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Arjun Garg, Esq.
Chief Counsel (AGC-1)
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591-0001

RE: Conforming Agency Guidance to Regulations

Dear Mr. Garg:

The Aeronautical Repair Station Association (ARSA)¹ is concerned with the disconnect between the plain language of the aviation safety regulations and guidance the Federal Aviation Administration (FAA) issues to its workforce and the public. As noted in ARSA's August 16, 2019 letter to Administrator Dickson, "[c]ompliance begins and ends with the plain language of the regulations. For the FAA to truly achieve the 'just culture' promised by its Compliance Program, it must rely on the basic standards set by Title 14 of the Code of Federal Regulations and ensure that guidance is perfectly aligned with those rules."

A recently released Executive Order² follows similar instructions from the Department of Justice,³ the Office of Management and Budget⁴ and the Department of Transportation.⁵ Those documents reiterate a basic tenet of administrative law: agency guidance cannot take priority over applicable statutes and regulations.

Measured against that standard, two FAA orders stand out in needing immediate attention:

- (1) [FAA Order 8000.373A, "Federal Aviation Administration Compliance Program" \(October 31, 2018\)](#). The document purports to provide methods for the agency and the industry to work through compliance issues that do not pose a risk to the aviation safety system. As the language now stands, agency personnel can base, and are basing, decisions upon "guidance", which unfortunately does not always comport with the rules. Therefore, paragraph 4(f) should be revised as follows:

¹ ARSA is the trade association for the global aviation maintenance industry, which employs [more than 188,000 Americans](#) at 4,025 FAA-certificated repair stations throughout the United States and contributes [more than \\$50 billion annually to the U.S. economy](#). We are also proud to count among our members repair stations outside the United States, as well as leading airlines, manufacturers, academic institutions and industry service providers.

² [Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents \(October 9, 2019\)](#).

³ [Limiting Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases \(January 25, 2019\)](#).

⁴ [Final Bulletin for Agency Good Guidance Practices \(January 18, 2007; published at 72 FR 3432 \(January 25, 2007\)\)](#).

⁵ [Review and Clearance of Guidance Documents \(December 20, 2018\)](#).

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- f. The FAA views ~~these~~ intentional or reckless deviations from regulatory standards, ~~as defined in the Agency's safety oversight guidance, or deviations from regulatory standards~~ that otherwise present an unacceptable risk to safety, as posing the greatest risk to ~~safe operation~~ of the National Airspace System, and thus requiring strong enforcement.
- (2) [FAA Order 8900.1, Volume 1, Chapter 1, Section 1 \(May 3, 2019\)](#). This document contains guidance to aviation safety inspectors (ASI) on certification and surveillance activities. It must be clear that regulations trump any guidance. Therefore, we request the following revisions.
- (a) Paragraph 1-3, "Standardization and Consistency," the third sentence, which currently reads, "At no time will local interpretations be used in lieu of established policy found in this order or from other official FAA sources" should be moved. The revised paragraph would then read:
- Two major objectives of the Flight Standards Service are to standardize the functions of the ASI position and provide consistency to industry stakeholders. For this reason, any change to this order must be in accordance with the approved Aviation Safety (AVS) Quality Management System (QMS) process. See Volume 1, Chapter 3, Section 2 for more detailed information on interdependence, critical thinking, and consistency.
- (b) Paragraphs 1-3A through D need to be revised and rearranged. The guidance needs to start with the principle that the regulations always take precedence. No deviation from the guidance is necessary when compliance with the regulations is shown. The fact that regulations take priority is currently buried in the last sentence of paragraph 1-3D. Therefore, we request these paragraphs be revised and reordered as follows:
- (A) **Conflicts with Regulations.** If the guidance in this order conflicts with 14 CFR, 14 CFR takes precedence and no deviation from this order is necessary. Inspectors should refer questions about such conflicts to their immediate supervisor. If the order conflicts with 14 CFR a feedback form is to be submitted informing the FSIMS Librarian of the conflict.
- (B) **Conflicts with Other FAA Orders.** The guidance in this order may conflict with other FAA orders and directives. This situation can arise inadvertently or because it is impractical to revise all orders and directives simultaneously. In such cases, use the order or directive with the most recent date. At no time will local interpretations be used in lieu of established policy found in this order or from other official FAA sources.
- (C) **Deviations from this Order.**
- (1) Inspectors, supervisors and managers who find that guidance in this order should not be applied in a specific case need to forward a request for permission to deviate through their division to the applicable Division Manager of the "Document Owner" listed on the Publication Index Card (PIC), which can be found by clicking on "PubData" in the FSIMS Document Viewer window. The originating office must specify in its request the

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alternative means it will use to meet the requirements of 14 CFR and the intent of the guidance from which it wishes to deviate.

- (2) The Division Manager for the document owner will notify the requesting office/branch if the request is granted or denied through a signed memorandum to that office/branch. Flight Standards Publications will publish the Deviation Memorandum in FSMIS.
- (D) **Authority to Change this Order.** The Executive Director, Flight Standards Service must approve all changes to this order.
- (E) **Availability of this Order.** This order is available to both FAA personnel and the public. Inspectors should advise certificate holders and applicants of the order's availability. It should also be relayed that the order does not take precedence over 14 CFR and any suggestions for changes or alignment may be submitted through the certificate holder or applicant's local office.

ARSA urges the Chief Counsel's Office to take immediate action to conform the above-referenced documents to basic principles of administrative law by making the suggested revisions. Please let me know if you have any questions or desire additional information.

Sincerely,



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