

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
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**CRITICAL LAPSES IN FEDERAL AVIATION ADMINISTRATION REGULATORY OVERSIGHT:
ABUSES OF REGULATORY PARTNERSHIP PROGRAMS**

The Oversight and Investigations (“O&I”) staff conducted an investigation that revealed major systemic problems in Federal Aviation Administration (“FAA”) regulatory oversight, and the development of an overly “cozy” relationship between the FAA and the airlines it is charged with regulating.

This investigation was stimulated by two FAA inspectors, who provided O&I staff with evidence demonstrating major violations of Federal Aviation Regulations. The evidence documented that the FAA maintenance supervisor for Southwest Airlines (“SWA”) knowingly allowed the airline to operate aircraft in passenger service in March 2007, well after the inspection deadlines on mandatory Airworthiness Directives (“ADs”). The evidence shows a systematic pattern of failure to exercise the required regulatory oversight in the FAA office overseeing SWA, and to ensure carrier compliance for years prior to this occurrence. It also suggested that FAA senior management was aware of these abuses of the regulations for a nearly a year prior to their disclosure in March 2008 and were seeking to cover it up.

Beyond the SWA cases, there is strong evidence that there the pattern of “coziness” is far more widespread. On March 6, 2008, as a result of the impending Committee on Transportation and Infrastructure hearing, the FAA notified SWA of a \$10.2 million civil penalty action for 46 aircraft that had over-flown the fuselage inspection AD for up to 30 months. On March 10, 2008, the FAA Assistant Administrator for Safety sent a special team of FAA inspectors to do a thorough examination of SWA regulatory compliance. On March 11, 2008, SWA announced that it had placed three employees on “administrative leave”, pending its internal investigation of this matter. On March 12, 2008, SWA announced it was grounding 41 more aircraft for “inspections”. On March 13, 2008, the FAA issued a national order instructing all FAA Flight Standards Offices to conduct a “special emphasis validation of AD oversight, as a direct result of the public scrutiny generated by the O&I investigation.

On April 3, 2008, the Committee held a hearing on these issues. At the hearing and subsequently, the FAA acknowledged significant lapses, has continued the inspection crackdown, placed several other supervisors on administrative leave, and grounded more than 700 aircraft at several major airlines, which resulted in thousands of flight cancellations.

On April 18, 2008, Secretary of Transportation Mary Peters announced numerous reforms, and the appointment of an outside-FAA task force to study and make recommendations for FAA reform. These actions would not have occurred absent the T&I Committee investigation.

DEEPWATER PROGRAM—UNITED STATES COAST GUARD (USCG)

The USCG's first major project in the ambitious "Deepwater" program was to convert 49 110-foot Island Class Cutters into 123-foot vessels with upgraded classified communications systems ("C4ISR") and other improvements. Early in the program, hull cracks were discovered in the eight vessels converted, and the conversion program was temporarily suspended. In addition, the classified communications systems were found to be vulnerable to eavesdropping by foreign intelligence services.

On April 18, 2007, the Committee held an O&I hearing on these issues. The hearing resulted in extensive media coverage, including CBS News' *60 Minutes*. That same week, the USCG removed Integrated Coast Guard Systems ("ICGS"), comprised of Lockheed Martin and Northrop Grumman, as the lead systems integrator ("LSI") of the Deepwater program and announced plans to create an Acquisitions Directorate, which would ultimately take over all LSI responsibilities. The USCG is seeking \$96 million in reimbursement from ICGS.

As a result on the investigation, Coast Guard Subcommittee Chairman Elijah E. Cummings introduced H.R. 2722, the "Integrated Deepwater Program Reform Act". The Committee reported the bill and, on July 31, 2007, the House passed H.R. 2722 by a vote of 426-0. The Senate passed a similar bill in December 2007. House and Senate majority staff have begun preliminary discussions to resolve differences between the two bills.

On May 7, 2008, the USCG accepted delivery of National Security Cutter #1, *Bertholf*. Again, there are deficiencies in the classified C4ISR systems, but the ship was accepted with parts of these systems removed, prior to final Navy testing and USCG acceptance. The Committee staff is investigating the National Security Cutter issues.

DRUG AND ALCOHOL TESTING PROGRAM OVERSIGHT BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Title 49 of the U.S. Code requires commercial drivers to submit to pre-employment and random drug and alcohol tests. Media reports in spring 2007 documented drug testing facilities that did not meet Federal requirements, potentially providing drug-using drivers opportunities to adulterate or "cheat" on these drug tests. The Committee's investigation found that thousands of products that are designed specifically to cheat a drug test are widely available over the Internet and in retail outlets. The Committee also found that, while industry-wide drug positive rates are approximately two percent, drivers' self-reports of drug use and anonymous testing indicate that actual drug use by commercial drivers is between seven and ten percent. This disparity likely relates, at least in part, to the weaknesses in the drug-testing process. The General Accountability Office ("GAO"), in its investigation of more than 20 private drug-testing facilities, found a multitude of problems, including the availability of liquids (e.g., cleaning supplies) that could be used to invalidate a urine sample which were stored in bathrooms where samples are collected.

On November 1, 2007, the Subcommittee on Highways and Transit held a hearing where these deficiencies were exposed.

On May 15, 2008, GAO issued their final report to the Committee on weaknesses in the drug-testing program. GAO revealed its analysis of drug-test results subpoenaed from a drug testing firm in

Texas. The analysis shows the extent to which drug-using drivers can move from job to job without their drug histories following them.

As a result of the investigation, the Committee is developing legislation to tighten the drug-testing process and create a national clearinghouse of drivers who have tested positive for drugs, refused to be tested, or attempted to cheat a drug test.

OPERATION SAFE PILOT: FAILURE TO DISCLOSE MEDICALLY DISQUALIFYING CONDITIONS ON APPLICATIONS FOR AIRMEN MEDICAL CERTIFICATES

In 2005, the Department of Transportation Inspector General (“DOT IG”) found thousands of cases of airmen holding current Airman Medical Certificates, while simultaneously collecting full medical disability pay from the Social Security Administration for debilitating medical conditions. These conditions included heart disease, schizophrenia, and macular degeneration. Airmen did not disclose these conditions to the FAA when applying for their Certificates. The DOT IG recommended that FAA periodically compare Certificates to the databases of agencies providing disability benefits and take administrative actions when false statements are identified.

On July 17, 2007, the Subcommittee on Aviation held a hearing on these issues. During the hearing, the FAA committed to establishing such a process. The Committee requested that the DOT IG report on the status of FAA’s efforts to conduct this match as well as to report on the security of data contained in the Airman database.

FEDERAL PROTECTIVE SERVICE (FPS) DOWNSIZING

O&I staff investigated a Department of Homeland Security (“DHS”) plan to significantly downsize the Federal Protective Service (“FPS”). Since being transferred from the General Services Administration (“GSA”) to DHS, the FPS workforce has steadily shrunk from approximately 1,400 law enforcement personnel to slightly over 800 in 2007. At the same time, the Federal inventory of buildings has increased substantially. The functional replacement value of the GSA’s Federal building portfolio is \$41.7 billion.

The DHS plan is to make increasing use of contract security guards, who do not have the same authority as law enforcement personnel. The investigation revealed that, under the plan, a large percentage of Federal buildings will not have any protection of Federal law enforcement personnel and will be forced to rely almost entirely upon the negotiation of memoranda of agreement with local police departments. To date, virtually none of these memoranda have been negotiated.

On April 18, 2007, the Committee held a hearing on these issues, which exposed a high level of vulnerability of Federal assets in many communities nationwide.

On December 26, 2007, Congress enacted the Consolidated Appropriations Act, 2008 (P.L. 110-161), which includes a provision that prohibits further cutbacks of FPS officers and requires DHS to restore the number of FPS officers to a minimum of 1,200.

On February 8, 2008, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on these issues. GAO will release a report on the FPS in June 2008 and the Subcommittee is expected to have a follow-up hearing on these issues.

AGING FAA AIR TRAFFIC CONTROL (ATC) FACILITIES

O&I staff conducted an investigation of the condition of FAA Air Traffic Control (“ATC”) facilities. On July 24, 2007, the Subcommittee on Aviation held a hearing on this issue. By the FAA’s own admission, terminal radar approach control centers (“TRACON”), towers, and en-route ATC facilities are, on average, relatively old, and are in “fair to poor” condition using GSA Facility Condition Index (FCI) criteria. Data collected indicates that numerous buildings have severe maintenance problems; and FAA employee reports of health-related problems due to facility conditions are becoming more numerous in various facilities.

In the course of this investigation, FAA managers openly acknowledged that the agency has a substantial maintenance backlog of between \$250 and \$350 million for repairs at hundreds of facilities. Yet, the FAA’s annual budget for facility maintenance and improvement for FY 2006 and FY 2007 was less than \$60 million in each year.

As a result of this investigation, the FAA immediately began a number of rehabilitation projects and reallocated more money for facility repair.

H.R. 2881, the “FAA Reauthorization Act of 2007”, which passed the House on September 20, 2007, includes a historic funding level of \$13 billion for FAA Facilities & Equipment. This funding will enable the FAA to make needed repairs and replacement of existing facilities and equipment. In addition, the bill requires the FAA to establish a task force on ATC facility conditions.

WATER QUALITY STANDARDS IN THE GREAT LAKES

Virtual elimination of toxic pollutants in the Great Lakes Basin remains a priority for the United States and Canada, yet pollution levels remain unacceptably high as a result of industrial, agricultural, and residential development.

On July 21, 2007, the Indiana Department of Environmental Management, with agreement from the U.S. Environmental Protection Agency (“EPA”), issued a permit allowing British Petroleum (“BP”) to increase its discharge of ammonia and sludge derivatives into Lake Michigan. The permit resulted in a public outcry, with environmentalists and local politicians questioning the veracity of EPA’s commitment to Federal laws and International agreements regarding water quality. The Committee scheduled a hearing for September 6, 2007 on the BP permit process. On August 23, 2007, BP America issued a public statement abandoning the proposed refinery expansion that would require the higher discharge limits.

The Subcommittee on Water Resources and Environment continues to examine the extent to which States are allowing facilities to circumvent the laws and exceed discharge levels for toxic pollutants such as mercury.

PRIVATIZATION OF FAA FLIGHT SERVICE STATIONS

O&I staff conducted an investigation of the FAA contract to privatize Flight Service Stations (“FSS”).

On February 1, 2005, the FAA awarded Lockheed Martin a five-year, fixed-price contract (with five additional option years) to operate and modernize the FSS system that provides weather information and flight plan filing services to pilots on the ground and in the air. The contract is worth about \$1.8 billion and represents one of the largest non-defense outsourcing of services in the Federal Government. The FAA estimates that by contracting out FSS, it will save between approximately \$1.7 and \$2.2 billion over the ten-year life of the agreement.

The first phase of the transition to Lockheed Martin management of the FSS system ran smoothly. However, in 2007, Lockheed Martin launched an aggressive implementation plan, declaring its three hub locations operational and consolidating other FSS locations at a rate of three facilities per week. Within days, service to pilots deteriorated dramatically.

On October 10, 2007, the Subcommittee on Aviation held a hearing on the issue. As a result of the investigation, the FAA has significantly tightened management oversight of the contractor. Substantial monetary performance penalties on the contractor have been assessed, and the performance of FSS services appears to be improving.

RAIL SAFETY REPORTING AND EMPLOYEE HARASSMENT

The O&I staff has conducted an in-depth review of railroad employee injury reporting practices. Staff received hundreds of reports from rail employees that suggested that railroad safety management programs sometimes either subtly or overtly intimidate employees from reporting on-the-job injuries. It is alleged that many Class I railroads have management programs and policies that inhibit or intimidate employees into not reporting on-the-job injuries. It is alleged that railroad management personnel invoke pressure upon employees in three common ways: 1) by “counseling” them not to file an injury report in the first place, subtly suggesting that it might be in their “best interests” not to do so; 2) by finding employees exclusively at fault for their injuries and administering discipline; and 3) by subjecting employees who have reported injury accidents to increased performance monitoring, performance testing, and often followed by subsequent disciplinary action up to, and including, termination.

On October 25, 2007, the Committee held a hearing on impact of railroad injury, accident reporting, and discipline policies on rail safety.

In 2007, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), which strengthens whistleblower protections for rail workers and could prevent harassment of workers.