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## ALASKA AIR CARRIERS ASSOCIATION

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ALASKA AIR  
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April 23, 2020

Local FAA Leaders – DRAFT Letter

RE: Using Guidance in Lieu of Regulation

Dear FAA Leaders,

The Alaska Air Carriers Association (AACAA), supports and advocates for the commercial aviation industry. Our membership includes Part 91, Part 135, 125, and 121 carriers who provide services essential to Alaska's communities and industries. Throughout this ongoing Covid-19 pandemic, AACAA members have ensured delivery of supplies, food, and other essential transportation services statewide.

Alaskan air operators have incorporated new state and federal health mandates into their daily routines and have instituted non-mandated monitoring programs for staff, all while continuing to provide services throughout Alaska. In addition, some operators continue to explore and apply for resources to bridge current financial obligations until revenues are restored through passenger, tour and other air carrier activity. In the midst of air carriers operating their businesses in these very unique and trying times, it has come to the AACAA's attention, some Alaskan air carriers are being pressured by FAA principal inspectors to implement changes to their programs and manuals through the application of 8900 guidance.

Details provided to AACAA indicate that training programs, general operating manual procedures approved by Ops Specs, operational control language and other language and processes are targeted for amendments. The FAA intends to retract approvals on previously negotiated work approved by the FAA years ago. There is little regard for the decades of work previously applied through negotiated approvals, as well as, the lack of regulation requiring these changes.

There appears to be a chronic occurrence of FAA inspectors who determine what rules are applied to individual carriers above and beyond the regulations. It's convenient to draft guidelines without the benefit of public comment or a cost/benefit analysis that subsequently drives some change in the industry. This can be a slippery slope. If operators change their rules to satisfy one inspector's interpretation of guidance or for the sake of that individual's satisfaction, there is a strong potential to negatively impact an air carrier's company. Crews know there are reasons why some procedures have endured over long periods of time. Progress shouldn't mandate change without a sound rationale or chronic accident history. If FAA inspectors desire everything to be check-box "Pass or Fail" it won't accomplish the objectives currently sought by Alaskan

air carriers to train to the highest safe and legal standards based on sound rational on why procedures need to change.

Workforce issues are shared by everyone in the industry. For FAA in Alaska, many arrive to gain entry into the industry or to climb to a higher level without any intention of staying. Many of the entry level workers lack the time and experience to understand both regulation and guidance. In fact, many may rely on guidance in lieu of the regulations and haven't yet realized Alaska is unique when compared to the CONUS. One size does not fit all.

Senator Ted Stevens recognized Alaska is different, but the FAA consistently avoids Congress mandated exemptions including Title 49, Subtitle VII, Part A, Subpart II, Ch 447, Sec 44701. This Law specifically states *"the Administrator shall take into account the unique conditions associated with air travel in the State of Alaska to ensure that such requirements are not unduly burdensome."*

The AACA membership would agree that improving safety, reliability, and efficiencies is the industry's goal. However, when an FAR or CFR has not been changed and there is no chronic issue, the air carriers should not be forced to amend their programs and documents. Quoting from the Executive Order below, *"Agencies may impose legally binding requirements on the public only through regulations ..."* and not through an unsigned handbook bulletin that is *"non-binding both in law and in practice"*

Many air operators in Alaska rely on aircraft certified before FAA inspectors were born. The Aircraft Certification process was thorough and complex. Many of the rules have changed but certified aircraft can still be operated under the original certification except when the regulations change (citation). On the maintenance side, even a simple FAA approved 337 Modification to an aircraft AFM can only be removed from the aircraft by Airworthiness Directive procedures, not at the discretion of an inspector, even if it is in error. That system works and should be the foundation for "legacy" Alaskan carriers. Specifically, an FAA inspector does not have the right or even the authority to make any Part 135 company justify and retrace the regulatory path for historically acceptable operations.

AACA supported and advocated for 14 CFR 516 to prevent FAA from utilizing guidance in lieu of regulations. During the same time, the President adopted the Executive Order outlined below.

**14 CFR SEC. 516.**

(c) LIMITATION.—Without a written finding of necessity, based on objective and historical evidence of imminent threat to safety, the Administrator shall not promulgate any operation specification, policy, or guidance document pursuant to this section that is more restrictive than, or requires procedures that are not expressly stated in, the regulations.

On October 9, 2019, President Donald Trump issued *Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents*. Below is an excerpt from that order:

Americans deserve an open and fair regulatory process that imposes new obligations on the public only when consistent with applicable law and after an agency follows appropriate procedures. Therefore, it is the policy of the executive branch, to the extent consistent with applicable law, to require that agencies treat guidance documents as non-binding both in law and in practice, except as incorporated into a contract, take public input into account when appropriate in formulating guidance documents, and make guidance documents readily available to the public. Agencies may impose legally binding requirements on the public only through regulations and on parties on a case-by-case basis through adjudications, and only after appropriate process, except as authorized by law or as incorporated into a contract.

Alaskan air carriers have a strong commitment to improving safety, but ask the FAA to not hinder those efforts by allowing staff – even when well-intentioned – to create confusion, inconsistency, and unnecessary paperwork, without going through the legally required public process to ensure that changes are warranted and effective.

If you have any questions, please do not hesitate to contact Jane Dale at 907.717.6724.

Best regards,



Matt Atkinson, President  
Alaska Air Carriers Association



Jane Dale, Executive Director  
Alaska Air Carriers Association