flight Standards reported to Mr. Sabatini, the Associate Administrator for Safety.

[2] Part 121 regulates certificated commercial airlines (97 certificates nationwide); part 135 regulates commuters and on demand operators (2264 operators certified nationwide); part 141 regulates pilot schools (564 certificates nationwide); part 142 regulates training centers (162 certificates nationwide); and part 145 regulates repair stations (4884 operators nationwide).

"One other thing to Mr. DeFazio -- I waited to hold this -- you questioned a number of times about Mr. Mills' hand-delivering everything. The answers you got from Mr. Sabatini, Mr. Ballough, and Mr. Stuckey seemed to think that -- they seemed to tell you that that wasn't the way things happened. That's incorrect. It was the way things happened."

"I was in the Southern Region, not the Southwest Region. In the Southern Region, my manager had to go out and deliver every one of those to everybody. It took him really probably -- probably a month and a half or at least that long. He had other duties. But it happened throughout the FAA, and it's not localized."

"I hope you see that the testimony from all of us is that this is, I believe, a systemic problem with the FAA. It's happening in other parts of the country, not just in the Southwest Region."

In conclusion, you should understand that these are very serious issues to our Committee. We cannot condone misleading testimony in our hearings, and in last week's hearing you were sworn under oath to tell the truth. The hearings are the basis for carrying out our legislative and oversight responsibilities. We cannot decide whether reforms or different policies are needed unless we have an accurate picture of all relevant agency actions.

Sincerely,

James L. Oberstar, M.C.
Chairman

Peter A. DeFazio, M.C.
Chairman
Subcommittee on Highways
and Transit

Jerry F. Costello, M.C.
Chairman
Subcommittee on Aviation

Attachment: Memorandum from Director, Flight Standards Service, February 12, 2004

cc: The Honorable Mary Peters, Secretary of Transportation
The Honorable Robert Sturgell, Acting Administrator, Federal Aviation Administration

Appendix A

Exhibit 18

Elaine
Stone-Arthur/AWA/FAA
AEO-500, Investigations
Division

04/15/2008 03:58 PM

To Peter Dula/AWA/FAA@FAA
cc William Boitnott/AWA/FAA@FAA, Joseph Garcia/AWA/FAA@FAA
bcc
Subject Mr. Bruno

Peter

Attached per our conversation. I understand, not first hand, that the attached came to Mr. Ballough. Also, again not first hand, that Mr. Bruno attended the Congressional Testimony.

elaine

bruno.pdf

19

Appendix A

Exhibit 19

APPENDIX A
Exhibit 19

Elaine
Stone-Arthur/AWA/FAA
AEO-500, Investigations
Division

04/17/2008 02:39 PM

To Peter Dula/AWA/FAA@FAA
cc
bcc
Subject Mr. Bruno - Resending Missing Pages from This Morning

Mr. Dula

The entire document was refaxed to me and is attached as such so you won't have to take out and insert pages.

Please advise if you need anything else.

Thanks

elaine Documents Provided by Mr. Bruno.pdf

Appendix A

Exhibit 20

VOLUME 5 AIRMAN CERTIFICATION

CHAPTER 7 REEXAMINATION OF AN AIRMAN

Section 3 Conduct a Reexamination Test of a Mechanic or an Inspection Authorization Under Title 49 of the United States Code (49 U.S.C.)

5-1466 PROGRAM TRACKING AND REPORTING SUBSYSTEM (PTRS) ACTIVITY CODES.

A. **Maintenance.** 3532.

B. **Avionics.** 5532.

5-1467 OBJECTIVE. This section provides guidance and describes procedures for determining whether an airman of questionable competence is qualified to exercise the privileges of a particular certificate or rating.

5-1468 GENERAL.

A. **Authority.** Title 49 of the United States Code (49 U.S.C.) section 44709 (formerly 609 of the Federal Aviation (FA) Act of 1958) authorizes the Administrator to reexamine any airman at any time. If an airman fails to comply with a request for reexamination, section 44709 provides legal procedures to enforce reinspection or reexamination. Punitive enforcement action may be undertaken during the reexamination process, as necessary. Federal Aviation Administration (FAA) Order 2150.3, Compliance and Enforcement Program, contains detailed information on the enforcement aspects of section 44709 actions.

B. **Cause for Reexamination.** The reconsideration of an airman's competence is a serious issue and requires that there be ample cause. In most cases, a reexamination will follow the investigation of an accident or incident apparently caused by the airman's incompetence.

5-1469 BASIS FOR REEXAMINATION TEST. The aviation safety inspector (ASI) will determine whether a reexamination test is necessary based on personal knowledge, reliable reports, or evidence obtained through an accident, incident, or enforcement investigation.

A. **Notification.** The ASI will notify the airman by letter that a reexamination is necessary. The letter must be sent via certified mail and include a return receipt. The letter should state that the FAA is promoting air safety by ensuring the airman's competence through reexamination of the applicable skills and knowledge. In no way should it suggest that the FAA considers the reexamination a punishment for an act the airman may have committed.

B. **Contents of Reexamination Letter.** The reexamination letter must specify the following:

- The reasons for the reexamination, such as an accident, incident, or occurrence;
- The specific certificate and/or rating(s) in question;
- The specific subject area(s) or skill(s) under review, if appropriate;

- The type of reexamination (knowledge, oral, practical);
- The category and class of aircraft required, as applicable;
- The location of the district office where the reexamination will take place (typically left to the discretion of the airman); and
- A reasonable time limit for the accomplishment of the reexamination. The reexamination normally occurs within 15 days after the airman receives the letter of notification.

5-1470 SPECIAL CONSIDERATIONS.

A. Handling an Airman's Response to a Reexamination Letter at an Office Other than the Requesting Office. In most cases, the office issuing the reexamination letter conducts the reexamination test and undertakes any needed enforcement action. However, an airman may contact a different district office. In such a case, the receiving district office must contact the requesting office.

1) Immediately upon scheduling the reexamination test, the ASI must inform the requesting office of the appointment and request a copy of the original reexamination letter;

2) After completion of the test, the receiving office forwards a copy of the test results to the requesting office; and

3) If enforcement action is necessary as a result of the test, the ASI who conducted the reexamination advises the office manager. The requesting and receiving office managers should coordinate responsibility for the enforcement action. See FAA Order 2150.3.

B. Airman Scheduling Appointment at a Later Date. An airman may request an appointment for the reexamination beyond the time limit stated in the letter. The airman either must schedule the reexamination within a reasonable time, or place the certificate and/or rating on temporary deposit at the district office. If the airman chooses temporary deposit, an ASI issues a 30-day temporary airman certificate with specific limitations. The Airmen Certification Branch, AFS-760, should be notified if the certification or authorization is placed on temporary deposit.

C. Airman Refusal to Submit to Reexamination. If the airman does not submit to a reexamination within the stated time limit, the investigating district office shall initiate emergency enforcement action to suspend the airman's certificate.

1) The ASI should fill out section A of FAA Form 2150-5, Enforcement Investigation Report, citing 49 U.S.C. section 44709. Any documentation supporting the need for reexamination, a copy of the original notification letter, and any evidence of the efforts made to obtain voluntary reexamination should be attached. The investigating district office shall forward a copy of FAA Form 50-5 through channels to the regional counsel.

2) The regional counsel will continue enforcement action if the evidence submitted is sufficient to establish that the airman is not qualified to hold the certificate or ratings, or that air safety and the public interest require such action.

3) This emergency order suspends the certificate, ratings, or authorization until the airman agrees to reexamination and proves qualified to continue to hold the certificate and exercise its privileges.

D. Voluntary Cancellation of Certificate, Rating, or Authorization. The airman may volunteer to surrender the certificate in question for cancellation. If this occurs, the airman has no re-issuance rights other than passing all knowledge, oral, and practical tests.

5-1471 REEXAMINATION FOR A MECHANIC CERTIFICATE. To conduct a reexamination test, use FAA Form 10-2, Airman Certificate and/or Rating Application. The reexamination should be accomplished according to the appropriate practical test standards for the certificate or rating involved. The ASI conducting the reexamination test should hold the same ratings for which the airman is being tested.

A. Extent of Reexamination. The ASI should test the airman only in the areas specified in the letter of reexamination; but the ASI may note other deficient areas during the reexamination that may constitute reason for failure of the test. If either situation occurs, the ASI should discontinue the reexamination and inform the airman that he or she has failed the test based on the deficiency noted.

B. Conduct of Reexamination. The ASI may conduct the reexamination using an oral or knowledge test if the area to be reexamined is one of knowledge rather than of skill. The ASI may design the knowledge test or seek assistance from a specialist in the Airman Testing Standards Division, AFS-630. In addition, AFS-630 specialists are available to conduct the retest, as requested by the ASI.

C. Standards. The airman must meet the appropriate practical test standards for the applicable certificate or rating. The airman cannot be tested to a more difficult standard than initial certification requires. The field office conducting the reexamination may select a Designated Mechanic Examiner (DME) to conduct the test, for appropriate compensation.

5-1472 REEXAMINATION FOR AN INSPECTION AUTHORIZATION (IA). The reexamination should be given according to testing standards appropriate for the authorization.

A. Extent of Reexamination. The ASI should test the airman only in the areas specified in the letter of reexamination. If the suspected deficiency is a skill rather than knowledge, consideration should be given to reexamination for a mechanic certificate.

B. Knowledge Reexamination. The field ASI may design the knowledge test or seek assistance from a specialist in AFS-630.

5-1473 REEXAMINATION RESULTS.

A. Airman Satisfactorily Completes Reexamination. Upon successful completion of the reexamination, the ASI will issue a letter of results to the airman. If the airman's certificate was on temporary deposit, it will be returned to the airman. The airman then may continue to exercise the privileges of the certificate and/or rating.

B. Airman's Performance Is Unsatisfactory. If the reexamination test was unsatisfactory, the ASI will issue a letter of results. The airman must be informed in detail of each deficiency and the pending enforcement action. Legal enforcement action must be taken to revoke the airman's certificate, rating, or authorization. See FAA Order 2150.3, chapter 8.

5-1474 PREREQUISITES AND COORDINATION REQUIREMENTS.

A. Prerequisites. This task requires knowledge of Title 14 of the Code of Federal Regulations (14 CFR) part 65.

B. Coordination. This task may require coordination with the ASI (operations). It may also require coordination with regional counsel and other Flight Standards district offices (FSDO).

5-1475 REFERENCES, FORMS, AND JOB AIDS.

A. References.

- 14 CFR parts 1, 13 and 65
- FAA Order 2150.3, Compliance and Enforcement, current edition
- Advisory Circular (AC) 65-19, Inspection Authorization Study Guide, current edition

B. Forms.

- FAA Form 2150-5, Enforcement Investigative Report
- FAA Form 8060-4, Temporary Airman Certificate
- FAA Form 8610-1, Mechanic's Application for Inspection Authorization
- FAA Form 8610-2, Airman Certificate and/or Rating Application

C. Job Aids.

- Figure 5-151, Letter of Notification of Reexamination
- Figure 5-152, Letter of Notification to an Airman of Satisfactory Reexamination

5-1476 PROCEDURES.

A. Need for Reexamination Test. Determine if a reexamination test is necessary. If a reexamination test is required, send a letter of notification to the airman.

1) Ensure that an airman scheduling a reexamination test provides the ASI with the following information:

- The office and person who issued the reexamination letter and the reasons for the reexamination
- The certificate and/or ratings being reexamined
- The kind of aircraft specified, if applicable
- Any areas of special emphasis
- The time limit (date) for completing the examination

2) Ask the airman to bring the letter of notification to the reexamination.

3) Request a copy of the original letter from the issuing district office, if applicable.

B. Schedule Appointment. Schedule a date, time, and location for the reexamination test.

1) If the airman's knowledge is in question, administer the knowledge test and obtain the results before scheduling the oral and practical tests.

2) If the requested date is beyond the time limit in the letter, and the delay is excessive or unjustified, accomplish one of the following:

- Suggest that the airman attempt to make the appointment within the time limit.
- Recommend that the airman place the certificate on temporary deposit.

3) If the airman refuses to comply with either option, advise the airman that emergency legal enforcement action will be initiated to suspend the certificate or rating.

a) Refer to FAA Order 2150.3 for emergency suspension procedures.

b) If another district office issued the reexamination letter, advise that office of the situation. If another office is handling the enforcement investigation, forward any records of telephone conversations, visits, and other evidence needed for the enforcement report.

4) If another office issued the letter of notification, inform that office of the date, time, and location of the reexamination.

C. Prepare the Reexamination Test.

1) Determine which subject areas and related tasks are to be examined. If a knowledge test is required, devise the test or contact AFS-630 for assistance. If oral and practical tests are required, identify the related tasks. If a DME will administer the oral and practical tests, discuss the tasks to be tested with the DME.

2) Prepare an agenda for the reexamination appointment. At the appointment, collect the airman's documentation.

a) Compare the airman's copy of the letter of notification to the district office copy to verify that they are the same.

b) Assist the airman in completing the application. Review the application for accuracy.

c) Inspect acceptable forms of identification to establish the airman's identity.

d) For an inspection authorization, have the airman complete blocks 1 through 4b on FAA Form 8610-1. Indicate in block 12 (Remarks) that the application is for a reexamination of an inspection authorization and print "44709 Retest" across the form.

e) For a mechanic, have the airman complete section I of FAA Form 8610-2 and sign in section IV. Mark the certificate or ratings being tested in the header of the form. Indicate that the application is for a reexamination of a mechanic under 49 U.S.C. on the line labeled "Specify Rating" and print "44709 Retest" across the form. Use the "Remarks" section on the back of the application to identify subjects to be tested during the oral and practical test.

f) If there is a problem with the application, the aircraft documents, or the airman's identity, return the application and any documentation to the airman. Explain what must be corrected before the reexamination test can be conducted.

D. Conduct the Test.

1) Review with the airman the areas to be covered in the reexamination. Resolve any questions or concerns the airman may have.

2) Conduct the reexamination test according to the agenda, using the devised test and practical test standards, and any related tasks.

a) If a knowledge test is required, record the results in the "Remarks" section of the application; and

b) If oral and/or practical tests are required, the administering ASI should use the reverse side of the FAA Form 8610-2 to record the results.

3) Upon completion of the test, inform the airman immediately of the results and the options open to the airman.

5-1477 TASK OUTCOMES.

A. PTRS. Complete the PTRS Data Sheet.

B. Satisfactory Reexamination. If the airman's performance was satisfactory, issue a letter of results indicating the satisfactory status of the rating or certification (Figure 5-152).

1) If another office originally issued the letter of notification, inform that office of the results and forward a copy of the letter of results.

2) If the airman's certificate or authorization is on temporary deposit pending the results of the reexamination, return the certificate or authorization immediately.

C. Unsatisfactory Reexamination. If the airman's performance was unsatisfactory and a repeat test would be inappropriate, have the airman surrender the certificate, rating, or authorization for cancellation or begin legal enforcement action to revoke the certificate, rating, or authorization. (See FAA Order 2150.3.)

1) Inform the airman that the certificate, rating, or authorization can be reissued only after the airman has passed all knowledge, oral, and practical tests.

2) If the airman refuses to comply, advise the airman that emergency legal enforcement action will be taken to revoke the certificate or rating.

3) If another office requested the reexamination, forward a copy of the results to that office. If enforcement action is required, inform the district office manager so that the requesting and receiving offices can coordinate.

D. Inspector's Report. Complete the application as described in FAA Order 8610.4 or AC 65-19, as appropriate. Attach required documentation and forward the completed file to AFS-760.

5-1478 FUTURE ACTIVITIES.

A. The airman may return for further reexamination, as needed. Follow procedures as above.

B. Possible enforcement investigation in connection with the reexamination may be necessary. (See Volume 7, Chapter 7, Conduct Violation Investigation.)

RESERVED. Paragraphs 5-1479 through 5-1495.

Figure 5–151, Letter of Notification of Reexamination

FAA Letterhead

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Date

Airman's Name and Address

Dear _____:

Investigation of the [accident, incident, occurrence, or other event that led to the reexamination], which occurred on [date and time], at [location], involving you as a [describe airman's role], gives reason to believe that a reexamination of your airman competency is necessary under Title 49 of the United States Code.

Therefore, we request that you appear at or telephone this office no later than 10 days from receipt of this letter to arrange for the reexamination. The reexamination will consist of appropriate [insert grade of certificate or rating] practical test maneuvers with emphasis on [include any special emphasis items].

If you elect to take the reexamination at another Flight Standards District Office (FSDO), please advise us by completing and returning the enclosed notification form in the self-addressed envelope which is enclosed for your convenience.

If you do not accept this opportunity for reexamination by the date indicated above, it will be necessary for us to start proceedings to suspend your mechanic certificate and/or inspection authorization certificate unless other arrangements are made. A reasonable later date may be arranged when required by circumstances beyond your control.

Please note that the incident which occurred on [insert date], is still under investigation to determine whether enforcement action is appropriate. If enforcement action is to be taken you will be advised in a separate letter.

Inspector [name of inspector] is available to discuss this matter and provide any information to assist you.

Signed by Inspector Making Report
District Office Address

Dear Inspector [name]:

I have made an appointment with _____ Flight Standards District Office for reexamination at _____ [time] on _____ [date].

Signed by Airman

Figure 5–152, Letter of Notification to an Airman of Satisfactory Reexamination

FAA Letterhead

Date

Airman's Name and Address

Appendix A

Exhibit 21

S10-071023-013

APPENDIX A
Exhibit 21

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

October 23, 2007

The Honorable Mary E. Peters
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: OSC File No. DI-07-2350

Dear Madam Secretary:

Federal Aviation Administration (FAA) officials are stewards of safety for the flying public, particularly in the administration and oversight of airplane maintenance and airworthiness. "The . . . reliability of the nation's aircraft depends, in part, on the FAA's regulation and certification of the aviation industry."[1] Serious allegations that call into question the FAA's oversight of aircraft maintenance have been filed with my office. Thus, pursuant to my responsibilities as Special Counsel, I am referring to you for investigation whistleblower disclosures that officials and employees of the Department of Transportation (DOT), FAA, Flight Standards Division (FSD), Washington, D.C., are engaging in conduct which constitutes gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety.

The information was disclosed by Gabriel D. Bruno, former Manager of the Orlando Flight Standards District Office (Orlando FSDO), who consented to the release of his name.[2] During his employment with FAA, Mr. Bruno was responsible for overseeing all commercial aviation safety activities within his district office. His allegations closely relate to disclosures he and another whistleblower made to my office in 2003, which were referred to you for investigation and report. They disclosed allegations of wrongdoing by officials within the FSD, including the cancellation of a re-examination program for individuals who had received airframe and powerplant (A&P) mechanic certificates under fraudulent conditions, through a company known as St. George Aviation, a designated mechanics examiner. Mr. Bruno's allegations were partially substantiated by your investigation. FAA resolved to correct deficiencies in the re-examination process.

---

[1] 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.

[2] [redacted]

Mr. Bruno has recently disclosed to my office that, to date, the mechanics who received certificates from St. George's have not been adequately re-examined and re-certified. He emphasizes that the cancellation of the re-examination program has placed the public at risk since 2001 by allowing unqualified mechanics to remain employed in the aviation industry. Mr. Bruno alleges that these re-certified aircraft mechanics are now employed with major airlines; their re-examination status is questionable and FAA has not taken sufficient steps to ensure they are actually qualified for the positions they hold. The information disclosed by Mr. Bruno reveals a substantial likelihood that serious safety concerns persist in the management and operation of the certification and maintenance programs at FAA. The allegations are detailed in the enclosed Report of Disclosures, incorporated herein by reference.

The U.S. Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). As Special Counsel, if I find, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report. 5 U.S.C. § 1213(c) and (g).

I have concluded that there is a substantial likelihood that the information the whistleblower provided to OSC discloses a violation of law, rule or regulation, gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety. As previously stated, I am referring this information to you for an investigation of the whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter. By law, the report must be reviewed and signed by you personally. Should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). Without this information, I would hasten to add that the report may be found deficient. The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. As a matter of policy, OSC also requires that your investigators interview the whistleblower as part of the agency investigation.

In the event it is not possible to report on the matter within the 60-day time limit under the statute, you may request in writing an extension of time not to exceed 60 days. Please be advised that an extension of time is normally not granted automatically, but only upon a showing of good cause. Accordingly, in the written request for an extension of time, please state specifically the reasons the additional time is needed. I must approve any additional requests for an extension of time.

After making the determinations required by 5 U.S.C. § 1213(e)(2), copies of the report, along with any comments on the report from the person making the disclosure and

any comments or recommendations by this office will be sent to the President and the appropriate oversight committees in the Senate and House of Representatives. 5 U.S.C. § 1213(e)(3).

Unless classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of the national defense or the conduct of foreign affairs, a copy of the report and any comments will be placed in a public file in accordance with 5 U.S.C. § 1219(a).

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,

Scott J. Bloch

Enclosures

Appendix A

Exhibit 22

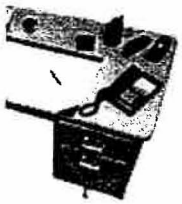
APPENDIX A
Exhibit 22

Susan Caron/AWA/FAA
AGC-300, Enforcement Division

04/04/2008 11:15 AM

To Peter Dula/AWA/FAA@FAA
cc
bcc
Subject Fw: Need you help 1993 question

Peter - Below is the e:mail string that discusses the reexamination program that was run out of the Southwest Region in the mid 90s after a "bad" DME came to light.
Susan S. Caron
AGC-300
(202) 267-7721 (telephone)
(202) 267-5106 (fax)
----- Forwarded by Susan Caron/AWA/FAA on 04/04/2008 11:12 AM -----



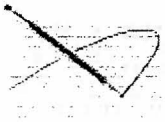
Peter J Kerwin/ASW/FAA
ASW-210, Planning & Program Management

03/31/2008 03:48 PM

To Peter Lynch/AWA/FAA@FAA, Susan Caron/AWA/FAA@FAA, Yolanda A Bernal/ASW/FAA@FAA
cc Steven W Douglas/ASW/FAA@FAA, Carol E Giles/AWA/FAA@FAA, Marci D LaShells/AWA/FAA@FAA
Subject Fw: Need you help 1993 question

Susan, Response to your question on the A&P's reexamination in the mid 90's Southwest region. Yolanda may be able to provide any additional information.

Pete Kerwin
----- Forwarded by Peter J Kerwin/ASW/FAA on 03/31/2008 02:25 PM -----



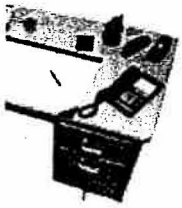
Fred E Dryden/ASW/FAA
ASW-FTW AEG-25, Fort Worth, TX

03/31/2008 02:18 PM

To Peter J Kerwin/ASW/FAA@FAA
cc
Subject Re: Need you help 1993 question

Yes, it was the Alvin Harris case out of San Antonio FSDO. Gary Worthy was the PMI, found 260 plus examinations by Mr. Harris in 9 months. The Southwest Region assembled a team to evaluate the applicants who were improperly tested and established re-examination for all applicants. Myself, Ken Robinson, and Leroy Wigfall along with the standards staff in OKC established the oral and practical exam for the 609 applicants. Yolanda Bernal was the attorney for the FAA and Judge Mullins heard the case. We issued, the then, 609 re-examination to all applicants. We, the FAA set up for free, re-exam opportunities in San Antonio, Dallas, and Houston. What else do you need?

Fred Dryden
Peter J Kerwin/ASW/FAA



Peter J Kerwin/ASW/FAA
ASW-210, Planning & Program Management

03/31/2008 01:38 PM

To Fred E Dryden/ASW/FAA@FAA, Mark C Fletcher/ASW/FAA@FAA
cc
Subject Need you help 1993 question

Fred, do you remember the case where numerous A&P's had to be reexamined due to a corrupt DME. Do you remember what the reexamination consisted of. Was there a written knowledge, oral, and/or practical test.

Pete

Elaine
Stone-Arthur/AWA/FAA
AEO-500, Investigations Division

04/17/2008 11:26 AM

To Peter Dula/AWA/FAA@FAA
cc William Boitnott/AWA/FAA@FAA, Joseph Garcia/AWA/FAA@FAA
bcc
Subject Mr. Bruno's Response

Mr. Dula

Attached are the answers Mr. Bruno provided. Also attached are copies of documents Mr. Bruno provided. I note that page 15 of the 16 page fax is missing. I am working to obtain that and will send it to you as soon as I receive it.

elaine

Bruno's Response to Questions.pdf

April 11, 2008

INTERROGATORY of GABRIEL D. BRUNO for
OSC FILE No. DI-07-2350

Q: When did you retire from the FAA and what was your position when you retired?

A: January 29, 2006/ FAA Southern Region Flight Standards, Runway Safety Program Manager

Q: What is your current interaction with the FAA?

A: Whistleblower

Q: What is your current knowledge of the re-examination program concerning the A&P mechanics who received their initial certification from St. George Aviation?

A: The current reexamination program of individuals who received initial certification from the St. George criminal enterprise is severely deficient. The reexamination does not meet the FAA's certification requirements.

Q: How many A&P mechanics received certification during the period of 1995-1999 from St. George Aviation?

A: Approximately 1800

Q: To the best of your knowledge, how many A&P mechanics needed to be re-examined?

A: All individuals who received certificates from the St. George criminal enterprise

Q: To the best of your knowledge, how many A&P mechanics have been re-examined?

A: The FAA has not provided reliable information to this question. FAA responses to this question have been inconsistent.

Q: To the best of your knowledge, how many A&P mechanics still need to be re-examined?

A: The FAA has not provided reliable information on this question. FAA responses to this question have been inconsistent.

Q: Do you have any documentation to support these numbers?

A: The most reliable document to reference this would be the original St. George list that was compiled by the DOT IG during the St. George prosecution and conviction.

FAA

Q: What criteria were utilized prior to Flight Standards Airworthiness 04-10B re-examination program?

A: The full compliance with FAA regulatory requirements for initial certification.

Q: How does that differ from the Flight Standards Airworthiness 04-10B and Section 44709 of the recodeifed FAA Act.?

A: Flight Standards Airworthiness bulletin 04-10B eliminates crucial factors required for initial certification. The requirement for the practical, hands-on portion of the test is totally eliminated. The requirements for the written and oral portions of certification examination have been severely reduced. This is in direct conflict with the FAA's own Order 8610.4K, Aviation Mechanic Examiner Handbook which states, "This order is to be used as policy for administering all aviation mechanic oral and practical tests. This order provides standardized procedures, which shall be used by persons responsible for administering aviation mechanic oral and practical tests. Compliance with these standardized procedures will assure that applicants meet a satisfactory level of competence and workmanship required for certification. This order stresses the FAA's policy of placing greater emphasis on the aviation mechanic oral and practical tests." Section 44709 of the Recodefied FA Act of 1958 establishes the FAA's authority to examine and re-examine. It is the FAA's Order 8610.4K and the Practical Test Standards that establish the policies, procedures and performance standards for the conduct of the initial examinations for aviation mechanic certification.

The Practical Test Standards state, "Title 14 of the Code of Federal Regulations (14 CFR) specifies the subject areas in which knowledge and skill must be demonstrated by the applicant before the issuance of an Aviation Mechanic Certificate with an airframe and/or powerplant rating."

Q: Do you have a copy of your re-examination program? Will you provide a copy of your program?

A: The original re-examination program that I established in 1999 and was approved by Washington Headquarters utilized the standards described above.

FAA Re-examination program

Q: What is your knowledge of the current FAA re-examination program? Oral, written, hands-on?

A: The current reexamination program of individuals who received initial certification from the St. George criminal enterprise is severely deficient. The reexamination does not meet the FAA's certification requirements. The requirement for the practical, hands-on portion of the test is totally eliminated. The requirements for the written and oral portions of certification examination have been severely reduced. This is in direct conflict with the FAA's own Order 8610.4K, Aviation Mechanic Examiner Handbook.

Q: If there is a deviation from the original certification testing, what is it? (This is important)

A: As stated above, Flight Standards Airworthiness bulletin 04-10B eliminates crucial factors required for initial certification. The requirement for the practical, hands-on portion of the test is totally eliminated. The requirements for the written and oral portions of certification examination have been severely reduced. This is in direct conflict with the FAA's own Order 8610.4K, Aviation Mechanic Examiner Handbook which states, "This order is to be used as policy for administering all aviation mechanic oral and practical tests. This order provides standardized procedures, which shall be used by persons responsible for administering aviation mechanic oral and practical tests. Compliance with these standardized procedures will assure that applicants meet a satisfactory level of competence and workmanship required for certification. This order stresses the FAA's policy of placing greater emphasis on the aviation mechanic oral and practical tests."

Section 44709 of the Recodefied FA Act of 1958 establishes the FAA's authority to examine and re-examine. It is the FAA's Order 8610.4K and the Practical Test Standards that establish the policies, procedures and performance standards for the conduct of the initial examinations for aviation mechanic certification.

The Practical Test Standards state, "Title 14 of the Code of Federal Regulations (14 CFR) specifies the subject areas in which knowledge and skill must be

demonstrated by the applicant before the issuance of an Aviation Mechanic Certificate with an airframe and/or powerplant rating."

Q: What are the retesting procedures required under FSAW 04-10B as you know them?

A: The retesting procedures required under FSAW 04-10B consist of one written test and one oral test.

Q: Do you have a copy of FASW 04-10B? What does it say?

A: I have a copy of FASW 04-10B, which states, "The reexamination will consist of two tests; one written test, and one oral test."

Q: Why do you believe these are not correct testing procedures?

A: These are not correct testing procedures because the practical portion of the certification testing is not being required under FASW 04-10B. This is in conflict with the testing requirements described in the Practical Test Standards, which state, "Title 14 of the Code of Federal Regulations (14 CFR) specifies the subject areas in which knowledge and skill must be demonstrated by the applicant before the issuance of an Aviation Mechanic Certificate with an airframe and/or powerplant rating. It is the FAA's Order 8610.4K and the Practical Test Standards that establish the policies, procedures and performance standards for the conduct of the initial examinations for aviation mechanic certification. Also, FSAW 04-10B severely reduces scope of the oral and written portions of the certification examination. For example, FSAW 04-10B states, "The oral test will consist of 5 questions selected from the Oral and Practical Test Guides (General, Airframe, and Powerplant), as appropriate for the rating(s) being tested (i.e., 10 questions for a single airframe or powerplant rating, 15 questions for both ratings)." However, the certification standards are for both airframe and powerplant ratings, a minimum of 172 questions are required for the oral test, and a minimum of 43 projects are required for the practical test.

Q: What do you believe the testing procedures should be and why?

A: The correct testing procedures should be in complete accordance with the original certification requirements as approved by FAA Headquarters in 1999, when the St. George Reexamination Project was initiated. This is a crucial safety standard because by not reexamining to initial certification requirements these individuals will never have demonstrated the required minimum competencies to hold the certificates that were issued to them. Under FSAW 04-10B, the FAA is now doing exactly what Anthony St. George did, incomplete testing, and thereby

decriminalizing St. George's actions, that earned him a sentence of 2 ½ years in federal prison.

Q: What is the pass rate of those who take the re-examination?

A: Unknown at this time because of FAA inconsistent responses to inquiries. However, before Associate Administrator for Aviation Safety, Mr. Nicholas Sabatini canceled the initial retesting program in 2001, the failure rate was on the order of 75 – 80%.

Q: How do you come by your knowledge of the above information?

A: I was the Flight Standards District Office Manager who was charged with the design and implementation of the original St. George Reexamination Program after Mr. St. George's criminal conviction.

Commitments to previous OIG investigation

Q: How many A&P mechanics received certification during the period 1995-1999 from St. George Aviation?

A: As previously stated, approximately 1,800. The FAA should have in its possession the original list that was compiled for the DOT IG and used in the St. George prosecution and conviction. This original list would give an exact answer to this question, and can be reconstructed through the FAA Airman Certification Branch in Oklahoma City, OK.

Q: Pledge to re-examine all of the nearly 2,000 mechanics who received certificates from St. George—how many needed reexamination? *Where did you get the figure nearly 2,000?* How many have been accomplished: How many are pending?

A: All should be properly retested in accordance with the FA Act of 1958, which gives the Administrator the authority to reexamine airmen when there is a question of competency. Obtaining certificates from a criminal enterprise certainly raises the question of competency. The NTSB has upheld this authority in the challenges that have been made by individuals who obtained their certificates from St. George. As stated previously, I got the number from the original list that was compiled for the DOT IG and used in the St. George prosecution and conviction. Again, FAA responses to how many have been accomplished and how many are pending have been inconsistent.

Q: Are there any other alleged unfilled commitments to the DOT OIG? If so, what are they?

A: The Director of Flight Standards, James Ballough, made a commitment to the DOT IG that this project would be completed by December of 2005. It still is not complete.

Q: How do you come by your knowledge of the above information?

A: By my involvement in ensuring that the FAA appropriately addresses this critical safety lapse.

FOIA Request

Q: What did you ask for in your FOIA request?

A: See attached facsimile copies.

Q: What were the responses to your questions?

A: See attached facsimile copies.

Q: Do you believe the figures provided to you in response to your FOIA request to be accurate? If not, why not?

A: No. There are numerous inconsistencies in the FAA's responses.

Q: What do you believe the figures to be? And why do you believe that? Any specific sources of information for your belief?

A: Unable to determine based on the information provided by the FAA.

FAA Report to the OSC

Q: Please explain your concern about the figures. Why do you believe the figures FAA provided to the OSC are not correct: What do you believe the figures should be: What is the basis for that belief? Any documentation?

A: See attached facsimile copy.

Q: How do you come by your knowledge of the above information?

A: See attached facsimile copy.

Q: Is there a connection between St. George certificate holders and those involved in either or both of those crashes: Were any of the mechanics involved in the two cited crashes issued certificates from St. George between 1995-1999? If so, had they gone through a re-examination process prior to the incident: If so, what type of re-examination process did they go through: Has FAA instituted a process to determine whether or not the mechanics involved in recent airline crashed, received their original certification from St. George during the time frame of 1995 – 1999, and ascertain the current status of their certification?

A: The FAA does not know if there is a connection between the St. George certificate holders and the 1/8/03 U.S. Airways Express crash in Charlotte, NC, with 21 fatalities (NTSB ID# DCA03MA022), and the Dec. 19, 2005 Chalk's Ocean Airways crash in Miami, FL, with 20 fatalities (NTSB ID # DCA06MA010). In both of these accidents the NTSB cited "faulty maintenance and lack of FAA oversight" as causal factors. The FAA has full knowledge of the St. George safety issues in question; however, it did not share this information with the NTSB during the accident investigations.

The FAA has not instituted a process to determine whether or not the mechanics involved in the cited crashes, or any other incidents or accidents received their certificates from St. George (see FOIA response).

Q: Is there formal coordination or cross-referencing program with regards to NTSB accident investigations, when the investigations determine that faulty maintenance contributed to the crash?

A: No. The FAA has admitted that they have not established a program to cross reference St. George information with NTSB accident and incident databases. The FAA has stated, "No formal cross-references between FAA/NTSB accident investigations have been done." (see FOIA response) This is especially shocking when faulty maintenance is cited as a causal factor by the NTSB (see FOIA response).

Q: Do you have any indication that those involved received certification from St. George Aviation?

A: This is the question that the current investigation by the Office of Special Counsel is attempting to answer. The FAA has stated, "No formal cross-references between FAA/NTSB accident investigations have been done." (see FOIA response)

Q: How do you come by your knowledge of the above information?

A: Numerous documents that I have cited above and attached. See attached facsimile copy.

Attachments:

- St. George fact sheet (1/5/08) (3 pages)
- Response to 7/28/07 inquiry by GAP (2 pages)
- 11/17/06 FOIA Response # 2007-0697 (2 pages)
- 7/23/07 FOIA Request from GAP (3 pages)

GAP is the Government Accountability Project, located in Washington, DC. Mr. Adam Miles is my representative.

Appendix A

Exhibit 23

Katherine McMullen 202 254 3604

S10-071023-013

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

APPENDIX A
Exhibit 23

REPORT OF DISCLOSURES REFERRED FOR INVESTIGATION
OSC FILE NO. DI-07-2350

I. SUMMARY

The disclosures in this case were made by Gabriel D. Bruno, former Manager of the Orlando Flight Standards District Office (Orlando FSDO), who was employed by the Federal Aviation Administration (FAA) for more than 24 years. During his employment with FAA, Mr. Bruno was responsible for overseeing all commercial aviation safety activities within his district office. Mr. Bruno alleges that there are more than 1,000 airframe and power plant (A&P) mechanics employed in the aviation industry whose certification is questionable due to a flawed and inadequate re-examination process.

As described more fully below, many of these mechanics received their certificates from the St. George Aviation Testing Center (St. George) in Sanford, Florida. Although initially designated by FAA as a mechanic examiner, St. George was later found to have engaged in the fraudulent testing and issuance of mechanics' certificates. After this discovery, FAA instituted a re-examination process, which Mr. Bruno alleges was entirely inadequate to ensure that A&P mechanics were qualified for their positions. He further states that many of the St. George mechanics who underwent a questionable re-examination are still employed in the industry, at great expense to the safety of the flying public. More troubling is Mr. Bruno's allegation that FAA has failed to establish any formal coordination with air carriers, the National Transportation Safety Board (NTSB), or the Department of Transportation (DOT), to examine the issue of mechanic certification when airline crashes occur due to mechanical failure. Mr. Bruno stated that FAA is aware of the continuing problem with the mechanics' certifications but has failed to address and resolve this significant public safety issue. The gravamen of Mr. Bruno's complaint is that officials at FAA lack accountability and are not fulfilling their roles as stewards of safety for the flying public in the administration and oversight of airplane maintenance and airworthiness.

II. THE INFORMATION DISCLOSED

Background

Mr. Bruno first brought this matter to the attention of OSC in March 2003, when he and another whistleblower disclosed two allegations of wrongdoing by officials within FAA's Southern Region Flight Standards Division (FSD), which oversees the Orlando FSDO. 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 questionable certificate holders, represented gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety.

St. George was a "designated mechanic examiner," authorized to 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, the owner of St. George and an 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, St. George was supplying examinees with the answers to the exam prior to the exam and, in some cases, issuing certificates without any examination at all. The mechanics certified by St. George were then employed by airlines and responsible for aircraft maintenance.

According to Mr. Bruno, the St. George investigation conducted by the Office of Inspector General (OIG) in 1999 revealed that approximately 2,000 mechanics were certified by St. George under these fraudulent conditions 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. Some simply relinquished their certificates without undergoing re-examination.

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 re-examinations were terminated. Mr. Bruno estimated that cancellation of this program left more than 1,000 questionable certificates, and many unqualified A&P mechanics, working in the aviation industry.

The allegations were referred to the Secretary of Transportation for investigation in March 2003. The OIG, partially substantiated the allegations. The OIG's initial report to OSC dated January 16, 2004, stated, "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 the OIG investigation began.

According to the report, the program was cancelled after only 130 mechanics had been re-examined based on: (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 statistics cited in this paragraph are

not consistent with evidence provided by Mr. Bruno in his first disclosure, in which he reported that the program was canceled after only 20% of 325 individuals contacted had demonstrated competency.

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 cases were closed.

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 recently 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

Mr. Bruno reports that, to date, the mechanics who received certificates from St. George's have not been adequately re-examined and re-certified. He emphasizes that the cancellation of the re-examination program has placed the public at risk since 2001 by allowing unqualified mechanics to remain employed in the aviation industry. When FAA resumed the re-examination process after the preliminary injunction was lifted, mechanics were tested using an abbreviated examination, excluding the practical, hands-on portion of the test, according to Flight Standards Information Bulletin for Airworthiness (FSAW 04-10B). Mr. Bruno alleges that these re-certified aircraft mechanics are now employed with major airlines; their re-examination status is questionable and FAA has not taken sufficient steps to ensure they are actually qualified for the positions they hold.

He alleges 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. FAA's oversight of the Designated Mechanic Examiner program, and airline mechanics overall, has fallen short of the minimum

level of oversight expected to ensure safety to the flying public. Without better oversight and management of commercial airline operations, particularly aircraft maintenance, substantial and significant risks to the public will continue.[1]

Mr. Bruno now alleges that the re-examination program has been insufficient to ensure that the mechanics who have received certificates are fully qualified to perform the essential functions of their positions. The re-examinations have been "watered-down" so that they represent little improvement over the original fraudulent St. George examinations. Mr. Bruno alleges that the practical, hands-on portion of the examination is essential to ensure that mechanics are legitimately certified. By modifying the examination, and excluding the essential practical portion of the exam, Mr. Bruno asserts that FAA has de-criminalized the St. George practices that were found to have been fraudulent, and adopted unsatisfactory, inconsistent certification criteria that do not prioritize safety, and conflict with FAA's own certification requirements.

Moreover, Mr. Bruno asserts that the FAA has been less than forthcoming in its reporting on the progress of re-examinations. FAA recently reported, in response to a Freedom of Information Act (FOIA) request, that as of August 1, 2007, only 712 St. George certificate holders were re-examined, out 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. 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 advised OSC, there were approximately 1,600 mechanics identified for re-testing. Mr. Bruno alleges that the statistics quoted by FAA are inconsistent and do not reflect the actual progress of the re-examination program.

Mr. Bruno identifies 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. He suggests that these factors evidence a lack of accountability by FAA officials administering and reporting on the re-examination program, as well as a continuing concern about the qualifications of those mechanics who were administered a less-than-complete examination.

As support for his concern that the re-examination process, as re-instituted by FAA, under FSAW-04-10B, was flawed and continues to compromise public safety, Mr. Bruno cites the conclusions of the NTSB in two recent 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 steps, resulting in a mechanical failure during flight. Similarly, in a December 2005 crash, a Chalk's Ocean

[1] 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.

Airways flight 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.[2]

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.[3]

Mr. Bruno also points 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 established no formal coordination or cross-referencing program with regard to NTSB accident investigations, when the investigative findings determine that faulty maintenance contributed to a crash. Without this critical piece of safety information, FAA has not credibly substantiated their claim that there was "no conclusive measurable impact on aviation safety and the flying public that can be attributed to individuals tested at [St. George]."[4]

Mr. Bruno alleges 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 asserts that FAA should review certification records to determine whether or not the mechanics involved in recent airline crashes, were originally St. George certificate-holders, and to ascertain the status of their certification. By not doing so, FAA has failed to ensure that its re-examination process is adequate, and that public safety is not further compromised by unqualified mechanics.

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[2] 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.

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

[4] See, Report of the Department of Transportation to OSC, January 16, 2004.

Summary and Conclusion

In this case, Mr. Bruno has disclosed very troubling allegations concerning FAA's failure to properly address a safety concern identified by OIG as a having a "measurable impact on aviation safety." FAA touts its mission to "provide the safest, most efficient aerospace system in the world" and its vision, ". . . to improve the safety and efficiency of aviation, while being responsive to our customers and accountable to the public." Moreover, the agency holds itself out as a leader in aerospace safety, and FAA's public statements even go so far as to state that "safety is our passion."[5]

Yet, FAA's public proclamations belie its inaction. If substantiated, these disclosures demonstrate that FAA oversight is sorely lacking and the agency is all too willing to overlook significant safety issues which adversely affect not only the aviation industry, but the safety of the flying public.

III. THE SPECIAL COUNSEL'S FINDINGS

Given the apparent expertise of the whistleblower regarding the matters disclosed and the detail provided, I have concluded that there is a substantial likelihood that the information he provided to the Office of Special Counsel discloses gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety.

[5] See, www.faa.gov.

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency[1] and shall include:

(1) a summary of the information with respect to which the investigation was initiated;

(2) a description of the conduct of the investigation;

(3) a summary of any evidence obtained from the investigation;

(4) a listing of any violation or apparent violation of law, rule or regulation; and

(5) a description of any action taken or planned as a result of the investigation, such as:

(A) changes in agency rules, regulations or practices;

(B) the restoration of any aggrieved employee;

(C) disciplinary action against any employee; and

(D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

[1] Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

FACSIMILE COVER SHEET

TO:

Name: The Honorable Mary E. Peters	
Title: Secretary	
Organization: U.S. Department of Transportation	
Office / Location: Washington, D.C.	
Telephone: (202) 366-1111	**Fax:** (202) 366-7202

FROM:

Name: Scott J. Bloch	
Organization: Office of Special Counsel	
Office / Location: Washington, D.C.	
Telephone: (202) 254-3601	**Fax:** (202) 653-5151

Date: October 23, 2007	**Number of pages, including this cover sheet: 11**

Message: Original and enclosures to follow by Federal Express delivery

If you did not receive the total number of pages shown, please call Denise Toney at (202) 254-3632.

Appendix A

Exhibit 24

APPENDIX A
Exhibit 24

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

The President
The White House
Washington, D.C. 20500

Re: OSC File Nos. DI-02-1869 and DI-03-0806

Dear Mr. President:

Airframe and powerplant (A&P) mechanics perform critical maintenance and repair work on our nation's commercial aircraft. It is crucial to the safety of the flying public that these mechanics receive proper training and master the skills necessary to perform their jobs, as evidenced by their ability to pass certification exams. One company that was authorized to administer FAA's A & P mechanic exams and issue A & P mechanic certificates was St. George Aviation in Sanford, Florida. In May 1999, the owner of St. George and an 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.

The Office of Special Counsel received disclosures from two whistleblowers at the Department of Transportation (DOT), Federal Aviation Administration (FAA), Flight Standards District Office (FSDO), Orlando, Florida, alleging gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety. Specifically, Gabriel D. Bruno, former Manager of the Orlando Flight Standards District Office, and Dorvin Hagen, a former Supervisory Safety Inspector of the Orlando FSDO, alleged that: (1) Dawn Veatch, then-Acting Division Manager of the Southern Region Flight Standards Division, wrongfully cancelled a program implemented to re-examine individuals who had received A & P mechanic certificates from St. George Aviation under fraudulent conditions; and (2) Southern Region management failed to adequately staff the AirTran Certificate Management Unit (CMU) from 1998 to 2001.

The Office of Special Counsel required the Secretary of Transportation to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). The Transportation Secretary delegated authority to review and sign the required agency report to the DOT Inspector General (IG). The Inspector General's initial report to this office on January 16, 2004, was found to be deficient, and we asked him to submit additional information, which he did on June 9, 2004, August 17, 2004, and April 7, 2005. The whistleblowers commented on the agency reports; their comments are attached. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the agency reports to you.

We have reviewed the original disclosures and the agency report and supplemental reports, as well as the whistleblowers' comments. We have determined that the agency reports contain all of the information required by statute and most of the findings appear to be reasonable.

However, as discussed in the attached Analysis of Disclosures, while I have determined that the agency's findings regarding cancellation of the re-examination program to be reasonable, and note that the agency has taken steps to complete the re-examinations, I am concerned that the re-examination process has now been interrupted by a court order. Therefore, I am recommending additional follow-up with the agency regarding the status of the re-examination program.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the reports and the whistleblowers' comments to the Chairmen of the Senate Committee on Commerce, Science and Transportation and the House Committee on Transportation and Infrastructure. We have also filed copies of the reports and comments in our public file and closed the matter.

Respectfully,

Scott J. Bloch

Enclosures

Appendix A

Exhibit 25

APPENDIX A
Exhibit 25

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
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Analysis of Disclosures, Agency Investigation and Reports, Whistleblower Comments, and Comments of the Special Counsel—OSC File Nos. DI-02-1869 and DI-03-0806

Summary

The disclosures in this matter were made by Gabriel D. Bruno, former Manager of the Orlando Flight Standards District Office (FSDO), who has been employed by the Federal Aviation Administration (FAA) for more than 24 years, and Dorvin Hagen, a former Supervisory Safety Inspector of the Orlando FSDO employed by FAA for 29 years. Mr. Bruno was responsible for overseeing all commercial aviation safety activities within his district office, including the FSDO's three Certificate Management Units (CMUs), which provide certification and monitoring of the assigned air carriers to ensure compliance with aviation safety regulations and procedures. Mr. Hagen served as the Supervisory Aviation Safety Inspector for the AirTran CMU from 1998 until August 2001.

Mr. Bruno and Mr. Hagen disclosed two allegations of wrongdoing by officials within FAA's Southern Region Flight Standards Division (FSD), which oversees the Orlando FSDO:

1. Mr. Bruno alleged that in the spring of 2001, Dawn Veatch, then-Acting Division Manager of the Southern Region FSD, abruptly cancelled a program implemented to re-examine individuals who had received airframe and powerplant (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 questionable certificate holders, represents gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety; and

2. Mr. Bruno and Mr. Hagen alleged that Southern Region FSD management, specifically three consecutive division managers, Marion Dittman, Dawn Veatch and Nicholas Sabatini, failed to adequately staff the AirTran CMU from 1998 to 2001. They asserted that such understaffing represents gross mismanagement that resulted in a substantial and specific danger to public safety.

The Department of Transportation (DOT), Office of Inspector General (OIG) investigated these allegations and substantiated them in part. The OIG found that FAA prematurely cancelled the re-examination program and recommended that the agency ensure that all remaining suspect certificate holders be re-tested. As discussed below, the agency initiated re-examinations; however, that process has been halted by a preliminary injunction judicially imposed on FAA. While the Special Counsel has determined that the agency's findings regarding this allegation appear to be reasonable, OSC remains concerned that the re-examination process has not been completed.

The OIG also found that "there were considerable staffing issues in the Orlando FSDO" from 1998 to 2001. However, the OIG did not find evidence that the staffing shortage in the AirTran CMU could be attributed to any deliberate act or omission by the Southern Region FSD managers, nor did it find that the shortage created a substantial and specific danger to public safety. Information provided by the whistleblowers and the OIG establishes that the shortage that existed from 1998 to 2001 has since been rectified, and the AirTran CMU, now classified as a Certificate Management Office, is currently adequately staffed.

The Whistleblowers' Disclosures

Cancellation of the St. George Mechanic Re-Examination Program

St. George Aviation (St. George) in Sanford, Florida, was an FAA "designated mechanic examiner," authorized to administer FAA's A & P mechanic exam and issue A & P mechanic certificates. In May 1999, the owner of St. George and an 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, St. George was supplying examinees with the answers to the exam prior to the exam and, in some cases, issuing certificates without any examination at all.

According to Mr. Bruno, the St. George investigation conducted by DOT OIG revealed that approximately 2,000 mechanics were certified by St. George under these fraudulent conditions and needed to be re-examined. Following the OIG investigation, the Orlando FSDO 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. Some simply relinquished their certificates without undergoing re-examination.

Mr. Bruno alleged that in the spring of 2001, Dawn Veatch, Acting Division Manager of the Southern Region FSD, ordered him 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 re-examinations were terminated. Mr. Bruno estimated that cancellation of this program left more than 1,000 questionable certificates, and many unqualified A & P mechanics, working in the aviation industry.

Failure to Adequately Staff the AirTran Certificate Management Unit

In April 1998, FAA transferred oversight responsibility for ValueJet Airlines from the Atlanta FSDO to the Orlando FSDO. In March 1999, ValueJet merged with AirTran Airways. The Orlando FSDO oversaw the merger and maintained the AirTran CMU following the merger. Mr. Bruno and Mr. Hagen alleged that prior to the merger, the Orlando FSDO developed a staffing plan for proper oversight of AirTran, taking into account the airline's history, including the National Transportation Safety Board's (NTSB's) findings regarding the 1996 ValueJet plane crash, the merger, and AirTran's plan for considerable growth. They alleged that they presented their staffing plan to the Southern Region FSD in October 1997, and that it was approved by Division Manager, Michael Sacrey, in December 1997.

The staffing plan called for eight inspectors, with six additional inspectors to be hired six months prior to the delivery of the first B-717 aircraft. Mr. Bruno and Mr. Hagen asserted that, despite the approval of this plan, their efforts to ensure the required staffing, and the arrival of the B-717 aircrafts in September 1999, the AirTran CMU never had more than seven inspectors during the three years following the merger, leaving the CMU grossly understaffed. They pointed out that the prior ValueJet CMU in the Atlanta FSDO had fourteen inspectors for oversight of a smaller airline operation with fewer aircraft.

Over the course of that three-year period, Mr. Bruno and Mr. Hagen sought additional inspectors for the AirTran CMU, to no avail. In October 2000, they met with Marion Dittman, then-Acting Division Manager of the Southern Region FSD. Mr. Hagen outlined for Ms. Dittman the safety oversight functions that they were unable to accomplish because of inadequate staffing. The failure to adequately perform these functions was particularly troubling to Mr. Bruno and Mr. Hagen, because inadequate FAA oversight of the airline was cited by NTSB in its review of the 1996 ValueJet crash. They alleged that Ms. Dittman acknowledged the staffing shortage yet failed to allocate additional inspectors.

After further follow-up by Mr. Bruno, the Director of the FSD, Nicholas Lacey, ordered an independent staffing study of the AirTran CMU in December 2000. The study, completed by a member of the Southwestern Region FSD in early January 2001, concluded that the AirTran CMU required a minimum of four, ideally five, additional inspectors. The study recommended increasing the staff by four inspectors "as soon as possible" and a fifth inspector when resources became available. In response, Mr. Lacey ordered the Southern Region to hire four additional inspectors by the end of February 2001. However, Southern Region FSD management, specifically Ms. Dittman and her successors, Dawn Veatch and Nicholas Sabatini, failed to fill those positions. At the time of Mr. Bruno's and Mr. Hagen's departure from the Orlando FSDO in the summer of 2001, none of the four positions had been filled.[1]

The Department of Transportation Investigation and Reports

Cancellation of the St. George Re-Examination Program

According to the OIG's initial report, dated January 16, 2004, "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 the OIG investigation began.

[1]Mr. Bruno and Mr. Hagen stated that subsequent to their departure from the Orlando FSDO in July 2001 and August 2001, respectively, additional inspectors were hired for the AirTran CMU.

According to the report, Dawn Veatch directed cancellation of the program after only 130 mechanics had been re-examined based on: (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 report states that 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. In addition, the OIG believed that the pass-rate of 79 percent was a matter of significant concern. The OIG stated, "[i]n our view, this does represent a measurable impact on aviation safety."

Accordingly, the OIG recommended that FAA take steps to re-examine the remaining 1,228 mechanics who received certificates from St. George under suspect conditions. The initial report did not include what steps FAA had taken in response to this recommendation. Thus, OSC followed up with the OIG on this issue. After communications with the OIG and James Ballough, Director, FAA Flight Standards Service, the OIG provided in its June 9, 2004, supplemental report, assurance that FAA was implementing steps to re-examine all mechanics who received certificates from St. George dating back to May 1995.

Subsequently, however, Mr. Bruno informed OSC that the new re-examination program had been cancelled. OSC followed up with the OIG and the FAA Office of the Chief Counsel (OCC), which confirmed the cancellation of the re-examination program. Susan Caron, OCC, advised OSC that the U.S. District Court for the Middle District of Florida issued a preliminary injunction prohibiting FAA from proceeding with re-examinations for several mechanics who filed suit challenging the legality of the re-examinations. She further advised that FAA had filed an appeal in the United States Court of Appeals for the Eleventh Circuit of the preliminary injunction which is pending and that the re-examinations were suspended pending the outcome of the litigation.[2]

Mr. Bruno provided comments regarding this allegation. He pointed out that the cancellation of the re-examination program placed the public at risk for more than three years by allowing unqualified individuals to remain in the aviation system. He also raised concern that, according to Flight Standards Information Bulletin 04-10, attached as Exhibit 50 to his comments, the new re-examination program includes the written and oral segments of the exam, but not the practical exam required for original certification. He expressed concern that the OIG investigation of the cancellation of the re-examination program will do little to rectify the problems associated with FAA's oversight of the Designated Mechanic Examiner program, and that abuses of authority, gross mismanagement and risks to the public will continue.

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[2]This matter is docketed as Bennett-Seacrest, et al. v. Federal Aviation Administration, Case No. 6:04-cv-1525-Orl-22JGG

Understaffing of AirTran CMU

In its initial report, the OIG found that Southern Region FSD provided adequate staff for the AirTran CMU. However, the report states that Mr. Bruno diverted the personnel hired or transferred to assist in the St. George re-examination program.

According to the initial report, the OIG found that Southern Region FSD management "took significant measures, including multiple re-writes and submissions of special position requests, to assist Mr. Bruno in obtaining the staff necessary for the CMU." Contrary to Mr. Bruno and Mr. Hagen's allegations, the report states that the original staffing plan for the AirTran CMU was reviewed by the Flight Standards National Position Classification Panel (FSNPCP) in December 1999; however, FSNPCP did not find sufficient justification for the positions requested and recommended that Mr. Bruno submit a unique position request for temporary positions. The report does not state from whom the OIG obtained this information or provide any documentation to support these findings. In fact, the report states that FAA was unable to provide such documentation.[3]

In addition, the initial report states that the 2001 staffing study ordered by Mr. Lacey "demonstrated that the CMU for AirTran Airways was staffed on a par with other CMUs with similar responsibilities. . ." However, according to the chart from that study, included on page 10 of the initial report, the AirTran CMU was the only one of the ten compared that needed five additional inspectors. Five of the CMUs did not require any additional personnel, and each of the other four required one or two additional inspectors. The report confirms that the staffing study recommended that the AirTran CMU hire five additional inspectors.

The initial report states that following the staffing study, Mr. Bruno refused offers by Southern Region FSD to hire aviation safety inspectors and made requests to hire inspectors at higher grades. The report states that "FAA told us that these are specialized positions and require specific justification for hiring." According to the report, FAA filled three of the inspector positions before the February 2001 deadline; however, Mr. Bruno and Mr. Hagen continued to request a contract maintenance inspector, which was denied by FAA.

The initial report further states that Ms. Dittman and Ms. Veatch advised the OIG that "Mr. Bruno and Mr. Hagen were repeatedly asking for additional personnel" for the AirTran CMU. They also stated that Mr. Bruno diverted personnel from the AirTran CMU to staff the St. George re-examination program. The initial report notes that Mr. Bruno's successor, Jack Moyers, advised the OIG that he had "ample staff" to properly manage the AirTran CMU when he became the CMU manager in August 2001 but does not state how many inspectors Mr. Moyers had initially or when additional inspectors were obtained.

Following review of the initial report and comments submitted by Mr. Bruno and Mr. Hagen, OSC sought clarification and additional information from the OIG regarding the

[3]The OIG states in footnote 8 that "FAA told us that their staffing numbers are based on a dynamic computerized staffing model that updates annually, overwriting the previous year's projections. Accordingly, FAA was unable to provide our office with written documentation of staffing goals during this period."

AirTran CMU staffing issue. OSC asked the OIG to identify the information relied on to reach its finding that adequate staffing was provided to the AirTran CMU, including identification of individuals interviewed for the investigation and any documentation relied on by the OIG. In response, the OIG produced a supplemental report, dated June 9, 2004.

OIG's First Supplemental Report

The OIG states in the supplemental report that it relied on documents provided by Mr. Bruno and Mr. Hagen, documents available at the Southern Region FSD and Orlando FSDO, FAA regulations, and interviews with relevant personnel. The supplemental report states that based on the documents attached to the report, the OIG found that: (1) Mr. Bruno and Mr. Hagen were constantly asking for personnel assignments and positions that were not justified by the size of the AirTran CMU; (2) Southern Region FSD and the Southern Region Personnel Office attempted to assist Mr. Bruno in obtaining sufficient staff for the AirTran CMU; and (3) staffing levels within the AirTran CMU were consistent with levels at similar facilities.

In support of the OIG's finding regarding repeated requests for "unrated" positions, the supplemental report includes in Exhibit 1 the original AirTran CMU staffing plan prepared by the Orlando FSDO, which Mr. Bruno and Mr. Hagen alleged was approved in December 1997. The report states that this plan requests "staffing support for the AirTran CMU based on the ATOS staffing model."[4] The report further states that the AirTran CMU was never officially authorized for the ATOS program. According to the report, Nancy Aadland, FAA's ATOS Program Office Manager, advised the OIG that AirTran "has never been identified or scheduled to become an ATOS carrier."

Exhibit 1 of the supplemental report also includes the October 28, 1999, AirTran Training Requirement provided to the OIG by Mr. Hagen. The Memorandum of Activity prepared by the OIG investigator, at Exhibit 1, states that this document reveals that the AirTran CMU had a total of 20 inspectors and concludes that the staffing for the CMU exceeded Mr. Hagen's request for 14 inspectors. The supplemental report provides additional documentation reflecting ongoing communications between the Orlando FSDO and the Southern Region FSD regarding staffing issues of the AirTran CMU – at the time of the merger and beyond – including requests for additional inspectors and documentation reflecting that certain requests were denied on the basis of the size and workload of the AirTran CMU.

In addition, the supplemental report provides a copy of the 2001 independent staffing study, at Exhibit 12. The report notes that at the time of the study, the AirTran CMU had seven aviation safety inspectors, and that the staffing study recommended that the CMU should be increased by five aviation safety inspectors. The staffing study states that "[i]t appears that this certificate has suffered the same fate that the Mesa certificate (and probably other certificates) has – insufficient resources to meet the identified needs."

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[4]The supplemental report provides information on the Air Transportation Oversight System (ATOS) program, which is described as a "new and innovative" way of inspecting the airlines, designed to identify trends in order to spot and correct problems at their root cause. The report explains that the ATOS program initially included only the ten largest airlines, but will eventually include all airlines.

The supplemental report further states that following the study, Ms. Dittman obtained hiring authority for four of the recommended aviation safety inspectors; however, Mr. Bruno submitted requests for more specialized inspectors, including Assistant Principal Operations Inspectors, an Assistant Principal Maintenance Inspector, and a Contract Maintenance Inspector (CMI). The report states that the request for the CMI was denied.

The supplemental report also provides summaries of the OIG investigator's interviews with Ms. Veatch and Ms. Dittman, two of the three individuals Mr. Bruno and Mr. Hagen alleged were responsible for the understaffing of the AirTran CMU, and with Mr. Moyers, Mr. Bruno's successor. The summary of Ms. Dittman's interview reflects that she advised the OIG investigator that "the Southern Region has always been understaffed, but it's incumbent upon the local FSDO Managers to properly manage the resources provided by means of prioritization and appropriate tasking of their limited resources." Ms. Dittman was unable to provide any specific information regarding numbers or dates of personnel allocations for the Orlando FSDO or the AirTran CMU. She stated she recalled offering geographical assistance.

The summary of Ms. Veatch's interview reflects that she provided similar information. She stated that Mr. Bruno and Mr. Hagen were offered, but refused, geographical support. Ms. Veatch and Ms. Dittman both stated that Mr. Bruno diverted FSDO staff, including staff designated for the AirTran CMU, to support the St. George re-examination project. The report reflects that Mr. Moyers advised the OIG that the AirTran CMO is currently staffed adequately with 21 inspectors.

The supplemental report further states that based on its review of the AirTran CMU personnel files, the OIG concluded that staffing levels at the CMU were consistent with those of similar facilities. The report cites the staffing study in support of this finding.

OIG's Second Supplemental Report

Subsequent to the initial report, Mr. Bruno raised in his comments and advised OSC that he had provided to the OIG investigator a copy of a 2001 document relating to the AirTran fleet size that he alleged was falsified and entered into the FAA's Vital Information System (VIS). A copy of the document is included as Exhibit 33 with Mr. Bruno's comments. Mr. Bruno alleged that this document falsely represents the AirTran fleet size in October 2001 to be twice its actual size – 120 aircraft rather than 58. He further alleged that this false representation of the fleet size was used to obtain authorization to establish an AirTran Certificate Management Office (CMO), separate from the FSDO. Such authorization was granted in December 2003.

OSC requested that the OIG review and respond to this allegation. In response, the OIG investigated and produced a second supplemental report, dated August 17, 2004. The OIG found that, as Mr. Bruno alleged, the VIS document does not accurately depict the AirTran fleet size in October 2001. However, the OIG found that neither the inaccurate document nor the 120 figure were used to obtain CMO approval, and that such approval was granted based on factors other

than fleet size. The report includes documents provided by FAA reflecting accurate fleet size and the basis for CMO approval.

OIG's Third Supplemental Report

At OSC's request, the OIG revisited the staffing issue in a third supplemental report, received on April 7, 2005. In the third supplemental report, the OIG concedes that, as Mr. Bruno and Mr. Hagen alleged, "there were considerable staffing issues in the Orlando FSDO" from 1998 to 2001. However, the OIG notes that the staffing shortages were not unique to Orlando, but, rather, were experienced throughout the entire agency. The report also explains that the OIG did not find any evidence showing that the Southern Region FSD managers deliberately created or contributed to the staffing shortages.

The OIG also did not believe that the staffing shortages created a danger to public safety, or significantly compromised the AirTran CMU's ability to perform its function. In support, the report cites an employee award recommendation Mr. Bruno submitted on March 15, 2000, that claimed that, for the AirTran certificate, "day to day operations were monitored with unprecedented scrutiny." The report also states that the award recommendation indicates that inspectors attended daily morning meetings to discuss the previous day's problems. The OIG asserts that attending such meetings extended above and beyond the inspector's normal duties, which belies the whistleblowers' contention that the office had inadequate staff to perform required duties.

Whistleblowers' Comments

Mr. Bruno and Mr. Hagen provided extensive comments and supporting documentation in response to the OIG's findings regarding the AirTran understaffing allegations.[5] They outlined the extensive documentation relating to AirTran staffing that they provided in support of their allegations. They then commented on the lack of documentation provided by FAA to refute the allegations or support FAA's position, and raised concerns regarding FAA's apparent failure to maintain official records. In addition, both noted that the OIG primarily relied on statements from Ms. Veatch and Ms. Dittman, the two primary subjects, and did not interview or seek information from the several individuals they identified as having valuable information regarding the AirTran CMU staffing during the time frame in question. Additional key points raised in their comments are discussed below.

Mr. Bruno outlined the memoranda and related documents that he provided to illustrate the staffing needs of the AirTran CMU and his and Mr. Hagen's efforts to resolve critical staffing issues. He noted that the OIG failed to explain how FAA met the staffing needs of the CMU, or explain why the CMU was not allocated the 14 positions called for in the staffing plan and previously dedicated to ValueJet before the merger. He refuted the assertion that Southern Region management assisted in obtaining the necessary staff. He further maintained the "special position requests" and numerous re-writes were an unnecessary stalling tactic forced on the

[5]In addition to his comments, Mr. Hagen provided to OSC a copy of the tape recording of his interview with the OIG investigator. OSC has placed the tape in Mr. Hagen's case file.

Orlando FSDO by the Southern Region management, which was unwilling to provide adequate staffing. He also pointed out that some of the information provided to show Southern Region FSD assistance pertained to filling vacant positions rather than additional staff.

Mr. Bruno also asserted that the OIG's finding that the 2001 staffing study demonstrated that the AirTran CMU was "on a par" with other CMUs distorts the study's finding and ignores the recommendation to increase the CMU's staff to 14, ideally 15, personnel. He refuted the OIG's allegation that following the staffing study and recommendation for additional aviation safety inspectors, he requested more specialized inspectors that were not justified. He pointed out that all of the positions he requested *are* aviation safety inspector positions, some of which were specifically recommended in the staffing study. He stated that he was identifying for the region, at their request, the position descriptions that he would use to assign these inspectors to perform.

Mr. Bruno adamantly denied that he diverted personnel from the AirTran CMU to support the St. George re-examination program. He stated that he provided the OIG with a copy of the St. George Action Plan, at Exhibit 2, which was approved by FAA Headquarters and specifically identifies the inspectors assigned to the program. He stated that there is no confusion regarding this issue, and noted that these accusations were presented by Ms. Dittman, the individual responsible for the understaffing. He further stated that the AirTran CMU was still seriously understaffed in August 2001, as he documented. Lastly, Mr. Bruno objected to the OIG's claim that the March 15, 2000, award recommendation showed that the CMU had adequate staff to fulfill all job duties. On the contrary, he asserted that he made the award recommendation in order to recognize the hard work performed by his limited staff under difficult conditions, which often included working nights, weekends and holidays.

In his comments, Mr. Hagen strongly refuted the OIG's statement that the original staffing plan calling for 14 inspectors, which he prepared, was based on the ATOS staffing model. He also objected to the assertion that AirTran was never identified or scheduled for ATOS, and, in support, he provided documentation prepared by Ms. Aadland showing that AirTran had, in fact, been slated for the ATOS program. He also contested the OIG's conclusion that, according to the AirTran Training Requirement, the CMU had 20 inspectors. He explained that that document was prepared as a cost summary of training required under ATOS when AirTran was being considered, and that 20 inspectors were never assigned to the CMU. Both Mr. Hagen and Mr. Bruno stressed in their comments that this newly raised issue of whether AirTran was considered for the ATOS program is not relevant to the question of whether the AirTran CMU was adequately staffed. Mr. Hagen expressed disappointment that the OIG did not probe further into FAA's decision not to transfer inspectors from Atlanta to Orlando after the agency transferred oversight responsibility from the Atlanta FSDO to the Orlando FSDO. He argued that this decision was untenable in light of the fact that the Certificate Management of ValuJet Airlines was one of FAA's greatest priorities at that time.

Conclusion

Based on the representations made in the agency reports and as stated above, I have determined that the agency's reports collectively contain all of the information required by statute and the agency's findings appear to be reasonable. It is, nevertheless, troubling that FAA has been forced to cancel the re-examination program initiated in response to this investigation because of the preliminary injunction. In light of the OIG's finding that the number of individuals who have not been re-examined represents a measurable impact on aviation safety, this issue remains unresolved.

Recommendation

Because there remain concerns regarding the termination of the re-examination program, the Special Counsel recommends follow-up with the agency to determine the status of the litigation and any steps the agency is taking to effectively complete the re-examinations.

Appendix A

Exhibit 26

APPENDIX A
Exhibit 26

Memorandum

U.S. Department
of Transportation
Federal Aviation
Administration

Southern Region, ASO-200
Flight Standards Division
1701 Columbia Ave.
College Park, GA 30337

Subject: INFORMATION: St. George Re-examination Program Briefing

Date: No date - copy supplied by ASO-201.

From: Manager, Air Safety Regulations Branch, ASO-230

Reply to Attn. of: Robert A. Merldy
(404)305-6067
FAX: (404)305-6065

To: Acting Manager, Flight Standards Division,
ASO-200

On May 20, 1999, guilty verdicts were returned by a federal jury on, Anthony St. George and George Allen on conspiracy charges. These charges related to making false statements to the Federal Aviation Administration (FAA) concerning testing and certification of Airframe and Powewrplant (A&P) mechanics at the St. George Testing Center in Sanford, Florida.(SGA).

A re-examination program was initiated by identifying the last person tested by the St. George facility. Working backward chronologically, the plan was to evaluated groups of twenty-five (25) until we have confidence that those remaining do not pose a threat to aviation safety and the flying public. The actual investigation surveillance of St. George was in June and December 1998.

Public Law 103-272, Section 44709(709), is the authority for re-examination. We believe that the safety threat to the aviation community and flying public as a result of the SGA facility is appropriately address by the following action:

A. Take 709 action for applicants that were identified during the J G surveillance, and those certificate holders that tested at the SGA facility and have been issued 709 letters to date (2/14/01).

B. At the conclusion of action for those individuals, notify the Southern Region Flight Standards Division ASO-200, of the results (briefing paper).

~~Approximately 980 airmen were certificated between June 1, 1997 and the date SGA~~ operations were terminated in 1998. As of January 10, 2001 there had been 312 letters (709) sent to individuals, 133 re-exams (709) scheduled, 78 re-exams conducted, 59 re-exams passed and 19 re-exams failed. There are 85 individuals that voluntarily surrendered their certificates. Those voluntarily surrendering their certificate may re-

apply for a certificate with no record relating to SGA and are thus not in the equation for evaluating the SGA effect. There are 95 letters that received no response.

Two years after closing the SGA facility, and considering the above information, we have no conclusive measurable impact on aviation safety and the flying public that can be attributed to individuals tested at SGA.

At the onset of the re-examination program, personnel were required to be re-tested at a facility operated by the Orlando, FL FSDO. There were "Congressionals" on behalf of some individuals that were notified to retest at the Facility operated by the Orlando FSDO. Procedures were changed to allow individuals to test at facilities (Designated Mechanic Examiners, DME's) of their choice with FAA inspector monitoring the process.

A **Draft HBAW** addressing the St. George issue sent to AFS-300, Randy Montgomery as an assist in finding uniform FAA wide procedures for re-examination of personnel identified in the SGA issue. On April 4, 2001 Randy Montgomery returned the DRAFT stating that Steve Douglas, AFS-300 need clarification in some wording. An updated copy of the proposed DRAFT was sent via FAX and cc-mail to AFS-300 on April 5, 2001 with changes in bold print. ASO-7, (legal's, Kieth May) has been briefed and coordinated with throughout in respect with ASO-250's involvement.

It was our recommendation that:

1. HBAW be issued as national standard guidance for tracking of 709 re-exams associated with the SGA issue.
2. The re-examination program be terminated at the conclusion of action on letters sent to the 312 individuals.
3. The Orlando Testing facility be closed, 90 days after the effective date of the HBAW addressing the St. George issue.
4. Those individuals identified for re-examination may be tested at a facility as outlined in the HBAW.

John M. Dunbar, Jr.

Appendix B
Exhibits 1 – 3

Appendix C
Exhibits 1 – 4

Presented to:

By:

Date:

Federal Aviation Administration

Appendix B

Exhibit 1

APPENDIX B
Exhibit 1

Exams Delivered Since August 1, 2005

		TAKE 1			TAKE 2		
Exam Date	FSDO	Exams Delivered	Number Pass	Number Fail	Exams Delivered	Number Pass	Number Fail
Aug 15 2005	ORLANDO FSDO	1	1	0	0	0	0
Aug 16 2005	ATLANTA FSDO	1	1	0	0	0	0
Aug 16 2005	MIAMI FSDO	1	0	1	0	0	0
Aug 18 2005	FARMINGDALE FSDO	2	2	0	0	0	0
Aug 19 2005	ATLANTA FSDO	2	2	0	0	0	0
Aug 22 2005	ATLANTA FSDO	1	1	0	0	0	0
Aug 22 2005	MIAMI FSDO	1	0	1	0	0	0
Aug 24 2005	TAMPA FSDO	1	0	1	0	0	0
Aug 29 2005	ATLANTA FSDO	1	1	0	0	0	0
Aug 31 2005	DETROIT FSDO	1	1	0	0	0	0
Aug 31 2005	ORLANDO FSDO	1	1	0	0	0	0
Sep 2 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Sep 6 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Sep 7 2005	ATLANTA FSDO	1	1	0	0	0	0
Sep 8 2005	DETROIT FSDO	1	1	0	0	0	0
Sep 9 2005	COLUMBIA FSDO	1	1	0	0	0	0
Sep 12 2005	OKLAHOMA CITY FSDO	1	1	0	0	0	0
Sep 12 2005	ORLANDO FSDO	1	0	1	0	0	0
Sep 14 2005	ATLANTA FSDO	1	1	0	0	0	0
Sep 16 2005	SCOTTSDALE FSDO	1	1	0	0	0	0
Sep 19 2005	PHILADELPHIA FSDO	2	1	1	0	0	0
Sep 21 2005	ATLANTA FSDO	1	1	0	0	0	0
Sep 22 2005	PHILADELPHIA FSDO	1	1	0	0	0	0
Sep 23 2005	ATLANTA FSDO	2	2	0	0	0	0
Sep 26 2005	ATLANTA FSDO	2	2	0	0	0	0
Sep 26 2005	DALLAS FSDO	1	1	0	0	0	0
Sep 26 2005	MIAMI FSDO	1	1	0	0	0	0
Sep 26 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Sep 27 2005	MIAMI FSDO	0	0	0	1	0	1
Sep 29 2005	ATLANTA FSDO	2	2	0	0	0	0
Sep 30 2005	ALLEGHENY FSDO	1	0	1	0	0	0
Sep 30 2005	ATLANTA FSDO	2	1	1	0	0	0
Sep 30 2005	RIVERSIDE FSDO	1	1	0	0	0	0
Oct 3 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Oct 3 2005	TAMPA FSDO	1	0	1	0	0	0
Oct 4 2005	ATLANTA FSDO	1	1	0	0	0	0
Oct 4 2005	TAMPA FSDO	1	1	0	0	0	0
Oct 5 2005	MIAMI FSDO	0	0	0	2	1	1
Oct 5 2005	WASHINGTON FSDO	1	1	0	0	0	0
Oct 6 2005	ATLANTA FSDO	2	2	0	0	0	0
Oct 7 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Oct 7 2005	ORLANDO FSDO	2	0	2	0	0	0
Oct 11 2005	DETROIT FSDO	1	0	1	0	0	0
Oct 11 2005	ORLANDO FSDO	1	1	0	0	0	0
Oct 12 2005	MIAMI IFO	1	1	0	0	0	0
Oct 12 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0

Oct 13 2005	ALBUQUERQUE FSDO	1	0	1	0	0	0
Oct 13 2005	DETROIT FSDO	1	1	0	0	0	0
Oct 14 2005	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Oct 17 2005	ATLANTA FSDO	4	4	0	0	0	0
Oct 17 2005	INDIANAPOLIS FSDO	1	1	0	0	0	0
Oct 17 2005	KANSAS CITY FSDO	1	1	0	0	0	0
Oct 17 2005	MEMPHIS FSDO	1	1	0	0	0	0
Oct 17 2005	PHILADELPHIA FSDO	0	0	0	1	1	0
Oct 17 2005	WICHITA FSDO	1	0	1	0	0	0
Oct 18 2005	ALLEGHENY FSDO	1	1	0	0	0	0
Oct 18 2005	BIRMINGHAM FSDO	1	1	0	0	0	0
Oct 18 2005	MIAMI FSDO	1	0	1	0	0	0
Oct 18 2005	MIAMI IFO	1	1	0	0	0	0
Oct 18 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Oct 18 2005	PHILADELPHIA FSDO	1	1	0	0	0	0
Oct 18 2005	VAN NUYS FSDO	1	0	1	0	0	0
Oct 20 2005	DUPAGE FSDO	1	1	0	0	0	0
Oct 20 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Oct 20 2005	TAMPA FSDO	1	1	0	0	0	0
Oct 21 2005	ATLANTA FSDO	3	3	0	1	1	0
Oct 21 2005	WASHINGTON FSDO	1	1	0	0	0	0
Oct 24 2005	ATLANTA FSDO	1	0	1	0	0	0
Oct 24 2005	FORT WORTH FSDO	1	1	0	0	0	0
Oct 24 2005	MEMPHIS FSDO	1	1	0	0	0	0
Oct 24 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Oct 24 2005	SCOTTSDALE FSDO	1	1	0	0	0	0
Oct 25 2005	BIRMINGHAM FSDO	1	0	1	0	0	0
Oct 25 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Oct 25 2005	ORLANDO FSDO	1	0	1	0	0	0
Oct 25 2005	WINDSOR LOCKS FSDO	1	0	1	0	0	0
Oct 26 2005	ATLANTA FSDO	1	0	1	0	0	0
Oct 26 2005	MINNEAPOLIS FSDO	1	0	1	0	0	0
Oct 27 2005	ATLANTA FSDO	2	2	0	0	0	0
Oct 27 2005	SAN JUAN FSDO	1	0	1	0	0	0
Oct 27 2005	VAN NUYS FSDO	1	0	1	0	0	0
Oct 28 2005	SCOTTSDALE FSDO	1	1	0	0	0	0
Oct 28 2005	WICHITA FSDO	1	1	0	0	0	0
Oct 31 2005	ATLANTA FSDO	4	4	0	0	0	0
Oct 31 2005	MINNEAPOLIS FSDO	2	1	1	0	0	0
Nov 1 2005	ATLANTA FSDO	1	1	0	0	0	0
Nov 1 2005	COLUMBUS FSDO	1	0	1	0	0	0
Nov 1 2005	INDIANAPOLIS FSDO	1	1	0	0	0	0
Nov 1 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Nov 1 2005	PORTLAND ME FSDO	1	1	0	0	0	0
Nov 1 2005	ST. LOUIS FSDO	1	1	0	0	0	0
Nov 2 2005	COLUMBUS FSDO	1	1	0	0	0	0
Nov 2 2005	DES MOINES FSDO	1	1	0	0	0	0
Nov 2 2005	HOUSTON FSDO	1	1	0	0	0	0
Nov 2 2005	LOUISVILLE FSDO	1	0	1	0	0	0
Nov 2 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Nov 2 2005	SALT LAKE CITY FSDO	1	1	0	0	0	0
Nov 3 2005	ATLANTA FSDO	2	0	2	0	0	0

Nov 3 2005	HOUSTON FSDO	1	1	0	0	0	0
Nov 3 2005	INDIANAPOLIS FSDO	1	0	1	0	0	0
Nov 3 2005	SALT LAKE CITY FSDO	1	1	0	0	0	0
Nov 4 2005	COLUMBUS FSDO	1	0	1	0	0	0
Nov 4 2005	ORLANDO FSDO	1	0	1	0	0	0
Nov 4 2005	SCOTTSDALE FSDO	1	1	0	0	0	0
Nov 7 2005	ATLANTA FSDO	2	1	1	0	0	0
Nov 7 2005	BIRMINGHAM FSDO	1	1	0	0	0	0
Nov 7 2005	FORT WORTH FSDO	1	0	1	0	0	0
Nov 7 2005	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Nov 7 2005	MIAMI FSDO	1	0	1	0	0	0
Nov 7 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Nov 8 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Nov 8 2005	SEATTLE FSDO	1	1	0	0	0	0
Nov 9 2005	ATLANTA FSDO	2	2	0	1	1	0
Nov 10 2005	ATLANTA FSDO	3	3	0	0	0	0
Nov 12 2005	MIAMI FSDO	3	1	2	0	0	0
Nov 14 2005	ATLANTA FSDO	3	2	1	0	0	0
Nov 14 2005	DETROIT FSDO	0	0	0	1	1	0
Nov 14 2005	GREENSBORO FSDO	2	2	0	0	0	0
Nov 14 2005	MIAMI IFO	1	1	0	0	0	0
Nov 14 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Nov 14 2005	NASHVILLE FSDO	1	0	1	0	0	0
Nov 14 2005	ORLANDO FSDO	0	0	0	3	1	2
Nov 14 2005	ROCHESTER FSDO	1	1	0	0	0	0
Nov 14 2005	WICHITA FSDO	0	0	0	1	0	1
Nov 15 2005	ATLANTA FSDO	4	3	1	0	0	0
Nov 15 2005	MIAMI FSDO	2	1	1	0	0	0
Nov 15 2005	MIAMI IFO	1	0	1	0	0	0
Nov 15 2005	SAN ANTONIO FSDO	1	1	0	0	0	0
Nov 15 2005	SAN JUAN FSDO	0	0	0	1	1	0
Nov 15 2005	TAMPA FSDO	1	0	1	0	0	0
Nov 16 2005	ATLANTA FSDO	2	2	0	0	0	0
Nov 16 2005	LOUISVILLE FSDO	1	1	0	0	0	0
Nov 17 2005	ATLANTA FSDO	2	1	1	0	0	0
Nov 17 2005	DETROIT FSDO	1	1	0	0	0	0
Nov 17 2005	SAN JUAN FSDO	1	1	0	0	0	0
Nov 18 2005	ATLANTA FSDO	4	4	0	0	0	0
Nov 18 2005	RIVERSIDE FSDO	1	1	0	0	0	0
Nov 18 2005	WINDSOR LOCKS FSDO	0	0	0	1	1	0
Nov 21 2005	ATLANTA FSDO	2	2	0	0	0	0
Nov 21 2005	GREENSBORO FSDO	1	0	1	0	0	0
Nov 22 2005	BALTIMORE FSDO	1	1	0	0	0	0
Nov 22 2005	DETROIT FSDO	1	1	0	0	0	0
Nov 22 2005	LOUISVILLE FSDO	1	0	1	0	0	0
Nov 22 2005	MIAMI FSDO	3	2	1	0	0	0
Nov 22 2005	ORLANDO FSDO	1	1	0	0	0	0
Nov 22 2005	PORTLAND ME FSDO	1	1	0	0	0	0
Nov 22 2005	SAN JUAN FSDO	1	0	1	0	0	0
Nov 22 2005	WASHINGTON FSDO	1	1	0	0	0	0
Nov 23 2005	MIAMI FSDO	1	0	1	0	0	0
Nov 23 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0

Nov 23 2005	ORLANDO FSDO	1	1	0	0	0	0
Nov 25 2005	BALTIMORE FSDO	1	1	0	0	0	0
Nov 28 2005	ATLANTA FSDO	4	2	2	0	0	0
Nov 28 2005	BIRMINGHAM FSDO	1	1	0	0	0	0
Nov 28 2005	MIAMI IFO	1	1	0	0	0	0
Nov 28 2005	MINNEAPOLIS FSDO	1	0	1	0	0	0
Nov 29 2005	ATLANTA FSDO	4	1	3	0	0	0
Nov 29 2005	BALTIMORE FSDO	1	1	0	0	0	0
Nov 29 2005	CINCINNATI FSDO	1	1	0	0	0	0
Nov 29 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Nov 29 2005	HARRISBURG FSDO	1	1	0	0	0	0
Nov 29 2005	LOUISVILLE FSDO	0	0	0	1	1	0
Nov 29 2005	MIAMI FSDO	2	0	2	0	0	0
Nov 29 2005	ORLANDO FSDO	1	1	0	0	0	0
Nov 29 2005	PORTLAND ME FSDO	1	1	0	0	0	0
Nov 30 2005	ATLANTA FSDO	3	3	0	0	0	0
Nov 30 2005	COLUMBIA FSDO	1	1	0	0	0	0
Nov 30 2005	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Nov 30 2005	LOUISVILLE FSDO	0	0	0	1	0	1
Nov 30 2005	MIAMI FSDO	1	1	0	1	0	1
Nov 30 2005	MINNEAPOLIS FSDO	1	0	1	0	0	0
Nov 30 2005	ORLANDO FSDO	1	1	0	0	0	0
Dec 1 2005	ATLANTA FSDO	3	2	1	0	0	0
Dec 1 2005	BALTIMORE FSDO	1	1	0	0	0	0
Dec 1 2005	DENVER FSDO	1	1	0	0	0	0
Dec 1 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 1 2005	MIAMI FSDO	1	1	0	0	0	0
Dec 1 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Dec 1 2005	ORLANDO FSDO	2	2	0	0	0	0
Dec 1 2005	SEATTLE FSDO	1	1	0	0	0	0
Dec 2 2005	ATLANTA FSDO	4	4	0	0	0	0
Dec 2 2005	CLEVELAND FSDO	1	1	0	0	0	0
Dec 2 2005	GREENSBORO FSDO	1	0	1	0	0	0
Dec 2 2005	ORLANDO FSDO	1	1	0	0	0	0
Dec 2 2005	VAN NUYS FSDO	0	0	0	1	1	0
Dec 2 2005	WINDSOR LOCKS FSDO	1	1	0	0	0	0
Dec 3 2005	MIAMI FSDO	2	0	2	0	0	0
Dec 5 2005	ATLANTA FSDO	3	3	0	0	0	0
Dec 5 2005	CHARLOTTE FSDO	1	1	0	0	0	0
Dec 5 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 5 2005	INDIANAPOLIS FSDO	1	0	1	0	0	0
Dec 5 2005	MIAMI FSDO	2	1	1	0	0	0
Dec 5 2005	ORLANDO FSDO	1	0	1	0	0	0
Dec 5 2005	RICHMOND FSDO	1	1	0	0	0	0
Dec 6 2005	ATLANTA FSDO	4	4	0	0	0	0
Dec 6 2005	DENVER FSDO	1	1	0	0	0	0
Dec 6 2005	ORLANDO FSDO	1	1	0	0	0	0
Dec 7 2005	ATLANTA FSDO	4	4	0	0	0	0
Dec 7 2005	BALTIMORE FSDO	1	1	0	0	0	0
Dec 7 2005	BIRMINGHAM FSDO	0	0	0	1	1	0
Dec 7 2005	JACKSON FSDO	1	1	0	0	0	0
Dec 7 2005	LITTLE ROCK FSDO	1	1	0	0	0	0

Dec 7 2005	MIAMI IFO	2	1	1	0	0	0
Dec 7 2005	ORLANDO FSDO	2	1	1	0	0	0
Dec 7 2005	ROCHESTER FSDO	1	1	0	0	0	0
Dec 8 2005	ATLANTA FSDO	4	4	0	1	1	0
Dec 8 2005	COLUMBIA FSDO	1	1	0	0	0	0
Dec 8 2005	DENVER FSDO	2	2	0	0	0	0
Dec 8 2005	HOUSTON FSDO	1	1	0	0	0	0
Dec 8 2005	MINNEAPOLIS FSDO	1	0	1	0	0	0
Dec 8 2005	ORLANDO FSDO	3	1	2	0	0	0
Dec 8 2005	PHILADELPHIA FSDO	1	1	0	0	0	0
Dec 9 2005	ALLEGHENY FSDO	1	1	0	1	0	1
Dec 9 2005	ATLANTA FSDO	3	3	0	0	0	0
Dec 9 2005	CLEVELAND FSDO	1	0	1	0	0	0
Dec 9 2005	COLUMBUS FSDO	1	1	0	0	0	0
Dec 9 2005	INDIANAPOLIS FSDO	1	1	0	0	0	0
Dec 9 2005	MIAMI FSDO	1	1	0	0	0	0
Dec 9 2005	SCOTTSDALE FSDO	1	0	1	0	0	0
Dec 9 2005	SPRINGFIELD FSDO	1	1	0	0	0	0
Dec 9 2005	WICHITA FSDO	1	0	1	0	0	0
Dec 10 2005	MIAMI FSDO	2	1	1	1	1	0
Dec 12 2005	ATLANTA FSDO	5	5	0	1	1	0
Dec 12 2005	FARMINGDALE FSDO	1	0	1	0	0	0
Dec 12 2005	FORT WORTH FSDO	0	0	0	1	0	1
Dec 12 2005	FT. LAUDERDALE FSDO	2	2	0	0	0	0
Dec 12 2005	GREENSBORO FSDO	1	1	0	0	0	0
Dec 12 2005	LOUISVILLE FSDO	1	1	0	0	0	0
Dec 12 2005	MEMPHIS FSDO	1	0	1	0	0	0
Dec 12 2005	MIAMI FSDO	1	1	0	0	0	0
Dec 12 2005	MINNEAPOLIS FSDO	1	0	1	1	1	0
Dec 12 2005	ORLANDO FSDO	1	0	1	0	0	0
Dec 12 2005	PHILADELPHIA FSDO	1	1	0	0	0	0
Dec 12 2005	SCOTTSDALE FSDO	1	1	0	0	0	0
Dec 13 2005	ATLANTA FSDO	5	5	0	1	1	0
Dec 13 2005	BOSTON FSDO	1	0	1	0	0	0
Dec 13 2005	COLUMBIA FSDO	1	0	1	0	0	0
Dec 13 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 13 2005	GREENSBORO FSDO	1	0	1	0	0	0
Dec 13 2005	ORLANDO FSDO	1	0	1	0	0	0
Dec 14 2005	ATLANTA FSDO	4	4	0	1	1	0
Dec 14 2005	COLUMBUS FSDO	1	1	0	0	0	0
Dec 14 2005	MIAMI FSDO	2	2	0	0	0	0
Dec 14 2005	ORLANDO FSDO	1	1	0	0	0	0
Dec 14 2005	ROCHESTER FSDO	1	1	0	0	0	0
Dec 15 2005	ATLANTA FSDO	3	3	0	0	0	0
Dec 15 2005	COLUMBIA FSDO	2	1	1	0	0	0
Dec 15 2005	COLUMBUS FSDO	1	1	0	0	0	0
Dec 15 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 15 2005	GRAND RAPIDS FSDO	1	0	1	0	0	0
Dec 15 2005	MIAMI FSDO	2	0	2	0	0	0
Dec 15 2005	MIAMI IFO	0	0	0	1	0	1
Dec 15 2005	MINNEAPOLIS FSDO	1	1	0	0	0	0
Dec 15 2005	ORLANDO FSDO	1	1	0	0	0	0

Dec 15 2005	PHILADELPHIA FSDO	1	1	0	0	0	0
Dec 16 2005	ALLEGHENY FSDO	1	1	0	0	0	0
Dec 16 2005	ATLANTA FSDO	6	6	0	1	1	0
Dec 16 2005	BIRMINGHAM FSDO	2	2	0	0	0	0
Dec 16 2005	CHARLESTON FSDO	1	0	1	0	0	0
Dec 16 2005	FRANKFURT IFO	1	1	0	0	0	0
Dec 16 2005	GREENSBORO FSDO	1	0	1	0	0	0
Dec 16 2005	HONOLULU FSDO	1	0	1	0	0	0
Dec 16 2005	INDIANAPOLIS FSDO	0	0	0	1	0	1
Dec 16 2005	MIAMI FSDO	3	2	1	0	0	0
Dec 16 2005	MIAMI IFO	1	0	1	0	0	0
Dec 16 2005	MINNEAPOLIS FSDO	3	2	1	0	0	0
Dec 16 2005	ORLANDO FSDO	3	1	2	0	0	0
Dec 16 2005	PHILADELPHIA FSDO	1	1	0	0	0	0
Dec 16 2005	RICHMOND FSDO	1	1	0	0	0	0
Dec 17 2005	MIAMI FSDO	3	1	2	1	0	1
Dec 17 2005	ORLANDO FSDO	1	0	1	0	0	0
Dec 19 2005	ATLANTA FSDO	2	2	0	1	1	0
Dec 19 2005	COLUMBUS FSDO	0	0	0	1	0	1
Dec 19 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 19 2005	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Dec 19 2005	GREENSBORO FSDO	1	0	1	1	1	0
Dec 19 2005	HONOLULU FSDO	1	1	0	0	0	0
Dec 19 2005	KANSAS CITY FSDO	1	0	1	0	0	0
Dec 19 2005	MIAMI FSDO	3	0	3	1	0	1
Dec 19 2005	ORLANDO FSDO	3	1	2	1	0	1
Dec 19 2005	RICHMOND FSDO	1	0	1	0	0	0
Dec 19 2005	SCOTTSDALE FSDO	1	0	1	0	0	0
Dec 19 2005	WASHINGTON FSDO	2	1	1	0	0	0
Dec 20 2005	ATLANTA FSDO	3	3	0	0	0	0
Dec 20 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 20 2005	GREENSBORO FSDO	2	1	1	0	0	0
Dec 20 2005	MIAMI FSDO	4	4	0	0	0	0
Dec 20 2005	MIAMI IFO	1	1	0	0	0	0
Dec 20 2005	ORLANDO FSDO	3	3	0	0	0	0
Dec 20 2005	PHILADELPHIA FSDO	2	1	1	0	0	0
Dec 20 2005	RICHMOND FSDO	1	1	0	0	0	0
Dec 20 2005	SAN JUAN FSDO	0	0	0	1	1	0
Dec 20 2005	SEATTLE FSDO	2	2	0	0	0	0
Dec 21 2005	ATLANTA FSDO	2	2	0	1	1	0
Dec 21 2005	FARMINGDALE FSDO	2	2	0	0	0	0
Dec 21 2005	MIAMI FSDO	4	0	4	1	1	0
Dec 21 2005	MINNEAPOLIS FSDO	1	0	1	0	0	0
Dec 21 2005	ORLANDO FSDO	3	2	1	0	0	0
Dec 21 2005	PORTLAND OR FSDO	1	1	0	0	0	0
Dec 21 2005	RICHMOND FSDO	1	1	0	0	0	0
Dec 21 2005	SAN JUAN FSDO	1	1	0	0	0	0
Dec 21 2005	SEATTLE FSDO	1	1	0	0	0	0
Dec 21 2005	VAN NUYS FSDO	0	0	0	1	0	1
Dec 21 2005	WASHINGTON FSDO	1	1	0	0	0	0
Dec 22 2005	ATLANTA FSDO	6	5	1	1	0	1
Dec 22 2005	COLUMBIA FSDO	2	0	2	0	0	0

Dec 22 2005	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 22 2005	FT. LAUDERDALE FSDO	1	0	1	0	0	0
Dec 22 2005	GREENSBORO FSDO	1	0	1	0	0	0
Dec 22 2005	MIAMI FSDO	5	3	2	1	0	1
Dec 22 2005	ORLANDO FSDO	3	3	0	0	0	0
Dec 22 2005	PHILADELPHIA FSDO	1	1	0	0	0	0
Dec 22 2005	SEATTLE FSDO	1	1	0	0	0	0
Dec 22 2005	TAMPA FSDO	1	0	1	0	0	0
Dec 22 2005	WASHINGTON FSDO	1	1	0	0	0	0
Dec 23 2005	ATLANTA FSDO	1	1	0	2	0	2
Dec 23 2005	COLUMBIA FSDO	1	1	0	0	0	0
Dec 23 2005	FT. LAUDERDALE FSDO	2	2	0	0	0	0
Dec 23 2005	MIAMI FSDO	3	1	2	0	0	0
Dec 23 2005	ORLANDO FSDO	4	3	1	0	0	0
Dec 23 2005	RICHMOND FSDO	1	1	0	0	0	0
Dec 23 2005	WINDSOR LOCKS FSDO	1	1	0	0	0	0
Dec 27 2005	ANCHORAGE FSDO	1	1	0	0	0	0
Dec 27 2005	DETROIT FSDO	1	1	0	0	0	0
Dec 27 2005	FORT WORTH FSDO	1	0	1	0	0	0
Dec 27 2005	FT. LAUDERDALE FSDO	1	0	1	0	0	0
Dec 27 2005	GREENSBORO FSDO	1	0	1	0	0	0
Dec 27 2005	MIAMI FSDO	6	4	2	1	0	1
Dec 27 2005	SAN ANTONIO FSDO	1	1	0	0	0	0
Dec 28 2005	CINCINNATI FSDO	1	1	0	0	0	0
Dec 28 2005	FORT WORTH FSDO	1	1	0	0	0	0
Dec 28 2005	GREENSBORO FSDO	2	1	1	0	0	0
Dec 28 2005	MIAMI FSDO	4	1	3	1	1	0
Dec 28 2005	ORLANDO FSDO	6	5	1	0	0	0
Dec 28 2005	ROCHESTER FSDO	1	1	0	0	0	0
Dec 28 2005	SCOTTSDALE FSDO	0	0	0	1	1	0
Dec 28 2005	TETERBORO FSDO	1	0	1	0	0	0
Dec 29 2005	ALLEGHENY FSDO	1	1	0	0	0	0
Dec 29 2005	ANCHORAGE FSDO	1	1	0	0	0	0
Dec 29 2005	BALTIMORE FSDO	1	1	0	0	0	0
Dec 29 2005	CINCINNATI FSDO	2	1	1	0	0	0
Dec 29 2005	FARMINGDALE FSDO	3	1	2	0	0	0
Dec 29 2005	FT. LAUDERDALE FSDO	5	2	3	0	0	0
Dec 29 2005	GREENSBORO FSDO	1	0	1	0	0	0
Dec 29 2005	INDIANAPOLIS FSDO	1	0	1	0	0	0
Dec 29 2005	MIAMI FSDO	6	3	3	0	0	0
Dec 29 2005	OKLAHOMA CITY FSDO	1	0	1	0	0	0
Dec 29 2005	ORLANDO FSDO	6	4	2	0	0	0
Dec 30 2005	ALLEGHENY FSDO	1	0	1	0	0	0
Dec 30 2005	FT. LAUDERDALE FSDO	3	2	1	0	0	0
Dec 30 2005	HELENA FSDO	1	0	1	0	0	0
Dec 30 2005	HONOLULU FSDO	1	1	0	0	0	0
Dec 30 2005	JACKSON FSDO	1	0	1	0	0	0
Dec 30 2005	MIAMI FSDO	5	0	5	0	0	0
Dec 30 2005	ORLANDO FSDO	5	5	0	0	0	0
Dec 30 2005	WASHINGTON FSDO	1	1	0	0	0	0
Dec 30 2005	WICHITA FSDO	0	0	0	1	0	1
Dec 31 2005	MIAMI FSDO	1	1	0	0	0	0

Jan 3 2006	MIAMI FSDO	1	1	0	0	0	0
Jan 4 2006	WASHINGTON FSDO	1	1	0	0	0	0
Jan 5 2006	INDIANAPOLIS FSDO	0	0	0	1	1	0
Jan 5 2006	ORLANDO FSDO	0	0	0	1	0	1
Jan 6 2006	ATLANTA FSDO	0	0	0	1	0	1
Jan 6 2006	DALLAS FSDO	1	0	1	0	0	0
Jan 6 2006	HONOLULU FSDO	0	0	0	1	1	0
Jan 6 2006	MIAMI FSDO	1	0	1	1	1	0
Jan 9 2006	MEMPHIS FSDO	0	0	0	1	0	1
Jan 9 2006	SAN ANTONIO FSDO	1	0	1	0	0	0
Jan 10 2006	MIAMI FSDO	1	1	0	0	0	0
Jan 10 2006	ORLANDO FSDO	1	1	0	0	0	0
Jan 11 2006	MIAMI FSDO	1	0	1	0	0	0
Jan 11 2006	MINNEAPOLIS FSDO	0	0	0	1	1	0
Jan 11 2006	TETERBORO FSDO	0	0	0	1	0	1
Jan 12 2006	FT. LAUDERDALE FSDO	0	0	0	1	1	0
Jan 12 2006	MINNEAPOLIS FSDO	0	0	0	1	1	0
Jan 13 2006	ATLANTA FSDO	0	0	0	1	0	1
Jan 13 2006	GREENSBORO FSDO	0	0	0	1	1	0
Jan 13 2006	INDIANAPOLIS FSDO	1	0	1	0	0	0
Jan 13 2006	MIAMI FSDO	1	0	1	3	1	2
Jan 13 2006	ORLANDO FSDO	0	0	0	1	0	1
Jan 17 2006	GREENSBORO FSDO	0	0	0	1	1	0
Jan 17 2006	LOUISVILLE FSDO	1	1	0	0	0	0
Jan 17 2006	MIAMI FSDO	0	0	0	1	1	0
Jan 17 2006	NASHVILLE FSDO	0	0	0	1	0	1
Jan 18 2006	ALLEGHENY FSDO	1	0	1	0	0	0
Jan 18 2006	COLUMBIA FSDO	0	0	0	1	1	0
Jan 19 2006	JACKSON FSDO	1	0	1	0	0	0
Jan 19 2006	LONDON INTERNATIONA	2	2	0	0	0	0
Jan 19 2006	LOUISVILLE FSDO	1	1	0	0	0	0
Jan 19 2006	WASHINGTON FSDO	0	0	0	1	1	0
Jan 20 2006	BOSTON FSDO	0	0	0	1	0	1
Jan 20 2006	MIAMI FSDO	1	0	1	1	0	1
Jan 20 2006	SAN JUAN FSDO	1	1	0	0	0	0
Jan 23 2006	COLUMBIA FSDO	1	1	0	1	0	1
Jan 23 2006	GREENSBORO FSDO	0	0	0	1	0	1
Jan 23 2006	MIAMI FSDO	0	0	0	1	1	0
Jan 23 2006	ORLANDO FSDO	0	0	0	1	0	1
Jan 24 2006	GREENSBORO FSDO	0	0	0	1	1	0
Jan 24 2006	ORLANDO FSDO	0	0	0	1	1	0
Jan 25 2006	ORLANDO FSDO	1	1	0	0	0	0
Jan 25 2006	RICHMOND FSDO	0	0	0	1	1	0
Jan 26 2006	FARMINGDALE FSDO	0	0	0	1	0	1
Jan 26 2006	MINNEAPOLIS FSDO	0	0	0	1	0	1
Jan 26 2006	RICHMOND FSDO	1	0	1	0	0	0
Jan 27 2006	INDIANAPOLIS FSDO	0	0	0	1	0	1
Jan 27 2006	MIAMI FSDO	0	0	0	5	3	2
Jan 27 2006	ORLANDO FSDO	0	0	0	1	0	1
Jan 30 2006	ATLANTA FSDO	1	0	1	0	0	0
Jan 30 2006	CHARLESTON FSDO	0	0	0	1	0	1
Jan 30 2006	FT. LAUDERDALE FSDO	1	0	1	1	0	1

Jan 30 2006	MINNEAPOLIS FSDO	0	0	0	1	0	1
Jan 31 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Jan 31 2006	GREENSBORO FSDO	0	0	0	1	0	1
Feb 1 2006	GREENSBORO FSDO	0	0	0	1	0	1
Feb 1 2006	MIAMI FSDO	0	0	0	7	4	3
Feb 1 2006	MIAMI IFO	1	0	1	0	0	0
Feb 2 2006	FARMINGDALE FSDO	0	0	0	1	1	0
Feb 2 2006	MIAMI FSDO	0	0	0	2	1	1
Feb 3 2006	JACKSON FSDO	0	0	0	1	1	0
Feb 6 2006	CINCINNATI FSDO	0	0	0	1	1	0
Feb 6 2006	GREENSBORO FSDO	0	0	0	1	1	0
Feb 6 2006	MINNEAPOLIS FSDO	0	0	0	1	0	1
Feb 7 2006	ORLANDO FSDO	1	1	0	0	0	0
Feb 8 2006	INDIANAPOLIS FSDO	0	0	0	1	1	0
Feb 8 2006	MIAMI FSDO	0	0	0	4	0	4
Feb 9 2006	FAA Headquarters	1	1	0	0	0	0
Feb 9 2006	FT. LAUDERDALE FSDO	0	0	0	1	1	0
Feb 9 2006	GREENSBORO FSDO	0	0	0	1	1	0
Feb 10 2006	ORLANDO FSDO	0	0	0	1	0	1
Feb 13 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Feb 13 2006	MIAMI FSDO	0	0	0	2	1	1
Feb 13 2006	NASHVILLE FSDO	1	1	0	0	0	0
Feb 13 2006	ORLANDO FSDO	0	0	0	1	1	0
Feb 14 2006	ALLEGHENY FSDO	0	0	0	1	1	0
Feb 14 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Feb 15 2006	FARMINGDALE FSDO	0	0	0	1	0	1
Feb 15 2006	MIAMI FSDO	0	0	0	2	1	1
Feb 15 2006	ORLANDO FSDO	0	0	0	1	0	1
Feb 21 2006	BALTIMORE FSDO	1	0	1	0	0	0
Feb 22 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Feb 23 2006	JACKSON FSDO	0	0	0	1	1	0
Feb 23 2006	MIAMI FSDO	0	0	0	1	0	1
Feb 23 2006	ORLANDO FSDO	0	0	0	1	0	1
Feb 23 2006	TAMPA FSDO	1	0	1	0	0	0
Feb 24 2006	BALTIMORE FSDO	1	1	0	0	0	0
Feb 24 2006	RICHMOND FSDO	0	0	0	1	1	0
Feb 28 2006	ORLANDO FSDO	1	0	1	0	0	0
Mar 1 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Mar 2 2006	HOUSTON FSDO	1	1	0	0	0	0
Mar 3 2006	CHARLOTTE FSDO	1	1	0	0	0	0
Mar 6 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Mar 15 2006	GRAND RAPIDS FSDO	0	0	0	1	1	0
Mar 15 2006	MIAMI IFO	1	1	0	0	0	0
Mar 17 2006	ATLANTA FSDO	0	0	0	1	1	0
Mar 17 2006	MIAMI IFO	0	0	0	1	0	1
Mar 17 2006	MINNEAPOLIS FSDO	0	0	0	1	0	1
Mar 20 2006	ORLANDO FSDO	1	0	1	0	0	0
Mar 21 2006	FT. LAUDERDALE FSDO	0	0	0	1	1	0
Mar 22 2006	FT. LAUDERDALE FSDO	1	0	1	0	0	0
Mar 24 2006	BALTIMORE FSDO	0	0	0	1	1	0
Mar 24 2006	LONG BEACH FSDO	1	1	0	0	0	0
Mar 27 2006	MIAMI FSDO	1	1	0	1	0	1

Mar 28 2006	ORLANDO FSDO	0	0	0	1	0	1
Mar 29 2006	GREENSBORO FSDO	1	1	0	0	0	0
Mar 30 2006	PHILADELPHIA FSDO	1	1	0	0	0	0
Apr 5 2006	BALTIMORE FSDO	1	0	1	0	0	0
Apr 7 2006	MIAMI IFO	1	1	0	0	0	0
Apr 10 2006	MIAMI FSDO	0	0	0	2	0	2
Apr 12 2006	ORLANDO FSDO	1	0	1	0	0	0
Apr 17 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Apr 20 2006	MIAMI IFO	1	1	0	0	0	0
Apr 21 2006	SAN ANTONIO FSDO	1	0	1	0	0	0
Apr 25 2006	MIAMI IFO	1	0	1	0	0	0
Apr 26 2006	ORLANDO FSDO	1	0	1	0	0	0
Apr 27 2006	ORLANDO FSDO	1	1	0	0	0	0
May 2 2006	MIAMI IFO	1	0	1	0	0	0
May 2 2006	ORLANDO FSDO	0	0	0	1	1	0
May 4 2006	COLUMBIA FSDO	2	1	1	0	0	0
May 11 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
May 22 2006	ROCHESTER FSDO	1	1	0	0	0	0
May 30 2006	MIAMI IFO	0	0	0	1	1	0
May 31 2006	ORLANDO FSDO	1	1	0	0	0	0
Jun 1 2006	MIAMI FSDO	1	0	1	0	0	0
Jun 2 2006	COLUMBIA FSDO	0	0	0	1	0	1
Jun 2 2006	MIAMI FSDO	1	1	0	0	0	0
Jun 5 2006	MIAMI IFO	1	1	0	0	0	0
Jun 7 2006	MINNEAPOLIS FSDO	1	1	0	0	0	0
Jun 12 2006	MIAMI FSDO	1	1	0	0	0	0
Jun 14 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Jun 21 2006	MIAMI FSDO	1	1	0	0	0	0
Jun 22 2006	MIAMI FSDO	0	0	0	1	1	0
Jun 23 2006	ORLANDO FSDO	1	0	1	0	0	0
Jun 23 2006	SCOTTSDALE FSDO	1	1	0	0	0	0
Jun 27 2006	ATLANTA FSDO	1	1	0	0	0	0
Jun 27 2006	MIAMI FSDO	1	0	1	0	0	0
Jun 30 2006	MILWAUKEE FSDO	1	0	1	0	0	0
Jul 6 2006	DENVER FSDO	1	1	0	0	0	0
Jul 6 2006	SAN JUAN FSDO	1	1	0	0	0	0
Jul 13 2006	ORLANDO FSDO	1	1	0	0	0	0
Jul 17 2006	MIAMI FSDO	1	1	0	0	0	0
Jul 21 2006	MIAMI FSDO	1	1	0	0	0	0
Jul 21 2006	MINNEAPOLIS FSDO	1	1	0	0	0	0
Jul 25 2006	FARMINGDALE FSDO	1	1	0	0	0	0
Jul 31 2006	ORLANDO FSDO	0	0	0	1	1	0
Aug 1 2006	FT. LAUDERDALE FSDO	0	0	0	1	1	0
Aug 1 2006	ORLANDO FSDO	1	1	0	0	0	0
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Aug 11 2006	ORLANDO FSDO	1	1	0	0	0	0
Aug 14 2006	BATON ROUGE FSDO	1	1	0	0	0	0
Aug 14 2006	DALLAS FSDO	0	0	0	1	1	0
Aug 14 2006	MILWAUKEE FSDO	0	0	0	1	0	1
Aug 15 2006	MINNEAPOLIS FSDO	1	1	0	0	0	0
Aug 21 2006	MIAMI FSDO	1	0	1	1	1	0
Aug 23 2006	SPRINGFIELD FSDO	1	1	0	0	0	0

Aug 24 2006	HOUSTON FSDO	1	0	1	0	0	0
Aug 24 2006	ORLANDO FSDO	1	1	0	0	0	0
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Sep 14 2006	MIAMI FSDO	2	1	1	0	0	0
Sep 15 2006	MIAMI FSDO	1	0	1	0	0	0
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Sep 25 2006	SCOTTSDALE FSDO	1	0	1	0	0	0
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Oct 6 2006	MEMPHIS FSDO	1	1	0	0	0	0
Oct 16 2006	MINNEAPOLIS FSDO	1	1	0	0	0	0
Oct 17 2006	FT. LAUDERDALE FSDO	1	0	1	0	0	0
Oct 20 2006	MIAMI FSDO	1	0	1	0	0	0
Oct 24 2006	BIRMINGHAM FSDO	1	1	0	0	0	0
Oct 24 2006	WASHINGTON FSDO	1	0	1	0	0	0
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Oct 30 2006	MINNEAPOLIS FSDO	0	0	0	1	1	0
Oct 30 2006	SCOTTSDALE FSDO	0	0	0	1	1	0
Oct 31 2006	SAN DIEGO FSDO	0	0	0	1	1	0
Nov 2 2006	FT. LAUDERDALE FSDO	0	0	0	1	0	1
Nov 3 2006	MIAMI IFO	1	0	1	0	0	0
Nov 6 2006	BALTIMORE FSDO	1	1	0	0	0	0
Nov 7 2006	ANCHORAGE FSDO	1	0	1	0	0	0
Nov 7 2006	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Nov 8 2006	HOUSTON FSDO	0	0	0	1	1	0
Nov 9 2006	RIVERSIDE FSDO	1	1	0	0	0	0
Nov 14 2006	FT. LAUDERDALE FSDO	0	0	0	1	1	0
Nov 14 2006	MEMPHIS FSDO	0	0	0	1	0	1
Nov 16 2006	FT. LAUDERDALE FSDO	0	0	0	1	1	0
Nov 17 2006	WASHINGTON FSDO	0	0	0	1	1	0
Nov 20 2006	OAKLAND FSDO	1	1	0	0	0	0
Nov 27 2006	MINNEAPOLIS FSDO	1	0	1	0	0	0
Nov 27 2006	ORLANDO FSDO	1	1	0	0	0	0
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Dec 6 2006	ATLANTA FSDO	1	1	0	0	0	0
Dec 6 2006	ORLANDO FSDO	1	1	0	0	0	0
Dec 12 2006	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 13 2006	MIAMI IFO	0	0	0	1	0	1
Dec 14 2006	ORLANDO FSDO	1	1	0	0	0	0
Dec 19 2006	GREENSBORO FSDO	1	1	0	0	0	0
Dec 20 2006	MIAMI FSDO	1	1	0	0	0	0
Dec 21 2006	FARMINGDALE FSDO	1	1	0	0	0	0
Dec 22 2006	BIRMINGHAM FSDO	1	0	1	0	0	0
Dec 27 2006	SAN JUAN FSDO	1	0	1	0	0	0
Dec 28 2006	SAN JUAN FSDO	2	2	0	0	0	0
Dec 29 2006	SAN JUAN FSDO	1	0	1	0	0	0
Jan 4 2007	JACKSON FSDO	1	1	0	0	0	0
Jan 4 2007	MIAMI FSDO	1	1	0	0	0	0
Jan 4 2007	ORLANDO FSDO	1	1	0	0	0	0
Jan 4 2007	SAN JUAN FSDO	0	0	0	2	2	0
Jan 11 2007	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Jan 23 2007	SCOTTSDALE FSDO	1	1	0	0	0	0
Jan 25 2007	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Jan 25 2007	SAN JUAN FSDO	1	0	1	0	0	0
Jan 26 2007	BIRMINGHAM FSDO	0	0	0	1	0	1
Jan 29 2007	VAN NUYS FSDO	0	0	0	1	0	1
Jan 31 2007	MINNEAPOLIS FSDO	0	0	0	1	0	1
Feb 5 2007	ORLANDO FSDO	1	1	0	0	0	0
Feb 12 2007	MIAMI FSDO	1	1	0	0	0	0
Feb 12 2007	ORLANDO FSDO	1	0	1	0	0	0
Feb 28 2007	DALLAS FSDO	1	1	0	0	0	0
Mar 8 2007	FT. LAUDERDALE FSDO	1	0	1	0	0	0
Mar 9 2007	MIAMI FSDO	1	1	0	0	0	0
Mar 12 2007	ORLANDO FSDO	0	0	0	1	1	0
Mar 12 2007	SAN ANTONIO FSDO	1	1	0	0	0	0
Mar 15 2007	RIVERSIDE FSDO	1	1	0	0	0	0
Mar 19 2007	WASHINGTON FSDO	1	0	1	0	0	0
Mar 23 2007	FT. LAUDERDALE FSDO	0	0	0	1	1	0
Mar 26 2007	MIAMI FSDO	2	1	1	0	0	0
Mar 27 2007	MIAMI FSDO	1	0	1	0	0	0
Apr 13 2007	ORLANDO FSDO	2	1	1	0	0	0
Apr 16 2007	FORT WORTH FSDO	1	0	1	0	0	0
Apr 25 2007	ORLANDO FSDO	1	1	0	0	0	0
Apr 26 2007	FT. LAUDERDALE FSDO	0	0	0	1	0	1
Apr 27 2007	MIAMI FSDO	1	0	1	0	0	0
Apr 30 2007	COLUMBIA FSDO	1	1	0	0	0	0
May 2 2007	WASHINGTON FSDO	0	0	0	1	0	1
May 3 2007	MIAMI FSDO	0	0	0	1	0	1
May 7 2007	MIAMI FSDO	0	0	0	1	0	1

May 9 2007	VAN NUYS FSDO	1	1	0	0	0	0
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May 14 2007	MIAMI FSDO	0	0	0	1	0	1
May 15 2007	SCOTTSDALE FSDO	1	1	0	0	0	0
May 22 2007	ORLANDO FSDO	1	0	1	0	0	0
Jun 5 2007	FORT WORTH FSDO	0	0	0	1	1	0
Jun 8 2007	MIAMI FSDO	1	0	1	0	0	0
Jun 12 2007	FT. LAUDERDALE FSDO	1	0	1	0	0	0
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Jul 23 2007	DETROIT FSDO	1	1	0	0	0	0
Jul 27 2007	ORLANDO FSDO	1	1	0	0	0	0
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Oct 25 2007	FT. LAUDERDALE FSDO	1	1	0	0	0	0
Dec 14 2007	MIAMI FSDO	1	0	1	1	0	1
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Dec 21 2007	MIAMI FSDO	1	0	1	0	0	0
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Feb 19 2008	MIAMI FSDO	0	0	0	1	0	1
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Pass Rates:	**Take 1:**	**68%**	**Take 2:**	**48%**	

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Appendix C

Exhibit 1

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-16729

D. C. Docket No. 04-01525-CV-ORL-22JGG

JOHN DOE, I,
JENNETTE BENNETT-SEACREST, et al.,

Plaintiffs-Appellees,

versus

FEDERAL AVIATION ADMINISTRATION,
MARION C. BLAKEY,
Federal Aviation Administrator,

Defendants-Appellants.

Appeal from the United States District Court
for the Middle District of Florida

(December 13, 2005)

Before BLACK, WILSON and COX, Circuit Judges.

COX, Circuit Judge:

The Federal Aviation Administration ("the FAA") and its Administrator appeal the district court's order granting a preliminary injunction. We hold that the district court had no subject-matter jurisdiction and therefore vacate the injunction and remand the action with instructions to dismiss for lack of subject-matter jurisdiction.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Plaintiffs are thirteen aircraft mechanics who were issued airmen certificates pursuant to powers granted by Congress to the FAA. 49 U.S.C. §§ 44702, 44703. After an investigation revealed (and a subsequent criminal trial confirmed beyond a reasonable doubt) that the school from which the Plaintiffs received their airmen certificates fraudulently examined and certified some applicants for those certificates, the FAA concluded that the existence of aircraft mechanics unqualified to hold certificates and perform aircraft maintenance posed a serious threat to air safety. The FAA was unable to determine which of the mechanics who received their certificates from the implicated school had been fraudulently certified. Therefore, the FAA wrote letters to the Plaintiffs (and approximately 2,000 other mechanics who had been certified at the school during the relevant time period) stating that reexamination of their airmen competency was necessary under 49 U.S.C. § 44709. The FAA took no action to suspend or

revoke the mechanics' certificates. Rather than submitting to reexamination or refusing reexamination, thereby risking an FAA order suspending or revoking their certificates, the Plaintiffs filed this action in federal district court and sought a preliminary injunction instructing the FAA how to proceed in its process of reexamination.

The district court granted the requested injunction. It prevents the FAA from reexamining the mechanics on an emergency basis pursuant to 49 U.S.C. § 44709; requires the FAA to show cause for reexamining each individual mechanic; and requires the FAA to provide each mechanic with an opportunity to be heard as to why he should not have to submit to reexamination.

II. CONTENTIONS OF THE PARTIES AND ISSUES ON APPEAL

The FAA challenges the district court's injunction on two grounds. First, it contends that the district court lacked subject-matter jurisdiction to hear the mechanics' case. Second, it contends that, even if the district court had subject-matter jurisdiction, it erred in granting the preliminary injunction. The FAA argues that Congress has established by statute a comprehensive administrative scheme for resolution of disputes between airmen and the FAA and that the statutory scheme denies the district court jurisdiction to resolve these sorts of disputes. *See* 49 U.S.C. § 44709. The Plaintiff mechanics maintain that the

statutory scheme the FAA relies upon is inapplicable in a case like this, where they brought suit before the FAA had taken any action to suspend or revoke their licenses and where they allege that their due process rights would be offended by the FAA's planned reexamination.

III. STANDARDS OF REVIEW

We review questions of subject-matter jurisdiction de novo. *See Milan Express, Inc. v. Averitt Express, Inc.*, 208 F.3d 975, 978 (11th Cir. 2000).

The district court's decision to grant a preliminary injunction is reviewed for abuse of discretion, but its application of law is reviewed de novo. *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246 (11th Cir. 2002).

IV. DISCUSSION

The outcome of this case is dictated by Supreme Court precedent that the parties never cited to the district court that issued the injunction. The facts here are so similar to those in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 114 S. Ct. 771 (1994), that review of that case is instructive.

In *Thunder Basin*, the Supreme Court examined the Federal Mine Safety and Health Act, 30 U.S.C. § 801 et seq., ("Mine Act") to determine whether it prevents a district court from exercising subject-matter jurisdiction over a pre-enforcement

challenge to Mine Safety and Health Administration (MSHA) actions pursuant to the Mine Act. 510 U.S. at 202, 114 S. Ct. at 774. A mine operator filed suit in district court before MSHA took any enforcement action against it; the operator's lawsuit requested an injunction preventing MSHA from requiring the mine operator to post a notice at its business. *Id.* at 205, 114 S. Ct. at 775. While acknowledging that the Mine Act provided a comprehensive statutory scheme prescribing a process through which the mine operator could challenge the acts of MSHA, the operator alleged that requiring it to comply with that process would cause the operator irreparable harm and violate its due process rights. *Id.*, 114 S. Ct. at 775. The district court granted the injunction. *Id.* at 205-06, 114 S. Ct. at 775-76. The Court of Appeals for the Tenth Circuit reversed, finding that the Mine Act's comprehensive administrative-review scheme precluded district court jurisdiction over the mine operator's claims. *Id.* at 206, 114 S. Ct. at 776. The Supreme Court affirmed the Tenth Circuit, holding that because the Mine Act "establishes a detailed structure for reviewing violations of [the Mine] Act," (including review by an administrative law judge, the Federal Mine Safety and Health Review Commission, and a federal court of appeals) and because that statutory scheme allocated initial review to an administrative body (rather than a federal district court), the district court had no jurisdiction to address the mine

operator's complaint. *Id.* at 207, 218, 114 S. Ct. at 776, 782. The Court recognized that the Mine Act was facially silent with respect to pre-enforcement claims but held that the structure of the act demonstrated that Congress intended to preclude challenges to the Mine Act's enforcement in district court. *Id.* at 208, 114 S. Ct. at 777.

The statutory administrative-review scheme at issue in this case functions very much like that established by the Mine Act. The statute in question, 49 U.S.C. §§ 44701-44723 ("the FAA Act" or "the FAA Statute"), charges the FAA with prescribing air safety standards, including certification requirements for (among others) airports, airlines, airplanes, and aircraft pilots and mechanics to "promote safe flight of civil aircraft in air commerce." 49 U.S.C. § 44701(a); *see also* 49 U.S.C. §§ 44702-44706. Pursuant to its authority under the FAA Statute, the FAA may reexamine an airman already holding a certificate. 49 U.S.C. § 44709(a). After that reexamination or "[an]other investigation," the FAA may order, in the interest of safety, that an airman's certificate be amended, modified, suspended or revoked. 49 U.S.C. § 44709(b). An airman adversely affected by such an order has a right to appeal to the National Transportation Safety Board (NTSB) and, subsequently, to a federal court of appeals. 49 U.S.C. § 44709(d), (f). If the FAA has determined that an emergency exists, its order of certificate action

takes effect immediately and the affected airman is entitled to final disposition of his NTSB appeal within sixty days. 49 U.S.C. § 44709(e). If no emergency is designated, the FAA's order of certificate action is stayed pending the resolution of any NTSB appeal. *Id.* Like the Mine Act, the FAA Statute is silent with regard to judicial review of pre-enforcement actions (lawsuits brought before an FAA order of certificate action).

The parties agree that the FAA has the power to reexamine airmen and to suspend and revoke their certificates. They also agree that the NTSB is independent of the FAA. And, the mechanics do not take issue with the fact that the NTSB is both uniquely suited and designated by statute as the sole entity to consider an airman's initial challenge to FAA certificate action. Rather, the mechanics contend that they need not submit to the administrative-review process because the FAA has not yet taken any certificate action and, further, that to require them to wait for such action and then pursue their claims through the administrative appeal process would cause irreparable harm and deprive them of their due process rights.

First, we address the mechanics' claim that the statutorily prescribed administrative-review process is inapplicable because their lawsuit was filed before the FAA took any certificate action. This argument is meritless. If, instead of

filing their lawsuit in district court, the mechanics had either: (1) refused to submit to reexamination, or (2) submitted to and failed reexamination, the FAA could have: (1) determined that a safety emergency existed and issued an order suspending or revoking the mechanics' certificates immediately, or (2) issued an order notifying the mechanics of the reasons for its concern and provided them with opportunities to be heard by the NTSB as to why their certificates should not be suspended or revoked. 49 U.S.C. § 44709(b), (c). Once one of these FAA orders was issued, the mechanics' rights to appeal to the NTSB would have vested; and the mechanics could obtain judicial review of any NTSB order in the appropriate federal court of appeals.[1] 49 U.S.C. § 44709(d), (e), (f). The mechanics simply cannot avoid the statutorily established administrative-review process by rushing to the federal courthouse for an injunction preventing the very action that would set the administrative-review process in motion. As with the Mine Act, "[t]o uphold the District Court's jurisdiction in these circumstances would be inimical to the structure and the purpose" of the statutory scheme. *Thunder Basin*, 510 U.S. at 216, 114 S. Ct. at 781.

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[1]If the FAA did not order any action on a mechanic's airman certificate, no right to appeal to the NTSB would vest. *See* 49 U.S.C. § 44709(d)(1) (granting right to appeal to "[a] person adversely affected by an order of the [FAA] under this section . . . .").

The mechanics' second argument–that their allegation of a constitutional violation removes their complaint from the purview of the statutory review scheme–also fails. Both this court and the Supreme Court have already rejected this argument. *See Thunder Basin*, 510 U.S. at 215, 114 S. Ct. at 780; *Green v. Brantley*, 981 F.2d 514, 520 (11th Cir. 1993).

In *Green*, the plaintiff was a Designated Pilot Examiner who held a FAA certificate. *Green*, 981 F.2d at 516. When the FAA cancelled Green's certificate, he filed suit in the federal district court seeking recovery for constitutional torts he alleged were committed in conjunction with the certificate termination. *Id.* at 518. This court found that the merits of Green's constitutional arguments were "inescapably intertwined with a review of the procedures and merits surrounding the FAA's order." *Green*, 981 F.2d at 521. Because the statute that authorized the FAA action on Green's certificate (the predecessor to the statute at issue in this case) provided for NTSB review of the FAA's order with a right to appeal to a federal court of appeals, Green's suit in federal district court was held to be an impermissible collateral challenge to the agency's action. *Id.* Therefore, the district court lacked subject-matter jurisdiction over Green's suit. *Id.*

The same is true here. The mechanics' constitutional claims (that the FAA has infringed upon their due process rights by failing to observe statutory and

administrative processes) necessarily require a review of the procedures and actions taken by the FAA with regard to the mechanics' certificates. Therefore, the constitutional claims fall within the ambit of the administrative scheme, and the district court is without subject-matter jurisdiction.

The NTSB, a Congressionally designated independent commission, can address the mechanics' constitutional concerns during its review of any FAA order. *See Thunder Basin*, 510 U.S. at 215, 114 S. Ct. at 780 (holding that, where reviewing body is not the agency itself but an independent commission, it may address constitutional questions). And a mechanic is guaranteed a right to appeal the NTSB's decision to the federal court of appeals. 49 U.S.C. § 44709(f). It is true that the FAA Statute (like the Mine Act) provides for delayed judicial review (that is, review by a federal court of appeals after a determination by the administrative commission rather than initial review by a federal district court). *Id.*; *Thunder Basin*, 510 U.S. at 215, 114 S. Ct. at 780. However, the statutory scheme does not deprive the mechanics of all federal court review of their due process allegations. Thus, contrary to the mechanics' contention, this case "does not present the 'serious constitutional question' that would arise if an agency statute were construed to preclude all judicial review of a constitutional claim." *Thunder Basin*, 510 U.S. at 215, n.20, 114 S. Ct. at 780, n.20 (quoting *Bowen v.*

Michigan Academy of Family Physicians, 476 U.S. 667, 681, n.12, 106 S. Ct. 2133, 2141, n.12 (1986)).

V. CONCLUSION

We conclude that *Thunder Basin* and *Green* control this case and therefore vacate the district court's order and remand the action with instructions that it be dismissed for lack of subject-matter jurisdiction. Because we resolve this dispute on jurisdictional grounds, we do not address the FAA's claim that the district court erred by misapplying the legal standards for issuance of a preliminary injunction.

VACATED AND REMANDED WITH INSTRUCTIONS.

Appendix C

Exhibit 2

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FREDERICK ALLISON, JEFFREY BAKER, PETER BISHOP
DARIO BRITTON, FITCH BRYAN,
TOM CLEMENTS, FRANK CONLEY,
MICHAEL DAULTON, JOSEPH DEFEO,
GREGG DEBBAN, FREDDY DILLEY,
DENNIS DOSE, RONALD ENGBERG, BRUCE ERB
ALEJANDRO FARIAS, BRIAN FINNEY
ADOLFO FERNANDEZ, JOSE GONZALES,
DAVID GEMMILL, MICHAEL GRAHAM
TOM GURLEY, DOUGLAS HOCEVAR,
STEVEN HOMAN, JAMES HARVEY,
JOSE LUIS HURTADO, CARLOS JIMENEZ,
BHOLA KENRICK, ALLAN KUIPER,
THOMAS LOGGINS, WAYMAN LUY,
BRIAN NELSON, JON NICHOLAS,
TERRY NIELSON, THOMAS MARDAUS,
SERGIO MENDEZ, JORGE MERCADO,
CLAUDIO MIRANDA, MICHAEL MIHAILIDIS,
JOSEPH MOLNAR, CARLO PALACIO,
FRANKIE QUILES, ANGEL PUMAROL,
DAVID RICHARD, JOHN RYAN, RANDY ROOSE,
JACK ROVELLO, GUILFOY ROWE,
MELIA RODRIGUEZ, KENETH SHARP,
GLENN SPARKMAN, JOSEPH SILVA,
JON SKOREY, CHARLES SCOTT,
DEVLIN SEAN, RICHARD THOMAS,
HATTO THOMAS, BRUCE TIBBETTS,
ROBERT TIDWELL, TIMOTHY WEST,
GEORGE WALTERS, CHARLES WILLIAMS,
DANIEL WILLIAMS, KETTELHACK WOLDIETER,
RALPH ZIADIE, PETER ZOLLDAN

CASE NO: 6:05-cv-1699-Orl-28DAB

Plaintiffs,

v.

FEDERAL AVIATION ADMINISTRATION, and
MARION C. BLAKEY, FederalAviation Administrator

Defendants.

_____/

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, FREDERICK ALLISON, et al., by and through their undersigned counsel submit this Memorandum of Law in support of Plaintiffs' Motion for a Preliminary Injunction.

STATEMENT OF FACTS

The Defendant, the Federal Aviation Administration ("FAA" or "Agency"), has taken administrative action against what is purported to be thousands of applicants who attended St. George Aviation Testing Center (hereafter "St. George"), in Sanford, Florida.[1] Specifically, the FAA issued letters to each of the Plaintiffs on July 5, 2005, demanding that each applicant schedule a reexamination, notwithstanding that each of the Plaintiffs had successfully completed each phase of the testing process, including satisfying the FAA's requirements concerning eligibility. This complaint is brought by Plaintiffs who challenge the practice and procedure implemented by the FAA .

Plaintiffs are mechanics who received certificates from St. George during the period of October 10, 1995 through December 31, 1998. The FAA Flight Standards District Office in Orlando, Florida had oversight of the St. George certification process. Even though the FAA was fully supervising the St. George Aviation Testing Center during the time in question, some fraudulent certificates were issued, and as a result, officials from St. George and at least one FAA Aviation Safety Inspector faced criminal charges.

In their July 5, 2005 reexamination mandate, the FAA cited to no individual wrongdoing by any of the Plaintiffs, but rather, reasoned that Plaintiffs had to submit to the FAA's reexamination based upon a generalized "uncertainty." The FAA has not provided nor articulated any evidence of wrongdoing by any of the Plaintiffs in the July 5, 2005 letter, but has instead required the Plaintiffs to prove to the FAA that they did not cheat to obtain their airman certification.

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[1] St. George Aviation was under criminal investigation by the Office of Inspector General's between October 10, 1995 and December 31, 1998. SGTCA owners were

The micro-aspects of the matter are quite simple. Generally, to obtain a mechanics certificate with Airframe and Powerplant ratings, an individual must work 30 months under the supervision of another mechanic(s). Upon acquiring the 30 months experience, the applicant must appear before an FAA Aviation Safety Inspector whereupon that inspector must determine if the is eligible to take the required examinations. Once the applicant has received an endorsement from the FAA, the applicant must successfully complete written examinations, an oral examination and practical examination. The typical oral examination consists of a face to face question and answer session. The practical examination typically consists of a hands-on examination where the applicant must demonstrate his skills via performing actual maintenance on an aircraft. A typical oral and practical session should take about eight or more hours.

The alleged wrongdoing by the owners of St. George Aviation, and the reason for the reexamination mandate herein are based upon the allegation that St. George gave abbreviated versions of the oral and practical examinations. Specifically, it has been alleged that many of the oral and practical tests were far less than eight hours and in some instances were not given.

Plaintiffs move to prevent the FAA from executing the reexamination mandate, because the FAA is acting arbitrarily, and without cause. The Agency has yet to interview any of the Plaintiffs to determine if that applicant received the abbreviated version of the test or whether the applicant was tested appropriately. Plaintiffs are prepared to answer any questions concerning their respective testing at St. George. Further, Plaintiff's are prepared to present testimonial and documentary evidence that they were tested in accordance with the Federal Aviation Regulations. The FAA simply does not have any evidence to refute that all of the Plaintiffs legitimately obtained their airmen certificates.

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Further, it is undisputed that several of the Plaintiffs took this test nearly ten years ago. It is also undisputed that the FAA had knowledge or should have known of this "abbreviated" version of the test as far back as 1995. The FAA did not act for nearly ten

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convicted of 15 counts of conspiracy and submitting false statements on numerous FAA certificates in May of 1999.

years against any of the Plaintiffs despite having knowledge of the alleged wrongdoing.

Notwithstanding its failure to act for nearly ten years, on July 5, 2005, the FAA issued what is believed to be thousands of letters to mechanics ordering the mechanics to submit to a reexamination under 49 U.S.C. Section 44709. The letters demanded that each mechanic submit to re-testing, despite admissions from the FAA that they did not know whom or how many of the St. George mechanics had received the abbreviated version of the test.

Concerning the issue of "cause" necessary to require reexamination, the FAA has *never* required any certificate holder to submit to re-examination unless the FAA Aviation Safety Inspector could articulate some facts and circumstances against the certificate holder giving rise to a reasonable belief that the certificate holder's competence may be called into question. Typically, re-examinations pursuant to Section 49 U.S.C. Section 44709 occur only after an aviation accident or incident. In this case, there has not been an accident or incident concerning the St. George mechanics or the Plaintiffs.

Santos & Rodriguez Carlson & Burkle

JURISDICTION

The jurisdictional authority granted the National Transportation Safety Board (hereafter "NTSB") is not exclusive as averred by Defendants. Defendants assert that this Court lacks jurisdiction because appellate review is strictly limited to an appeal to the NTSB and subsequently to the Court of Appeals. Indeed, judicial review with the NTSB and Court of Appeals is provided for by the statute; however, the NTSB's appellate authority has been limited to "appeals from adjudicative orders of the FAA." Watson v. National Transp. Safety Bd., 513 F.2d 1081, 1082 (9th Cir., 1975); See 49 U.S.C. 1422 (b), 1654 (b)(2). Defendants by their own concession support the proposition that there is no adjudicative order; and thus no "exclusive" NTSB jurisdictional authority in stating the following: "...the Administrator has not yet determined to revoke or suspend the certificate of any individual mechanic." The Defendants' action is a non-adjudicatory mandate that is arbitrary, capricious, and otherwise contrary to the law. Absent an adjudicative order ("final order"), the NTSB has no jurisdictional authority; therefore, this court has jurisdiction over Plaintiffs' claims.

Watson further stands for the proposition that the NTSB is not afforded jurisdiction for "challenges to FAA regulations of general application." Watson, 513 F.2d at 1082; Citing, Air Line Pilots Association, International v. Quesada, 276 F.2d 892, 897-98 (2d Cir. 1960), cert denied, 366 U.S. 962, 6 L. Ed. 2d 1254, 81 S. Ct. 1923 (1961) ("...§ 609[now codified at 49 U.S.C. § 44709] is not intended to apply when a general directive of the Administrator is promulgated..."). As stated in Plaintiffs' first memorandum of law, the FAA has issued a general directive under the aegis of 49 U.S.C. 44709. Such a general mandate is challenged here by Plaintiffs, and thus, the district court is the proper venue, given the NTSB's lack of jurisdictional authority. Watson, 513 F.2d at 1082.

Additionally, the Plaintiffs are not challenging any Order issued by the FAA, nor are the Plaintiffs challenging the FAA's general authority to issue Orders under 49 U.S.C. § 44709. The Plaintiffs are challenging the FAA's practice and procedure implemented when the Defendant issued the July 5, 2005 reexamination mandate **without** any basis to do so, and without articulating individualized cause against any of the Plaintiffs. The Plaintiffs challenge this action by the FAA that was initiated without authority and in total disregard to due process. The Plaintiffs contend that this court has subject matter jurisdiction over the Plaintiffs' claim, where Plaintiffs are challenging FAA procedures that violate Plaintiffs' due process rights. See Mace v. Skinner, 34 F.3d 854, 860 (9th Cir. 1994).

ARGUMENT

I. The FAA's nationwide reexamination mandate is not only outside the scope of authority granted by Congress but also is in contravention to established Agency policy as set forth by the FAA Order 8300.10, given that the FAA is required to articulate cause against each individual Plaintiff for reexamination.

The FAA's nationwide reexamination directive is contrary to the congressional intent for the bestowing of reexamination authority upon the Agency pursuant to Section

609 of the Federal Aviation Act of 1958, 49 U.S.C. § 44709 (Note that Section 609 of the Federal Aviation Act of 1958 has been re-codified as 49 U.S.C. § 44709). The court in Airline Pilots Association, International v. Quesada stated:

> It is clear that Congress intended that the section [section 609] should apply only when an order of the Administrator is directed to an individual airman and is concerned with conduct or other facts peculiar to that airman...§609 is not intended to apply when a **general directive** of the Administrator is promulgated...(**emphasis added**).

Airline Pilots Association, International v. Quesada, 276 F.2d 892, 897 (2d Cir., 1960). The issuance of a general directive against thousands of certificate holders nationwide is clearly not directed at individual airmen, but rather at a general class of those who attended St. George Aviation. The FAA's general mandate does not concern specific conduct of any particular airman, and the Agency cannot articulate facts peculiar to any of the individual certificate holders. The broad and sweeping nature of the FAA's reexamination mandate is outside the scope of authority afforded the Agency under 49 U.S.C. § 44709.

Additionally, the general mandate is in contravention with FAA Order 8300.10, as set forth by the Airworthiness Inspector's Handbook, Volume 3, Chapter 18, Section 1, Subpart 5(B), entitled: *"Cause for Reexamination."* FAA Order 8300.10 demonstrates that even the FAA's own policy is consistent with the above-referenced congressional intent expressed in Airline Pilots Association, International v. Quesada. The agency's policy as established by FAA Order 8300.10 sets forth *"Cause for Reexamination"* under the authority granted by 49 U.S.C. § 44709 as follows:

> *Cause for Reexamination.* The reconsideration of an airman's competence is a serious issue and requires that there be ample cause. In most cases, a reexamination will follow the investigation of an accident or incident apparently caused by the airman's incompetence.

Airworthiness Inspector's Handbook, Volume 3, Chapter 18, Section 1, Subpart 5(B).

The FAA's handbook even requires the showing of an articulation of cause that is peculiar to an isolated incident such as an accident investigation or other specific incident, consistent with Congress' intent. The Agency is without authority to issue a general directive, for it is contrary to legislative intent and the FAA's own policy; thus Plaintiff will ultimately prevail on the merits of their claim. In addition, the FAA has clearly acted in contravention to FAA Order 8300.10 in issuing the July 5, 2005 mandate, for in the letter, the FAA wrongfully shifts the burden to the Plaintiffs to provide evidence that they did not cheat. The FAA requires the following of the Plaintiffs in the July 5, 2005 mandate:

> *If you believe that you should not be reexamined because your testing at St. George Aviation was properly conducted, you may provide specific evidence supporting your contention within fifteen days from your receipt of this letter...*

FOIA's

Even though the FAA is wrongfully shifting the evidentiary burden, Plaintiffs sent Freedom of Information (FOIA) requests to obtain their airman records; only about half have received responses. Plaintiffs are required to complete the reexamination by the end of December 2005, but cannot obtain information in their defense by then. Plaintiffs reiterate; however, that it is not their burden to prove they received legitimate examinations where the FAA has presented no evidence that even suggests that Plaintiffs fraudulently obtained their certificates. The Defendant has no specific evidence against

Plaintiffs, however, they make a blanket assertion against this class of airmen and threaten to take away their livelihood because of an unconfirmed suspicion.

a. **The reexamination directive is subject to dismissal on the basis of Title 49 C.F.R. 821.33, as a stale complaint; lending further support that will ultimately prevail on the merits of their claim.**

The Agency's reexamination directive is based upon the Office of Inspector General's ("OIG") criminal investigation of the St. George Aviation Testing Center ("SGATC") for issuing fraudulent A&P mechanic certificates. Employees of SGATC were convicted in 1999. In light of this nearly six year delayed response by the FAA, the Agency issued the said reexamination mandate under the guise of uncertainty about the qualifications of those who were issued certificates by St. George between October 10, 1995 and December 31, 1998. The agency is not asserting a ***lack*** of qualifications but rather an ***uncertainty*** as to the qualifications of Plaintiffs and thousands of others. The stale complaint rule, pursuant to 49 C.F.R. 821.33, warrants dismissal where the charges "occurred more than six (6) months prior" to the mandate (issued nationwide on October 4, 2004). The Agency may argue that the stale complaint rule is inapplicable because their allegation is one of a "lack of qualifications;" however, this is not the contention of the mandate. The mandate purports that there is an ***uncertainty*** as to the qualifications, which is not the same notion as charging a ***lack*** of qualifications, as is required by the stale complaint rule.

If the Agency cannot establish good cause for the delay in issuing the mandate, it follows that they neither can claim necessity in the name of public interest as both are required under 49 C.F.R. 821.33(a)(1), to defeat the application of the stale complaint

rule. Without a showing of good cause as to why the FAA's uncertainty regarding the qualifications of charged airmen has been delayed five years, the Agency's reexamination directive must be dismissed in accordance with the stale complaint rule.

II. **Within the aviation community, a lethal inference arises from any issued 49 U.S.C. 44709 reexamination mandate even if the reexamination subsequently results in a finding of competency; and therefore, the stigma inflicted upon Plaintiffs by the FAA's July 5, 2005 reexamination mandate will cause irreparable injury if not enjoined.**

Survival within the aviation community depends upon each individual airman's reputation. Additionally, it is standard hiring practice in the aviation industry for hiring employers to contact the FAA in checking the status of a potential employee's certificate. Reexamination pursuant to 49 U.S.C. § 44709 does not provide any disclosure immunity to even those who have been questioned under § 44709 and vindicated as competent. At any time, Plaintiffs could face career-breaking consequences if the agency is not enjoined from exercising this reexamination mandate, which is without authority under 49 U.S.C. § 44709.

In addition to the stigma associated with having one's competency questioned under 49 U.S.C. 44709, many airmen subject to the FAA's July 5, 2005 nationwide reexamination mandate face obstacles that will deprive them of the opportunity either to submit to reexamination or adequately prepare. With thousands of re-examinees, the

mandate gives little time to prepare or make other arrangements for previous commitments. There are countless instances where plaintiffs nationwide will suffer injury if the Agency is not enjoined from the action they have taken in contravention to 49 U.S.C. § 44709. In the Declaration of Randy A. Williams, attached as Exhibit "A," Mr. Williams attested to the irreparable injury that will result from a reexamination mandate such as that issued by the FAA on July 5, 2005. Mr. Williams' declaration was prepared on October 29, 2004; however, the declaration still contains facts that are true and correct. Mr. Williams is now an employee of the Federal Aviation Administration; however, and cannot prepare an updated statement on behalf of Plaintiffs. The Plaintiffs have and will continue to suffer irreparable injury, even though the FAA should have maintained records of all those who attended St. George. If the FAA had properly kept such records, they may have been able to distinguish between those individuals who received valid certificates, and those who did not.

Aside from aviation community mores regarding reputation and competency, there is concurrence within FAA Order 8300.10, that reexamination of an airman's competency is a "serious issue." As already stated, irreparable harm to reputation has already been done by the FAA's issuance of the July 5, 2005 nationwide reexamination mandate. Harm to reputation is something that cannot be remedied without the force of an injunction.

III. **The potential harm suffered by the FAA if enjoined from issuing said reexamination is harm to Agency reputation, tarnished earlier by the criminal proceedings against St. George Aviation.**

As stated earlier, employees at St. George Aviation Training Center (SGATC) were convicted for issuing fraudulent A&P mechanic certificates. Additionally, the former FAA inspector who was responsible for regulating SGATC subsequently went to work for the SGATC. Charges of conspiracy were filed against said FAA inspector, but they were eventually dropped against him. Julie Carr Smyth, *St. George Mechanics Do Big Jobs*, THE ORLANDO SENTINEL, May 19, 1999, at B1. In light of an injunction, the FAA may argue that the public interest requires the reexamination mandate of the thousands of certificate holders nationwide; however, the agency has failed to demonstrate that any airman receiving his certificate from the SGATC to be a hazard to public safety. Furthermore, there is no adverse occurrence in the form of an accident or other incident that the FAA can point to that can be attributed to one of the thousands of certificate holders subjected to the nationwide reexamination mandate.

CONCLUSION

An injunction preventing the FAA from issuing said reexamination mandate is proper because congressional intent mandates individualized articulations of cause for purposes of 49 U.S.C. § 44709. Furthermore, FAA's initiated process for reexamination under the guise of § 44709 is contrary to their procedure, which is in line with congress' above-referenced intent. Even if the agency had §44709 authority to issue a general directive such as this, the stale complaint rule bars them from taking said action, because there only exists an ***uncertainty*** as to qualifications, rather than a bona fide contention of a *lack* of qualifications. In light of the irreparable harm faced by nearly 2,000 certificate

holders nationwide, a preliminary injunction against the agency in issuing said reexamination mandate is proper and just.

Respectfully submitted,

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By: /s/ Michael A. Moulis
Michael A. Moulis, Esq.
Florida Bar No. 0186790

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the CM/ECF electronic filing on this 15th day of November, 2005 to the following:

Marion C. Blakey, Administrator
Federal Aviation Administration National Headquarters
800 Independence Ave., S.W.
Washington, DC 20591

Susan Caron, Chief Counsel
Federal Aviation Administration National Headquarters
800 Independence Ave., S.W.
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United States Attorney's Office
501 West Church Street, Suite 300
Orlando, Florida 32805

/s/Michael A. Moulis
Michael A. Moulis, Esq.
MOULIS and ASSOCIATES

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Attachment A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JENNETTE BENNETT-SEACREST, et al.,

Plaintiffs,

v.

FEDERAL AVIATION ADMINISTRATION, and MARION C. BLAKEY, Federal Aviation Administrator

Defendants.

CASE NO: 6:04-CV-1525-ORL-ACC-JGG

/

DECLARATION OF RANDY A. WILLIAMS

1. I, Randy A. Williams, am currently a self-employed Aviation Consultant in Fort Lauderdale, Florida. Until June of 2004, I was employed by the Federal Aviation Administration (FAA) as an Aviation Safety Inspector, Safety Program Manager for Airworthiness at the Fort Lauderdale Flight Standards District Office (FSDO). Additional, positions that I have held with the FAA include that of a Principal Maintenance Inspector and a Geographic Maintenance Inspector having periodic oversight responsibilities with, among other things, Designated Mechanic Examiners and certificated Maintenance Technician Schools. I hold various FAA airman certificates and ratings, to include an Airframe & Powerplant Mechanic (A&P) with an Inspection Authorization (IA) Endorsement. As a fully qualified Aviation Safety Inspector, I possess specialized experience specific to the certification and oversight of FAA certificated A&P mechanics. I have personally been involved with the certification and enforcement actions on many individual mechanics, to include

Appendix C

Exhibit 3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JENNETTE BENNETT-SEACREST, PEYKAN BEYRAMI, WILLIAM CALIA, MICHAEL HIGGINS, MICHAEL LEIGHTON, HOWARD LUXNER, PATRICK MAJOR, BEHROUZ NAMVAR-ARDEBILI, MATTHEW SAVER, MICHAEL SCARANGELLA, DAVID TARPLEY, DOUGLAS WISCHMEIER, and REZA ZOGHI,

Plaintiffs,

-vs- Case No. 6:04-cv-1525-Orl-22JGG

FEDERAL AVIATION ADMINISTRATION and MARION C. BLAKELY, Federal Aviation Administrator,

Defendants.

PRELIMINARY INJUNCTION AND ORDER

I. INTRODUCTION

The Plaintiffs in this case are a group of mechanics certified by the Federal Aviation Administration. They have sued to enjoin the agency and its administrator (collectively, "the FAA") from requiring them to sit for re-examination as a condition of maintaining their certificates.

On October 19, 2004, the Plaintiffs filed a Motion for Preliminary Injunction (Doc. 2).[1] The Court heard argument on the motion on November 1, 2004. After considering the motion, Plaintiffs' supporting legal memorandum (Doc. 7), Defendants' opposition memorandum (Doc. 11), Plaintiffs'

[1] A second preliminary injunction motion, also filed on October 19, 2004, appears on the docket sheet. *See* Doc. 5. However, that document is unsigned.

reply (Doc. 12), the parties' supporting and counter affidavits, and argument of counsel, the Court determines that a preliminary injunction should issue.

II. BACKGROUND

The facts are largely undisputed.[2] In 1998, special agents from the U.S. Department of Transportation, Office of the Inspector General ("OIG"), conducted an investigation in cooperation with the FAA regarding allegations that designated mechanic examiners at St. George Aviation ("SGA"),[3] including Anthony R. St. George and George E. Allen, were conducting fraudulent examinations for mechanic certificates and airframe and powerplant ("A&P") ratings. The investigation was prompted by complaints dating back to 1995 regarding SGA's examination practices.

As designated mechanic examiners, Mr. St. George and Mr. Allen were designated by the FAA Administrator to administer the required tests, including oral, practical, and written and computer knowledge tests, for the issuance of mechanic certificates and A&P ratings. The investigation revealed a conspiracy between Mr. St. George and Mr. Allen to fraudulently examine applicants for mechanic certificates and ratings, including practices such as signing off on incomplete and abbreviated examinations. In May 1999, Mr. St. George and Mr. Allen were criminally convicted of charges of conspiracy to commit fraud.

Shortly after these convictions, the OIG and the FAA decided to retest the individuals who received a mechanic certificate or rating after being examined by employees of SGA. The FAA's

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[2] Many of the fact statements set forth herein are derived, verbatim in some instances, from the Declaration of FAA representative Carol E. Giles, attached as Exhibit 1 to Doc. 11.

[3] SGA was located in Sanford, Florida.

position is that it had no other realistic means of determining whether those individuals were actually qualified to hold their certificates and, thus, of ensuring aviation safety. Consequently, the FAA developed a program to reexamine the mechanics who were tested through SGA.

The FAA initially sought to reexamine the 412 mechanics who received their certificates between June 11, 1998 and January 1999, when SGA ceased operating. The agency located and contacted most of those mechanics. Of those mechanics who were contacted, some submitted to reexamination.[4] Those who failed the test and who did not voluntarily surrender their certificates to the agency for cancellation had their certificates revoked. In lieu of being retested, others voluntarily surrendered their certificates to the FAA for cancellation. Those mechanics who did not respond to the reexamination request had their certificates suspended until such time that they successfully completed the reexamination.

Subsequently, the OIG reviewed the FAA's program to reexamine the mechanics who were initially examined by SGA. In early 2004, the Assistant Inspector General for Investigations recommended that the FAA reexamine all of the remaining mechanics who had received mechanic certificates or ratings as a result of examinations conducted at SGA since October 10, 1995, which was about the time allegations first surfaced concerning SGA's examination practices. The Assistant Inspector General premised his recommendation in part on his finding that a pass rate of 79 percent in the initial group of reexamined mechanics was insufficient to ensure aviation safety. He concluded

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[4] The FAA contends the reexamination passage rate was 79 percent. Plaintiffs' expert witness quarrels with that figure, and suggests the passage rate may have been higher. *See* Declaration of Randy A. Williams (attached to Doc. 12), ¶ 10.a.ii, at 10. The Court's analysis is unaffected by this dispute. Even assuming the lower passage rate, Plaintiffs are still entitled to a preliminary injunction.

that when that pass rate was applied to the remaining mechanics who had not yet been contacted by the FAA regarding reexamination, a failure rate of 21 percent would have a measurable adverse impact on safety.

Based on the recommendation of the Inspector General's office, the FAA developed a program to expedite the reexamination of those remaining mechanics who were initially examined by SGA between October 10, 1995, and December 31, 1998. On October 4, 2004, the FAA mailed a letter to each of the mechanics in question, notifying them that they must submit to a reexamination of their competency. More particularly, the letter states:

> The Office of Inspector General's (OIG) criminal investigation disclosed that between October 10, 1995, and December 31, 1998, the owner and/or employees of St. George Aviation (SGA) issued numerous fraudulent A&P mechanic certificates. As a result of the OIG's investigation and the uncertainty about the qualifications of the certificate holders who were issued certificates by SGA between October 10, 1995, and December 31, 1998, the FAA has reason to believe that a reexamination of your airman competency is necessary under Title 49 of the United States Code, Section 44709.
>
> Therefore, we request that you contact the Flight Standards District Office (FSDO) no later than 15 days from the date of this letter to arrange for the reexamination. The reexamination will consist of a written and oral exam based on your ratings.
>
> **If you do not accept this opportunity for reexamination within 30 days of receipt of this letter, it will be necessary for us to forward your airmen's file to the regional counsel office to initiate emergency legal enforcement action on your Airman Mechanic's certificate. If, for reasons beyond your control, you are unable to be reexamined at this time, please contact the FSDO in order that a determination can be made whether a time extension may be granted.**
>
> An Aviation Safety Inspector is available at the FSDO to discuss this matter and provide any information to assist you.

Your cooperation in this matter will be appreciated.

Exhibit "B" to Declaration of Carol E. Giles (emphasis in original).

III. PLAINTIFFS' CONTENTIONS

The Plaintiffs are among the group of mechanics the FAA is requiring to submit to reexamination. Plaintiffs maintain that the FAA "is governed by the procedure set forth in the Federal Aviation Administration's Handbook Order 8300.10; and therefore is without authority to issue [the] reexamination mandate without some 'reasonable basis' or 'cause' against each particular airman or mechanic prior to demanding that they submit to a reevaluation." Doc. 2, ¶ 2. Plaintiffs also argue that the reexamination directive is barred by the "stale complaint" provisions set forth in 49 C.F.R. § 821.33. Plaintiffs seek a preliminary injunction restraining the FAA from proceeding with the reexamination process.

IV. DEFENDANTS' POSITION

The FAA argues it has absolute statutory authority to require the reexamination of a certificate holder. The agency maintains that challenges of this type must be pursued through the National Transportation Safety Board's ("NTSB") administrative appeal process, then raised in the Court of Appeals. Accordingly, in the FAA's view, this Court lacks jurisdiction to entertain Plaintiffs' claims. The FAA also contends it may properly require retesting of all mechanics initially examined by SGA, and need not show cause for such action as to each individual mechanic. Further, the agency maintains Plaintiffs have failed to satisfy the requirements for a preliminary injunction, particularly irreparable injury and substantial likelihood of success on the merits of their claims.

V. PRELIMINARY INJUNCTION STANDARD

In order to obtain a preliminary injunction, the movant must demonstrate:

> (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003).

VI. ANALYSIS

A. Subject Matter Jurisdiction

This Court has federal question subject matter jurisdiction to consider the claims presented by Plaintiffs.

At first blush, the Federal Aviation Act ("Act") appears to divest federal district courts completely of jurisdiction over claims involving that Act. In part, 49 U.S.C. § 44709(d) provides that "[a] person adversely affected by an order of the Administrator . . . may appeal the order to the National Transportation Safety Board ["Board"]. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order. . . ." For persons "substantially affected by an order of the Board . . . , or the Administrator when the Administrator decides that an order of the Board . . . will have a significant adverse affect on carrying out [49 U.S.C. 40101 *et seq.* of the Act],"[5] judicial review is available "in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides. . . ."[6] Unlike the situations that these jurisdictional provisions govern, here Plaintiffs challenge the very practices and procedures of the FAA rather than any FAA order.

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[5] 49 U.S.C. 44709(f).

[6] 49 U.S.C. 46110(a).

The FAA grants the Administrator of the FAA broad authority to reexamine airmen holding certificates issued under § 44703 of the Act.[7] Nevertheless, that authority is tempered by process and procedure. In relevant part, § 44709(c) of the Act requires that:

> [b]efore acting . . ., the Administrator shall advise the holder of the certificate of the charges or other reason which the Administrator relies on for the proposed action. *Except in an emergency*, the Administrator shall provide the holder an *opportunity to answer the charges and be heard* why the certificate should not be amended, modified, suspended, or revoked" (emphasis added).

49. U.S.C. § 44709(c). In applying §44709 to the case at hand, the heart of the matter becomes whether Plaintiffs have been denied procedural due process.

District courts have subject matter jurisdiction to adjudicate the constitutionality of FAA practices and procedures, including whether those procedures violate procedural due process. *See Mace v. Skinner*, 34 F.3d 854, 860 (9th Cir. 1994). In *Mace*, the decision most analogous to the case at hand, the FAA issued an emergency order revoking Mace's, the plaintiff's, aircraft mechanic's certificate "as the result of alleged violations of FAA safety regulations stemming from Mace's purported failure to properly inspect and repair airplanes." *Id.* at 856. Mace went on to challenge the revocation before an administrative law judge and the National Transportation Safety Board ("NTSB"). *Id.* The NTSB dismissed Mace's appeal, however, because Mace filed it in an untimely manner. *Id.* Mace then sought review of the NTSB's dismissal in the United States Court of Appeals for the District of Columbia Circuit. *Id.* While his appeal to the D.C. Circuit was

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[7] Section 44709 of the Act provides that "[t]he Administrator of the [FAA] may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under § 44703 of [Title 49]." 49 U.S.C. § 44709.

pending, Mace filed a separate action in an Arizona federal district court. Mace's complaint, brought against former officials of the FAA, NTSB, and Department of Transportation asserted that the FAA's use of the emergency order violated his due process and jury trial rights guaranteed under the Fifth and Sixth Amendments to the Constitution. *Id.* Mace further alleged:

> the FAA was not authorized to revoke certificates as a sanction for violating aviation safety regulations, nor was the NTSB authorized to try such revocations; that only fines were authorized as a sanction for safety violations; that the FAA failed to promulgate rules relating to the revocation procedures, to give the public notice and an opportunity to comment on such rules, and to publish them in the *Federal Register*; and that the FAA's emergency procedures failed to accord Mace adequate notice of the revocation of his certificate. . . . Mace also argued . . . that the FAA's revocation of his certificate was irrational because his use of the certificate posed no threat to air safety or to the public.

Id. Ultimately, "[t]he district court dismissed the complaint with prejudice under Rule 12(b)(1), holding that it lacked subject matter jurisdiction over the action because the power to review Board decisions upholding FAA orders was vested exclusively in the federal appellate courts." *Id.*

The Ninth Circuit reversed the district court and held that the district court had subject matter jurisdiction over the case. The appellate court distinguished Mace's case from those where the courts of appeal would have exclusive jurisdiction, noting that Mace: (1) sought a remedy, namely, damages, not afforded by the Federal Aviation Act ("Act"); (2) "broadly challenged the constitutionality of the FAA's revocation procedures" rather than actions by the FAA; and (3) based his claims not "on the merits of his individual situation" but rather on the FAA's allegedly unconstitutional practices. *Id.* at 858-59. Here, as in *Mace*, Plaintiffs seek a remedy not afforded by the Act. The Act fails to give guidelines for the issuance of preliminary injunctions. The Act further fails to give guidelines for challenging the constitutionality of the procedures of the FAA

and thus fails to place jurisdiction to hear such claims with the U.S. courts of appeal. The Supreme Court has held that "where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear." *Webster v. Doe*, 486 U.S. 592, 603, 100 L. Ed. 2d 632, 108 S. Ct. 2047 (1988) (citing *Johnson v. Robison*, 415 U.S. 361, 39 L. Ed. 2d 522, 95 S. Ct. 2457 (1974)). Such a heightened showing is required "to avoid the 'serious constitutional question' that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." *Id.* Moreover, here Plaintiffs do not argue the merits of any particular mechanic's situation. Instead, Plaintiffs challenge the procedure employed by the FAA and argue that "[s]uch action without implementation of due process must be struck down." (Amended Complaint, Doc. 2, ¶ 13 at 4). This Court agrees.

B. Entitlement to a Preliminary Injunction

Plaintiffs have satisfied the requirements under Federal Rule of Civil Procedure 65(a) and Local Rule for the Middle District of Florida 4.06 and are thus entitled to the issuance of a preliminary injunction in this case.

First, Plaintiffs have demonstrated a substantial likelihood of success on the merits. Generally, "to be entitled to procedural due process, a party must show a liberty or property interest in the benefit for which protection is sought. If the party establishes that such an interest exists, a court determines what process was due and whether the party was actually afforded such process." *Greenwood v. Federal Aviation Administration*, 28 F.3d 971, 975 (9th Cir. 1994) (citing *Morrisey v. Brewer*, 408 U.S. 471, 480-81, L. Ed. 2d 484, 92 S. Ct. 2593 (1972)). Here, Plaintiffs have a property interest in their mechanic's certificates. Generally, a mechanic's certificate "is

effective until it is surrendered, suspended, or revoked,"[8] and it endures so long as the mechanic satisfies the recent experience requirements under 14 C.F.R. § 65.83.[9] Because the certificate is nonexpiring and because Plaintiffs must have a valid certificate in order to exercise the privileges of both the certificate and ratings under the Federal Aviation Act and Chapter 65 of Title 14 of the Code of Federal Regulations, Plaintiffs can thus be said to have a property interest in their certificates. *See generally Greenwood*, 28 F.3d at 976 (where the Ninth Circuit found that an engineer had a protected property interest in a different kind of certificate, an FAA design modification certificate, given, in part, its nonexpiring nature). The next step in the analysis is to determine what process was due Plaintiffs and whether they were afforded such process.

Section 44709 of the Act speaks most directly to the process needed in this situation. In examining § 44709, three issues emerge: (1) whether the letters sent to the certificate holders satisfy the Administrator's burden of advising them of the charges or other reasons relied on for the proposed action; (2) whether this is an emergency situation and; (3) if this is not an emergency situation, whether the FAA erred in failing to give Plaintiffs an opportunity to answer the charges and be heard. The Court will address each issue in turn.

The FAA did not sufficiently advise Plaintiffs of the reasons for its action. The letters sent to Plaintiffs notifying them of the FAA's mandate that they submit to reexamination failed to

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[8] 14 C.F.R. § 65.15.

[9] Although there are duration and renewal provisions for inspection authorization under 14 C.F.R. § 65.92, mechanic certificates themselves, barring suspension or revocation by the FAA, require only recent experience by the mechanic to maintain validity.

articulate any cause with respect to each individual mechanic.[10] FAA Order 8300.10, Airworthiness Inspector's Handbook ("Handbook"), Vol. 3, Chapter 18, Section 1, Subsection 5 (2004), discusses the cause that must exist before an airman is required to submit to reexamination. Order 8300.10 reads:

> *Cause for Reexamination.* The reconsideration of an airman's competence is a serious issue and requires that there be ample cause. In most cases, a reexamination will follow the investigation of an accident or incident apparently caused by the airman's incompetence.

3 Handbook at 18, §1(5)(B). Here, the FAA has failed to articulate any cause with respect to any particular mechanic. Instead, the FAA has issued letters to nearly 2,000 certified mechanics demanding that they submit to reexamination without pointing to any specific incidents of

---

[10] In any event, sending the mechanics a letter was at least the proper way for the FAA to notify them of their reexaminations. Order 8300.10, Volume 3, Chapter 18, Subsections 7(A) and 7(B) states:

> A. *Notification.* The ASI will notify the airman by letter that a reexamination is necessary. The letter must be sent via certified mail and include a return receipt. . . .
> B. *Contents of Reexamination Letter.* The reexamination letter must specify the following:
> (1) The reasons for the reexamination, such as an accident, incident, or occurrence;
> (2) The specific certificate and/or rating(s) in question;
> (3) The specific subject area(s) or skill(s) under review, if appropriate;
> (4) The type of reexamination (knowledge, oral, practical);
> (5) The category and class of aircraft required, as applicable;
> (6) The location of the district office where the reexamination will take place (typically left to the discretion of the airman); and
> (7) A reasonable time limit for the accomplishment of the reexamination. The reexamination normally occurs within 15 days after the airman receives the letter of notification.

incompetence. In short, the letters issued by the FAA do not sufficiently advise Plaintiffs of the cause for the action being taken against them.

Additionally, the current situation presents no emergency. As previously indicated, the recent push for Plaintiffs' reexaminations grew out of an investigation that culminated in a criminal case that ended more than five years ago. Defendant has yet to make a plausible articulation as to why these reexaminations are necessary now. Whether or not the stale complaint rule presented in 49 C.F.R. § 821.33 applies is not now for this court to decide. Nevertheless, the FAA likely should have pressed for these reexaminations at a time closer to the investigation and criminal case in the late 1990s.

Moreover, because this is not an emergency situation, the FAA must give Plaintiffs an opportunity to respond to the demands for reexamination and to be heard. As discussed in the hearing, the FAA should have records in its possession that at best will allow the FAA to separate those mechanics who took valid examinations at SGA from those mechanics who did not. Additionally, as required by § 44709, the certificate holders should be given an opportunity to refute the evidence against them and to present a case as to why their license should not be suspended and why they should not have to submit to reexamination.

Second, irreparable harm has already been suffered and will continue to be suffered unless this injunction issues. Already, various mechanics "have been put on notice that their work is to be restricted until further notice" as noted in the Declaration of Randy A. Williams, a self-employed Aviation Consultant in Fort Lauderdale, Florida (Declaration of Randy Williams, Doc. 12, Ex. 1, ¶ 7(d) at 5). For example, "one employee of a certified operator in Milwaukee, WI., [sic] who is otherwise in good standing with the FAA and his employer, has had his work privileges

restricted until further notice based on a recommendation of the Principal Maintenance Inspector (PMI) of that operator. Specifically, the PMI told the operator that the individual's A&P [or mechanic's] certificate was 'no good.'" *Id.* The loss of work privileges is an irreparable harm. Moreover, the mechanics subjected to this investigation and reexamination process may find it difficult to find other work, whereas:

> [f]uture employment in the aviation industry is reliant on a sound and confirmed reputation. When applying for any position in the aviation community that requires an airman certificate, full disclosure is required of any and all enforcement actions the [sic] have ever been initiated against the individual. Also, it is common procedure for a certificated company to check into the professional background of all new hires. The stigma that the FAA has brought to this group of A&P mechanics, through allegation alone, will never be professionally overcome.

Id. ¶ 7(b) at 5. Without the issuance of an injunction, the number of mechanics put on restricted work privileges will rise and, in some situations, job losses will likely ensue.

Third, the threatened injury to Plaintiffs outweighs any damage this injunction would do to the Defendants. The FAA is not barred from completing its investigation or the reexamination process; however, the FAA must follow the statutory and regulatory guidelines in doing so.

Last, the issuance of an injunction here is not adverse to the public interest. Defendants argue that the Inspector General and FAA "determined that, because there was a question whether a significant number of mechanics were in fact qualified pursuant to FAA standards, there was a cognizable risk to aviation safety." (Doc. 11 at 5). That determination is what led to the FAA's current reexamination policy (Doc. 11, Ex. 1, Ex. A). The FAA knowing of the problems associated with SGA has allowed the Plaintiffs to hold their certificates for six to nine years. (Doc. 11 at 5). As previously discussed, mechanics are generally not required to submit to reexamination

unless their competence is a serious issue and there is ample cause. *See* FAA Order 8300.10, Airworthiness Inspector's Handbook ("Handbook"), Vol. 3, Chapter 18, Section 1, Subsection 5 (2004). Additionally, the FAA has presented no evidence that any of the Plaintiffs have caused by their incompetence accidents or incidents. In sum, there is no evidence that any of these mechanics currently pose a risk to aviation safety. The public interest is promoted by requiring the FAA to comply with the requirements of due process.

VII. CONCLUSION

Based on the foregoing, it is ORDERED as follows:

1. Plaintiffs' Motion for Preliminary Injunction (Doc. 2), filed October 19, 2004, is GRANTED.

2. Plaintiffs' Motion for Preliminary Injunction (Doc. 5), filed October 19, 2004, is MOOT.

3. The Defendants, Federal Aviation Administration and Marion C. Blakely, Administrator, are hereby enjoined from proceeding with the reexamination of Plaintiffs on an emergency basis under 49 U.S.C. § 44709.

4. The Defendants are ordered to follow the procedures outlined in FAA Order 8300.10, Airworthiness Inspector's Handbook, Volume 3, Chapter 18, Section 1, Subpart 5(B) and 49 U.S.C. § 44709(c) and present cause for the reexamination of each individual Plaintiff.

5. The Defendants are further ordered to follow the non-emergency procedures outlined in 49 U.S.C. § 44709(c) and provide each Plaintiff an opportunity to answer the charges and be heard why that Plaintiff's certificate should not be subject to suspension and why that Plaintiff should not have to submit to reexamination.

6. The Court determines that the nature of this action is such that a bond is unnecessary.

DONE and **ORDERED** in Chambers, in Orlando, Florida on November 2, 2004.

ANNE C. CONWAY
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Party

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FREDERICK ALLISON, JEFFREY BAKER, PETER BISHOP DARIO BRITTON, FITCH BRYAN, TOM CLEMENTS, FRANK CONLEY, MICHAEL DAULTON, JOSEPH DEFEO, GREGG DEBBAN, FREDDY DILLEY, DENNIS DOSE, RONALD ENGBERG, BRUCE ERB ALEJANDRO FARIAS, BRIAN FINNEY ADOLFO FERNANDEZ, JOSE GONZALES, DAVID GEMMILL, MICHAEL GRAHAM TOM GURLEY, DOUGLAS HOCEVAR, STEVEN HOMAN, JAMES HARVEY, JOSE LUIS HURTADO, CARLOS JIMENEZ, BHOLA KENRICK, ALLAN KUIPER, THOMAS LOGGINS, WAYMAN LUY, BRIAN NELSON, JON NICHOLAS, TERRY NIELSON, THOMAS MARDAUS, SERGIO MENDEZ, JORGE MERCADO, CLAUDIO MIRANDA, MICHAEL MIHAILIDIS, JOSEPH MOLNAR, CARLO PALACIO, FRANKIE QUILES, ANGEL PUMAROL, DAVID RICHARD, JOHN RYAN, RANDY ROOSE, JACK ROVELLO, GUILFOY ROWE, MELIA RODRIGUEZ, KENETH SHARP, GLENN SPARKMAN, JOSEPH SILVA, JON SKOREY, CHARLES SCOTT, DEVLIN SEAN, RICHARD THOMAS, HATTO THOMAS, BRUCE TIBBETTS, ROBERT TIDWELL, TIMOTHY WEST, GEORGE WALTERS, CHARLES WILLIAMS, DANIEL WILLIAMS, KETTELHACK WOLDIETER, RALPH ZIADIE, PETER ZOLLDAN

Plaintiffs,

v.

FEDERAL AVIATION ADMINISTRATION, and MARION C. BLAKEY, FederalAviation Administrator

Defendants.

_____/

CASE NO: 6:05-cv-1699-Orl-28DAB

MOTION FOR PRELIMINARY INJUNCTION

RELIEF SOUGHT

Plaintiff moves this court, pursuant to Rule 65 of the Federal Rules of Civil Procedure:

1. To issue a Preliminary Injunction suspending and restraining the operation, enforcement, or execution of the reexamination mandate issued by the Federal Aviation Administration (hereafter "FAA") on July 5, 2005, pending the final hearing and determination on this cause.

GROUNDS FOR MOTION

The grounds for this motion, as more fully set forth in the verified complaint are that:

2. The Federal Aviation Administration has taken administrative action against what is believed to be over 1,000 individuals who attended St. George Aviation (hereafter "SGA"), in Sanford, Florida between October 10, 1995 and December 31, 1998.[1] Specifically, the FAA issued letters to each of the Plaintiffs and hundreds of others, demanding that each applicant schedule a re-test or reexamination, notwithstanding that each Plaintiff had successfully completed each phase of the testing process, including satisfying the FAA's standards concerning eligibility. The FAA is governed by the procedure set forth in the Federal Aviation Administration's Handbook Order 8300.10; and therefore is without authority to issue said reexamination mandate without some

[1] St. George Aviation was under criminal investigation by the Office of Inspector General's between October 10, 1995 and December 31, 1998. SGA owners were convicted of 15 counts of conspiracy and submitting false statements on numerous FAA certificates.

"reasonable basis" or "cause" against each particular airman or mechanic prior to demanding that they submit to a reevaluation.

3. In the July 5, 2005 mandate, the FAA does not articulate any of the required individualized cause; rather, the FAA cites to an "uncertainty" about the Plaintiffs qualifications, and then shifts the burden to the Plaintiffs to provide evidence as to why each Plaintiff should not have to re-test. The FAA has not presented the Plaintiffs with individualized cause and accompanying evidence in support of the FAA's uncertainty as to the Plaintiffs' qualifications as airmen; but instead requires that the Plaintiffs rebut the FAA's unconfirmed accusations. The Plaintiffs have submitted Freedom of Information Act (FOIA) requests in order to respond to the baseless accusations made against them in the FAA's July 5, 2005 letter; however, approximately half of these requests for information have been answered. The FOIA requests were made in an effort to obtain the Plaintiffs' airman records; however, the airman records alone are insufficient to rebut the FAA's accusation that the Plaintiffs "cheated" on their certification examinations.

4. Unless enjoined, the Federal Aviation Administration threatens to enforce the reexamination mandate against Plaintiffs, without giving the obligatory and individualized articulation of "cause." In fact, the FAA cannot articulate cause against any individual, and can only articulate that the Plaintiffs attended SGA, and speculate that some of the students may have not been given the appropriate test by the school.

5. In late October 2005, the FAA issued letters to Plaintiffs and hundreds of others who did not schedule a reexamination. These letters stated that the FAA would take legal enforcement actions and that FAA certificate actions are pending against the Plaintiffs.

4. The reexamination mandate and its enforcement is causing and will cause immediate and irreparable injury to the plaintiffs because some of the Plaintiffs have been informed that if they are required to reexamine, they will be terminated from their respective employment, while others must carry the stigma of having an enforcement action on their records for "cheating" in order to obtain a certificate. While the Federal Aviation Administration disregards its own procedures authorizing reexamination (upon individualized articulation of "cause"), the affected plaintiffs face potential job loss and financial setback. Without administering the proper steps affording due process to Plaintiff-victims, the FAA is subjecting Plaintiffs to immediate and irreparable injury.

5. Unless the operation and enforcement of the Federal Aviation Administration's reexamination mandate is enjoined pending final disposition of the action, the injury to plaintiff in the interim will be irreparable even by final judgment for plaintiff.

6. No injury will be sustained by the defendant or by the public through issuance of a Preliminary Injunction.

7. This prayer for a Preliminary Injunction will not cause financial setback nor costs or damages that would warrant the giving of security.

8. Pursuant to Rule 4.05(b)(3)(iv) of the District Court of the United States for the Middle District of Florida, a supporting legal memorandum is attached to this motion.

WHEREFORE, the Respondent hereby request that the court grant their Motion for a Preliminary Injunction.

Respectfully submitted this 15th day of November, 2005,

MOULIS & ASSOCIATES, LLP
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SUITE 312
FORT LAUDERDALE, FL 33315
Telephone: (954) 359-3172
Facsimile: (954) 359-3213

By: /s/ Michael A. Moulis
Michael A. Moulis
Florida Bar No.: 0186790

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the CM/ECF electronic filing on this 15th day of November, 2005 to the following:

Marion C. Blakey, Administrator
Federal Aviation Administration National Headquarters
800 Independence Ave., S.W.
Washington, DC 20591

Susan Caron, Chief Counsel
Federal Aviation Administration National Headquarters
800 Independence Ave., S.W.
Room 912
Washington, DC 20591

Carlotta Wells, Senior Counsel
Civil Division/Federal Programs Branch
20 Massachusetts Avenue, NW
Room 7150
Washington, D.C. 20530

Carolyn Adams, Senior Counsel
United States Attorney's Office
501 West Church Street, Suite 300
Orlando, Florida 32805

Appendix C

Exhibit 4

APPENDIX C
Exhibit 4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FREDERIC ALLISON, ET AL

Plaintiffs,

-vs- Case No. 6:05-cv-1699-Orl-28DAB

FEDERAL AVIATION ADMINISTRATION, ET AL

Defendants.

NOTICE OF HEARING

This cause is before the Court on the Motion for Preliminary Injunction filed by the Plaintiffs (Doc. 2, filed November 15, 2005). Upon consideration, it is ORDERED as follows:

1. Plaintiffs and Defendants shall appear on FRIDAY, DECEMBER 9, 2005, at 9:30 a.m. in Courtroom # 4, Sixth Floor, George C. Young U.S. Courthouse & Federal Building, 80 North Hughey Avenue, Orlando, Florida, for a hearing on Plaintiffs' Motion for Preliminary Injunction (Doc. 2).

2. On or before Monday, November 28, 2005, at 4:00 p.m. Plaintiffs shall serve Defendants with all papers that have been filed in this action, including a copy of this Order, in the manner required by Federal Rule of Civil Procedure 4 for service of a summons and complaint. Additionally, within the same time period, Plaintiffs shall serve and file "all papers and affidavits upon which the moving party intends to rely" in accordance with Local Rule 4.06.

3. Defendants shall have until **Tuesday, December 6, 2005, at 4:00 p.m.** to file and serve any briefs, affidavits, or other evidence in opposition to the motion for preliminary injunction.

4. No oral testimony will be allowed.

5. The parties will be allowed thirty (30) minutes each for oral argument.

DONE and ORDERED in Chambers in Orlando, Florida on this 21st day of November, 2005.

JOHN ANTOON II
United States District Judge

Copies furnished to:
Counsel of Record
Any Unrepresented Party

PLEASE NOTE: Photo I.D. is required to enter the United States Courthouse. Also, cellular telephones and laptop computers are prohibited in the Courthouse.

reexamination under the authority granted to the Administrator under 49 U.S.C. 44709 ("709").

2. After separating from the Agency, I became aware that the FAA was considering utilizing it's "709" authority in connection with the debacle that the FAA was responsible for allowing to happen at the St. George Aviation Testing Center in Sanford Florida. Although an attempt was made to prosecute Orlando, FSDO Aviation Safety Inspector J. Barrington for his part in the conspiracy, it was made perfectly clear to the general public in 1999 that the FAA was, in part, responsible for the fiasco in Sanford, Florida.

3. In mid-October, I offered my services to Moulis & Associates in Fort Lauderdale, Florida when Mr. Michael Moulis informed me that he had several clients who felt that they were being unfairly targeted and would be sacrificed to allow the FAA redirect the shortcomings of the Agency that were identified during the criminal trials of Mr. St. George and Mr. Allen. At that time I began to interview Mr. Moulis' clients and prospective clients to determine the legitimacy of each of their situations. I determined that each of Mr. Moulis's clients appeared to have legitimate situations.

4. While I would have never suspected that it would attempt to reexamine every airman indiscriminately, it became immediately apparent that the FAA has never made ANY attempt to contact any one individual to determine if their account and evidence of the testing at St. George was in any way deficient with regard to their situation. I have to date, personally interviewed 47 persons affected by the action proposed in this matter.

5. Each and every mechanic that I interviewed, including the plaintiffs, were all similarly situated in the following areas:

a. Each of them did go to St. George Aviation Testing Center to receive all or a portion of their Airframe and/or Powerplant Mechanic Certificate between October 10, 1995 and December 31, 1998 (some of them took the written exams elsewhere).

b. Each of them arrived at the testing center with all of the appropriate FAA issued endorsements and approved experience qualifications to take the examination in GOOD FAITH with an FAA Designated Mechanic Examiner.

c. Each of them was able to provide me with some evidence and statements that their individual tests appeared to be conducted in accordance with the established guidelines and practical test standards of that time and would be willing to provide such evidence and statements to the FAA should they ever be interviewed.

d. Each of them expressed a concern that they would not have adequate time to prepare for a test that originally took them months or years to prepare to take.

e. Each of them expressed a concern that the FAA may be predisposed to fail as many applicants as possible in order to "save face" regarding their involvement in the St. George conspiracies.

f. Each of them expressed a concern over the reaction of their respective or prospective employers would have regarding the FAA's allegations against their integrity.

6. Several concerns that were raised by many of the airmen included:

a. Questioning the requirement to take a written examination when they received their examinations from an FAA authorized test center other than St. George Aviation Testing Center yet the FAA is still insisting that they take the entire reexamination.

b. Questioning why the agency will allow persons who obtained additional ratings be exempted from the reexamination while the Agency refuses to consider additional airmen training and testing at FAA authorized and approved schools.

c. Questioning why airmen who received their Inspection Authorization Endorsement after 4 October 2004 are not exempt.

7. After conducting interviews with each of the aforementioned airmen and reviewing their statements I have some specific concerns of harm that is being inflicted or will be inflicted upon them and their families.

a. In the aviation industry, a certificated airman is only as good as his personal reputation. Without a solid reputation and history of dependability to rely upon, employers are reluctant to allow financial exposure by continuing the employment of an individual with "questionable" ethics.

b. Future employment in the aviation industry is reliant on a sound and confirmed reputation. When applying for any position in the aviation community that requires an airman certificate, full disclosure is required of any and all enforcement actions the have ever been initiated against the individual. Also, it is common procedure for a certificated company to check into the professional background of all new hires. The stigma that the FAA has brought to this group of A&P mechanics, through allegation alone, will never be professionally overcome.

c. The FAA has made it perfectly clear that it intends to initiate an enforcement action on any airmen that questions this proposal. One example would be where the Farmingdale, NY. FSDO has already initiated an enforcement action on one of Mr. Moulis's clients (EIR #2005EA110001) due to a misunderstanding on the part of the FAA Safety Inspector. Once an enforcement action has been initiated, no matter the outcome, under allegations regarding qualifications, it can never be expunged from that individual's permanent record.

d. Other airmen at various companies have been put on notice that their work is to be restricted until further notice. One example would be where an employee of a certificated operator in Milwaukee, WI., who is otherwise in good standing with both the FAA and his employer, has had his work privileges restricted until further notice based on a recommendation of the Principal Maintenance Inspector (PMI) of that

operator. Specifically, the PMI told the operator that the individual's A&P certificate was "no good".

8. Mr. Moulis asked me to conduct an analysis of the FAA Published Handbook bulletin FSAW 04-10, dated 09-21-04, to FAA Order 8300.10 and determine how, in my specialized experience, the proposed procedure in the bulletin conforms to standard agency testing procedures and practical test standards. Also, I was asked to evaluate the proposed procedures and how they deviate from the FAA's published guidelines. In that bulletin the FAA is establishing very specific guidelines to the conduct of the proposed reexamination. I take issue with the following points in that document.

a. The bulletin indicates that the most recent airman testing was accomplished nearly five years ago. In the FAA Compliance and Enforcement procedures, FAA Order 2150.3A, Chapter 402, the agency the agency is barred from bringing an administrative action against an airman beyond 6 months from the date that the alleged violation was known to the Agency. Although, there is a "good cause" exception to this limitation, the FAA has failed to demonstrate any justification for the excessive delay.

b. The authority sited by the FAA in the bulletin indicates that this can be accomplished under the 49 U.S.C. 44709, however in Volume 3, Chapter 18 of the very same handbook that the bulletin is associated with (FAA Order 8300.10) clearly states that "ample cause" must be shown on an "airman" to proceed with a reexamination

recommendation. No evidence has been presented against any one "airman" the bulletin only addressed a group of "airmen".

c. Exemptions from the reexamination proposal have allowed for some groups of airmen. Those exempted include airmen who received their Inspection Authorization (IA) endorsement since they received their A&P certificates. The logic utilized to at arrive at that exemption states that they have "demonstrated the required qualifications" is flawed. Since the IA is an endorsement to the A&P certificate, it requires a valid A&P certificate to become an IA, therefore the generalized maintenance testing given to mechanics would not be conducted during an IA examination.

d. Exemptions from the reexamination proposal have allowed for other airmen such as active duty military. However no consideration is being made for one airman that I interviewed who is expected to be at a military training school in Fort Rucker, AL. during the testing window. The FAA solution to that situation was to transfer his reexamination to the Birmingham, AL. FSDO. It is preposterous to believe that the United States Army is going to allow a student in training to take off an entire day to drive 150 miles to Birmingham to take this examination. Besides, where is any allowance to this airman to study for the reexamination and a full time helicopter school?

9. The bulletin indicates that the agency has proposed a modified version of the examination. The proposed A&P reexamination would consists of 60 written questions

randomly selected out of the poll of available questions for the actual test and 15 oral examination questions. The proposed test is expected to take less than 3 hours. The actual FAA examination series to become a certificated Airframe & Powerplant Mechanic is summarized as follows:

i. Endorsements must be obtained from the FAA to allow taking the written examinations. To obtain said endorsements, an applicant must provide evidence to the Administrator that they meet the experience requirements needed to obtain an Airframe and/or Powerplant Certificate.

ii. The applicant for an A&P certificate must then take a battery of three separate written (computer) tests at an FAA authorized testing center. The written tests are designed to test the applicants generalized knowledge in a very diverse scope of subject matter. The pool of questions available to be tested on is 2,374 objective type questions, many of which require supplemental excerpts to obtain an answer. A pass rate of 70% is required to proceed to the oral examination phase of the testing.

iii. The series of oral examinations are conducted by an FAA Designated Mechanic Examiner. Oral examinations are designed to test the applicant's KNOWLEGDE in specific areas. The oral examinations consist of three separate oral examinations that are to be accomplished in accordance with

three separate published Practical Test Standards (FAA-S-8081-26/27/28).

1. The GENERAL oral examination tests the applicant's knowledge specific to **twelve** separate areas at **three** different performance levels and have specific reference to **thirteen** various FAA publications.
2. The AIRFRAME oral examination tests the applicant's knowledge specific to **twenty** separate areas at **three** different performance levels and have specific reference to **fifteen** various FAA publications.
3. The POWERPLANT oral examination tests the applicant's knowledge specific to **nineteen** separate areas at **three** different performance levels and have specific reference to **seven** various FAA publications.

iv. The series of Practical examinations are conducted by an FAA Designated Mechanic Examiner. Practical examinations are designed to test the applicant's SKILLS in specific areas. The Practical examinations emanate from the aforementioned oral examination criteria and encompass a similar scope.

v. Oral and practical examination phases usually last a minimum of 8 hours with the designee.

vi. The FAA allows an applicant 24 months to complete this process (14CFR 65.71).

AGENCY REPORT

(PART 2)

Federal Aviation Administration

Memorandum

Date: SEP 15 2009

To: Karen P. Gorman, Deputy Chief, Disclosure Unit, U.S. Office of Special Counsel

From: Carol E. Giles, Manager, Aircraft Maintenance Division, AFS-300

Subject: Response to Office of Special Counsel (OSC), Gabriel Bruno, DI-07-2350

While finalizing the review of the above-mentioned DOT report (DI-07-2350) the OSC identified several questions and requested clarification in order to determine if the findings of the agency head are reasonable. The Aircraft Maintenance Division, AFS-300, has prepared the following responses to the individual questions posed by the OSC.

Question 1: When a mechanic fails the reexamination and the FAA revokes the mechanic's certification, does the FAA have a mechanism in place for notifying the carrier/employer? If not, where does the responsibility lie? With the mechanic or the carrier? If FAA does not notify the carrier, is it possible that this could present a loophole in the system, whereby mechanics might continue working on aircraft after losing their certification?

Response to Question 1:

Does the FAA have a mechanism in place for notifying the carrier/employer?
There is no requirement for mechanic certificate holders to inform the FAA of where or whether they are employed. Consequently, the FAA does not have a means to notify an employer when a mechanic's certificate has been revoked unless the FAA is aware of the identity of the mechanic's employer. In that case, the FAA may advise the carrier/employer. On November 10, 2008, the FAA modified its system of records under the Privacy Act of 1974 to include a routine use to "make records of effective orders against the certificates of airmen available to their employers if the airmen use the affected certificates to perform job responsibilities for those employers." See 73 Fed. Reg. 56625 (Sep. 29, 2008).

Where does the responsibility lie? With the mechanic or the carrier?
The responsibility to insure that only qualified mechanics are performing work on behalf of the carrier for which a mechanic certificate is required is shared by the certificate holder and the carrier. The certificate holder's responsibility is not to exercise the privileges of a mechanic certificate once the certificate is revoked. See 14 CFR 43.3 and 65.15. The carrier's

responsibility is to insure that only qualified certificate holders perform maintenance on their aircraft for which a certificate is required. See, e.g., 14 CFR 121.363, 121.367, 135.411, and 135.413.

If FAA does not notify the carrier, is it possible that this could present a loophole in the system, whereby mechanics might continue working on aircraft after losing their certification?
The FAA's regulations are explicit that only certificated mechanics may perform maintenance for which certification is required. It is possible that these regulations, like any other regulations, may be violated, but the FAA does not consider that possibility to constitute a loophole.

Question 2: Our understanding is that prior investigations discovered that certain examiners at St. George Aviation conducted deficient/inadequate *oral* and *practical* tests. Is this correct? Did St. George Aviation also administer *written* tests? If so, were any deficiencies uncovered in their written testing program as well?

Response to Question 2:

Is it correct that prior investigations discovered that certain examiners at St. George Aviation conducted deficient/inadequate oral and practical tests?
Yes, it is correct that both the DOT IG investigation and the FAA's own internal investigation of St. George Aviation revealed that certain designated mechanic examiners for St. George Aviation conducted deficient oral and practical examinations. This information served as a basis to request the reexamination of the mechanics who were examined at St. George Aviation.

Did St. George Aviation also administer written tests? If so, were any deficiencies uncovered in their written testing program as well?
Yes, St. George Aviation was also authorized to administer written tests for mechanic certificates. The FAA's internal investigation documented numerous deficiencies with St. George Aviation's administration of the written tests. Moreover, there was testimony during the criminal trial of Mr. Anthony St. George regarding the deficiencies that occurred with the written testing process. This information also served as a basis to request the reexamination of the mechanics who were examined at St. George Aviation.

Question 3: In reference to the St. George mechanic who worked on the aircraft involved in the Chalks accident, both the FAA report and the Flight Standards QA staff report provide meager information. Both reports merely state that FAA's review of Chalk's Air Maintenance records "revealed" that there is no documentation that the St. George Aviation mechanic graduate was involved in maintenance on areas of this aircraft related to the accident. OSC would like more detailed information. Which databases and documents were included in the review? Was the FAA's document review definitive? What areas of the aircraft did the mechanic work on? Was all his time accounted for in the maintenance records? Is it possible that he worked on other areas of the aircraft, without this fact being documented?

Response to Question 3:

Was the FAA's document review definitive?
No, it is not possible to state that the FAA's document review is definitive. Chalks utilized hand written signatures and initials to record maintenance performed on its aircraft and not all the records are entirely legible. In preparing this response, the FAA's Flight Standards Service, Aircraft Maintenance Division requested the FAA's South Florida Certificate Management Office (oversight office for Chalks) to provide information about the records they reviewed during the initial investigation and requested that they reanalyze those records in an attempt to determine what, if any, work was accomplished by the St. George mechanic. The South Florida Certificate Management Office still maintained copies of the aircraft logbook pages, C-ck records and associated non-routine cards. The South Florida Certificate Management Office's review of these records indicates that the St. George mechanic did perform work on the accident aircraft. These records further showed he was a mechanic and inspector for Chalks and that he performed work on various sections of the aircraft. The FAA notes that the National Transportation Safety Board (NTSB) issued an aircraft accident report on May 30, 2007. During the NTSB's investigation of the Chalk's accident, it reviewed various maintenance records and made 17 total findings. The NTSB did not find that any one individual who worked on the aircraft, which includes the St. George mechanic, was at fault for any particular maintenance deficiency.

What areas of the aircraft did the mechanic work on?
The South Florida Certificate Management Office's recent review of the aircraft records indicates the St. George mechanic worked on various areas of the aircraft throughout his tenure at Chalks.

Was all his time accounted for in the maintenance records?
Mechanics are not required by regulation to record start and stop times for any particular task; thus we have no way to account for all of the mechanic's time

Is it possible that he worked on other areas of the aircraft, without this fact being documented?
Yes, it is possible that he worked on other areas of the aircraft without the work being documented. However, it is incumbent on both the mechanic and the owner/operator to insure that all maintenance work is properly documented.

Question 4: Please clarify the basis for the FAA's position that, when conducting reexaminations, the FAA has the discretion to deviate from the testing format and standards used in the initial mechanics' certification program (set forth at 14 CFR Part 65). Please provide the relevant legal citations that support the FAA's position.

Response to Question 4:
As noted in our report to you, Congress in 49 U.S.C. § 44709 gave the FAA a variety of tools to use to address situations in which a certificate holder's conduct violates safety regulations, raises questions about the certificate holder's competency, or demonstrates that the certificate holder is no longer qualified to hold a certificate or rating. In circumstances such as the present case in which the FAA has evidence that raises a question about the qualifications of the mechanics who

were examined for their certificates and ratings at St. George Aviation, the FAA may utilize its authority in section 44709 to reexamine the qualifications of those mechanics. The standards for conducting a reexamination 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 reexamination must, in effect, repeat the original certification testing process provided for under part 65. The FAA has never interpreted its reexamination authority to be restrictive in nature and neither the wording of section 44709 nor its legislative history indicates that Congress intended it to be read to limit the FAA's discretion with regard to how it conducts reexaminations.

The FAA feels that it is appropriate to note that we have completed the reexamination program with the exception of one individual who is scheduled to be retested at the end of September 2009. This individual had been considered eligible for relief from the testing requirements by the provisions of SFAR 100-1.

If additional information is required please contact Rusty Jones, Manager, Special Programs Branch, AFS-320, at (202) 385-6399 or rusty.jones@faa.gov.