

Clearance Record
DOCUMENT COMMENT LOG

Originating Office: AIR-110	Document Description: AC 20-XX, Certification Data Retention Agreements and Government Records	Project Lead: Maddie Miguel, AIR-111	Reviewing Office: Public Comments	Date of Review: 4/12/2013
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Company & Group	Page & Paragraph	Comment	Rationale for Comment	Recommendation	Disposition
Garmin	Page 1 Para. 1.b	AC 21-48 specifically addresses data in three-dimensional (3-D) modeling system as type design. For applicants that maintain an electronic copy that is equivalent to a paper copy (such as a pdf copy for example), the requirements of AC 21-48 may be inappropriate.	AC 21-48 may not be appropriate for systems that use simple electronic files that are directly equivalent to the traditional paper drawing.	Suggest clarifying this paragraph to emphasize that AC 21-48 should be followed if 3-D data is part of the data retention but otherwise not reference AC 21-48 for any other data.	Adopted. Reworded sentence as follows: “Although in that AC we define an “electronic modeling system” as a three-dimensional (3-D) modeling system, we encourage you to use the guidance provided because it identifies the criteria for using electronic type design data and includes requirements for how to access and present the data.”
Garmin	Page 1 Para 2	Exclude ODAs from following this AC.	Order 8100.15() already addresses and has requirements in place for the data retention agreement for an ODA holder. Having redundant requirements in this AC and FAA Order 8100.15 may result in divergent requirements if one is not kept consistent with the other.	Suggest including a statement mentioning that this AC is not applicable to an ODA and ODA holders should ensure their ODA Procedure Manual Data Retention section is consistent with the requirements of FAA Order 8100.15().	Adopted. Added the following sentence: “This AC is not applicable to Organization Designation Authorization (ODA) holders. ODA holders must ensure their ODA Procedures Manual Data Retention section is consistent with the requirements listed in of FAA Order 8100.15(), <i>Organization Designation Authorization Procedures.</i> ”
Garmin	Page 2 Para 4.a	“Though 14 CFR 21.21(b)...a signed Memorandum of Agreement (MoA) between you and the FAA is necessary.” Suggest expanding this	Paragraph 4.b of this AC allows an applicant to have a data retention agreement through the PSP. It is not clear why there needs to be a separate MOA.	Suggest rewording the last sentence to expand upon other means of documenting the data retention agreement.	Adopted. Reworded last sentence: “ Though 14 CFR 21.21(b) specifically requires submission of data to the FAA, in the event design data are offered in any format other than paper, a part of a Partnership for Safety Plan

		paragraph to include other means to document the data retention agreement besides a MoA.			(PSP) or a signed Memorandum of Agreement (MoA) between you and the FAA is necessary. ”
Garmin	Page 2 Para 4.a	The information in this paragraph is not clear.	We believe the intent of this paragraph is to cover data submittal during an open certification project. However, this is not entirely clear.	Suggest modifying this paragraph to make its intent clear.	Adopted. Added the word “on-going” on the first sentence.
Garmin	Page 2 Para. 4.b	<p>“The data retention agreement could be part of a Partnership for Safety Plan (PSP), or a standalone MoA.”</p> <p>Suggest expanding this paragraph to include other means to document the data retention agreement besides a PSP or MoA.</p>	Order 8100.15() section 3-17 allows an ODA holder to document the data retention agreement in the ODA Manual.	<p>Suggest changing to: “The data retention agreement could be part of the Partnership for Safety Plan (PSP), a standalone MoA, or other means that are accepted by the FAA.”</p> <p>(unless an ODA is excluded from the applicability of this AC as suggested by Garmin’s comment on paragraph 2)</p>	Non-Concur. We have adopted Garmin’s comment to exclude ODA from this AC. Therefore the only two methods allowed are MOAs or a section of a Partnership for Safety Plan (PSP), if applicable.
Garmin	Page 2 Para 4.b Page 5 Para 6.a.(7), Para 6.b, Para 6.c	The AC repeatedly mentions that data retention must be available and in a format that is readable by the FAA and the NARA.	Industry is not familiar with the NARA requirements; therefore, it would be very difficult to comply with the NARA requirements. The FAA should ensure that the requirements of any other government agency are clearly identified in this AC or other FAA documents such as orders that are referenced from the AC.	Suggest deleting NARA in all locations and ensuring NARA and other applicable government agency requirements are incorporated into this AC or referenced FAA policy.	Adopted. Removed NARA from the AC.

Garmin	Page 4 Para 6.a.(3) & 6.a.(4)	Paragraph 6.a.(4) contradicts paragraph 6.a.(3).	<p>Paragraph 6.a.(4) includes the statement that “This employee is required to provide FAA with immediate access to the records upon FAA request.”</p> <p>The phrase “immediate access” is contradictory with paragraph 6.a.(3). Paragraph 6.a.(3) allows the applicant to specify the time interval to make the data available upon request.</p>	Suggest rewording 6.a.(4) to be consistent with 6.a.(3) to allow the applicant to specify the time interval to make the data available upon request.	Adopted. Removed the word “immediate” from par. 6.a.(4).
Heath Tecna	Page 2 Paragraph 4b	The FAA is asking industry to ensure data is readable by NARA.	<p>Industry has no mandate to work with NARA. Data format and media type are defined by the FAA and the FAA should ensure their policy is in line with NARA requirements for data submittal. In no case would industry provide federal records directly to NARA. There is no suitable means in place for industry to be successful with understanding NARA requirements without intervention from the FAA.</p>	Remove all reference of NARA from the AC	Adopted. Removed NARA from the AC.
Heath Tecna	Page 3 Paragraph: Note below table 1	We do not believe it is acceptable to label design data as “FAA Approved.”	Marking type design data as “FAA approved” can cause problems in industry. Making such a mark on the type design data could, in and of itself invalidate it. Type design data that is approved is documented by FAA forms and should not appear directly on the design data or substantiation.	Remove note from the AC	Adopted. Removed the whole note.

Heath Tecna	Page 4 Paragraph: 5d note	We do not agree with the wording in the note not allowing release of proprietary data.	There are many cases where the owner of the data (usually also the holder of the type design data) would wish to use this proof of approval in support of future development programs. For example, a seat supplier might wish to reuse some substantiation data on a new program. In order to accomplish this, they would need to provide this data to the installer so that it can be determined if the data is valid and applicable to support the new design. This is common in the reconfiguration world as a means to establish proof of previous FAA approval.	Remove this note from the AC.	Adopted. Removed the note.
Heath Tecna	General	This AC is not easy to read. It is wordy.			No response required, comment is non-specific. AC has been revised by Technical Writer-Editor.
Rolls Royce	<i>Section 4 b. (mid paragraph)</i>	In the tenth sentence, the AC claims that the FAA “may use the project data retained by you for any official purpose, including reference or evaluation of any subsequent applicant’s submitted data”. Also in the eleventh sentence, “the FAA must have access to the data for purposes such as PMA design verification,	Under 14 CFR 21.21(b), an Applicant must provide data specifically to allow the FAA to make a finding of compliance to the applicable regulations for the purpose of obtaining a design approval. This data, in most instances, contains proprietary information such as trade secrets or other commercial information		Adopted. Reworded 10 th . Sentence: “The FAA may use the project data retained by you for any official purposes such as production inspections, technical oversight of designees, design reviews, continued operational safety oversight, or any other reasons deemed necessary by the FAA.”

		<p>technical oversight of delegated organizations, design review and approval, and continued operational safety investigations”.</p>	<p>developed by the Applicant. This data was not developed nor submitted to the FAA for any other purpose besides showing compliance to the applicable airworthiness requirements applicable to their product. The use of an Applicant’s (or DAH) data by the FAA for purposes other than for which it was submitted can have an adverse effect on the competitive position of the Applicant. Unrestricted use by the FAA of an Applicant’s data for purposes of verifying or evaluating a subsequent Applicant’s design approval is contrary to the purpose for its original submission and contrary to the protections provided under the Freedom of Information Act (5 U.S.C. § 552(b)), and Section 40115 of the Federal Aviation Act of 1994 (49 U.S.C. § 40115).</p>		
Rolls Royce	<i>Section 6 b. (mid paragraph)</i>	<p>In the third sentence, the FAA expects that the data retention agreement contain language requiring the DAH to “forward all data associated with the certificate” whenever the design approval is surrendered.</p>	<p>It is Rolls-Royce’s assertion that unless the DAH provides written consent for public release of the type design data, any forwarding of type design data (including drawings, specifications, test reports, analysis or other information) regardless of whether the certificate is being surrendered,</p>		<p>Concur: Intellectual property rights are not the purview of the FAA. We are adding the following two sentences to emphasize this: “Upon surrender of a TC/STC, a DAH retains their intellectual property</p>

			terminated or revoked will (or should) only be released to the FAA provided that the protections identified in the previous comment above remain in force.		rights in the underlying design and substantiating data. Protection of intellectual property is provided for in paragraph 5 of this AC. Paragraphs 5.a. and b. require written consent from the DAH to release data to the public.”
Cessna Aircraft Company	1.a.	Reference to 14 CFR 21.21 is out of context in the following excerpt since that regulation makes no mention of data retention. “design approval holders (DAHs) should follow when entering into a certification data retention agreement with the Federal Aviation Administration (FAA). (See Title 14 of the Code of Federal Regulations (14 CFR) 21.21.)”	Rewrite 1.a. as follows: “This advisory circular (AC) describes the procedures that domestic design approval applicants and design approval holders (DAHs) should follow when entering into a certification data retention agreement with the Federal Aviation Administration(FAA). Applicants for a Type Certificate must provide Type Design data to the FAA. In addition, the Type Design Data must be made available for review upon request by the FAA. (See Title 14 of the Code of Federal Regulations(14 CFR) 21.21, 21.41 and 21.49.) This AC also clarifies the type of certification data that constitute a government record per 14 CFR 21.31.”		Adopted. Removed reference to 14 CFR 21.21 on this sentence.
Cessna Aircraft Company	4.b.	The term “type design” is mentioned but not defined. “The FAA maintains project data, type design data and substantiation data for each type	Recommend adding a reference to 14 CFR 21.31. “The FAA maintains project data, type design data (14 CFR 21.31) and substantiation data for each		Non-Concur. “Type design” is defined in Figure 1. <i>Types of Data for Retention by ACO or TC Holder</i> , on page. 3.

		certification project.”	type certification project.”		
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