



## MEMORANDUM FOR RECORD

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**Eastern Region**

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**Date: January 26, 2017**  
**Subject: Review of FAA Memoranda, Emails, and Email Summary**  
**NTSB Accident Number: ANC14FA068**

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**In fulfillment of an NTSB investigative support request, the FAA provided various documents to the NTSB including two memoranda, several emails, and an email summary for review. These documents included the following information:**

- A memorandum dated December 6, 2011, where the Certification Manager of the Fairbanks FSDO expressed concern regarding the pending certification to the Alaska Region Division Manager (AAL-200), stating that the pilot:

- "Has demonstrated a lack of judgement and failure to comply with the Federal Aviation Regulations on multiple occasions" and that "Certification of an individual who has demonstrated a lack of judgement may leave FAA open to scrutiny."
- "Is a repeat accident offender"
- "By virtue of his record, has shown an inability to conduct safe operations."

The memorandum further recommended that they "Terminate the certification process for Kirst Aviation" as the pilot had demonstrated "Poor judgement, a lack of knowledge, and failure to comply with Federal Aviation Regulations on multiple occasions and his record demonstrates an inability to conduct safe operations under Part 135."

- An email dated December 19, 2011, where an aviation safety inspector (ASI) in Alaska sent an email to the Flight Standards Service headquarters office in Washington, DC (AFS DC), the subject of which was: "Memo regarding denial of Part 135 air carrier certificate application." The Alaska ASI sought to have the draft memo reviewed, and to get AFS DCs views on it.

- A second memorandum dated December 20, 2011, which was once again sent to the Alaska Region Division Manager (AAL-200), and in which, the Branch Manager from the Technical Standards Branch (AAL-230), and the Alaska Regional Counsel (AAL-7), expressed their support in denying the certification of Kirst Aviation, stating that: "Based on concerns set forth

in the December 6, 2011 memorandum" submitted by the Certification Manager of the Fairbanks FSDO, "The Technical Standards Branch, AAL-230 and the Alaskan Regional Counsel, AAL-7 supports the decision to deny the certification request"

The memorandum further stated that: "14 CFR Part 119.39(b) (1) specifically states: An application for a certificate may be denied if the administrator finds the applicant is not properly or adequately equipped or is not able to conduct safe operations."

The memorandum went on to say that, "It is clear," based on the pilot's "history of accidents and lack of ability to comply with Air Traffic Control (ATC) instructions, that he has not exemplified the characteristics of someone who could adequately conduct safe operations as is required by the above listed regulation."

It also continued by discussing the pilot's "four infractions within the past five years, stating that, "This history consists of two accidents involving student pilots that resulted in damage, on both occasions, to the aircraft," and that in one of these instances, his failure to comply with ATC instructions resulted in the mid-air collision and also stated that though the pilot had "Successfully passed two 44709 re-examinations following his accidents, he has demonstrated a repeated inability to operate safely within the constraints of the Federal Aviation Regulations," and that "Considering this history of infractions, it would be inconsistent with the FAA's responsibility to protect the flying public to issue an air carrier certificate" to the pilot, and furthermore, that "it should be noted," that the pilot's "proposed market is already being safely and sufficiently served by several other operators."

- On January 24, 2012 an email from an employee in AFS DC to the Alaska AFS manager. The email conveyed the message to the Alaska AFS manager that the employee in AFS DC does not feel that the Part 135 certificate should be granted.
- On January 30, 2012, an email from an employee in AFS DC to the Alaska Legal Counsel, with a copy to an employee in the FAA's Office of the Chief Counsel (AGC) Message: "Can you look at this issue and provide your views. Can we deny this if we already granted him a commercial certificate?"
- On April 27, 2012, an email containing the sunset letter, transitioning the certification from the certification team to the Fairbanks FSDO effective May 1, 2012 was sent to the pilot. A log entry that certification was continuing and a high-level review had been completed was also made.
- On July 6, 2012, an email from AGC to AFS Alaska along the lines of: Let me be clear. If the FSDO wants to deny the certificate, then do it. We only provide counsel. On the other hand ... FAA delayed this. I get the recent run-in's, but are there other things...? I will get together with ... (AFS legal) and ... (AFS Legal) to discuss.
- On August 14, 2012, an email from an ASI in the Fairbanks FSDO to the FSDO Front Line Manager, and copied to the FSDO Manager, citing the Flight Standards Information Management System, regarding prospective certificate holders, concluding with:

"When you really break down the certification process, the check ride is part of the demonstration and inspection phase; phase 4. Phase 5 is certification. The guidance still allows for a way out of issuing that certification. Hence, the checkride was mandatory and fulfilled, however, certification can be avoided at this phase. It is covered by guidance and public law".

He then cited 49 USC 44705, and concluded with; "I really don't feel that anyone involved can feel fully confident in allowing certification" of the pilot, "and the aircraft he is putting on the certificate."

- On August 29, 2012, A Program Tracking and Recording System (PTRS) entry indicated that the Operations Specifications had been issued to the pilot.