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July 22, 2010

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-08-2971

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel (OSC) is forwarding to you agency reports responding to disclosures received from Mr. Mark Lund, an Aviation Safety Inspector and Partial Program Manager at the Department of Transportation (DOT), Federal Aviation Administration (FAA), assigned to the Northwest Airlines (NWA) Certificate Management Office (NWA CMO), Bloomington, Minnesota.¹ Mr. Lund, who consented to the release of his name, disclosed allegations concerning FAA's failure to provide proper oversight of NWA and to address NWA's systemic non-compliance with FAA Airworthiness Directives (ADs).²

On November 25, 2008, OSC referred Mr. Lund's allegations to the Honorable Mary Peters, then-Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Then-Secretary Peters delegated investigative authority to DOT's Office of Inspector General (OIG). On December 14, 2009, Secretary of Transportation Ray LaHood submitted the agency's report to OSC. In response to OSC's request for additional information regarding administrative action taken by FAA, DOT provided a supplemental report dated February 4, 2010. Mr. Lund provided comments on the agency's reports to this office pursuant to 5 U.S.C. § 1213(e)(1). As required by law, 5 U.S.C. § 1213(e)(3), we are now transmitting the agency reports and Mr. Lund's comments to you.

Mr. Lund alleged that audits of NWA's AD compliance conducted by NWA CMO in 2008 revealed that NWA did not have adequate policies and procedures in place to ensure current or future AD compliance, and that the status of NWA's compliance with more than 1,000 ADs was unknown.³ He further asserted the audit findings demonstrated that FAA failed to provide

¹NWA has since been acquired by Delta Airlines and all operations have been merged under the Delta certificate. Mr. Lund is now assigned to the Delta CMO.

²Airworthiness Directives (ADs) are legally enforceable rules that FAA issues to address an unsafe condition that exists in an aircraft product or is likely to exist or develop in other products of the same type design. ADs specify the inspections that must be carried out, conditions and limitations that carriers must comply with, and any actions carriers must take to resolve the unsafe condition. A carrier who operates an aircraft that does not meet the requirements of an applicable AD violates 14 C.F.R. § 39.7. See 14 C.F.R. Part 39.

³Mr. Lund reported that the audits, conducted pursuant to an FAA national special emphasis review, revealed NWA was non-compliant with eight of the eleven ADs he reviewed. In all eight instances of non-compliance, deficiencies

adequate oversight of NWA's AD compliance program by accepting voluntary disclosures of non-compliance in contravention of FAA policy, declining to pursue legal enforcement actions with civil penalties, and issuing letters of correction without requiring NWA to implement comprehensive corrective action to address the deficiencies.

Mr. Lund contended that, despite the 2008 audit findings of systemic deficiencies, FAA failed to take appropriate action to ensure that NWA had an effective AD management system in place. Instead, he asserted, NWA CMO and FAA's Great Lakes Regional Office (Regional Office) continued a pattern of declining to take legal enforcement actions against NWA. He contended that this practice undermined NWA's ability to ensure AD compliance, and resulted in NWA's operation of non-airworthy and potentially unsafe aircraft.

The investigation substantiated Mr. Lund's allegations that NWA CMO failed to provide effective oversight of NWA's AD process, resulting in NWA's continued systemic AD non-compliance. The investigation revealed that, despite NWA's history of AD non-compliance for more than a decade and current trends, NWA CMO inspectors continued to work "collaboratively" with the carrier to resolve AD deficiencies, rather than pursue enforcement actions with civil penalties. Specifically, OIG found that NWA CMO continued to allow numerous voluntary disclosures of AD non-compliance and closed enforcement cases primarily with letters of correction for most of the items of non-compliance. OIG concluded that "these actions have not been adequate," and in many instances were contrary to FAA guidance. OIG further stated that, given that AD non-compliance issues were continuing, the status of NWA's compliance with more than 1,000 ADs was unknown.

OIG found that during the four-month period of the 2008 audits conducted pursuant to the national special emphasis review, NWA CMO identified 14 instances of AD non-compliance. OIG noted that this number, which was one of the highest of all airlines reviewed, was significantly higher than the eight items of non-compliance identified by NWA CMO over the previous four years. OIG found that NWA CMO's inability to identify these weaknesses during a safety attribute inspection (SAI) conducted just one month prior to the national special emphasis review "indicates serious deficiencies in FAA's regular oversight." For the 14 items of AD non-compliance identified during the 2008 audit, NWA CMO inspectors opened 13 enforcement cases, resulting in 8 letters of correction, 3 civil penalties of more than \$1.9 million in proposed fines, and 2 cases closed with no action.

The investigation further revealed that NWA CMO continued to find instances of AD non-compliance following the 2008 audits. OIG found that of the eight non-compliance items identified during Fiscal Year (FY) 2009, five were closed with letters of correction in lieu of enforcement action. One of these five included a case where NWA grounded 27 aircraft because

were found within NWA's engineering process. Among the findings, the audit revealed that for two ADs, pertaining to a windshield heat wiring inspection and an anti-ice control system modification, NWA flew non-compliant aircraft for approximately seventeen years, until the audit, without ever detecting it had failed to conduct inspections pursuant to the ADs.

they were not in compliance with an AD requiring inspection of the landing gear fuse pins. OIG concluded that “[c]ontinuing to close AD enforcement cases with administrative action (*e.g.*, a letter of correction) is contrary to FAA guidance, which states that administrative action is not appropriate when there is a trend of non-compliance for the same FAA regulation that has gone undeterred by the use of administrative or legal enforcement action.”

In addition, the report indicates that in 2009, during the OIG investigation, Mr. Lund identified a serious instance of AD non-compliance and failure of NWA CMO oversight. He found that NWA did not comply with an AD and Federal Aviation Regulation (FAR), 14 C.F.R. § 121.1113C, requiring carriers to incorporate new airworthiness limitations into their maintenance procedures and to have an FAA-approved fuel tank system (FTS) maintenance program to mitigate the risks associated with ignition sources and flammability conditions in fuel tanks. Mr. Lund reported, and OIG confirmed, that Principal Avionics Inspector (PAI) Paul Biever approved NWA’s FTS maintenance program Operations Specification in December 2008, even though Mr. Biever knew that NWA had not incorporated all of the FTS requirements into its engineering and maintenance procedures. OIG further found that Mr. Biever violated the AD and FAR by granting NWA extensions of time for compliance without obtaining approval from the Seattle Aircraft Certification Office (ACO), as explicitly required. OIG concluded that these actions “allowed NWA to operate 61 Boeing 757 aircraft in non-compliance with this AD and FAR [§] 121.1113C for at least 3.5 months and potentially its entire fleet of over 300 aircraft.”⁴

The investigation also substantiated Mr. Lund’s allegation that NWA CMO accepted voluntary disclosures of AD non-compliance in contravention of FAA guidance. OIG found that “CMO management continued to accept voluntary disclosures despite a clear trend of similar AD process deficiencies and contrary to its own guidance governing disclosures of repeat violations and disclosures made during any FAA inspection.” The report states that during FYs 2007 and 2008, NWA CMO accepted 12 voluntary disclosures where “clear trends existed in the type of deficiencies identified.” OIG further found that NWA CMO management accepted three voluntary disclosures during the 2008 audits conducted pursuant to the national special emphasis review. OIG concluded that “these actions exempted the carrier from enforcement action, which directly violated FAA guidance” set forth in FAA Order 8900.1, Chapter 11, and Advisory Circular 00-58B. OIG concluded that NWA CMO should not have accepted the voluntary disclosures, not only because it was contrary to FAA guidance, but because of NWA’s history of non-compliance. The investigation also revealed that NWA CMO accepted three voluntary disclosures in FY 2009, one of which involved a repeat violation of an AD that was the subject of a prior voluntary disclosure by NWA in 2007. OIG concluded that, given the history of non-compliance with this AD and FAA guidance on systemic issues, NWA CMO should have pursued enforcement action instead of accepting a voluntary disclosure.

OIG did not substantiate Mr. Lund’s allegation that the Regional Office engaged in a pattern of declining to pursue enforcement actions and civil penalties, and did not find that the Regional Office acted improperly in declining inspectors’ recommendations for legal

⁴OIG noted that the FTS maintenance program Operations Specification covered all NWA aircraft. Mr. Lund’s enforcement case covered only Boeing 757 aircraft, but NWA’s entire fleet could have been in non-compliance.

enforcement actions. In comparison with the percentage of penalties issued in other regions, OIG did not find concerning disparities. OIG determined that the problems appeared to exist primarily within NWA CMO. However, OIG did find that inspectors were reluctant to recommend civil penalties because they believed the Regional Office was too lenient and would not support civil penalties. OIG attributed this perception to the new enforcement tool used in preparing enforcement cases, which limits inspectors' flexibility to recommend civil penalties, and to the fact that, for several years, FAA Headquarters strongly promoted working collaboratively with carriers rather than imposing civil penalties. In addition, OIG identified one enforcement case that was misplaced by the Regional Office after it was received from NWA CMO in October 2008. The report states that it was not until OIG inquired about the status of that case that the Regional Office discovered the mistake. NWA CMO promptly re-submitted the case in September 2009, and the Regional Office proposed a \$1.35 million civil penalty against NWA. In closing, OIG reiterated the concern it raised to Congress in April 2008, after the AD non-compliance at Southwest Airlines was exposed, that "FAA relies too heavily on self-disclosures and promotes a pattern of excessive leniency at the expense of effective oversight and appropriate enforcement."

In response to OIG's findings and recommendations, FAA Administrator J. Randolph Babbitt established an Internal Assistance Capability (IAC) review team to oversee the implementation of the reviews and audits recommended. While several of the reviews were completed, the recommended safety attribute inspection was delayed until July 2010, due to the merger of NWA and Delta Airlines. In addition, DOT's supplemental report of February 4, 2010, confirms that FAA proposed a five-day suspension for PAI Paul Biever and a ten-day suspension for NWA CMO Manager Ken McGurty.

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Lund had an opportunity to review and provide comments on the agency's reports. Overall, Mr. Lund expressed his appreciation for the OIG investigation and its validation of most of his allegations. Mr. Lund commented on OIG's findings regarding NWA CMO's improper approval of NWA's FTS maintenance program. He asserted that Mr. Biever did not act alone; rather, the Supervisory Principal Maintenance Inspector (SPMI) was aware of NWA's non-compliance and allowed the carrier to continue to operate past the compliance deadline. He noted, however, that OIG did not implicate or recommend disciplinary action against the SPMI for his involvement. Similarly, Mr. Lund contends that, along with Mr. McGurty, an FAA Supervisor was complicit in improperly accepting NWA's voluntary disclosures during the special emphasis review; however, the Supervisor was not subjected to administrative action.

In addition, Mr. Lund refuted the findings that the Regional Office did not act improperly in declining to pursue two enforcement actions with civil penalties that he recommended. He also noted that he was the inspector who initiated the enforcement action that was misplaced by the Regional Office and located only after OIG inquired about the status. He found the Regional Office's actions suspect and suggested the misplacement of the case was an attempt to protect NWA from penalty. He noted that FAA management has failed to take action on other enforcement cases, in his opinion, for the same reason.

Mr. Lund also contends that the dysfunction between FAA managers and inspectors within NWA CMO persists in the Delta CMO following the merger of the two carriers. He asserted that the inspector is not supported by FAA management and "has to typically fight through the FAA management chain of command just to perform his public safety duties." He believes FAA's culture of placing the interests of the carrier over safety continues to pose a risk to the flying public, and he outlined some of his observations since the merger. In particular, he noted that the merger was allowed to go forward despite findings that Delta Airlines' Continuing Analysis and Surveillance System (CASS) program was deficient. In addition, he commented that he does not believe the disciplinary action against Mr. Biever and Mr. McGurty has had a deterrent effect on the current managers within the Delta CMO. He contends that Delta CMO management is continuing the practice of accepting voluntary disclosures of AD non-compliance contrary to FAA guidance, just as NWA management did. Finally, he argued that change can occur only when FAA holds its managers accountable for their compliance with FAA policies and guidelines.

OSC has reviewed the original disclosure, the agency's reports, and the whistleblower's comments. Based on that review, OSC has determined that the agency's reports contain all of the information required by statute and that the findings of the agency head appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the agency's reports and Mr. Lund's comments to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure. OSC has also filed copies of the reports and Mr. Lund's comments in our public file, which is available on-line at www.osc.gov, and closed the matter.

Respectfully,



William E. Reukauf
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Enclosures