



**U.S. Department of
Transportation**

GENERAL COUNSEL

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Office of the Secretary
of Transportation

April 15, 2022

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street NW., Suite 218
Washington, DC 20036

Re: OSC File No (s) DI-20-000577, DI-20-000578, DI-20-000672, and DI-20-000694

Dear Mr. Kerner:

By letter dated April 22, 2020, you referred for investigation eight allegations from four whistleblowers who alleged that Federal Aviation Administration (FAA) officials, particularly those in the Flight Standards Service's (AFX) Southwest Airlines (SWA) Certificate Management Office (CMO), knowingly permitted SWA to engage in unsafe and improper actions that compromised the safety of the flying public, with limited or no repercussions.

The Secretary of Transportation has delegated responsibility for matters falling under 5 U.S.C. Section 1213(d) to the General Counsel. As Deputy General Counsel, I have the authority to carry out the functions and duties of the General Counsel. FAA, through its Office of Audit and Evaluation (AAE), prepared the Report of Investigation (ROI) in this matter. I enclose the ROI with this letter.

The investigation substantiated several of the allegations. The investigation found that the SWA CMO: (1) inappropriately accepted multiple events into an FAA voluntary disclosure program that did not meet program criteria, including two separate 2019 accidents; (2) mismanaged its oversight of SWA's weight and balance program; and (3) allowed SWA to operate 88 aircraft (known as the "Skyline" aircraft) knowing that required inspections were not completed in accordance with regulatory requirements. As noted in the ROI, FAA has already completed corrective actions to address the first two findings, and has completed three of four recommended actions made in a DOT Office of Inspector General audit report concerning the Skyline aircraft matter. The investigation did not substantiate a claim that FAA failed to oversee an alleged SWA pattern of assigning too much work to mechanics than could be reasonably completed. As for the referral's allegation that FAA improperly certified SWA's Extended Operations (ETOPs) program, that same allegation was made by a whistleblower in a previous OSC referral, to which DOT responded with an ROI on March 15, 2022 (OSC File Number DI-19-005096). Therefore, pursuant to previous discussions between DOT and OSC staff, the enclosed ROI does not address that allegation because DOT has already addressed it through another ROI. Finally, the enclosed report found mismanagement and lack of oversight by FAA AFX and SWA CMO management, despite several changes to management and staffing. For this

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last finding, the report recommends that the new executive leadership team in FAA's Aviation Safety (AVS) division arrange for an independent evaluation of the SWA CMO. The ROI requests that AVS respond to the recommendation by May 16, 2022. Working with the FAA Administrator and, in turn, AAE, my office will ensure that AVS adequately responds to the recommendation.

We have appreciated the opportunity to review this important matter and the whistleblowers' diligence in raising their concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E. Putnam", with a stylized flourish extending to the right.

John E. Putnam
Deputy General Counsel

Enclosures

**Federal Aviation Administration
Report of Investigation
To the Secretary of Transportation**

In response to:

U.S. Office of Special Counsel (OSC)

**Files DI-20-000577; DI-20-00578; DI-20-000672; DI-
20-000694**

**Director, Office of Audit and Evaluation (AAE-1)
Federal Aviation Administration
Washington, D.C.**

April 15, 2022

Executive Summary

On April 22, 2020, Special Counsel Henry J. Kerner referred to the Secretary of Transportation four U.S. Office of Special Counsel (OSC) whistleblower disclosures for investigation (OSC File No. DI-20-000577, DI-20-000578, DI-20-000672 and DI-20-000694).

On February 4, 2022, the Office of the Secretary re-assigned those referrals to the Federal Aviation Administration (FAA), Office of Audit and Evaluation (AAE).¹ AAE is an independent office with the statutory authority to conduct impartial investigation of aviation safety-related whistleblower disclosures. These disclosures, from multiple whistleblowers, alleged that FAA officials, particularly those in the Flight Standards Service's (AFX) Southwest Airlines (SWA) Certificate Management Office (CMO), knowingly permitted SWA to engage in unsafe and improper actions that compromised the safety of the flying public, with limited or no repercussions.

At the time these disclosures were submitted to OSC, the same or similar allegations were the subject of other inquiries. Thus, this report summarizes findings and corrective actions previously documented in AAE reports, a Department of Transportation (DOT) Office of Inspector General (OIG) Audit Report published in February 2020 (for which AAE provided a significant amount of information), and to a lesser extent, a U.S. Senate Committee on Commerce, Science and Transportation report (for which AAE also provided information).^{2 3} Additionally, AAE was already aware of some of the OSC allegations covered in this report, and had initiated investigations and found indications that a substantial likelihood existed that a violation of an order, a regulation, or law pertaining to aviation safety may have occurred. However, when the DOT OIG audits and investigations were initiated, AAE suspended further investigation of the matters covered in this report, and all evidence gathered by AAE was provided to the OIG auditors or Senate investigators. AAE investigators provided assistance to the OIG throughout the course of its audit.

AAE found that the SWA CMO mishandled the agency's response to two separate 2019 accidents, inappropriately accepted multiple events into an FAA voluntary disclosure program, and mismanaged its oversight of SWA's weight and balance program. We also found that the FAA allowed SWA to operate 88 aircraft (known as the "Skyline" aircraft) knowing that required inspections were not completed in accordance regulatory requirements. We were unable to determine that the FAA failed to take action related to SWA assignment of aircraft maintenance work that could not reasonably be expected to be completed, or that mechanics were pressured to sign off on work that was not completed. These allegations were very general, and AAE was unable to obtain specific reported incidents from SWA mechanics or FAA inspectors for investigation.

¹ The matter was originally delegated to the Office of Inspector General.

² Audit Report Titled, "FAA Has Not Effectively Overseen Southwest Airlines' Systems for Managing Safety Risks" (Report No. AV2020019), issued February 2020. We also note that the FAA had an opportunity to review and comment on the draft DOT/OIG report and ultimately concurred with its findings and all recommendations.

³ Report Titled, "Aviation Safety Whistleblower Report," from Senate Commerce was issued December 2020. FAA did not have an opportunity to review or comment on this report prior to publication.

Finally, AAE found mismanagement and lack of oversight by FAA AFX and SWA CMO management, despite changes to management and staffing throughout the years. Recent changes in senior executive management provide an opportunity to address these issues. First, the FAA recently appointed a new Associate Administrator for Aviation Safety, who became the Acting FAA Administrator on April 1, 2022. The individual filling this position is new to the agency and has a fresh opportunity to evaluate the circumstances within the SWA CMO. Second, the FAA recently appointed a new Executive Director of Flight Standards who has extensive experience within the FAA, particularly in addressing organizational challenges. The new AFX Executive Director has a proven track record of addressing cultural challenges and working to ensure strict adherence to all regulations, procedures, and standards, while maintaining impartial professional relationships with both internal and external stakeholders.

This report issues one recommendation: that the new executive leadership team arrange for an independent evaluation of the SWA CMO. Going forward with the new executive leadership team, it is imperative that AFX and Air Carrier Safety Assurance (ACSA) executive leadership, along with SWA CMO management, foster a professional culture at the SWA CMO that empowers safety inspectors to take appropriate actions regarding findings while accomplishing certificate management, oversight, and regulatory compliance. This culture must not allow undue pressure from internal, or external sources, to sway decisions regarding public safety.

A complete methodology of our review is included as Appendix A.

Findings and Details

Allegations 1, 2 & 3:

Allegation 1: SWA CMO officials mishandled FAA's response to a February 2019 accident caused by pilot error involving SWA Flight 2169; both wings were damaged while attempting to land at Bradley International Airport in Connecticut. The agency's investigation of the accident was criticized as well.

Allegation 2: SWA CMO officials mishandled FAA's response to two other SWA events, one incident was caused by pilot error at the Hollywood / Burbank Airport in Burbank, California, and another at Philadelphia International Airport in Philadelphia, Pennsylvania.

Allegation 3: FAA's complicity in SWA's ongoing efforts to "hide" serious incidents involving pilot error in FAA's Aviation Safety Action Program (ASAP) while allowing pilots to continue flying.

Findings: Allegation 1 and 2 are substantiated. Allegation 3 is substantiated in part.

AAE received a disclosure⁴ in 2019 regarding Aviation Safety Action Program (ASAP) reports that were submitted by SWA and accepted by the SWA Event Review Committee (ERC)⁵

⁴ AAE Case Number IWB19804.

⁵ All ASAP report must be evaluated and accepted or rejected per agency guidance by the ERC, which is comprised

contrary to program guidelines. Those submissions included the events named in Allegations 1 and 2. Noting that there were similar issues raised in other disclosures, the internal AAE investigation went beyond the initial SWA disclosure, examining the ASAP program in general, and took a holistic approach to the findings.⁶ Accordingly, AAE made recommendations covering ASAP implementation FAA-wide.

ASAP is a voluntary disclosure program, the goal of which is to enhance aviation safety through the prevention of incidents and accidents. ASAP provides valuable information to the agency that it might not otherwise obtain. As explained on FAA's website, "Its focus is to encourage voluntary reporting of safety issues and events that come to the attention of employees of certain certificate holders. To encourage an employee to voluntarily report safety issues even though they may involve an alleged violation of Title 14 of the Code of Federal Regulations (14 CFR), enforcement-related incentives have been designed into the program."

The AAE investigation mentioned above found that the SWA ASAP ERC did not comply with FAA guidance on the acceptance and investigation of the referenced ASAP submissions. For example, an FAA ERC representative admitted that the ERC did not wait for the results of the FAA investigations before accepting the ASAP report and/or corrective actions for those events. Examination of all evidence is critical in determining whether an ASAP disclosure qualifies for inclusion in the program. AAE identified that even though ASAP reports were accepted and closed by the ERC, FAA and/or NTSB investigations were still ongoing, and the ERC did not use pertinent data in their evaluations. In addition, company and union representatives were generally resistant to FAA requests for interviews or other investigative activities by the FAA ERC representatives. These actions were inconsistent with the requirement that the ERC ensure all pertinent facts and circumstances are considered in accepting ASAP reports.

The investigation also found that SWA pilot union ERC representatives consistently pushed for acceptance of all reports, and not in compliance with program acceptance criteria. Likewise, the company's representatives consistently pressed for reports to be accepted and closed as quickly as possible. Since both union and company representatives were often resistant to FAA requests for interviews or other investigative activities, this often left the FAA ERC representative with the belief that he or she was outnumbered and not supported by CMO management in ensuring that all reports met the requirements for acceptance into the program. Interviews confirmed that the FAA ERC representatives often acquiesced to these pressures, resulting in non-compliance with FAA guidance and acceptance of reports that did not meet the acceptance criteria of the ASAP program.

Examples included:

- A crew that performed three separate go-arounds due to wind shear warnings at Bradley International Airport, one resulting in a wingtip strike, before diverting to an alternate

of company, FAA and pilot union officials.

⁶ Our findings in 2020 closely mirrored those from a 2009 DOT/OIG audit report, titled "*FAA is not Realizing the Full Benefits of the Aviation Safety Action Program*," AV-2009-057, which found that the FAA's ineffective implementation of ASAP allowed for acceptance of reports that did not meet the intent of the published ASAP guidelines.

airport and landing with low fuel.

- A crew that performed multiple go-arounds due to wind shear warnings, unable to divert to an alternate airport due to low fuel at Philadelphia.
- Report of a runway overrun at Burbank that was accepted and closed by the ERC. Subsequent investigation by the NTSB found that the review of the Cockpit Voice Recorder (not conducted by the ERC) showed that the first officer's conduct was "highly unprofessional."

In addition to the events in allegations 1 and 2, the disclosure specifically alleged that FAA officials overrode the FAA ASAP Program Manager to accept improperly a January 2020 incident (Event 67733). In this incident, SWA pilots knowingly flew with flight control issues. A similar, improper acceptance occurred in a separate incident involving duct tape covering both of the aircraft's angle of attack (AOA) vanes. In that case, the whistleblower wanted to interview the crew but did not accept SWA's conditions under which to do so. When the whistleblower refused to accept SWA's conditions for an interview, the consideration of the matter was postponed, then later accepted into ASAP after the whistleblower left his position on the ERC for a new position. The Senate Commerce Committee's report provides details of these events.

Multiple interviewees told AAE and OIG investigators that the pilot union and company ERC representatives decided, as a result of case experiences, that some FAA ERC representatives were "more lenient" than others. Difficult or questionable cases were sometimes delayed until an FAA representative considered to be more favorable to the company and union was available. This practice had the appearance of manipulating both the process and the acceptance outcomes. There is evidence suggesting that some FAA ASIs serving on an ERC would more easily acquiesce to the desires of company and pilot union ERC members. AAE also found that multiple ASAP reports were accepted despite evidence that the events represented an intentional disregard for safety, and some ERCs failed to examine and establish pertinent facts thoroughly.

In November 2019, AAE made two recommendations to AFX. The first suggested that initial and recurrent training be provided to all personnel prior to serving on the ASAP ERC. The second recommendation suggested the development of a regular compliance audit or routine observation of each ASAP program to ensure conformance with FAA guidance. The corrective actions were completed in 2021 when FAA introduced web-based training and developed an ASAP audit tool.

Allegation 3 was substantiated in part, because AAE could not establish systematic FAA "complicity" to "hide" serious events, even though AFX leadership and the SWA CMO were slow to halt the practice of undue influence on ERTs by company and union officials.

Allegation 4: *FAA's handling of SWA's Extended Operations (ETOPS) certification during the 2018-2019 federal government shutdown.*

AAE conducted an investigation of SWA's handling of ETOPS in 2020. Our findings and

recommendations were provided to OIG. OIG then prepared a Report of Investigation (ROI) on that same topic, which DOT submitted to OSC on March 15, 2022 (OSC Referral DI-19-005096). Because that referral and DOT's resulting ROI, prepared by OIG, already addresses SWA's handling of ETOPS, DOT and OSC have agreed that this ROI need not cover this allegation. Please refer to the report DOT submitted on March 15, 2022 for additional details.

Allegation 5: *FAA's ongoing, permissive oversight of SWA's egregiously incorrect and unreliable weight and balance data.*

Findings: Substantiated.

Due to continuing weight and balance discrepancies, SWA filed a voluntary self-disclosure on this issue in February 2018 through the SWA CMO Voluntary Disclosure Reporting Program (VDRP). Under this program, the CMO accepts a voluntary disclosure and does not take enforcement action when certain conditions are met, including a requirement that the carrier take immediate action to terminate the conduct that resulted in the violation.

Although the carrier disclosed a discrepancy for a specific flight, FAA had already opened an investigation into weight and balance inaccuracies due to an increase in the number of safety reports filed by SWA pilots. As part of the investigation, the SWA CMO and SWA reached an agreement to address the weight and balance issues through a sequence of steps SWA would take. These carrier actions included the following:

- Audit 25 percent of its daily flights to determine the frequency of potential violations.
- Investigate any discrepancy over 300 pounds.
- Continue reporting variances greater than 1,500 pounds through VDRP.

While the SWA CMO required the carrier to investigate discrepancies of 300 pounds or more to determine the root cause, OIG's February 2020 audit report found that CMO inspectors did not ensure that SWA fulfilled its requirements or verify that the carrier took the agreed-upon actions. As a result, these discrepancies continued for over two years.

The February 2020 OIG audit report documented more than 4,000 errors of 300 pounds or more from March 2018 through July 2019. During this time, SWA CMO staff worked with FAA Headquarters AFX staff to address the issues and briefed senior AFX leadership regarding the ongoing weight and balance inaccuracies. FAA regulations require that airlines report accurate weight and balance data, but the agency has no regulatory definition of "accurate."

SWA submitted a report to the SWA CMO showing that any error less than 1,500 pounds (the total weight or balance differential caused by incorrect documentation or cargo not loaded into the correct part of the aircraft) did not negatively impact safety. Although FAA officials did not accept this definition of "accurate," FAA used SWA's analyses to establish a threshold for reporting non-compliances. Thus, FAA allowed the carrier to continue to only report non-compliance incidents greater than 1,500 pounds.

By allowing the carrier to use VDRP in this manner, the SWA CMO and AFX did not follow

FAA guidance. Specifically, FAA inspectors did the following:

- Accepted multiple reports even though the non-compliance had not ceased.
- Allowed the carrier to submit repetitive events under a single disclosure.
- Failed to follow up and ensure the carrier investigated the non-compliance and determined the root cause of the events.

The former FAA Principal Operations Inspector (POI) reasoned that these actions were acceptable because the airline justified inaccurate weight and balance calculations as “low risk.” Additionally, an FAA inspector told OIG that handling the non-compliances in this manner would minimize the “administrative burden” within the local oversight office.

The CMO granted the carrier multiple extensions to determine the root cause, and then granted additional time for the carrier to implement corrective actions even though the POI told OIG that he and other inspectors did not feel the carrier had identified the true cause. According to OIG’s report, this was because FAA officials believed that the root cause is the responsibility of the carrier and the inspectors should not be involved in that process.

These statements are inconsistent with FAA guidance, which requires inspectors to work with air carriers to determine the root cause of safety concerns. The decisions made by the principal inspector and FAA managers, combined with their lack of action on significant discrepancies, ultimately led to the agency closing one of its weight and balance investigations with no enforcement action.

In January 2020, the FAA proposed a \$3.92 million dollar civil penalty for SWA’s operation in 2018 of 44 aircraft with inaccurate weight data. The matter was resolved in 2021, with payment of a \$200,000 civil penalty and deferral of the remaining civil penalty based upon corrective actions accomplished by SWA.

In February 2020, OIG recommended the FAA ensure that SWA comply with regulatory requirements to provide accurate weight and balance information to pilots, or grant an exemption that justifies the non-compliance being in the public interest. In response, FAA provided SWA audit data to OIG covering January 2019 through July 2021. These data confirmed a significant decline in inaccuracy, including a sustained error rate below 0.5% since September 2020. OIG reviewed and independently verified the data, finding no inconsistencies. Inspection data from the SWA CMO covering July to December 2021 had 2 negative findings out of nearly 200 inspection questions during this time frame. Based upon the dramatic improvement in accuracy, OIG has closed the recommendation as acceptable and complete.

Allegation 6: *FAA’s failed oversight of SWA’s pattern of assigning mechanics more work than can be reasonably completed and then pressuring them to sign off on work that was not completed or completed by someone else.*

Findings: Not Substantiated.

FAA has no regulatory authority pertaining to the assignment of work by an air carrier.

Nonetheless, safety culture is a key tenet of an effective Safety Management System (SMS), which is required of air carriers by 14 CFR Part 5.

In March 2019, the then Associate Administrator for Aviation Safety wrote to SWA regarding his awareness of ongoing litigation between the airline and the Aircraft Mechanics Fraternal Association (AMFA) regarding labor negotiations. He cautioned that a breakdown in the relationship between Southwest and its mechanics union raises concern about the ongoing effectiveness of the airline's safety management system. He wrote, "Safety is a shared responsibility of Southwest and AMFA members that demands a collaborative culture, irrespective of any ongoing controversy between the two organizations."

In an attempt to better understand the crux of the allegation, DOT OIG investigators conducted nearly 30 interviews of employees at the SWA CMO and indicated to AAE that they could not find any definitive evidence related to this issue. Conversely, a review of records provided by OIG auditors in support of their 2020 audit report indicates that 61% of FAA employees at the SWA CMO and Headquarters expressed concern about the safety culture at Southwest Airlines. However, the audit report concluded that "FAA does not assess safety culture as part of its oversight because the agency has not provided inspectors with appropriate guidance on how to evaluate air carrier safety culture and how it should be factored into inspectors' oversight."

In summary, while these general allegations and the concerns about SWA's safety culture are cause for concern, we were unable to find specific examples of regulatory non-compliance associated with this allegation. AAE found no recent, similar reports in FAA Hotline records.

Allegation 7: *FAA's failure to immediately and unequivocally intervene in SWA's continued use of 88 foreign-purchased aircraft, known as the Skyline aircraft, despite FAA leadership and FAA's Office of Audit and Evaluation having been notified early and often about concerns with the safety of the aircraft.*

Findings: Substantiated.

Background

Between 2014 and 2018, SWA acquired, and FAA designees approved, 88 formerly foreign-operated aircraft known as the "Skyline" aircraft. As part of the conformity and approval process required before going into U.S. commercial service, aircraft owners who purchase foreign-registered aircraft must apply to the FAA and certify that the aircraft are airworthy, maintenance records comply with FAA requirements, and all applicable airworthiness directives have been met. In addition, every aircraft must be inspected by an approved source (i.e., air carrier, FAA-certified repair station, or mechanic) to ensure that it meets airworthiness standards before FAA or its designee can begin their review process to determine whether to issue an airworthiness certificate. The carrier must then ensure the aircraft conforms to any additional requirements prior to placing the aircraft into commercial service.

Once the carrier completes these steps, the FAA is required to validate both the information provided and the condition of the aircraft prior to issuing an airworthiness certificate. This

validation includes reviewing aircraft records and physically inspecting the aircraft to verify it conforms to its design specifications, including applicable airworthiness directives and major repairs and alterations. According to the whistleblower, the entire process of ensuring that an aircraft conforms to U.S. standards and approving the aircraft for service typically takes 3 to 4 weeks per aircraft and is primarily accomplished by aviation representatives designated to perform this work on the FAA's behalf (i.e., "designees").

Details:

In 2017, inspectors at the SWA CMO began identifying potentially serious gaps in SWA's process for verifying the condition of the Skyline aircraft, including undocumented major repairs and aircraft records not in compliance with regulatory standards. For example, supporting documentation was not translated into English during the conformity process. This was due to designated airworthiness representatives not following established procedures for ensuring the aircraft conform to U.S. standards. The FAA designee company hired by Southwest to perform these inspections was operated by a former FAA official.

After the SWA CMO brought these issues to the carrier's attention, the CMO and SWA agreed to a 2-year action plan for the carrier to verify that the 88 aircraft conformed to U.S. aviation standards. The initial actions taken did not identify discrepancies with the aircraft (e.g., undocumented repairs). OIG's audit determined that designees relied on air carrier-provided summary data to verify that the aircraft conformed to U.S. standards rather than conducting a comprehensive review of aircraft records themselves.

Once the CMO identified these concerns, the carrier then agreed to perform comprehensive paperwork reviews for these aircraft and in-depth physical inspections of the aircraft as part of scheduled maintenance. In November 2018, the then principal maintenance inspector coordinated with senior FAA officials to recommend that SWA perform immediate, limited visual inspections on 34 aircraft based on surveillance findings and the initial results from the carrier's paperwork reviews. The airline performed overnight inspections on the 32 aircraft, for which records were still being reviewed, and claimed that it did not identify any discrepancies during the inspections.

The carrier completed the paperwork reviews in December 2018 and identified 44 alternative methods of compliance used to address Airworthiness Directives and 360 major repairs that were previously unknown.

SWA provided the first summary of its comprehensive inspection findings in February 2019 to the CMO, identifying additional undocumented or nonconforming repairs on 5 of the 10 aircraft inspected. The next summary update in July 2019 highlighted findings on nine additional aircraft. As of October 4, 2019, the carrier had completed inspections for 39 of the 88 aircraft, of which 24 (or 62 percent) had undocumented, nonconforming, or unverifiable repairs. Examples of findings related to major repairs included improper repairs to vapor barriers and fuselage skin.

When interviewed on this issue multiple times by OIG auditors in July-August 2019, the deciding official at first was very dismissive of the concern, appearing to blame the

whistleblower for allowing it to happen. In subsequent interviews, he indicated that he was comfortable allowing these SWA Skyline planes to operate in revenue service while in a partially unknown airworthiness status, relying on the air carrier's SMS risk assessments.

OIG's review of SWA's airworthiness certificates found that FAA designees approved 71 of the 88 aircraft on the same day as the repair station inspection. According to designees interviewed by OIG, they used the carrier's summary documentation to complete their review expeditiously to meet the air carrier's timelines, rather than performing the required independent analyses.

On October 24, 2019, the OIG auditors formally briefed the AAE Director, and AFX leadership including the then Director of Flight Standards, on the concerns regarding the Skyline aircraft. Immediately following that meeting, the AAE Director sent a memo to the FAA Administrator requesting immediate action to ensure the airworthiness of the remaining aircraft, including the potential suspension or revocation of the airworthiness certificates. The recommendation was not accepted. Rather, FAA officials requested that SWA perform additional risk assessments to determine the safety of the remaining aircraft. The individual responsible for this decision retired from the FAA in 2021 and was not available for interview by AAE as to their rationale.

In accordance with FAA regulations, SWA and/or FAA should have identified and addressed these issues during the conforming process, and before the carrier operated the aircraft in commercial service. The Supervisory Principal Maintenance Inspector (SPMI), at the time, wrote in an email:

“I was unable to find any FAA Order, Guidance, Policy or Regulation that provides me as an SPMI or any Principal Inspector, for that matter, the sole authority to allow a Certificated 121 Air Carrier to deviate or be exempted from a regulatory requirement and allow them to continue to operate an aircraft that is un-airworthy from the perspective of not meeting type design or it's properly altered condition [14 CFR Part 21, 25, 26] or regulatory requirements associated with maintaining their aircraft. (14 CFR Part 39, 119 and 121).”

However, FAA allowed SWA to continue flying 49 of the 88 aircraft without verifying that they conformed to FAA standards. Further, the SWA CMO did not communicate these concerns to the FAA office responsible for overseeing the designees that approved the aircraft. According to the OIG Audit Report, this was because the local inspectors were unaware of FAA's process for providing feedback to designee oversight officials and lacked access to the agency's system for reporting deficiencies identified after the airworthiness certificate has been issued.

As a result of these findings, OIG made four recommendations to the FAA related to this matter, concerning designees, management control of designees, and training of FAA inspectors associated with providing feedback to designees when corrective actions are needed. The FAA has completed three of the four recommendations, with the fourth to be completed in Fiscal Year 2022.

Allegation 8: *Overall mismanagement and lack of oversight at the FAA SWA CMO in Irving, Texas, notwithstanding recent changes to local leadership and staffing.*

Findings: Substantiated.

OIG conducted extensive interviews from 2018 to 2021 as part of its February 2020 published audit and investigation of FAA oversight of SWA. AAE reviewed all interview notes and documentation provided by OIG. Those records reflect that there was mismanagement and interference on the part of FAA senior leadership with oversight activities at the SWA CMO in the 2018-2020 time frame.

Intimidation & Interference

SWA was described by the former ASAP Program Manager as “an intimidating company to oversee,” and “SWA knows it.” Former ASAP ERC member #2 reported that the SWA Vice President of Flight Operations, as well as the Chairman of the SWA Pilots Association (SWAPA), came to an ERC meeting, something that had never happened before. He reported that they did not ask or tell the CMO, they just showed up. At the time of his interview, he reported that SWA now has a member of flight operations management at every meeting. He said there are “usually 2-3 FAA representatives and 9-10 representatives from the carrier at every ERC meeting.” He became emotional when he discussed the efforts of SWA to have the former ASAP Program Manager removed from the ERT.

Two Principal Inspectors provided examples of the lack of support from FAA leadership. They described a meeting when the then Director of the Office of Air Carrier Safety Assurance visited the CMO during a trip to visit SWA senior management. During this meeting, this FAA HQ official allegedly “apologized” to SWA officials for the CMO being too “heavy-handed” with the airline. However, the Director did not meet with the CMO staff prior to delivering that message to SWA executives or attempt to understand their concerns with the carrier’s ongoing regulatory non-compliance.

The interviews confirmed that the then Division Manager was the de facto CMO manager. He admitted to the OIG that he temporarily gave up his Division Manager role to another manager and was devoting his attention solely to the SWA CMO because the CMO had “specific high risk/high consequence issues that require intense focus, a concise strategic plan.” He said one of his goals was to improve the CMO’s professional relationship with the air carrier. The OIG interviews reflect that the Division Manager’s involvement and collaborative relationship with SWA raised doubts among inspectors about their authority to ensure regulatory compliance at SWA.

Relationships

Another whistleblower reported to AAE in August 2020, a personal relationship between the Acting PMI, Director of Maintenance (DOM) for ATS, DOM for SWA and the Director of the FAA Office of Air Carrier Safety Assurance.⁷ The then Acting PMI (selected by the then AFC-300 Division Manager) was married to the Director of Maintenance (DOM) at ATS, a repair station that performed heavy maintenance for SWA. The Director of Maintenance for SWA was

⁷ FAA Hotline Case No. A20200803022.

a previous employee of ATS and was also a previous Assistant Division Manager of the FAA Flight Standards' Northwest Mountain Region. The Acting PMI was previously assigned as a specialist in the Northwest Mountain Region under the supervision of the current DOM for SWA. The Director of Air Carrier Safety Assurance and the DOM for SWA served together in the FAA while assigned to the Northwest Mountain Region. The Director was also previously assigned to assist in restructuring the SWA CMO after Congressional hearings in 2008.⁸ This gave the Director the opportunity to develop relationships with SWA executive leadership. These relationships at minimum created the appearance of a conflict of interest.

The Acting PMI was removed from the position after concerns were raised by a whistleblower. The relationship between the AFC-Division Manager, the SWA Director of Maintenance, and the Director of the Office of Air Carrier Safety Assurance, was well known by the SWA CMO whistleblowers. The whistleblowers believed trust in their leadership was diminished because of those relationships.

In his interviews, the Division Manager stated that there was a strong friendship between the SWA CEO and a former Deputy/Acting FAA Administrator, with near weekly texts, emails or phone calls. This raised questions among inspectors about whether they would be allowed to perform their oversight responsibilities appropriately.

SWA CMO Personnel Changes

It was also noted that frequent turnover in management positions at SWA CMO over the last 3 years is of concern to the whistleblowers. Since 2019, the CMO is on its third new manager, third Principal Operations Inspector and (soon to be) fourth Principal Maintenance Inspector. In total, since June 2019, there have been 16 changes within the management team at the CMO. In interviews, whistleblowers shared their belief that the continuous turnover is in large part due to SWA's attempts to influence SWA CMO decisions. While many of the senior leaders within FAA, who might have given the carrier extra consideration, or interfered with the CMO on the carrier's behalf, have since departed the agency, the whistleblowers continue to express concerns at a higher rate than at the CMOs of any other major US air carrier.

Mismanagement

A September 2020 AAE investigation⁹ found that the SWA-CMO authorized a regulatory non-compliance, for which there is no approved process, resulting in SWA operating aircraft in revenue service that did not meet airworthiness limitations and the requirements of the SWA approved maintenance program. Our investigation also found that AFX allowed continued operation of affected aircraft in commercial passenger carrying service without a process for allowing or providing an approved means to document that authorization. Moreover, AFX lacked sufficient guidance regarding Risk Based Decision Making (RBDM) and the application of regulatory exemptions and/or deviations to resolve operational non-compliance disclosed by air carriers. We issued six recommendations which focused on ensuring regulatory compliance

⁸ House Committee on Transportation & Infrastructure hearing on April 3, 2008, Titled, *Critical Lapses in FAA Safety Oversight of Airlines: Abuses of Regulatory Partnership Programs*.

⁹ AAE Case No. IWB20805.

over airline operations which were completed in February 2022.

FAA Leadership - Going Forward

FAA leadership, from 2008 to the present, has periodically acknowledged the ongoing problem and the need for corrective actions in the organizational culture of both the airline and the FAA Flight Standards organization. Recently, there have been significant senior executive management changes at the highest levels of the agency. First, the FAA appointed a new Associate Administrator for Aviation Safety, who became the Acting FAA Administrator on April 1, 2022. The individual filling this position is new to the agency and has a fresh opportunity to evaluate the circumstances that continue to cause inspectors concern within the SWA CMO. Second, the FAA recently appointed a new Executive Director of Flight Standards who has extensive experience within the FAA, particularly in addressing contentious organizational challenges. The new AFX Executive Director has a proven track record of addressing cultural challenges and working to ensure strict adherence to all regulations, procedures, and standards, while maintaining impartial professional relationships with both internal and external stakeholders.

Recommendation

This report recommends that the Executive Director of Flight Standards conduct a comprehensive climate assessment and evaluation that should:

- Be conducted by an independent and unbiased third party (with no current or prior FAA employees). The chosen third party and its scope of work should be approved by the Associate Administrator for Aviation Safety (AVS-1) and AFX-1 in consultation with AAE-1.
- Include interviews of all SWA CMO current and past employees (back to January 2019) assigned in any capacity in the CMO, and willing to participate.
- Keep confidential all employees' identities, unless release of their identity is agreed to, in writing, by the employee.
- Include a review and summary findings, recommendations and corrective actions from prior investigations, audits, management inquiries and other evaluations related to the SWA CMO (from sources internal and external to the FAA).
- Share the assessment findings with AOA-1, AVS-1, AFX-1, AGC-1 and AAE-1 and depending on the findings, corrective action plan shall be developed.

This report also recommends that the Executive Director of Flight Standards consider this recommendation and provide a response—concurrence, or options for alternative actions—to FAA's Office of Audit and Evaluation (AAE) by May 16, 2022. Upon receipt of the response, AAE will work with the Office of the FAA Administrator to ensure that appropriate corrective action is taken, including to the satisfaction of the General Counsel, who acts under delegation from the Secretary on OSC matters.

Appendix A: Methodology

The investigation was conducted under the authority of the FAA Office of Audit and Evaluation (AAE), pursuant to Title 49 U.S.C. §106(t) and FAA Notice 1100.337.

Investigative Team:

- [REDACTED], Senior Technical Advisor, AAE
- [REDACTED], Attorney-Investigator, Office of Inspector General
- [REDACTED], Attorney-Investigator, Office of the Inspector General

Members of the team contacted, interviewed and/or obtained relevant documents from:

- The Whistleblower
- The former ASAP Program Manager
- The Assistant Principal Operations Inspector

Documents:

The investigation relied on AAE Reports of Investigation #DI-19-5096 and IWB19804 in addition to the Senate Committee on Commerce, Science & Transportation's Investigative Report on Aviation Safety Oversight issued in December 2020, and a DOT Office of Inspector General audit report, issued February 11, 2020, titled, "FAA Has Not Effectively Overseen Southwest Airlines' Systems for Managing Safety Risks (Report #AV2020019).

In addition, AAE reviewed over 250 pages of interview notes, spreadsheets, correspondence and other documents obtained by OIG auditors related to Report AV2020019. In addition, AAE listened to nearly 13 hours of recorded interviews conducted by OIG investigators.

Memo to FAA Administrator titled URGENT: Action Required. Southwest Airlines Airworthiness Concerns, issued October 24, 2019.

List of Names

- The Whistleblower – [REDACTED]
- The former ASAP Program Manager – [REDACTED]
- The former Principal Operations Inspector (POI) – [REDACTED]
- The Assistant Principal Operations Inspector – [REDACTED]
- the then Associate Administrator for Aviation Safety – [REDACTED]
- the then SPMI – [REDACTED]
- Former ASAP ERC member #2 – [REDACTED]
- Then Director of the Office of Air Carrier Safety Assurance – [REDACTED]
- Two Principal Inspectors – [REDACTED] and [REDACTED]
- The SWA Director of Maintenance – [REDACTED]
- The then Acting PMI – [REDACTED]



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

March 15, 2022

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: OSC File No. DI-19-005096

Dear Mr. Kerner:

By letter dated December 30, 2019, you referred for investigation disclosures from an anonymous whistleblower concerning the Federal Aviation Administration (FAA). According to the whistleblower, FAA officials may have failed to comply with FAA guidance and policy during the process to certify Southwest Airlines (SWA) to conduct extended-range, twin-engine operational performance standards (ETOPS) operations.

The Secretary of Transportation has delegated responsibility for matters falling under 5 U.S.C. Section 1213(d) to the General Counsel. Pursuant to a delegation from the General Counsel, the FAA Office of Audit and Evaluation (AAE) originally conducted the investigation into this matter. After reviewing AAE's June 3, 2020, report, the General Counsel determined further review was required to confirm the accuracy of AAE's findings. As a result, the General Counsel requested in a June 26, 2020, memorandum that the DOT Office of Inspector General review the whistleblower disclosure and AAE ROI, and conduct a possible investigation. OIG has conducted an investigation and prepared a report, enclosed with this letter.

OIG interviewed 34 FAA officials—including 18 who worked on the SWA ETOPS certification—and obtained and reviewed emails, reports, and other documents. I enclose the OIG Report of Investigation. OIG did not substantiate the allegations. However, OIG's report notes two FAA actions—one completed, one still in progress—designed to improve its ETOPS certification process.

We have appreciated the opportunity to review this important matter and the whistleblower's diligence in raising their concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "John E. Putnam", written over a faint, light blue rectangular stamp or watermark.

John E. Putnam
Deputy General Counsel

Enclosure



**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL**

REPORT OF INVESTIGATION	INVESTIGATION NUMBER I20A003SINV	DATE 3/15/2022
TITLE FAA Aviation Safety – Alleged Non-Compliance with FAA Guidance and Policy (OSC File No. DI-19-005096)	PREPARED BY: [REDACTED] [REDACTED]	STATUS FINAL
	DISTRIBUTION File U.S. Office of Special Counsel	[REDACTED] 1/15
		APPROVED [REDACTED] ASAC, JI-2

I. SYNOPSIS

On December 30, 2019, the U.S. Office of Special Counsel referred for investigation to the Department of Transportation (DOT) a whistleblower disclosure (DI-19-005096) from an anonymous Federal Aviation Administration (FAA) employee. The whistleblower alleged non-compliance with FAA guidance and policy by FAA officials during the process to certify Southwest Airlines (SWA) to conduct extended-range, twin-engine operational performance standards (ETOPS) operations.

The DOT General Counsel delegated the investigation of this allegation to the FAA Administrator who, in turn, directed the FAA Office of Audit and Evaluation (AAE) to conduct the investigation. On June 3, 2020, AAE provided its findings in a Report of Investigation (ROI) which described “two discrepancies” from the ETOPS guidance during the SWA ETOPS qualification process. Although AAE stated the discrepancies did not adversely affect the quality of the certification process, it recommended clarifying ETOPS guidance or requirements to address those discrepancies. After reviewing the ROI, the DOT General Counsel determined further review was required. As a result, the DOT General Counsel requested in a June 26, 2020, memorandum that the DOT Office of Inspector General review the whistleblower disclosure and AAE ROI and convey any issues that arise.

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Pursuant to the General Counsel's request, OIG interviewed or communicated with 34 FAA officials and obtained and reviewed a large amount of emails, reports, and other documents. This evidence did not substantiate the whistleblower's allegations, nor did it demonstrate other potential violations of law, rule, or regulation. To date, FAA has completed corrective action concerning one of the two aforementioned deficiencies and is still working to correct the other.

II. BACKGROUND

For over 35 years, FAA has used ETOPS guidance to allow two-engine airplanes to deviate from regulations that limited the distance such aircraft could fly from potential diversion airports where the aircraft could land in the event of an emergency. As aircraft technology, reliability, and flying distance improved over the years, FAA decided to extend ETOPS operations to other types of aircraft. As a result, the meaning of ETOPS has changed from signifying two-engine airplanes to "Extended Operations."

Like other large U.S.-based airlines, regional air carriers, and cargo operators, SWA operates pursuant to a certificate issued by FAA under 14 CFR Part 121. As described in Appendix P of Part 121, there are several different types of ETOPS operations, which differ based on the maximum diversion time. These operations range from a diversion time of up to 75 minutes for Caribbean and Western Atlantic area routes to greater than 240 minutes for routes from the western United States to Australia, New Zealand, and Polynesia.

To receive ETOPS certification from FAA, aircraft operators must demonstrate their aircraft and operations meet specific requirements and guidance, primarily provided in FAA Order 8900.1 and Advisory Circular (AC) 120-42B. Among other things, the operators must use an aircraft model and engine combination previously approved by FAA for ETOPS operations, demonstrate the aircraft's ability to fly with only one engine, and add redundancy for the aircraft's communications, electrical, fire suppression, and hydraulics systems.

In a letter dated June 30, 2017, to the Manager of the FAA Certificate Management Office (CMO) overseeing SWA, a senior company official communicated the company's "preapplication intent to conduct passenger-carrying operations on 180-minute ETOPS routes using the Accelerated ETOPS Application Method." (This method permits ETOPS operations without first accumulating in-service experience.) According to the letter, SWA intended to conduct ETOPS operations using the Boeing 737-800/CFM56-7B aircraft/engine combination.

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After discussion with the CMO, SWA sent a follow-up letter to the CMO Manager on November 16, 2017. In the letter, SWA stated its intent to conduct passenger-carrying ETOPS operations from the Western United States to Hawaii within the Central East Pacific route system. SWA also wrote that it planned to conduct validation flights with the FAA in September 2018. (As explained below, validation flights serve as test flights in which a carrier demonstrates the ability to conduct ETOPS operations under FAA supervision.)

In a December 26, 2017, letter to SWA, the Supervisory Principal Operations Inspector (SPOI) at the CMO informed the company that all requirements for the first phase of the ETOPS certification process had been met. According to the letter, upon receiving SWA's formal ETOPS application package, the CMO would initiate the second phase of the process.

SWA submitted its formal ETOPS application to the CMO on January 10, 2018. The application included, among other things, a proposed schedule of events for the certification process and SWA manuals and programs. In order to meet the schedule of events, SWA requested in the application that the CMO approve the applicable training materials by January 17, 2018.

In a letter dated January 17, 2018, the CMO informed SWA that it had received the airline's formal ETOPS application. According to the letter, the CMO's review of the submission determined it met the applicable requirements of AC 120-42B and guidance of 8900.1. As a result, according to the letter, the CMO found the application acceptable and the third phase of the ETOPS certification process would begin.

On December 17, 2018, the ETOPS certification project manager (CPM) leading the process for the CMO sent a letter to SWA. The letter stated the CMO had reviewed and found satisfactory an October 2018 revision to the formal application package and the certification process would proceed to the fourth stage.

Shortly thereafter, a shutdown of the federal government occurred. As a result of the shutdown, which lasted from December 22, 2018, to January 25, 2019, most employees within the CMO and FAA were furloughed.

Upon returning from the federal government furlough, FAA restarted the SWA ETOPS certification process. The next step of the process involved conducting tabletop exercises, which are overseen by FAA officials, occur on the ground, and entail FAA officials creating ETOPS-related scenarios and observing the operator's system, policies, and procedures. If the applicant performs at a satisfactorily level during the tabletop exercises, FAA conducts validation flights.

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During these test flights, FAA officials again subject the applicant's personnel, both in the air and on the ground, to scenarios and observe the applicant's system, policies, and procedures.

Under certain circumstances, ETOPS applicants must also conduct an additional tabletop exercise and validation flights. This requirement depends upon the nature of the ETOPS operation the applicant wishes to conduct. In SWA's case, its operation involved the Central East Pacific Airspace, which required Operations Specification (OpSpec) B037. FAA issues OpSpecs, which outline how aircraft operators and certificate holders may conduct authorized operations. Some OpSpecs concern the make, model, and series of aircraft, while others concern the authority to conduct a particular kind of operation. For example, successful completion of the ETOPS certification process results in the issuance of an OpSpec, B342.

For OpSpec B037, the tabletop exercise occurred on January 31, 2019, and took place at an SWA facility in Texas involving SWA personnel and FAA officials. The two validation flights involved similar individuals and took place on February 5, 2019 (Oakland International Airport to Honolulu International Airport) and February 6, 2019 (Honolulu to Dallas Love Field Airport). SWA satisfactorily completed both activates and FAA later issued the airline OpSpec B037. An FAA official from the Flight Technologies and Procedures Division – Flight Operations Branch (AFS-410) led the OpSpec B037 process and four aviation safety inspectors from the CMO assisted. The AFS-410 official had no involvement with the ETOPS certification process, as OpSpec B037 is technically not part of the ETOPS certification process.

The two-day tabletop exercise for ETOPS took place on February 11-12, 2019, at the SWA Remote Operations Center located in McKinney, TX and involved personnel from SWA and FAA officials from the CMO, Air Transportation Division (AFS-200), and the Aircraft Maintenance Division (AFS-300). An official with the Air Transportation Division – Operations Branch (AFS-220) oversaw the exercise. SWA demonstrated a successful operation of its system, policies, and procedures during the tabletop exercise.

SWA also demonstrated successful operation of their system, policies, and procedures during six ensuing ETOPS validation flights.

- (1) February 14, 2019: Oakland to Honolulu
- (2) February 15, 2019: Honolulu to Oakland
- (3) February 16, 2019: Oakland to Honolulu

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- (4) February 17, 2019: Honolulu to Oakland
- (5) February 18, 2019: Oakland to Kahului Airport (Maui)
- (6) February 19, 2019: Maui to Dallas-Love

The validation flight on February 16, 2019, included a successful ETOPS in-flight diversion to Hilo International Airport with a simulated inoperative engine.

In a February 27, 2019, memorandum to the Flight Standards Service Executive Director, the SPOI advised that SWA was approved to conduct Extended Operations with a maximum diversion time of 180 minutes in the Pacific Ocean. The memo further stated that the SPOI was authorized to issue OpSpecs B342 authorizing such extended operations. The memorandum also mentioned SWA's successful February 2019 ETOPS tabletop exercise and validation flights and stated that members of the SWA CMO were aboard the airplane for all flights. According to the memorandum, an Aviation Safety Inspector (ASI) from AFS-220 was also aboard the airplane for all flights and observed the diversion for a simulated engine failure. The memo further stated that during all six validation flights, ASIs specializing in dispatch from the CMO and AFS-220 were present at the SWA Dispatch/Operational Control facility and airworthiness inspectors from the CMO and the Aircraft Maintenance Division observed activity in the SWA Maintenance Control Center.

In a March 5, 2019, letter to SWA, the SPOI informed the airline that it demonstrated successful operation of their system, policies, and procedures during February 2019 tabletop exercise and six validation flights. According to the letter, with the concurrence of the CMO and AFS-220, the fourth phase of the process was complete and the process had now advanced to the fifth phase. The letter also included a list of the "discrepancies" noted during the previous phase. This list described 29 discrepancies, which included the need for SWA to provide more information to airline personnel concerning certain aircraft components and hazards, clear and specific procedures in certain manuals, and improved training. The letter also stated that a six-month period of enhanced surveillance will follow the issuance of OpSpec B342. According to the letter, there will be a three-month data-gathering period followed by a three-month correction period. The SPOI also requested that SWA address the listed discrepancies during this six-month period of enhanced ETOPS surveillance.

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III. DETAILS

The anonymous whistleblower made several specific disclosures concerning the SWA ETOPS certification process.

- (1) The ETOPS certification moved slowly because of SWA's attempts to save money, which included assigning pre-flight checks to flight attendant attendants instead of FAA-licensed mechanics.
- (2) Upon returning from the federal government furlough on January 25, 2019, the division manager overseeing the SWA CMO took over the ETOPS certification process from the CPM and replaced CMO inspectors with FAA headquarters (AFS-220 and AFS-300) personnel.
- (3) FAA officials rushed the ETOPS tabletop exercise, which SWA technically passed despite several critical errors by its pilots.
- (4) The CMO inspector assigned to the six ETOPS validation flights remained in the aircraft cabin while FAA headquarters employees sat in the cockpit despite lacking appropriate knowledge of SWA procedures.
- (5) FAA management officials included the ETOPS certification process on a "wish list" of requests from major carriers designed to help the carriers financially recover from the furlough.
- (6) The lack of SWA CMO inspectors, lack of preparation, and rushed nature of the ETOPS certification process resulted in FAA holding SWA to a lower standard than they otherwise would have.

Pre-flight Checks

According to the whistleblower, the SWA ETOPS certification process moved too slowly because of the airline's "continued attempts to cut corners to save money." As an example, the whistleblower alleged that the airline insisted on assigning certain pre-flight checks to flight attendants in an effort to save money. According the whistleblower, it is industry-best practice to have licensed mechanics conduct such checks.

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FAA officials from both the CMO and headquarters (AFS-220 and AFS-300) with knowledge of this matter corroborated that SWA proposed having flight attendants conduct pre-flight checks. However, these witnesses also stated that FAA officials, especially those at the CMO, pushed back against SWA for suggesting this. For example, the ETOPS CPM stated FAA regulation required such mechanics to perform these pre-flight checks. (As mentioned above, the CPM was an inspector employed at the CMO and served as the lead FAA official during the ETOPS certification process.) According to the CPM and other interviewees, SWA eventually relented and agreed that mechanics would perform the pre-flight checks.

Another CMO inspector assigned to the SWA ETOPS certification told OIG that the proposal stemmed from SWA's existing process whereby flight attendants checked emergency equipment and conducted interior inspections. However, according to the inspector, FAA officials rejected SWA's proposal, finding that a pre-departure service check is inherently a maintenance item and, therefore, should be inspected and signed off by a licensed mechanic rather than a flight attendant. The inspector stated he did not recall "a lot of kickback" from SWA following FAA's determination. Moreover, none of the witnesses interviewed associated SWA's proposal to have flight attendants conduct pre-flight checks with the "airlines continued attempts to cut corners and save money." Rather, the inspector opined that "every single airline who's ever gone through ETOPS certification has inquired...because it makes sense from the airlines perspective...if I already have someone checking for the emergency equipment, do I need to have someone else check it?" The inspector added, "I think it's a fair inquiry."

Division Manager

According to the whistleblower, upon returning from the federal government furlough on January 25, 2019, the division manager overseeing the CMO informed CMO staff of an intent to take over the ETOPS certification process from the CPM and that inspectors from FAA headquarters inspectors would replace the CMO inspectors to complete the ETOPS certification.

The evidence gathered during the investigation did not substantiate this allegation. First, in the OSC referral, the whistleblower misidentified the aforementioned inspector who served as the CPM for the certification process, as the last name is incorrect. Second, although interviews and emails indicate the division manager involved himself in attempting to have the ETOPS certification process completed, there is insufficient evidence the division manager "took over"

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the process. Specifically, both the division manager and the CPM denied the whistleblower's assertions. The division manager stated they did not take over the certification process from the CPM and cited that the role of headquarters, and in particular the Air Transportation Division (AFS-200), is designed into the process consistent with applicable guidance. To be sure, several CMO employees said they felt pressured by the CMO division manager to complete the SWA ETOPS certification, but it is within the division manager's authority to set the priorities of the CMO. Moreover, the CPM recalled that the division manager inquired about what could be done to get ETOPS moving—a statement in which the CPM stated any manager would have made—and devised a schedule with senior staff to move the certification process along.

Third, there is no evidence that FAA headquarters employees ever “replaced” CMO staff during the certification process. Instead, there is evidence that around the time of the ETOPS tabletop exercise in February 2019, staff from the Air Transportation Division, Operations Branch (AFS-220) took control of the ETOPS certification process from the CPM and CMO. Although the CPM acknowledged he felt displaced because AFS-200 staff led the tabletops and validation flights given their vast experience, the CPM nevertheless contended that headquarters personnel did not replace CMO staff. The CPM stated:

So when it came to the tabletops and the validation flights -- because they had so much experience in doing this, they took that part over, but they did not replace me or anybody else. They just ran the scenarios because they had done it so many times before. And I felt that -- that we -- well let's put it this way. The inspectors were totally involved.

Moreover, other CMO staff did not take issue with this because CMO staff lacked previous experience conducting ETOPS certifications and Air Transportation Division (AFS-200) officials are the subject matter experts concerning ETOPS and always participate in ETOPS certifications. Rather, witnesses from both the CMO and headquarters recalled a collaborative process with headquarters staff leading part of the process. Specifically, one AFS-220 official stated because the CMO has expertise in SWA's overall systems and AFS-220 has expertise in ETOPS, the certification process becomes a joint effort where the CMO deals with the operator on matters that are “tangentially related to ETOPS, but the ETOPS portion....because...this particular CMO had no experience whatsoever in ETOPS, we're the ones that drive the ETOPS portion of it.” Similarly, an aircrew program manager (APM) from the CMO, in describing the collaborative process from the perspective of the CMO, emphasized that this was the first ETOPS certification process for SWA and that the presence of headquarters staff “really enhance[d] the program for [the CMO].”

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Tabletop Exercises

The whistleblower alleged that the division manager scheduled a tabletop evaluation for Thursday, January 31, 2019, only six days after returning from the federal government furlough. According to the whistleblower, this timing was “highly unusual” because the complexity of a tabletop exercise means it takes several weeks, rather than approximately six days, to plan and prepare for a tabletop. The whistleblower further stated that although SWA “technically passed its tabletop, SWA pilots reportedly made a number of critical errors.”

The OIG investigation did not substantiate this allegation. First, the ETOPS tabletop exercise did not occur on January 31, 2019. Instead the one-day tabletop concerning OpSpec B037 occurred on that day. Although OpSpec B037 is required to conduct ETOPS operations, it is a separate process. SWA successfully completed the tabletop exercise before conducting two OpSpec B037 validation flights to and from Hawaii on February 5-6, 2019. According to the AFS-410 official who led the B037 validation flights, SWA did a “superb job.”

The ETOPS tabletop exercise actually occurred on February 11-12, 2019. The CPM and AFS-220 official who led the two-day ETOPS tabletop evaluation stated the division manager did not have a role in scheduling the tabletop exercise. Instead, the AFS-220 official said the timeline for the tabletop exercise was coordinated between the CMO and SWA prior to the division manager becoming more involved in the ETOPS certification process. As a subject matter expert concerning ETOPS, the AFS-220 official stated SWA was “absolutely ready” prior to the furlough and that AFS-220 would not have put the airline in a position to fail the tabletop evaluations or validation flights if they felt SWA did not have the ability to pass. Moreover, officials from the CMO, AFS-200, and AFS-300 concurred that SWA was ready for the tabletop exercise on the date for which it was scheduled and disagreed with the notion that there was insufficient time to prepare. Rather, the officials specifically involved recounted satisfactorily coordinating logistics prior to the evaluation and completing a number of scenarios during the tabletop evaluation.

OIG also found scant evidence to support the contention that SWA pilots made critical errors during the tabletop exercises. Although a CMO inspector who was not part of the ETOPS certification process told OIG the CPM and SPOI characterized SWA’s tabletop performance as unimpressive and that they wanted SWA to repeat the tabletop, both the CPM and SPOI denied knowledge of any critical errors. The CPM reported to OIG that although SWA made mistakes during the tabletop exercises, they were not critical to the process. Furthermore,

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according to other interviewed witnesses, the purpose of the tabletop exercise is not to execute everything perfectly, but to look at an air carrier's procedures and responses to different scenarios. Most of the witnesses reported that SWA performed well during the tabletop exercises.

Validation Flights

The whistleblower alleged that SWA completed its ETOPS validation flights to Hawaii on January 19-21, 2019. According to the whistleblower, FAA guidance required a CMO employee to be present on all such flights. The whistleblower disclosed that, to meet this requirement, FAA headquarters staff assigned the aforementioned CMO APM to ride in the cabin of the aircraft during all six flights. Meantime, according to the whistleblower, FAA headquarters employees, who were unfamiliar with SWA procedures, were instead assigned to the cockpit. The whistleblower explained that, because the APM was in the cabin for the entirety of every flight and the cockpit door remained closed, the APM could not properly observe or evaluate the flight crew's performance during the validation flights. According to the whistleblower, although this technically met the requirements, it again permitted SWA to be held to a less stringent standard than they would have been had the ETOPS proceeded with local CMO employees.

Our investigation did not substantiate this allegation. First, the six ETOPS validation flights did not occur on January 19-21, 2019. Instead, as stated above, they occurred on February 14-19, 2019. Second, we interviewed the APM who participated in the six February 2019 ETOPS validation flights and the APM emphatically denied sitting outside the cockpit during those flights. The APM acknowledged sharing observation duties with an inspector from AFS-220, with each taking one segment of the six flights. According to the APM, he sat in the cockpit most of the time during the second leg of each sequence of the six validation flights. The APM stated it was impractical for both of them to be in the cockpit simultaneously, as the second jumpseat is uncomfortable because of constricted space within the cockpit. The AFS-220 inspector, as well as four other participants on the six proving flights, corroborated that the APM was in the cockpit at least part of the time to appropriately observe and evaluate the flight crew's performance.

(The whistleblower also alleged that conducting the validation flights during the 2019 Martin Luther King Jr. holiday was an unnecessary expenditure. First, the six ETOPS validation flights occurred over President's Day 2019. Second, the CMO Division Manager stated he

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approved the travel despite the cost. Third, a manager within the FAA Travel Policy Division (AFM-100) provided language from the FAA Travel Policy stating “[a] Supervisor is authorized to approve Actual Subsistence Expenses (usually actual subsistence costs will be higher than the GSA approved per diem rates).”)

“Wish List”

The whistleblower alleged that FAA management officials compiled a "wish list" of requests from every major carrier and determined what could be approved quickly to help the airlines recover financially from the government furlough. According to the whistleblower, ETOPS was one such item.

One witness told OIG about the “wish list” while being interviewed. The witness, however, did not provide evidence corroborating this contention or demonstrating impropriety by the management officials. No other interviewees corroborated that witness’s allegation.

Additionally, both the division manager and their supervising director denied having any knowledge or familiarity about a “wish list.” OIG also conducted a search of their emails and found no such list. The division manager stated, however, that the director emailed all of the Air Carrier Safety Assurance offices and asked for a risk ordered list of what needed to be worked on upon the employees’ return from furlough. The director emphasized that any requests would have been from all the carriers, not just SWA. The director also stated that if airlines such as SWA requested action by FAA, “we would have tracked what those requests were and, absolutely, we would have been responsive to those requests once the furlough ended.” Nevertheless, the director denied doing this to help the airlines recover financially from the furlough.

Lower Standard

Finally, the whistleblower further alleged that the lack of SWA CMO inspectors, lack of preparation, and rushed nature of the tabletop resulted in FAA holding SWA to a lower standard than they otherwise would have. For example, the whistleblower alleged that the SWA ETOPS certification was approximately 60% completed on December 22, 2018, when the 35-day federal government furlough began. The majority of the staff OIG interviewed, however, disagreed with that allegation. First, many OIG personnel questioned the ability to quantify the timeline to completion. Specifically, an ASI assigned to AFS-300 indicated that it

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was “hard to conceptualize a percentage of time remaining because each stage of certification required a different amount of time to complete.” Second, in addition to questioning the very framing of the allegation, the vast majority of FAA personnel involved disagreed with the whistleblower’s contention that 60% of the ETOPS certification process was completed at the time the furlough began. FAA personnel told OIG that, at the time of the furlough, the manuals were either complete or nearing completion and that only the tabletop evaluation and validation flights remained outstanding.

Although an ASI reported that FAA officials had serious concerns about SWA’s failure to correct outstanding serious regulatory issues that should have been addressed rather than making ETOPS a priority, the division manager indicated that the outstanding regulatory issues were separate and apart from the ETOPS certification process. Because SWA and the CMO were actively addressing the ongoing regulatory issues in question, the Division Manager indicated that you would not “stop the certification process” pending the resolution of the regulatory issues. He further contended there was a sufficient amount of CMO inspectors to concurrently address the certification process and ongoing regulatory issues. The Division Manager stated that although he asked, CMO personnel did cite any regulation which would have prohibited addressing the two matters simultaneously.

In response to the allegation that staff was pressured or rushed by management to carry out the ETOPS certification, OIG found that some of the CMO inspectors either concurred with that characterization or stated that the certification process had an aggressive timeline. However, the CPM disagreed with the whistleblower’s contention, stating, “I don't agree with the point that it was necessarily rushed through, but we did need somebody to push us along because...we were getting bogged down...[with] some issues that I felt were very minor and not of any real value. [W]e weren't moving as quickly as we should.” The CPM further stated that the division manager “did step in [and]...set an agenda...laid out a plan to get things moving and accelerated [for]...what I thought had gotten into a very slow crawl. It was accelerated...but it needed to because we were getting bogged down.” Additionally, other FAA staff disagreed that the certification process was rushed.

Finally, OIG did not find sufficient testimonial evidence to support the Complainant’s contention that SWA was held to a lower standard given an alleged lack of CMO inspectors, lack of preparation and rushed nature of the tabletop. Although a supervisory principal maintenance inspector attributed the inability to “process the test button on more systems, more processes, [and] more procedures” due to the alleged rush nature of the certification process, the remaining

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OIG personnel interviewed did not support the whistleblower's allegation. Specifically, witnesses refuted the allegation and reported that a majority of CMO inspectors worked on the ETOPS certification process. Witnesses further contended, as stated above, that SWA was ready for the tabletop, which sufficiently involved several scenarios according to AFS 200. Furthermore, FAA officials denied without equivocation that SWA was held to lower standards, noting that the involvement of Headquarters/AFS 220 provided continuity to ensure that SWA was held to the same standards by the same group of people that do ETOPS certifications for all carriers according to the director of Air Carrier Safety Assurance for Flight Standards.

IV. INVESTIGATIVE SUMMARY

OIG interviewed or communicated with 34 FAA officials, including 18 who participated in the SWA certification process, and obtained and reviewed a large amount of emails, reports, and other documents. This evidence did not substantiate the whistleblower's allegations nor did it demonstrate other potential violations of law, rule, or regulation.

OIG did, however, ask FAA for a status update concerning two recommendations AAE had raised during its review of these issues. FAA's response is discussed immediately below.

V. CORRECTIVE ACTION

Although the whistleblower's allegations were not substantiated, FAA has initiated corrective action to address two discrepancies previously identified by AAE related to its ETOPS certification policy. First, as of April 2020, AFS-200 advised the SWA CMO with guidance via memorandum, removing the requirement to record ETOPS entries into both the Program Tracking Reporting Subsystem (PTRS) and the Safety Assurance System databases. FAA did not record its ETOPS certification documentation for SWA in both databases. However, FAA views that previous policy as inefficient and unnecessary. FAA has therefore removed the requirement. In any event, the older PTRS has been merged into the state-of-the-art SAS, another reason there is no longer a need for such duplicate database entries.

Second, on March 9, 2022, FAA reported it is still working to update FAA Order 8900.1 to clearly identify the FAA office that is in charge during each phase of the ETOPS certification process. As described above, there was an issue concerning the respective roles of CMO staff and officials from AFS-200. According to FAA, AFS-200 recently decided to undertake a comprehensive guidance update concerning the ETOPS authorization process to clearly define roles and responsibilities for personnel within the Office of Safety Standards and Office of Air Carrier

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Safety Assurance and General Aviation Safety Assurance within the Office of Flight Standards. This comprehensive revision involves amendments beyond the previously planned editorial changes in response to the aforementioned technical discrepancies. AFS-200 currently expects that, following development and formal coordination, it will release the revised guidance later this year. As noted above, OIG did not substantiate the whistleblower's allegation that the Air Transportation Division "replaced" the CMO in violation of FAA policy. Nevertheless, FAA's updates will provide additional clarity on the appropriate functions of FAA personnel, avoiding any confusion in the future.

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METHODOLOGY OF INVESTIGATION

Three OIG Attorney-Investigators participated in this investigation. To address the whistleblower's concerns, the OIG staff interviewed or communicated with 34 FAA officials, including:

- Assistant Aircrew Program Manager
- Assistant Chief Counsel for Litigation and Information Law
- Assistant Office Manager
- Aviation Safety Inspectors
- Chief of Staff, Aviation Safety
- Director, Office of Air Carrier Safety Assurance
- Division Manager, Office of Air Carrier Safety Assurance
- Partial Program Managers

In addition, the OIG staff analyzed numerous records and documents obtained from FAA personnel, including the whistleblower, witnesses, and FAA management officials. These included emails, FAA guidance and policy, and records from FAA databases.

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