Federal Aviation Administration

Memorandum

Date: JUL 17 2009

To: David W. Hempe, Manager, Aircraft Engineering Division, AIR-100

From: Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Karen Petronis, Senior Attorney for Regulations, AGC-200

Subject: Record Retention under Organization Designation Authorization (ODA)

You requested an interpretation of conflicting regulations regarding data developed under various organizational delegation programs.

Specifically, you noted that organizations such as Designated Alteration Stations (DAS) and Delegation Option Authorizations (DOA) are required to transition to the Organization Designation Authorization (ODA) program established in Part 183 Subpart D in 2005.

The regulations in Part 21 require DAS and DOA designees to surrender the data developed under those programs to the FAA when the organization no longer holds that authorization. Under the ODA program, however, §183.61 requires the ODA holder to maintain the data developed under one of those other programs for the duration of the ODA. As you noted, the regulations require those transitioned designees to both retain and surrender the same data.

Similarly, you note that there are certain organizational designations that may be terminated rather than transitioned into the ODA program. Some of these organizations have separate data retention agreements in place with the FAA. A literal reading of the regulation would require the data be submitted to the FAA at the termination of the delegation, and then returned to the organization under its data retention agreement.

In the case of the dichotomy between part 21 (§§ 21.293 and 21.493) and part 183 (§183.61), we find that the part 183 requirement would control. The ODA regulations are more recent, and were developed cohesively to maintain a certain relationship with designation holders under a more modern structure than the original programs. There is no reason for organizations that developed and are using the same data to surrender that data to the FAA. The regulations in part 21 appear to have been established when the concern was that data would be lost when the relationship with the FAA was severed. That is not a concern when the organization has simply changed program designation under a more recent requirement by the FAA.

Similarly, there does not appear to be any reason for forcing an organization that holds a retention agreement to surrender data it developed. If the concern is the data would be lost when the designation was terminated, that concern would appear to be negated by the separate data retention agreements you mention.

In both cases, as you note, it is to the advantage of the agency to not have the data physically in its possession because of the space required, and because of the relative unfamiliarity of the agency with the data developed by a designee. The goal of all the regulations is to keep the data available for substantiation. There is no purpose served by forcing unnecessary transfer if the FAA is satisfied that the data are maintained by and available from the developing organization.

We presume that agreements with the organizations, whether as data retention agreements or as part of ODA documentation, call out this data and the requirement that it be properly maintained and accessible. We also presume that the rights of DAS and DOA certificate holders, as granted by 49 USC 44702 (a), are not at issue here, since ODA holders are 49 USC 44702 (d) designees rather than certificate holders. Nothing in this interpretation may be construed as changing the rights of any certificate holder or altering any agreement made with one.